All parties to this proceeding ask the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Hann's decision regarding T. K. M.'s claim for benefits under the Utah Occupational Disease Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. §34A-3102(2), Utah Code Ann. §34A-2-801(3) and Utah Admin. Code R602-2-1.M.

BACKGROUND AND ISSUES PRESENTED

On August 20, 2001, Ms. M. filed an Application For Hearing with the Commission to compel City Market and its insurance carrier, CNA Insurance (referred to jointly as "City Market" hereafter) to pay occupational disease benefits for Ms. M.'s "cervical dystonia."[1] Ms. M. alleged that her dystonia had been caused by the repetitive motion of her work as a grocery checker.

At the hearing held in this matter on July 30, 2002, the parties submitted stipulated facts and agreed that Judge Hann should refer the medical aspects of Ms. M.'s claim to a panel of medical experts. The panel issued its report on February 10, 2003. On September 12, 2003, Judge Hann issued her decision.

In summary, Judge Hann concluded that Ms. M. suffered from cervical spondylosis and spasmodic torticollis, aggravated, but not caused, by her work at City Market. Judge Hann further concluded that the work-related aggravation of Ms. M.'s underlying condition had ended by the time she stopped working at City Market. Consequently, Ms. M. was not entitled to any disability compensation for lost wages. However, Judge Hann ordered City Market to pay Ms. M.'s expenses incurred in the medical treatment of her spondylosis and torticollis.

In its motion for review of Judge Hann's decision, City Market argues Ms. M. is not entitled to any benefits because her spondylosis and torticollis are not within the coverage of the Occupational Disease Act. Alternatively, City Market argues that, even if Ms. M. is entitled to the medical benefits awarded by Judge Hann, the amount of those benefits must be determined according to the proportion by which Ms. M.'s work at City Market contributed to her occupational disease.

Ms. M.'s motion for review argues she is entitled to disability compensation and expenses of future medical for a continuing work-related aggravation of her pre-existing spondylosis and torticollis.

FINDINGS OF FACT

The parties have stipulated to the underlying facts of Ms. M.'s claim. With respect to the medical aspects of Ms. M.'s claim, the Appeals Board finds the medical panel's report to be persuasive. On that basis, the facts relevant to the issues raised by the parties' motions for review may be summarized as follows.

Ms. M. worked for City Market for more than 11 years, primarily as a grocery checker, beginning in December, 1989. As early as 1992, Ms. M. was diagnosed with cervical spondylosis. In 1996, she began to experience cervical spasms. By 2000, she was diagnosed with torticollis. She stopped working at City Market in May, 2001.

The preponderance of medical evidence, particularly the medical panel's report, establishes that Ms. M. does, in fact, suffer from cervical spondylosis with secondary spasmodic torticollis and dizziness. Her work at City Market did not cause the spondylosis, torticollis, or dizziness, but did exacerbate those conditions. While Ms. M. continued to work at City Market, 40% of her medical problems were attributable to work-related aggravations of her underlying condition. This exacerbation continued until Ms. M. stopped working.

Ms. M.'s past medical care has been necessary to diagnose and treat the work-related aggravation of her underlying condition, but any ongoing medical care is attributable to her underlying medical problems, rather than to her work at City Market.

DISCUSSION AND CONCLUSIONS OF LAW

Section 34A-3-104(1) of the Utah Occupational Disease Act provides that "Every employer is liable for the payment of disability and medical benefits to every employee who becomes disabled . . . by reason of an occupational disease under the terms of this chapter." Section 34A-3-103 of the Act defines a "compensable occupational disease" as "any disease or illness that arises out of and in the course of employment and is medically caused or aggravated by that employment." The fundamental question raised by City Market's motion for review is whether a work-related aggravation of a non-work-related disease is compensable under the Act.

City Market argues that the work-related aggravation of Ms. M.'s spondylosis and torticollis does not meet the Act's definition of "compensable occupational disease" because those conditions did not "arise out of and in the course of her employment" within the meaning of Section 34A-3-103. To support this argument, City Market cites two Utah Supreme Court decisions: Young v. Salt Lake City, 90 P.2d 174 (Utah 1939) and Edlund v. Industrial Commission, 248 P.2d 365 (Utah 1952).

Young was decided in 1939, before Utah had even adopted an occupational disease law. Young merely addressed the means of distinguishing accidental injuries, which were compensable at that time pursuant to the Workers' Compensation Act, and occupational diseases, which were compensable, if at all, in civil tort actions.[2] By 1952, when the Supreme Court decided Edlund, Utah had enacted an Occupational Disease Act. However, the coverage provisions of the Act interpreted in Edlund were repealed in 1991 and replaced by very different provisions now in the Act. Thus, neither Young nor Edlund is helpful in evaluating Ms. M.'s right to benefits under the current Act. The Appeals Board therefore turns to the Act itself.

The plain language of the Act encompasses payment of compensation for a work-related aggravation of a non-work-related disease. Section 34A-3-103 includes aggravation as part of the definition of a compensable occupational disease. Likewise, Section 34A-3-110(4) provides for apportioning compensation "when disability . . . from any other cause not itself compensable is

aggravated, prolonged, accelerated, or in any way contributed to by an occupational disease." This apportionment provision would be unnecessary if, as City Market argues, the work-related aggravation of an underlying non-work-related condition is not compensable at all. The Appeals Board believes the Legislature included the foregoing provision advisedly, in recognition that the aggravation of non-work-related conditions is compensable under the Act.

In light of the foregoing provisions of the Act and the principle that the Act should be construed liberally in favor of coverage and compensation, the Appeals Board concludes that the work-related aggravation of Ms. M.'s non-work-related spondylosis and torticollis is compensable under the Act.[3]

As an alternative argument, City Market contends that, if Ms. M.'s condition is compensable under the Act, then her right to benefits must be computed according to Section 34A-3-110, which reduces City Market's liability in proportion to the degree Ms. M.'s work at City Market contributed to her condition. Although the statutory language of Section 34A-3-110 is not a model of clarity, the Appeals Board agrees with City Market's interpretation. The Appeals Board has previously determined that Ms. M.'s work at City Market bears a 40% causal relationship to her condition; consequently, City Market's liability is limited to 40% of any medical expenses or other benefits awarded to Ms. M..

The Appeals Board now turns to Ms. M.'s argument that she suffers from continuing and permanent work-related aggravation of her pre-existing condition, and is therefore entitled to additional compensation. Ms. M.'s argument turns on questions of medical fact and opinion. The preponderance of the medical evidence, including the opinion of the impartial medical panel, establishes that any work-related aggravation of her underlying spondylosis and torticollis had ended by the time Ms. M. stopped work at City Market. Consequently, no basis exists to award additional compensation to Ms. M..

ORDER

The Appeals Board grants City Market's motion for review with respect to its liability for Ms. M.'s medical expenses and modifies Judge Hann's Order as follows:

> It is hereby ordered that City Market and/or CNA Insurance, pay 40% of Ms. M.'s expenses for medical care of her cervical spondylosis and spasmodic torticollis, consistent with the Labor Commission's medical fee schedule.

In all other respects, the Appeals Board affirms Judge Hann's decision and denies both City Market and Ms. M.'s motions for review. It is so ordered.

Dated this 5th day of April, 2004.

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

1. The following definitions of medical terms used in this decision are taken from Dorland's Illustrated Medical Dictionary, 27th Edition. "Dystonia" is disordered tonicity of muscle. "Cervical spondylosis" is degenerative joint disease affecting the cervical vertebrae, intervertebral discs, and surrounding ligaments and connective tissue, sometimes with pain or parasthesia radiating down the arms as a result of pressure on the nerve roots. "Spasmodic torticollis" is a contracted state of the cervical muscles, occurring intermittently and producing twisting of the neck and an unnatural position of the head.

2. As observed in *Larson's Workers' Compensation Law*, section 52.03(2): "It is of little value, and indeed, may be quite misleading, to quote indiscriminately from old definitions whose only purpose was distinguishing accident."

3. An extension of occupational disease coverage for work-related aggravation of non-work conditions has occurred in other states, as well as in Utah. As observed in Larson's Workers' Compensation Law,section 52.06(3):

> It can readily be seen, as this process has gone forward, the line between occupational disease and aggravation of preexisting disease or weakness has become blurred. The ultimate working rule that seems to emerge is simply that a disability which would be held to arise out of the employment under the tests of increased risk and aggravation for a preexisting condition will be treated as an occupational disease.

Larson then refers to section 9.02(3)of his treatise, where he notes the general rule that "preexisting disease or infirmity does not disqualify a claim under the 'arising out of employment' requirement if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the . . . disability for which compensation is sought."