

July 22, 2008

To Workers Compensation Attorney Practitioners,

The Labor Commission strives to work with attorneys to address concerns and continually improve the workers' compensation adjudication process. The Commission believes it is helpful from time to time to discuss issues arising from the workers' compensation statutes and rules, particularly with respect to the policy underlying those laws. This letter addresses the Commission's process for approving agreements to either settle or commute workers' compensation claims.

Section 34A-2-420 of the Utah Workers' Compensation Act states (emphasis added):

(4) Notwithstanding Subsection (1) and Section 34A-2-108, an administrative law judge **shall review** and **may approve** the agreement of the parties to enter into a full and final:

(a) compromise settlement of disputed medical, disability, or death benefit entitlements under this chapter or Chapter 3, Utah Occupational Disease Act; or

(b) commutation and settlement of reasonable future medical, disability, or death benefit entitlements under this chapter or Chapter 3 by means of a lump sum payment, structured settlement, or other appropriate payout.

Thus, whenever an ALJ receives a proposed settlement agreement, the administrative law judge must first ascertain whether it a) compromises a disputed claim, pursuant to subsection 420(4)(a); or b) commutes the payment of established benefits, pursuant to subsection 420(4)(b).

A "disputed validity" settlement must involve a real controversy between the parties regarding the compensability of a claim, in whole or in part. Settlement of these disputed claims allows the parties to assess the strengths and weaknesses of their respective positions and then strike a compromise in order to avoid the risk, expense and delay of further adjudication.

A "commutation agreement" involves very different considerations. Here, the injured worker's right to benefits has been established and is no longer in doubt. The only question before the ALJ is whether the parties should be allowed to substitute their own method of paying those benefits for the payment provisions otherwise required by the Utah Workers' Compensation Act.

Once the ALJ has ascertained the nature of the proposed agreement, the ALJ must then determine if the agreement fulfills the underlying purposes of the workers' compensation laws. The Commission's Rule 602-2-5.B. provides that:

Settlement agreements may be appropriate in claims of disputed validity or when the parties' interests are served by payment of benefits in a manner different than otherwise prescribed by the workers' compensation laws. However, settlement agreements must also fulfill the underlying purposes of the workers' compensation laws. Once approved by the Commission, settlement agreements are permanently binding on the parties. The Commission will not approve any proposed settlement that is manifestly unjust.

It is the ALJ's duty to consider whether a proposed agreement is "manifestly unjust." It is not enough that the injured worker, employer and insurance carrier agree to a settlement. There also exists a public interest that the ALJ must take into account. In *Reteuna v. Industrial Commission*, 185 P. 535, 537 (Utah 1919), decided shortly after enactment of the Workers Compensation Act, the Utah Supreme Court described that public interest as follows:

The Utah Workers Compensation Act embodies a public policy and legislative intent to 'secure compensation to an injured employee ... (and) to relieve society of the care and support of the unfortunate victim of the industrial accident.

It is fundamental to Utah's workers' compensation system that injured workers have both a continuing source of income to meet their basic needs and medical care to treat their work injury so as to prevent them from becoming a charge on society. In considering a commutation proposal, the ALJ must be satisfied that the proposed alternative payments will provide the injured worker with a reasonable equivalent to the benefits provided by the Act, and that the alternative payment method is in the injured worker's best interests.

Furthermore, the ALJ must consider whether an agreement improperly shifts the cost of a work accident away from the workers' compensation system and places the burden on another system. For example, in the absence of a good-faith dispute regarding the compensability of a workplace injury, the ALJ will not approve an agreement that transfers the costs of medical care to a private health insurance plan or other similar programs. In like manner, the ALJ will not approve a settlement that is unreasonable, considering the certainty of liability, the seriousness of the injury, the medical documentation, or other important factors.

In summary, ALJs are expected to exercise judgment and discretion in considering settlement agreements. Consistent with the purposes underlying the Utah Workers Compensation Act, ALJs will not approve settlement agreements that are mischaracterized--such as an agreement labeled as a "disputed validity" compromise when nothing in the case is really in dispute. ALJs will also not approve commutation agreements where the parties fail to show the computation of each benefit to be commuted, with supporting documentation where appropriate. And in all cases, the

AUJ will consider the underlying purposes of the workers' compensation system and whether the proposed settlement is manifestly unjust.

I hope this letter is of assistance in better understanding the Commission's perspective, policy and process regarding approval of settlement agreements. The Commission appreciates the continued dialogue regarding the adjudicative process, and invites you to the next quarterly attorney meeting, which will be held at the 1st floor conference room in the Heber Wells Office Building.

Sincerely,

Sherrie Hayashi
Commissioner