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**UTAH LABOR COMMISSION**

**KEVIN D. WIEDERHOLD,**

**Petitioner,**

vs.

**ALLIED FENCE and WORKERS  
COMPENSATION FUND,**

**Respondents.**

**ORDER AFFIRMING  
ALJ'S DECISION**

**Case No. 2003372**

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Kevin D. Wiederhold asks the Utah Labor Commission to review Administrative Law Judge Marlowe's denial of Mr. Wiederhold's 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 Utah Code Annotated § 63-46b-12 and § 34A-2-801(3).

**BACKGROUND AND ISSUE PRESENTED**

Mr. Wiederhold claims workers' compensation benefits from Allied Fence and its insurance carrier, Workers Compensation Fund (jointly referred to as "Allied"), for a work accident that occurred on May 31, 2001. Judge Marlowe held an evidentiary hearing and then appointed a medical panel. After reviewing the panel's report, Judge Marlowe awarded benefits for Mr. Wiederhold's thoracic condition but denied benefits related to his lumbar condition.

In his motion for review, Mr. Wiederhold argues the medical panel's opinion was based on false assumptions and therefore Judge Marlowe's reliance on the panel's report was in error. Mr. Wiederhold claims that aside from the panel's report, the evidence shows that Mr. Wiederhold's lumbar condition was caused by the work accident. Mr. Wiederhold also argues that it was error for Judge Marlowe to appoint a medical panel as there were no conflicting medical opinions.

**FINDINGS OF FACT**

The Commission adopts Judge Marlowe's findings of facts. Those relevant to the current motion for review are as follows:

On May 31, 2001, Mr. Wiederhold carried a roll of chain link fence to his truck bed, laid it down and was unrolling it when he injured his back. He was initially treated for a thoracic strain at WorkMed by Dr. Anne Hawkins and sent to physical therapy for a thoracic spine injury. Mr. Wiederhold reports that within a few weeks of the accident, his pain had radiated down his back and caused intense lower back pain. The medical records reflect some massaging/ manipulation of the

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lumbar region in physical therapy by mid-June 2001. In a follow-up visit at the WorkMed clinic on July 16, 2001, thoracic strain remained the diagnosis, although there were notes that Mr. Wiederhold's pain now radiated down to the lower back.

Mr. Wiederhold underwent testing and treatment over the next two years for his lumbar and thoracic region. None of the treating doctors during this time, however, made any determination or analysis of whether Mr. Wiederhold's lumbar condition was caused by his work accident. The only medical opinion offered to make this connection was by Dr. Hawkins on March 26, 2003, when she checked the "Yes" box on a preprinted "Summary of Medical Record." The report did not offer any discussion or explanation for her conclusion that Mr. Wiederhold's lumbar condition was medically caused by the work accident, despite the fact that her first report of the injury only mentioned *thoracic strain*. The only statement she made regarding medical causation was that the "[b]ack injury from 5/31/01 including T-spine and Lumbar spine has not been resolved."

Allied did not obtain an independent medical examination. Therefore, the only medical report available at the hearing that discussed the medical causal connection with Mr. Wiederhold's lumbar condition and the work accident is Dr. Hawkin's summary.

**DISCUSSION AND CONCLUSION OF LAW**

Section 34A-2-401 of the Utah Workers' Compensation Act provides benefits to workers injured by accident "arising out of and in the course of" employment. To qualify for benefits, an injured worker must prove that his or her work was both the "legal" and "medical" cause of the injury in question. *Allen v. Industrial Commission*, 729 P.2d 15, 25 (Utah 1986). The primary issue in this case is whether Mr. Wiederhold's lumbar back condition was caused by the May 31, 2001, work accident.

The burden remains on Mr. Wiederhold to establish that it was the work accident that caused the injuries for which he currently seeks compensation. At the time of the hearing, the only medical evidence available to establish medical causation was the brief summary from Dr. Hawkins. This summary did not offer any analyses or discussion to explain Dr. Hawkins' conclusions of medical causation, which is particularly remiss since she had never previously indicated any lumbar injury in her prior notes. The Commission is not convinced that, at the time of the hearing, Mr. Wiederhold had established that his lumbar condition was caused by the work accident. Nevertheless, at her discretion, Judge Marlowe permitted appointment of a medical panel, thereby offering Mr. Wiederhold the opportunity to obtain the necessary medical opinion needed to establish medical causation. However, the panel concluded that the lumbar condition was *not* caused by the work accident. The Commission finds that Mr. Wiederhold did not establish by a preponderance of the evidence that his lumbar condition was caused by the work accident.

Mr. Wiederhold also argues that Judge Marlowe's appointment of a medical panel was outside of her authority under the Commission rules. Mr. Wiederhold contends that the

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Commission's rule R602-2-2 mandates that the ALJ can only appoint a medical panel under the outlined circumstances. The Commission does not agree with this interpretation. Section 34A-2-601(1) of the Utah Workers' Compensation Act provides that an ALJ *may* refer the medical aspects of a case to a medical panel. The Commission's rules then outline circumstances where the question of appointing a panel is no longer discretionary, but mandatory. However, these rules do not preclude the ALJ from appointing a panel under other appropriate circumstances. Therefore the Commission finds that there was no error in Judge Marlowe's exercise of discretion in appointing a medical panel in this case.

**ORDER**

The Commission affirms Judge Marlowe's decision. It is so ordered.

Dated this 30<sup>th</sup> day of April, 2008.

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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.