UTAH LABOR COMMISSION

LARRY A. VIGIL, **Petitioner,** **vs.** **ALLEN STEEL CO.,** **Respondent.**	**ORDER MODIFYING ALJ'S DECISION** **Case No. 05-0503**

Larry A. Vigil filed a motion for review asking the Utah Labor Commission to review Administrative Law Judge Marlowe's dismissal of Mr. Vigil's claim for benefits under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.[1]

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63G-4-301 and § 34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Mr. Vigil previously filed a claim with the Commission on February 19, 2002, claiming workers' compensation benefits against Allen Steel Co. ("Allen Steel") for an alleged injury that occurred on June 21, 2001, causing his neurological problems. On December 16, 2003, Judge Marlowe dismissed the case without prejudice after Mr. Vigil failed to submit any medical evidence demonstrating medical causation between his health conditions and his work.

On May 31, 2005, Mr. Vigil filed the present claim alleging the same facts. Allen Steel moved to dismiss for failing to provide any supporting medical evidence and Judge Marlowe, who was again assigned Mr. Vigil's claim, ordered Mr. Vigil to provide the necessary medical evidence no later than October 18, 2005. On October 4, 2005, Mr. Vigil asked for another extension and Judge Marlowe provided another order granting the extension to November 29, 2005, but warned that if he still failed to provide the necessary evidence, she would dismiss his claim with prejudice. By December 12, 2005, when Mr. Vigil failed to provide the required evidence, Judge Marlowe dismissed the claim with prejudice.

In his motion for review, Mr. Vigil goes into detail as to why Allen Steel is liable for his health condition under various theories of law, a history of his health condition, as well as complaints of ineffective counsel and a biased judge. However, he does not assert that he has the medical evidence necessary to make his claim (other than his own statements and copies of articles

[1] Although Mr. Vigil has since asked that the matter be decided by the Appeals Board, jurisdiction to conduct this review has already vested in the Labor Commission, pursuant to Section 34A-2-303(3).

from medical journals), or that he will obtain such evidence.

DISCUSSION AND CONCLUSION OF LAW

Section 34A-2-401 of the Utah Workers' Compensation Act requires employers to pay workers' compensation benefits to employees injured by accidents "arising out of and in the course of employment." Injuries satisfy this requirement if the work is both the "legal cause" and the "medical cause" of injury. Allen v. Industrial Commission, 729 P.2d 15 (Utah 1986). It is the employee's burden to establish that the work accident was the medical cause of his injury.

In his application for benefits, Mr. Vigil only provides his own conclusion that it was his work at Allen Steele that caused his condition based on excerpts from various medical articles. Although he provided medical documents that indicate he suffers from a seizure disorder and depression, none of the physicians stated a medical opinion that these conditions were **caused** by his work with Allen Steel, thereby establishing medical causation. The Commission's Rule R602-2-1(B)(3) requires:

> All Applications for Hearing shall include any available supporting medical documentation of the claim where there is a dispute over medical issues. Applications for Hearing without supporting documentation and a properly completed Authorization to Release Medical Records may not be mailed to the employer or insurance carrier for answer until the appropriate documents have been provided. In addition to respondent's answer, a respondent may file a motion to dismiss the Application for Hearing where there is no supporting medical documentation filed to demonstrate medical causation when such is at issue between the parties.

The Commission has reviewed the medical documents related to Mr. Vigil's medical treatment before and since his alleged work accident of June 2001. None of the treating doctors have stated a medical opinion that Mr. Vigil's condition was medically caused by his work at Allen Steele. The Commission concludes that, despite being given multiple opportunities from Judge Marlowe to provide such evidence, Mr. Vigil has failed to provide the necessary medical documentation to support his claim and his claim should therefore be dismissed. However, Judge Marlowe's dismissal of the claim with prejudice is not appropriate prior to adjudication of Mr. Vigil's claim on its merits either in an evidentiary hearing or pursuant to Rule 56 or Rule 12(b) of the Utah Rules of Civil Procedures. For these reasons, the Commission amends Judge Marlowe's decision to dismissal without prejudice.[2]

ORDER

[2] Thus, Mr. Vigil retains the right to file his claim for benefits again, but should be aware his application may be rejected if he cannot provide supporting medical documents at the time he files.

The Commission affirms Judge Marlowe's decision dismissing the claim, but amends the order to dismissal without prejudice. It is so ordered.

Dated this 23rd day of September, 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.