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**UTAH LABOR COMMISSION**

**KELLY G. QUARNBERG,**

**Petitioner,**

vs.

**CONSOL ENERGY, INC. and  
NATIONAL UNION FIRE  
INSURANCE OF PITTSBURG,**

**Respondents.**

**ORDER SETTING ASIDE  
ALJ'S DECISION AND  
DENYING BENEFITS**

**Case No. 06-0502**

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Consol Energy, Inc. and its insurance carrier, National Union Fire Insurance of Pittsburg (referred to jointly as "Consol"), ask the Utah Labor Commission to review Administrative Law Judge Lima's award of benefits to Kelly G. Quarnberg 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. Quarnberg claims workers' compensation benefits for spine injuries allegedly caused by an accident in Consol's underground coal mine on February 21, 2006. After an evidentiary hearing, Judge Lima awarded benefits to Mr. Quarnberg.

In challenging Judge Lima's decision, Consol argues that Mr. Quarnberg is not entitled to workers' compensation benefits because his back problems do not "arise out of" the work accident at Consol. Specifically, Consol contends the circumstances of the accident do not satisfy the more stringent prong of the *Allen* test for legal causation that is applicable to Mr. Quarnberg's claim.

**FINDINGS OF FACT**

The Commission adopts Judge Lima's findings of fact. The material facts are summarized as follows:

Mr. Quarnberg has a history of spinal problems that predate his accident at Consol. As noted by the panel of physicians Judge Lima appointed to review the medical aspects of Mr. Quarnberg's claim, these pre-existing cervical and thoracic conditions contributed to the spinal problems for which he now seeks benefits.

Mr. Quarnberg's accident at Consol occurred on February 21, 2006, when one of the corners of the coal hauling vehicle he was operating struck a wall in the mine. The vehicle was moving at three to four miles per hour when it collided with the wall. The collision did not stop the vehicle, but may have slowed it somewhat. Mr. Quarnberg was jolted by the incident, but not enough to throw him against his lap belt or the vehicle's frame. Mr. Quarnberg experienced immediate pain in his back and chest.

### 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 the "legal cause" of the injury in question. *Allen v. Industrial Commission*, 729 P.2d 15, 25 (Utah 1986). In *Allen*, the Utah Supreme Court discussed the context in which the requirement of "legal causation" is applied:

Just because a person suffers a preexisting condition, he or she is not disqualified from obtaining compensation . . . To meet the legal causation requirement, a claimant with a preexisting condition must show that the employment contributed something substantial to increase the risk he already faced in everyday life because of his condition. This additional element of risk in the workplace is usually supplied by an exertion greater than that undertaken in normal, everyday life.

In its subsequent decision in *Price River Coal Co. v. Industrial Commission*, 731 P.2d 1079, 1082 (Utah 1986), the Utah Supreme Court described the test for legal causation as follows:

Under *Allen*, a usual or ordinary exertion, so long as it is an activity connected with the employee's duties, will suffice to show legal cause. However, if the claimant suffers from a pre-existing condition, then he or she must show that the employment activity involved some **unusual or extraordinary exertion** over and above the "usual wear and tear and exertions of nonemployment life." (Citations omitted; emphasis added.)

In Mr. Quarnberg's case, there is no dispute that he suffered from preexisting spinal conditions that contribute to his current problems. Consequently, he must satisfy the more stringent *Allen* test for legal causation by showing that the circumstances of his accident at Consol constituted an "unusual or extraordinary exertion over and above the usual wear and tear and exertions of nonemployment life." *Price River Coal Co. v. Industrial Commission*, *Ibid.*

Admittedly, Mr. Quarnberg's work accident took place in an unusual location (an underground coal mine) and involved unusual equipment (a massive coal hauling vehicle). However those factors are not dispositive of the issue of legal causation. Rather, it is the force or exertion that Mr. Quarnberg experienced that must satisfy the "unusual or extraordinary" standard. On that precise point, the record indicates that the accident occurred in a vehicle moving at a slow speed. Furthermore, the incident did not bring the vehicle to a halt—it merely slowed the vehicle.

Consequently, Mr. Quarnberg was “jolted,” but not with enough energy to throw him against the vehicle’s frame or to force him against his lap belt.

Based on the foregoing, the Commission finds that the force or exertion Mr. Quarnberg experienced in his accident at Consol was not unusual or extraordinary when compared to the forces and exertions experienced in typical modern nonemployment life. Similar low-speed events and jolting are common in the operation of cars, carts and other such vehicles and are frequently experienced in a wide range of recreational activities. The Commission therefore concludes that the circumstances of Mr. Quarnberg’s accident do not satisfy the more stringent *Allen* test for legal causation. Consequently, Mr. Quarnberg’s current spinal problems do not arise out of his employment at Consol and are not compensable under the workers’ compensation system.

### **ORDER**

The Commission sets aside Judge Lima’s award of benefits to Mr. Quarnberg and dismisses Mr. Quarnberg’s claim for benefits with prejudice. It is so ordered.

Dated this 31<sup>st</sup> day of March, 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.