
UTAH LABOR COMMISSION

STEVE KIRK,

Petitioner,

vs.

**UTAH CONTROLS, INC. and
LIBERTY MUTUAL FIRE
INSURANCE CO.,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 07-0140

Steve Kirk asks the Utah Labor Commission to review Administrative Law Judge Trayner's denial of Mr. Kirk'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. Kirk filed a claim for benefits from Utah Controls, Inc., and its insurance carrier, Liberty Mutual Fire Insurance Co. (jointly referred to as "Utah Controls") for a work accident that occurred on October 11, 2006, involving his back. Following an evidentiary hearing, Judge Trayner appointed a medical review panel and then, relying on the panel's report, denied benefits.

In his motion for review, Mr. Kirk argues that Judge Trayner's reliance on the medical panel's report was error since the report conflicted with the preponderance of the evidence that the work accident caused his current back condition.

FINDINGS OF FACT

The Commission adopts Judge Trayner's findings of facts. Those facts relevant to the motion for review are as follows: Mr. Kirk injured his back on October 11, 2006, when he fell from a ladder, hitting his head on a metal box as he fell. He was first diagnosed with cervical strain, lumbar strain, and knee contusion.

Mr. Kirk was seen by Dr. Biddulph on October 17, 2006, who noted that he had a "previous history of fairly advanced and severe osteoarthritis of the back." In fact, Mr. Kirk had a history of back pain and treatment since September 2004, and had a visit with a neurosurgeon two days before the work accident. Dr. Biddulph opined that the work accident was an exacerbation of a pre-existing condition that accelerated Mr. Kirk's need for surgery, which was done on November 16, 2006.

On January 16, 2007, Dr. Anderson conducted an independent medical examination (IME) and concluded that Mr. Kirk's current medical condition was not caused by the work accident, but rather, from his long standing back problems, including severe osteoarthritis. On August 8, 2007, Dr. Luers reviewed Mr. Kirk's imaging studies and concluded that there was no evidence of a significant spine injury related to the work accident.

Because of the conflict in the medical opinions, a medical panel was appointed. The panel reviewed the medical evidence and concluded that Mr. Kirk did not suffer a permanent exacerbation of his pre-existing condition as a result of the work accident, thereby also refuting medical causation.

DISCUSSION AND CONCLUSION OF LAW

Mr. Kirk argues that the medical panel's opinion conflicts with the preponderance of the evidence, which he claims demonstrates medical causation, and therefore Judge Trayner's reliance on the report was error. Section 34A-2-601(2)(e) of the Utah Workers' Compensation Act provides that the ALJ may base findings and decision on a medical panel report, although the judge is not bound by a report "if other substantial conflicting evidence in the case supports a contrary finding."

An impartial medical panel, consisting of a specialist in orthopedics and a neurologist, provided a detailed report outlining Mr. Kirk's medical history, a review of all the medical reports, and their interpretation and conclusions of the data. They concluded that Mr. Kirk's current condition was not caused by the work accident of October 11, 2007. The Commission finds the report from the impartial panel of medical experts persuasive and supported by the medical opinions of Drs. Anderson and Luers. In summary, the Commission finds that Mr. Kirk has failed to prove that his work accident is the medical cause of his back injury. Therefore the Commission concurs with Judge Trayner's denial of Mr. Kirk's claim.

ORDER

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

Dated this 30th day of April, 2008.

Sherrie Hayashi
Utah Labor Commissioner

IMPORTANT! NOTICE OF APPEAL RIGHTS FOLLOWS ON NEXT PAGE.

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.