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**UTAH LABOR COMMISSION**

**SAM BANKS,**

**Petitioner,**

**vs.**

**UTAH COUNTY SHERIFF and  
UTAH COUNTIES INSURANCE POOL,**

**Respondents.**

**ORDER REVERSING  
ALJ'S DECISION**

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**ORDER OF REMAND**

**Case No. 08-0956**

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Sam Banks asks the Utah Labor Commission to review Administrative Law Judge Marlowe's denial of Mr. Banks'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 § 63G-4-301 of the Utah Administrative Procedures Act and § 34A-2-801(3) of the Utah Workers Compensation Act.

**BACKGROUND AND ISSUE PRESENTED**

Mr. Banks claims workers' compensation benefits for an injury to his right-ankle that occurred on October 30, 2007, while Mr. Banks was employed as a deputy by the Utah County Sheriff. Judge Marlowe held an evidentiary hearing on Mr. Banks' claim and then denied the claim on the grounds that Mr. Banks' work was not the legal cause of his injury. Mr. Banks asks the Commission to review Judge Marlowe's determination on that issue.

**FINDINGS OF FACT**

On October 30, 2007, Mr. Banks was working as a deputy at the Utah County jail. He received an emergency call for assistance at another part of the jail. In responding to this call, he sprinted 15 feet, stopped abruptly at a security door, then sprinted 60 yards to a second security door. He again stopped abruptly while the door opened, then passed through the door to the location where help had been requested.

After the foregoing event, Mr. Banks immediately felt pain in his right ankle. He was diagnosed with arthritis and a bone spur in his ankle that had existed prior to events of October 30, 2007. However, his work exertion on that date broke the bone spur loose, which caused his symptoms and necessitating medical care.

**DISCUSSION AND CONCLUSION OF LAW**

The Utah Workers' Compensation Act provides benefits to workers injured by accident "arising out of and in the course of" employment. See Utah Code Ann. §34A-2-401. To qualify for benefits under the foregoing standard, an injured worker must establish that his or her work was both the "legal cause" and the "medical cause" of the injury in question. *Allen v. Industrial Commission*, 729 P.2d 15, 25 (Utah 1986). There is no question that Mr. Banks' work exertion on October 30, 2007, is the medical cause of his ankle injury. The only issue before the Commission is whether that exertion also satisfies the requirement of "legal causation."

In *Allen*, *Ibid*, the Utah Supreme Court discussed the context in which the requirement of "legal causation" is applied.

Whether an injury arose out of or in the course of employment is difficult to determine where the employee brings to the workplace a personal element of risk such as a preexisting condition. Just because a person suffers a preexisting condition, he or she is not disqualified from obtaining compensation. Our cases make clear that "the aggravation or lighting up of a pre-existing disease by an industrial accident is compensable . . ." (Citation omitted.) 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."** . . . . The requirement of "unusual or extraordinary exertion" is designed to screen out those injuries that result from a personal condition which the worker brings to the job, rather than from exertions required of the employee in the workplace. (Citations omitted; emphasis added.)

Mr. Banks suffered from preexisting ankle conditions that contributed to his current injury. Consequently, he must satisfy the more stringent prong of the *Allen* test for legal causation by showing that his work at the Utah County jail on October 30, 2007, involved "some unusual or

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extraordinary exertion over and above the usual wear and tear and exertions of nonemployment life.”

To assess whether Mr. Banks' specific work activities meet the Allen test of an “unusual or extraordinary exertion,” the Commission must compare his work activities to other typical activities and exertions experienced by men and women in modern nonemployment life. See *Allen* at 26. Some of the specific examples cited by the Supreme Court in Allen as examples of typical nonemployment exertion are “taking full garbage cans to the street, lifting and carrying baggage for travel, changing a flat tire on an automobile, lifting a small child to chest height, and climbing the stairs in buildings.”

Since the Supreme Court's decision in *Allen*, the Commission and the Commission's Appeals Board have had occasion to consider legal causation in the context of many types and combinations of exertion. In most cases, the exertion in question can fairly easily be characterized as “unusual or extraordinary” (and therefore compensable) or “usual and ordinary” (and therefore noncompensable). The Commission views Mr. Banks' exertion in this case as falling quite close to the dividing line between these two categories. On one hand, athletes and casual participants in a wide variety of sports engage in the same type of sprinting and sudden stopping that Mr. Banks performed at work. However, the fact that a certain subgroup of the general population, such as athletes, engages in a particular exertion does not persuade the Commission that the activity is “typical” of modern nonemployment life. Likewise, the Commission does not view the intensity of other common activities, such as running to catch a bus or train, as involving the intensity of exertion that was present as Mr. Bank ran at full speed and then stopped abruptly in order to respond to a jail emergency.

As already noted, the Commission views this as a close case but concludes that Mr. Banks' work exertion was sufficient to constitute the legal cause of his injury. The Commission therefore finds Mr. Banks eligible for benefits. The Commission remands this matter to Judge Marlowe to determine the nature and extent of such benefits.

**ORDER**

The Commission finds Mr. Banks eligible for workers' compensation benefits for his right ankle injury and remands Mr. Banks' claim to Judge Marlowe to establish the nature and amount of those benefits. It is so ordered.

Dated this 30<sup>th</sup> day of July, 2009.

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Sherrie Hayashi  
Utah Labor Commissioner