

2007

Martha D. Casper, widow of C. Lynn Barracclough v.
Labor Commission of Utah, Andrus Trucking
Services, Inc., and/or National Union Fire
Insurance (TPA - AIG Claim Services) : Brief of
Respondent

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

MARTHA D. CASPER, widow of C.
LYNN BARRACLOUGH,

Petitioner,

vs.

LABOR COMMISSION OF UTAH,
ANDRUS TRUCKING SERVICES, INC.
and/or NATIONAL UNION FIRE
INSURANCE (TPA - AIG CLAIM
SERVICES),

Respondents.

**BRIEF OF RESPONDENTS
ANDRUS TRUCKING SERVICES,
INC. AND
NATIONAL UNION FIRE
INSURANCE**

Court of Appeals Case No. 20070324

PETITION FOR REVIEW FROM THE LABOR COMMISSION OF UTAH

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JURISDICTIONAL STATEMENT

The Utah Court of Appeals has jurisdiction over this appeal pursuant to Utah Code Section 78-2a-3(2)(a) (2006); see also Utah Code Ann. § 63-46(b)-16(1) (2006); § 34A-2-801(8) (2006); Utah R. App. P. 14 (2006).

ISSUES

1. Whether the Utah Labor Commission abused its discretion in refusing to strictly apply the Utah Rules of Civil Procedure in an administrative proceeding by refusing to deem admitted untimely responses to requests for admission where Utah administrative law provides that administrative discovery is informal so that cases are resolved on the merits and not through technical procedural vehicles.

Standard of Review: Decisions regarding administrative discovery are reviewed under the abuse of discretion standard. See Utah Code Ann. § 34A-2-802 (2007) (“The commission, . . . is not bound by the usual common law or statutory rules of evidence or by any technical or formal rules or procedure The commission may make its investigation in such manner as in its judgment is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of the chapter.”); cf. Joseph v. Salt Lake City Civil Serv. Comm’n, 2002 UT App 254, 53 P.3d 11 (discussing abuse of discretion standard for reviewing sanctions imposed by administrative agency for failure to respond to administrative discovery requests).

This issue was preserved in the motion for review to the Labor Commission. (R. 00446-68.)

2. Whether the Court of Appeals should re-weigh evidence of medical and legal causation where the Labor Commission made factual findings of no legal causation and no medical causation and Utah law provides that findings of fact made by the Commission after weighing competing testimony and evidence are conclusive on the courts.

Standard of Review: Complete deference to the Labor Commission's findings of no legal or medical causation. Where conflicting opinions on causation are presented to the Labor Commission and a finding on causation is made by the Commission, Utah appellate courts do not re-weigh evidence or substitute their opinion for that of the Labor Commission; rather, the court defers to the Labor Commission's findings. See Tintic Standard Mining Co. v. Industrial Comm'n, 110 P.2d 367, 368-69 (Utah 1941); Wheritt v. Industrial Comm'n, 110 P.2d 374, 376 (Utah 1941); Staker v. Industrial Comm'n, 209 P. 880, 882 (Utah 1922).

This issue was preserved in the motion for review to the Labor Commission. (R. 00446-68.)

**CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES,
RULES AND REGULATIONS**

Utah Administrative Code R602-2-1.H. (October 1997), Addendum A

Utah Administrative Code R602-2-1.H (2000), Addendum B.

Utah Code Section 63-46b-7, Addendum C.

Utah Administrative Code R602-2-1.F., Addendum D.

STATEMENT OF THE CASE

Petitioner Martha Casper seeks workers' compensation death benefits as a result of the death of her former husband, C. Lynn Barraclough. Mr. Barraclough died two days after suffering a heart attack while operating a truck for Respondent Andrus Transportation. Mr. Barraclough's death was not, however, caused by, or a result of, his employment. Rather, the medical expert opinions weighed by the Labor Commission overwhelmingly indicated that Mr. Barraclough's death was the result of a pre-existing heart condition.

During the administrative process, Ms. Casper served requests for admission. The requests for admission were responded to by Respondent, but not within the 30 day requirement of Utah Rule of Civil Procedure 36 that would strictly apply in a civil judicial proceeding. Rather, because of longstanding Utah law adopting the informality principle of administrative law, Utah statutory law directing that administrative discovery is relaxed and the Labor Commission is not bound by any formal rules or procedure (including the Utah Rules of Civil Procedure), because of an administrative rule permitting interrogatories but not requests for admission, and in light of the a statutory mandate to carry out the spirit of the Workers' Compensation Act by deciding cases on the merits, and not through technical procedural vehicles, the Labor Commission refused to deem admitted the untimely responses to Ms. Casper's requests for admission. Ms. Casper complains that she is entitled to benefits because of this; Respondent maintains that this was not an abuse of discretion.

In deciding the case on the merits, the Administrative Law Judge held an administrative hearing. At the hearing, opinions of several competing experts were

introduced and considered. Initial findings of fact on causation were made by the ALJ, but because of the competing medical opinions, the matter was remanded by the Commission to obtain advice from a medical panel on the issue of causation. The medical panel concluded that Mr. Barraclough's employment with Andrus was not the cause of his heart attack and death; rather, his heart attack and death was a result of a pre-existing heart condition. On remand, the ALJ analyzed the evidence, considered the opinions from the competing experts, took into account the opinion of no causation from the medical panel, and concluded that there was no causal link. Following a motion for review from Ms. Casper, the Labor Commission affirmed.

Ms. Casper continues to disagree with the no causation finding, complaining about the relative weight given to the competing medical expert opinions by the Commission. The instant Petition for Review to this Court is simply another attempt to have the evidence re-weighted. It is improper for Ms. Casper to ask this Court to re-weight evidence, and it is unnecessary for this Court to do so. Appellate courts do not re-weight evidence or findings of fact made by the Labor Commission after the Commission has weighed competing authorities on conflicting evidence. Moreover, re-weighting the evidence simply confirms that the decision of no causation made by the Commission was correct and not an abuse of discretion.

STATEMENT OF FACTS

Mr. C. Lynn Barraclough ("Mr. Barraclough") suffered a heart attack while driving truck for Defendant Andrus Trucking Services ("Andrus" or "Respondent") on November

19, 1996; he died two days later. (R. 00618; 00441; 00405.)¹ Mr. Barraclough's widow, Petitioner Martha Casper ("Petitioner" or "Ms. Casper")² filed her Application for Hearing (the initial pleading that is somewhat analogous to a complaint in the civil judicial context) in October 1997, seeking medical expenses, dependents benefits, and burial expenses due to the death of her husband. (R. 0001; see also 00618; 00441; 00405.) Ms. Casper alleges that Mr. Barraclough's death was caused by his work at Andrus. (Id.) Andrus maintains that Mr. Barraclough's death was neither caused by, nor arose out of, his employment; but was a result of a longstanding preexisting condition. (R. 00091-94; 00252-57; 00469-96.)

In the administrative proceeding, Ms. Casper's first set of requests for admission were served even before Respondents filed their Answer, and therefore before an attorney planning would have taken place had this matter been a civil suit as opposed to an administrative claim. The first set of requests for admission were served on December 12, 1997. (R. 00087-90.) Respondents' Answer to the Application for Hearing was filed six days later, on December 18, 1997. (R. 00091-94.) Obviously no attorney planning meeting had taken place prior to the service of the requests for admission as an answer had not yet

¹ The citations to factual findings in the record are to the following: (1) Labor Commission's March 21, 2007 "Order Affirming ALJ's Decision (R. 00618-00622); (2) the ALJ's July 18, 2005 "Findings of Fact" (R. 00405-00412); and the ALJ's August 27, 2004 "Findings of Fact, Conclusions of Law, and Order." (R. 00441-00445). This is because the final the Labor Commission's "Order Affirming ALJ's Decision," adopt[ed] [Administrative Law] Judge George's findings of fact," (R.00619), and the "Findings of Fact, Conclusions of Law, and Order," of Administrative Law Judge George "incorporated by reference the August 27, 2004 Preliminary Findings of Fact. (R. 00443.)

² Petitioner advised the Court that she remarried on February 17, 2001, after filing her Application for Hearing seeking workers' compensation benefits. (R. 00326.)

been filed, and even if an answer had been filed there had been no equivalent of a Rule 26(f) conference would have begun the time for discovery. The second set of requests for admission were filed nearly a year and a half later on April 20, 1999. (R. 00188-90.) The requests for admission were responded to by Andrus, but not within the 30 day requirement imposed by Utah Rule of Civil Procedure 36 that would strictly apply in a civil judicial proceeding. Respondents responded to the first set dated December 12, 1997, on March 6, 1998 (R. 00108-114), and to the second set dated April 20, 1999, on May 26, 1999 (R. 00200-02.)

A two-day administrative hearing was held on September 11 and 12, 2000. (R. 00618; 00406.)) At issue was, inter alia, whether Mr. Barracrough's death arose out of, and in the course and scope of, his employment. After receiving evidence from both sides, the ALJ weighed the evidence and found that "Mr. Barracrough's work at Andrus was neither the legal cause nor the medical cause of his heart attack." (R. 00618.)

At the hearing, Mr. Barracrough's death was described as occurring while he was driving. He left St. George on a solo drive, experienced chest pains, called his doctor and his wife, and communicated to the Andrus dispatcher that he was returning to the Andrus facility. (R. 00342; 00409.)³ When Mr. Barracrough never returned to the yard, Andrus

³ References to both the ALJ's July 31, 2003 "Findings of Fact Conclusions of Law and Order" made before the matter was remanded for submission to a medical panel, and the ALJ's August 27, 2004 "Findings of Fact" provided to the medical panel are provided inasmuch as the July 31, 2003 Findings are identical to those of August 27, 2004 with the exception of one paragraph in which the ALJ initially concluded after the hearing but before submission to the medical panel, that Mr. Barracrough had a

(continued...)

employees left to find him off the road in a ditch. (R. 00345; 00409.) Ambulance personnel were summoned who then took Mr. Barraclough to the hospital where he died two days later. (R. 00345; 00409.)

Evidence was introduced at the hearing demonstrating that Mr. Barraclough's death was neither caused by, nor arose out of, his employment, but was a result of a longstanding preexisting condition. The evidence first outlined Mr. Barraclough's prior history of heart problems: (1) on August 17, 1995, Mr. Barraclough presented to Dr. Moore with numbness on the left side of his body, (R. 00342; 00406); John Bell, a friend of Mr. Barraclough, testified that Mr. Barraclough told him (Mr. Bell) that Mr. Barraclough would get chest pains and numbness on his left side, (R. 00342; 00406); Mr. Bell also testified that he observed Mr. Barraclough experience chest pains. (R. 00342-43; 00406-07.)

Expert opinions were also introduced at the hearing to address the issue of causation (i.e., whether Mr. Barraclough's death arose both out of, and in the course of, his employment). Ms. Casper's expert, Dr. Frank Yanowitz, noted that Mr. Barraclough "suffered a cardiac arrest secondary to an acute myocardial infarction while on his job driving an 18-wheeler truck" (R. 00346; 00410.) Dr. Yanowitz opined that "[i]t is likely that the anxiety and stress of having to drive solo for the first time contributed to the timing of [Mr. Barraclough's] fatal coronary event, although this is very hard to prove." (R. 00346; 00410.) On the other hand, Dr. Todd Grey, the medical examiner/pathologist retained by

³(...continued)
preexisting degenerative cardiac condition, a conclusion that was left to be decided by the medical panel on remand. (Compare R. 00342-49 with R. 00405-12.)

Andrus, also noted that Mr. Barraclough suffered a heart attack. Dr. Grey went on to explain, however, why the heart attack did not arise out of, and in the course and scope of, employment. Dr. Grey explained that the most common cause of a heart attack is the hardening and narrowing of the arteries slowly over time over a period of years or decades, (R. 00347; 00410-11), pointed out that Mr. Barraclough had experienced chest pains in the days prior to his heart attack, (R. 00347; 00411), and opined that “the underlying pathology (occlusion of the coronary arteries) is a condition which had been developing for many years and cannot be ascribed to [Mr. Barraclough’s] employment as a truck driver.” (R. 00347; 00411, quoting Report of Dr. Gray.) Additional evidence presented to the ALJ included the opinion of Dr. Joseph Perry, a cardiologist, who stated that Mr. Barraclough’s employment “had no relationship to the development of coronary atherosclerosis, which was the disease responsible for his demise,” and he found “no relationship between [Mr. Barraclough’s] employment and his demise.” (R. 00669:0001.) A psychiatrist retained by Andrus, Dr. David McCann, further opined that Mr. Barraclough’s injuries did not arise out of or as a result of his employment. Dr. McCann explained that the medical records provided a clear description of a man who was feeling progressively ill, and that the belief that Mr. Barraclough was stressed by the job was not supported by any evidence. (R. 00347; 00411). These facts were findings made by the Administrative Law Judge on two separate occasions. (Compare R. 00342-49 with R. 00405-12.)

Based upon this evidence, the ALJ found that Mr. Barraclough’s death did not arise out of, and in the course of, his employment. The ALJ explained that Mr. Barraclough had

a “pre-existing, degenerative cardiac condition, coronary artery atherosclerosis, which culminated in his [heart attack] and ultimately his demise.” (R. 00348.) The ALJ went on to conclude that Ms. Casper failed to prove that Mr. Barraclough’s heart attack was caused by his work, and therefore dismissed Ms. Casper’s claims. (R. 00348-49.)

Petitioner filed an administrative motion for review seeking review of the ALJ’s decision by the Labor Commission. (R. 00354-68.) Her argument was that the ALJ did not give proper weight to the medical expert’s opinions and conclusions, as her motion praised the opinions of Ms. Casper’s experts and criticized the opinions of Andrus’ experts. For example, Petitioner praised Dr. Yanowitz’s “well-reasoned” report that it was “likely” that the anxiety caused the heart attack, (R. 00360-61), while criticizing Dr. Joseph Perry’s conclusion that Mr. Barraclough’s “employment had no relationship to the development of coronary atherosclerosis which was the disease process responsible for his demise.” (R. 00361.) Petitioner also criticized Dr. Grey’s opinion that the underlying cause of the heart attack was developed over a number of years and could not be ascribed to Mr. Barraclough’s employment. (R. 00361.) After praising and criticizing the opinions of these competing experts, Petitioner claimed that she established both medical and legal causation, insisting that the opinions of Andrus’ medical experts were “not persuasive,” and that despite the conclusions that there was no causal link, such reports should “carry little weight” (R. 00365-66.) Andrus opposed this first motion for review, pointing out that the ALJ weighed the evidence as the factfinder and correctly determined that Ms. Casper failed to prove that Mr. Barraclough’s death arose out of, and in the course of, his employment. (R. 00377-85.)

Because the ALJ concluded there was no causal link without consulting a medical panel, the Labor Commission remanded the matter to the ALJ to reconsider the issues of medical and legal causation, instructing the ALJ to obtain an opinion from a medical panel. (R. 0388-90.) In remanding the matter, the Commission addressed the requests for admission, rejecting Ms. Casper's request to deem them admitted stating, "The Commission accepts [the ALJ's] tacit ruling that the connection between Mr. Barraclough's work and his death should be decided according to the evidence actually presented by the parties." (R. 00389.) The Commission instructed the ALJ to issue a new decision after obtaining the medical panel's report. (R. 00390.) The Commission ordered the medical panel review because of the "express contrary [medical] opinions," and the "significant conflict in the medical evidence." (R. 00389.)

As instructed, the ALJ appointed a medical panel. (R. 00402.) The medical panel considered and weighed the competing opinions of Drs. Moore, Yanowitz, Perry, and Gray. (R. 00419-24.) The medical panel concluded that Mr. Barraclough's heart attack was caused by a preexisting condition, stating as follows: "The decedent suffered from a medical condition that was pre-existent to the events of 11/19/96. This condition contributed to a myocardial infarction, cardiac arrest, and cerebral anoxia." (R. 00418.) The medical panel also specifically concluded that Mr. Barraclough's employment at Andrus was not the medical cause of his cardiac arrest and death. (R. 00418.) In response to the question "Did the decedent's employment activities with Andrus Transportation Services, Inc. medically cause his cardiac arrest and death?", the medical panel responded, "No." (R. 00419.)

Ms. Casper objected to the medical panel report, claiming the panel “engag[ed] in speculation,” (R. 00426), but at the same time admitting that conflicting medical evidence existed. (R. 00429.) Ms. Casper even submitted a supplemental report of Dr. Yanowitz and asked for permission to cross examine the medical panel. (R. 00435, 00432.) Respondents opposed the motion. (R. 00438.)

After receiving the medical panel report and Ms. Casper’s objection, the ALJ issued its Findings of Fact, Conclusions of Law, and Order. (R. 00441.) The ALJ noted that Ms. Casper’s objections simply went “to the weight the report should be given,” and not to whether it was properly part of the record. (R. 00442.) The ALJ then went on to adopt the medical panel’s finding that Mr. Barraclough’s death was not causally related to his employment with Andrus Transportation. (R. 00443.) As a result, the ALJ concluded that Applicant “failed to prove by a preponderance of the evidence that a medical causal connection exists between the decedent’s cardiac arrest and his work activities.” (R. 00444.)

Ms. Casper sought administrative review from the Labor Commission. Ms. Casper argued that the Utah Rules of Civil Procedure should have been strictly applied in the administrative process, and asserted that she was entitled to recover because Andrus answered requests for admission late. (R. 00452.) She also took issue with the medical records and opinions, (R. 00453-57), claimed that her objections to the medical panel must not have been considered, (R. 00458), asked for reconsideration of conflicting medical evidence, (R. 00460), and reasserted an entitlement to cross examine the medical panel. (R. 00464.) Respondents opposed the motion, setting forth the facts with citations to the record,

(R. 00470-81), referencing the medical opinions, and pointing out that Ms. Casper had the burden of proving both medical and legal causation under Utah workers' compensation law. (R. 00481-82.) Respondents pointed out that Ms. Casper failed to prove legal causation (R. 00483), and that she also failed to prove medical causation. (R. 00486) Respondents also explained why Ms. Casper's request for strict application of the Utah Rules of Civil Procedure in the administrative process was contrary to Utah law. (R. 00488-91.) Respondents explained that the Utah Rules of Civil Procedure do not apply in the same manner in the administrative context as they do in civil judicial proceedings. (R. 00488) Respondents pointed out that the Labor Commission's administrative rules did not provide for requests for admission, that discovery is subject to limitations and not strictly applied in the administrative arena, and that the administrative officer had discretion to modify how discovery procedures and tools were used in the administrative process. (R. 00489-90.) Respondents also explained that Ms. Casper's request to re-weigh the evidence yet again was improper and unnecessary. (R. 00490.)

The Labor Commission affirmed the dismissal of Ms. Casper's petition. (R. 00618.) The Commission adopted the findings of fact made by the ALJ. (R. 00619.) The Commission confirmed the finding that Mr. Barraclough's death was not medically caused or related to his employment. (R. 00619.) The Commission then went on to explain that Ms. Casper did not prove legal causation, nor medical causation; and it therefore concluded that she was not entitled to benefits. (R. 00620.) The Commission addressed a second time the requests for admission, again rejecting Ms. Casper's request to deem them admitted. The

Commission stated, “ The Commission has already considered and rejected this argument in its previous Order Of Remand. Specifically, the Commission ruled that ‘the connection between Mr. Barraclough’s work and his death should be decided according to the evidence actually presented by the parties.’ The Commission hereby reaffirms that ruling.” (R. 00619-20.)

The instant petition for review to this Court ensued. (R. 00623.)

SUMMARY OF ARGUMENTS

Petitioner Martha Casper insists that the Utah Rules of Civil Procedure strictly apply in the administrative process, and she asks that the Commission’s decision be overturned because she disagrees with the relative weight given by the Commission to the medical opinions. (Pet. Br. at I, 1-2.) These arguments are contrary to Utah administrative law and must be rejected for several reasons.

Ms. Casper first claims that the Utah Rules of Civil Procedure strictly apply in the administrative process. She asserts that because Respondents filed responses to requests for admission late, that she is entitled to recover benefits as a matter of law. (Pet. Br. at 8-12.) This position has no foundation in Utah law. There are several reasons why the Labor Commission correctly refused to deem admitted requests for admission that were served as part of the administrative discovery process. Each point is outlined in sections of the brief.

First, Petitioner misapprehends the nature of discovery in workers’ compensation proceedings. Utah Code Section 63-46b-7 does not stand for the proposition asserted by Ms. Casper. To interpret the statute to impose strict, technical adherence to the rules of civil

procedure in the administrative discovery process as proposed by Ms. Casper is contrary to the “informality principle” adopted by Utah administrative law.

Second, it would have been contrary to Utah Code Section 34A-2-802 and Utah administrative law to deem admitted the requests for admission. Utah Code Section 34A-2-802 mandates that administrative discovery is specifically relaxed and that the Labor Commission is not bound by any formal rules or procedure, including the Utah Rules of Civil Procedure. To deem admitted requests for admission would contradict this statutory mandate.

Third, the Commission is also statutorily mandated to decide cases in a way that ascertains the substantial rights of the parties and carries out the spirit of the Workers’ Compensation Act. This spirit of the Act includes applying workers’ compensation law in accordance with the administrative informality principle and ensuring that cases are resolved by proceedings on the merits, and not through technical procedural vehicles.

Fourth, Ms. Casper incorrectly asserts that requests for admission were proper administrative discovery vehicles. No administrative rule has ever permitted the use of requests for admission as administrative discovery methods in Labor Commission administrative proceedings. The old rule permitted interrogatories; and administrative law directs that where one discovery method is expressly permitted, other methods are thereby prohibited. Therefore requests for admission have always been prohibited. A new administrative rule was promulgated to clarify this old rule. The new rule now expressly

makes clear that requests for admission are prohibited. Because this new rule is a procedural rule, it also applies retroactively to render the requests for admission invalid.

Fifth, even if the requests for admission were deemed admitted, they are not determinative of the ultimate questions before the Commission. To recover, Ms. Casper was required to prove two aspects of causation: (1) legal causation and (2) medical causation. All that would be deemed admitted is that the heart attack occurred while Mr. Barraclough was at work. This does not, however, establish that the work was a legal cause of the heart attack, nor does it establish that the work was the medical reason for the heart attack. There is no evidence that Mr. Barraclough's work was the reason for the heart attack; on the contrary, the medical evidence is overwhelming that the heart attack was the result of a pre-existing condition.

As her second argument, Ms. Casper also asks this Court to overturn the Labor Commission's findings of no legal causation and no medical causation because she disagrees with the relative weight given to the competing medical expert opinions on causation. (Pet. Br. at 12-14.) This argument fails for two reasons.

First, it is improper for Ms. Casper to ask this Court to re-weigh evidence, and it is unnecessary for this Court to do so. In reviewing a workers' compensation award, an appellate court does not re-weigh the evidence. Longstanding Utah law directs that findings of fact made by the Commission after weighing competing authorities on conflicting evidence are conclusive on the courts. The Labor Commission's finding of no causation is therefore conclusive on this Court.

Second, re-weighing the evidence would simply validate the decision of the Commission. The ALJ, and the Labor Commission both weighed the evidence and analyzed opinion testimony from competing experts. After weighing this evidence, the ALJ and the Labor Commission both correctly determined that Ms. Casper is not entitled to death benefits as a result of Mr. Barraclough's death because she failed to establish that Mr. Barraclough's death was legally and medically causally related to his employment. Mr. Barraclough's death was a result of a pre-existing heart condition. The instant Petition for Review to this Court is nothing more than another attempt to have the evidence re-weighed, evidence that has already been carefully and thoroughly weighed by the ALJ on two occasions, and later twice by the Labor Commission on administrative review. There has been no abuse of discretion by the Labor Commission in reaching its finding of no causation.

As her final argument, Ms. Casper argues she should be awarded benefits because, she insists, claims are to be "liberally construed in favor of awarding benefits." (Pet. Br. at 14.) An injured worker is not compensated, however, for simply making a claim. Ms. Casper fails to acknowledge that the workers' compensation statutory scheme is a contested one, and that she failed to satisfy the statutory requirements of obtaining benefits. She failed to prove both (1) legal causation and (2) medical causation. Ms. Casper did not demonstrate, by a preponderance of the evidence, that she is entitled to benefits under the Act.

ARGUMENT

I. The Labor Commission correctly concluded that the requests for admission were not deemed admitted in the administrative arena

The Labor Commission correctly refused to deem admitted requests for admission that were served in the administrative discovery process. Ms. Casper claims that the Utah Rules of Civil Procedure should strictly apply in the administrative discovery process. Ms. Casper claims that Section 63-46b-7 should be interpreted to permit parties to serve requests for admission, and that such discovery requests should be handled and applied in accordance with all of the technical applications of the Utah Rules of Civil Procedure. She asserts that because Respondents filed responses to requests for admission late, that she is entitled to recover benefits as a matter of law. (Pet. Br. at 8-12.) Ms. Casper's argument fails for several reasons. The reasons why the Labor Commission correctly refused to deem admitted requests for admission are discussed in greater detail in the sections that follow.

A. Rigid adherence to technical procedure is contrary to Utah administrative law

It is important to set forth the context of discovery in the administrative arena. In arguing for strict application of the Rules of Civil Procedure in a Labor Commission administrative proceeding, Ms. Casper misapprehends the nature of discovery in workers' compensation proceedings. Matters before the Labor Commission are administrative proceedings, not adversarial judicial proceedings. "Rigid adherence to judicial procedures in administrative proceedings is generally inappropriate because it ignores basic differences between judicial and administrative procedures." Pilcher v. Dep't of Social Servs., 663 P.2d

450, 453 (Utah 1983). Because administrative proceedings and judicial proceedings are fundamentally different, “[Labor Commission] [a]dministrative proceedings are usually conducted with greater flexibility and informality than judicial proceedings.” See Pilcher v. Dep’t of Social Servs., 663 P.2d 450, 453 (Utah 1983). “While the mode of procedure before administrative bodies may conform to the Utah Rules of Civil Procedure, the rules governing civil procedure in the trial courts are not necessarily applicable to administrative proceedings.” Pilcher v. Dep’t of Social Servs., 663 P.2d 450, 453 (Utah 1983). Accordingly, the discovery rules found in the Utah Rules of Civil Procedure do not apply in administrative matters in the same manner that they apply in civil judicial proceedings. A leading treatise on Workers’ Compensation makes clear that the purpose of the administrative process is to avoid the procedures and technicalities of the judicial process in favor of reaching a right decision in an expeditious manner. See generally 3 Arthur Larson & Lex K. Larson, Larson’s Worker’s Compensation § 124.01, “Informality Principle Summarized” (Desk Ed. 2007). Pursuant to the administrative informality principle, “cases should be resolved by proceedings on the merits, and not through technical procedural vehicles.” Id. (citing Israel v. Indus. Comm’n, 669 P.2d 102 (Ariz. 1983)). This principle supports deciding the case on the merits and refusing to strictly apply procedural civil discovery rules. The Labor Commission explained this to Ms. Casper on the two occasions when it rejected her requests to deem admitted the requests for admission. (R. 00388, Order of Remand, noting that the ALJ did not impute any admission to Andrus, required the parties to present their evidence on causation, and accepting the ALJ’s ruling “that the connection

between Mr. Barraclough's work and his death should be decided according to the evidence actually presented by the parties"; R. 00619, Order Affirming ALJ's Decision, reiterating that 'the connection between Mr. Barraclough's work and his death should be decided according to the evidence actually presented by the parties'").

B. Utah Code Section 34A-2-802 directs that discovery before the Labor Commission is relaxed, and therefore strict adherence to the Utah Rules of Civil Procedure would be improper

It would have been improper and contrary to Utah Code Section 34A-2-802 and the informality principle of Utah administrative law for the ALJ or the Commission to deem admitted the requests for admission. Discovery before the Labor Commission is specifically relaxed and limited pursuant to Utah Code Section 34A-2-802. This statute provides that the Labor Commission is not bound by any formal rules or procedure, including the Utah Rules of Civil Procedure. It reads: "The commission, . . . an administrative law judge, or the Appeals Board **is not bound** by the usual common law or statutory rules of evidence or **by any technical or formal rules or procedure** The Commission may make its investigation in such manner as in its judgment is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of the chapter." Utah Code Ann. § 34A-2-802 (2007) (emphasis added). Because discovery in workers' compensation proceedings is not bound by the strict rules of the Utah Rules of Civil Procedure, Defendants' failure to timely respond does not require that the requests for admission be deemed admitted, and it would have been improper for the ALJ or the Commission to strictly apply the rules of civil procedure and deem admitted the requests for admission. The application of this statute is

supported by Utah Code Section 63-46b-7(3): “Nothing in this section precludes any investigative right or power given to an agency by another statute.” As a result, it was well within the administrative officer’s discretion to decide the case on the merits.

C. The Labor Commission was obligated to hear the matter on the merits and therefore had discretion to disregard the requests for admission

Administrative officers are given broad discretion in administrative discovery matters. It was well within the administrative officer’s discretion to hear and resolve Ms. Casper’s claim on the merits, as opposed to through technical procedural vehicles such as requests for admission. In addition to making clear that the Labor Commission is not bound by any formal rules of civil procedure, Section 34A-2-802 also directs that discovery may be modified as necessary by the presiding administrative officer. It reads: “The commission, . . . an administrative law judge, or the Appeals Board is not bound by the usual common law or statutory rules of evidence or by any technical or formal rules or procedure **The Commission may make its investigation in such manner as in its judgment is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of the chapter.**” Utah Code Ann. § 34A-2-802 (2007) (emphasis added); cf. Joseph v. Salt Lake City Civil Serv. Comm’n, 2002 UT App 254, 53 P.3d 11 (discussing discretion of administrative agency for imposing sanctions for failures to respond to administrative discovery requests).

This statute authorizes the Labor Commission to oversee the administrative discovery process and modify it as necessary in order to “carry out justly the spirit of the chapter.” This spirit of the chapter undoubtedly includes applying workers’ compensation law in accordance

with the informality principle and ensuring that cases are resolved by proceedings on the merits, and not through technical procedural vehicles. See, e.g., Pilcher v. Dep't of Social Servs., 663 P.2d 450, 453 (Utah 1983) (explaining that because administrative proceedings and judicial proceedings are fundamentally different, administrative proceedings are usually conducted with greater flexibility and informality, and that the rules governing civil procedure in the trial courts are not necessarily applicable to administrative proceedings); 3 Arthur Larson & Lex K. Larson, Larson's Worker's Compensation § 124.01 (2007) (explaining that the informal nature of the administrative process is to avoid the procedures and technicalities of the judicial process in favor of reaching a right decision in an expeditious manner). This further supports the decision of the Labor Commission to refuse to deem admitted the requests for admission.

An administrative agency has discretion to sanction a party for willfulness or dilatory tactics in responding to discovery requests. See Joseph v. Salt Lake City Civil Serv. Comm'n, 2002 UT App 254, ¶11, 53 P.3d 11. It likewise follows that the administrative agency has discretion not to sanction a party. Id. No findings of willfulness or persistent dilatory tactics were made in the instant case by the ALJ or the Commission. Rather, the Commission twice rejected Ms. Casper's request to deem admitted the requests for admission, in both its Order of Remand and final Order Affirming the ALJ's Decision. (R. 00388; R. 00619.) In light of Utah law regarding administrative discovery, it was certainly not an abuse of discretion by the Commission to refuse to deem admitted the requests for admission. Rather, it was proper to have decided the case on the merits.

The Commission explained this to Ms. Casper on both occasions when it rejected Ms. Casper's request to deem admitted the requests for admission. The Commission stated, "The Commission has already considered and rejected this argument in its previous Order Of Remand. Specifically, the Commission ruled that 'the connection between Mr. Barraclough's work and his death should be decided according to the evidence actually presented by the parties.' The Commission hereby reaffirms that ruling." (R. 389 (Order of Remand); 00619-20 (Order Affirming ALJ's Decision).) These two rulings are in accordance with the Commission's statutory mandate of Section 34A-2-802 to "ascertain the substantial rights of the parties and to carry out justly the spirit of the chapter." Utah Code Ann. § 34A-2-802 (2007)

Additionally, Ms. Casper comes to this court asking for strict compliance with the rules of civil procedure with unclean hands. The first set of requests for admission were improper given the fact that no responsive pleading or answer had been filed as of the date when the requests for admission were served. The first set of requests for admission were served on December 12, 1997. Respondents' Answer to the Application for Hearing was filed six days later, on December 18, 1997. If administrative law were to strictly apply the rules of civil procedure, no attorney planning meeting had taken place such that requests for admission could have been served. Even under a strict compliance theory, Ms. Casper has unclean hands because the first set of requests for admission were improper.⁴

⁴ On this point of unclean hands, it is also worth noting the timing by which Ms. Casper responded to interrogatories from Andrus. In the civil context, failure to respond to interrogatories as opposed to requests for admission carry different ramifications. However, the unclean hands of Ms. Casper is demonstrated by the following facts:
(continued...)

In short, discovery in workers' compensation proceedings is not bound by the strict rules of the Utah Rules of Civil Procedure. Based upon this authority, the ALJ and Commission properly concluded that the issues of legal and medical causation should be decided on their merits. (See R. 00389, Order of Remand at p.2, ("The Commission accepts [the ALJ's] tacit ruling that the connection between Mr. Barraclough's work and his death should be decided according to the evidence actually presented by the parties.")); Utah Code Ann. § 34A-2-802 (2005); Utah Administrative Code R602-2-1.N. (2005).

D. Administrative discovery methods are only available to the extent permitted by statute or agency rules, and where the governing statute or agency rule does not expressly permit a method of discovery, that method is prohibited

Utah Code Section 63-46b-7 does not permit requests for admission in a Labor Commission administrative matter as claimed by Ms. Casper. Rather, Section 63-46b-7 states that the administrative "agency may, by rule, prescribe means for discovery[.]" §63-46b-7(1) (2007). If the agency does not enact rules, the parties may conduct discovery according to the Utah Rules of Civil Procedure. Id. The Labor Commission has enacted discovery rules. Copies of these administrative discovery rules are attached. (Utah Administrative Code R602-2-1.H. (October 1997), Exhibit A; Utah Administrative Code R602-2-1.H (2000), Exhibit B; Utah Administrative Code R602-2-1.F., Exhibit D.) For the

⁴(...continued)

Andrus served its first set of interrogatories on February 3, 1998, to which Ms. Casper responded late, 42 days later on March 17, 1998 (0098-101); and Andrus served its second set of interrogatories on September 10, 1998, to which Ms. Casper responded late, more than 7 months later on April 15, 1999. (R. 00179-81; 00186-87.)

reasons outlined below, no Labor Commission administrative discovery rule has ever permitted requests for admission. Rather, requests for admission have always been prohibited.

Discovery methods are only permitted if expressly allowed, and only to the extent permitted, otherwise they are prohibited. Legislation or administrative regulations may set forth how discovery rules may apply in the administrative context. See Pilcher v. Dep't of Social Servs., 663 P.2d 450, 453 (Utah 1983) (“[A]dministrative proceedings are not subject to the Utah Rules of Civil Procedure unless the governing statute or regulations so provide.”) However, “[d]iscovery in administrative proceedings is available only if governing statutes or agency rules so provide.” Beaver County v. Utah State Tax Comm’n, 916 P.2d 344, 352-53 (Utah 1996). Administrative discovery vehicles are limited. “Insofar as the proceedings of a state administrative body are concerned, only the methods of discovery set forth in the pertinent statute are available, and methods not set forth therein are excluded.” Id. (quoting 73A C.J.S. Public Administrative Law and Procedure § 124 (1983)). In other words, discovery is available only to the extent permitted by the governing statute or agency rules, and if the governing statute or agency rules do not expressly permit a method of discovery, that method is prohibited. See id.

1. Requests for admission have never been an administrative method of discovery

Ms. Casper claims that the requests for admission filed in December 1997 were proper under the administrative rule in effect at the time. She makes much of fact that the requests

were served in 1997 and 1999, presumably attempting to avoid the current procedural rule – that “[d]iscovery shall not include requests for admissions.” Utah Administrative Code R602-2-1.F., Exhibit D. Regardless, under either the current rule or the rule in effect in 1997 and 1999, requests for admission have never been permitted vehicles of administrative discovery in Labor Commission proceedings.

(a) In permitting interrogatories but not mentioning requests for admission, the old rule thereby prohibited requests for admission

Prior Administrative Rule R602-2-1.F., the rule at the time the requests for admission were propounded, did not provide for requests for admission. The Labor Commission discovery rule in effect in 1997 and 1999 reads as follows:

Upon filing of the Answer, the defendant may commence discovery with appropriate sets of interrogatories. Such discovery should focus on the accident event, witnesses, as well as past and present medical care. The defendant shall also be entitled to appropriately signed medical releases to allow gathering of pertinent medical records. The defendant may also require the applicant to submit to a medical examination by a physician of the defendant’s choice. Failure of an applicant to comply with such requests may result in the dismissal of a claim or a delay in the scheduling of a hearing.

(Utah Administrative Code R602-2-1.H. (October 1997), Exhibit A; Utah Administrative Code R602-2-1.H (2000), Exhibit B.)⁵

In permitting interrogatories but not mentioning requests for admission, the rule thereby prohibits requests for admission. This rule expressly permits interrogatories. It does

⁵ The language of the rule in effect in 1997 is identical to the language of the rule in effect in 1999. Copies of the rule for verification of the identical language are attached as Exhibits A and B.

not even mention, however, much less authorize, requests for admission. As explained previously, where an administrative rule sets forth methods of conducting administrative discovery (i.e. interrogatories), any other methods not set forth in the rule (i.e. requests for admission) are prohibited. See Beaver County v. Utah State Tax Comm’n, 916 P.2d 344, 352-53 (Utah 1996) (citing and quoting 73A C.J.S. Public Administrative Law and Procedure § 124 (1983)). As a result, because requests for admission are not set forth in the rule, requests for admission are prohibited.

Construing the rule to prohibit requests for admission is also consistent with the informality principle of the administrative process. See Pilcher v. Dep’t of Social Servs., 663 P.2d 450, 453 (Utah 1983) (explaining that “[r]igid adherence to judicial procedures in administrative proceedings is generally inappropriate because it ignores basic differences between judicial and administrative procedures” and that “[a]dministrative proceedings are usually conducted with greater flexibility and informality than judicial proceedings.”); see generally 3 Arthur Larson & Lex K. Larson, Larson’s Worker’s Compensation § 124.01, “Informality Principle Summarized” (Desk Ed. 2007).

(b) The current Labor Commission administrative discovery rule clarifies the prohibition on requests for admission

The current Labor Commission discovery rule expressly prohibits requests for admission. Utah Administrative Code R602-2-1.F. makes clear that requests for admission are prohibited methods of administrative discovery:

F. Discovery.

1. Upon filing the answer, the respondent and the petitioner may commence discovery. Discovery allowed under this rule may include interrogatories, requests for production of documents, depositions, and medical examinations. **Discovery shall not include requests for admissions.** Appropriate discovery under this rule shall focus on matters relevant to the claims and defenses at issue in the case. All discovery requests are deemed continuing and shall be promptly supplemented by the responding party as information comes available.

(Emphasis added.)

The current rule was promulgated to clarify the old rule. As explained above, requests for admission were not permitted methods of administrative discovery. The current rule made this clear by adding the phrase, “Discovery shall not include requests for admissions.” Changes to procedural rules are applied retroactively. See, e.g., Evans & Sutherland Computer Corp. v. Utah State Tax Comm’n, 953 P.2d 435, 437-38 (Utah 1997). This is especially true when amendments merely clarify an ambiguity. Id. Where a statute or rule “deals only with the clarification or amplification as to how the law should have been understood prior to its enactment [or promulgation],” the rule is properly applied retroactively. See Okland Constr. Co. v. Industrial Comm’n, 520 P.2d 208, 210-11 (Utah 1974). Because requests for admission were not permitted methods of administrative discovery under the old rule, and because the new rule’s express prohibition simply clarifies the old rule, the new rule applies retroactively in the instant case. As a result, the requests for admission were expressly prohibited under the new rule.

E. Even if they were deemed admitted, the requests for admission do not resolve legal and medical causation

Even if the requests for admission were deemed admitted, they are not dispositive of the ultimate questions before the Commission. To recover, Ms. Casper was required to prove two aspects of causation: (1) legal causation and (2) medical causation. See Utah Code Ann. § 34A-2-401 (2007); Allen v. Industrial Comm'n, 729 P.2d 15, 25-27 (Utah 1986). This two-part causal test must be proven to distinguish injuries which coincidentally occur at work, injuries due to a preexisting condition that manifests itself at work, to ensure that employers do not become a general insurer of employees, and to discourage fraudulent claims. Allen, 729 P.2d at 25-27. Proving both legal and medical causation is the burden of the applicant. In this case, Ms. Casper proved neither.

Petitioner propounded six requests for admission:

1. Admit that on or about November 19, 1996, the Deceased was injured while acting in the course and scope of employment;
2. Admit that the Applicant's claim is not barred by any applicable statute of limitation.

(R. 00088.)

1. Admit that the Deceased's myocardial infarction occurred while he was driving one of the Employer's trucks;
2. Admit that the Deceased's myocardial infarction occurred after he was dispatched by the Employer to travel on a job or jobs for and/or at the direction of the Employer;
3. Admit that the Deceased performed services for the Employer on the day when his myocardial infarction occurred.
4. Admit that the Deceased's myocardial infarction occurred while the employee was at work for the Employer.

(R. 00188-89.)

Even assuming these requests as admitted, this does not resolve the dispute because these requests are not determinative of both legal and medical causation that would permit recovery by Ms. Casper as a matter of law. All that would be deemed admitted is that the heart attack occurred while Mr. Barraclough was at work—in the course and scope of his employment. It is not determinative that something about the work caused the accident – either legally or medically. If it were deemed admitted that Mr. Barraclough was injured in the course and scope of his employment, while driving an Andrus truck, after being dispatched, performing services for Andrus, while at work, this does not establish the issues of medical and legal causation. Just because the heart attack occurred while Mr. Barraclough was on the job does not establish that the heart attack occurred because of the work. It also does not establish medical causation and rule out the injury being the result of a preexisting condition. Just because the heart attack occurred while Mr. Barraclough was in the course and scope of his employment does not establish whether or not a preexisting medical condition contributed to his death; nor does it establish whether or not the stress, strain, or exertion of Mr. Barraclough’s work at Andrus caused Mr. Barraclough’s heart attack. All that could be established by the requests for admission is that the heart attack occurred on the job, and this does not resolve the issues of legal and medical causation.

These requests for admission, even if admitted, especially cannot satisfy, as a matter of law, the medical causation requirement. Indeed, on the merits, the medical panel concluded that Mr. Barraclough’s death was not medically linked to his work. Thus, even if there were a finding of legal causation, Ms. Casper’s appeal must fail on medical

causation. The medical panel was asked: “Did the decedent’s employment activities with Andrus Transportation Services, Inc. medically cause his cardiac arrest and death?” (R 00418.) The medical panel responded, “No.” (Id.) Therefore, even if the requests for admission were deemed admitted for legal causation purposes, there is no error by the Commission in finding the medical panel to be credible and concluding that there is no medical causation between Mr. Barraclough’s death and his employment at Andrus.

II. Petitioner failed to prove medical causation and legal causation

As her second argument, Ms. Casper asks this Court to overturn the Labor Commission’s findings of no legal causation and no medical causation because she disagrees with the relative weight given to the competing medical expert opinions on causation. (Pet. Br. at 12-14.) The reasons this argument fails are outlined below.

Ms. Casper failed to prove the required legal and medical causal links. For an injury to be compensable under the Workers’ Compensation Act, the injury must arise out of, and in the course and scope of, employment. Utah Code Ann. § 34A-2-401 (2007). The leading case on causation in Utah workers’ compensation jurisprudence, Allen v. Industrial Comm’n, makes clear that a petitioner must prove both medical and legal causation. 729 P.2d 15, 25-27 (Utah 1986) (adopting the two-part test of legal causation and medical causation from Larson, Workmen’s Compensation, (1986)). Ms. Casper proved neither, and her case was properly dismissed.

Ms. Casper now disagrees with the relative weight given by the Commission to competing medical opinions. Various medical opinions were provided by experts retained

by both Petitioner and Respondents. Because of these competing experts, an independent medical panel was appointed. See, e.g., Utah Administrative Code 602-2-2 (2007); Willardson v. Industrial Comm'n of Utah, 904 P.2d 671 (Utah 1995). The independent medical panel provided its opinion on causation – that Mr. Barraclough's heart attack and demise was not causally related to his employment. The medical opinions of experts retained by both sides, as well as the opinion of the medical panel, were thoroughly weighed by the Administrative Law Judge, and later on administrative review by the Commission.

This Court need not re-weigh the evidence. Longstanding Utah law directs that findings of fact made by the Commission after weighing competing authorities on conflicting evidence are conclusive on the courts. The finding of no causation is therefore conclusive on this Court.

Regardless, re-weighing the evidence simply validates the decision of the Commission. After weighing the evidence, the Labor Commission correctly determined that Ms. Casper is not entitled to death benefits because she failed to establish that Mr. Barraclough's death was legally and medically causally related to his employment at Andrus. Mr. Barraclough's death was a result of a pre-existing heart condition. Just because the weight given to Ms. Casper's experts was not as she had hoped does not mean there is any abuse of discretion by the Commission.

A. Causation findings by the Labor Commission are final and such fact issues are not re-weighed by this Court

The Commission's findings on legal and medical causation are final, and it would be contrary to precedent, as well as unnecessary, for this court to re-weigh the evidence and substitute its judgement for the causation findings of the Commission. Utah law directs that the Labor Commission is the ultimate factfinding authority for workers' compensation proceedings. See, e.g., Speirs v. Southern Utah Univ., 2002 UT App 389, ¶ 10, 60 P.3d 42. Additionally, it is not the task of an appellate court to re-weigh evidence in workers' compensation proceedings and substitute its conclusion for that of Labor Commission. Longstanding Utah law directs that where two or more "conflicting inferences" or opinions are presented to the Commission on causation, and a finding on causation is made by the Commission, Utah appellate courts do not re weigh evidence and do not "substitute [their] opinion as to the preponderance of the evidence for that of the commission." Tintic Standard Mining Co. v. Industrial Comm'n, 110 P.2d 367, 368-69 (Utah 1941); see also Wherritt v. Industrial Comm'n, 110 P.2d 374, 376 (Utah 1941) (explaining that "[t]he burden of proof is upon the applicant to establish her claim for compensation" and that "it is not [an appellate court's] duty to say what inference or conclusion [it] would have drawn from the facts presented tot he Commission"); Staker v. Industrial Comm'n, 209 P. 880, 882 (Utah 1922) (refusing to disturb a causation finding where two physicians provided competing testimony to the Commission, and for the court to substitute its findings for the Commission's would

require the court to “usurp the functions of an administrative body [and require the court to] determine the weight of the evidence and the credibility of the witnesses who testified”).

Appellate courts should not be asked to re-weigh facts, especially when appellate courts are not equipped to gauge credibility. Under circumstances like the instant case where the Commission has made causation findings, the court defers to the Labor Commission's findings because, when reasonably conflicting views arise, it is the Commission's province to draw inferences, find facts, and reach conclusions on issues of fact. See id. In short, causation is an issue of fact for the Commission, and “[t]here is no purpose [for this Court to] set[] forth all the evidence since [it] do[es] not weigh it.” Tintic Standard Mining Co. v. Industrial Comm’n, 110 P.2d 367, 368 (Utah 1941)

B. Re-weighing the evidence still results in Ms. Casper failing to prove medical and legal causation

1. No Medical Causation

Given the medical testimony and medical panel report, there can be no abuse of discretion in finding no medical causal link. The ALJ concluded, and the Commission affirmed, based upon the factual and medical evidence, that Mr. Barraclough suffered from a preexisting heart condition. Therefore Ms. Casper failed to prove a medical causal link between Mr. Barraclough’s work at Andrus and his death.

Medical causation is obviously determined by medical evidence. See Allen, 729 P.2d at 22. To establish medical causation, a petitioner must prove by evidence, opinion, or otherwise, that the stress, strain, or exertion required by the occupation caused the resulting

injury. See Allen, 729 P.2d at 27. The medical evidence clearly weighed against a causal connection; and the medical panel concluded, after weighing the medical evidence, that there was no causal connection. The medical evidence clearly and unambiguously demonstrates that Mr. Barraclough's heart attack was caused by a preexisting heart condition. Accordingly, it was certainly not an abuse of discretion for the Commission to conclude that Petitioner failed to establish medical causation.

There can be no abuse of discretion in concluding that Mr. Barraclough suffered from a preexisting heart condition given the evidence presented to the ALJ. Evidence at the hearing indicated that Mr. Barraclough had a prior history of heart problems: he presented to Dr. Moore with numbness on the left side of his body years before the heart attack; John Bell testified that Mr. Barraclough told him that Mr. Barraclough experienced chest pains and numbness on his left side; John Bell also observed Mr. Barraclough experience chest pains. Additionally, several days before the accident Mr. Barraclough demonstrated prodromal symptoms characteristic of a pre-existing cardiac condition: he felt "run down," appeared grey or "ashen," "complained of some chest pain," remained in bed and reminisced about his children, appeared anxious but never admitted to being anxious, looked "very tired," walked with a "shuffling gait," exhibited unusual behavior in conversing about years of love and support, and went in to work late. (R. 00418-25, Medical Panel Report.) Dr. Gray concluded that the underlying cause of the heart attack was developed over a number of years and could not be ascribed to Mr. Barraclough's employment. (R. 00669:0011-12) Dr. Perry concluded Mr. Barraclough's employment "had no relationship to the development

of coronary atherosclerosis, which was the disease responsible for his demise,” and determined that there was “no relationship between [Mr. Barraclough’s] employment and his demise.” (R. 00669:0001.) Even Ms. Casper’s own expert, Dr. Yanowitz, acknowledged that “the underlying disease process, artherosclerosis, was likely present for many years[.]” (R. 00669:0013-14) Dr. McCann analyzed the opinions of the other experts and also concluded that the heart attack was not caused by Mr. Barraclough’s work. (R. 00669:0011-12) The Medical Panel analyzed all of this medical evidence and concluded that Mr. Barraclough’s heart attack was caused by a preexisting condition. (R. 00418-25, Medical Panel Report.) Given this well-supported conclusion of the medical panel, Petitioner cannot legitimately contend that the Commission abused its discretion in finding, based on the medical evidence, that Mr. Barraclough had a pre-existing heart problem.

Given the evidence of a pre-existing condition, medical testimony that the heart attack was the result of a pre-existing condition, and the medical panel’s conclusion that the heart attack was caused by a pre-existing condition, the Commission cannot legitimately be accused of an abuse of discretion in finding no medical causation.

2. No Legal Causation

There can be no abuse of discretion in finding no legal causal link. The Commission correctly concluded that Petitioner failed to prove legal causation. The ALJ concluded, and the Commission affirmed, based upon the factual and medical evidence, that Mr. Barraclough suffered from a preexisting heart condition. Therefore Ms. Casper failed to prove a legal causal link between Mr. Barraclough’s work at Andrus and his death.

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 the condition. Allen, 729 P.2d at 23. Id. Ms. Casper had to prove the existence of a physical exertion greater than that undertaken in normal, everyday life was the cause of death. Ms. Casper failed to meet this burden. She did not claim the existence of such physical stress, and there is no record evidence of any physical exertion. Ms. Casper claimed Mr. Barraclough's death was caused by mental stress and anxiety caused by his work. However, Petitioner did not prove by a preponderance of the evidence that mental stress was sudden and greater than the mental stress encountered in normal, everyday life was the cause of Mr. Barraclough's death. The evidence was to the contrary. After receiving medical opinions from the various experts and the medical panel, the Commission weighed the evidence and concluded that the cause of death was a preexisting heart condition.

Because Mr. Barraclough suffered from a pre-existing heart condition, Petitioner had to establish that Mr. Barraclough was exposed to an unusual or extraordinary exertion at work. Plaintiff failed to meet this burden, and the Commission found that Mr. Barraclough was not exposed to any extraordinary physical or mental stress at his work. Dr. McCann noted that "the records contain no evidence that Mr. Barraclough was exposed to any sudden or extraordinary stress on the day of the event" and stated that Mr. Barraclough's "belief that he was stressed by the job was not supported by any actual evidence." (R. 00669:0009-10.) Moreover, Petitioner's own expert acknowledged a preexisting condition and failed to

present a conclusive opinion, stating that it “is very hard to prove” that stress, not the preexisting condition, caused the heart attack. Such evidence did not satisfy Ms. Casper’s burden of demonstrating an unusual or extraordinary stress caused by work, especially in light of the overwhelming competing testimony and conclusion of the medical panel. It was certainly not an abuse of discretion for the Commission to conclude that Mr. Barraclough was not exposed to any extraordinary stress.

III. Ms. Casper is not entitled to benefits simply because the Workers’ Compensation Act provides a statutory scheme for benefits

As a final point, Petitioner argues she should be awarded benefits because, she insists, claims are to be “liberally construed in favor of awarding benefits.” (Pet. Br. at 14.) This claim fails to appreciate the fact that Ms. Casper failed to satisfy the statutory requirements of obtaining benefits. The statute was established to compensate workers for injuries that both arise out of, and in the course and scope of, employment. Utah Code Ann. § 34A-2-401 (2007). An applicant must prove both (1) legal causation and (2) medical causation. See Utah Code Ann. § 34A-2-401 (2007); Allen v. Industrial Comm’n, 729 P.2d 15, 25-27 (Utah 1986). As a result of these statutory requirements, the statutory scheme is a contested one. An injured worker is not compensated for simply making a claim. The statutory scheme provides a method to adjudicate disputes regarding compensation for benefits. A petitioner must satisfy the requirements of the Act. Ms. Casper did not demonstrate, by a preponderance of the evidence, that she is entitled to benefits under the Act.

CONCLUSION

The Labor Commission's rejection and dismissal of Petitioner Martha Casper's application for benefits under the Workers' Compensation Act should be upheld.

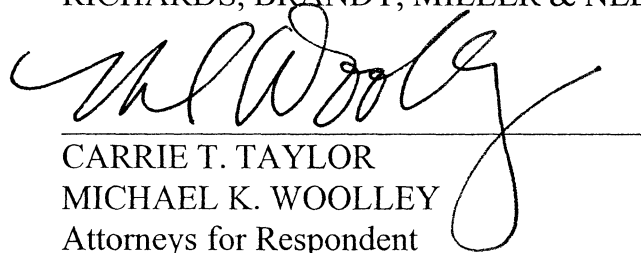
Her contention that the untimely responses to requests for admission should be deemed admitted is contrary to the informality principle recognized by Utah administrative law. Utah Code Section 34A-2-802 also mandates that administrative discovery is relaxed and that the Labor Commission is not bound by any formal rules or procedure, including the Utah Rules of Civil Procedure; to deem admitted requests for admission would also contradict this statutory mandate. The Commission properly carried out the spirit of the Workers' Compensation Act by deciding the matter on the merits, instead of through technical procedural vehicles. Moreover, no Labor Commission administrative rule has ever permitted the use of requests for admission as administrative discovery methods. The old rule permitted interrogatories, and thus other methods including requests for admission were prohibited. The new administrative rule clarifies the old rule by expressly stating that requests for admission are prohibited, and because this new rule is procedural rule, it applies retroactively to render the requests for admission invalid. Furthermore, even if the requests for admission were deemed admitted, they are not determinative of legal causation and medical causation. In light of this authority, the Labor Commission did not abuse its discretion in refusing to deem admitted the requests for admission.

Ms. Casper's request to overturn the Labor Commission's findings of no legal causation and no medical causation because she disagrees with the relative weight given to the competing medical expert opinions on causation is also contrary to Utah law. It is improper for Ms. Casper to ask this Court to re-weigh evidence, and it is unnecessary for this Court to do so because Utah law directs that findings of fact made by the Commission after weighing competing authorities on conflicting evidence are conclusive on the courts. The finding of no causation is therefore conclusive on this Court. Moreover, re-weighing the evidence simply validates the decision of the Commission. After weighing the evidence, the ALJ and the Labor Commission both correctly determined that Ms. Casper is not entitled to death benefits as a result of Mr. Barraclough's death because Mr. Barraclough's death was a result of a pre-existing heart condition. As a result, the Labor Commission did not abuse its discretion in finding no causal link.

Accordingly, Respondents respectfully request that the decision of the Labor Commission be upheld.

DATED this 10 day of October, 2007.

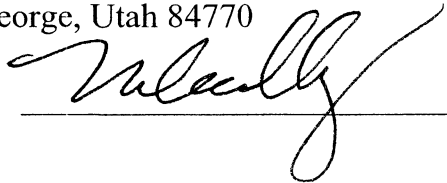
RICHARDS, BRANDT, MILLER & NELSON


CARRIE T. TAYLOR
MICHAEL K. WOOLLEY
Attorneys for Respondent

MAILING CERTIFICATE

I hereby certify that two (2) true and correct copies of the foregoing BRIEF OF RESPONDENTS ANDRUS TRUCKING SERVICES, INC. AND NATIONAL UNION FIRE INSURANCE was mailed, first class, postage prepaid on this 16 day of October, 2007, to the following:

Virgilius Dabney
Attorney at Law
1060 South Main Street #2
St. George, Utah 84770

A handwritten signature in black ink, appearing to read "Virgilius", is written over a horizontal line.

G \EDS\DOCS\09263\0362\JW6026 WPD

Addendum A
Utah Administrative Code R602-2-1.H. (October 1997)

SUPERSEDED
UTAH
ADMINISTRATIVE
CODE

OCTOBER 1997

R380 - R657

R602. Adjudication.

R602-1. General Provisions.

R602-2. Adjudication of Workers' Compensation and Occupational Disease Claims.

R602-1. General Provisions.

R602-1-1. Time.

R602-1-2. Witness Fees.

R602-1-1. Time.

A. An Order is deemed issued on the date on the face of the Order which is the date the presiding officer signs the Order.

B. In computing any period of time prescribed or allowed by these rules or by applicable statute:

1. The day of the act, event, finding, or default, or the date an Order is issued, shall not be included;
2. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a state legal holiday, in which event the period runs until the end of the next working day;
3. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and state legal holidays shall be excluded in the computation;
4. No additional time for mailing will be allowed.

R602-1-2. Witness Fees.

Each witness who shall appear before the Commission by its order shall receive from the Commission for his/her attendance fees and mileage as provided for witnesses by the Utah Rules of Civil Procedure. Otherwise, each party is required to subpoena witnesses at their own expense.

References: 34A-1-302, 63-46b-1 et seq.

History: 10879, AMD, 08/01/90; 10918, NSC, 07/10/90; 10951, NSC, 07/25/90; 11470, AMD, 02/01/91; 13351, AMD, 10/15/92; 13517, AMD, 12/01/92; 13518, AMD, 12/01/92; 14635, AMD, 08/31/93; 15488, NSC, 03/01/94; 15490, NSC, 03/01/94; 17089, AMD, 08/31/95; 17524, NSC, 01/22/96; 17937, AMD, 10/01/96; 18179, AMD, 12/03/96; 19304, NSC, 07/01/97.

NOTES TO DECISIONS

Applicable law.

Rule requiring claimant's industrial accident be a "significant" cause of disability when worker had already qualified for Social Security benefits and which was promulgated after worker's industrial accident, but before worker's application for a hearing before the Industrial Commission, could not be applied retroactively. The general rule in workers' compensation cases is that the court is to apply the law existing at the time of injury. (Former R490-1-17.) *Abel v. Industrial Comm'n*, 860 P.2d 367 (Utah Ct. App. 1993).

R602-2. Adjudication of Workers' Compensation and Occupational Disease Claims.

R602-2-1. Pleadings and Discovery.

R602-2-2. Guidelines for Utilization of Medical Panel.

R602-2-3. Compensation for Medical Testimony.

R602-2-4. Attorney Fees.

R602-2-5. Settlement Agreements.

R602-2-1. Pleadings and Discovery.

A. For the purposes of this rule, "Commission" means the Labor Commission. "Division" means the Division of Adjudication within the Labor Commission. Adjudicative pro-

ceedings for workers' compensation and occupational disease claims may be commenced by the injured worker or dependent filing a request for agency action with the Commission. The Administrative Law Judge is afforded discretion in allowing intervention of other parties pursuant to Section 63-46b-9. The Application for Hearing is the request for agency action. All such applications shall include supporting medical documentation of the claim where there is a dispute over medical issues. Applications without supporting documentation will not be mailed to the employer or insurance carrier for answer until the appropriate documents have been provided.

B. Whenever a claim for compensation benefits is denied by an employer or insurance carrier, the burden rests on the applicant to initiate the action by filing an Application for Hearing with the Commission.

C. When an Application for Hearing is filed with the Commission, the Commission shall forthwith mail a copy to the employer or to the employer's insurance carrier.

D. The employer or insurance carrier shall have 30 days following the date of the mailing of the application to file a written answer with the Commission, admitting or denying liability for the claim. The answer shall state all affirmative defenses with sufficient accuracy and detail that an applicant may be fully informed of the nature of the defense asserted. All answers shall include a summary and categorization of benefits paid to date on the claim. A copy shall be sent to the applicant or, if there is one, to the applicant's attorney by the defendant.

E. When an employer or insurance carrier fails to file an answer within the 30 days provided above, the Commission may enter a default against such employer or insurance carrier. The Commission may then set the matter for hearing, take evidence bearing on the claim, and enter an Order based on the evidence presented. Such defaults may be set aside by following the procedure outlined in the Utah Rules of Civil Procedure. Said default shall apply to the defendant employer or insurance carrier and may not be construed to deprive the Employers' Reinsurance Fund or the Uninsured Employers' Fund of any appropriate defenses.

F. When the answer denies liability solely on the medical aspects of the case, the applicant, through his/her attorney or agent, and the employer or insurance carrier, with the approval of the Commission or its representative, may enter into a stipulated set of facts, which stipulation, together with the medical documents bearing on the case in the Commission's file, may be used in making the final determination of liability.

G. When deemed appropriate, the Commission or its representatives may have a pre-hearing or post-hearing conference.

H. Upon filing of the Answer, the defendant may commence discovery with appropriate sets of interrogatories. Such discovery should focus on the accident event, witnesses, as well as past and present medical care. The defendant shall also be entitled to appropriately signed medical releases to allow gathering of pertinent medical records. The defendant may also require the applicant to submit to a medical examination by a physician of the defendant's choice. Failure of an applicant to comply with such requests may result in the dismissal of a claim or a delay in the scheduling of a hearing.

I. Commission subpoena forms shall be used in all discovery proceedings and shall be signed, unless good cause is shown for a shorter period, at least one week prior to any scheduled hearing.

J. All medical records shall be filed by the employer or its insurance carrier as a single joint exhibit at least one week before the scheduled hearing. Claimant must cooperate and submit all pertinent medical records contained in his/her file to the employer or its insurance carrier for the

joint exhibit submission two weeks in advance of a scheduled hearing. Exhibits are to be placed in an indexed binder arranged by care provider in chronological order. Exhibits shall include all relevant treatment records which tend to prove or disprove a fact in issue. Pages shall be numbered consecutively. Hospital nurses' notes, duplicate materials, and other non-relevant materials may not be included.

K. The Administrative Law Judge shall be notified one week in advance of any proceeding when it is anticipated that more than four witnesses will be called, or where it is anticipated that the hearing of the evidence will require more than two hours.

L. Decisions of the presiding officer in any adjudicative proceeding shall be issued in accordance with the provisions of Section 63-46b-5 or 63-46b-10.

M. Any party to an adjudicative proceeding seeking review of an Order by the Agency may file a written request for review in accordance with the provisions of Sections 63-46b-12 through 16. A Motion for Review of any Order entered by an Administrative Law Judge may be filed pursuant to the provisions of Section 63-46b-12. Unless so filed, the Order shall become the award of the Commission and shall be final. If appropriately filed, the Administrative Law Judge shall:

1. Reopen the case and enter a Supplemental Order after holding such further hearing and receiving such further evidence as may be deemed necessary,
2. Amend or modify the prior Order by a Supplemental order, or
3. Refer the entire case for review under Section 34A-2-801.

If the Administrative Law Judge enters a Supplemental Order, as provided in this subsection, it shall be final unless a Motion for Review of the same is filed.

N. In formal adjudicative proceedings, the Division shall generally follow the Utah Rules of Civil Procedure regarding discovery and the issuance of subpoenas, except as the Utah Rules of Civil Procedure are modified by the express provisions of Section 34A-1-802, or as may be otherwise modified by the presiding officer.

O. A request for reconsideration of an Order on Motion for Review may be allowed and shall be governed by the provisions of Section 63-46b-13. Any petition for judicial review of final agency action shall be governed by the provisions of Section 63-46b-14.

R602-2-2. Guidelines for Utilization of Medical Panel.

Pursuant to Section 34A-2-601, the Commission adopts the following guidelines in determining the necessity of submitting a case to a medical panel:

A. A panel will be utilized by the Administrative Law Judge where:

1. One or more significant medical issues may be involved. Generally a significant medical issue must be shown by conflicting medical reports. Significant medical issues are involved when there are:

- (a) Conflicting medical reports of permanent physical impairment which vary more than 5% of the whole person,
- (b) Conflicting medical opinions as to the temporary total cutoff date which vary more than 90 days, and/or
- (c) Medical expenses in controversy amounting to more than \$2,000.

B. A hearing on objections to the panel report may be scheduled if there is a proffer of conflicting medical testimony showing a need to clarify the medical panel report. Where there is a proffer of new written conflicting medical evidence, the Administrative Law Judge may, in lieu of a hearing, re-submit the new evidence to the panel for consideration and clarification.

C. The Administrative Law Judge may authorize an injured worker to be examined by another physician for the purpose of obtaining a further medical examination or evaluation pertaining to the medical issues involved, and to obtain a report addressing these medical issues in all cases where:

1. The treating physician has failed or refused to give an impairment rating,
2. The employer or doctor considers the claim to be non-industrial, and/or
3. A substantial injustice may occur without such further evaluation.

D. Any expenses of the study and report of a medical panel or medical consultant and of their appearance at a hearing, as well as any expenses for further medical examination or evaluation, as directed by the Administrative Law Judge, shall be paid out of either the Employers' Reinsurance Fund or the Uninsured Employers' Fund, as directed by Section 34A-2-601.

R602-2-3. Compensation for Medical Testimony.

Compensation for medical panel examination, medical testimony, and preparation by medical panel members at hearings shall be \$75 per half hour and shall be \$97.50 per half hour for the medical panel chair.

R602-2-4. Attorney Fees.

Pursuant to Section 34A-1-309, the Commission adopts the following rule to regulate and fix reasonable fees for attorneys representing applicants before the Commission in all cases wherein such fees are awarded after December 31, 1991.

A. The concept of a contingency fee is recognized. A retainer in advance of a Commission approved fee is not allowed. Benefits are only deemed generated within the meaning of this rule when they are paid as a result of legal services rendered after an Appointment of Counsel form is signed by the applicant. A copy of this form must be filed with the Commission by the claimant's attorney.

B. By creating this rule, the commission does not intend that an applicant's attorney be paid a fee where the assistance the attorney renders involves only an incidental expenditure of time. For example, no attorney's fee shall be paid when compensation agreements are merely reviewed, simple documents such as Protection of Rights forms are prepared, or an apparent dispute is quickly resolved as a result of oral or written communication.

C. "Benefits" within the meaning of this rule shall be limited to weekly death or disability compensation and accrued interest thereon paid to or on behalf of an applicant pursuant to the terms of Title 34A, Utah Code Annotated.

D. An attorney's fee deducted from the benefits generated shall be awarded for all legal services rendered through final Commission action with the following constraints:

1. 20% of weekly benefits generated for the first \$15,000, plus 15% of the weekly benefits generated in excess of \$15,000 but not exceeding \$30,000, plus 10% of the weekly benefits generated in excess of \$30,000.

2. In no case shall an attorney collect fees calculated on more than the first 312 weeks of any and all combinations of workers' compensation benefits.

3. Notwithstanding the above, in no case shall the maximum fee exceed \$7,500.

E. After either successfully prosecuting or defending an appeal following final Commission action, an increased attorney's fee shall be awarded amounting to:

1. 25% of the benefits in dispute before the Utah Court of Appeals, plus the amount awarded in part D of this rule, not to exceed \$11,000.

2. 30% of the benefits in dispute before the Supreme Court, plus the amount awarded in part D of this rule, plus

Addendum B
Utah Administrative Code R602-2-1.H (2000)

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Ann.

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R590 - R623

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UTAH
ADMINISTRATIVE
CODE
ANNOTATED

VOLUME 6

Insurance, R590

Judicial Conduct Commission, R595

Labor Commission, R600-R616

Lieutenant Governor, R622, R623

Money Management Council, R628

R602-1. General Provisions.

R602-1-1. Time.

R602-1-2. Witness Fees.

R602-1-1. Time.

A. An Order is deemed issued on the date on the face of the Order which is the date the presiding officer signs the Order.

B. In computing any period of time prescribed or allowed by these rules or by applicable statute:

1. The day of the act, event, finding, or default, or the date an Order is issued, shall not be included;

2. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a state legal holiday, in which event the period runs until the end of the next working day;

3. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and state legal holidays shall be excluded in the computation;

4. No additional time for mailing will be allowed.

R602-1-2. Witness Fees.

Each witness who shall appear before the Commission by its order shall receive from the Commission for his/her attendance fees and mileage as provided for witnesses by the Utah Rules of Civil Procedure. Otherwise, each party is required to subpoena witnesses at their own expense.

References: 34A-1-302, 63-46b-1 et seq.

History: 10879, AMD, 08/01/90; 10918, NSC, 07/10/90; 10951, NSC, 07/25/90; 11470, AMD, 02/01/91; 13351, AMD, 10/15/92; 13517, AMD, 12/01/92; 13518, AMD, 12/01/92; 14635, AMD, 08/31/93; 15488, NSC, 03/01/94; 15490, NSC, 03/01/94; 17089, AMD, 08/31/95; 17524, NSC, 01/22/96; 17937, AMD, 10/01/96; 18179, AMD, 12/03/96; 19304, NSC, 07/01/97; 20258, 5YR, 11/24/97.

NOTES TO DECISIONS**Applicable law.**

Rule requiring claimant's industrial accident be a "significant" cause of disability when worker had already qualified for Social Security benefits and which was promulgated after worker's industrial accident, but before worker's application for a hearing before the Industrial Commission, could not be applied retroactively. The general rule in workers' compensation cases is that the court is to apply the law existing at the time of injury. (Former R490-1-17.) *Abel v. Industrial Comm'n*, 860 P.2d 367 (Utah Ct. App. 1993).

R602-2. Adjudication of Workers' Compensation and Occupational Disease Claims.

R602-2-1. Pleadings and Discovery.

R602-2-2. Guidelines for Utilization of Medical Panel.

R602-2-3. Compensation for Medical Testimony.

R602-2-4. Attorney Fees.

R602-2-5. Settlement Agreements.

R602-2-1. Pleadings and Discovery.

A. For the purposes of this rule, "Commission" means the Labor Commission. "Division" means the Division of Adjudication within the Labor Commis-

sion. Adjudicative proceedings for workers' compensation and occupational disease claims may be commenced by the injured worker or dependent filing a request for agency action with the Commission. The Administrative Law Judge is afforded discretion in allowing intervention of other parties pursuant to Section 63-46b-9. The Application for Hearing is the request for agency action. All such applications shall include supporting medical documentation of the claim where there is a dispute over medical issues. Applications without supporting documentation will not be mailed to the employer or insurance carrier for answer until the appropriate documents have been provided.

B. Whenever a claim for compensation benefits is denied by an employer or insurance carrier, the burden rests on the applicant to initiate the action by filing an Application for Hearing with the Commission.

C. When an Application for Hearing is filed with the Commission, the Commission shall forthwith mail a copy to the employer or to the employer's insurance carrier.

D. The employer or insurance carrier shall have 30 days following the date of the mailing of the application to file a written answer with the Commission, admitting or denying liability for the claim. The answer shall state all affirmative defenses with sufficient accuracy and detail that an applicant may be fully informed of the nature of the defense asserted. All answers shall include a summary and categorization of benefits paid to date on the claim. A copy shall be sent to the applicant or, if there is one, to the applicant's attorney by the defendant.

E. When an employer or insurance carrier fails to file an answer within the 30 days provided above, the Commission may enter a default against such employer or insurance carrier. The Commission may then set the matter for hearing, take evidence bearing on the claim, and enter an Order based on the evidence presented. Such defaults may be set aside by following the procedure outlined in the Utah Rules of Civil Procedure. Said default shall apply to the defendant employer or insurance carrier and may not be construed to deprive the Employers' Reinsurance Fund or the Uninsured Employers' Fund of any appropriate defenses.

F. When the answer denies liability solely on the medical aspects of the case, the applicant, through his/her attorney or agent, and the employer or insurance carrier, with the approval of the Commission or its representative, may enter into a stipulated set of facts, which stipulation, together with the medical documents bearing on the case in the Commission's file, may be used in making the final determination of liability.

G. When deemed appropriate, the Commission or its representatives may have a pre-hearing or post-hearing conference.

H. Upon filing of the Answer, the defendant may commence discovery with appropriate sets of interrogatories. Such discovery should focus on the accident event, witnesses, as well as past and present medical care. The defendant shall also be entitled to appropriately signed medical releases to allow gathering of pertinent medical records. The defendant may also require the applicant to submit to a medical examination by a physician of the defendant's choice. Failure of an applicant to comply with such requests may result in the dismissal of a claim or a delay in the scheduling of a hearing.

I. Commission subpoena forms shall be used in all discovery proceedings and shall be signed, unless good cause is shown for a shorter period, at least one week prior to any scheduled hearing.

J. All medical records shall be filed by the employer or its insurance carrier as a single joint exhibit at least one week before the scheduled hearing. Claimant must cooperate and submit all pertinent medical records contained in his/her file to the employer or its insurance carrier for the joint exhibit submission two weeks in advance of a scheduled hearing. Exhibits are to be placed in an indexed binder arranged by care provider in chronological order. Exhibits shall include all relevant treatment records which tend to prove or disprove a fact in issue. Pages shall be numbered consecutively. Hospital nurses' notes, duplicate materials, and other non-relevant materials may not be included.

K. The Administrative Law Judge shall be notified one week in advance of any proceeding when it is anticipated that more than four witnesses will be called, or where it is anticipated that the hearing of the evidence will require more than two hours.

L. Decisions of the presiding officer in any adjudicative proceeding shall be issued in accordance with the provisions of Section 63-46b-5 or 63-46b-10.

M. Any party to an adjudicative proceeding may obtain review of an Order issued by an Administrative Law Judge by filing a written request for review with the Adjudication Division in accordance with the provisions of Section 63-46b-12 and Section 34A-1-303. Unless a request for review is properly filed, the Administrative Law Judge's Order is the final order of the Commission. If a request for review is filed, other parties to the adjudicative proceeding may file a response within 20 calendar days of the date the request for review was filed. Thereafter, the Administrative Law Judge shall:

1. Reopen the case and enter a Supplemental Order after holding such further hearing and receiving such further evidence as may be deemed necessary,

2. Amend or modify the prior Order by a Supplemental order, or

3. Refer the entire case for review under Section 34A-2-801.

If the Administrative Law Judge enters a Supplemental Order, as provided in this subsection, it shall be final unless a request for review of the same is filed.

N. In formal adjudicative proceedings, the Division shall generally follow the Utah Rules of Civil Procedure regarding discovery and the issuance of subpoenas, except as the Utah Rules of Civil Procedure are modified by the express provisions of Section 34A-1-802, or as may be otherwise modified by the presiding officer.

O. A request for reconsideration of an Order on Motion for Review may be allowed and shall be governed by the provisions of Section 63-46b-13. Any petition for judicial review of final agency action shall be governed by the provisions of Section 63-46b-14.

R602-2-2. Guidelines for Utilization of Medical Panel.

Pursuant to Section 34A-2-601, the Commission adopts the following guidelines in determining the necessity of submitting a case to a medical panel:

A. A panel will be utilized by the Administrative Law Judge where:

1. One or more significant medical issues may be involved. Generally a significant medical issue must

be shown by conflicting medical reports. Significant medical issues are involved when there are:

- (a) Conflicting medical reports of permanent physical impairment which vary more than 5% of the whole person,

- (b) Conflicting medical opinions as to the temporary total cutoff date which vary more than 90 days, and/or

- (c) Medical expenses in controversy amounting to more than \$2,000.

B. A hearing on objections to the panel report may be scheduled if there is a proffer of conflicting medical testimony showing a need to clarify the medical panel report. Where there is a proffer of new written conflicting medical evidence, the Administrative Law Judge may, in lieu of a hearing, re-submit the new evidence to the panel for consideration and clarification.

C. The Administrative Law Judge may authorize an injured worker to be examined by another physician for the purpose of obtaining a further medical examination or evaluation pertaining to the medical issues involved, and to obtain a report addressing these medical issues in all cases where:

1. The treating physician has failed or refused to give an impairment rating,

2. The employer or doctor considers the claim to be non-industrial, and/or

3. A substantial injustice may occur without such further evaluation.

D. Any expenses of the study and report of a medical panel or medical consultant and of their appearance at a hearing, as well as any expenses for further medical examination or evaluation, as directed by the Administrative Law Judge, shall be paid out of either the Employers' Reinsurance Fund or the Uninsured Employers' Fund, as directed by Section 34A-2-601.

R602-2-3. Compensation for Medical Testimony.

Compensation for medical panel examination, medical testimony, and preparation by medical panel members at hearings shall be \$75 per half hour and shall be \$87.50 per half hour for the medical panel chair.

R602-2-4. Attorney Fees.

Pursuant to Section 34A-1-309, the Commission adopts the following rule to regulate and fix reasonable fees for attorneys representing applicants before the Commission in all cases wherein such fees are awarded after April 2, 1999.

A. The concept of a contingency fee is recognized. A retainer in advance of a Commission approved fee is not allowed. Benefits are only deemed generated within the meaning of this rule when they are paid as a result of legal services rendered after an Appointment of Counsel form is signed by the applicant. A copy of this form must be filed with the Commission by the claimant's attorney.

B. By creating this rule, the commission does not intend that an applicant's attorney be paid a fee where the assistance the attorney renders involves only an incidental expenditure of time. For example, no attorney's fee shall be paid when compensation agreements are merely reviewed, simple documents such as Protection of Rights forms are prepared, or an apparent dispute is quickly resolved as a result of oral or written communication.

C. "Benefits" within the meaning of this rule shall be limited to weekly death or disability compensation and accrued interest thereon paid to or on behalf of an

Addendum C
Utah Code Section 63-46b-7

U.C.A. 1953 § 63-46b-7

C

West's Utah Code Annotated Currentness

Title 63. State Affairs in General

Chapter 46B. Administrative Procedures Act (Refs & Annos)

→§ 63-46b-7. Procedures for formal adjudicative proceedings--Discovery and subpoenas

(1) In formal adjudicative proceedings, the agency may, by rule, prescribe means of discovery adequate to permit the parties to obtain all relevant information necessary to support their claims or defenses. If the agency does not enact rules under this section, the parties may conduct discovery according to the Utah Rules of Civil Procedure.

(2) Subpoenas and other orders to secure the attendance of witnesses or the production of evidence in formal adjudicative proceedings shall be issued by the presiding officer when requested by any party, or may be issued by the presiding officer on his own motion.

(3) Nothing in this section restricts or precludes any investigative right or power given to an agency by another statute.

Laws 1987, c. 161, § 263.

CROSS REFERENCES

Discovery, see Rules Civ. Proc., Rule 26 et seq.

Labor commission, adjudicative proceedings, see § 34A-1-302.

LIBRARY REFERENCES

Administrative Law and Procedure ↪464 to 466.

Westlaw Key Number Searches: 15Ak464 to 15Ak466.

C.J.S. Public Administrative Law and Procedure §§ 124 to 131.

UNITED STATES CODE ANNOTATED

Subpoena of persons in foreign country, see 28 U.S.C.A. § 1783.

NOTES OF DECISIONS

In general 1

1. In general

U C.A. 1953 § 63-46b-7

When an administrative agency determines that a party has not complied with legitimate discovery requests due to willfulness, bad faith, fault, or persistent dilatory tactics frustrating the judicial process, the agency acts within its discretion in imposing sanctions. Joseph v Salt Lake City Civil Service Com'n, 2002, 53 P.3d 11, 452 Utah Adv. Rep. 43, 2002 UT App 254, certiorari denied 63 P.3d 104, certiorari denied 124 S.Ct. 133, 540 U.S. 821, 157 L.Ed.2d 40 Administrative Law And Procedure ⚔ 466

The choice of an appropriate discovery sanction including the entry of default against the noncomplying party is primarily the responsibility of an administrative agency. Joseph v. Salt Lake City Civil Service Com'n, 2002, 53 P.3d 11, 452 Utah Adv. Rep. 43, 2002 UT App 254, certiorari denied 63 P 3d 104, certiorari denied 124 S.Ct. 133, 540 U.S. 821, 157 L.Ed.2d 40. Administrative Law And Procedure ⚔ 466

An administrative agency is not required to issue an order compelling discovery prior to considering sanctions; it is enough that a notice of the taking of a deposition or a request for inspection has been properly served on the party. Joseph v. Salt Lake City Civil Service Com'n, 2002, 53 P.3d 11, 452 Utah Adv. Rep. 43, 2002 UT App 254, certiorari denied 63 P 3d 104, certiorari denied 124 S.Ct. 133, 540 U.S. 821, 157 L.Ed.2d 40. Administrative Law And Procedure ⚔ 466

Discovery in administrative proceedings is available only if governing statutes or agency rules so provide. Beaver County v. Utah State Tax Com'n, 1996, 916 P.2d 344 . Administrative Law And Procedure ⚔ 466

U.C.A. 1953 § 63-46b-7, **UT ST § 63-46b-7**

Current through 2007 First Special Session.

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END OF DOCUMENT

Addendum D
Utah Administrative Code R602-2-1.F.

C

**UTAH ADMINISTRATIVE CODE
LABOR COMMISSION
R602. ADJUDICATION.**

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Current with amendments included in the Utah State Bulletin,
Number 2007-16, dated August 15, 2007.

R602-2. Adjudication of Workers' Compensation and Occupational Disease Claims.

AUTHORITY AND SOURCE

KEY: workers' compensation, administrative procedures, hearings, settlements

Date of Enactment or Last Substantive Amendment

2007

Notice of Continuation September 5, 2002

Authorizing, and Implemented or Interpreted Law

34A-1-301 et seq.; 63-46b-1 et seq.

R602-2-1. Pleadings and discovery

A. Definitions.

1. "Commission" means the Labor Commission.
2. "Division" means the Division of Adjudication within the Labor Commission.
3. "Application for Hearing" means the request for agency action regarding a workers' compensation claim.
4. "Supporting medical documentation" means a Summary of Medical Record or other medical report or treatment note completed by a physician that indicates the presence or absence of a medical causal connection between benefits sought and the alleged industrial injury.
5. "Authorization to Release Medical Records" is a form authorizing the injured workers' medical providers to provide medical records and other medical information to the commission or a party.

6 "Supporting documents" means supporting medical documentation, list of medical providers, Authorization to Release Medical Records and, when applicable, an Appointment of Counsel Form

7 "Petitioner" means the person or entity who has filed an Application for Hearing

8 "Respondent" means the person or entity against whom the Application for Hearing was filed

9 "Discovery motion" includes a motion to compel or a motion for protective order

B Application for Hearing

1 Whenever a claim for compensation benefits is denied by an employer or insurance carrier, the burden rests with the injured worker, or medical provider, to initiate agency action by filing an Application for Hearing with the Division Applications for hearing shall include an original, notarized Authorization to Release Medical Records

2 An employer, insurance carrier, or any other party with standing under the Workers' Compensation Act may obtain a hearing before the Adjudication Division by filing a request for agency action with the Division

3 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

4 When an Application for Hearing with appropriate supporting documentation is filed with the Division, the Division shall forthwith mail to the respondents a copy of the Application for Hearing, supporting documents and Notice of Formal Adjudication and Order for Answer

5 In cases where the injured worker is represented by an attorney, a completed and signed Appointment of Counsel form shall be filed with the Application for Hearing or upon retention of the attorney

C Answer

1 The respondent(s) shall have 30 days from the date of mailing of the Order for Answer, to file a written answer to the Application for Hearing

2 The answer shall admit or deny liability for the claim and shall state the reasons liability is denied The answer shall state all affirmative defenses with sufficient accuracy and detail that the petitioner and the Division may be fully informed of the nature and substance of the defenses asserted

3 All answers shall include a summary of benefits which have been paid to date on the claim, designating such payments by category, i e medical expenses, temporary total disability, permanent partial disability, etc

4 When liability is denied based upon medical issues, copies of all available medical reports sufficient to support the denial of liability shall be filed with the answer

5 If the answer filed by the respondents fails to sufficiently explain the basis of the denial, fails to include available medical reports or records to support the denial, or contains affirmative defenses without sufficient factual detail to support the affirmative defense, the Division may strike the answer filed and order the respondent to file within 20 days, a new answer which conforms with the requirements of this rule

6 All answers must state whether the respondent is willing to mediate the claim

7 Petitioners are allowed to timely amend the Application for Hearing, and respondents are allowed to timely amend the answer, as newly discovered information becomes available that would warrant the amendment. The parties shall not amend their pleadings later than 45 days prior to the scheduled hearing without leave of the Administrative Law Judge

8 Responses and answers to amended pleadings shall be filed within ten days of service of the amended pleading without further order of the Labor Commission

D Default

1 If a respondent fails to file an answer as provided in Subsection C above, the Division may enter a default against the respondent

2 If default is entered against a respondent, the Division may conduct any further proceedings necessary to take evidence and determine the issues raised by the Application for Hearing without the participation of the party in default pursuant to Section 63-46b-11(4), Utah Code

3 A default of a respondent shall not be construed to deprive the Employer's Reinsurance Fund or Uninsured Employers' Fund of any appropriate defenses

4 The defaulted party may file a motion to set aside the default under the procedures set forth in Section 63-46b-11(3), Utah Code. The Adjudication Division shall set aside defaults upon written and signed stipulation of all parties to the action

E Waiver of Hearing

1 The parties may, with the approval of the administrative law judge, waive their right to a hearing and enter into a stipulated set of facts, which may be submitted to the administrative law judge. The administrative law judge may use the stipulated facts, medical records and evidence in the record to make a final determination of liability or refer the matter to a Medical Panel for consideration of the medical issues pursuant to R602-2-2

2 Stipulated facts shall include sufficient facts to address all the issues raised in the Application for Hearing and answer

3 In cases where Medical Panel review is required, the administrative law judge may forward the evidence in the record, including but not limited to, medical records, fact stipulations, radiographs and deposition transcripts, to a medical panel for assistance in resolving the medical issues

F Discovery

1 Upon filing the answer, the respondent and the petitioner may commence discovery. Discovery allowed under this rule may include interrogatories, requests for production of documents, depositions, and medical examinations. Discovery shall not include requests for admissions. Appropriate discovery under this rule shall focus on matters relevant to the claims and defenses at issue in the case. All discovery requests are deemed continuing and shall be promptly supplemented by the responding party as information comes available.

2 Without leave of the administrative law judge, or written stipulation, any party may serve upon any other party written interrogatories, not exceeding 25 in number, including all discrete subparts, to be answered by the party served. The frequency or extent of use of interrogatories, requests for production of documents, medical examinations and/or depositions shall be limited by the administrative law judge if it is determined that

a The discovery sought is unreasonably cumulative or duplicative, or is obtainable from another source that is more convenient, less burdensome, or less expensive,

b The party seeking discovery has had ample opportunity by discovery in the action to obtain the discovery sought, or

c The discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the adjudication.

3 Upon reasonable notice, the respondent may require the petitioner to submit to a medical examination by a physician of the respondent's choice.

4 All parties may conduct depositions pursuant to the Utah **Rules of Civil Procedure** and Section 34A-1-308, Utah Code.

5 Requests for production of documents are allowed, but limited to matters relevant to the claims and defenses at issue in the case, and shall not include requests for documents provided with the petitioner's Application for Hearing, nor the respondents' answer.

6 Parties shall diligently pursue discovery so as not to delay the adjudication of the claim. If a hearing has been scheduled, discovery motions shall be filed no later than 45 days prior to the hearing unless leave of the administrative law judge is obtained.

7 Discovery motions shall contain copies of all relevant documents pertaining to the discovery at issue, such as mailing certificates and follow up requests for discovery. The responding party shall have 10 days from the date the discovery motion is mailed to file a response to the discovery motion.

8 Parties conducting discovery under this rule shall maintain mailing certificates and follow up letters regarding discovery to submit in the event Division intervention is necessary to complete discovery. Discovery documents shall not be filed with the Division at the time they are forwarded to opposing parties.

9 Any party who fails to obey an administrative law judge's discovery order shall be subject to the sanctions available under Rule 37, Utah **Rules of Civil Procedure**.

G Subpoenas

1 Commission subpoena forms shall be used in all discovery proceedings to compel the attendance of witnesses. All subpoenas shall be signed by the administrative law judge assigned to the case, or the duty judge where the assigned judge is not available. Subpoenas to compel the attendance of witnesses shall be served at least 14 days prior to the hearing consistent with Utah Rule of Civil Procedure 45. Witness fees and mileage shall be paid by the party which subpoenas the witness.

2 A subpoena to produce records shall be served on the holder of the record at least 14 days prior to the date specified in the subpoena as provided in Utah Rule of Civil Procedure 45. All fees associated with the production of documents shall be paid by the party which subpoenas the record.

H Medical Records Exhibit

1 The parties are expected to exchange medical records during the discovery period.

2 Petitioner shall submit all relevant medical records contained in his/her possession to the respondent for the preparation of a joint medical records exhibit at least twenty (20) working days prior to the scheduled hearing.

3 The respondent shall prepare a joint medical record exhibit containing all relevant medical records. The medical record exhibit shall include all relevant treatment records that tend to prove or disprove a fact in issue. Hospital nurses' notes, duplicate materials, and other non-relevant materials need not be included in the medical record exhibit.

4 The medical records shall be indexed, paginated, arranged by medical care provider in chronological order and bound.

5 The medical record exhibit prepared by the respondent shall be delivered to the Division and the petitioner or petitioner's counsel at least ten (10) working days prior to the hearing. Late-filed medical records may or may not be admitted at the discretion of the administrative law judge by stipulation or for good cause shown.

6 The administrative law judge may require the respondent to submit an additional copy of the joint medical record exhibit in cases referred to a medical panel.

7 The petitioner is responsible to obtain radiographs and diagnostic films for review by the medical panel. The administrative law judge shall issue subpoenas where necessary to obtain radiology films.

I Hearing

1 Notices of hearing shall be mailed to the addresses of record of the parties. The parties shall provide current addresses to the Division for receipt of notices or risk the entry of default and loss of the opportunity to participate at the hearing.

2 Judgment may be entered without a hearing after default is entered or upon stipulation and waiver of a hearing by the parties.

3 No later than 45 days prior to the scheduled hearing, all parties shall file a signed pretrial disclosure form that identifies (1) fact witnesses the parties actually intend to call at the hearing, (2) expert witnesses the

parties actually intend to call at the hearing, (3) language translator the parties intend to use at the hearing, (4) exhibits, including reports, the parties intend to offer in evidence at the hearing, (5) the specific benefits or relief claimed by the petitioner, (6) the specific defenses that the respondent actually intends to litigate, (7) whether, or not, a party anticipates that the case will take more than four hours of hearing time, (8) the job categories or titles the respondents claim the petitioner is capable of performing if the claim is for permanent total disability, and, (9) any other issues that the parties intend to ask the administrative law judge to adjudicate. The administrative law judge may exclude witnesses, exhibits, evidence, claims, or defenses as appropriate of any party who fails to timely file a signed pre-trial disclosure form as set forth above. The parties shall supplement the pre-trial disclosure form with information that newly becomes available after filing the original form. The pre-trial disclosure form does not replace other discovery allowed under these rules.

4 If the petitioner requires the services of language translation during the hearing, the petitioner has the obligation of providing a person who can translate between the petitioner's native language and English during the hearing. If the respondents are dissatisfied with the proposed translator identified by the petitioner, the respondents may provide a qualified translator for the hearing at the respondent's expense.

5. The petitioner shall appear at the hearing prepared to outline the benefits sought, such as the periods for which compensation and medical benefits are sought, the amounts of unpaid medical bills, and a permanent partial disability rating, if applicable. If mileage reimbursement for travel to receive medical care is sought, the petitioner shall bring documentation of mileage, including the dates, the medical provider seen and the total mileage.

6 The respondent shall appear at the hearing prepared to address the merits of the petitioner's claim and provide evidence to support any defenses timely raised.

7 Parties are expected to be prepared to present their evidence on the date the hearing is scheduled. Requests for continuances may be granted or denied at the discretion of the administrative law judge for good cause shown. Lack of diligence in preparing for the hearing shall not constitute good cause for a continuance.

8 Subject to the continuing jurisdiction of the Labor Commission, the evidentiary record shall be deemed closed at the conclusion of the hearing, and no additional evidence will be accepted without leave of the administrative law judge.

J Motions-Time to Respond

Responses to all motions other than discovery motions shall be filed within ten (10) days from the date the motion was filed with the Division. Reply memoranda shall be filed within seven (7) days from the date a response was filed with the Division.

K. Notices.

1 Orders and notices mailed by the Division to the last address of record provided by a party are deemed served on that party.

2 Where an attorney appears on behalf of a party, notice of an action by the Division served on the attorney is considered notice to the party represented by the attorney.

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L Form of Decisions

Decisions of the presiding officer in any adjudicative proceeding shall be issued in accordance with the provisions of Section 63-46b-5 or 63-46b-10, Utah Code

M Motions for Review

1 Any party to an adjudicative proceeding may obtain review of an Order issued by an Administrative Law Judge by filing a written request for review with the Adjudication Division in accordance with the provisions of Section 63-46b-12 and Section 34A-1-303, Utah Code Unless a request for review is properly filed, the Administrative Law Judge's Order is the final order of the Commission If a request for review is filed, other parties to the adjudicative proceeding may file a response within 20 calendar days of the date the request for review was filed If such a response is filed, the party filing the original request for review may reply within 10 calendar days of the date the response was filed Thereafter the Administrative Law Judge shall

a Reopen the case and enter a Supplemental Order after holding such further hearing and receiving such further evidence as may be deemed necessary,

b Amend or modify the prior Order by a Supplemental Order, or

c Refer the entire case for review under Section 34A-2-801, Utah Code

2 If the Administrative Law Judge enters a Supplemental Order, as provided in this subsection, it shall be final unless a request for review of the same is filed

N Procedural Rules

In formal adjudicative proceedings, the Division shall generally follow the Utah **Rules of Civil Procedure** regarding discovery and the issuance of subpoenas, except as the Utah **Rules of Civil Procedure** are modified by the express provisions of Section 34A-2-802, Utah Code or as may be otherwise modified by these rules

O Requests for Reconsideration and Petitions for Judicial Review

A request for reconsideration of an Order on Motion for Review may be allowed and shall be governed by the provisions of Section 63-46b-13, Utah Code Any petition for judicial review of final agency action shall be governed by the provisions of Section 63-46b-14, Utah Code

CREDIT(S)

History Note Amended effective January 2, 2004, amended effective 5/5/2006

R602-2-2 Guidelines for utilization of medical panel

Pursuant to Section 34A-2-601, the Commission adopts the following guidelines in determining the necessity of submitting a case to a medical panel

A A panel will be utilized by the Administrative Law Judge where one or more significant medical issues may be involved Generally a significant medical issue must be shown by conflicting medical reports Significant medical

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issues are involved when there are

- 1 Conflicting medical opinions related to causation of the injury or disease,
- 2 Conflicting medical reports of permanent physical impairment which vary more than 5% of the whole person,
- 3 Conflicting medical opinions as to the temporary total cutoff date which vary more than 90 days,
- 4 Conflicting medical opinions related to a claim of permanent total disability, and/or
- 5 Medical expenses in controversy amounting to more than \$10,000

B A hearing on objections to the panel report may be scheduled if there is a proffer of conflicting medical testimony showing a need to clarify the medical panel report. Where there is a proffer of new written conflicting medical evidence, the Administrative Law Judge may, in lieu of a hearing, re-submit the new evidence to the panel for consideration and clarification.

C The Administrative Law Judge may authorize an injured worker to be examined by another physician for the purpose of obtaining a further medical examination or evaluation pertaining to the medical issues involved, and to obtain a report addressing these medical issues in all cases where

- 1 The treating physician has failed or refused to give an impairment rating, and/or
- 2 A substantial injustice may occur without such further evaluation

D Any expenses of the study and report of a medical panel or medical consultant and of their appearance at a hearing, as well as any expenses for further medical examination or evaluation, as directed by the Administrative Law Judge, shall be paid from the Uninsured Employers' Fund, as directed by Section 34A-2-601.

R602-2-3 Compensation for Medical Panel Services

Compensation for medical panel services, including records review, examination, report preparation and testimony, shall be \$112.50 per half hour and for medical panel members and \$125 per half hour for the medical panel chair.

CREDIT(S)

Amended effective November 15, 2005

R602-2-4 Attorney Fees

A Pursuant to Section 34A-1-309, the Commission adopts the following rule to regulate and fix reasonable fees for attorneys representing applicants in workers' compensation or occupational illness claims.

- 1 This rule applies to all fees awarded after July 1, 2007.
- 2 Fees awarded prior to the effective date of this rule are determined according to the prior version of this rule in effect on the date of the award.

B Upon written agreement, when an attorney's services are limited to consultation, document preparation, document review, or review of settlement proposals, the attorney may charge the applicant an hourly fee of not more than \$125 for time actually spent in providing such services, up to a maximum of four hours

1 Commission approval is not required for attorneys fees charged under this subsection B It is the applicant's responsibility to pay attorneys fees permitted by this subsection B

2 In all other cases involving payment of applicants' attorneys fees which are not covered by this subsection B , the entire amount of such attorneys fees are subject to subsection C or D of this rule

C Except for legal services compensated under subsection B of this rule, all legal services provided to applicants shall be compensated on a contingent fee basis

1 For purposes of this subsection C , the following definitions and limitations apply

a The term "benefits" includes only death or disability compensation and interest accrued thereon

b Benefits are "generated" when paid as a result of legal services rendered after an Appointment of Counsel form is signed by the applicant A copy of this form must be filed with the Commission by the applicant's attorney

c In no case shall an attorney collect fees calculated on more than the first 312 weeks of any and all combinations of workers' compensation benefits

2 Fees and costs authorized by this subsection shall be deducted from the applicant's benefits and paid directly to the attorney on order of the Commission A retainer in advance of a Commission approved fee is not allowed

3 Attorney fees for benefits generated by the attorney's services shall be computed as follows

a For all legal services rendered through final Commission action, the fee shall be 20% of weekly benefits generated for the first \$24,275, plus 15% of the weekly benefits generated in excess of \$24,275 but not exceeding \$48,550, plus 10% of the weekly benefits generated in excess of \$48,550, to a maximum of \$12,250

b For legal services rendered in prosecuting or defending an appeal before the Utah Court of Appeals, an attorney's fee shall be awarded amounting to 25% of the benefits in dispute before the Court of Appeals This amount shall be added to any attorney's fee awarded under subsection C 3 a for benefits not in dispute before the Court of Appeals The total amount of fees awarded under subsection C 3 a and this subsection C 3 b shall not exceed \$17,900,

c For legal services rendered in prosecuting or defending an appeal before the Utah Supreme Court, an attorney's fee shall be awarded amounting to 30% of the benefits in dispute before the Supreme Court This amount shall be added to any attorney's fee awarded under subsection C 3 a and subsection C 3 b for benefits not in dispute before the Supreme Court The total amount of fees awarded under subsection C 3 a, subsection C 3 b and this subsection C 3 c shall not exceed \$23,550

4 In addition to attorneys fees authorized by this subsection, a prevailing applicant's attorney shall be awarded reasonable and necessary costs actually incurred in the prosecution of the applicant's claim, as determined by the ALJ

D In "medical only" cases in which awards of attorneys' fees are authorized by Subsection 34A-1-309(4), the amount of such fees and costs shall be computed according to the provisions of subsection C

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History Note Amended effective December 2, 2004, amended effective 7/24/07

R602-2-5 Settlement agreements

A Statutory authority

Section 34A-2-420 requires the Commission to review all agreements for the settlement or commutation of claims for workers' compensation or occupational disease benefits and grants the Commission discretion to approve such agreements The Commission's authority under Section 34A-2-420 applies to all claims arising under the Utah Workers' Compensation Act or Occupational Disease Act, regardless of the date of accident or occupational disease This rule sets forth the requirements for Commission approval of such agreements

B General Considerations

Settlement agreements may be appropriate in claims of disputed validity or when the parties' interests are served by payment of benefits in a manner different than otherwise prescribed by the workers' compensation laws However, settlement agreements must also fulfill the underlying purposes of the workers' compensation laws Once approved by the Commission, settlement agreements are permanently binding on the parties The Commission will not approve any proposed settlement that is manifestly unjust

C Procedure

1 Parties interested in a present or potential workers' compensation claim, whether or not an application for hearing has been filed, may submit their settlement agreement to the Commission for review and approval The Commission may delegate its authority to review and approve such agreements

2 Each settlement agreement shall be in writing, executed by each party and such party's attorney, if any, and shall include a proposed order for Commission approval of the agreement

3 Each settlement agreement shall set forth the nature of the claim being settled and what claims are in dispute, if any

4 Each settlement agreement shall contain a statement that each party understands that the agreement is permanent, binding and constitutes full and final settlement of any right the claimant may otherwise have to future benefits, including medical benefits The Commission may establish an approved form for complying with the foregoing disclosure requirement

5 Attorneys' fees shall be allowed as provided by Rule R602-2-4 Each settlement agreement shall describe the amount to be paid to claimant's counsel as attorney's fees and costs, the manner in which such amounts are

computed and the method of payment thereof.

6. The settlement agreement may provide for payment of benefits through insurance contract or by other third parties if the Commission determines a) such payment provisions are secure and b) such payment provisions do not relieve the parties of their underlying liability for payments required by the agreement.

7. Upon receipt of a proposed settlement agreement meeting the requirements of this rule, the Commission shall review such proposed agreement:

- a. As needed, the Commission may contact the parties and others to obtain further information about the proposed settlement;
- b. If the Commission determines that a proposed settlement agreement conforms with this rule, the Commission shall approve such agreement and notify the parties in writing.
- c. If the Commission determines that a proposed settlement agreement does not comply with this rule, the Commission shall notify the parties in writing of its reasons for rejecting the proposed agreement.
- d. The Commission shall retain a record of its action on all settlement agreements submitted to it for approval.

U.A.C. R602-2, UT ADC R602-2

UT ADC R602-2

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