

2007

Martha D. Casper, widow of C. Lynn Barraclough,
Deceased v. Labor Commission of Utah, Andrus
Transportation and National Union Fire Insurance :
Brief of Petitioner

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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

Petitioner/Appellant,

v.

LABOR COMMISSION OF UTAH,
ANDRUS TRANSPORTATION and
NATIONAL UNION FIRE INSURANCE,

Respondents/Appellees.

Case No. 20070324-CA

Labor Commission No. 97-0886

Priority No. 7

BRIEF OF PETITIONER MARTHA D. CASPER

PETITION FOR REVIEW FROM ORDER OF THE UTAH LABOR COMMISSION

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**PETITIONER RESPECTFULLY REQUEST ORAL ARGUMENT
AND THAT THIS CASE BE REPORTED**

FILED
UTAH APPELLATE COURTS

AUG 10 2007

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JURISDICTION OF THE COURT

This appellate review proceeding arises from the Utah Labor Commission's denial of an injured worker's claim for death benefits. The Utah Court of Appeals has jurisdiction over this proceeding pursuant to Utah Code Annotated § 78-2a-3 (2) (a) (1953, as amended), Utah Code Annotated § 34A-2-801 (8) (1997) and Rule 14 of the Utah Rules of Appellate Procedure.

STATEMENT OF ISSUES AND STANDARD OF REVIEW

Issue 1: Did the Utah Labor Commission commit reversible error by failing to rule that Petitioner's Requests for Admissions were legally deemed admitted, when said Requests were not either expressly admitted or denied within thirty (30) days of their service and no subsequent Motion was made by Respondents for relief from the deemed Admissions?

Standard of Review: This is a question of law where appellate review gives no deference to the agency's determination, because the appellate court has the power and duty to say what the law is and to ensure that it is uniform throughout the jurisdiction. Drake v. Industrial Commission, 939 P.2d 177, 182 (Utah 1997). Such an issue is reviewed for correctness. LaSal Oil Co. V. Department of Environmental Quality, 843 P.2d 1045, 1047 (Utah Ct. App. 1992).

Issue 2: Did the Utah Labor Commission commit reversible error in finding that Petitioner did not establish that Mr. Barraclough's work was the medical cause of his heart attack and death?

Standard of Review: This is a mixed question of law and fact to which this

Court extends “heightened deference” to the Commission’s determination “with varying degrees of strictness, falling anywhere between a review of ‘correctness and a broad ‘abuse of discretion’ standard.” Drake v. Industrial Commission, 939 P.2d 177, 182 (Utah 1997).

Furthermore, in reviewing the proceedings below and the scope of the Utah Workers Compensation Act, it is important to recognize that the Act is to be liberally construed and any doubt as to compensation is to be resolved in favor of the Petitioner. E.g., State Tax Commission v. Industrial Commission, 685 P.2d 1051, 1053 (Utah 1984); and McPhie v. Industrial Commission, 567 P.2d 153, 155 (Utah 1977).

Preservation for Appeal: All of the above issues were raised by Petitioner before the Utah Labor Commission. A Petition for Review was timely filed with this Court.

DETERMINATIVE STATUTE AND RULE

Rule 36 of the Utah Rule of Civil Procedure and Utah Code Annotated, §63-46b-7 (1987) are the applicable Statute and Rule. Said Statutes and Rule are set forth in full in Addenda “A” hereto.

STATEMENT OF THE CASE

Nature of the Case: The Petitioner seeks review of a final Order of the Utah Labor Commission denying Petitioner’s claim for death benefits on account of her husband, C. Lynn Barraclough’s, death sustained while doing his work duties.

Course of Proceedings:

1. On October 17, 1997, Martha D. Barraclough filed an Application for Hearing with the then Industrial Commission of Utah seeking Dependents Compensation, Burial Expenses and unpaid medical expenses on account of the death of her husband arising out of and in the course of his employment with Respondent Andrus Transportation Services. (R1 at 1-63).

2. On December 12, 1997 the Applicant filed Pre-Hearing Discovery Requests, which included Requests for Admissions, Interrogatories and Requests for the Production of Documents. (R1 at 87-90).

3. On December 18, 1997 the Employer/Carrier filed an Answer denying liability and asserting certain defenses. They prayed that the Application for Hearing be dismissed.

4. On February 4, 1997, the Employer/Carrier filed certain Interrogatories to the Applicant. (R1 at 98-104).

5. On March 9, 1998 the Employer/Carrier filed Responses to Applicant's Pre-Hearing Discovery Requests. (R1 at 108-167). The responses to the Requests for Admissions were 56 days late. No extension was requested to file late responses or set aside deemed Admissions.

6. On March 20, 1998 the Applicant filed Answers to the Employer/Carrier's Interrogatories. (R1 at 170-174). On September 10, 1998, the Employer/Carrier filed a Second Set of Interrogatories to Applicant. (R1 at 179-182). Applicant filed Responses to those Interrogatories on April 15, 1999. (R1 at 187). On April 20, 1999, Applicant filed a Second Set of Discovery Requests containing another 4

Requests for Admissions. (R1-188-190). Defendants responded to those discovery requests on May 26, 1999, (R1 at 200-202). These answers were 6 days late and again no extension was requested to file late responses or set aside deemed Admissions. On May 26, 1999, Applicant filed a Third Set of Discovery Requests (R1 at 203-205). Defendants responded on June 24, 1999. (R1 at 206-212)

7. The Deposition of Martha D. Barraclough was taken on August 10, 1999. (R6).

8. The matter was heard on September 11, 2000 in St. George Utah before Administrative Law Judge Donald L. George. (R2 at 269). On July 21, 2003 ALJ George entered Findings of fact, Conclusions of Law and Order dismissing the case with prejudice. (R2 at 341-350).

9. On August 19, 2003, Applicant filed a Motion for Review of that decision. (R2 at 352-368). Defendants filed a Memorandum in Opposition on September 19, 2003. (R2 at 377-386). On December 31, 2003 The Labor Commission issued an Order of Remand sending the case back to the ALJ with instructions to convene a Medical Panel. (R2 at 388-391).

10. On August 27, 2004 ALJ George appointed a Medical Panel (R2 at 402-404) and made certain Findings of Fact to guide them in their determinations. (R2 at 405-412). On January 21, 2005 the Medical Panel filed its Report and Findings. (R2 at 417-425). The Applicant filed Objections on April 20, 2005 (R2 at 428-436) and the Defendants filed Responses on April 27, 2005. (R2 at 437-440).

11. ALJ George entered Findings of Fact, Conclusions of Law and Order on

July 18, 2005 again denying the Application for Hearing and dismissing it with prejudice. (R2 at 441-444).

12. On July 29, 2005 Applicant filed a Motion for Review and Memorandum of Law in Support. (R3 at 446-468). Defendants filed a Memorandum in Opposition on August 17, 2005. (R3 at 469-573). Applicant filed a Reply Memorandum on November 16, 2007 (R3 at 575-606). Defendants filed Objections to that Reply on November 28, 2005. (R3 at 607-608).

13. On March 21, 2006 the Labor Commission entered an Order Affirming ALJ's Decision. (Addenda "B", R3 at 618-622). Applicant timely filed a Petition for Review with this Court on April 19, 2007. (R3 at 623-624).

Statement of Facts: The relevant facts in this matter are simple, straightforward and not really disputed by the parties.

1. On November 19, 1996, the Deceased, Mr. C. Lynn Barraclough, suffered a heart attack while driving an 18-wheel truck at work for Andrus Trucking Services, Inc. (hereafter "Andrus") on his first day driving solo. (R2 at 344, R6 at 6). He was found unconscious behind the steering wheel of his truck, not breathing and without a pulse, by the company Safety Officer and was taken by ambulance to the Dixie Regional Medical Center. (R2 at 345). He was placed on life support for two days before dying two days later on November 21, 1996. (R2 at 345).

2. The Deceased's Certificate of Death indicated that the immediate cause of death was cerebral anexia due to or as a consequence of cardiac arrest and myocardial infraction. (R1 at 3).

3. The Defendants admitted on the record that the Deceased's myocardial infraction occurred while he was at work for the Employer and after he had been dispatched by the Employer to travel on a job or jobs for and/or at the direction of the Employer. The Deceased worked as a long haul truck driver (trainee) for a period of two and half months prior to his demise. (R2 at 329-331).

4. On July 11, 1996, two months before Deceased died, Andrus required the Deceased to submit himself to the Utah Department of Transportation for a physical examination by Dr. Dennis J. Moore who concluded that the Deceased had no documented or suspected health history or significant risk factors for cardiovascular disease. He further found that the Deceased's blood pressure was normal (130/70) and that his pulse before exercise (60) was also normal. Dr. Moore characterized the Deceased's general medical condition as being: "healthy no problem." (R4 at 28).

5. On November 9, 1999, Dr. Dennis J. Moore, the same doctor who performed the DOT exam of the Deceased two months before he died, confirmed in a medical opinion letter to Applicant's counsel that his "... records show no mention of Mr. Barraclough having heart disease prior to his contact with my (Dr. Moore's) office on November 19, 1996." (R2 at 304).

6. There are no medical records dated prior to Mr. Barraclough's death, which at any time during his life identify or confirm that the Deceased either was treated for a heart or heart-related condition, or had any significant cardiac risk factors in his medical history. (R 4 and R5).

7. The Petitioner's medical expert, Dr. Frank G. Yanowitz, a Board Certified Cardiac physician and Associate Professor of Medicine at the University of Utah School of Medicine, filed a detailed medical report filed with the Commission, enclosing his curriculum vita by cover letter dated December 9, 1997. Dr. Yanowitz's expertise in cardiac cases involving alleged industrial accidents and occupational exposures is well known in the industrial community. He has served on several Commission Medical Panels, lectured at workers compensation seminars and provided written reports and testified in industrial Hearings in several of the leading Utah heart industrial cardiac cases. As such he has been in the forefront of industrial medicine related to cardiac claims. (R1 at 68-85).

8. Dr. Yanowitz in a well reasoned medical report concluded that "It is likely that the anxiety and stress of having to drive solo for the first time contributed to the timing of his fatal coronary event" (R4 at 14). Dr. Yanowitz noted that his previous history was only significant in having venous thrombosis and pulmonary embolism several years prior without significant complications or sequelae. Dr. Yanowitz also noted that the Deceased was not known to have any significant coronary risk factors. (R4 at 13-14).

9. The Respondent's medical expert, Dr. J. Joseph Perry, a cardiac physician, concluded that the Deceased's "...employment had no relationship to the development of coronary atherosclerosis which was the disease process responsible for his demise. It is my opinion that any contribution of his employment to the precipitation of the fatal event was negligible. I find no relationship between his

employment (with Andurs Transportation Services, Inc. with his associated duties and responsibility) and his demise.” (R4 at 1).

10. The Respondent’s second medical expert, Dr. Todd C. Grey, stated that “While I agree with Dr. Yanowitz that it is possible, though certainly not provable, that stress may have played a role in the onset of [the Deceased’s] symptoms, the underlying pathology (occlusion of the coronary arteries) is a condition which had been developing for many years and can not be ascribed to his employment as a truck driver.” (R4 at 11).

11. Dr. Yanowitz in a report dated March 8, 2001 stated that he had reviewed the reports of Defendants’ doctors and that the review did not change his original opinion. Dr. Yanowtiz concluded that based on all of the available medical evidence, including the Defendant’s medical experts, “It is reasonable likely that the job activities contributed in some way to the final outcome.” (R3 at 571).

12. The Deceased, at the time of his death was married to Mrs. Martha D. Barraclough (R1 at 10) and she is, therefore. his surviving spouse for purposes of payment of widows benefits pursuant to Utah Workers Compensation law. Mrs. Barraclough remarried on February 17, 2001 and is now know as Ms. Martha D. Casper.

SUMMARY OF ARGUMENT

The Respondent Employer/Carrier failed to timely deny a Request for Admission that the Deceased was injured/died while acting within the course and scope of his employment. Pursuant to the Rule 36 of the Utah Rules of Civil

Procedure that Request is deemed admitted and concedes liability for the industrial accident. No Motion was ever made to set aside the Admission.

Because the Deceased did not have a documented preexisting condition which would trigger the higher burden of proof under Allen v. Industrial Commission, 729 P.2d 15, 18 (Utah 1986), any exertion connected with the employment satisfies the medical causation test. Petitioner established legal and medical causation by showing that the Deceased suffered an industrial accident while driving a truck for the Employer.

ARGUMENT

I

PETITIONER ESTABLISHED AN IRREBUTABLE AWARD OF WIDOW'S BENEFITS DUE TO RESPONDENTS' ADMISSIONS DURING DISCOVERY.

Rule 36 (a) (2) of the Utah Rules of Civil Procedure provides in relevant part that:

(a) (1) A party may serve upon any other party a written request for the admission, ... of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact... .

(a) (2) ... The matter is admitted unless, with thirty days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter. ...

(b) Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. ...

Utah Code Annotated, Section 63-46b-7 (1997, as amended), the statute in effect at the time of Petitioner's claim permitted the parties in an administrative claim to "conduct discovery according to the Utah Rule of Civil Procedure." The Administrative Rules adopted by the Labor Commission and in effect at the time of the Petitioner's claim did not address, preclude or exclude the use of Requests for Admissions in workers compensation claims.

Petitioner served a total of six Requests for Admissions upon the Respondent Employer /Carrier in two separate sets of Requests, dated December 12, 1997 (R1 at 87-90) and April 20, 1999 (R1 at 188-190). The Respondents failed to answer the Requests within the thirty day period provided for in Rule 36. Their responses were 56 days and 6 days late, respectively and they were deemed admitted by operation of law.

On December 12, 1997, Petitioner filed Applicant's Pre-Hearing Requests. . Those Requests contained two Requests for Admissions, to wit:

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.

(R1 at 87-90).

Under Rule 36 of the Rules of Civil Procedure, Respondents Answers were due within thirty days or or about January 11, 1998. Respondents denied the Requests on March 6, 1998 (R1 at 108-114), some 56 days later. The Respondents did not file any Motion or seek relief in any way from the deemed admitted Requests

for Admissions.

On April 20, 1999, Petitioner filed Applicant's Second Set of Discovery Requests. Those Requests contained four Requests for Admissions, to wit:

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; and
4. Admit that the Deceased's myocardial infarction occurred while he was at work for the Employer.

(R1 at 188-190).

Once again, Respondents denied those Request for Admissions on May 26, 1998, 6 days after they were deemed admitted by operation of law. (R1 at 200-202).

Respondents failed to timely deny the Requests for Admission, and further failed to proffer prior to trial any reasonable explanation or excuse as to why they had failed to timely respond, or why they should have been permitted to file their responses for good cause after the time period for responding to them had expired.

The Labor Commission refused to find that the Admissions were legally deemed admitted, ruling that "the connection between Mr. Barraclough's work and his death should be decided according to the evidence actually presented by the parties." (Addenda "B", R3 at 619). Since all six Requests for Admission were deemed admitted by operation of law, pursuant to the Utah Rules of Civil Procedure

concerning Requests for Admissions, the Administrative Law Judge and the Labor Commission erred and should have entered an appropriate award of benefits based upon these Requests for Admission, all of which were deemed admitted.

II

BECAUSE THERE WERE NO MEDICAL RECORDS ESTABLISHING PRE-EXISTING CONDITIONS SUFFICIENT TO REQUIRE THE HIGHER BURDEN OF PROOF IN ALLEN, APPLICANT ESTABLISHED LEGAL AND MEDICAL CAUSATION BY SHOWING THAT THE DECEASED SUFFERED AN INDUSTRIAL ACCIDENT WHILE DRIVING A TRUCK FOR THE EMPLOYER.

The Utah Workers Compensation Act provides generally the following with regard to compensable industrial accidents resulting in death:

Each employee described in section 34A-2-104 who is injured, and the dependents of each such employee who is killed, by accident arising out of and in the course of the employee's employment, wherever such injury occurred, if the accident was not purposely self-inflicted, shall be paid compensation for loss sustained on account of the injury or death, and such amount for medical, nurse, and hospital services and medicines, and, in the case of death, such amount of funeral expenses, as provided in this chapter. U.C.A., Sec. 34A-2-401.

There are two prerequisites for a finding of a compensable death under the Utah Workers' Compensation Act: the death must be (1) by accident and there must be (2) a causal connection between the death and the Deceased's employment. Allen v. Industrial Commission, 729 P.2d 15, 18 (Utah 1986).

Although not defined in the Workers' Compensation act, the term "by accident" has been defined by our Supreme Court: "We ... hold that an accident is an unexpected or unintended occurrence that may be either the cause or the result of

an injury.” Allen at 22. It is undisputed that the Deceased’s death was an accident within the meaning of the Workers’ Compensation Act. His heart attack was not planned nor foreseen and was obviously unexpected and unintended. Price River Coal Co. v. Industrial Commission, 731 P.2d 1079, 1081 (Utah 1986).

The real dispute in this case centers on the second element of the two-prong test, namely, whether the Deceased’s heart attack and death had the requisite medical causal connection with his employment duties.

The standard of legal causation varies depending on the Deceased’s medical condition at the time of the accident. “[W]hen a claimant has no preexisting risk factors, any exertion connected with the employment . . . will satisfy the legal causation test.” Lancaster v. Gilbert Development, 736 P.2d 237, 239 (Utah 1987). If the Deceased had a preexisting medical condition, there is a higher standard of proof. Specifically, he is required to prove that the employment contributed something substantial to increase the risk he already faced in everyday life because of his prior condition. This additional element of risk in the workplace is usually supplied by an exertion greater than that undertaken in normal, everyday non-employment life. This extra exertion serves to offset the preexisting condition of the employee as a likely cause of the injury, thereby eliminating claims for impairments resulting from personal risk rather than exertions at work. Worker’s Compensation Fund v. Industrial Commission, 761 P.2d 572, 574 (Utah Ct. App. 1988).

There is no medical or other reliable evidence that the Deceased was ever treated for heart problems, had any prior heart problems or had any cardiac risk

factors present at the time of his death. His past medical history is unremarkable with the exception of having venous thrombosis and a pulmonary embolism several years prior without significant complications. In addition, and confirming that fact, is a pre-employment physical dated July 11, 1996, required by the Defendants, a mere 4 months prior to the Deceased's heart attack and death, which showed no signs of any medical problems. In fact, he was characterized as being "healthy no problem" and was cleared for work and employment as a long-haul truck driver. (R4 at 28).

Given that determination, the Deceased's employment activity need only have involved usual or ordinary exertion. Price River Coal at 1082, n.1 and Allen at 26. Driving a long haul 18-wheel truck clearly qualifies as "any exertion" for medical causation purposes.

III

PETITIONER IS ENTITLED TO HAVE THE FACTS, LAW AND ANY DOUBT ARISING THEREFROM RESOLVED IN FAVOR OF AWARDING BENEFITS.

Few principles of workers compensation law are as well established in this State as that workers' compensation disability claims are to be liberally construed in favor of awarding benefits, and any doubts raised from the evidence are to be resolved in favor of the claim. Utah Courts have consistently reiterated this principle from 1919 to the present. E. g., Heaton v. Second Injury Fund, 796 P.2d 676 (Utah 1990); J & W Janitorial Co. v. Industrial Commission, 661 P.2d 949 (Utah 1983); Prows v. Industrial Commission, 610 P.2d 1362 (Utah 1980); McPhie v. Industrial Commission, 567 P.2d 153 (Utah 1977); Baker v. Industrial Commission, 405 P.2d

613 (Utah 1965); Askrew v. Industrial Commission, 391 P.2d 302 (Utah 1964); M & K Corp. v. Industrial Commission, 189 P.2d 132 (Utah 1948); and Chandler v. Industrial Commission, 184 P. 1020 (Utah 1919).

This well accepted principle of law was not applied in this case, however. It is one in which, because of the circumstances of Mr. Barraclough's non-witnessed death, there is no direct evidence regarding what the Deceased had been doing the day of his accident, and particularly, shortly before he turned his truck around to return to St. George for medical treatment and was subsequently found on the side of the road slumped against the steering wheel of his truck.

This is an classic case for resolving any doubts raised from in evidence in favor of awarding benefits, and reversing the Findings, Conclusions and Order of the Labor Commission.

CONCLUSION/STATEMENT OF RELIEF SOUGHT

The Labor Commission's Order denying benefits should be reversed and remanded with directions to enter an award for the payment of benefits.

DATED this 10th day of August, 2007.

DABNEY & DABNEY, p.c.

Virginus Dabney
Counsel for Martha D. Casper

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of August, 2007, a copy of the foregoing BRIEF OF PETITIONER MARTHA D. CASPER was hand-delivered and/or mailed, as follows:

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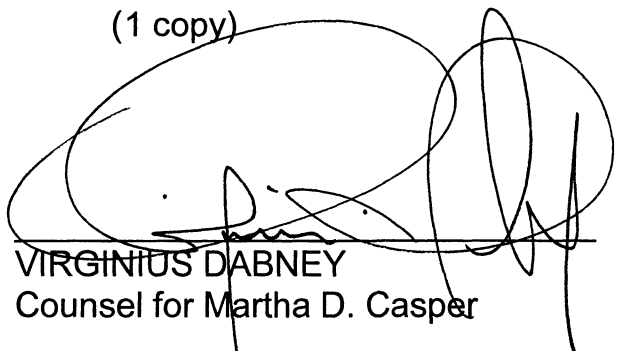
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Addendum A

Utah Code Annotated, § 63-46b-7 (1987)

Rule 36 of the Utah Rules of Civil Procedure

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.

Rule 36. Request for admission.**(a) Request for admission.**

(a)(1) A party may serve upon any other party a written request for the admission, for purpose of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. The request for admission shall contain a notice advising the party to whom the request is made that, pursuant to Rule 36, the matters shall be deemed admitted unless said request is responded to within 30 days after service of the request or within such shorter or longer time as the court may allow. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Without leave of court or written stipulation, requests for admission may not be served before the time specified in Rule 26(d).

(a)(2) Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon him. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the

substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why he cannot admit or deny it.

(a)(3) The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(b) Effect of admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pretrial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved

thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

Addenda B

Order Affirming ALJ's Decision

Utah Labor Commission

(March 21, 2007)

UTAH LABOR COMMISSION

MARTHA D. CASPER, Widow of
C. LYNN BARRACLOUGH, Deceased,

vs.

ANDRUS TRANSPORTATION and
NATIONAL UNION FIRE INSURANCE,

Respondents.

ORDER AFFIRMING
ALJ'S DECISION

Case No. 97-0886

Martha D. Casper,¹ widow of C. Lynn Barraclough, asks the Utah Labor Commission to review Administrative Law Judge George's denial of her claim for dependent's benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated §63-46b-12 and §34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Mr. Barraclough suffered a fatal heart attack on November 19, 1996, while driving truck for Andrus Trucking Services. On October 17, 1997, Ms. Casper filed an Application For Hearing with the Commission to compel Andrus Trucking Services and its workers' compensation insurance carrier, National Union Fire Insurance (referred to jointly as "Andrus" hereafter) to pay dependent's benefits. Ms. Casper's claim is based on the theory that her husband's heart attack was work-related.

Judge George held an evidentiary hearing in this matter on September 11, 2000. On July 21, 2003, he denied Ms. Casper's claim on the grounds that Mr. Barraclough's work at Andrus was neither the legal cause nor the medical cause of his heart attack. Ms. Casper filed a motion for review of Judge George's decision. On review, the Commission remanded the claim to Judge George so that a medical panel could consider the medical aspects of Ms. Casper's claim.

On July 18, 2005, after receiving the medical panel's report, Judge George again denied Ms. Casper's claim on the grounds Mr. Barraclough's work was not the medical cause of his heart attack. On August 1, 2005, Ms. Casper requested review of Judge George's decision. Specifically, Ms. Casper alleged that: 1) Andrus's admissions during discovery established Ms. Casper's right to benefits; 2) Mr. Barraclough's work at Andrus was both the legal and medical cause of his heart attack; 3) Judge George failed to properly consider Ms. Casper's objections to the medical panel report; and 4) any doubt as to the facts or law must be resolved in favor of awarding benefits to Ms. Casper.

¹ Previously known as Martha Barraclough.

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On August 17, 2005, Andrus filed its reply to Ms. Casper's motion for review. On November 18, 2005, Ms. Casper submitted a reply memorandum which for the first time requested that the review of Judge George's decision be conducted by the Appeals Board, rather than by the Commissioner.

FINDINGS OF FACT

The Commission adopts Judge George's findings of fact. As material to the issues presented by Ms. Casper's motion for review, the facts can be summarized as follows.

Mr. Barraclough began work as a truck driver for Andrus on August 30, 1996. For the first several weeks, in order to train Mr. Barraclough, Andrus assigned him to drive with another experienced driver. After successfully completing that training, he was given three days off and then scheduled to drive solo beginning on November 19, 1996.

Mr. Barraclough reported for work as scheduled on November 19, 1996. He was assigned a truck and left the Andrus yard, driving north on I-15. Approximately, 20 minutes later, he reported by telephone that he was suffering chest pains and was returning to St. George to go to his doctor. On the return trip, Mr. Barraclough lost consciousness. His truck came to a stop off the side of the freeway. Andrus personnel were at the scene immediately and Mr. Barraclough was taken by ambulance to a local hospital. Mr. Barraclough died two days later.

The medical evidence establishes that Mr. Barraclough suffered from a preexisting heart condition that led to myocardial infarction and cardiac arrest on November 19, 1996, which resulted in cerebral anoxia and death. The medical evidence also establishes that neither Mr. Barraclough's underlying heart disease nor the heart attack that immediately preceded his death was medically caused or related to his employment.

DISCUSSION AND CONCLUSION OF LAW

As a preliminary matter, the Commission notes that Ms. Casper has requested in her reply memorandum that this review be conducted by the Labor Commission Appeals Board, rather than by the Commissioner. However, §34A-2-801(3)(c) of the Utah Workers' Compensation Act specifically requires that any such request must be made as part of the initial motion for review. Because Ms. Casper's motion for review did not designate the Appeals Board, this review will be conducted by the Commissioner.

Ms. Casper's first argument on review is that Andrus's admissions during the prehearing discovery process establish that Ms. Casper is entitled to benefits. 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

ORDER AFFIRMING ALJ'S DECISION
MARTHA D. CASPER
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reaffirms that ruling.

As her second argument, Ms. Casper maintains that Mr. Barraclough's work at Andrus was **both** the legal and medical cause of his heart attack. With respect to legal causation, and in light of Mr. Barraclough's preexisting heart condition, Ms. Casper must prove that Mr. Barraclough's exertions at Andrus were unusual or extraordinary when compared to the typical exertions encountered in modern nonemployment life. *Allen v. Industrial Commission*, 729 P.2d 15, 26 (Utah 1986). The Commission finds no evidence that Mr. Barraclough's work at Andrus meets this standard. Nor does the preponderance of evidence establish that Mr. Barraclough's work for Andrus was the medical cause of his heart attack. To the contrary, the more persuasive medical opinion of record, including the impartial medical panel's report, establishes that Mr. Barraclough's work did not cause his heart attack. In light of the absence of legal and medical causation, Mr. Barraclough's death is not compensable under the Utah Workers' Compensation Act.

Ms. Casper also contends that her objections to the medical panel's report were not properly considered. Ms. Casper lists those objections as: 1) Judge George's improper directive to the panel to "find in certain ways"; 2) failure to submit conflicting medical evidence for the panel's consideration; 3) lack of medical support of the panel's conclusions; and 4) denial of Ms. Casper's request for a hearing on her objections to the panel report. After reviewing the record, the Commission finds no merit to these objections. Judge George's questions and instructions to the medical panel were appropriate and the panel had access to Mr. Barraclough's underlying medical records so that it could reach a fully informed opinion. Under these circumstances, Judge George properly exercised his discretion by declining to convene a hearing on Ms. Casper's objections.

Finally, Ms. Casper argues she is entitled to have "the facts, law and any doubt rising therefrom resolved in favor of awarding benefits." While it is true that the Workers' Compensation Act is to be liberally construed in favor of compensability, applicants for workers' compensation benefits must still meet the Act's statutory criteria for compensability. For the reasons already stated, the Commission has determined that Mr. Barraclough's heart attack did not arise out of his employment. Consequently, the Commission concludes that Ms. Casper has not met her burden of proof and that she is not entitled to dependents' benefits.

ORDER AFFIRMING ALJ'S DECISION
MARTHA D. CASPER
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ORDER

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

Dated this 21st day of March, 2007.



Sherrie Hayashi
Utah Labor Commissioner

NOTICE OF APPEAL RIGHTS

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.

ORDER AFFIRMING ALJ'S DECISION
MARTHA D. CASPER
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CERTIFICATE OF MAILING

I certify that a copy of the foregoing Order Affirming ALJ's Decision in the matter of Martha D. Casper, Widow of C. Lynn Barraclough, Case No. 97-0886, was mailed first class postage prepaid this 21st day of March, 2007, to the following:

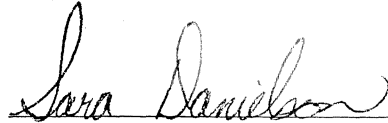
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