

2000

John M. McPhie v. United States Steel Corporation, The Industrial Commission of Utah : Unknown

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc2



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

A. Wally Sandack; Sandack and Sandack; Attorney for Plaintiff.

Vernon B. Romney; Attorney General of Utah; Attorney for Defendant; Erie V. Boorman; Parsons, Behle, and Latimer; Attorney for Defendant .

Recommended Citation

Legal Brief, *John M. McPhie v. United States Steel Corporation, The Industrial Commission of Utah*, No. 14364.00 (Utah Supreme Court, 2000).

https://digitalcommons.law.byu.edu/byu_sc2/253

This Legal Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

UTAH
DOCUMENT
KFU
45.9
.S9
DOCKET NO.

UTAH SUPREME COURT

BRIEF

14364D

RECEIVED
LAW LIBRARY

1 JUN 1977

ORIGINAL

UNIVERSITY
School

IN THE SUPREME COURT OF THE STATE OF UTAH

* * *

JOHN M. McPHIE,

Plaintiff,

-vs-

Case No. 14364

UNITED STATES STEEL CORPORA-
TION and THE INDUSTRIAL
COMMISSION OF UTAH,

Defendants.

* * *

ACTION FOR REVIEW OF
FINAL ORDER OF INDUSTRIAL COMMISSION

BRIEF OF DEFENDANT
THE INDUSTRIAL COMMISSION OF UTAH

VERNON B. ROMNEY

Attorney General of Utah
236 State Capitol
Salt Lake City, Utah 84114

Attorney for Defendant, The
Industrial Commission of Utah

A. WALLY SANDACK

Sandack & Sandack
370 East Fifth South
Salt Lake City, Utah 84111

Attorney for Plaintiff,
John M. McPhie

ERIE V. BOORMAN

Parsons, Behle & Latimer
79 South State Street
Salt Lake City, Utah 84111

Attorney for Defendant, United
States Steel Corporation

MAY 7 - 1973

IN THE SUPREME COURT OF THE STATE OF UTAH

* * *

JOHN M. McPHIE,

:

Plaintiff,

:

-vs-

:

Case No. 14364

UNITED STATES STEEL CORPORA-
TION and THE INDUSTRIAL
COMMISSION OF UTAH,

:

:

Defendants.

:

* * *

ACTION FOR REVIEW OF
FINAL ORDER OF INDUSTRIAL COMMISSION

BRIEF OF DEFENDANT
THE INDUSTRIAL COMMISSION OF UTAH

VERNON B. ROMNEY

Attorney General of Utah
236 State Capitol
Salt Lake City, Utah 84114

Attorney for Defendant, The
Industrial Commission of Utah

A. WALLY SANDACK

ERIE V. BOORMAN

Sandack & Sandack
370 East Fifth South
Salt Lake City, Utah 84111

Parsons, Behle & Latimer
79 South State Street
Salt Lake City, Utah 84111

Attorney for Plaintiff,
John M. McPhie

Attorney for Defendant, United
States Steel Corporation

TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF THE NATURE OF THE CASE.....	1
DISPOSITION BY INDUSTRIAL COMMISSION.....	1
RELIEF SOUGHT ON APPEAL.....	1
STATEMENT OF FACTS.....	1
ARGUMENT:	
Point I: The Industrial Commission Did Not Abuse Its Discretion In Determining The Appli- cant's Injuries and Compensation.....	2
Point II: Even If The Court Finds That The Com- mission Erred By Basing Its Order On Arbitrary Guidelines, The Case Should Be Remanded To The Industrial Commission For Rehearing.....	8
CONCLUSION.....	14

CASES CITED

O'Driscoll v. State Insurance Fund file #1U653-1133.....	3
Ostler v. Industrial Commission, 84 U. 428, 36 P.2d 95....	7
Quednan v. Langrish, 137 A.2d 544, 144 Conn. 706.....	10
Spencer v. Industrial Commission 20 P.2d 618, 81 U. 511..	6
Twin Peaks Canning Co. v. Ind. Com., 196 P. 853, 57 U. 589..	6
Utah Consol. Mining Co. v. Ind. Com., 240 P. 440, 66 U.173..	7

STATUTES

Utah Code Annotated, §35-1-20.....	5
Utah Code Annotated, §35-1-68.....	2
Utah Code Annotated, §35-1-69.....	2

Page

MISCELLANEOUS

Words and Phrases, Volume 17a, page 539.....	10
Words and Phrases, Volume 35, page 12.....	10

STATEMENT OF THE NATURE OF THE CASE

Respondents agree generally with Appellants' statement of the nature of the case.

DISPOSITION BY INDUSTRIAL COMMISSION

Respondents agree generally with Appellants' statement of the disposition by the Industrial Commission.

RELIEF SOUGHT ON APPEAL

Respondents seek to have the award of the Industrial Commission dated October 25, 1974 affirmed by the Supreme Court of Utah.

STATEMENT OF FACTS

Respondents agree generally with Appellants' statement of facts.

POINT I.

THE INDUSTRIAL COMMISSION DID NOT ABUSE ITS DISCRETION IN DETERMINING THE APPLICANT'S INJURIES AND COMPENSATION.

Learned counsel for the plaintiff very adequately covered the statutory ground and general principles concerning the Special Fund under U.C.A. 35-1-68, 69. Respondents therefore will endeavor not to be repetitive in these areas.

The basic issue plaintiff raises on appeal is whether the Commission's guidelines are arbitrary in interpreting U.C.A. 35-1-69. The pertinent part of that statute that creates difficulty in interpretation includes:

"35-1-69. Combined injuries resulting in permanent incapacity--Basis of Compensation--Special fund--Training of employee--(1) If any employee who has previously incurred a permanent incapacity by accidental injury, disease, or congenital causes, sustains an industrial injury for which compensation and medical care is provided by this title that results in permanent incapacity which is substantially greater than he would have incurred if he had not had the pre-existing incapacity, compensation and medical care, which medical care and other related items are outlined in section 35-1-81, shall be awarded on the basis of the combined injuries, but the

liability of the employer for such compensation and medical care shall be for the industrial injury only and the remainder shall be paid out of the special fund provided for in section 35-1-68(1) hereinafter referred to as the "special fund"... (Emphasis added).

The language "substantially greater" poses distinct problems of interpretation for the Industrial Commission, as the phrase is unduly broad and general.

The commission has long struggled with the meaning of this phrase, and has to the best of its ability, attempted to evaluate claims on a case by case basis, rather than setting down inflexible guidelines. When pressed for guidelines in the O'Driscoll case, cited at page 16 of plaintiff's brief, the Commission explained this policy:

"The Commission has for years, labored with problems of this (35-1-69) section and has endeavored to interpret what constitutes 'substantially greater.' The guidelines of what 'substantially greater' means are elusive and difficult, even among the Commissioners. The Commission has not formulated a written policy regarding this matter, although in private discussions reference has been made to a 50% and a 40% figure. Said percentages were discussed in terms of the amount of percentage the industrial accident had to contribute before it became "substantially greater" within the meaning intended in the Workmen's Compensation law. The Commission had endeavored to treat each case individually with the

idea in mind that each case would stand on its own facts, with no particular immovable policy being set...."

It is thus amply clear the Commission is trying to remain flexible on this statute, in an effort to work equitable results, as the business of determining percentages of a man's disability is subjective at best.

Yet, plaintiff's counsel argues on pg. 21 of their brief that:

"If the Commission is sustained here, every worker with greater than 50% prior disability should be disqualified for any subsequent injury of 49% or less, since the second injury cannot be substantially greater arithmetically. Such arbitrary criteria makes the statute inoperative."

Contrary to what plaintiff's counsel argues here, it is abundantly clear from the Commission's language in the O'Driscoll case, cited supra, and in the plaintiff's own brief--that the 40-50 percent range is merely a general guideline, and not an "immovable standard."

Next, plaintiff attacks the reference to California statutes by the Industrial Commission, stating that such statutes are not relevant here. (pg. 19 Appellant's brief). Upon closer examination of what the Industrial Commission is actually doing, it is plain that there is nothing wrong with the Commission referring to a California statute for assistance

in interpreting a Utah statute.

The Utah statute itself is broad and general, yet the Industrial Commission, by mandate of the legislature, must interpret it. The commission has for the most part been left to its own means in doing so. Thus, because California has codified some specific guidelines in their workmen's compensation statute, the Utah Industrial Commission has turned to California, just as courts often look to other jurisdictions, to get some guidance in how other states have handled similar statutory interpretation problems. Thus, far from being unlawful, the Commission's reference to the California statute is reasonable, and an indication of the Commission's attempt to act in good faith.

No where has the Commission adopted the California standard as its own, but even if they did, this would not be improper. Due to the broadness of the statute in question, and the powers vested in the Industrial Commission, it appears that the Commission is free to adopt any reasonable standard of interpretation of the law.

Further, there is statutory and case law that gives great deference to orders and decisions of the Industrial Commission.. U.C.A. 35-1-20 states:

"Orders of commission--Presumed lawful--
All orders of the commission within its jurisdiction shall be presumed reasonable and lawful until they are found otherwise in an action brought for that purpose, or until altered or revoked by the commission."

It appears that here the legislature has given the orders of the Industrial Commission a statutory presumption of lawfulness. Likewise, we urge the Court in the instant case, barring any evidence presented by plaintiff that the Commission abused its discretion, should uphold the presumption and not disturb the Commission's findings.

As to review of Industrial Commission hearings and orders, the Supreme Court of the State of Utah has a long history of giving great deference to the Commission's findings. Just a few of many cases in this line of decisions include:

In Spencer v. Industrial Commission 20 P.2d 618, 621, 81 U. 511, the Court said: "A broad discretion is vested in the Industrial Commission by statute with respect to the manner in which its investigations shall be conducted. Unless it is shown that some substantial right of a party has been denied him, or that he has been deprived of an opportunity to fairly and fully develop his case, this court will not interfere to direct the method of conducting such hearings or investigations."

In Twin Peaks Canning Co. v. Industrial Commission, 196 P. 853, 856, 57 U. 589, The Utah Supreme Court stated: "This court is now firmly committed to the doctrine that it will examine into the evidence only to ascertain whether there is any substantial evidence in support of the findings of its commission and whether it has either acted without or in excess of its jurisdiction."

And again, in Utah Consol. Mining Co. v. Industrial Commission, 240 P. 440, 441, 66 U. 173, the Utah High Court reaffirmed their long standing policy:

"This court has consistently and persistently held that our powers are limited to the determination of whether the Commission has exceeded its powers or has disregarded some positive provision of law in making or in denying an award."

And finally, the Court said in Ostler v. Industrial Commission 84 U. 428, 36 P.2d 95:

"Unless upon the whole record it can be said that the Commission acted arbitrarily or capriciously in making its findings, this court under the statute is without authority to interfere. It is not for this court in matters of evidence to interfere or to substitute its judgment for that of the Commission unless it is made clearly to appear that the Commission has misconstrued or misapplied the provisions of the statute; but if such is made to appear, then it becomes the duty of the court to correct the same. Where there is substantial competent evidence to support an award, it will not be disturbed, likewise when there is no substantial competent evidence to support an award or an order denying an award, it is held the award or order must be affirmed, not because the Commission acted arbitrarily or capriciously, but because of the insufficiency of competent evidence. It is said in this regard that "the commission may not without sufficient cause arbitrarily refuse to follow the uncontradicted evidence, yet, before this

court can say that the commission acted arbitrarily or capriciously in the matter, it must be made clearly to appear that such was in fact the case." Kavalinakis v. Ind. Comm. et al., 67 Utah, 174, 246 P. 698, 701; Hauser v. Ind. Comm., 77 Utah, 419, 296 P. 780."

Defendant Industrial Commission respectfully submits that their guidelines are not arbitrary or capricious as plaintiff contends, that plaintiff failed to produce any evidence or facts to support his claim to that effect, and that therefore the court should affirm the Commission's order in accordance with long standing Supreme Court policy.

POINT II.

EVEN IF THE COURT FINDS THAT THE COMMISSION ERRED BY BASING ITS ORDER ON ARBITRARY GUIDELINES, THE CASE SHOULD BE REMANDED TO THE INDUSTRIAL COMMISSION FOR REHEARING.

Even assuming arguendo that the State Industrial Commission abused its discretion by making decisions in this case on arbitrary guidelines, the appropriate remedy is to remand the case to the commission for rehearing. The reason for this is twofold: first, the Court may possibly find a need for further evidentiary hearings concerning Mr. McPhie's injuries based on a new court enunciated guidelines. And

second, because United States Steel Corporation is not represented in this hearing on appeal, remanding the case would give them an opportunity to adequately protect their interests in the case.

Defendant Commission strongly urges the court, however, to affirm the commission's order, as based on the facts of this case, it is unlikely any better result can be reached on rehearing. Our argument will endeavor to explicate this point.

Section 35-1-69 provides that certain benefits be paid to an employee who has previously incurred a permanent incapacity by accident, disease or congenital causes, who then sustains an industrial injury which results in permanent incapacity substantially greater than he would have incurred if he had not had the pre-existing incapacity. These benefits are to be awarded on the basis of the combined injuries but the liability of the employer and/or insurance carrier shall be for the industrial injury only, and the remainder shall be paid out of the special fund.

The law then provides that a Medical Panel be set up to determine:

1. The total permanent physical impairment from all causes.
2. The percentage of permanent physical impairment attributable to the industrial injury.

3. The percentage of permanent physical impairment attributable to the pre-existing condition.

After the above determinations have been made, the Commission shall then assess the liability for payment of benefits -- the employer and/or insurance carrier shall pay the percentage of permanent physical impairment attributable to the industrial injury only and the remainder shall be paid out of the special fund.

The medical panel mentioned supra, found inter alia in its Medical Panel Report finding (R. 202, 203), "7. Mr. McPhie does have a significant functional component to his problem at the present time."

Within the law of Workmen's Compensation, "functional component" or as it is sometimes called, "functional overlay," has a specialized meaning. In Quednan v. Langrish 137 A.2d 544, 548, 144 Conn. 706, it was defined as such:

"The term 'functional overlay' appears to be a substitute for 'psychogenic overlay,' which has been defined as 'the emotionally determined increment to an existing symptom or disability which has been of an organic or physically traumatic origin.' Laughlin, Meuroses in Clinical Practice, p. 732.

See also Words and Phrases volume 17a pg. 539, "Functional Overlay", and volume 35 pg. 12 "Psychogenic Overlay."

Basically then, the functional component of an injury is the emotional or psychiatric harm that results from the industrial injury, but is not physical in nature resulting directly from the industrial accident. Nevertheless, the functional component can be severe in a given case, and contribute substantially to a workman's overall disability.

Thus, applying this to the facts of the instant case, perhaps Mr. McPhie is in fact entitled to a determination of a higher percentage of disability than the 15 percent that was previously determined by the medical panel as attributable to the July 23, 1972 accident. We base this conclusion on the language found in Dr. Alan Jeppsen's letter of psychiatric evaluation of Mr. McPhie (R. 204, 205) which states in pertinent part:

"In answering question number seven from the Industrial Commission, Mr. McPhie does have a significant functional component to his problem at the present time. Mr. McPhie had a chronic pain syndrome in 1966 following his accident. This predisposed him to have another traumatic neurosis develop after this recent injury to his cervical spine. I think on top of that, his impaired mental functioning predisposed him to focus on this limitation as an explanation of his poor functioning. The accident of July 23, 1972 would have to be considered the precipitating and aggravating event."
(Emphasis added)

It appears from this language that the "significant functional component" referred to may well in fact constitute a substantial part of Mr. McPhie's total disability. But, more importantly to the issue at hand, it also appears that this functional component may not have been present prior to the July 23, 1972 accident.

Now, according to U.C.A. 35-1-69 as amended, if the significant functional impairment did not exist before the July 23, 1972 accident, then the employer, (United States Steel Corporation or its insurance carrier) would be responsible for the liability accruing from the injury. This is because the special fund as explained earlier, only pays for that amount of the total disability that was pre-existing to the industrial accident. The employer, U.S. Steel Corp., or its insurance carrier, is responsible for that percentage of the injury that results concurrent or subsequent to the accident, such as the functional component overlay.

Thus in the instant case, much of Mr. McPhie's total disability is directly related to his functional overlay, as explained in Dr. Jeppson's letter. Likewise, there is a very strong possibility that the functional overlay created liability the employer or his insurance carrier should bear, if the overlay is a result of the July 23, 1972 injury, and was not, as required by U.C.A. 35-1-69, pre-existing to the Industrial

accident. However, since United States Steel is not represented in this appeal, we therefore respectfully submit if the court finds that the Commission abused its discretion and made its order in the instant case based on arbitrary guidelines, then the case should be remanded to the Industrial Commission for an evidentiary hearing on the subject of the functional component overlay. This would be to determine when it occurred, i.e. prior to or subsequent to the July 23, 1972 accident, and what proportion of Mr. McPhie's total disability the functional component overlay consisted of, over and above the 15 percent that has already been determined as resultant from the July 1972 accident.

The purpose of such a new hearing, if found necessary by the court, would be to re-examine the evidence relating to the functional component; however, defendants strongly urge against such a rehearing, due to the facts in the instant case. In the commission's conclusions of law (R. 228) the Commission stated:

"Considering Claimant's prior history and complaints, and considering the multiple problems following the July 23, 1972 accident, the various hospitalization, diagnostic efforts and cervical surgery were not unreasonable under the circumstances. The Medical Panel concluded that much

of Claimant's disability was attributable to previously existing, co-existing and subsequent conditions. They also concluded that it was impossible to separate into distinct categories the various aspects or components of Claimant's permanent impairment because of the significant functional component being involved in the problem." (Emphasis added).

Despite this language, if the court finds a new hearing is in order, it would appear necessary for the commission to re-evaluate the claimant's injuries in the context of new guidelines set out by the court, to prevent saddling either U.S. Steel or the Special Fund with the entire amount of liability.

Nevertheless, it must be concluded that the instant facts make for a hard case, because as stated by the Commission supra, they believed it to be impossible to properly apportion the various aspects or components of the claimant's injuries to before or after the accident.

CONCLUSION

The Industrial Commission has taken a very hard set of facts, and has tried to come to an equitable settlement for the claimant. The Commission has acted in good faith, interpreting and applying the state statute to the best of their

ability. Unless there is some evidence that there has been a clear abuse of discretion by the Commission, the Supreme Court should allow the Commission's order to stand. Further even should the court find such an abuse of discretion, the proper remedy is to remand the case to be heard in the context of court established guidelines. Nevertheless, we respectfully urge the court to let this Commission order stand as is. We likewise respectfully urge that if any new guidelines or changes are to be made in the statute, this is in the province of the legislature to establish such guidelines or changes.

DATED this 6 day of May, 1976.

Respectfully submitted,

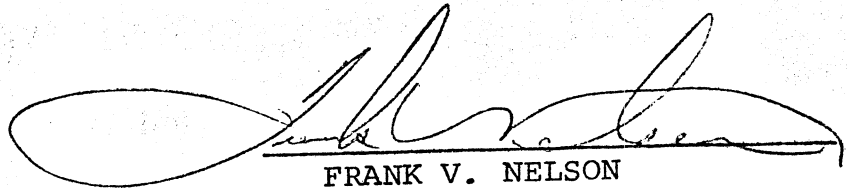
VERNON B. ROMNEY
Attorney General

by: 

FRANK V. NELSON
Assistant Attorney General
Attorney for Defendant and
Respondent

CERTIFICATE OF MAILING

This is to certify that I mailed two (2) copies of the foregoing brief to A. Wally Sandack, Attorney for Applicant and Appellant, 370 East Fifth South, Salt Lake City, Utah 84111; and one (1) copy to Erie V. Boorman, Attorney for another party Defendant and Respondent, 79 South State Street, Salt Lake City, Utah 84111, this 6th day of May, 1976.



FRANK V. NELSON

RECEIVED
LAW LIBRARY

17 JUN 1977

BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School