1985

Lloyd L. Moore v. American Coal Company, kna Emory Mining Corp., Utah State Insurance Fund and Second Injury Fund : Brief of Appellant

Utah Supreme Court

COURT

ORIGINAL

20620 IN THE SUPREME COURT OF THE

STATE OF UTAH

LLOYD L. MOORE,	:	
Claimant, Employee, Appellant,	:	Case No. 20620
vs.	:	
AMERICAN COAL COMPANY, kna EMORY MINING CORP., UTAH STATE INSURANCE FUND and SECOND INJURY FUND,	:	
Employer.	:	

BRIEF OF APPELLANT

Appeal from the Utah State Industrial Commission of Utah, Timothy C. Allen, Administrative Law Judge.

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IN THE SUPREME COURT OF THE

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Claimant, Employee, Appellant,	:	Case No. 20620
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STATEMENT OF ISSUES PRESENTED FOR REVIEW

Is a medical panel hearing mandatory under Section 35-1-77 Utah Code Annotated when requested by an applicant in a workmen's compensation case?

STATEMENT OF THE CASE

Statement of the Nature of the Case

Lloyd Moore as petitioned this Court for the review and reversal of a denial of a Motion for review issued by the Industrial Commission of Utah on March 25, 1985 denying him a medical panel hearing on his workmen's compensation claim.

Disposition of Case in Lower Court

Mr. Moore had requested a medical panel hearing on his workmen's compensation claim preceeding a decision on his claim. A medical panel hearing was denied and a decision entered without benefit of having his treating physician's testimony at a medical panel hearing. Mr. Moore filed a motion for review with the Industrial Commission requesting a mandatory medical panel hearing. That motion was denied on March 25, 1985 and this petition for review follows.

Statement of Facts

Mr. Moore was first injured in an industrial accident on April 10, 1979 while employed by the American Coal Company. The injury was to his right knee. In a decision issued September 16, 1982 he was found to be 43% impaired and compensated accordingly. (R. 341-346)

Thereafter, additional surgery was perforemd on Mr. Moore's right knee and a claim made for additional benefits.

(R. 373) A second hearing was held June 28, 1984 following surgery of January 29, 1984. At the time of the second hearing Mr. Moore was then awaiting more surgery to be performed by Dr. Sherman Coleman at the University of Utah School of Medicine who was going to perform total knee replacement surgery on Mr. Moore's right knee. That surgery took place in September, 1984. Thereafter a second medical panel examined Mr. Moore and concluded that the additional surgery performed on his right knee in January 1984 and the total knee replacement surgery of September 1984 was not caused by or related to the industrial injury of April 10, 1979. (R.398-401)

A timely objection to the medical panel report was filed with the Industrial Commission (R. 404) on February 6, 1985. The administrative law judge denied the objection and declined to schedule a medical panel hearing because no conflicting testimony had been profferred with the objections to the medical panel report. The administrative law judge then entered his Findings of Fact, Conclusions of Law and Order (R. 405-407) based solely on the medical panel report without permitting Mr. Moore to produce testimony from his treating physicians that both the January, 1984 surgery and the knee joint replacement surgery of September, 1984 were both directly related to his industrial injury of April 10, 1979.

A timely Motion for Review was filed on behalf of Mr. Moore (R. 409) and it was denied (R. 414) leading to this petition for review.

Summary of Argument

A medical panel hearing is mandatory under Section 35-1-77 Utah Code Annotated when objections are filed to a medical panel report.

ARGUMENT

Recently this Court decided the case of Johnson v. Moore Business Forms, 694 P.2d 597 (Utah 1984). In the Johnson case the Court ruled that the appointment of an impartial panel was mandatory under the Utah Occupational Disease Disability law Utah Code Ann., 1953, § 35-2-1 to -2-65 because the act required that "the Commission shall appoint an impartial medical panel. . . ." Utah Code Annotated, 1953, § 35-2-56(2) (Supp. 1983) (emphasis added.) The statute was mandatory in language and the Industrial Commission was not free to ignore the clear requirement of the statute. The Court also cited Schmidt v. Industrial Commission, Utah, 617 P.2d 693 (1980) and Lipman v. Industrial Commission, Utah, 592 P.2d 616 (1969) which required the appointment of a medical panel in all workmen's compensation cases. Again it was the mandatory language of the statute which clearly required the appointment of the medical panel.

Just as Utah Code Ann., 1953, §35-1-77 requires the appointment of a medical panel in mandatory language, it also requires in mandatory language the holding of a medical panel hearing when objection is made by any party to the medical panel report. The law says:

> If objections to such report are filed it shall be the duty of the commission to set the case for hearing within thirty days to determine the facts and issues involved. . . .

It is not within the discretion or power of the Industrial Commission to ignore the clear requirement of the statute and decline to set a medical panel hearing when an objection to the medical panel report is made whether conflicting medical evidence is or is not profferred or for any other reason. A hearing must be set and held within thirty days of the objection.

CONCLUSION

Mr. Moore is entitled to have the decision of the Industrial Commission denying him a medical panel hearing reversed and the case remanded to the Industrial Commission with instructions that a hearing be set and held in accordance with statutory requirements.

DATED this 26 day of July, 1985.

MARQUARDT, HASENYAGER & CUSTEN

James R. Hasenyager

CERTIFICATE OF MAILING

I hereby certify that on this 26 day of July, 1985, I mailed 4 true and correct copies of the foregoing Brief of Appellant, postage prepaid, to:

Ralph Finlayson
Attorney General's Office
State Capitol Building
Salt Lake City, Utah

James R. Hasenyager

History: L. 1917, ch. 100, § 82; C. L. 1917, § 3143; R. S. 1933 & C. 1943, 42-1-71.

Age of employee.

This section must be read in connection with 35-1-75 which makes the basis of compensation the average weekly wage of the employee at the time of injury. This section was intended to have a restricted application, and is peculiarly adapted to apply in case of minors or persons of immature years whose wages are usually less than that of adults in like employment, but who could be expected naturally and normally to reach the wage scale of adults with increasing years and experience. Where such persons are killed or injured in employment, it is only fair that they should be placed on a comparable basis with adults, particularly where the injury is such as will reach into a period beyond maturity. Accordingly, this section will not be applied to miner 38 years old, experienced, who was previously a mine shift boss and leaser, earning higher wages. Brewer v. Industrial Comm., 89 U. 596, 58 P. 2d 33.

Findings and conclusions.

Findings and conclusions as to possible future earning capacity under this section must be supported by evidence. Royal Canning Corp. v. Industrial Comm., 101 U. 323, 121 P. 2d 406.

Collateral References.

Workmen's Compensation⇐835.
99 C.J.S. Workmen's Compensation § 292.

Anticipation of increase in wages of minor as an element in fixing compensation, 21 A. L. R. 1531.

Right to take rise or fall in wages since date of accident into account in fixing workmen's compensation, 2 A. L. R. 1642, 92 A. L. R. 1188.

35-1-77. Medical panel—Duty of commission to refer case to powers of panel—Findings and report—Objections to report—Hearing—Expenses.—Upon the filing of a claim for compensation for injury by accident, or for death, arising out of or in the course of employment, and where the employer or insurance carrier denies liability, the commission shall refer the medical aspects of the case to a medical panel appointed by the commission and having the qualifications generally applicable to the medical panel set forth in section 35-2-56, Utah Code Annotated 1953, as amended. The medical panel shall make such study, take such X-rays and perform such tests, including post-mortem examinations where authorized by the commission, as it may determine and thereafter shall make a report in writing to the commission in a form prescribed by the commission, and shall make such additional findings as the commission may require. The commission shall promptly distribute full copies of the report of the panel to the claimant, the employer and the insurance carrier by registered mail with return receipt requested. Within fifteen days after such report is deposited in the United States post office, the claimant, the employer or the insurance carrier may file with the commission objections in writing thereto. If no objections are so filed within such period, the report shall be deemed admitted in evidence and the commission may base its finding and decision on the report of the panel, but shall not be bound by such report if there is other substantial conflicting evidence in the case which supports a contrary finding by the commission. If objections to such report are filed it shall be the duty of the commission to set the case for hearing within thirty days to determine the facts and issues involved, and at such hearing any party so desiring may request the commission to have the chairman of the medical panel present at the hearing for examination and cross-examination. For good cause shown the commission may order other members of the panel with or without the chairman, to be present at the hearing for examination and cross-examination. Upon such hearing the

written report of the panel may be received as an exhibit but shall not be considered as evidence in the case except in so far as it is sustained by the testimony admitted. The expenses of such study and report by the medical panel and of their appearance before the commission shall be paid out of the fund provided for by section 35-1-68, Utah Code Annotated 1953, as amended.

History: L. 1957 ch. 52, § 1; C. 1943, Supp., 42-1-71.10; L. 1955, ch. 57, § 1; 1969, ch. 86, § 9.

Compiler's Notes.

The 1955 amendment substituted "injury by accident, or for death, arising out of or in the course of employment" for "disability as in this title defined, or for death, resulting from an occupational disease" near the beginning of the first sentence; substituted a reference to the Utah Code for a reference to Laws 1949 in the first sentence; substituted "prescribed by the commission" for "following generally that prescribed in chapter 51, Laws of Utah 1949, and relating to partial permanent disability cases" in the second sentence; and made a minor change in phraseology.

The 1969 amendment substituted "chairman of the medical panel" for "medical panel or any of its members" in the sixth sentence; and inserted the seventh sentence.

Title of Act.

An act providing for the appointment of a medical panel with reference to total permanent disability and death cases arising from occupational disease.—L. 1951, ch. 52.

Duty of commission on remand of case.

Where an order of the commission was vacated and the case remanded because of a deficiency in the evidence to support the report of a medical panel appointed by the commission, the commission was not required to make an award based solely on the plaintiff's evidence; but it was the responsibility of the commission to make some disposition of plaintiff's application for an award and it was the prerogative of the commission to make a determination upon the evidence in the light of the decision of the Supreme Court or to order and hold a supplemental hearing to allow the parties to present additional evidence. Hackford v. Industrial Comm., 12 U. (2d) 250, 364 P. 2d 1091.

Objections to report.

Where plaintiff filed written objections to the report of a medical panel which had been appointed by the commission and objected to the report at the hearings, the burden was on the commission or the employer to sustain the report by oral testimony and, where this was not done, the report could not be considered as evidence. Hackford v. Industrial Comm., 11 U. (2d) 312, 358 P. 2d 899.

Where industrial commission had granted medical expenses from time of claimant's injury to June 13, 1962, and workmen's compensation to and including February 12, 1962, it did not act arbitrarily in denying payments for any later periods, the evidence at the hearing on objections to report of medical panel showing that hospitalization on January 18, 1962, was made necessary by accident in course of claimant's employment causing temporary loss of control of claimant's diabetes; total temporary disability ceased on claimant's return to work initially following accident; there was no permanent disability; and further medical treatment was not needed as the result of the accident. Sanderson v. Industrial Comm., 16 U. (2d) 348, 400 P. 2d 756.

Panel report as evidence.

In denying workmen's compensation benefits to claimant, industrial commission did not err in considering report of medical panel appointed by commission along with other evidence; medical panel and report did not encroach upon authority vested in commission to make findings of fact and conclusions. Jensen v. United States Fuel Co., 18 U. (2d) 414, 424 P. 2d 440, distinguished in 25 U. (2d) 58, 475 P. 2d 835.

In determining that order of commission denying award was supported by sufficient evidence, question whether panel report submitted to commission should be considered as evidence was of no importance where one of panel members appeared and testified before commission, and that testimony alone was sufficient to sustain order of commission. McWilliams v. Industrial Comm., 21 U. (2d) 266, 444 P. 2d 513.

Although great respect must be paid to panel of medical experts appointed pursuant to this section, they are not ultimate finders of fact but rather reporters of medical aspects of given case in aid of industrial commission's appraisal and weighing of all facts; therefore, where commission adopted panel's conclusion which was unsupported by any credible

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THE INDUSTRIAL COMMISSION

STATE OF UTAH

LLOYD MOORE,	:	
Claimant,	:	OBJECTION TO MEDICAL PANEL REPORT
vs.	:	
AMERICAN COAL CO.,	:	
Employer,	:	

Claimant objects to the medical panel report for the reason that the conclusion of the panel that the total knee replacement operation was unrelated to his April, 1979 industrial injury is, in the opinion of his treating physicians, clearly incorrect.

DATED this 6 day of February, 1985.

MARQUARDT, HASENAYGER & CUSTEN

James R. Hasenyager
Attorney for Claimant

THE INDUSTRIAL COMMISSION OF UTAH

Case No. 81000833

LLOYD MOORE, Applicant, vs. AMERICAN COAL COMPANY and/or STATE INSURANCE FUND and SECOND INJURY FUND, Defendants.	*	FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER

HEARING: Hearing Room 332, Industrial Commission of Utah, 160 East Broadway, Salt Lake City, Utah, on June 28, 1984, at 10:00 o'clock a.m.; same being pursuant to Order and Notice of the Commission.

BEFORE: Timothy C. Allen, Administrative Law Judge.

APPEARANCES: The Applicant was present and represented by James R. Hasenyager, Attorney at Law.

The Defendants American Coal Company and/or State Insurance Fund were represented by Dennis V. Lloyd, Attorney at Law.

At the conclusion of the evidentiary hearing, the medical issues and questions were submitted to a Medical Panel appointed by the Administrative Law Judge. The Medical Panel Report was received, and copies were distributed to the parties. Applicant, by and through counsel, filed an objection to the Medical Panel Report on February 8, 1985, indicating that the Applicant's treating physicians disagreed with the same. There being no proffer of conflicting medical testimony, the Administrative Law Judge has reviewed the file and the Medical Panel Report, and finds that the objections to the Medical Panel Report should be denied, and the Medical Panel Report is admitted into evidence.

FINDINGS OF FACT:

This case concerns whether or not the industrial injury of April 10, 1979, resulted in the need for surgery and temporary total disability after November 5, 1983.

This case was previously heard and was the subject of Findings of Fact, Conclusions of Law, and Order and three Amended Orders. As a result thereof, the Applicant was given an award of 35% of the whole man due to pre-existing conditions, and 8% of the whole man due to the industrial injury of April 10, 1979. The present Application concerned the denial by the State Insurance Fund of liability for a surgery of November 5, 1983, to the Applicant's right knee, and an additional surgery to the right knee of January 30, 1984, and a proposed right knee replacement. In addition, the Applicant was claiming additional temporary total disability since November 5, 1983, as a result of the industrial injury of April 10. 17979. With the file in this posture, the case was referred to the Medical Panel for its evaluation.

The Medical Panel found that the Applicant had not been temporarily totally disabled since November 5, 1983, as a result of the industrial injury of April 10, 1979. The Panel further found that the Applicant's present problems in his right knee are due to the injury he sustained in the military service, and that there was no contribution to his present problems by the industrial injury of April 10, 1979. Accordingly, the surgery of November 5, 1983, the surgery of January 30. 1984, and the total knee replacement surgery, were found not to be a result of the industrial injury of April 10, 1979. Finally, there has been no increase in impairment due to the industrial injury of April 10, 1979. The Administrative Law Judge adopts the findings of the Medical Panel as his own.

Pursuant to the findings of the Medical Panel, there is no causal connection between the Applicant's present right knee complaints and the industrial injury of April 10, 1979. Accordingly, the Applicant has not met his burden of showing a substantial change of condition so as to warrant the re-opening of his claim.

CONCLUSIONS OF LAW:

The Applicant has not met his burden of showing a substantial change in condition.

ORDER:

IT IS THEREFORE ORDERED that the claim of Lloyd Moore for additional surgery and benefits as a result of the industrial injury of April 10, 1979, should be, and the same is hereby dismissed.

IT IS FURTHER ORDERED that any Motion for Review of the foregoing shall be filed in writing within fifteen (15) days of the date hereof speci- fying in detail the particular errors and objections, and unless so filed this Order shall be final and not subject to review or appeal.

Timothy C. Allen
Administrative Law Judge

Passed by the Industrial Commission of Utah, Salt Lake City, Utah, this 4th day of March, 1985.

ATTEST:

/s/ Linda J. Strasburg
Linda J. Strasburg
Commission Secretary

CERTIFICATE OF MAILING

I certify that on the 4th day of March, 1985, a copy of the attached Order was mailed to each of the following persons at the following addresses, postage paid:

American Coal Company
Emery Mining Corporation
P.O. Box 310
Huntington, UT 84528

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Dennis V. Lloyd, Attorney at Law
Utah State Insurance Fund
P.O. Box 45420
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Gilbert A. Martinez, Administrator
Second Injury Fund

Lloyd Moore
389 North 100 West
Moroni, UT 84646

THE INDUSTRIAL COMMISSION OF UTAH

By DeAnn

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THE INDUSTRIAL COMMISSION OF UTAH

Case No. 81000833

LLOYD MOORE,	:	
Applicant,	:	MOTION FOR REVIEW
vs.	:	
AMERICAN COAL COMPANY and/or STATE INSURANCE FUND and SECOND INJURY FUND,	:	
Defendants.	:	

Claimant Lloyd Moore, by and through his attorney James R. Hasenyager hereby moves the Industrial Commission to review the findings of fact, conclusions of law and order entered in claimants case by Timothy C. Allen, Administrative Law Judge for the reason that the order was entered despite the claimant having filed an objection to findings of the medical panel and requesting that a medical panel hearing be scheduled. Judge Allen stated that no contrary medical testimony had been profferred. That ruling is contrary to the clear language of Section 35-1-77 Utah Code Annotated which requires the appointment of a medical panel in every

case and requires the commission set a medical panel hearing when requested by a party who objects to the findings of the medical panel.

The case of Johnson v. Moore Business Forms, INA/Aetna and the Industrial Commission filed by our Supreme Court on December 3, 1984 a copy of which is attached is dispositive.

DATED this 7 day of March, 1985.

MARQUARDT, HASENYAGER & CUSTEN

James R. Hasenyager

CERTIFICATE OF MAILING

I hereby certify that on this 7th day of March, 1985, I mailed a true and correct copy of the foregoing Motion for Review, postage prepaid, to:

Dennis V. Lloyd, Utah State Insurance Fund
P.O. Box 45420, Salt Lake City, UT 84145-1420

Gilbert A. Martinez, Administrator
Second Injury Fund

Secretary

ARCHIVES

IN THE SUPREME COURT OF THE STATE OF UTAH

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Linda B. Johnson,
Plaintiff and Appellant,

v.

Moore Business Forms, INA/Aetna and the Industrial Commission of Utah,
Defendants and Respondents.

No. 19630

F I L E D
December 3, 1984

Geoffrey J. Butler, Clerk

Arthur F. Sandack
Plaintiff and Appellant,
Gilbert Martinez
Shaun Howell
Robert Shaughnessy
Frank Nelson
Defendants and Respondents.

ZIMMERMAN, Justice:

The issue in this review from the Industrial Commission is whether an administrative law judge can dispose of a claim of permanent partial disability under the Utah Occupational Disease Disability Law without calling a medical panel.

Mrs. Johnson, an employee of Moore Business Forms in Logan, Utah, brought this partial disability claim under the Utah Occupational Disease Disability Law (the "Act"). Utah Code Ann., 1953, § 35-2-1 to -2-65 (1974 ed. & Supp. 1983). She alleged that her assembly line job caused her to suffer tenosynovitis of the left wrist, resulting in permanent partial disability. Her job consisted of wrapping and packing paper forms and involved repetitive twisting motions with both her hands. The administrative law judge heard evidence of the work she did and the motions and stresses to which her hands and wrists were subjected. The judge rejected her claim, finding that Mrs. Johnson had not shown that her tenosynovitis was "due to continual pressure or friction or to repeated trauma or vibration of tools," as required by section 35-2-27(25) of the Act. The Commission affirmed. Because that finding was made without first convening a medical panel as required by section 35-2-56(2) of the Act, we reverse.

Sections 35-2-27(25) and 35-2-56(1) of the Act provide that one suffering from tenosynovitis of the wrist "due to continual pressure or friction or repeated trauma or vibration of tools" resulting in permanent partial disability is entitled to compensation if that condition is "caused or contributed to" by an occupational disease or injury to health. Mrs. Johnson made exactly this claim. The Act requires that when such a claim is filed with the Commission, "the commission shall appoint an impartial medical panel . . . , and such medical panel shall make such study, take such X-rays and perform such tests as the panel may determine . . . ." Utah Code Ann., 1953, § 35-2-56(2) (Supp. 1983) (emphasis added). Following such study, the panel must report to the Commission both (i) the extent of any permanent partial disability and (ii) whether the disability, in whole or in part, resulted from an occupational disease. Id.

Despite the clear requirement of the statute that upon the mere filing of such a claim a medical panel "shall" be convened, the administrative law judge took it upon himself to hold a hearing, consider the evidence, including the supportive medical opinion of Mrs. Johnson's doctor, and make findings of fact and conclusions of law that Mrs. Johnson's tenosynovitis did not result from any of the causes enumerated in section 35-2-27(25), including "friction" or "repeated trauma." He then dismissed her claim.

The administrative law judge seemed to be operating under the unspoken premise that not every claim filed that alleges the statutory elements requires convening a medical panel; only those cases that pass some threshold test of meritoriousness established by the administrative law judge may go forward. That interpretation of the statute is contrary to the plain language of section 35-2-56(2) and, furthermore, is flatly contrary to this Court's holdings in Schmidt v. Industrial Commission, Utah, 617 P.2d 693, 695-96 (1980), and Lipman v. Industrial Commission, Utah, 592 P.2d 616, 618 (1979). In those cases, we ruled that similar language in the Workers' Compensation Act required the convening of a medical panel in all cases. Utah Code Ann., 1953, § 35-1-77 (1974 ed.).

The instant case presents an even more compelling reason than existed in Schmidt for applying the statute literally. Section 35-2-56(2) of the Utah Occupational Disease Disability Law includes language describing the legislature's purpose in requiring that all questions of causation and disability raised by a claim be referred to a medical panel, language that was absent from the parallel section of the Workers' Compensation Act construed in Schmidt. In section 35-2-56(2) the legislature specifically found that these questions present "highly technical" issues and that the "difficult task" of dealing with these issues "should be placed in the hands of physicians specially trained for the care and treatment of the occupational disease involved." Given this legislative finding, we are not free to depart from the interpretation placed upon the similar language in Schmidt, despite the fact that the legislature later amended the Workers' Compensation Act to delete the requirement that a medical panel be convened in every case.[1]

In the present case, Mrs. Johnson's claim met the required statutory minimum to trigger the convening of a medical

1. In 1982, the legislature amended section 35-1-77 to make convening of a medical panel discretionary under the Workers' Compensation Act. 1982 Utah Laws ch. 41 § 1. This amendment effectively reversed Schmidt on this issue. However, it is worth noting that no such change was made in the similar language used in section 35-2-52(2) of the Utah Occupational Disease Disability Law, perhaps because the legislature thought the latter act required more sophisticated determinations, best made only with expert assistance.

panel. Section 35-2-27(25) of the Act requires that to be compensable tenosynovitis of the wrist must be caused, inter alia, by job-related continual "friction" or "repeated trauma." Mrs. Johnson claimed that job-related repeated trauma caused tenosynovitis of her wrist. She testified about the repetitive twisting wrist movements required by her job and produced a letter from her doctor, Dr. Hyde, opining that the requirements of her job played a causative role in her wrist problems. Once she made this showing, a medical panel had to be called to report on whether the continual twisting motions required by Mrs. Johnson's job constituted "friction" or "repeated trauma" and whether this trauma eventually resulted in her tenosynovitis.

The administrative law judge invaded the province of the medical panel when, without input from a panel, he found that Mrs. Johnson's job did not involve the statutorily required pressure, friction, trauma, or vibration.[2]

We reverse the administrative law judge's holding and remand for further proceedings before a properly called medical panel.

WE CONCUR:

Gordon R. Hall, Chief Justice

I. Daniel Stewart, Justice

Richard C. Howe, Justice

Christine M. Durham, Justice

2. In his findings, the administrative law judge also stressed the fact that nothing unusual or accidental in nature had occurred on the day Mrs. Johnson first reported pain. That fact is irrelevant. It is only when the injury complained of does not fit under the Utah Occupational Disease Disability Law and is dealt with under the Workers' Compensation Act that the claimant must show an identifiable accident as a prerequisite to recovery. See Pintar v. Industrial Commission, 1 Utah 2d 276, 277, 382 P.2d 414 (1963).

THE INDUSTRIAL COMMISSION OF UTAH

Case No. 81000833

LLOYD MOORE, Applicant, vs. AMERICAN COAL COMPANY and/or STATE INSURANCE FUND and SECOND INJURY FUND, Defendants.	*	DENIAL OF MOTION FOR REVIEW

On or about March 4, 1985, an Order was entered by an Administrative Law Judge of the Commission wherein benefits were denied in the above entitled case.

On or about March 8, 1985, the Commission received a Motion for Review from the Applicant by and through his attorney.

Thereafter, the matter was referred to the entire Commission for review pursuant to Section 35-1-82.53, Utah Code Annotated. The Commission has reviewed the file in the above entitled case and we are of the opinion that the Motion for Review should be denied and the Order of the Administrative Law Judge affirmed. In affirming, the Commission adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge.

IT IS THEREFORE ORDERED that the Order of the Administrative Law Judge dated March 4, 1985, shall be, and the same is hereby, affirmed and the Motion for Review shall be, and the same is hereby, denied.

Passed by the Industrial Commission of Utah, Salt Lake City, Utah, this 25th day of March, 1985.

ATTEST:

Linda J. Strasburg
Commission Secretary

Stephen M. Hadley
Chairman

Walter T. Axelgard
Commissioner

Lenice L. Nielsen
Commissioner

CERTIFICATE OF MAILING

I certify that on March 27th, 1985, a copy of the attached Denial of Motion for Review was mailed to the following persons at the following addresses, postage paid:

Lloyd Moore, 389 North 100 West, Moroni, UT 84646

James R. Hasenyager, Atty., 2661 Washington Blvd., Suite 202, Ogden, UT 84401

Dennis V. Lloyd, Atty., State Insurance Fund, 560 South 300 East, SLC, UT 84111

Gilbert A. Martinez, Administrator, Second Injury Fund

American Coal Company, Emery Mining Corporation, P. O. Box 310, Huntington, UT 84528

THE INDUSTRIAL COMMISSION OF UTAH

By Wilma