

2007

Linda Lee Hymas v. Utah Labor Commission: SOS Staffing/Hyclone and/or Insurance Company of the State of Pennsylvania : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

LINDA LEE HYMAS,

Petitioner/Appellant,

vs.

UTAH LABOR COMMISSION; SOS
STAFFING / HYCLONE and /or
INSURANCE COMPANY OF THE
STATE OF PENNSYLVANIA,

Respondents/Appellees.

:

Court of Appeals

:

Case No.: 20070875- CA

:

Priority 7

:

:

Labor Commission No.: 06-0370

:

:

BRIEF OF APPELLEES

**SOS STAFFING / HYCLONE and /or INSURANCE COMPANY OF THE STATE
OF PENNSYLVANIA**

Appeal from the Utah Labor Commission

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FILED
UTAH APPELLATE COURT
AUG 8 - 2008

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**APPELLEES DO NOT REQUEST ORAL ARGUMENT NOR THAT THIS CASE BE
REPORTED.**

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JURISDICTION OF THE COURT OF APPEALS

This Petition for Review by Appellant, Linda Hymas, is from a final order of the Labor Commission of Utah date July 31, 2007.¹ This Court has jurisdiction over this appeal pursuant to Utah Code Annotated §§ 34A-2-801(8)(a), 63-46b-16, and 78-2a-3(2)(a) (2006).

ISSUES PRESENTED AND STANDARDS OF REVIEW

Issue: Did the Commission act reasonably and rationally in denying death benefits to Ms. Hymas on the basis that she failed to establish that her husband's death is medically related to his work activities with SOS Staffing. This issue was preserved at R. 23-26.

Standard of Review

Whether the Commission erroneously applied the Allen test is a mixed question of law and fact reviewed for reasonableness and rationality. See Acosta v. Labor Comm'n, 2002 UT App 67, P11 (Utah Ct. App. 2002); AE Clev ite, Inc. v. Labor Comm'n, 2000 UT App 35, P7, 996 P.2d 1072 HN6 ("The Legislature has granted the Commission discretion to determine the facts and apply the law to the facts" and this court will uphold the Commission's determination unless it "exceeds the bounds of reasonableness and rationality.").

¹ Ms. Hymas's brief indicates she is appealing from the ALJ's Order. However, given that there was further appeal to the Commissioner, it would seem that her appeal is from the later order of Sherri Hayashi, the Commissioner, dated July 31, 2007, affirming the ALJ's Findings of Fact, Conclusions of Law and Order.

DETERMINATIVE LAW

The determinative law is Utah Code Ann. § 34A-2-401 (Utah “Workers Compensation Act”), the provision authorizing workers’ compensation for industrial accidents. This section reads as follows:

An 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 . . . such amount for medical, nurse, and hospital services . . . [and] medicines; and in the case of death, the amount of funeral expenses.

Utah Code Ann. § 34A-2-401 (2006).

The section emphasized above was interpreted by the Utah Supreme Court in Allen v. Industrial Commission, 729 P.2d 15, 18, 22-23 (Utah 1986), to require a claimant to prove both medical and legal causation.

STATEMENT OF THE CASE

Nature of the Case and Course of the Proceedings

This case presents the question whether the spouse of an employee of SOS Staffing/Hyclone is entitled to death benefits as a result of the death of her husband, William Hymas that coincidentally occurred while working for this employer.

On April 12, 2006 Linda Lee Hymas (hereinafter “Ms. Hymas”) filed an Application for Hearing requesting death benefits in connection with the death of her husband, William Hymas (hereinafter “Mr. Hymas”) who had a fatal heart attack on February 1, 2006 while working for SOS Staffing. Ms. Hymas alleged that the stress of physical labor Mr. Hymas performed on his job caused or contributed to his heart attack. (R. 1-18).

On May 26, 2006 SOS Staffing/Hyclone and the Insurance Company of the State of Pennsylvania (collectively “SOS Staffing”), its worker’s compensation insurance carrier, filed an Answer defending on the grounds that Ms. Hymas fails to show either a legal or medical causal connection between MR. Hymas’ work activities and his heart attack. (R. 23-26).

A hearing was held on October 25, 2006 before Administrative Law Judge, Deidre Marlowe. Judge Marlowe admitted the Medical Records Exhibit into evidence. (R. 106-107).

On October 26, 2006, the ALJ entered her Findings of Fact, Conclusions of Law and Order denying benefits. The ALJ held that Ms. Hymas failed to establish a medical causal relation between Mr. Hymas' death and his work at SOS Staffing on February 1, 2006. (R. 36-39).

On November 22, 2006 Ms. Hymas filed a Motion for Review of the ALJ's Order. (R. 40-59).

On December 12, 2006 SOS Staffing filed a Response to the Motion for Review. (R. 60-66).

On July 31, 2007, the Commission entered is Order Affirming ALJ's Decision. (R. 68-71).

On August 14, 2007 Ms. Hymas filed a Request for Reconsideration. (R. 72-73).

On September 26, 2007 the Commission entered an Order Denying Request for Reconsideration. (R. 101-103).

On October 26, 2007 Ms. Hymas filed a Petition for Review seeking review from the final order of the Labor Commission.

A Docketing Statement was filed thereafter.

Statement of Facts

1. Decedent, Mr. Hymas, worked for SOS Staffing through its client company, Hyclone. (R. 1).
2. On February 1, 2006, Mr. Hymas was found on the ground at the Hyclone facility. Medical records indicate that he was found in cardiac arrest. Revival efforts were not successful. (R. 106).
3. Because Mr. Hymas' death was unexpected and unwitnessed, emergency room personnel involved the medical examiner. (R. 106, 3A, 4).
4. The medical examiner found the cause of death to be 1) occlusive coronary artery disease involving a) right coronary artery, 60% occlusion, b) ostia or right coronary artery, partial occlusion by plaque and, c) left anterior coronary artery, greater than 90% occlusion; and, 2) atrial septal defect. (R. 106, 2).
5. The medical examiner went on to write in a letter of October 11, 2006 stating that work-related stress may be a factor in increasing the demands on a person's heart. However, the examiner did not state any opinion as to whether Mr. Hymas's work activities caused or contributed to his heart attack. That letter provides:

Atherosclerosis has several risk factors that may enhance the rate at which the disease process develops. These include male gender, aging, a family history of heart disease, hypertension, smoking, poor exercise and eating habits, diabetes and smoking. The medical history provided was that Mr. Hymas was a non-insulin dependent diabetic.

The effects of work related stress may be a factor in an additional work load being placed upon the heart, depending upon a person's adaptation to the

stress. Signs of anxiety may be displayed. Physiologic manifestations may include high blood pressure or an increased heart rate. These latter events may increase the work load on the heart compounding the underlying atherosclerotic disease risk to the heart. Additional physical requirements in the workplace may also place additional demands of the heart.

I have no information regarding the etiology or degree of stress, if any, that the deceased was subjected to during the course of his employment. That information, no matter how detailed, would not alter my conclusion and certification as to the cause and manner of death of this individual. (R., 106 at 3A).

6. A hearing on this matter was held on October 25, 2006. At that hearing, Ms. Hymas sought death benefits based upon Mr. Hymas's fatal heart attack that coincidentally occurred at the Hyclone facility. (R., 107).
7. At the hearing the ALJ asked if the medical record exhibit was complete. Ms. Hymas attorney responded that it was. (R. 107). Based upon the record, Judge Marlowe ruled from the bench that the medical records submitted by Ms. Hymas did not meet the appropriate medical causation standard showing that Mr. Hymas's heart attack and subsequent death was medically caused or contributed by any work accident or disease. (R. 36-39).
8. Ms. Hymas asked that she and her deceased husband's co-workers be allowed to testify regarding the medical causal connection between his work and death. Since Ms. Hymas failed in her initial burden of medical causation, the ALJ refused to entertain any hearing testimony. (R. 107).

9. Ms. Hymas then requested a continuance to submit additional medical evidence of medical causation. Judge Marlowe denied this request for continuance. (R. 107).
10. The ALJ issued her written Findings of Fact, Conclusions of Law and Order on October 25, 2006 reiterating her ruling at hearing. (R. 36-39).
11. Ms. Hymas then filed a Motion for Review of this Order. The Commission agreed that because Ms. Hymas did not establish a medical causal connection between her husband's death and his work at SOS Staffing, she failed to meet her burden under Utah Code Ann. 34A-2-401 of the Utah Worker's Compensation Act. (R. 40-59).
12. Ms. Hymas has since filed a Petition for Review with the Utah Court of Appeals. Attached to her Brief are documents, including two medical treatises, that were not made part of the record below.

SUMMARY OF THE ARGUMENT

There was no error by the Commission in denying Ms. Hymas' claim for dependency death benefits as a result of the death of her husband. Ms. Hymas failed to establish, as is her burden, that Mr. Hymas' death was medically caused by stress, strain or exertion from his work with SOS Staffing. Since she failed to establish this prima facie burden, there was no need for the ALJ to evaluate the other elements necessary to establish compensability. It also was not error for the ALJ to refuse to allow hearing testimony of lay witnesses as these witnesses were not qualified to provide a medical opinion regarding the cause of Mr. Hymas' death.

ARGUMENT²

POINT 1: THERE WAS NO ERROR BY THE COMMISSION IN DENYING DEATH BENEFITS SINCE MS. HYMAS FAILED TO MEET HER BURDEN OF ESTABLISHING MEDICAL CAUSATION.

Ms. Hymas presents a plethora of arguments challenging the ALJ and Commission's ultimate ruling denying her benefits as a result of her husband's death under the Utah Worker's Compensation Act. She argues that the ALJ erred in (1) overlooking whether Mr. Hymas sustained an "accident"³; (2) presuming the existence of a pre-existing heart condition; (3) ignoring the issue of legal causation; (4) failing to remit this case to a medical panel; and, (5) refusing to allow Ms. Hymas to present witness testimony. Such arguments all lack legal merit.

Quite simply, Ms. Hymas' arguments each lack substantive merit since there was insufficient evidence submitted by Ms. Hymas to meet her burden of medical causation. Since this initial element was not established, the ALJ was not required to examine other statutory elements. See Lancaster v. Gilbert Development, 736 P.2d 237 (Utah 1987)

² Petitioner's first argument entitled "appellate review" does not provide any legal challenge to the Commission's Order Denying Motion for Review. Accordingly, Respondents have not addressed that argument given Ms. Hymas' improper briefing.

³ In any event, there is no dispute that Mr. Hymas did die by "accident" as his heart attack was certainly an unexpected or unintended event that resulted in his death. See Allen v. Industrial Comm'n *infra*; Price River Coal v. Industrial Comm'n, 731 P.2d 1079 (Utah 1986). However, such a finding does not complete the analysis since the more difficult question in this case was whether the claimant's death arose out of and in the course of employment under the medical causation standard.

(when court's ruling turns on issue of medical causation, other elements including legal causation need not be examined by court).

Utah Code Ann. § 34A-2-401 (Utah "Workers Compensation Act"), the provision authorizing workers' compensation for industrial accidents provides as follows:

An 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 . . . such amount for medical, nurse, and hospital services . . . [and] medicines; and in the case of death, the amount of funeral expenses.

Utah Code Ann. § 34A-2-401 (2006). This section has been interpreted by the Utah Supreme Court in Allen v. Industrial Commission, 729 P.2d 15, 18, 22-23 (Utah 1986), to require a claimant to prove that he sustained an "accident", as well as establish medical and legal causation.

In Allen and its progeny, the Utah's Supreme Court has indicated that to demonstrate "medical causation" a Petitioner "must introduce evidence establishing that the stress, strain or exertion required by his or her occupation led to the resulting disability." Id. at 27. The court in Olsen v. Industrial Commission, 776 p.2d 937 (Utah Ct. App. 1989) evaluated whether a claimant had established that his heart attacks were related to his work duties. The Utah Court of Appeals found that there was competent comprehensive medical evidence upon which the Commission could rely in concluding that Petitioner's heart attacks were not medically related to his employment activities.

Likewise the court ruled in Landcaster that because there was insufficient medical evidence from a physician, stating with medical certainty that the claimant's heart attack was caused by work related factors, benefits were properly denied.

Ms. Hymas fails to recognize that because she failed to meet her initial burden of proving medical causation, there was no need to go forward with evaluating whether an "accident" occurred or whether legal causation was established. Moreover, no medical panel was warranted in this case since medical panels are only used when there are conflicting medical reports. See Utah Admin. Code R. 602-2-2; Roberts v. Labor Comm'n, 2006 UT App 403 (Utah Ct. App. 2006) ("[R]eferral to a medical panel is mandatory only where there is a medical controversy as evidenced through conflicting medical reports."). Such a medical controversy did not exist in this case.

The Commission properly recognized that Ms. Hymas failed to meet her burden of establishing a medical causal connection between her husband's death and his work. The Commission also recognized that testimony of certain witnesses may be relevant to other aspects of her claim, such as legal causation. However, the Commission correctly ruled that lay testimony is not competent to prove medical causation. Indeed, when the cause of death is related to an internal anatomy, **medical** evidence of causation is required. See Griffith v. Industrial Comm'n, 399 P.2d 204, 206 (Utah 1965); Harlan v. Industrial Comm'n, 15 Utah 2d 298, 391 P.2d 838 (1964); Cooper v. Industrial Comm'n, 15 Utah 2d 91, 387 P.2d 689 (1963). Ms. Hymas' attempt to submit testimony of non-expert

witnesses, including herself and her husband's co-workers, does not qualify as "competent" medical testimony. Hence the Commission correctly rejected the presentation of such evidence.

Additionally, Ms. Hymas asserts that, under the Act, all doubts must be resolved in favor of compensation. In doing so, Ms. Hymas attempts to shift the burden of proof to SOS, but to no avail. It is well settled that a claimant bears the burden of proof to establish the right to compensation. See Owens v. Labor Comm'n, 2004 UT App 352 (Utah Ct. App. 2004). To be entitled to benefits under the Act, a claimant must show, "by a preponderance of evidence, that a workplace accident occurred and that the accident was the legal and medical cause of the injury". McKesson Corp. v. Labor Comm'n, 2002 UT App 10, P 15, 41 P.3d 468. The requirement to establish medical causation "ensure[s] that there is a medically demonstrable causal link between the work-related exertions" and the injuries claimed. Allen v. Industrial Comm'n, 729 P.2d 15, 27 (Utah 1986). If the claimant cannot show a medical causal connection, compensation should be denied. Ms. Hymas failed to establish that the 2006 fatality at the work place was the medically caused by Mr. Hymas' work. The liberal construction of the Act does not relieve her of her burden.

POINT 2: THE COMMISSION DID NOT ERR IN REFUSING TO ALLOW POST-HEARING EVIDENCE.

Ms. Hymas also argues that the Commission erred in refusing to allow her a continuance to collect and present additional medical evidence. We disagree. The Commission did not err in refusing to allow Ms. Hymas to present post-hearing evidence to establish medical causation. The court correctly ruled that Utah Administrative Code Rule 602-2-1F.6. requires parties to “diligently pursue” evidence so as to avoid delaying the adjudicative process. Likewise the Commission’s Rule 602-2-1(I)(7) states that on the date of the hearing “[p]arties are expected to be prepared.” Requests for continuances and reopening of cases may be granted at the discretion of the ALJ for good cause shown. However, the Commission correctly found that lack of preparation for a hearing shall not constitute good cause.

Ms. Hymas had more than six months between the time she filed her Application for Hearing and the date of the hearing to obtain medical evidence that would support her allegation that Mr. Hymas’s death was medically caused by his work at SOS Staffing. Nevertheless, she did not submit the necessary medical evidence at the hearing. Ms. Hymas certainly had a reasonable opportunity to present medical evidence to establish a medical causal connection between Mr. Hymas’ death and his work. A continuance to allow for additional “medical research” should not be allowed due to her failure to diligently investigate this matter.

POINT 3: THIS COURT SHOULD STRIKE EXHIBITS ATTACHED TO MS. HYMAS' APPELLATE BRIEF

Ms. Hymas attaches several documents to her Appellate Brief. The first is a letter of the Office of Medical Examiner. The second is a treatise from the New England Journal of Medicine. The third is a treatise from the American Medical Association. SOS asks the Court to strike these attachments as they were not made part of the evidentiary record below. Indeed, to attach such records and have the Court of Appeals now rely on them would violate SOS's right to due process.

While formal rules of evidence do not apply in administrative proceedings held before the Utah Labor Commission, Utah law allows parties of notice of proceedings and opportunity to present testimony and cross examine witnesses and meet such evidence as is presented at the proceeding. Utah's courts have held:

it is fundamental that in investigations such as the Industrial Commission is authorized to make, any party to a cause or proceeding is entitled to be advised of and afforded an opportunity to meet such evidence as the commission may consider and rely on in the making of its findings and decision. Unless such evidence is brought into the case, and in some lawful manner made a part of the record, it cannot be regarded as competent evidence, and must be excluded in determining the sufficiency of the evidence to support the findings of the Industrial Commission.

Workers' Compensation Fund v. Industrial Comm'n, 761 P.2d 572, 575 (Utah Ct. App.

1988) *citing* Tintic Standard Mining Co. v. Industrial Comm'n, 100 Utah 96, 110 P.2d

367, 369 (1941) ("the commission should not receive evidence on disputed matters where a hearing is held after the hearing is closed, since then a party adversely affected would

have no opportunity to meet such evidence"). In the Worker's Compensation Fund, the Court held that it was error for the Commission to rely on medical commentary which was not introduced at the evidentiary hearing and was not made part of the record.

Petitioner attempts to support her argument that a medical causal connection exists between the claimed industrial accident and her husband's work based upon these medical treatises. However, since these documents were not introduced at the evidentiary hearing and made part of the record, it is improper at this late juncture to allow such evidence into the record.

CONCLUSION

The Court of Appeals should affirm the Commission's Order Affirming ALJ's Decision. Ms. Hymas has not met her burden to establish the necessary elements of compensability.

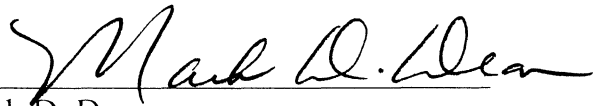
ADDENDUM

- 1. Findings of Fact, Conclusions of Law and Order of Administrative Law
Judge, dated October 25, 2006 Attachment A

- 2. Order Affirming ALJ's Decision, dated July 31, 2007 Attachment B

Respectfully submitted this day of August, 2008.

BLACKBURN & STOLL, LC

A handwritten signature in black ink, appearing to read "Mark D. Dean", written over a horizontal line.

Mark D. Dean

Kristy L. Bertelsen

Attorneys for Appellees Attorneys for Appellees
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Addendum A

UTAH LABOR COMMISSION
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LINDA LEE HYMAS, Petitioner, vs. SOS STAFFING HYCLONE and/or INSURANCE CO OF THE STATE OF PENNSYLVANIA, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW Case No. 06-0370 Judge Deidre Marlowe
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Hearing: October 25, 2006

Appearances:

Raymond Malouf for the Petitioner

Mark D. Dean for the Respondents

Linda Lee Hymas filed an application for hearing on April 12, 2006 requesting appropriate benefits in connection with the death of her husband, William Hymas, who had a fatal heart attack on February 1, 2006 while working for SOS Staffing. The Petitioner alleged that the stress of the physical labor Mr. Hymas performed on his job caused or contributed to his heart attack.

SOS Staffing and Insurance Co. of the State of Pennsylvania filed an answer on May 26, 2006 defending on the grounds that the Petitioner fails to show either a legal or medical causal connection between Mr. Hymas' work activities and his heart attack.

FINDINGS OF FACT

A hearing was held today and the medical records were marked as Exhibit A and admitted into evidence. The records relate that Mr. Hymas was found on the ground by co-workers in an open area of the warehouse. He was found to be in cardiac arrest and the paramedics were called but attempts to revive him were unsuccessful. Because Mr. Hymas' death was unexpected and unwitnessed, emergency room personnel involved the medical examiner. ME p. 4.

The medical examiner, Dr. Edward Leis, found the cause of death to be 1) occlusive coronary artery disease involving a) right coronary artery, 60% occlusion, b) ostia or right coronary artery, partial occlusion by plaque, and c) left anterior descending coronary artery,

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Linda Lee Hymas, Case No. 06-0370

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greater than 90% occlusion; and 2) atrial septal defect, small. In another letter dated October 11, 2006 Dr. Leis affirms these conclusions. He also writes:

Atherosclerosis has several risk factors that may enhance the rate at which the disease process develops. These include male gender, aging, a family history of heart disease, hypertension, smoking, poor exercise and eating habits, diabetes, and smoking. The medical history provided was that Mr. Hymas was a non-insulin dependent diabetic.

The effects of work-related stress may be a factor in an additional work load being placed upon the heart, depending upon a person's adaptation to that stress. Signs of anxiety may be displayed. Physiologic manifestations may include high blood pressure or an increased heart rate. These latter events may increase the workload on the heart compounding the underlying atherosclerotic disease risk to the heart. Additional physical requirements in the workplace may also place additional demands of the heart.

I have no information regarding the etiology or degree of stress, if any, that the deceased was subjected to during the course of his employment. That information, no matter how detailed, would not alter my conclusion and certification as to the cause and manner of death of this individual. ME p. 3A.

CONCLUSIONS OF LAW

The Petitioner must show that any conditions for which she claims benefits are medically causally related to an industrial injury. "Under the medical cause test, the claimant must show . . . that the stress, strain or exertion required by his or her occupation led to the resulting injury or disability." Allen v. Industrial Commission, 729 P.2d 15, 27 (Utah 1986). The burden of proof is on the Petitioner.

In Lancaster v. Gilbert Development, 736 P.2d 237, 239-241 (Utah 1987), Mr. Lancaster sought benefits for a heart attack he suffered while working. He claimed that the cold weather and high altitude caused or contributed to his heart attack. His doctor opined that the altitude, cold, and working conditions "probably" precipitated the heart attack. However, the doctor also discussed Mr. Lancaster's various risk factors for coronary disease and eventually indicated that it was unlikely that cold exposure and exertion had much of a role in bringing on the heart attack. The Court ultimately viewed the doctor's opinion as inconclusive regarding the causal connection between the work conditions and the myocardial infarctions and therefore determined that Mr. Lancaster did not prove that there was a medical causal link between his work activities and his heart attack.

In the present case, there is no medical opinion or other medical evidence to show that Mr. Hymas' work activities caused or contributed to his heart attack. At most, there is Dr. Leis' letter indicating that work-related stress may be a factor in increasing demands on a person's

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Linda Lee Hymas, Case No. 06-0370

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heart. However, Dr. Leis' letter is far short of an opinion that any work activities which may have been performed by Mr. Hymas caused or contributed to his heart attack. Therefore the element of medical causation is not shown and the claim for benefits will be dismissed with prejudice.

ORDER

IT IS THEREFORE ORDERED that the application for hearing filed by Linda Lee Hymas on April 12, 2006 is dismissed with prejudice.

DATED this 25th day of October 2006.



Deidre Marlowe
Administrative Law Judge

NOTICE OF APPEAL RIGHTS

A party aggrieved by the decision may file a Motion for Review with the Adjudication Division of the Utah Labor Commission. The Motion for Review must set forth the specific basis for review and must be received by the Commission within 30 days from the date this decision is signed. Other parties may then submit their responses to the Motion for Review within 20 days of the date of the Motion for Review.

Any party may request that the Appeals Board of the Utah Labor Commission conduct the foregoing review. Such request must be included in the party's Motion for Review or its response. If none of the parties specifically request review by the Appeals Board, the review will be conducted by the Utah Labor Commission.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Linda Lee Hymas, Case No. 06-0370

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CERTIFICATE OF MAILING

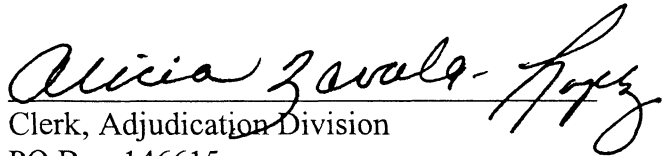
I hereby certify that a true and correct copy of the attached Findings of Fact, Conclusions of Law, and Order, was mailed by prepaid U.S. postage on this 26 day of October 2006, to the persons/parties at the following addresses:

Linda Hymas
330 E. 1200 N.
Logan, UT 84341

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Logan, UT 84321-4036

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Blackburn & Stoll
257 E. 200 S. Ste. 800
Salt Lake City, UT 84111-2048

UTAH LABOR COMMISSION

A handwritten signature in black ink, reading "Alicia Zavala-Rojas", is written over a horizontal line.

Clerk, Adjudication Division

PO Box 146615

Salt Lake City, UT 84114-6615

Addendum B

UTAH LABOR COMMISSION

**LINDA LEE HYMAS, surviving spouse
Of WILLIAM E. HYMAS, deceased**

Petitioner,

vs.

**SOS STAFFING and INSURANCE CO.
OF THE STATE OF PENNSYLVANIA,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 06-0370

Linda Lee Hymas, surviving spouse of William E. Hymas, requests Commission review of Administrative Law Judge Marlowe's denial of Mrs. Hymas's claim for dependents' benefits under Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The 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

Mrs. Hymas claims workers' compensation dependents' benefits for her husband's death, which Mrs. Hymas alleged was caused by his work for SOS Staffing. Judge Marlowe held an evidentiary hearing in this matter and then denied Mrs. Hymas's claim for lack of evidence that Mr. Hymas's work was the medical cause of his death.

In requesting Commission review of Judge Marlowe's decision, Mrs. Hymas argues that Judge Marlowe should have allowed Mrs. Hymas and other non-medical witnesses to testify at the evidentiary hearing regarding the medical cause of Mr. Hymas's death, and should have continued the hearing to allow Mrs. Hymas to obtain evidence of medical causation.

FINDINGS OF FACT

The Commission adopts Judge Marlowe's findings of fact. As material to the issues raised by Mrs. Hymas's motion for review, the facts can be summarized as follows.

On February 1, 2006, Mr. Hymas suffered a fatal heart attack while employed by SOS Staffing and working on assignment at Hyclone. Mr. Hymas's heart attack and death were caused by occlusive coronary artery disease.

When Ms. Hymas filed her claim for dependents' benefits, she signed a release authorizing SOS Staffing to obtain Mr. Hymas's medical records. Although SOS Staffing then requested Mr.

ORDER AFFIRMING ALJ'S DECISION

LINDA LEE HYMAS

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Hymas's medical records from his medical providers, it did not receive all the requested records. The records that were received were included in the parties' joint medical exhibit, which was submitted to Judge Marlowe on October 11, 2006, two weeks in advance of the evidentiary hearing.

At the evidentiary hearing, Judge Marlowe asked if the medical record was complete. Mrs. Hymas's attorney responded that it was. Based on that record, Judge Marlowe ruled from the bench that no medical evidence had been submitted to establish that Mr. Hymas's work was the medical cause of his heart attack and death. Mrs. Hymas then asked that she and her deceased husband's co-workers be allowed to testify regarding the medical causal connection between Mr. Hymas's work and his death. Judge Marlowe declined to accept this testimony because the proposed witnesses were not qualified to render an opinion on that medical question. Mrs. Hymas then requested a continuance to submit additional evidence of medical causation. Judge Marlowe denied this request for continuance. After the conclusion of the evidentiary hearing, Judge Marlowe issued her decision denying Mrs. Hymas's claim for failure to prove medical causation.

DISCUSSION

Section 34A-2-401 of the Utah Workers' Compensation Act requires employers to pay workers' compensation benefits to employees injured by accidents "arising out of and in the course of" employment. Only work-related injuries are compensable under the Act, and injuries are not work-related unless, among other elements, the work is the "medical" cause of the injury. Allen v. Industrial Commission, 729 P.2d 115 (Utah 1986). In this case, the fundamental question is whether Mr. Hymas's work for SOS Staffing medically caused or contributed to his death.

Mrs. Hymas has not submitted any medical evidence to establish a medical causal connection between her husband's work and his death. However, at the evidentiary hearing, she attempted to meet her burden of proof on this point with testimony from non-medical witnesses regarding the strenuous nature of Mr. Hymas's work duties. The Commission recognizes that this testimony might be relevant to other aspects of Mrs. Hymas's claim, such as the issue of legal causation. But lay testimony is not competent to prove medical causation--when the cause of death is related to internal anatomy, **medical** evidence of causation is required. *Griffith v. Industrial Comm.*, 399 P.2d 204, 206 (Utah 1965). Because Mrs. Hymas's witnesses were not qualified to testify as to the medical cause of Mr. Hymas's death, Judge Marlow did not err in rejecting their testimony.

Mrs. Hymas also argues that Judge Marlowe should have continued the evidentiary hearing to allow Mrs. Hymas to obtain and submit other evidence of medical causation. Under the Commission's administrative rule R602-2-1.F.6, parties are expected to "diligently pursue" evidence so as to avoid delaying adjudicative proceedings. Likewise, the Commission's rule R602-2-1.I.7 states that on the date set for hearing, "[p]arties are expected to be prepared. Requests for continuances may be granted at the discretion of the administrative law judge for good cause shown. Lack of diligence in preparing for the hearing shall not constitute good cause for a continuance."

ORDER AFFIRMING ALJ'S DECISION

LINDA LEE HYMAS

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In this case, Mrs. Hymas had more than six months between the time she filed her claim and the date of hearing to obtain medical evidence that would support her allegation that Mr. Hymas's death was medically caused by his work at SOS Staffing. Nevertheless, she did not submit the necessary medical evidence at the hearing, or explain why it was not possible to obtain such evidence.

Mrs. Hymas argues that SOS Staffing failed in its duty to include relevant records from Mr. Hymas's medical providers as part of the joint medical exhibit. However, if Mrs. Hymas believed the missing records were relevant, it was her responsibility to ensure that they were included in the medical exhibit. Additionally, when Judge Marlow asked if there were any additional medical documents that should be included in the record, Mrs. Hymas's attorney replied that there were not. Mrs. Hymas has now submitted the "missing" records as part of her motion for review. The Commission has examined these records, but finds nothing therein that would establish Mr. Hymas's work as the medical cause of his heart attack and death. The Commission therefore finds that, even now, Mrs. Hymas has not proffered competent evidence of medical causation.

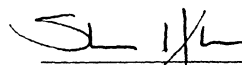
Finally, Mrs. Hymas argues that Judge Marlowe should have continued the evidentiary hearing because SOS Staffing did not deliver the joint medical exhibit to Mrs. Hymas's attorney 10 business days prior to the hearing, as required by Commission rule. According to this argument, if the medical exhibit had been provided earlier, she would have known that some medical records were missing. However, as already noted, the "missing" records in question do not establish medical causation and would not have prevented denial of Mrs. Hymas's claim. Under these circumstances, the Commission finds no reason to reopen the evidentiary hearing in this matter.

In summary, Mrs. Hymas had a reasonable opportunity to present medical evidence to establish a medical causal connection between Mr. Hymas's work and his death. Because she has not submitted such evidence, the Commission concurs with Judge Marlowe's denial of Mrs. Hymas's claim for dependents' benefits.

ORDER

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

Dated this 31 day of July, 2007.



Sherrie Hayashi

Utah Labor Commissioner

IMPORTANT! NOTICE OF APPEAL RIGHTS FOLLOWS ON NEXT PAGE.

ORDER AFFIRMING ALJ'S DECISION
LINDA LEE HYMAS
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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.

CERTIFICATE OF MAILING

I certify that a copy of the foregoing Order Affirming ALJ's Decision in the matter of Linda Lee Hymas, Case No. 06-0370, was mailed first class postage prepaid this 31st day of July, 2007, to the following:


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Raymond Malouf, Esq.
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Mark D. Dean, Esq
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Sara Danielson
Utah Labor Commission

CERTIFICATE OF SERVICE

I certify that true and correct copies of the foregoing document were mailed, first class, postage prepaid on the 4th day of August, 2008, to:

Utah Court of Appeals (8 copies, one w/ original signature)
Scott M. Matheson Courthouse
450 South State Street
P.O. Box 140230
Salt Lake City, Utah 84114-0230

Alan L. Hennebold, General Counsel (2 copies)
Labor Commission of Utah
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Marlin Grant (2 copies)
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Logan, UT 84323-0525

Mark D. Dean