

1986

G. Carmen Herrera v. Sperry Corporation,
Travelers Insurance Company, Second Injury Fund,
and Industrial Commission of Utah: Brief of
Appellant G. Carmen Herrera

Utah Supreme Court

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Recommended Citation

Brief of Appellant, *G. Carmen Herrera v. Sperry Corporation, Travelers Insurance Company, Second Injury Fund, and Industrial Commission of Utah*, No. 860062.00 (Utah Supreme Court, 1986).
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ENT

TNO 86 0062

SUPREME COURT OF THE
STATE OF UTAH

G. CARMEN HERRERA,)
)
 PLAINTIFF-APPELLANT)
)
 v.)
)
 SPERRY CORPORATION, TRAVELERS)
 INSURANCE COMPANY, SECOND)
 INJURY FUND, AND INDUSTRIAL)
 COMMISSION OF UTAH,)
)
 DEFENDANTS-RESPONDENTS)

Supreme Court No.: 860062

number 6

BRIEF OF APPELLANT G. CARMEN HERRERA

APPEAL FROM THE JUDGMENT OF THE
UTAH INDUSTRIAL COMMISSION

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FILED

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SUPREME COURT OF THE

STATE OF UTAH

G. CARMEN HERRERA,)	
)	
PLAINTIFF-APPELLANT)	
)	
v.)	
)	
SPERRY CORPORATION, TRAVELERS)	
INSURANCE COMPANY, SECOND)	Supreme Court No.: 860062
INJURY FUND, AND INDUSTRIAL)	
COMMISSION OF UTAH,)	
)	
DEFENDANTS-RESPONDENTS))	

BRIEF OF APPELLANT G. CARMEN HERRERA

ISSUE PRESENTED ON APPEAL

IS A SPRAINED BACK, SUFFERED ON THE JOB WHILE A
PERSON PERFORMS HIS OR HER NORMAL TASK OF LIFTING,
AN ACCIDENT FOR THE PURPOSES OF WORKMEN'S COMPEN-
SATION IF THERE IS A MEDICALLY DEMONSTRATED CAUSAL
CAUSAL CONNECTION BETWEEN THE INJURY AND THE WORK?

STATEMENT OF FACTS

1. The Plaintiff, Gloria Carmen Herrera is a 25 year old female who, at the time of her injury, worked at Sperry Univac Corporation. (R. 3)

2. She had worked there approximately six (6) months prior to the date of her injury. (R. 4)

3. Her duties included picking up computer units from the ground and placing them on a conveyor belt. (R. 4)

4. These units weighed between 20 and 100 pounds. (R. 5)

5. This task involved a lifting and then turning motion while holding the computer unit. (R. 5)

6. On May 3, 1985, the Plaintiff was lifting one of these units, and as she turned, she felt a pop in her back. (R. 5)

7. The Plaintiff reported the injury to her supervisor that day and then continued working. (R. 6)

8. She was thereafter examined by several doctors who diagnosed her as having suffered a sprained back. (R. 7)

9. Medical examinations revealed a causal connection between the claimant's work task and her back injury (Report of Dr. Gene R. Smith, R. 47). (For ease of reference, a copy of this report along with the Administrative Law Judge's Finding of Fact and Conclusion of Law, and the Industrial Commission's Denial of Motion for Review are included as the addendum to this brief).

10. As a result of this condition, the Plaintiff has constant backaches and headaches and cannot sit or walk for long periods of time. (R. 7)

11. The Administrative Law Judge ruled, and the Industrial Commission affirmed that because the claimant's injury occurred in the course of her normal work duties, her injury was not the result of a compensable "accident" in that [t]here is nothing to take her activity on that day out of the realm of what could be considered usual and normal activities" (Findings of Fact and Conclusions of Law and Order of the Administrative Law Judge, R. 88-90; Denial of Motion for Review, R. 103).

SUMMARY OF ARGUMENT

The Industrial Commission was in error in ruling that the Plaintiff suffered no "accident" when she injured her back during the normal course of her job. The determination of whether an "accident" has occurred should not depend on whether the injury was sustained during usual exertion or activities. Rather, the question should depend on whether there is an unexpected injury and whether there is a medically demonstrable causal relationship between the person's work duties and the unexpected injury.

ARGUMENT

POINT I. UNEXPECTED INJURIES INCURRED WHILE
PERFORMING ONE'S USUAL DUTIES SHOULD
BE COMPENSABLE UNDER UTAH'S WORKMAN'S
COMPENSATION LAWS WHEN A CAUSAL RELATIONSHIP
BETWEEN THE WORK AND THE
INJURY EXISTS.

The Administrative Law Judge in this case ruled that a back injury occurring in the course of one's employment duties is not an "accident" compensable under Utah's Workman's Compensation

laws if the activity is "usual and normal." She also did not refer the case to a medical panel because she found there was no "accident". As the following discussion will demonstrate, this is an improper interpretation of Utah law.

Utah Code section 35-1-45 states:

Every employee...who is injured by accident arising out of or in the course of his employment...shall be paid compensation. U.C.A. section 35-1-45 (Supp. 1984).

It has been held that the meaning of the term "accident" is a question of law. Kaiser Steel Corp. v. Monfredi, 631 p.2d 888, 890 (Utah 1981). The term "...should be given broad meaning. It connotes an unanticipated, unintended occurrence different from what would normally be expected to occur in the usual course of events". Carling v. Industrial Commission, 16 Utah 2d 260, 399 P.2d 202, 203 (1965). Injury caused by one's ordinary work task may be considered an accident even if no unusual exertion or activity is shown. A. Larson, 1 The Law of Workmen's Compensation, section 38.30, (1965). "The fact that overexertion is more apt to cause internal failure than is

ordinary exertion is no reason [to] ...require proof of overexertion to sustain an award." Purity Biscuit Co. v. Industrial Commission, 201 P.2d 961, 969 (Utah 1949).

However, in deciding whether an injury is an "accident", the Industrial Commission has adopted a test which unduly narrows the scope of the inquiry and which therefore excludes from coverage injuries that, being unanticipated and unintended, are "accidents". In reality, there are two categories of injuries which qualify as "accidents". The first category is comprised of unexpected activities which result in injury. An example of this category would be where an employee is run over by a run-away dump truck. When an injury falls into this category, the question of whether an accident has occurred is generally not an issue.

In the second category, the injury takes the form of an unexpected result from an expected or normal activity. An example of this would be where an employee suffers a sprained back while lifting. Case authority can be found pointing both ways on the question of whether injury in the second category qualifies as an accident. One line of Utah cases holds that such injuries qualify as accidents. See Schmidt v. Industrial Commission, 617 P.2d 693, 695 (Utah 1980). See also, Purity

Biscuit Co. v. Industrial Commission, 115 Utah 1, 201 P.2d 961, 969 (1949). However, another line of cases holds that such injuries are not compensable. Sabo's Electronic Service v. Sabo, 642 P.2d 722, 724 (Utah 1982); Farmer's Grain Co-op v. Mason, 606 P.2d 237, 239 (Utah 1980); and Church of Jesus Christ of Latter Day Saints v. Industrial Commission and Thurman, 590 P.2d 328, 329-30 (Utah 1979). The Industrial Commission has misinterpreted the latter line of cases to mean that injuries occurring during the course of one's duties are not accidents if the activities are usual and normal unless there is also present unusual exertion or abnormal activities. In reality in all of the above cases where no compensation was awarded, no causation was shown. Whether the activity was unusual or required extra exertion is an indicator of causation sometimes, especially in back cases, but it is not always determinative of causation.

As the remainder of this discussion will demonstrate, the Industrial Commission is in error in relying on its interpretation of the Sabo line of cases for the following reasons:

1. First, these cases were decided on the issue of causation as was the case they look to as their precedent; Redman

Warehousing Corporation v. Industrial Commission, 22 Utah 2d 398, 454 P.2d 283 (1969).

2. Second, the Industrial Commission's interpretation of the law is not in line with the majority of jurisdictions; and,

3. Third, and most importantly, a narrow determination of "accident" is contrary to the objective of Utah Workmen's Compensation Law.

A. The Precedent of Redman

The cases holding that injuries incurred during the performance of one's normal duties trace the rule of law they apply to Redman Warehousing Corp. v. Industrial Commission, 22 Utah 2d 398, 454 P.2d 283 (1969). Redman was a case involving a claim for back injury that first evidenced itself while the claimant was driving a moving van. Although driving the van was part of the claimant's usual duties, his duties also included loading and unloading the van. The Industrial Commission decided that the claimant's injuries were the result of driving the van and that this unlooked for result of his normal activities

qualified as an accident. However, this court reversed that decision on a finding of a lack of causal connection between the claimant's work activities and the injury. Id. at 285.

The Redman court correctly decided that a claimant must be able to establish a causal connection between the injury and work. For, as the court stated:

To conclude otherwise would insure every truck driver, every railroad engineer, every airplane pilot, and a lot of others, against a physiological malfunction or physical collapse of any of hundreds of human organs, completely unproven as to cause, but compensable only by virtue of the happenstance that the malfunction, collapse or injury occurred while the employee was on the job, and not home or elsewhere. (emphasis added) Id. at 285.

As a consequence, Redman stands for the proposition that before a claimant may collect workmen's compensation for an injury

incurred on the job, he or she must be able to demonstrate a causal connection between his or her normal work duties and the injury sustained.

However, the causation requirement of Redman as found in Sabo, Mason, and Thurman has been interpreted by the Industrial Commission into an over-simplistic rule which holds that only injuries occurring during nonordinary or unusual activity or exertion are compensable. Redman clearly does not stand for this rule. Redman simply turns on the court's inability to believe the Industrial Commission's finding that the act of driving a vehicle was the cause of the claimant's injury. Id. at 285. Hence, there is no precedent in Redman for the requirement that all injuries occurring during one's normal job are not compensable and that unusual exertion need be shown.

B. The Industrial Commission's decision disagrees with the majority position.

In addition, the rule applied by the Industrial Commission disagrees with the majority rule. The majority of jurisdictions hold that when usual exertion leads to an internal breakdown of some sort, the injury is accidental. A. Larson, 1

The Law of Workmen's Compensation, Section 38.30 (1965). As a consequence, to uphold the Industrial Commission's decision would place Utah out of step with the majority of jurisdictions.

C. The Industrial Commission's rule is contrary to the objective of Workmen's Compensation Law.

Finally, the rule applied by the Industrial Commission fails to compensate injuries the rule was intended to identify as compensable. The word "accident" should be given a broad meaning to effectuate the purpose of the Workmen's Compensation Act which is to give workers injured on the job quick and easy access to benefits. Cook v. Peter Kiewit Sons Company, 15 Utah 2d 20, 386 P.2d 616, 617 (1963); See also, Monfredi, pp. 890 and 892. The rule applied by the Industrial Commission purports to weed out claims where the injury is the result of coincidence and thereby only allow claims in which there exists a causal connection between the work task and the injury. However, in reality, because of its narrow and over-simplistic approach, the test achieves just the opposite result. It excludes claims, as in this case, when there is a clear and medically demonstrable relationship between the work task and the injury, while it invites claims for injuries that are the result of coincidence and happenstance.

The anomolous results engendered by this rule are illustrated by the following example. Suppose Party A and Party B both suffer back injuries while lifting a crate at work. Party A's normal task involves lifting and a medical examination reveals a degenerative condition in A's back, caused by the heavy labor, and that this condition culminated in the present back injury. On the other hand, Party B's usual duties do not involve lifting. However, a medical examination of B reveals a congenital condition in his back which has caused the back to degenerate to such a point as to be overly susceptible to injury and that the lifting conincidentally triggered this condition, resulting in the injury.

In the case of Party A, there is no recovery under the Industrial Commission's rule because there was no unusual or nonordinary activity even though lifting on the job is the medically demonstrable cause of A's injury. On the other hand, Party B can recover even though the lifting was not really the cause but rather was merely a condition of the injury -- the fact that the injury occurred on the job being merely fortuitous.

The test applied by the Industrial Commission in this case lends itself to such results. It is a mechanical approach

which is circumstantial rather than causal oriented. Clearly, such a rule is over simplistic and not properly tailored to weed out claims where causation does not exist.

The better test for "accident" would be whether the injury was unforeseen. This broad test would not be dispositive in most cases. It should be followed by a test of causation. Taking the evidence as a whole, does there exist a medically demonstrable connection between work and the injury. In other words, the work task must be shown to be the efficient cause and not merely a condition to the injury. As a consequence, in every claim of this nature, the case should be referred to a medical panel for a determination on the issue of causation. See, Schmidt v. Industrial Commission, 617 P.2d 693, 696 (Utah 1980) (in the case of accidental injury, submission of the medical aspects of the case, including the issue of causation, to the medical panel is mandatory). In the present case, because the Administrative Law Judge did not find in favor of the existence of an accident she did not submit the case to a medical panel.

Note that such a test would not change the results in any of the previously cited decisions. For example, as stated before, Redman can be explained on the basis of the court's

inability to believe that there was a causal connection between the claimant's back injury and his job of driving a moving van, in light of the fact that he regularly performed strenuous lifting without suffering injury. Id. at 285.

Similarly, in Sabo, the claimant, although required to lift crates as part of his job, probably did not perform such tasks as his primary activity. Id. at 723 (claimant owned and operated a business known as Sabo's Electronic Service). Hence, as to him, lifting, although a condition to his injury, was, in all probability, not the primary cause. The same is true of Thurman. According to the medical report contained in the opinion in that case, the claimant suffered from a degenerative condition which does not appear to be work related. Id. at 330. Hence, his work task was also a condition rather than a cause of his injury.

On the other hand, in Purity Biscuit this Court allowed compensation for back injury incurred during the normal course of the claimant's duties which included, among other things, driving a truck. Id. at 962. This decision was based on the Industrial Commission's finding that the claimant's work task, which involved a great deal of "stooping and bending in lifting heavy

packages" caused his spine to deteriorate to such an extent as to result in his injury. Id.

Similarly, in the present case, the Plaintiff's doctor, Dr. Smith, reports that the injury was brought on by the Plaintiff's job of lifting. This evidence should not be disregarded and made of no import by an arbitrary rule of law that holds injuries occurring during "usual and normal" activities at work are per se not compensable.

CONCLUSION

The Plaintiff therefore respectfully requests that this court reverse the Industrial Commission's decision and remand this case for further hearing on damages.

DATED this 4th day of
April, 1986.

CHRISTENSEN, JENSEN & POWELL

BY: Wesley M. Lang
DENTON M. HATCH
WESLEY M. LANG

CERTIFICATE OF SERVICE

This is to certify that on the 4th day of April, 1986, four true and correct copies of the foregoing Brief of Appellant G. Carmen Herrera was mailed to:

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ADDENDUM

Medical Report of Dr. Gene R. Smith

Findings of Fact and Conclusions of Law and Order of
the Administrative Law Judge

Industrial Commission's Denial of Motion for Review.

INDUSTRIAL COMMISSION OF UTAH
P. O. Box 5800
Salt Lake City, Utah 84145-0580

Date of Injury 3 May, 1985
Employer Sperry

SUMMARY OF MEDICAL RECORD
(To be completed by treating physician)

RE: Permanent Impairment Evaluation for G. Carmen Herrera
Name of Applicant

1. Has applicant been released for usual work? No What date? _____

2. Has applicant been released for light duty? No What date? _____

3. Has applicant a permanent injury? _____ If so, describe fully _____

cf. narrative report.

4. In case of permanent injury, on what date did or will the applicant reach a final state of recovery? cf. Dr. Anderson

5. If there is a permanent injury, give your estimate of impairment in terms of percentage of loss of function: lower back & left hip

6. Is there a medically demonstrated causal relationship between the industrial accident and the problems you have been treating? Yes Please explain as necessary

7. What future medical treatment will be required as a result of the industrial accident? conservative low back care

8. What is the percentage of permanent physical impairment attributable to previously-existing conditions, whether due to accidental injury, disease or congenital causes? 50% X 8 1/2% = 4.25% (Left Hip injury + arthritis)

9. What is the applicant's total physical impairment, if any, resulting from all causes and conditions, including the industrial injury? 8 1/2%

10. Did the industrial injury aggravate the applicant's pre-existing condition? Please explain as necessary. Speculative question.

Dated this 24 day of

Sept 1985

Gene R. Smith, M.D.
Physician's Name (Please Print)

Orthopedic Surgery
Physician's Specialty

Gene R. Smith, M.D.
Physician's Signature

450 So 400 E
Street Address

Bountiful, UT 84010
City and State

INDUSTRIAL COMMISSION OF UTAH

CASE No. 85000559

G. CARMEN HERRERA,

Applicant,

vs.

SPERRY CORPORATION,
TRAVELERS INSURANCE and
SECOND INJURY FUND,

Defendant.

FINDINGS OF FACT

CONCLUSIONS OF LAW

AND ORDER

* * * * *

HEARING: Hearing Room 334, Industrial Commission of Utah, 160 East Broadway, Salt Lake City, Utah, on November 19, 1985, at 1:00 p.m.; same being pursuant to Order and Notice of the Commission.

BEFORE: Janet L. Moffitt, Administrative Law Judge.

APPEARANCES: The Applicant was present and represented by Wesley M. Lang, Attorney at Law.

The Defendants were represented by Thomas Kay, Attorney at Law.

The issues presented in this matter were as follows:

1. Whether the Applicant sustained injuries as the result of a compensable industrial accident on May 3, 1985.
2. Causal relationship of the incident to the Applicant's alleged injuries.
3. Temporary total disability compensation from May 6, 1985 through the present date.
4. Permanent partial impairment.
5. Medical expenses.

FINDINGS OF FACT:

Inasmuch as one of the above listed issues is dispositive of the others, the Administrative Law Judge will deal only with the issue of whether the Applicant sustained injuries as the result of a compensable industrial accident.

The Applicant in this matter, G. Carmen Herrera, is a twenty-five year old female who began working for the defendants at the ovens making computer parts approximately six months prior to the date of her injury. Her duties included placing computer units in the oven, pulling them out and placing them on conveyor belts. The units themselves varied greatly in size, ranging from twenty to one hundred pounds. On the date of the alleged injury, the Applicant was working with units which weighed approximately thirty pounds. At the time of her alleged injury, the Applicant was earning \$6.59 per hour working forty hours per week regular time and approximately five hours per week on overtime. The Applicant was not married, nor did she have any dependent children under the age of eighteen.

On May 3, 1985, the Applicant squatted down to pick up a unit which weighed approximately thirty pounds. As she straightened, she felt a snap and tingling pain in her low back. The Applicant informed her supervisor of the problem. She then went to the nurse's station and obtained some medication for pain. She was able to finish her shift.

The incident occurred on a Friday. The Applicant stayed in bed all during the weekend because of her pain. She went to work on Monday with continuing pain and was sent by her supervisor and the nurse to Dr. Anderson. Her first visit with Dr. Anderson occurred on May 6, 1985. At that time, x-rays were taken and an examination was done. The Applicant was taken off work for the rest of the week. Her leave later extended through September. During that time, the Applicant was referred to Dr. Chester Powell. She also saw Dr. Gene Smith upon a referral from her attorney.

The Applicant returned to work on September 23, 1985 per her doctor's release. She has a new job where she is able to regulate her activities. At the time of the hearing, she still had a constant backache and was not able to participate in any of her regular activities such as jogging or roller skating.

During the time the Applicant was out of work, she did receive the \$181.00 a week payment from a disability insurance policy.

The Applicant has had some prior injuries to her left knee and left hip. She indicated, however, that prior to May 3, 1985, she had never had any problems with her low back.

In reviewing the facts in this matter, it is the considered opinion of the Administrative Law Judge that the Applicant has not met her burden in demonstrating that a compensable industrial accident occurred on May 3, 1985. Counsel for the Applicant cites the MONFREDI case as precedence finding that the Applicant sustained injuries as the result of a compensable accident. However, the Administrative Law Judge notes that there were substantial differences between the facts in the Applicant's case and those in the MONFREDI case. In that instance, the worker was performing a usual work activity; however, the Applicant had also had numerous prior industrial injuries to his low back and the Court adjudged the incident of usual activity to be a culmination of the results of the prior industrial accidents. The

G. CARMEN HERRERA
FINDING OF FACT
PAGE THREE

Applicant in this matter has no record of prior industrial injuries to her low back. The facts in this case are much closer to those announced in the SABO case. Although it is clear in this case that the Applicant's activity was work related, there was nothing unusual about the activity. The Applicant testified that she had lifted heavier computers at various times. Additionally, she indicated very clearly on the record that her normal procedure in lifting the parts was to squat, lift and straighten and then turn to place them on the conveyor belt. She testified that there was no variation from this procedure on May 3, 1985. There is nothing to take her activity on that day out of the realm of what could be considered usual and normal activities. Under the Applicant's description, the same type of injury could have just as easily occurred had she bent down to pick up a clothes basket or a bag of groceries.

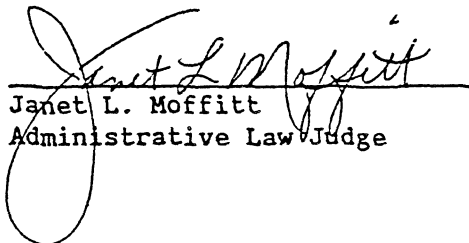
The Administrative Law Judge notes that there is some question as to whether a work relationship between the activity and the injury is sufficient to allow for a finding of compensable accident. The matter is currently pending before the Supreme Court in three cases which have been joined for hearing. It is very possible that the decisions in those cases may alter a finding such as this one of "no accident".

CONCLUSIONS OF LAW:

The Applicant in this matter, G. Carmen Herrera, has failed in her burden to demonstrate that she sustained injuries as the result of a compensable industrial accident on May 3, 1985 and her claim for benefits should be denied.

ORDER:

IT IS THEREFORE ORDERED that the claim of G. Carmen Herrera, Applicant, be, in the same is hereby, dismissed.


Janet L. Moffitt
Administrative Law Judge

Passed by the Industrial Commission
of Utah, Salt Lake City, Utah, this
27 day of November, 1985
ATTEST:

/s/ Linda J. Strasburg

Linda J. Strasburg
Commission Secretary

THE INDUSTRIAL COMMISSION OF UTAH

Case No. 85000559

G. CARMEN HERRERA,

Applicant,

vs.

SPERRY CORPORATION and/or
TRAVELERS INSURANCE and
SECOND INJURY FUND,

Defendants.

DENIAL OF

MOTION FOR REVIEW

On or about November 27, 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 December 12, 1985, the Commission received a Motion for Review from the Applicant by and through her 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 of November 27, 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

grc
~~ATTEST:~~ day of January, 1986.

Linda J. Strasburg
Linda J. Strasburg
Commission Secretary

Stephen M. Hadley
Stephen M. Hadley
Chairman

Walter F. Axelgard
Walter F. Axelgard
Commissioner

Lenice L. Nielsen
Lenice L. Nielsen
Commissioner