

1997

# Ronald Ferrin, Labor Commission of Utah v. Hampton Inn and Mid Century Insurance Compnay : Brief of Respondent

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca2](https://digitalcommons.law.byu.edu/byu_ca2)

 Part of the [Law Commons](#)

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

Ralph W. Curtis; Henricksen & Henricksen; Attorneys for Respondent Ronald Ferrin; Alan L. Hennebold; Attorneys for Respondent Labor Commission.

Linda L.W. Roth; Hanson, Nelson, Chipman & Quigley; Attorneys for Petitioner.

---

## Recommended Citation

Brief of Respondent, *Ferrin v. Hampton Inn*, No. 970266 (Utah Court of Appeals, 1997).  
[https://digitalcommons.law.byu.edu/byu\\_ca2/840](https://digitalcommons.law.byu.edu/byu_ca2/840)

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

---

**IN THE UTAH COURT OF APPEALS**

---

RONALD FERRIN, :

Applicant/Respondent, : Utah Court of Appeals  
Case No. 970266-CA

LABOR COMMISSION OF UTAH, :

Respondent, : ARGUMENT PRIORITY CLASS 7

vs. :

HAMPTON INN and MID CENTURY : Utah Labor Commission  
INSURANCE COMPANY, Case No. 96-0085

Defendants/Petitioners. :

---

**BRIEF OF RESPONDENT RONALD FERRIN**

---

**APPEAL FROM THE LABOR COMMISSION  
OF THE STATE OF UTAH  
Administrative Law Judge Kathleen H. Switzer**

---

Linda L.W. Roth, Bar No. 4133	Ralph W. Curtis, Bar No. 6859
HANSON, NELSON, CHIPMAN,	HENRIKSEN & HENRIKSEN
& QUIGLEY	320 South 500 East
215 South State St., Ste. 800	Salt Lake City, Utah 84102
Salt Lake City, Utah 84111	Telephone: (801) 521-4145
Telephone: (801) 364-3627	<b>Attorneys for Respondent</b>
<b>Attorneys for Petitioners</b>	<b>Ronald Ferrin</b>

Alan L. Hennebold  
LABOR COMMISSION OF UTAH  
P. O. Box 146600  
Salt Lake City, Utah 84114-6600  
Telephone: (801) 530-6953  
**Attorneys for Respondent**  
**Labor Commission**

TABLE OF CONTENTS

TABLE OF AUTHORITIES . . . . . ii

JURISDICTION OF THE UTAH COURT OF APPEALS . . . . . 1

STANDARD OF APPELLATE REVIEW . . . . . 1

STATEMENT OF THE CASE . . . . . 2

DETERMINATIVE STATUTES . . . . . 4

STATEMENT OF FACTS . . . . . 4

SUMMARY OF THE ARGUMENT . . . . . 11

ARGUMENT . . . . . 12

    I.    MR. FERRIN IS ENTITLED TO COMPENSATION BECAUSE THE UNCONTROVERTED EVIDENCE INTRODUCED AT THE HEARING SHOWED HE WAS INJURED IN AN INDUSTRIAL ACCIDENT. . . . . 12

        A.    Mr. Ferrin's Testimony Provided a Reasonable and Credible Account of the Circumstances Surrounding the Accident. . . . . 12

        B.    Mr. Ferrin's Uncontroverted Testimony Was Supported By Other Facts, Evidence, Testimony, and Reasonable Inferences . . . . . 16

    II.   HAMPTON INN'S ARGUMENT THAT THE INJURY WAS SELF-INFLICTED IS ONLY SPECULATION UNSUPPORTED BY ANY CREDIBLE EVIDENCE . . . . . 18

CONCLUSION . . . . . 20

TABLE OF AUTHORITIES

CASES

Allen v. Industrial Commission,  
729 P.2d 15, 27 (Utah 1986) . . . . . 1

Ashcroft v. Industrial Commission,  
855 P.2d 267, 269 (Utah Ct. App. 1993) . . . . . 13

Blaine v. Industrial Commission,  
700 P.2d 1084, 1086 (Utah 1985) . . . . . 1

Featherstone v. Industrial Commission,  
877 P.2d 1251, 1254 n.5 (Utah Ct. App. 1994) . 12, 15

Homer v. Smith,  
866 P.2d 622, 627 (Utah Ct. App. 1993) . . . . . 13

Kennecott v. Industrial Commission,  
675 P.2d 1187, 1192 (Utah 1983) . . . . . 1, 13

M&K Corporation v. Industrial Commission,  
189 P.2d 132 (Utah 1948) . . . . . 13

McKay Dee Hospital v. Industrial Commission of Utah,  
598 P.2d 375, 377 (Utah 1979) . . . . . 12

McPhie v. Industrial Commission,  
567 P.2d 153 (Utah 1977) . . . . . 13

Park Utah Consolidated Mines Co. v. Industrial Commission,  
36 P.2d 979, 981-82 (Utah 1934) . . . . . 1, 13

Rushton v. Gelco Exp.,  
732 P.2d 109, 111 (Utah 1986) . . . . . 1

Savage v. Industrial Commission,  
565 P.2d 782, 783 (Utah 1977) . . . . . 1

Tisco Intermountain v. Industrial Commission of Utah,  
744 P.2d 1340, 1342 (Utah 1987) . . . . . 18

Williams v. Shwendiman,  
740 P.2d 1354, 1356 (Utah Ct. App. 1987) . . . . . 18

**RULES**

None

**STATUTES**

U.C.A. 35A-3-401(1) (July, 1997) . . . . . 12  
U.C.A. Section 63-46(b)-16(4) (1953 as amended) . . . . . 1  
U.C.A. Section 63-46b-16(4)(h)(iv) (1953 as amended) . . . . . 1  
Utah Code Annotated, Section 35A-3-401(1) (July 1997) . . . . . 4

**OTHER AUTHORITIES**

None

## JURISDICTION OF THE UTAH COURT OF APPEALS

This Court has jurisdiction over this appeal, from an Order entered by the Labor Commission of Utah, pursuant to U.C.A. Section 63-46(b)-16(4) (1953 as amended).

### STANDARD OF APPELLATE REVIEW

On appeal from a decision by the Labor Commission, the Court cannot disturb the findings and orders of the Commission unless they are arbitrary and capricious. Findings and orders are arbitrary and capricious when they are contrary to the evidence or without reasonable basis in the evidence. Rushton v. Gelco Exp., 732 P.2d 109, 111 (Utah 1986). See also Blaine v. Industrial Commission, 700 P.2d 1084, 1086 (Utah 1985); Savage v. Industrial Commission, 565 P.2d 782, 783 (Utah 1977); Park Utah Consolidated Mines Co. v. Industrial Commission, 36 P.2d 979, 981-82 (Utah 1934) (holding that the Commission's findings on factual issues are final and not subject to review unless the findings are clearly contrary to the evidence); U.C.A. Section 63-46b-16(4)(h)(iv) (1953 as amended). This Court's review is limited to determining whether the Commission's findings are supported by the appropriate standard of evidence. Kennecott v. Industrial Commission, 675 P.2d 1187, 1192 (Utah 1983); Allen v. Industrial Commission, 729 P.2d 15, 27 (Utah 1986). This Court cannot weigh conflicting evidence or direct which inferences ought to be drawn from the evidence. Park Utah Consol. Mines

Co., 36 P.2d at 982.

**STATEMENT OF THE CASE**

This case involves Mr. Ronald Ferrin who was seriously burned by hydrochloric acid while performing his responsibilities as a maintenance person for Hampton Inn. The burn to Mr. Ferrin's right forearm was so severe that a skin graft was necessary to heal the arm. Mr. Ferrin appropriately notified his employer of the accident, and received medical treatment from both Alta View Hospital and the University of Utah Medical Center. Hampton Inn, through its insurer, denied Mr. Ferrin worker's compensation benefits. As a result, Mr. Ferrin initiated the hearing process before the Labor Commission, in which process Mr. Ferrin has claimed benefits for Temporary Total Disability, Permanent Partial Disability, Medical Benefits, Travel Expenses, and Interest. A hearing was held before the Honorable Kathleen H. Switzer, Administrative Law Judge, on June 7, 1996. At this hearing, the ALJ received testimony and evidence from Mr. Ferrin as to the events surrounding the accident. In addition, testimony was presented by Mr. Daniel Maynard, corporate engineer responsible for maintenance at Hampton Inn at the time of the injury, and by Mr. Craig Thatcher, president of the company that manufactured the hydrochloric acid that caused the burn. Medical records, a recorded statement by Mr. Ferrin, and other exhibits were received into evidence.

Hampton Inn argued that the injury was purposefully self-inflicted, but Hampton Inn did not introduce any evidence to corroborate this argument. Therefore, Mr. Ferrin's testimony was uncontroverted.

After fully considering the evidence and testimony presented at hearing, the ALJ found that the preponderance of the evidence weighed in favor of awarding Mr. Ferrin benefits, and that the injury was the result of a compensable work accident. The ALJ's findings and conclusions were contained in an Order entered on October 25, 1996. (See Petitioner's Brief, Addendum) Hampton Inn filed a Motion for Review, which Motion the Labor Commission denied after it conducted its own analysis of the hearing record. The Commission found that the ALJ had fully considered Hampton Inn's arguments, but had found that the injury was compensable because there was no evidence to support Hampton Inn's contention that the injury was self-inflicted. The Order Denying Motion for Review was entered on March 26, 1997.

This Court is faced with the sole issue of determining whether the Findings and Order of the Commission were supported by the weight of the evidence presented at hearing. Respondent believes that both the ALJ and the Commission thoroughly and fairly evaluated the evidence, and that the Commission was correct in its finding that Hampton Inn's arguments were based solely on speculation without corroborating evidence. This Court



should therefore uphold the Commission's findings and award appropriate benefits to Mr. Ferrin.

**DETERMINATIVE STATUTES**

Utah Code Annotated, Section 35A-3-401(1) (July 1997):

**Compensation for industrial accidents to be paid**

**[Effective July 1, 1997].**

(1) Each employee described in Section 35A-3-104 who is injured and the dependents of each such employee who is killed, by accident arising out of and in the course of his employment, wherever such injury occurred, if the accident was not purposely self-inflicted, shall be paid compensation for loss sustained on account of the injury or death, and such amount for medical, nurse, and hospital services and medicines, and , in case of death, such amount of funeral expenses, as provided in this chapter.

**STATEMENT OF FACTS**

1. Appellee, Ronald Ferrin (hereinafter "Mr. Ferrin") was employed by Hampton Inn as a maintenance person for approximately two and one-half (2 1/2) years prior to the industrial injury at issue in this case. He was one of three maintenance persons employed at Hampton Inn at the time of the injury. (R. 127, pp.16-17)

2. On February 13, 1995, while performing his duties as a maintenance person, Mr. Ferrin suffered an accidental acid burn on his right arm. The burn was reported to Mr. Ferrin's supervisor between the time of 10:30 a.m. and 10:45 a.m., shortly after the burn occurred. (R. 128, Exhibit D7, pp. 1-2)

3. On February 13, 1995, Mr. Ferrin began his

maintenance of the pool and spa area by checking the chemical (pH) balance in the pool and spa. Hampton Inn kept both chlorine and hydrochloric acid in the pool maintenance room so that the maintenance person could correct the pH balance in both the pool and the spa. (R. 127, p. 25)

4. After checking the chemical balance, Mr. Ferrin went back into the pool maintenance room to clean the filter baskets on the pool and spa pumps. (R. 127, pp. 25-27)

5. After removing the filter basket from the spa pump, Mr. Ferrin bent over the grate in the maintenance room floor and started emptying the debris out of the filter. Extra filters were stacked next to the grate, and unknown to Mr. Ferrin, a bottle of hydrochloric acid, with a loose or missing cap, was sitting on top of the extra filters. While cleaning the basket, Mr. Ferrin inadvertantly bumped the stack of filters and knocked the bottle of acid off of the filter. The bottle fell, spilling acid on Mr. Ferrin's right arm, as well as on his pant leg and shoe. The acid also spilled onto the floor around the grate as well as the floor around the spa heater. There was no testimony at hearing that the acid spilled over a wide area. (R. 127, pp. 27-29, 73-74)

6. Mr. Ferrin immediately grabbed the hose to wash the acid spill down the drain in order to prevent the acid fumes from entering the air conditioning system, the machinery for which was

located in the same maintenance room. Because of the acidic fumes, Mr. Ferrin was forced to leave and reenter the maintenance room three times until the spill was under control. This process took between five and ten minutes. (R. 127, pp. 29, 31, 34-35, 42-43, 72-73)

7. Mr. Ferrin was aware of the dangers of hydrochloric acid when the spill and accident occurred. He was aware of a prior incident when a cloud of acidic fumes spread through the pool area when hydrochloric acid was spilled. Mr. Ferrin was concerned that if the fumes got into the air conditioning system, they would spread through the lobby area of the hotel and people would get sick. He was also concerned that he would lose his job if the fumes spread. (R. 127, pp. 31, 34-36, 58, 76)

8. Because of his concerns over the fumes, Mr. Ferrin's first priority was to wash down the spill. Even though he felt the burning of the acid on his arm, he was more concerned with the safety and health of the hotel guests. As a result, Mr. Ferrin did not wash the acid off of his arm until after the spill had been washed down the drain. (R. 127, pp. 30-31, 34-36, 58, 76)

9. Contrary to the appellant's statement in fact paragraph 3k of Apellant's Brief, the acid spill was not restricted to the area of the tattoo on Mr. Ferrin's right forearm. The acid spill over the top of the forearm and around

the sides of his arm. In addition, the acid spilled on Mr. Ferrin's right pants leg and right shoe, and around the area of the grate and spa heater. (R. 127, pp. 39-41, 51-52, 73-74)

10. Although the acid spilled on Mr. Ferrin's pants and shoe, neither his leg nor foot were burned because of water leaking from the hose as Mr. Ferrin washed down the spill. (R. 127, pp. 41-42) However, Mr. Ferrin testified that the acid ate through one of his shoes, which shoe was discarded after the accident. (R. 128, Exhibit D5, p. 3)

11. At the time of the accident, there were no other employees in the pool maintenance room or pool area. There were guests in the swimming pool. (R. 127, p. 47)

12. After the spill was cleaned up, Mr. Ferrin immediately headed to the men's room, near the lobby of the hotel, in order to wash his arm thoroughly. On the way to the men's room, Mr. Ferrin showed the burn to an employee named Marylynn who was working at the hotel desk. (R. 127, pp. 43, 47) After washing his arm, Mr. Ferrin reported the injury to Robert Hardesty, and was immediately sent to receive medical care. (R. 128, Exhibit D7)

13. Mr. Ferrin underwent medical treatment for the burn at both Alta View Hospital and the University of Utah Medical Center. Although there was some confusion on the part of the physicians treating the burn, the records for both hospitals show

that Mr. Ferrin was treated for hydrochloric acid burn. (R. 127, p.45; R. 128, Exhibit D1, pp. 8, 16, 17, 32, 83)

14. At the hearing, Mr. Ferrin positively identified a bottle of hydrochloric acid as the type of container and the type of acid that was involved in the injury. (R. 127, p. 36)

15. Hampton Inn has argued that Mr. Ferrin's burn was self-inflicted and that he was attempting to remove his tattoo. There was absolutely no evidence introduced at the hearing to support this argument. In fact, the evidence showed that Mr. Ferrin gave himself three different tattoos when he was 14 years old, including the tattoo on his right arm. (R. 127, pp. 52-55) Mr. Ferrin had never attempted to remove these tattoos even though he had been through two divorces and other relationships. (R. 127, p. 65) Contrary to the insinuation of Hampton Inn, the name of Mr. Ferrin's fiancé was never written in the center of the heart tattoo burned by the acid. (R. 128, Exhibit P3) Hampton Inn could find no corroborating evidence or witnesses to support their argument that the injury was self-inflicted. (R. 127, pp. 104-105)

16. Hampton Inn presented the testimony of Daniel Maynard, the corporate engineer for Woodbury Corporation, the owner of the hotel. Mr. Maynard oversees the maintenance of the hotel property, and he conducted an investigation of Mr. Ferrin's accident. (R. 127, pp. 92-105) Mr. Maynard testified that at the

time of the injury, Hampton Inn did not allow hydrofloric acid on its premises, and that no hydroflouric acid was found as part of his investigation. (R. 127, p. 95)

17. Mr. Maynard started his investigation of the injury at approximately 1:00 p.m. on the day of the accident -- three hours after the acid spill. (R. 127, p.101) Mr. Maynard testified that the floor of the maintenance room no longer appeared wet and that he did not notice staining from hydrochloric acid on the concrete. (R. 127, pp. 92-93) Mr. Maynard also testified that no photographs were taken of the pool maintenance room or investigation and that a partial bottle of hydrochloric acid was found in the room. (R. 127, pp. 92-103) Even though he suspected Mr. Ferrin's account of the injury, Mr. Maynard was not able to find any evidence, whatsoever, to show that the acid burn was purposefully self-inflicted. No employees could testify to this fact, and no other evidence or proof was obtained. (R. 127, pp. 104-105)

18. Mr. Maynard also testified that he had received blistering, second degree burns from hydrochloric acid on occassions when he had accidentally splashed acid on his hand while adding the acid to swimming pools. (R. 127, p. 106)

19. Hampton Inn also introduced the testimony of Craig Thatcher, president of the company that manufactured the hydrochloric acid involved in this industrial injury. (R. 127,

p. 107) Mr. Thatcher testified that hydrochloric acid can be detected by its pungent odor, but the strength of the odor depends on the temperature and air movement in the area where the acid is exposed. (R. 127, pp. 109-110) Mr. Thatcher also testified that the bottles of hydrochloric acid carry a label warning that the acid can cause severe burns to eyes, skin, and mucous membranes. The longer the acid sits on the skin, the more damage is caused by the burn. (R. 127, pp 111-114).

20. After considering all of the evidence presented at hearing, the ALJ made the findings that: (1) Mr. Ferrin had a basis for focusing on the fumes for the acid spill and the potential harm to the safety of other hotel personnel and guests; (2) Mr. Ferrin was a credible, forthright, and convincing witness; (3) the weight and preponderance of the evidence showed that the burn was caused by a spill of hydrochloric acid; (4) there was no corroborating evidence that the injury was self-inflicted; and (5) Mr. Ferrin's testimony of the injury was uncontroverted. Based on these findings, the ALJ awarded appropriate benefits. (Petitioner's Brief, Addendum)

21. The Labor Commission, found, on Hampton Inn's Motion for Review, that: (1) Hampton Inn's arguments were based solely on speculation; (2) the ALJ fully considered all of the arguments raised by Hampton and still found that the preponderance of the evidence was in Mr. Ferrin's favor; and (3)

after reviewing the record, the ALJ's Findings and Order would be upheld. (Petitioner's Brief, Addendum)

SUMMARY OF THE ARGUMENT

The Labor Commission is the ultimate finder of fact in this case. After considering the weight of all of the evidence submitted to the ALJ during the hearing, the Commission made the determination that Mr. Ferrin has suffered a compensable industrial injury. Mr. Ferrin's testimony as to the events surrounding the injury was uncontroverted. He was found to be a credible, persuasive, and honest witness by the ALJ. In addition, the other evidence and testimony presented at the hearing supported Mr. Ferrin's account of the injury. All of this evidence, and the reasonable inferences therefrom, support the Commission's Findings and Order.

Hampton Inn, however, has argued that inferences from the evidence at hearing show that the injury was purposely self-inflicted. However, both the ALJ and the Commission properly found that this argument was completely speculative, and that there was no evidence corroborating the hearsay statement upon which the argument was based. Without such corroborating evidence, the argument is without merit and the Commission could not base its findings upon the argument. The Commission was careful and thorough in its factual findings. Therefore, this Court should accept those findings and affirm the Commission's



Order.

ARGUMENT

- I. MR. FERRIN IS ENTITLED TO COMPENSATION BECAUSE THE UNCONTROVERTED EVIDENCE INTRODUCED AT THE HEARING SHOWED HE WAS INJURED IN AN INDUSTRIAL ACCIDENT.
- A. Mr. Ferrin's Testimony Provided a Reasonable and Credible Account of the Circumstances Surrounding the Accident.

It is the clear law in the State of Utah that an employee who is injured in an "accident arising out of and in the course of his 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. . . ." U.C.A. 35A-3-401(1) (July, 1997). The term "accident" means "an unanticipated, unintended, occurrence different from what would normally be expected to occur in the usual course of events." McKay Dee Hospital v. Industrial Commission of Utah, 598 P.2d 375, 377 (Utah 1979). It is the role of the Commission to make factual findings as to whether a claimed injury occurred as a result of an accident. In order to make this factual finding, the Commission, by and through the administrative law judge (ALJ), is empowered to develop a record of the facts in the case, which record includes testimony and exhibits received during hearing. At hearing, the ALJ, and by extension, the Commission, is in the best position to judge the credibility of a witness. Featherstone v. Industrial Commission, 877 P.2d 1251, 1254 n.5

(Utah Ct. App. 1994) (citing Homer v. Smith, 866 P.2d 622, 627 (Utah Ct. App. 1993)). The Featherstone court also stated that the credibility of the applicant and other witnesses at the hearing is a key factor in determining whether an industrial accident occurred. Featherstone, 877 P.2d at 1254. In making its factual findings, the Commission must employ a preponderance of the evidence standard. Ashcroft v. Industrial Commission, 855 P.2d 267, 269 (Utah Ct. App. 1993) (discussing the distinction between a "preponderance" standard and a "substantial evidence" standard). Further, the Commission is required to liberally construe evidence in favor of the injured worker, and to resolve reasonable inferences, even if accompanied by some doubt, in favor of awarding recovery and benefits to the injured worker. Park Utah Consol. Mines Co. v. Industrial Commission, 36 P.2d 979, 984 (Utah 1934); M&K Corporation v. Industrial Commission, 189 P.2d 132 (Utah 1948); McPhie v. Industrial Commission, 567 P.2d 153 (Utah 1977); Kennecott Corp. v. Industrial Commission of Utah, 675 P.2d 1187, 1191 (Utah 1983).

Given the foregoing standards by which the Commission makes its findings of fact, it is clear that the ALJ and the Commission carefully considered all evidence presented at the hearing before determining that Mr. Ferrin was injured in a work accident. Mr. Ferrin's testimony at the hearing, along with his prior recorded statement submitted as an exhibit during the

hearing, was consistent in showing the circumstances and events surrounding his injury. Mr. Ferrin was very clear in diagramming and describing what occurred when the hydrochloric acid spilled in the pool maintenance room. After watching and hearing Mr. Ferrin's testimony, the ALJ found that he was persuasive and credible. As a result, the ALJ and the Commission were not arbitrary and capricious in accepting Mr. Ferrin's recitation of the facts as honest and correct. Therefore, even though Mr. Ferrin's was the only testimony as to the circumstances of the injury, the Commission acted properly in accepting his testimony as credible and true.

Mr. Ferrin's testimony provided evidence that he was engaged in his normal work responsibilities when the bottle of acid fell on him. His testimony also showed that he did nothing to intentionally cause the acid to burn his arm. Further, he testified, and the ALJ agreed, that he had a valid reason for trying to wash down the acid spill before the pungent and dangerous acid fumes spread into the air conditioning system of the hotel. Given his past experience with the fumes from hydrochloric acid, and given his knowledge of the potential of that acid to cause harm, Mr. Ferrin's concern for the hotel employees and guests is both reasonable and admirable.

Also, Mr. Ferrin testified of the manner in which he notified his supervisor of the injury, and the subsequent medical

treatment he received. Given the circumstances in this case, Mr. Ferrin was the only person in the pool maintenance room when the acid spill occurred. It follows that his testimony is critical to establishing the facts of the accident. As stated above, the Commission and the ALJ are in the best position to judge Mr. Ferrin's credibility, and are even free to disregard his testimony if it is incredible. Featherstone v. Industrial Commission of Utah, 877 P.2d 1251, 1254 (Utah Ct. App. 1994). However, the Commission and the ALJ specifically found that Mr. Ferrin was honest and believable in his testimony. Therefore, his testimony is credible evidence that must be considered by the Commission in making its findings.

This Court cannot judge Mr. Ferrin's credibility, and must accordingly defer to the Commission on this point. Consequently, even though Hampton Inn argues that Mr. Ferrin did not act with common sense by failing to first wash the acid off of his arm, this Court must uphold the Commission's finding that there was a reasonable basis for Mr. Ferrin's actions. The Commission properly drew inference from the testimony in favor of Mr. Ferrin, and that inference was supported by Mr. Ferrin's own credible testimony. Therefore, this Court must uphold the Commission's findings that Mr. Ferrin was injured in a work accident.

**B. Mr. Ferrin's Uncontroverted Testimony Was Supported By Other Facts, Evidence, Testimony, and Reasonable**

### Inferences.

Even though Mr. Ferrin gave the only eye-witness account of the accident, his testimony was supported by other facts, evidence, testimony, and reasonable inferences presented at the hearing. The testimony of Mr. Maynard supported the fact that hydrochloric acid causes severe burns when spilled on the skin. Maynard, himself, testified that he had received second degree burns while doing essentially the same type of pool maintenance as Mr. Ferrin. (R. 127, p. 106) Similarly, Maynard testified of the partial bottle of hydrochloric acid was found in the pool maintenance room, and that he was not able to find any evidence to support the argument that the injury was self-inflicted. (R. 127, pp. 104-105) Mr. Thatcher's testimony also supported the fact that severe burns could result from hydrochloric acid if the acid was left on the skin for a prolonged period. (R. 127, pp. 111-114)

Hampton Inn has argued that the accident could not have happened because the pool maintenance room was not wet when Mr. Maynard conducted his investigation. It is important to note that Mr. Maynard's investigation did not begin until 1:00 p.m., approximately three hours after the spill occurred. Mr. Ferrin testified that the spill was localized around the drain in the floor and the spa heater. (R. 127, pp. 73-74) His efforts to wash down the spill would have also been centered on the area.

Mr. Ferrin did not testify that either the spill or the washing covered the entire pool maintenance room. It is reasonable to infer that the water was concentrated around the drain, and that after the passage of three hours in a hot maintenance room, the floor would have dried. It is also reasonable to infer that the 5-10 minutes of washing the floor around the grate would have prevented the staining or etching of the concrete by the acid. Mr. Thatcher, Mr. Maynard, and Mr. Ferrin all testified that the application of water dissipated the acid and prevented harm to the skin. It is reasonable to infer that the washing of the concrete prevented damage to the concrete. Therefore, Mr. Maynard's failure to find a wet floor and failure to find stained concrete does not imply that the accident did not happen.

It is also significant that Mr. Maynard did not take any photographs of the pool maintenance room. Therefore, there was no evidence to further corroborate or substantiate his assertion that he did not believe Mr. Ferrin was burned in the pool maintenance room. Without any corroborating evidence, the Commission was left with the credible testimony of Mr. Ferrin, and the unsupported testimony of Mr. Maynard. Having viewed all of this evidence, the Commission found, by a preponderance of the evidence, that Mr. Ferrin's injury was compensable. This Court must respect these factual determinations by the Commission. Because there were no arbitrary and capricious findings, the

Commission's Order must be affirmed.

**II. HAMPTON INN'S ARGUMENT THAT THE INJURY WAS SELF-  
INFLECTED IS ONLY SPECULATION UNSUPPORTED BY ANY  
CREDIBLE EVIDENCE.**

As it did at the hearing and in its Motion for Review, Hampton Inn continues to argue that Mr. Ferrin intentionally burned himself with acid in an attempt to remove his tattoo because he was despondent over the end of a love affair. This would make a dramatic movie plot, but in a legal proceeding to determine substantive rights of an injured worker, such an argument is completely irresponsible -- especially when Hampton Inn has failed to produce any evidence, whatsoever, to support its claims. Hampton Inn's argument is based solely on Mr. Maynard's testimony that approximately one week after the injury, he heard another employee say that Mr. Ferrin may have been trying to remove the tattoo with sulfuric acid because he had recently broken off a relationship with his fiancé. Hampton Inn, however, ignores the fact that Mr. Maynard also testified that he could find not any evidence or proof to support such a story.

(R. 127, pp. 104-105)

As observed by the ALJ in her considered Findings and Order, the Commission can receive hearsay evidence, but it cannot rely exclusively on that evidence in making its findings. Tisco Intermountain v. Industrial Commission of Utah, 744 P.2d 1340, 1342 (Utah 1987); Williams v. Shwendiman, 740 P.2d 1354, 1356

(Utah Ct. App. 1987). Mr Maynard's hearsay testimony was completely unsupported by any corroborating evidence. No witnesses, no written records, and no items of physical evidence were introduced to show that Mr. Ferrin was trying to remove his tattoo. Instead, the Commission was presented with Mr. Ferrin's credible account of the injury, the corresponding testimony of the danger of hydrochloric acid, and testimony and photographs showing that Mr. Ferrin did not have any motive to remove the tattoo he had worn since he was fourteen years old, and through several relationships and marriages. The Commission was precisely correct when it labeled Hampton Inn's arguments as "speculative."

As to Hampton Inn's argument that the pattern of the burn should have been different under the circumstances of the accident, this is a factual argument that is inappropriately raised for the first time on appeal. Even still, Hampton did not present any testimony or evidence that the pattern of the burn was inconsistent with the account of the injury. Instead, Hampton Inn simply asks this Court to join in their speculation. Their argument is also implausible because once the acid hit Mr. Ferrin's arm, it began eating into the skin, not running all over the surface of the skin. Mr. Thatcher testified that the longer the acid was allowed to penetrate into an area of the skin, the more severe the burn. (R. 127, pp. 111, 114) Similarly, the



medical records clearly indicated that the acid had burned into the deep layers of Mr. Ferrin's skin. The reasonable inference from this evidence is that the acid continued to eat into Mr. Ferrin's arm once it came in contact with the skin. Undoubtedly, this is also what happened when Mr. Maynard suffered second degree burns from the same acid as he was doing pool maintenance. He testified that his skin blistered in the areas where the acid splashed on him. (R. 127, p. 106) If the acid rolls around on the skin as Hampton Inn suggests, why wasn't Mr. Maynard's entire hand blistered as he continued doing his maintenance work? Clearly, Hampton Inn is desperately grasping for any speculative argument that will alleviate them from their duty to pay Mr. Ferrin's benefits.

Because Hampton Inn did not introduce any evidence to corroborate and support its arguments, the Commission acted properly in finding that the evidence preponderates in favor of Mr. Ferrin. This Court must now respect those factual findings and affirm the Order of the Commission.


#### CONCLUSION

When all of the evidence in this case is considered, it is clear that the weight of the evidence supports Mr. Ferrin's testimony of his injury. His testimony, his prior recorded statement, the medical records, Hampton Inn's loss and incident report, and all of the diagrams, photographs, and written

exhibits introduced at hearing support the finding that Mr. Ferrin was accidentally burned with hydrochloric acid as he performed his work duties. Hampton Inn can only speculate when it argues that the injury was self-inflicted. Without introducing any corroborating evidence, Hampton Inn cannot support its argument. The Commission must make its rulings based on the evidence presented, and reasonable inferences from that evidence. Obviously, the Commission did not act arbitrarily and capriciously when it found that Mr. Ferrin's injury was not self-inflicted, because Hampton Inn did not show any evidence to the contrary. Because the Commission's Order was based upon substantial and credible evidence, this Court should affirm that Order and direct that Hampton Inn promptly pay appropriate benefits to Mr. Ferrin.

DATED this 10<sup>th</sup> day of September, 1997.

HENRIKSEN & HENRIKSEN, P.C.

  
RALPH W. CURTIS  
Attorney for Applicant/  
Respondent, Ronald Ferrin


NO ADDENDUM WILL BE SUBMITTED WITH THIS BRIEF

CERTIFICATE OF MAILING

The undersigned hereby certified that on the 10<sup>th</sup> day of September, 1997, a true and correct copy of the foregoing Brief of Respondent Ronald Ferrin was served upon all parties to this appeal by mailing, via first class mail, postage prepaid, to each of the following:

Linda L.W. Roth  
HANSON, NELSON, CHIPMAN,  
& QUIGLEY  
215 South State Street, Suite 800  
Salt Lake City, Utah 84111  
Telephone: (801) 364-3627  
**Attorneys for Petitioners**

Alan L. Hennebold  
LABOR COMMISSION OF UTAH  
P. O. Box 146600  
Salt Lake City, Utah 84114-6600  
Telephone: (801) 530-6953  
**Attorneys for Respondent  
Labor Commission**

  
\_\_\_\_\_