

1988

Mark D. Letham v. Industrial Commission of Utah, Big Basin Enterprises, Workers Compensation Fund : Brief of Respondent

Utah Court of Appeals

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DOCKET NO. 880307-CA
~~IN THE COURT OF APPEALS OF THE STATE OF UTAH~~

MARK D. LETHAM,	:	
	:	
Applicant and Appellant,	:	Industrial Commission Case
	:	No. 87000671
	:	
vs.	:	Administrative Law Judge:
	:	Gilbert A. Martinez
	:	
INDUSTRIAL COMMISSION OF UTAH,	:	Court of Appeals No.
BIG BASIN ENTERPRISES, AND	:	88-0307-CA
WORKERS' COMPENSATION FUND,	:	
	:	Priority No. 6
	:	
Defendants and Respondents.:	:	

BRIEF OF RESPONDENTS

WORKERS' COMPENSATION FUND OF UTAH, ET AL.

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FILED

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COURT OF APPEALS

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JURISDICTION OF THIS COURT

AND NATURE OF PROCEEDINGS BELOW

This is a Workers' Compensation case. The applicant appeals from an Order Denying Motion for Review of the Industrial Commission of Utah.

Sections 35-1-86 and 63-46b-16, Utah Code Ann. (1953, as amended), confer jurisdiction of this matter on the Court of Appeals.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

The central question is whether the applicant in this case should be awarded any further Workers' Compensation benefits.

Appellant lists six issues in his brief to this Court. These seem to boil down to three separate issues, as follows:

1. There is an issue concerning the evidence: Whether there was sufficient evidence to support of the Administrative Law

Judge and the Industrial Commission or whether, to the contrary, the evidence supported an order in favor of Applicant for additional temporary total disability benefits and for permanent partial impairment benefits. (Appellant's Brief, p. 2, Issues 1, 2, 5)

2. There is an issue concerning a medical panel: Whether Applicant was entitled to have his case reviewed by a medical panel for evaluation of the medical issues. (Appellant's Brief, p. 2-3, Issues 3, 6)

3. There is an issue concerning the transcript of the hearing: Whether the case was fairly reviewed by the Commission when it, apparently, did not have a copy of the hearing transcript available at the time of its review. (Appellant's Brief, p. 2, Issue 4)

DETERMINATIVE AUTHORITY

Authority determinative of the first issue discussed is this Court's statement of the standard of review, as announced in American Roofing Co. v. Indus. Comm., 752 P.2d 912, 914 (Utah App. 1988). Also pertinent is Sec. 35-1-88, Utah Code Ann. (1953, as amended). Authority determinative of the second issue discussed is the present version of Sec. 35-1-77, Utah Code Ann. (1953, as amended 1982).

STATEMENT OF THE CASE

A. THE NATURE OF THE CASE

This case involves the denial of an employee's claims for additional temporary total disability benefits and for permanent impairment benefits.

B. COURSE OF PROCEEDINGS AND DISPOSITION IN COURT BELOW

Applicant Mark D. Letham claimed benefits under Utah Workers' Compensation Act. He alleged that he sustained injuries to his lower back from an industrial accident on March 19, 1985, and from a second industrial accident on February 10, 1986. (Record, pp. 2, 20, 30)

A hearing was held on October 22, 1987, before Administrative Law Judge Gilbert A. Martinez. (Record, p. 270) The Administrative Law Judge found that Applicant's claim was not credible or trustworthy and that Applicant was not entitled to any benefits in connection with either of the alleged industrial accidents. (Record, p. 276) Accordingly, in his Order, November 3, 1987, the Administrative Law Judge denied any additional benefits for medical expenses or temporary total disability. He also denied Applicant's claim for permanent partial disability. (Record, p. 277)

Applicant sought review November 9, 1987; and in early January 1988, Applicant filed Applicant's Brief on Motion for Review. (Record, p. 280, 296-307) Defendants submitted Defendants' Response to Applicant's Motion for Review on January 29, 1988. (Record, pp. 287-292) However, before Defendants'

response brief was submitted, the Administrative Law Judge issued his Supplemental Order on January 27, 1988. In this Order, he reiterated his finding that Applicant's claim was not credible or trustworthy; and he again denied Applicant's claims for benefits. (Record, pp. 283-285)

Applicant again sought review in early February 1988. (Record, p. 293) The Industrial Commission of Utah issued its Order Denying Motion for Review on April 15, 1988. In its Order, the Commission reversed the Administrative Law Judge's finding that no compensable accident had occurred. It found the March 19, 1985, industrial accident to be fairly well documented, even though the alleged February 10, 1986, industrial accident was questionable. (Record, pp. 316-317)

However, the Commission upheld the Administrative Law Judge's denial of further benefits. (Record, p. 317) The Commission agreed with the Administrative Law Judge that the medical evidence submitted was unreliable because Applicant had misrepresented his true physical condition to the physicians involved. (Record, p. 316) It noted that substantial benefits had already been paid, and it agreed that the evidence showed that temporary total compensation was paid at a time when Applicant was medically stable. The Commission concluded that there had been an overpayment of temporary total compensation during a period when Applicant had been medically stable and that this overpayment would offset any award for permanent impairment that might be warranted. (Record, p. 317)

Applicant submitted a "Petition for Writ of Review" to this Court on May 16, 1988; and the writ was issued May 23, 1988. (Record, pp. 319-321, 322)

C. STATEMENT OF FACTS

Applicant Mark D. Letham was an electrician employed by Big Basin Enterprises, a general contractor that did industrial electrical work in Utah. (Record, p. 19) He was hired in September 1985 and worked until an accident in March of that year. (Record, p. 20)

On March 19, 1985, Applicant sustained an injury to his lower back when he and other workers tried to lift a large electrical cabinet on a job at Central Valley Water Treatment Plant in Salt Lake City. (Record, pp. 20-21) An ambulance was called; and Applicant was taken to St. Mark's hospital, where he was referred to a Dr. Robert Lamb. A CT Scan was taken, apparently showing only a slight bulge in one disc but nothing more. (Record, pp. 9, 23, 46)

Applicant was off work for about a month and a half following this incident, and he received benefits for this period. He returned to work in late April or May 1985, and he continued work until February 1986. (Record, pp. 23-24)

On February 10, 1986, Applicant allegedly sustained a second injury to his lower back at work. When he and three other men attempted to lift a steel highway grate, Applicant felt intense pain in his lower back. (Record, p. 30) The same day, Applicant saw Dr. Aaron Barson, an osteopath, in Ogden, Utah; and Dr. Barson

instructed Applicant to stay off work. (Record, pp. 31-33) On February 12, 1986, a Dr. Walter Reichert took a repeat CT Scan showing no substantial changes from the previous CT Scan of March 1985. (Record, p. 49) Dr. Barson treated Applicant with injections in his back for two to four months. (Record, pp. 30, 50)

Notwithstanding Applicant's alleged back problems, he attended the Fourteenth Annual Mountain Man Rendezvous at Fort Bridger, Wyoming, in August 1986, where the activities included putting up tepees, shooting black powder rifles and selling crafts. (Record, pp. 72-74, 79, 262-265, 275) Applicant testified that he earned \$1,300 at the rendezvous by selling his craft wares. (Record, pp. 80, 275)

Applicant was eventually referred to Dr. Peter Heilbrun, a neurosurgeon with University of Utah Neurosurgical Center, who then became his treating physician. (Record, pp. 9, 34) Initial treatment under Dr. Heilbrun consisted of bed rest and no lifting. In November 1986, Dr. Heilbrun had X-rays taken and decided that surgery was required. He performed a diskectomy or laminectomy on Applicant at the University of Utah Hospital on November 4, 1986. (Record, pp. 14, 34-36)

In December 1986, Applicant slipped and fell at home on his front porch. As a result of this fall, the "stitch work" from Applicant's surgery had to be repaired. Following this second surgery, Applicant was again prescribed bed rest and no lifting. (Record, pp. 14, 38-39)

Applicant last saw Dr. Heilbrun in June or July of 1987. Applicant returned to work in August 1987 as an employee of USA Cable Connection. He has worked regularly ever since. (Record, pp. 40-41)

Within the first three months after his repair surgery, Applicant was able to do yard work, carry garbage cans out to the street, and the like. (Record, pp. 58-59) On or about May 2, 1987, Applicant was observed and videotaped putting up a 20-foot tepee, carrying a bag of tepee canvas weighing approximately 65 pounds, carrying large boxes, and engaging in other strenuous activities at Fort Buenaventura in Ogden, Utah. (Record, pp. 68-70, 235-237, 273-274) During the first week of June 1987, Applicant went on a gold-panning expedition in the San Gabriel mountains in California. (Record, pp. 69-70, 87-89) Videotape showed this to involve activities such as shoveling dirt, carrying five-gallon buckets of water and of dirt, climbing up and down hills, and pulling a wheel barrel containing several five-gallon buckets full of dirt up a mountain slope. (Record, pp. 237-240, 274-275) There is also evidence that Applicant was engaged in some construction work for the Dean's Hungry Eye Restaurant, 4700 South and State Street, Salt Lake City, during part of May 1987. (Record, p. 71, 284)

During these periods of physical activity, Applicant claimed that he was, nevertheless, seriously incapacitated with his lower-back condition. Medical reports show that Applicant continued to claim problems with his back during this period.

On March 2, 1987, Dr. Heilbrun reported: "He generally is improving but continues to have this sharp pain in his back in various positions. I could not find evidence of abnormality on flexion and extension films." (Record, p. 107) Dr. Heilbrun reported on April 27, 1987: "The patient is unchanged in that he continues to have intermittent sharp pain in the back in the area of the incision" (Record, p. 162)

On May 22, 1987, Applicant's physical therapist, Kurt Dudley, wrote:

He returned to our clinic on 5-18-87, for re-evaluation. I tested him on most of his functional skills. His subjective complaints of pain, I feel, have remained about the same. He continues to complain of low back pain which is centered in the middle of his back. He has some groin pain and some buttock pain. When asked what is the heaviest object he has lifted in the last few months, he reported he had not lifted anything heavier than a "grocery bag." He also reports, "I can mow the lawn, but it will usually put me down."

- - -

My overall impression is that the patient's subjective complaint is the major focus of disability.

(Record, p. 182, 184)

Finally, in his letter of July 8, 1987, Dr. Sherman Coleman stated:

This young man's current complaints consist of a "snapping in his back" which is located in the center of the lower portion, and pain that accompanies the snapping that radiates down as far as his knees bilaterally. He says he has an occasional pain in his groin. He has not been able to return to work since his "injury" in March 1986

(Record, p. 105)

SUMMARY OF ARGUMENTS

POINT I

The argument is that the Commission had ample evidence upon which to base its decision and that its decision was a reasonable one in light of the many heavy physical activities Applicant was undertaking while reporting to his physicians symptoms incompatible with his activity level.

POINT II

Sec. 35-1-77 Utah Code Ann. (1953, as amended 1982), makes it clear that the Commission has full discretion about whether or not to convene a medical panel in a given case; and, therefore, the Commission did not err in not referring the medical issues to a medical panel in this case. There was sufficient, reliable, substantive medical evidence to support the Commission's denial.

POINT III

The Commission adopted the extensive findings of facts of the Administrative Law Judge, reviewed the videotapes; and, therefore, a transcript of the hearing was unnecessary. Consequently, the Commission did not err in conducting its review of the issues. While not conceding error, if it was error to not review the transcript, it was harmless error, especially when the videotapes of Applicant's activities and the audiotape of the hearing were available.

ARGUMENT

POINT I

THE COMMISSION HAD SUFFICIENT EVIDENCE TO SUPPORT ITS ORDER AND DID NOT ACT IN AN ARBITRARY OR CAPRICIOUS MANNER.

In Points I, II and III of Appellant's Brief, Appellant raises issues concerning the sufficiency of the evidence.

Concerning issues of evidence, the standard of review has been stated recently by this Court in American Roofing Co. v. Indus. Comm., 752 P.2d 912, 914 (Utah App. 1988):

In reviewing a decision by the Commission, "this Court will not disturb the findings and orders of the Commission unless they are arbitrary and capricious, and they are arbitrary and capricious when they are contrary to the evidence or without any reasonable basis in the evidence." Rushton v. Gelco Express, 732 P.2d 109, 111 (Utah 1986).

Another statement of the standard of review is found in Peck v. Eimco Process Equipment Co., 748 P.2d 572 , 575 (Utah 1987):

In reviewing the evidentiary basis for findings of fact made by the Industrial Commission, this Court inquires only whether the Commission's findings are supported by substantial evidence. Bigfoot's Inc. v. Industrial Comm'n, 714 P.2d 1152, 1153 (Utah 1986).

We contend that the Commission's findings are, indeed, amply supported by substantial evidence and that the Commission's findings are not arbitrary or capricious.

At Points I and II, Appellant relies entirely on the evidence of Dr. Peter Heilbrun. Dr. Heilbrun was one of Applicant's attending physicians. In a letter dated November 6, 1987, Dr. Heilbrun assigns Applicant a release date of August 22, 1987, and

an impairment rating of 15% of whole man. (Record, p. 282) At Point I, Appellant claims, "No medical evidence was introduced to refute these medical claims."

Medical Evidence. First, it should be noted that the Commission is not required to give any special weight to the evidence of the attending physician. In Rushton v. Gelco Express, 732 P.2d 109 (Utah 1986), the applicant claimed benefits for a knee condition which her attending physician believed was caused by an industrial accident. According to the applicant in that case, the Administrative Law Judge was required to give preference to the findings of the treating physician. This contention however, was flatly rejected by the Utah Supreme Court. 732 P.2d at 111-112.

Second, Appellant's Brief gives the impression that there was no medical evidence to support Defendants' side of this case; but this is incorrect.

There are the CT Scan reports of March 19, 1985, and February 12, 1986. Both reports mention only a small disk bulge that does not displace any nerve roots. (Record, pp. 112, 118)

There is evidence from Dr. Robert Lamb. In his notes of April 16, 1985, he states: "I think that his back discomfort depends on his ability to improve his posture." (Record, p. 120) His diagnosis was: "Possible central disk protrusion and acute lumbar strain. (Record, p. 121, 123)

In March, 1986, Dr. Aaron Barson stated that he did not think Applicant's back condition warranted surgery. (Record, p. 131)

There is also the letter of Dr. Gerard F. Vanderhooft, May 14, 1986, in which he confirms the diagnosis of Dr. Lamb that Applicant had "a lumbar sprain syndrome without significant disk herniation." (Record, p. 101) Dr. Vanderhooft states:

This man had what appears to be a reasonable industrial accident in March of 1985. He then improved in a reasonable amount of time and returns to work and six months later while doing ordinary work that is expected of him, he starts having back pain again. In the meantime, the evaluation has ruled out any significant intervertebral disc herniation. He has not then nor is he now a candidate for surgery. Enzyme injections in the disc space and surgery are both contraindicated in my opinion.

(Record, p. 102, emphasis added) Dr. Vanderhooft attributed Applicant's back problems primarily to his sway back, and Dr. Vanderhooft's evaluation was that "this man has no permanent impairment." (Record, p. 103)

In short, there was sufficient medical evidence in the record from which the Commission could reasonable have inferred an alternative theory of the case. The evidence supports conclusions that Applicant did no more than "sprain" his back in the March 1985 and/or February 1986 industrial accidents and that the herniated disk, which Dr. Heilbrun repaired in the November 1986 surgery, was the result of some non-industrial accident that occurred after the CT Scans of March 1985 and February 1986 or was the result of a nonindustrial, postural problem.

Non-medical evidence. In addition to medical evidence, the Commission had a good deal of non-medical evidence bearing on Applicant's condition, namely, the video tape of Applicant's

mountainman activities and the testimony of the investigators who did the taping.

It is not true, as Appellant seems to suggest, that the Commission is bound to consider only medical evidence (evidence from medical authorities) in making determinations about an applicant's alleged injury. Section 35-1-88, Utah Code Ann. (1953, as amended), makes it clear that the Commission may receive any evidence (medical or non-medical) that is material and relevant for proof of any fact (medical or non-medical). Section 35-1-88 states in part:

The Commission may receive as evidence and use as proof of any fact in dispute all evidence deemed material and relevant"

(Emphasis added) See also, Rushton v. Gelco Express, 739 P.2d 109, 111-112 (Utah 1986). Moreover, the Commission is not required to accept opinions of medical experts and may, in fact, find contrary to the only medical evidence received. Griffith v. Indus. Comm., 754 P.2d 981 (Utah App. 1988); Rushton v. Gelco Express, 732 P.2d 109 (Utah 1986); Shipley v. C & W Contracting Co., 528 P.2d 153 (Utah 1974). See also: Larson, Workmen's Compensation Law, Vol. 3, Sec. 79, "Evidence."

Appellant's claims for additional temporary total disability benefits and permanent partial impairment benefits are based on Dr. Heilbrun's letter of November 1987. Appellant suggests in his brief that there was no other acceptable evidence (i.e., medical evidence) upon which the Commission could have based contrary findings. Yet, the video tape of Applicant's mountainman

activities provided material and relevant evidence concerning Applicant's condition. This evidence was perfectly acceptable, non-medical evidence. Thus, the Commission had substantial evidence to support its Order.

Credibility. Furthermore, the Commission's assessment of the evidence presented, both medical and non-medical, must be considered in light of the concern over credibility, which arose in this case. Under the applicable standard of review, the reviewing court "has no power to determine the weight of the evidence and credibility of the witnesses . . ." Bigfoot's Inc. v. Indus. Comm., 714 P.2d 1152, 1153 (Utah 1986); Staker v. Indus. Comm., 61 Utah 11, 209 P. 880 (1922).

In his Supplemental Order in the instance case, the Administrative Law Judge stated that "there existed a serious issue of credibility regarding the claim of the applicant." The Administrative Law Judge found "that the applicant's claim is not credible and trustworthy." (Record, p. 284) In its Order, the Commission agreed with these findings and pointed out that some of the medical reports of treating physicians were poisoned because they simply recounted what Applicant had inaccurately reported.

The Commission agrees with the Administrative Law Judge that, per the video tape, temporary total compensation was paid at a time when the applicant was clearly medically stable. The Commission also agrees that the medical evidence that has been submitted is somewhat unreliable as the applicant clearly was misrepresenting to the doctor or doctors involved as to what his true physical condition was.

(Record, p. 316)

Liberal construction. Finally, Appellant cites a number of cases at Point III in his brief for the proposition that doubts on close questions concerning the evidence should be resolved in favor of the applicant. (Appellant's Brief, p. 13) The answer to this is simply that neither the Administrative Law Judge nor the Commission found the disputed factual issues to be close questions, and the available evidence certainly makes clear that such an assessment was reasonable.

It might also be noted that all the cases cited by Appellant speak of doubts concerning construction of workers' compensation statutes or acts being decided in favor of the applicant--not questions of fact. Presumably, the facts should be ascertained first, and only then should the relevant statutes be interpreted and applied. The central disputes in this case have been over factual issues regarding Applicant's condition and credibility and not over points of statutory interpretation.

Considering the problems with Applicant's credibility and considering all the medical and non-medical evidence presented to the Commission, it is clear that the Commission's findings were not arbitrary and capricious and that, to the contrary, they were amply supported by the evidence.

POINT II

THE COMMISSION'S DECISION CONCERNING A MEDICAL PANEL IS ENTIRELY DISCRETIONARY UNDER THE 1982 AMENDMENT, AND THE COMMISSION DID NOT COMMIT ERROR WHEN IT DID NOT CONVENE A MEDICAL PANEL.

In Point II of Appellant's Brief, he asserts that it was "mandatory" that the Commission refer the case to a medical panel. In support of his position, Appellant refers to Section 35-1-77 and cites Schmidt v. Indus. Comm., 617 P.2d 693 (Utah 1983). (Appellant's Brief, p. 12)

Appellant refers to unamended law and not the current version of the relevant statute. The former version of Sec. 35-1-77 of the Workers' Compensation Act stated in pertinent part:

Upon the filing of a claim for compensation for injury by accident, or for death, arising out of or in the course of employment, and where the employer or insurance carrier denies liability, the commission shall refer the medical aspects of the case to a medical panel. . . .

(Emphasis added) The 1982 amendment, however, substituted "may" for "shall" in the first sentence, thus giving the Commission complete discretion concerning the appointment of medical panels. The relevant portion of the current version of Sec. 35-1-77 reads as follows:

(1)(a) Upon the filing of a claim for compensation for injury by accident, or for death, arising out of or in the course of employment, and if the employer or its insurance carrier denies liability, the commission may refer the aspects of the case to a medical panel

(Emphasis added) The present version of Sec. 35-1-77 also

provides an alternative method for obtaining medical evaluations.

But here too the Commission is given complete discretion:

(b) As an alternative method of obtaining an impartial medical evaluation of the medical aspects of a controverted case, the commission in its sole discretion may employ a medical director or medical consultants

(Emphasis added) The older case of Schmidt v. Indus. Comm., cited by Appellant, refers to the pre-1982 version of Sec. 35-1-77. See 617 P.2d at 695-696. The Utah Supreme Court has confirmed that the Commission now has complete discretion as to whether a case is referred to a medical panel. Moore v. American Coal Co., 737 P.2d 989 (Utah 1987); Champion Home Builders v. Indus. Comm., 703 P.2d 306-308 (Utah 1985).

It is abundantly clear that the appointment of a medical panel by the Commission is no longer mandatory. Accordingly, the Commission did not commit error when, in its sound discretion, it decided not to appoint a medical panel in this case.

POINT III

THE COMMISSION COMMITTED ONLY HARMLESS ERROR,
IF ANY, WHEN IT REVIEWED THE CASE WITHOUT A
TRANSCRIPT OF THE HEARING.

The fourth issue listed in Appellant's Brief, under Statement Of The Issues, challenges the fairness of the Commission's review. Appellant, apparently, wishes to suggest that it was reversible error for the Commission to review the case without having a transcript of the hearing. (Appellant's Brief, p. 2) Appellant offers no argument on this issue, however.

In most cases, the Commission adopts the findings of fact of the Administrative Law Judge, especially when concerns about the credibility of a key witness are involved. Such is the case here. The Administrative Law Judge's findings of fact were set out in very considerable detail in the Findings of Fact Conclusions of Law and Order of November 3, 1988; and this, of course, was part of the record which the Commission reviewed. Further, the Commission did review the videotapes of Applicant's physical activities; and it had access to the audiotapes of the hearing itself, as all hearings before Administrative Law Judges are taped. The Commission also had before it Applicant's motion for review in which Applicant presented his version of the facts in a light most favorable to his claimed errors. Thus, the fact that the Commission did not have a copy of the transcript is of little moment in providing a full review of the circumstances. If this was error, it was harmless at worst.

CONCLUSION

The Order of the Commission should be affirmed, since the Commission did not commit any reversible error. The findings of the Administrative Law Judge and the Commission are amply supported by substantial evidence in the record bearing on Applicant's credibility and his medical condition. The Commission was well within the bounds of reasonable discretion when it decided not to appoint a medical panel in this case. And lack of a hearing transcript constituted harmless error at most when the Commission conducted its review as it was more than amply apprised

of the circumstances by the opposing parties, the video- and audiotapes and the factual summary of the Administrative Law Judge.

Accordingly, Defendants respectfully request this Court to affirm the Order of the Commission in this matter.

DATED this 12 day of October, 1988.

15/
James R. Black

CERTIFICATE OF MAILING

The undersigned hereby certifies that four true and correct copies of the foregoing Brief of Respondents was mailed, postage fully prepaid, this 12 day of October, 1988, to the following:

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15/

ADDENDUM 1:

FINDINGS OF FACT, CONCLUSION OF LAW
AND ORDER

INDUSTRIAL COMMISSION OF UTAH

CASE No. 87000671

MARK D. LETHAM,

Applicant,

vs.

BIG BASIN ENT and/or
WORKERS COMPENSATION FUND OF UTAH,

Defendants.

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FINDINGS OF FACT

CONCLUSIONS OF LAW

AND ORDER

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HEARING: Hearing Room 334, Industrial Commission of Utah, 160 East 300 South, Salt Lake City, Utah, on October 22, 1987, at 8:30 a.m.; same being pursuant to Order and Notice of the Commission.

BEFORE: Gilbert A. Martinez, Administrative Law Judge.

APPEARANCES: The applicant was present and represented by Keith E. Sohm, Attorney at Law.

The defendants were represented by Burton K. Brasher, Attorney at Law.

At the commencement of the hearing, the parties set forth the issues to be resolved by the Administrative Law Judge, which include the following:

1. Whether or not the applicant's claim is credible and trustworthy?
2. Whether or not there is a direct medical causal relationship between the applicant's low back problems and the alleged industrial accidents?

3. Whether or not the applicant's low back problems occurred as a result of non-industrial events occurring after the industrial accidents?
4. Whether or not the applicant was temporarily and totally disabled during the period of May 30, 1987, to and including August 22, 1987?
5. Whether or not the applicant, in fact, sustained a permanent partial disability as a result of his alleged industrial accidents?
6. Whether or not the applicant was injured by accident arising out of or in the course of employment on February 10, 1986?
7. Attorney's fees and interest pursuant to Utah Code Annotated, Section 35-1-78 and 35-1-87.

This is a claim for benefits under the Utah Worker's Compensation Act. Pursuant to the Application for Hearing, the applicant alleges that he sustained an injury to his low back by accident arising out of or in the course of employment with the defendant employer on March 19, 1985, and from a second accident occurring on February 10, 1986.

The defendant employer has raised several defenses, as follows:

1. That the applicant did not injure his low back during the course of employment on either March 19, 1985, or February 10, 1986;
2. That the applicant's low back injuries resulted from non-industrial events occurring after these alleged industrial accidents;
3. That the applicant did not sustain a permanent partial disability as a direct result of either of these two industrial accidents, according to Dr. Gerard F. Vanderhooft;
4. That the applicant's testimony is not credible and trustworthy that he was temporarily and totally disabled or that he sustained a permanent partial disability at any time.

MARK D. LETHAM
FINDINGS AND ORDER
PAGE THREE

Based upon the testimony of the various witnesses at the time of the hearing, including the videotape demonstrating the applicant involved in heavy physical exertion, and good cause appearing herein, the Administrative Law Judge finds as follows.

FINDINGS OF FACT:

At the time of the formal hearing, the defendants attacked the credibility of the applicant's claim. The defendants presented clear and convincing evidence to establish that the applicant was not temporarily and totally disabled at any time after May 2, 1987. Furthermore, the defendants presented clear and convincing evidence to support that the applicant did not sustain a permanent partial disability in his low back from an industrial accident occurring on either March 19, 1985, or February 10, 1986.

Under the Utah Workers' Compensation Act the applicant carries the burden of proving by the preponderance of the evidence that he sustained an injury by accident during the course of employment, which is compensable under the Act. Furthermore, the applicant carries the burden of proof of establishing that he was totally and temporarily disabled as a result of the industrial accident and that he sustained a permanent partial disability. In those cases where the industrial injury is suspect, the Administrative Law Judge has the discretion of giving whatever weight is reasonable to the testimony of the applicant regarding his claim. Let the record show that the Administrative Law Judge also has the discretion of not accepting the testimony of the applicant when the credibility of the applicant is attacked, and where there is substantial evidence to show that the applicant did not remain temporarily and totally disabled after May 2, 1987, or that he sustained a permanent partial disability from the alleged industrial incidents.

In the case at bar, there exists a serious issue of credibility regarding the claim of the applicant. The applicant claims that he was temporarily and totally disabled and that he sustained a permanent partial disability as a result of his two industrial accidents. However, the evidence does not support the applicant's claim for benefits. At the hearing, the defendants presented evidence that was clear and convincing that the applicant had no physical limitations during the periods of time that he is claiming that he was totally disabled.

Dennis Dye, investigator for Intel Tech Services, testified at the hearing that he conducted a surveillance of the applicant in this matter, Mark D. Letham, on May 2, 1987, and again on June 5, 1987, and June 7, 1987. During this surveillance, Mr. Dye used a professional camera to visually tape the physical activities of the applicant during the periods that he was claiming that he was totally disabled. At the hearing, a videotape was presented into evidence and was shown to demonstrate that the applicant had no physical limitations following his industrial injuries. See the Fuji Videocassette marked: "Mark Letham, Hearing Tape."

After viewing the videotape at the hearing, the Administrative Law Judge finds that the applicant was not temporarily and totally disabled from May 2, 1987, to August 22, 1987. In this regard, the Administrative Law Judge questions whether or not the applicant was temporarily and totally disabled before May 2, 1987, when he was receiving temporary total disability compensation. Furthermore, the Administrative Law Judge finds that the applicant did not sustain a permanent physical impairment or disability as a direct result of either the alleged industrial accidents of March 19, 1985, or February 10, 1986.

The videotape demonstrating the physical activities of the applicant demonstrated that he was physically capable of setting up and dismantling a teepee on or about May 2, 1987, and that the applicant was physically capable of mining for gold in the mountains of San Gabriel in the State of California on June 5, 1987, and June 7, 1987. This videotape demonstrated the following:

1. That on or about May 2, 1987, the applicant was engaged in setting up a 20 foot teepee. In order to do so, the applicant was engaged in bending, carrying, and raising teepee poles. The applicant carried a sack of a teepee canvas on his shoulder from his truck to the place he was setting up the teepee. The applicant wrapped the canvas around the poles and tied it down with a rope. During this process, the applicant ran back and forth from the teepee to the truck and climbed up onto the truck to get material and poles. Furthermore, the applicant carried two large boxes, singlehandedly, from the truck to the teepee. Subsequently, the applicant was observed carrying a very large box from the truck to the teepee. These boxes contained equipment belonging to the applicant and some of his merchandise that he would sell as part of his business entitled, RamCo Enterprise. Included in this merchandise was furs and other leather goods. During the installation of the teepee, the applicant was observed to climb up and

down the boxes to tie down the canvas on the teepee poles. Furthermore, the applicant was observed to climb up and down his truck removing equipment from the truck to set up the teepee. Dennis Dye, investigator, testified at the hearing that the applicant was engaged in the physical activities of setting up the teepee during a one and one-half hour period. Furthermore, Mr. Dye testified that the applicant completely dismantled the teepee and that it took him 45 minutes to do so. From the videotape, one could observe the applicant carrying equipment to his truck, loading the truck with equipment, and tying down the truck with a rope. The applicant would be on the floor, pulling on a rope and rocking the truck, as he tied down the rope. All of these activities clearly established that the applicant was not totally and temporarily disabled at that time.

2. On or about June 5, 1987, Dennis Dye, private investigator, taped the applicant in the mountains of San Gabriel, California. At that time, the applicant was demonstrating techniques of panning for gold. The videotape presented at the hearing clearly establishes that the applicant had no physical limitations and no problems with movement involving his low back. Furthermore, the tape demonstrates no weakness in the applicant. The Administrative Law Judge observed from the film that the applicant was extremely active in performing unusual and extraordinary exertions. The applicant was observed carrying large equipment and climbing up and down hills. Furthermore, the applicant climbed up steep rocks. At other points in the film, the applicant was observed running up and down the hillside. As part of the search for gold, the applicant was shoveling loads of dirt and carrying 5-gallon buckets containing dirt and other material. At no time did it appear that the applicant was having any physical problems with his low back. In addition, the applicant was observed to be seated in a squatting position along the river panning for gold. Dennis Dye, investigator, testified at the hearing that the applicant would be in these positions for two or three hours without any observation of pain problems in the low back. While the applicant was in the river mining for gold, he was observed to be lifting gallons of water and pouring it into a mining machine. Again, the applicant did not appear to have any physical limitations in performing this activity. As part of the tape, the applicant was

observed carrying heavy rocks and lifting and carrying buckets of water and dirt in 5-gallon buckets. Of all of the activities that was most impressive, it was when the applicant and his partner, allegedly his brother, were pulling a wheelbarrow up the side of a mountain slope containing several of these 5-gallon buckets containing dirt in them. During this extreme amount of exertion, the applicant showed no ill effects in his low back. At the times that the applicant climbed up and down the mountain slopes and ran up and down the hillsides, he showed no physical limitations and weaknesses in his low back.

3. On June 7, 1987, the applicant was again panning for gold in the mountains of San Gabriel, California. Again, the applicant was involved in extremely physical exertion, which included bending, squatting, lifting, climbing up and down hills, lifting buckets of water and dirt, and carrying large equipment. At one point, it was impressive that the applicant was able to demonstrate such physical strength in pulling a wheelbarrow up the side of a hill. Because of the terrain involved, the applicant and his brother could no longer pull on the wheelbarrow and therefore lifted the wheelbarrow and carried it up the side of the hill. Such over exertion demonstrated that the applicant was having no low back problems, and that he was physically strong in performing these and other activities.

Let the record show that the videotape containing the physical activities of the applicant on May 2, 1987, when he was setting up the teepee, and the two days in June of 1987, when he was mining for gold in the State of California, contains 38 to 40 minutes of the applicant performing heavy and unusual exertion. The defendants stated for the record that they have six hours of videotape involving the applicant, which was condensed down to the 38 minute tape that was presented at the hearing. See the Fuji videocassette marked as "Mark Letham, Hearing Tape."

Randy Moser, private investigator, testified at the hearing that the applicant informed him toward the end of May of 1987, that he was performing construction work in the remodeling of a restaurant, entitled: Dean's Hungry Guy. The defendants also presented evidence showing that while the applicant was receiving compensation for temporary total disability, the applicant appeared on TV commercials for Lagoon. Furthermore, the applicant appeared in the September, 1986, issue of People Magazine. In that magazine, the applicant was involved in the Fourteenth Annual Mountain Man Rendezvous in Fort Bridger, Wyoming. See Exhibit "D-2". The applicant testified at the hearing that he earned \$1,300 at that rendezvous by selling his wares, which included mountain furs and leather.

Regarding the applicant's claim that he was temporarily and totally disabled during the year of 1987, Curt Dudley, physical therapist from the Cottonwood Back Institute, testified at the hearing that, in his opinion, the applicant overly exaggerated his pain problems during the time that he was being treated at the Cottonwood Back Institute in February and March of 1987. Mr. Dudley testified that the applicant was not very cooperative during the physical therapy training and that he missed several of the treatments. Mr. Dudley testified that he saw the applicant in May of 1987, when the applicant appeared to be limping at that time and complaining of pain. This, of course, was the month that the applicant was involved in setting up and dismantling the teepee. From a credibility standpoint, it appears that the applicant was physically capable of performing physical activities requiring unusual and extraordinary exertion in performing his hobby and commercial projects as a mountaineer, but would appear before his physical therapist with low back pains and limp in front of the physical therapist during the times he was involved with installing teepees. This is totally inconsistent with the applicant's physical capabilities, as demonstrated by the videotape presented at the hearing.

CONCLUSIONS OF LAW:

The applicant in this matter is not entitled to workers' compensation benefits as a result of an alleged industrial accident occurring on either March 19, 1985, or February 10, 1986.

The applicant's claim for additional compensation and medical benefits shall be denied on the basis that the applicant's claim is not credible and trustworthy. The Administrative Law Judge does not have to address the other issues presented above, the testimony and evidence presented at the hearing, specifically the videotape demonstrating the physical activities of the applicant, is clear and convincing evidence that the applicant's claim is not credible and trustworthy. This ruling is based upon the Findings of Fact herein, and that the record clearly establishes that the credibility of the applicant is suspect and not trustworthy.

It should be pointed out for the record that the applicant has been paid substantial benefits regarding these alleged claims. The record shows that the defendants have paid benefits amounting to over \$51,000. Temporary

MARK D. LETHAM
FINDINGS AND ORDER
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total disability of \$20,782.57 was paid at the rate of \$272.00 per week from March 20, 1985, to May 27, 1985, and again from February 11, 1986, to May 29, 1987. Furthermore, the defendants have paid medical expenses amounting to \$31,286, this includes low back surgery performed on November 4, 1986, and on December 9, 1986. The facts in this case would, however, establish that these two surgeries were not necessitated by either of the industrial accidents. This is especially true of the second surgery performed on December 9, 1986, a couple of days after the applicant slipped and fell onto his low back at home on his front porch. The Administrative Law Judge makes no formal ruling in this regard. There exists a serious question regarding medical causation between these two surgeries and the alleged industrial incidents. Furthermore, the Administrative Law Judge makes no specific ruling regarding whether the applicant was improperly paid temporary total disability compensation during the calendar year of 1987. These benefits have been gratuitously paid, although they do not appear to be supported by the evidence in the case.

It is most likely that the applicant in this matter, Mark D. Letham, has received a windfall in this case. The amounts of \$20,782.57 in compensation and \$31,286.00 in medical expenses is probably more than what the applicant is rightfully entitled to. At this time, the applicant is gainfully employed by U.S.A. Cable Network and is not entitled to any additional benefits, pursuant to the above Findings of Fact.

ORDER:

IT IS THEREFORE ORDERED that the applicant's claim for additional temporary total disability compensation shall be, and the same is hereby, denied.

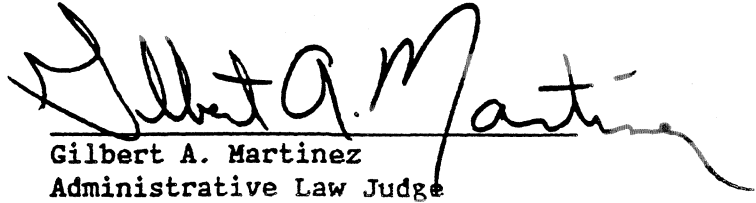
IT IS FURTHER ORDERED that the applicant's claim for permanent partial disability compensation shall be, and the same is hereby, denied.

IT IS FURTHER ORDERED that the applicant's claim for additional medical expenses shall be, and the same is hereby, denied.

IT IS FURTHER ORDERED that the applicant's claim for attorney fees and interest shall be, and the same is hereby, denied.

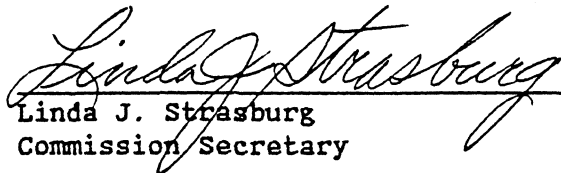
MARK D. LETHAM
FINDINGS AND ORDER
PAGE NINE

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


Gilbert A. Martinez
Administrative Law Judge

Passed by the Industrial Commission
of Utah, Salt Lake City, Utah, this
3rd day of ~~October~~, 1987.

ATTEST: November


Linda J. Strasburg
Commission Secretary

CERTIFICATE OF MAILING

I hereby certify that on ~~October~~ ^{November} 3, 1987, a copy of the attached Findings of Fact, Conclusions of Law and Order was mailed to the following persons at the following addresses, postage paid:

Mark D. Letham
922 East 10715 South
Sandy, UT 84070

Keith E. Sohm
Attorney at Law
2057 Lincoln Lane
Salt Lake City, UT 84124

Burton K. Brasher
Attorney at Law
Workers Compensation Fund of Utah

Erie V. Boorman, Administrator
Second Injury Fund

INDUSTRIAL COMMISSION OF UTAH

By Janet N. Moriarty
Janet N. Moriarty

ADDENDUM 2:
SUPPLEMENTAL ORDER

039

THE INDUSTRIAL COMMISSION OF UTAH

Case No. 87000671

MARK D. LETHAM,

Applicant,

vs.

BIG BASIN ENT and/or
WORKERS COMPENSATION FUND

Defendants.

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SUPPLEMENTAL

ORDER

HEARING:

Hearing Room 334, Industrial Commission of Utah, 160 East 300 South, Salt Lake City, Utah, on October 22, 1987 at 1:00 p.m. o'clock. Said hearing was pursuant to Order and Notice of the Commission.

BEFORE:

Gilbert A. Martinez, Administrative Law Judge.

APPEARANCES:

The applicant was present and represented by Keith E. Sohm, Attorney at Law.

The defendants were represented by Burton K. Brasher, Attorney at Law.

At the commencement of the hearing, the parties set forth the issues to be resolved by the Administrative Law Judge, which included the following issue as being the most significant issue in the case.

1. Whether or not the applicant's claim is credible and trustworthy.

On November 3, 1987, the Administrative Law Judge issued a Findings of Fact, Conclusions of Law and Order, denying the applicant's claim for additional benefits. The Administrative Law Judge ruled that the applicant's claim for additional compensation and medical expenses are denied on the basis that the applicant's claim is not credible and trustworthy.

MARK LETHAM
ORDER
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On November 10, 1987, the applicant, by and through legal counsel, filed a "Motion for Review" with the Industrial Commission of Utah. The applicant respectively requested 30 days in which to file a brief in the matter. On or about January 5, 1988, the applicant filed a "Applicant's Brief on Motion for Review". In the brief, the applicant alleges that the Administrative Law Judge erred in making up findings that were improper, inaccurate and contrary to the evidence.

The Administrative Law Judge does not agree. The testimony presented at the hearing by the witnesses, including Dennis Dye, investigator for Intel Tec Services and Randy Moser, investigator, clearly establishes that the applicant's claim is not credible and trustworthy.

In the case at bar, there existed a serious issue of credibility regarding the claim of the applicant. During the period that the applicant alleged that he was temporarily and totally disabled, the defendants presented evidence to clearly establish that the applicant was physically capable of performing physical activities requiring heavy exertion, including the setting up and dismanteling a teepee and the physical performance of mining for gold in the mountains of San Gabriel, California. Randy Moser, private investigator, testified at the hearing that the applicant informed him in May of 1987, that the applicant was performing construction work in the remodeling of a restaurant, during a period that he was claiming that he was temporarily totally disabled. The defendants also presented evidence showing that while the applicant was receiving compensation for temporary total disability, the applicant appeared in T.V. commercials for Lagoon. Furthermore, the applicant appeared in the September, 1986, issue of People's Magazine. In that magazine, the applicant was involved in the 14th annual mountain man rendezvous in Fort Bridger, Wyoming. See exhibit D-2.

Based upon the testimony of all of the witnesses at the hearing and the evidence presented, and good cause appearing herein the Administrative Law Judge issues the following supplemental ruling:

SUPPLEMENTAL CONCLUSIONS OF LAW:

The Administrative Law Judge hereby finds that the applicant in this matter, Mark D. Letham, is not entitled to Utah workers compensation benefits as the result of an alleged industrial incident occurring on either March 19, 1985, or February 10, 1986.

Based upon the preponderance of the evidence presented at the hearing before the Industrial Commission of Utah, the Administrative Law Judge hereby

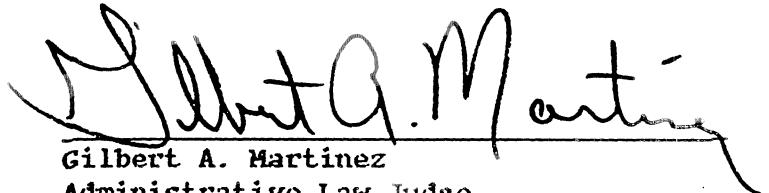
MARK LETHAM
ORDER
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rules that the applicant did not sustain a compensable industrial accident on March 19, 1985, or February 10, 1986. The Administrative Law Judge rules that the applicant's claim for benefits arising out of or in the course of employment on these dates are not credible or trustworthy. This ruling is based upon the findings of fact contained in the original Order dated November 3, 1987, and that the record clearly establishes that the credibility of the applicant's claim for benefits is not credible and not trustworthy.

SUPPLEMENTAL ORDER:

IT IS THEREFORE ORDERED that the applicant's claim for additional temporary total disability and/or permanent partial disability compensation shall be, and the same is hereby, denied. Compensation and medical benefits are denied on the basis that the applicant's claim is not credible or trustworthy, and that the applicant did not sustain a viable industrial accident on either March 19, 1985, or February 10, 1986.

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


Gilbert A. Martinez
Administrative Law Judge

Passed by the Industrial Commission
of Utah, Salt Lake City, Utah, this
27th day of January, 1988.

ATTEST:

/s/ Linda J. Strasburg

Linda J. Strasburg
Commission Secretary

CERTIFICATE OF MAILING

059

I certify that on January 27, 1988 a copy of the attached ORDER in the case of Mark D. Letham issued January 27 was mailed to the following persons at the following addresses, postage paid:

Mark Letham
922 East 10715 South
Sandy, Utah 84070

Keith E. Sohm
Attorney at Law
2057 Lincoln Ln
Salt Lake City, Utah 84124

Burton K. Brasher, Workers Compensation Fund

Erie V. Boorman, Second Injury Fund

THE INDUSTRIAL COMMISSION OF UTAH

By _____
Sherry

ADDENDUM 3:
ORDER DENYING MOTION FOR REVIEW

007

THE INDUSTRIAL COMMISSION OF UTAH

Case No: 87000671

MARK D. LETHAM,

Applicant,

vs.

BIG BASIN ENT and/or
WORKERS COMPENSATION FUND OF UTAH,

Defendants.

ORDER DENYING

MOTION FOR REVIEW

On November 3, 1987, an Administrative Law Judge of the Industrial Commission issued Findings of Fact, Conclusions of Law and Order denying the applicant in the above-captioned case additional temporary total compensation and permanent partial impairment benefits for two back injuries alleged to have occurred on March 19, 1985 and February 10, 1986. The Application for Hearing indicates a claim for additional temporary total compensation from approximately the beginning of June 1987 until the applicant returned to work in August 1987, plus a claim for permanent partial impairment benefits based on the treating physician's rating of 15% whole person. The Administrative Law Judge based his denial of these additional benefits on the fact that the applicant was clearly not temporarily totally disabled as of May 1987, and quite possibly stabilized much earlier than that date, resulting in an overpayment of temporary total compensation. The November 3, 1987 Order points to a video tape of the applicant's activities, taken by the defendant in May 1987, as being the most influential evidence convincing the Administrative Law Judge an overpayment had occurred. The video tape showed the applicant involved in extremely strenuous physical activity such as unloading a truck, carrying very heavy items, setting up a 20 ft. teepee, shoveling dirt, running and climbing and hauling large buckets of water. Based on the fact the applicant engaged in these activities while receiving temporary total compensation and representing to the professionals treating him that he was in pain and/or restricted in mobility, the Administrative Law Judge found the applicant's claim for further benefits as not supported by the facts and the Administrative Law Judge therefore denied the applicant's claim.

On January 5, 1988, counsel for the applicant filed a Motion for Review arguing that the Administrative Law Judge's denial of benefits resulted from the Administrative Law Judge ignoring certain evidence. Counsel for the applicant argues that the Administrative Law Judge ignored the applicant's testimony as well as the medical evidence. Per counsel for the applicant, the medical evidence reflect that the applicant was not stable during the period

MARK D. LETHAM
ORDER DENYING MOTION
PAGE TWO

of time at issue. With respect to the applicant's activities as reproduced in the video tape, counsel for the applicant finds these activities are non-strenuous and counsel for the applicant argued only a medical panel can determine whether the activities were such that a finding of temporary total disability is inconsistent with those activities.

On January 27, 1988, the Administrative Law Judge issued a Supplemental Order indicating that besides the fact that no further compensation is due the applicant, the Administrative Law Judge determined there was no compensable accident on either March 19, 1985 or February 10, 1986. Once again, the Administrative Law Judge cited the applicant's lack of credibility as the reason behind his conclusions. On January 29, 1988, counsel for the defendant/Workers Compensation Fund filed a Response to the applicant's Motion for Review. Counsel for the Workers Compensation Fund states that the Administrative Law Judge correctly listed in his Order just those facts upon which he relied on reaching his decision. As the Administrative Law Judge did not rely on the applicant's testimony, which the Administrative Law Judge found to be non-credible, counsel for the Workers Compensation Fund states it was not necessary for the Administrative Law Judge to reiterate in his Order what the applicant testified to at hearing. Furthermore, counsel for the Workers Compensation Fund states that the Administrative Law Judge did not rely on the medical records indicating medical instability as it is clear the applicant misrepresented to the medical care providers as well as to the insurance carrier. Finally, counsel for the Workers Compensation Fund states that the rating of Dr. Heilbrun does not require that the Industrial Commission award permanent partial impairment benefits. Dr. Heilbrun's rating is based on the American Medical Association's Guides to the Evaluations of Permanent Impairment and counsel for the Workers Compensation Fund states that publication is merely a guide. As the applicant's impairment is obviously minimal as demonstrated by the activities he is able to, and does perform, counsel for the Workers Compensation Fund states no impairment rating or benefits are warranted.


The Commission finds that the issue on review is whether the applicant is entitled to further workers compensation benefits beyond what has already been paid. The Commission notes it is clear from the file that the Workers Compensation Fund has already paid substantial compensation, including nearly a year and a half of temporary total compensation and medical expenses related to two separate surgeries. The Commission agrees with the Administrative Law Judge that, per the video tape, temporary total compensation was paid at a time when the applicant was clearly medically stable. The Commission also agrees that the medical evidence that has been submitted is somewhat unreliable as the applicant clearly was misrepresenting to the doctor or doctors involved as to what his true physical condition was. However, the Commission does not agree with the Administrative Law Judge's Supplemental Order that there is no compensable accident involved here. The

MARK D. LETHAM
ORDER DENYING MOTION
PAGE THREE

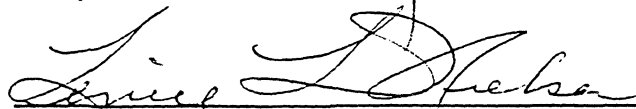
March 19, 1985 industrial accident is fairly well documented. The February 10, 1986 industrial accident is questionable. Presuming that there is at least one compensable industrial accident involved, some of the benefits paid were most likely legitimate. However, it is clear there was an overpayment of temporary total compensation during a period of time when the applicant had to be medically stable. The Commission agrees with counsel for the Workers Compensation Fund that the American Medical Association Guides to the Evaluation of Permanent Impairment are guides only and the Commission feels that the activities the applicant is able to perform prevent any finding that the applicant is permanently impaired. Even if a minimal permanent impairment does exist, the overpayment of temporary total compensation offsets any award for permanent impairment warranted in this case. Therefore, the Commission agrees with the Administrative Law Judge's denial of further benefits in this case and must therefore deny the applicant's Motion for Review.

ORDER:

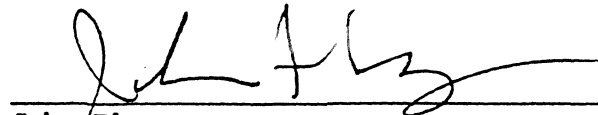
IT IS THEREFORE ORDERED that the applicant's January 5, 1988 Motion for Review is hereby denied and the Administrative Law Judge's November 3, 1987 Order is hereby affirmed and final with further appeal to the Court of Appeals only within the thirty (30) day time limit as specified in U.C.A. 35-1-83.



Stephen M. Hadley
Chairman



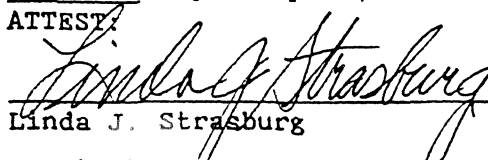
Lenice L. Nielsen
Commissioner



John Florez
Commissioner

Passed by the Industrial Commission
of Utah, Salt Lake City, Utah, this
15th day of April, 1988.

ATTEST:



Linda J. Strasburg
Commission Secretary

CERTIFICATE OF MAILING

I certify that on April 15th, 1988, a copy of the attached ORDER DENYING MOTION FOR REVIEW in the case of MARK D. LETHAM was mailed to the following persons at the following addresses, postage paid:

Mark D. Letham
922 East 10715 South
Sandy, UT 84070

Keith E. Sohm
Attorney at Law
2057 Lincoln Lane
Salt Lake City, UT 84124

Burton K. Brasher
Attorney at Law
Workers Compensation Fund of Utah
P.O. Box 45420
SLC, UT 84145-0420

Erie V. Boorman, Administrator, Second Injury Fund

Gilbert A. Martinez, Administrative Law Judge

Richard G. Sumsion, Administrative Law Judge

Janet L. Moffitt, Administrative Law Judge

INDUSTRIAL COMMISSION OF UTAH

By Pamela Hayes
Pamela Hayes