

1986

Mannes - Vale, Inc. v. Robert K. Vale : Brief of Respondent

Utah Supreme Court

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ENT

IN THE SUPREME COURT OF THE STATE OF UTAH

1986 20917

MANNES - VALE, INC. and/or
STATE INSURANCE FUND,

Defendants/Appellants,

-v-

ROBERT K. VALE and/or the
INDUSTRIAL COMMISSION OF UTAH,

Applicant/Respondents.:

Case No. 20917

BRIEF OF RESPONDENT

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FILED

12 6 1986

IN THE SUPREME COURT OF THE STATE OF UTAH

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STATE INSURANCE FUND, :

Defendants/Appellants, :

-v-

Case No. 20917

ROBERT K. VALE and/or the :
INDUSTRIAL COMMISSION OF UTAH, :

Applicant/Respondents.:

BRIEF OF RESPONDENT

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IN THE SUPREME COURT OF THE STATE OF UTAH

MANNES - VALE, INC. and/or :
STATE INSURANCE FUND, :
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Defendants/Appellants, :
 :
-v- Case No. 20917 :
 :
ROBERT K. VALE and/or the :
INDUSTRIAL COMMISSION OF UTAH, :
 :
Applicant/Respondents.: :

STATEMENT OF ISSUE PRESENTED ON APPEAL

The issue in this case is whether it was proper for the Industrial Commission to implement the rulings of two Utah Supreme Court cases which determined that there is no statute of limitations on workers' claims for medical expenses by awarding medical benefits to Mr. Robert K. Vale.

PROVISION WHOSE INTERPRETATION IS DETERMINATIVE

U.C.A., 1953, § 35-1-78 (Supp. 1985)

The powers and jurisdiction of the commission over each case shall be continuing, and it may from time to time make such modification or change with respect to former findings, or orders with respect thereto, as in its opinion may be justified, provided, however, that records pertaining to cases, other than those of total permanent disability or where a claim has been filed as in 35-1-99, which have been closed and inactive for a period of 10 years, may be destroyed at the discretion of the commission.

Awards made by the Industrial Commission shall include interest at the rate of 8% per annum from the date when each benefit payment would have otherwise become due and payable.

STATEMENT OF FACTS

Applicant, Robert K. Vale, suffered injuries to his eye, ear and shoulder from an industrial accident that occurred on June 3, 1968. (R. 3, 31, 33) Mr. Vale received medical benefits and temporary-total disability through August 23, 1971. (R. 33) Additional medical benefits were claimed by Mr. Vale in 1974, and a payment of \$675.00 was made by Defendant Fund on September 17, 1975. (R. 5) Other medical expense claims of Mr. Vale were refused by the Fund. (R. 33)

A hearing was held on November 29, 1976, in which Mr. Vale sought an award of additional compensation and benefits. (R. 9, 33-37) On December 9, 1976, the Administrative Law Judge issued an order denying compensation and medical benefits incurred on the ground that the statutes of limitations had run. (R. 33-37, Appendix 1)

Mr. Vale filed a Motion for Review on December 27, 1976, and the Defendant Fund filed a Memorandum in Response on April 21, 1977. (R. 39-46, 48-56) The Industrial Commission affirmed the Decision of the Administration Law Judge on May 17, 1977. (R. 58, Appendix 2)

Mr. Vale communicated with the Fund beginning in 1983 and continuing through early January, 1985 in an effort to secure payment for medical benefits under the doctrine of a 1982 Utah Supreme Court case to the specific affect that there is no statute of limitations for medical expenses. (R. 62-82) This effort to secure medical payments was rejected by the Fund. (R.82)

On March 6, 1985, Mr. Vale filed a petition to reopen his case (R. 85) on a printed form entitled "APPLICATION FOR HEARING," thereby seeking medical benefits through order of the Industrial Commission. The Insurance Fund responded through two letters. (R. 88, 90-91) The Industrial Commission issued its order on July 12, 1985, granting to Mr. Vale medical benefits. (R. 93-96, Appendix 3).

On August 19, 1985 Defendant Insurance Fund filed a Motion for Review. On September 4, 1985 the Commission issued its Denial of Motion for Review and affirmed the award of medical payments to Mr. Vale for the period following the Commission's denial of the Fund's Motion for Review of May 17, 1977. (R. 106-109, Appendix 4).

Defendant State Insurance Fund then petitioned this Court for review, seeking reversal of the Industrial Commission's award of those medical payments to Mr. Vale.

SUMMARY OF ARGUMENT

The Industrial Commission ruled correctly in awarding medical benefits to applicant Robert K. Vale because the Commission was implementing the decisions of this Court that there is no statute of limitations for medical expenses, or because the Commission was properly exercising its continuing jurisdiction, or both.

ARGUMENT

THE INDUSTRIAL COMMISSION'S ORDER GRANTING TO MR. VALE PAYMENT OF MEDICAL EXPENSES INCURRED AFTER MAY 17, 1977 SHOULD BE UPHELD SINCE THE ORDER WAS ISSUED UNDER RULINGS OF THE UTAH SUPREME COURT AND PURSUANT TO LAW AND EQUITY.

The Industrial Commission's 1985 award of medical expenses to Mr. Vale for the period following its earlier, 1977, order was correct because following that 1977 order the Utah Supreme Court declared that once an industrial accident was established there is no statute of limitations on a claim for such expenses. In Christensen v. Industrial Commission, Utah, 642 P.2d 755, 757 (1982) the Court confirmed that "'compensation,' as used in the final sentence of section 35-1-99, does not include payments for medical expenses." Hence, in the language of Kennecott Copper Corp. v. Industrial Commission, Utah, 597 P.2d 875, 877 (1979), which the Court in Christensen quoted, once it is determined that there was an industrial accident "there is no limitation as to the time during which the medicals must continue to be furnished."

Here, there was never any question about the existence of an industrial accident. (R. 3, 31, 33, Defendants Brief at 1)¹ Thus, there is no statute of limitations bar to Mr. Vale's claims for medical expenses.

¹ The Insurance Fund had even made a payment of medical expenses on September 17, 1975 (R. 33), less than a year before Mr. Vale filed his claim. (R. 3). In addition to supporting the fact that an industrial accident had occurred, the payment establishes that, even if U.C.A., 1953, § 35-1-99 (1985 Supp.) were considered to be a statute of limitation for medical claims, contrary to Kennecott Copper and Christensen, the requirement of § 35-1-99 that the claim be filed "within three years from . . . the date of the last payment of compensation" was satisfied.

The Insurance Fund asserts, nevertheless, that the 1977 decision of the Commission based on the 1976 ruling of the Administrative Law Judge is res judicata in this action and bars Mr. Vale's recover despite Kennecott Copper and Christensen. It argues that the Commission never acquired jurisdiction and hence could not have continuing jurisdiction under U.C.A. 1953, § 35-1-78 (1985 Supp.) to award Mr. Vale his post-1977 medical expenses.

The Commission did have jurisdiction. The claim that the statute of limitations has run is an affirmative defense. Kimball v. McCormick, 70 U. 189, 259 P. 313 (1927). It is pleaded specifically to the effect that an action is barred by the statute of limitations. Rule 9(h), Utah Rules of Civil Procedure. It was not treated as a jurisdictional matter in either the Kennecott Copper or the Christensen case. It simply is not a predicate for a ruling on the question of subject matter jurisdiction.

The term "without jurisdiction" is sometimes properly used in a general sense as the equivalent of "without discretion."² It was so used by the Administrative Law Judge in his December 9, 1976 Order. (R. 36) His phrase was, "the Commission is without jurisdiction to do other than dismiss the application." Id. At the same time, he rendered a decision on the merits, saying the application "should be denied" and

² "'It [Jurisdiction] is a term in general use, . . . having different meanings, dependent on the connection in which it is found and the subject matter to which it is directed', and it is in fact 'often used without any determinate signification.'" General Trades School v. United States, 212 F.2d 656 (8th Cir. 1954), quoting 50 C.J.S. at 1089-90.

ordering "that the Claimant's application for compensation be, and is hereby, denied." Id. The Commission affirmed the order, in its terms, "wherein the applicant's claim for compensation was denied." Id. at 58.

Having taken jurisdiction and rendered a decision on the merits on the basis of an affirmative defense, the Commission has continuing jurisdiction under U.C.A., 1953, 35-1-78 (1985 Supp.). Through this continuing jurisdiction it can give effect to the rulings and policies enunciated by this Court. It has done so in this case. Moreover, by implementing the Kennecott Copper and Christensen rulings through its 1985 award of medical benefits to Mr. Vale, the Commission not only complied with the law of this Court, but at the same time advanced the policy of the worker's compensation law. That policy is, of course, that the law be liberally applied in favor of coverage of the employee in order to alleviate the hardships that result from industrial accidents. Baker v. Industrial Commission, 17 Utah 2d 141, 405 P.2d 613 (1965); M & K Corp. v. Industrial Commission, 112 Utah 488, 189 P.2d 132 (1948); Park Utah Consol. Mines Co. v. Industrial Commission, 84 Utah 481; 36 P.2d 979 (1934). See also, Marshall v. Industrial Commission, Utah 704 P.2d 581 (1985).

The Insurance Fund cites United States Smelting, Refining and Mining Co. v. Nielson, 19 Utah 2d 239, 430 P.2d 162 (1967), as a bar to the continuing jurisdiction of the Commission in this case. In Nielson the Court construed U.C.A., 1953, § 35-1-78 "to mean the Commission has continuing jurisdiction only

during the period of the limitations statutes" involved. 19 Utah 2d at 242, 430 P.2d at 164. But in the instant case involving medical expenses, there is no statute of limitation because of the rulings in Kennecott Copper and Christensen. Nielson, therefore, does not cut off Mr. Vale's right to recover medical expenses.

A separate element which prevents the 1977 decision of the Commission from being a res judicata bar to Mr. Vale's claim is that the 1977 decision was not final in the sense necessary to give it res judicata effect. (The Fund acknowledges at page 4 of its brief that res judicata can not take effect unless the judgment in question is "final.") Since the Commission had exercised jurisdiction in the case, and therefore has continuing jurisdiction under U.C.A., 1953, 35-1-78 (1985 Supp.), further proceedings "were possible which might alter or upset the judgment," (Brief of State Insurance Fund at 4) and therefore there was no final judgment upon which res judicata could be based.

Res judicata should not apply at all in this case. But even if it did, it would not bar recovery for the post-1977 medical expenses of the claimant. The issue decided by the Commission in 1977 was whether or not the statute of limitations of U.C.A., 1953, § 35-1-99 (Supp. 1985) barred claims for medical expenses to the time of the 1977 hearing. The Commission said in its 1977 ruling (though erroneously it is now clear in the wake of the cases) that those claims were barred by the statute. The claims which the Commission honored under Kennecott Copper and

Christensen in its Orders of July 12, 1985 (R. 93-96), and September 4, 1985 (R. 106-10), had not previously been ruled on. As to them there previously had been no judgment, and therefore they are not barred by the doctrine of res judicata.

Defendant Fund relied in its brief on the Restatement of Judgments. Under the Restatement itself, however, even if the 1977 ruling of the Industrial Commission were found to be a ruling on the question of subject matter jurisdiction, that question can be relitigated where, as here, "[a]llowing the judgment to stand would substantially infringe the authority of another tribunal." Restatement Second, Judgments, § 12(2). The Court's rulings in Kennecott Copper and Christensen would be rendered meaningless if they could be avoided by incarceration of the Commission's decision in a linguistic prison called "no jurisdiction." See also, Restatement Second, Judgments, § 16 (allowing for setting aside of a judgment, such as the 1977 order, which was based on an earlier judgment, such as rulings prior to Kennecott Copper and Christensen, and which was nullified by a later judgment, such as Kennecott Copper and Christensen).

Also, under Restatement Second, Judgements, § 83(2)(d), rules of res judicata do not apply to an administrative decision if the decision is not final. And under Kennecott Copper and Christensen, no ruling of the Commission on a bona fide industrial-accident-claim for medical expenses can be considered final for purposes of the running of the statute of limitations because those cases have held there is no such statute of

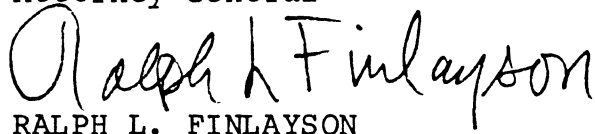
limitations. Judicial constructions extend to all times past and supercede prior "erroneous or inconsistent decisions." See, e.g., Frank v. Mangum, 237 U.S. 309, 344 (1915).

CONCLUSION

Law and policy support application of the Court's rulings in Kennecott Copper and Christensen at least to the post-1977 medical claims of Robert K. Vale. The Commission's 1985 ruling was not barred by lack of jurisdiction or the doctrine of res judicata. That ruling in favor of Mr. Vale should be affirmed.

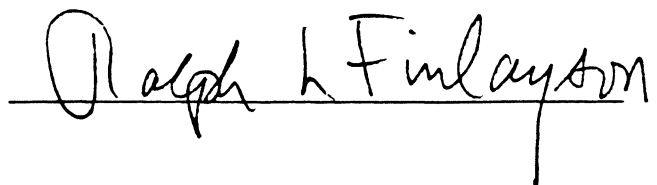
Dated this 26th day of February, 1986.

DAVID L. WILKINSON
Attorney General


RALPH L. FINLAYSON
Assistant Attorney General

MAILING CERTIFICATE

I hereby certify that four true and correct copies of the above and foregoing Brief of Respondent, were mailed, postage prepaid, to James R. Black and Laurie A. Haynie, Black & Moore, 261 East Broadway, Suite 300, Salt Lake City, Utah 84111, Attorneys for Appellants, on the 26th day of February, 1986.



APPENDICES

Appendix 1

THE INDUSTRIAL COMMISSION OF UTAH

File No. 1M2314-1

ROBERT K. VALE,	*	
	*	
Claimant,	*	REPORT AND ORDER
	*	
vs.	*	OF
	*	
MANNESS-VALE, INC. and	*	DISMISSAL
STATE INSURANCE FUND,	*	
	*	
Defendants.	*	
	*	

* * * * *

HEARING: Hearing Room, Industrial Commission of Utah, 350 East 500 South,
Salt Lake City, Utah, November 29, at 10:30 o'clock a.m.
Said hearing was pursuant to order and notice of the Commission.

BEFORE: Keith E. Sohm, Administrative Law Judge.

APPEARANCES: Claimant was present and represented by counsel, Dean L. Gray.

Defendants were represented by counsel, Robert D. Moore.

FINDINGS OF FACT:

The Claimant in this matter was injured during the course of his employment on June 3, 1968 when a vehicle he was driving was struck broadside by a truck causing injuries to his eye, ear, and shoulder. The subsequent partial paralysis of the right eye resulted in near blindness in that eye. The Claimant underwent treatment and received compensation from the State Insurance Fund up to and including August 23, 1971 in the amount of \$5,681.43 in medical payments and \$1,168.40 in temporary total disability compensation. The Claimant visited his eye doctor several times but was examined February 8, 1974 to get a final determination on his eye condition. Vale did not receive a report from his doctor until September or October 1974. In the meantime, he was also examined by an ear specialist. During all of this time from August 23, 1971 to 1974 no claim had been made with the Commission or the State Insurance Fund. Finally bills were submitted to the State Insurance Fund in late 1974 and, after some exchanges of phone calls and correspondence, at least one bill was paid in September 1975. Other medical bill submitted in November 1974 were rejected on the theory that the three year statute of limitations had run as of August 23, 1974.

The Claimant contends that the three year statute of limitations did not apply because the Fund had previously made payments which brought it within the eight year statute of limitations referred to in the law as Section 35-1-66, Utah Code Annotated 1953, and further because the Insurance Fund had made a payment on September 17, 1975 of \$675.00. The Claimant further contends that he is entitled to an award of at least one hundred weeks of compensation for blindness in his right eye under the theory that the prior compensation paid for his eye damage had been improperly computed and should now be corrected pursuant

REPORT AND ORDER OF DISMISSAL
PAGE TWO

to statute 35-1-66 (4) (b).

The Defendant maintains that Section 35-1-99 applies which requires the filing of a claim with the Industrial Commission within three years from the date of the accident or the date of last compensation and further maintains that this section is jurisdictional which leaves the Commission without any discretion in the matter. The Defendant also contends that the payment by the Fund subsequent to the running of the three year statute did not toll the running of the statute nor does the fact that an inadequate payment for eye damage may have been made : toll the running of the statute so that a more adequate payment could be made later. The Defendant further contends that the eight year statute of limitation in Section 35-1-66 does not apply.

THE LAW:

Section 35-1-99 reads in part, as follows:

"If no Claim for compensation is filed with the industrial commission within three years from the date of the accident or the date of the last payment of compensation, the right to compensation shall be wholly barred."

Section 35-1-66 reads in part, as follows:

"The Commission may make a permanent partial disability award at any time prior to eight years after the date of injury to any employee whose physical condition resulting from such injury is not finally healed and fixed eight years after the date of injury and who files an application for such purpose prior to the expiration of such eight year period.

Section 35-1-66 (4) (b) provides for 100 weeks of compensation for total blindness of one eye.

DISCUSSION:

The language of Section 35-1-99 is very specific; a claim must be filed with the Industrial Commission within three years after the accident or after the last payment of compensation and if not it "shall" (mandatory language) be "wholly" (not partially) barred.

In the case of Glen H. Jones v. Industrial Commission, 17 Utah 2d 28 (1965), the Utah Supreme Court affirmed a decision by the Industrial Commission denying an application where the Claimant was last attended by a doctor three years before his present claim was filed but the claim was not paid by the employer until after the three years had passed.

REPORT AND ORDER OF DISMISSAL
PAGE THREE

The Claimant contended that since the employer paid the doctor bill even if it was paid after the three year period, the statute was tolled and was not a bar to recovery. The Court held that the statute was not tolled and the mere fact that the employer paid the medical bills after the three years cannot "emasculate the obvious legislative intent of the statute".

In the case of the United States Smelting, Refining and Mining Company, v. Nielsen, 20 Utah 2d 271 (1968), the Industrial Commission held that the Commission had continuing jurisdiction pursuant to Section 35-1-78 if a Claim had been timely filed in accordance with section 35-1-99. Holding in effect there was no limitation of time within which to file a supplemental claim. The Supreme Court disagreed with the Commission and said that such interpretation to hold an employer or his insurer vulnerable to the further liability indefinitely was not the intent of the legislature. The court held that the Claimant was precluded from an award of any supplemental compensation, namely, medical expenses." The Court reversed the Industrial Commission on the grounds that the six year (now eight year) statute of limitations applicable to the Claimant's award for partial disability had run.

In the Utah Supreme Court case of Fredericks v. Industrial Commission of Utah, 19 Utah 2d 233, (1967) the Claimant was injured on July 9, 1959 and the carrier paid last compensation on January 26, 1960. The file contained the insurance carrier's statement of benefits paid filed October 8, 1959. Mrs. Frederickson had filed nothing more with the Commission until November 12, 1965 at which time she filed an Application for Additional Compensation and Medical Benefits. It was the Court's unanimous decision that the three year statute of limitations had run.

In the case of Don W. Peterson v. Young Electric Sign Company, 29 Utah 2d 446, (1973) the Claimant was injured in February 1964. The insurance carrier filed a report of the injury and made payment of total disability and medical expenses in August 1966. The Claimant then, from time to time, saw various doctors but did not file an application with the Commission until September 1971. In June 1972 a Claims Examiner for the insurance company wrote the Commission stating that the carrier was accepting liability and would pay medical and compensation benefits. However, in July of the same year counsel for the Defendants filed a formal answer with the Commission denying liability on the basis that the three year statute of limitations had run. The Commission denied the application for compensation and the Supreme Court affirmed the Order. The Court in the Peterson case considered the Claimant's allegation that the ruling in the Apex Mining Co. v. Industrial Commission of Utah case, 116 Utah 305 (1949) applied but distinguished the case because in the Apex case the employer filed a report with the Commission and the insurance carrier requested the injured employer employee to appear before the Commission's Medical Panel and both parties assumed that the Industrial Commission had acquired jurisdiction and both had participated in hearings and subsequent proceedings and the Commission made findings which were accepted by the parties. Such was not the case in the Peterson case nor in our case.

In the case of W. W. Gardner v. Industrial Commission, 30 Utah 2d 377 (1973) the Claimant, Camden, was injured July 1968. The Claimant saw a doctor twice in August of 1968 and the last payment from the insurance company was made October 25, 1968. He saw a doctor in July of 1971 and a second doctor in

January 1972, however, no notice of these appointments was given to either the Industrial Commission or the insurance company. On March 31, 1972 Camden filed an application for hearing with the Commission some three years and seven months after the accident and some three years and four months after the last compensation was paid. The Defendant claimed that the statute starts to run from the date of the last treatment, calling on the language in the Jones case, but the Court said there is no basis for such a contention.

The principal cases dealing with an eight year statute of limitations are the cases of United States Steel Corporation v. The Industrial Commission of Utah and William Zele, Sr., 27 U.2d 145, 493 P.2d 986 (Utah 1972); Utah Apex Co. et al. v. Industrial Commission of Utah, et al., 116 U. 305, 209 P.2d 578 (Utah, 1949); and Hardy v. Industrial Commission of Utah, et al., 89 Utah 561, 58 P.2d 15 (Utah, 1936). Those cases are not applicable in this case. There has been no previous adjudication by the Commission in this case, the Claimant has not written any letters to the Commission which are sufficient to constitute the filing of a claim as required in Section 35-1-99, Utah Code Annotated, and the carrier in this case had not requested the intervention of the Commission on anything.

The cases clearly show that the three year statute does apply in this case and that the application of the statute of limitations requiring a filing within three years is jurisdictional and not discretionary with the Commission. If the Claimant failed to file an application within three years after the date of injury or the payment of last compensation, no matter how equitable the claim may be, the Commission is without jurisdiction to do other than dismiss the application. The fact that the Insurance Fund paid something to the Claimant after the statute had run or had negotiated with the Claimant for a considerable period of time after the statute had run cannot be interpreted as lulling of the Claimant into failing to file because he thought payment would be made. The Claimant was not prejudiced by the payment nor the negotiations because the time has already expired and a filing at any period of time after the running of the statute would have been ineffective whether it was a few days late, several months late, or several years late.

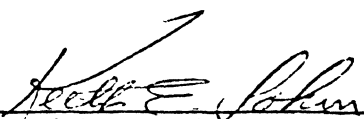
CONCLUSIONS OF LAW:

The application by the Claimant, Robert K. Vale, for additional benefits for medical expenses, for permanent partial disability compensation for temporary total disability compensation should be denied.

ORDER:

IT IS THEREFORE ORDERED that the Claimant's application for compensation be, and is hereby, denied.

Passed by the Industrial Commission
of Utah, Salt Lake City, December 9,
1976.
ATTEST:


Keith E. Sohm
Administrative Law Judge

/s/ Gloria B. Hanni

CERTIFICATE OF MAILING

I certify that on December 9, 1976 a copy of the
attached Report and Order of Dismissal was mailed to the
following persons at the following addresses, postage prepaid:

Robert K. Vale,
14828 North Skokie Ct., Phoenix, Arizona 85022

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Attorney at Law
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Salt Lake City, Utah 84111

Manness-Vale, Incorporated
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Salt Lake City, Utah 84115

State Insurance Fund
350 East 500 South
Salt Lake City, Utah 84111

Robert D. Moore,
Attorney at Law
Ten West Broadway, Suite 400
Salt Lake City, Utah 84101

THE INDUSTRIAL COMMISSION OF UTAH

By Frances Moffat

Appendix 2

THE INDUSTRIAL COMMISSION OF UTAH

File No. 1M2314-1

ROBERT K. VALE,

Applicant,

vs.

MANNESS-VALE, INC. and
STATE INSURANCE FUND,

Defendants.

DENIAL OF MOTION FOR
REVIEW

* * * * *

On or about December 9, 1976 a Report and Order of Dismissal was entered by an Administrative Law Judge of the Commission wherein the applicant's Claim for Compensation was denied.

On or about December 27, 1976 the Commission received a Motion for Review of Report and Order of Dismissal from the applicant by and through his attorney.

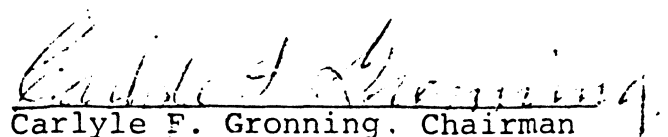
On or about April 21, 1977 the Commission received a Memorandum in Response to Claimant's Motion for Review from the defendants by and through their attorney.

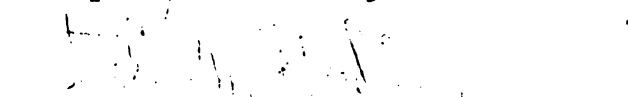
Thereafter, the matter was referred to the entire Commission for review pursuant to Section 35-1-82.53, Utah Code Annotated. The Commission has reviewed the file in the above entitled case and we are of the opinion that the Motion for Review should be denied and the Order of Dismissal of the Administrative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

IT IS THEREFORE ORDERED that the Order of the Administrative Law Judge, dated December 9, 1976 shall be, and is hereby affirmed and the Motion for Review shall be, and is hereby, denied.

Passed by the Industrial Commission
of Utah, Salt Lake City, Utah this
17th day of May 1977.

ATTEST:


Carlyle F. Gronning, Chairman


Stephen M. Hadley, Commissioner

/s/ Gloria B. Hanni

Gloria B. Hanni, Secretary

John R. Schone, Commissioner

CERTIFICATE OF MAILING

I certify that on May 17, 1977 a copy of the
attached Denial of Motion for Review was mailed to the
following persons at the following addresses, postage prepaid:

Mr. Robert K. Vale
14828 North Skokie Ct.
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Attorney Robert D. Moore
Suite 400, Ten West Broadway
Salt Lake City, Utah 84101

THE INDUSTRIAL COMMISSION OF UTAH

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By _____

Appendix 3

THE INDUSTRIAL COMMISSION OF UTAH

Case No. 85000225

ROBERT K. VALE,

Applicant,

vs.

MANNESS-VALE, INC., and
STATE INSURANCE FUND,

Defendants.

ORDER

On or about December 9, 1976, a Report and Order of Dismissal was entered by an Administrative Law Judge of the Industrial Commission. The Administrative Law Judge found that under Section 35-1-99, Utah Code Annotated, the Applicant's claim for additional benefits was barred in that it was not filed within three years from the date of the accident or the last payment of compensation. On December 27, 1976, a Motion for Review was filed by the Applicant's attorney, followed by a response to the Motion for Review filed by the Defendants on April 21, 1977.

On May 17, 1977, the Commission denied the Motion for Review and upheld the Administrative Law Judge's denial of benefits.

On March 4, 1985, a second Application for Hearing was filed by the Applicant asking for additional medical benefits. An Answer to the Application was filed on March 19, 1985, by the Defendant, Utah State Insurance Fund, alleging basically that because the issue of ongoing medical benefits was held to be barred as well as compensation benefits by the 1976 Order, the issue was res judicata and therefore not subject to Commission review.

After substantial correspondence, the matter was referred to the Commission for opinion.

Since the Administrative Law Judge's Order of December 9, 1976, the Supreme Court on numerous occasions has interpreted the meaning of Section 35-1-99, Utah Code Annotated. Two cases are directly on point. In Kennecott Copper Corporation v. the Industrial Commission of Utah and Bill Bilanzich, 597 P.2d 875 Utah (1979), the Court addressed the question of whether the category of "compensation" encompassed medical benefits in addition to temporary total disability and permanent partial disability compensation. The Court held that medical benefits were separate from "compensation" and were not to be barred under the statute of limitations referenced in Section 35-1-99. The Court relied on the language contained in Sections 35-1-45 and

ROBERT K. VALE
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35-1-81 to interpret the legislative intent to distinguish between medical benefits and compensation. The Court concluded:

The reasons for making this distinction between compensation to be paid for loss of wages because of injury and disability, as contrasted to the payment for medical expenses in connection therewith, is that the law is firmly established that, once it is determined that there was an industrial accident, there is no limitation as to the time during which the medicals must continue to be furnished.

The Bilanzich case was affirmed subsequently in Mel Christensen and State Insurance Fund v. Industrial Commission of Utah and Scott Morrison, 17426 Utah (1982). That case, decided after the May 12, 1981, amendments, ruled:

A well-established canon of statutory construction provides that where a legislature amends a portion of a statute but leaves other portions unamended, or re-enacts them without change, the legislature is presumed to have been satisfied with prior judicial constructions of the unchanged portions of the statute and to have adopted them as consistent with its own intent. State v. Roberts, 56 Utah 136, 190 P. 351 (1920); Quaremba v. Allan, 67 M.J. 1, 334 A.2d 321 (1975); Ladd v. Board of Trustees, 23 Cal.App.3d 984, 100 Cal.Rptr 571 (1972); People v. Mills, 40 Ill.2d 4, 237 N.E.2d 697 (1968). Two years after our Bilanzich decision, the Legislature amended Section 35-1-99 without altering the sentence this Court construed in Bilanzich. Ch. 287, 1981 Utah Laws 1361. Consequently, we conclude that Bilanzich correctly interpreted the intent of the Legislature in holding that 'compensation,' as used in the final sentence of Section 35-1-99, does not include payments for medical expenses. We reaffirm that decision.

When the Supreme Court has so adamantly clarified the legislative intent of Section 35-1-99, the Commission is compelled to enforce the Court's directives.

The Commission therefore finds that the Administrative Law Judge's Order of December 9, 1976, is not res judicata in respect to the continuing obligation of the State Insurance Fund to pay medical benefits.

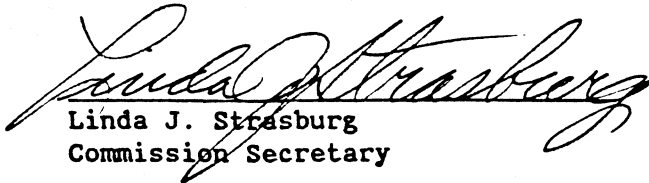
IT IS THEREFORE ORDERED that the State Insurance Fund be allowed thirty (30) days from the date of this Order to investigate the claim, after which a response should be filed with the Commission indicating whether Mr. Vale's medical benefits will be paid or denied.

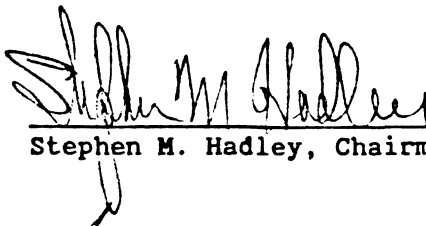
ROBERT K. VALE
ORDER
PAGE THREE

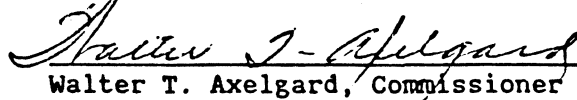
IT IS FURTHER ORDERED that any Motion for Review of the foregoing shall be filed in writing within fifteen (15) days of the date hereof specifying in detail the particular errors and objections, and unless so filed this Order shall be final and not subject to review or appeal.

Passed by the Industrial Commission
of Utah, Salt Lake City, Utah, this
12th day of July, 1985.

ATTEST:


Linda J. Strasburg
Commission Secretary


Stephen M. Hadley, Chairman


Walter T. Axelgard, Commissioner


Lenice L. Nielsen, Commissioner

CERTIFICATE OF MAILING

I certify that on the 16th day of July, 1985, a copy of the attached Order was mailed to the following persons at the following addresses, postage paid:

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

Gilbert A. Martinez, Administrator
Second Injury Fund

Robert K. Vale
2544 West Campbell, #37
Phoenix, AZ 85017

THE INDUSTRIAL COMMISSION OF UTAH

By DeAnn

Appendix 4

THE INDUSTRIAL COMMISSION OF UTAH

Case No. 85000225

ROBERT K. VALE,

Applicant,

vs.

MANNESS-VALE, INC. and/or
STATE INSURANCE FUND,

Defendants.

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DENIAL OF

MOTION FOR REVIEW

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On July 12, 1985, the Commission issued an Order requiring the Defendant, State Insurance Fund, to pay further medical expenses to the Applicant, for expenses incurred after the Applicant was denied benefits finally in a May 17, 1977, Commission decision. On August 19, 1985, the Defendant, State Insurance Fund filed a Motion for Review with the Commission, stating that the Applicant should be denied any further benefits as the unappealed Commission Order of 1977, denying all benefits, was res judicata on the issue of the State Insurance Fund liability for any benefits. The Commission is of the opinion that the Motion for Review must be denied. A review of the file follows.

The Applicant was injured in a traffic accident on June 3, 1968, while in the course of his employment. The State Insurance Fund paid temporary total disability benefits and medical expenses for the Applicant through August 23, 1971. The Applicant continued to see physicians for both his eye and ear injury and submitted several bills to the State Insurance Fund after August 23, 1974. Although the State Insurance Fund did pay one of the bills in September 1975, other bills were rejected because the State Insurance Fund felt that the Applicant was barred further recovery due to the notice requirements of U. C. A., Section 35-1-99.

On May 28, 1976, the Applicant filed his claim for compensation claiming medical expenses and permanent partial impairment benefits. On November 29, 1976, a Commission hearing was held and on December 9, 1976, the Administrative Law Judge issued his Order dismissing the Applicant's claim. The dismissal was based on the Applicant's failure to comply with the requirements of U. C. A., Section 35-1-99, which requires that a claim be filed with the Commission within three years of the last payment of compensation. At the time, the Administrative Law Judge issued his Order, the

ROBERT K. VALE
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language of U. C. A., Section 35-1-99, provided that failure to file a claim within the three year period wholly barred the right to compensation. The Applicant filed a Motion for Review which was denied on May 17, 1977. No appeal was filed with the Supreme Court.

On March 6, 1985, the Applicant filed an Application for Hearing with the Industrial Commission claiming benefits for additional medical expenses incurred as the result of the 1968 accident. The Defendant, State Insurance Fund, answered the Application by stating that the issue of liability for the State Insurance Fund had been decided in the May 17, 1977, Order and that, in the alternative, there was insufficient evidence to show a causal connection between the 1968 accident and the additional medical expenses incurred. On July 12, 1985, the Commission issued an Order finding the State Insurance Fund liable for the additional medical expenses. The Commission Order stated that the Supreme Court has clarified the intent of U. C. A., Section 35-1-99, in several opinions issued since the May 17, 1977, Order which the Defendant claims to be res judicata. The Order states that the Supreme Court has determined that reference to "compensation" in U. C. A., Section 35-1-99, does not include medical expenses, and thus, U. C. A., Section 35-1-99, provides for a statute of limitations for an award of compensation and not one for medical expenses.

The Motion for Review filed by the Defendant, State Insurance Fund, on August 19, 1985, states that regardless whether the Administrative Law Judge or the Commission incorrectly interpreted the law at the time of the 1977 Order, the Order was not appealed to the Supreme Court, and thus, that Order is final and res judicata on the issue of liability for the State Insurance Fund for further medical expenses. We agree in part with the Defendant. The exact issues before the Administrative Law Judge and the Commission at the time of the 1977 Order are not now reviewable. No appeal was made at the correct time and the Commission cannot now overrule the decision made at that time despite subsequent Supreme Court clarification of the law. However, the issues before the Administrative Law Judge and the Commission in 1977, were first, an award of permanent partial impairment benefits, and second, medical expenses incurred prior to 1977. Therefore, the Applicant is barred from an award of benefits based on either of those two claims. The March 1, 1985, Application for Hearing, and the July 12, 1985, Order deal, with medical expenses incurred after the 1977 Order, and this issue has not yet been decided by the Commission. Res judicata does not bar the decision made by the Commission in the July 12, 1985, Order. Therefore, we deny the Defendant's Motion for Review, and affirm the July 12th, Order as the new issue before the Commission must be resolved based on Supreme Court interpretation of the intent of the legislature regarding U. C. A., Section 35-1-99. The State Insurance Fund is liable for the Applicant's medical expenses caused by the June 3, 1968, accident incurred after May 17, 1977.

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IT IS THEREFORE ORDERED that the Order of the Commission dated July 12, 1985, is affirmed and the Defendant's Motion for Review is denied.

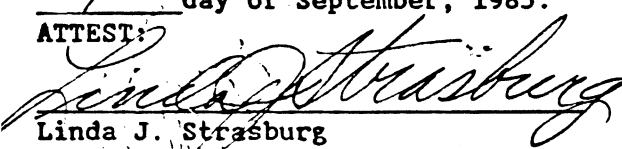
IT IS FURTHER ORDERED that the matter be remanded to the Administrative Law Judge to determine the amount owed the Applicant at the present time for medical expenses incurred subsequent to the May 17, 1977, Order.

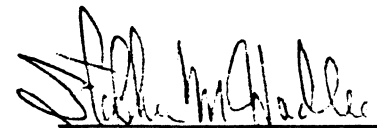
Passed by the Industrial Commission
of Utah, Salt Lake City, Utah, this

4th


day of September, 1985.

ATTEST:


Linda J. Strasburg
Commission Secretary


Stephen M. Hadley
Chairman


Walter T. Axelgard
Commissioner


Lenice L. Nielsen
Commissioner

CERTIFICATE OF MAILING

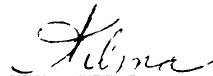
I certify that on September 5th, 1985, a copy of the attached Denial of Motion for Review in the case of Robert K. Vale, issued September 4th 1985, was mailed to the following persons at the following addresses, postage paid:

Robert K. Vale, 2544 West Campbell, #37, Phoenix, AZ 85017

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

Erie Boorman, Administrator, Second Injury Fund

THE INDUSTRIAL COMMISSION OF UTAH

By 
Wilma