

1998

# Wilner A. Blakley v. Utah Labor Commission : Brief of Appellant

Utah Court of Appeals

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**BRIEF**

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DOCKET NO. 980268-CA

Pro Se

IN THE UTAH COURT OF APPEALS

WILNER A. BLAKLEY  
Petitioner

BRIEF  
Case No. 980268-CA

V

UTAH LABOR COMMISSION  
Respondent

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VERBAL HEARING  
REQUESTED

**FILED**

Utah Court of Appeals

SEP 01 1998

Julia D'Alesandro  
Clerk of the Court

Wilner A. Blakley  
v.  
Utah Labor Commission  
and Salt Lake County

Labor Commission Case No. 96-0413  
Court of Appeals Case No. 980268-CA

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IN THE UTAH COURT OF APPEALS

WILNER A. BLAKLEY )

Petitioner )

) BRIEF

vs. )

) Case No. 980268-CA

UTAH LABOR COMMISSION )

Respondent )

1. DATE OF ORDER APPEARED FROM **October 14, 1997.**

2. POST ORDER MOTIONS AND DATE FILED.

- a] Request for Review Filed on November 10, 1997.
- b] Request for reconsideration filed March 31, 1998.

3. FINAL ORDER:

Order denying request for reconsideration entered April 30, 1998.

4. DATE OF FILING PETITION FOR REVIEW;

Petition for review filed in the Appeals Court May 29, 1998  
assigned case no. 980268 CA.

5. JURISDICTION:

The Court of Appeals has jurisdiction in the matter pursuant to  
Utah Code ;Ann. 34A-2-801 [6][a] [1997]; 78-2a-3[2][a] [1996]

and 63-46b-166[1]] [1997].

6 NAME OF AGENCY: Utah; Labor Commission

## 7 STATEMENT OF FACT:

This proceeding initiated by claim for workmen compensation after the December 1994 removal the right great toe, which was removed to stop infection that set into the ulcer caused by the petitioner being able to move the seat back to egress and ingress the Van while picking up seniors to the Friendly Neighborhood Center {FNC} and returning them to their homes in about a five hour period this could be 30 to 50 ingress and the same amount of egress twisting your feet to the left to egress and to the right, when you Ingress the records indicates 365 people picked up November 1994 in this cramped and difficult situation, see page 84 John Hutchinson the petitioners supervisor and page 85 line 7 "Q I did make a request to you that the tracks be moved back on the new van." line 9 answer Yes. This was never done. The June 1995 removal of the great toes on the left foot was also the end results of the trauma created during the same period; the difference is that the Doctors had pretty well declared it healed after treating the Ulcer under a research program starting in late January 1995.

In May of 1995 the petitioner went out to an opening of NORTHWEST BANK as a Volunteer representing the FNC advisory Council, as they had promised to donate money to the Council for recreation activities for the seniors at the Center. The next day the petitioner noted swelling around the wound and reported to the Hospital, which the Doctor reported tunneling, which indicated the healing from the outside in, instead page 2 inside out, this was treated until mid June when the decision was made to remove the left great toe to stop infection in the bone. August 15, 1995 Doctors declared healed and the petitioner was released to return to work under certain conditions that the Driver seat be adjusted for correct ingress and egress, a simple request for the employer to comply with for the disabled petitioner, this was not done. No. 2 a volunteer to accompany the driver for the purpose of helping load and unload the Seniors to relieve the Petitioner from the many Egress and Ingress on his tender feet. This was granted by the employer. Instead of the new van being adjusted petitioner was assigned one of the older vans similar to the one driven from May 31, 1994 Until Nov. 1, 1994, refer to Marlene Allen's testimony transcript of the January 23, 1996 hearing Page 68 starting with line 22 through Page 73 line 14. This worked fine until November 1995 thanksgiving celebration at the Senior Centers, when the petitioner found in his box an unsigned note refer to Monty's testimony page 93 line 6 through page 94 line 1 of the

transcript of the January hearing. "Gordon or Will someone is gonna have find their own van for the Friday pick up for Eastside" Refer to page 86 line 22 through line 20 page 87 John Hutchinson testimony during the January 1997 hearing on van assignment in November 1995. The contention of the respondent and the Medical panel that the limited number picked up that day even in that cramped situation of the new assigned Van could not or that it was doubtful that any TRAUMA could have occurred to the right foot to cause final amputation of the other four toes refer to page 88 line 2 through line 10 page 90 Mr. Stones Cross examination of John Hutchinson at the hearing; also in the ALJ finding of facts paragraph 2 and 3 page 6 and 7, also the last paragraph of the Medical panel report "does not really see any good reason for there having been any significant undue trauma to the feet" all picked up the one day in November of 1995 to base the decision on when as pointed out it was the month of November 1994 where the original trauma happened and the 1995 incident reoccurred in a cramped Van because of the condition the Petitioners feet were in after two operations and 10 months of recovery and the VA doctor had released the petitioner to work stipulating not to drive the van in the cramped situation the Supervisors were advised, but still allowed this assignment in November 1995 to occur. Reference is also made the fact the employer was involved at the same time in sending drivers and supervisor to the UDOT start II program at the same time. The petitioner a 72 year old Senior, who was employed by the Senior Center division of Aging Services A Salt Lake County agent, that obtain Federal funds to provide a better life for the Senior population of the County, which the petitioner is one and in the process of the injury the defendant are defending the Workmen Compensation (a self insured agency of the employer) against the Senior employee who is entitled to and from the Federal grants better cooperation. The employer has to their disposal tax paid attorneys and tax paid personnel, while the untrained Petitioner has had to seek out all the legal work plus do his own typing on his own computer as it could be a conflict of interest for the employer page 3 to help the petitioner, which has been very obvious the last two months to get official driving records for the period in question in 1994 and the fact that it was necessary to Subpoena the Supervisors to the hearing over signing a statement of facts as Marlene Allen was told you sign that statement your position could be in Jeopardy. Doing research on this case and hearing Mary Ann Cowan talk at FNC, a disabled employee, who works for the Salt Lake County Personal dept. on the Disability area the petitioner is quite aware

that the Disability a part of the Discrimination act and have no enforcing teeth and the only way to get help is through the elected Officials, etc.; however it seemed reasonable to the Petitioner, since the Title V program is a Federal funded program administered through Salt Lake County Aging Services and the petitioner is in training in this program and his particular program was set up by Dan Weinrich and David Turner, the site Manager at Health Aging Program specified the petitioner was to proceed to improve his computer skills, which he has by two courses and practice on the job. this brief and other documents has required a great deal of typing and computer practice since the attorney who is connected with a large firm, after he had helped the petitioner with the Docketing statement was told by people above him to get off the case. It seemed reasonable for a disabled employee to request this work be done on Senior Employment time and on County equipment this was flatly turned down.

#### ISSUE FOR REVIEW AND STANDARD OF REVIEW

;Whether there was good reason to believe that there was significant undo trauma to the Petitioner's feet is supported by substantial evidence.

STANDARD OF REVIEW; "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. In applying the substantial evidence test, we review the whole record before the court .."Grace Drilling Co. V Board of review 776 P.2d 63, 68 (Utah App. 1989) Utah Code Ann. 46bb-16{4} {g} (1997). See Smith v Mity Lite, 939 P.2d 684, 696 (Utah App. 1997). whether the Conclusion of Law that Petitioner failed to establish a medical cause to defeat entitlement to workers compensation is supported by the record by any evidence or whether the bounds of reasonableness and rationality,

STANDARD OF REVIEW.The Substantial evidence; requires review of the entire record; before this court.See Drake industrial Commission of Utah, 939 p2d 177 180. {1997}; Smith v Mity Lite 939 p2d 684, 686 {Utah App. {1997}}. Whether the conclusion ;that the petitioner's pre existing diabetes was the sole contributing fact to the resulting amputation to his feet, where ;said conclusion is based on assumption and not supported by any record testimony and is contrary to the to the uncontradicted testimony of the petitioner is supported by substantial evidence on record as a whole or is otherwise reasonable and rational: Standard of Review: See PP above. Utah Code Ann. 63-46{b}{4}{g} { 1997},



Drake v Industrial Commission of Utah 939 p.2d 177, 180, {Utah 1997}. {This Court must give some scrutiny to the record in its review.

Whether the Administrative Law Judges conclusion. adopted by the labor Commission, that the ;Petitioner failed to establish medical cause entitling Petitioner to works Compensation benefits and the conclusion of the ALJ. which conclusion was adopted by the Labor Commission that it was unnecessary to make a a finding as to whether or not; Petitioner proved a legal cause of his injury for the purpose; of entitlement; to workers compensation benefits is supported as a matter of law.

Standard of Review:The appellate court reviews a question of law applying a "correctness" standard. Drake v. Industrial Commission of Utah. 939 p 2d 177, 180 {Utah 1997}.

Whether the Labor Commission has properly given purpose and effect to the Workers Compensation Act by failing to acknowledge and recognize that said Act was to provide economic protection for employees, like Petitioner, and that any doubt respecting Petitioners right to compensation should have been resolved in his favor.

STANDARD OF REVIEW; Appellate court reviews question of law of an agencies determination under a standard of "correctness" Drake Industrial Commission of Utah 939 p.2d 177,180 {Utah 1997}

DETERMINATIVE LAW < Utah Code Ann. 35-145 {1997} Provide in relevant part. Each employee who is injured by accident arising out of and in the course of his employment where ever such injury occurred if the accident was not purposely self inflicted shall be paid compensation for loss sustained on account of injury.

Whether the conclusions of fact and law are supported by the entire record as a whole and whether Petitioner has met his burden established by the Supreme Court in Allen v Industrial Commission 729 p.2d 15 {Utah 1986} See Justice Stewart dissenting, id.

RELATED APPEALS- none—

THE DOCTOR PANEL REPORT

THE ALJ CONCLUSION OF LAW Case No. 96413 dated October 14,1997. "In addition, the panel report restates Dr. Thueson's conclusion that the

petitioner's work as van driver, even in cramped van he had to use on one occasion in 1994." The ALJ ignores the fact stated in previous testimony that the new van assigned November 1, 1994 and was driven four days a week Monday East Side Senior Center estimate 12, Tuesday of Friendly neighborhood Senior Center {FNC} 16 Wednesday Thursday 25 a total of 68 plus in four days every week making the Ingress and Egress Estimate 140 times just loading and unloading Senior Citizens plus the many times in an out the Van getting ready to pick up the care of the van when finished example washing the Van, Gassing it up taking it the garage and inspection of Van increases the number of Ingress and Egress, in support of these figures the employer has supplied a number of 365 people picked up in November 1994 for FNC this does not include pick up for East Side Center on Mondays During the month of November 1994 after the petitioner was assigned the new Van November 1, 1994. The respondent at the hearing of January 23, 1997 emphasis's on the minimum driving Petitioner performed during the Thanksgiving day crunch November 1995 and that is not what the claim is about, the claim is shortly after the assignment of the new dodge van the petitioner filed a verbal complaint to his supervisor John Hutchinson the Director of FNC in November 1994 of the conditions and the problem of Ingress and Egress and as a Diabetic which is a Disability disease and a simple request to correct a work condition for a disable person and during this driving the month of November of 1994 did the damage to both feet that did create Amputation.

Refer to Page of the transcript of the hearing.

#### THE MEDICAL PANEL REPORT.

(ref. page 9 FINDING OF FACTS CONCLUSION OF LAW AND ORDER] index as No.1 In the DOCKETING STATEMENT.

'The Medical panel noted that there was no good reason to believe that there was any significant undue TRAUMA to the feet based on the description of the work duties offered the medical panel," the following quote from Dr. panel report to ALJ June 9, 1997. "However we would leave it to the ALJ to make further determination if this represents an activity, the nature of which is beyond what the PUBLIC is ordinarily exposed to"Refer made to this Dr. R. Kelly Thueson, M.D. Internal Medicine chosen Dr. of the defendant. reference made to Blakley comments on Dr. Thueson report page 5-8 Index of the complete file For review before the the Utah Court of Appeal. "However, I am somewhat

sympathetic to the examinee's plight, as he reports to me requesting the use of a van which permitted easier egress than the model of van he was assigned. "The ALJ decision to adopt the erroneous medical panel report and Dr. Thueson report over Dr. Mortiz report from the VA MC, who was one of treating Doctors as well as one of the operating Dr. March 26, 1996. The determination by the Medical Panel that there was not enough TRUMA to effect the feet. The word Trauma in medical terms is the breaking of the skin and the Merriam = Webster dictionary "a bodily or mental injury usually caused by an external Agent "The Trauma to the petitioner feet by the cramped position and the many twisting Egress and Ingress of driving the month of November 1994 to cause petitioner to be admitted to the VA Hospital Dec. 12, 1994 for treatment and remain until Dec. 24 1994 after the right toe amputation and the a Home nurse Daily until August 1995.

THE MEDICAL PANEL REPORT DATED June 9, 1997 received July 9, 1997 at the ALJ office Industrial of Utah, Transmittal no. 710-714 to the UTAH COURT OF APPEALS dated June 12, 1998.

The following discrepancies discovered by the petitioner and because of the multitude involved went to see the ALJ and during the conversation petitioner ask and understood the ALJ that there we would be a verbal hearing on the Medical Panel report to correct the following errors prior to the ALJ final report, which did not happen.

"It is noted that diabetes was first diagnosed in about 1970, as indicated when he was admitted at the V.A hospital in 1984. With a long history of smoking and relative neglect of diabetes" The Medical Panel has not documented the above statement. The facts are; Diabetes Diagnosed in 1972 by Dr. Erb in Waterloo, Ontario, Canada and petitioner was put on Oral Medication, which was an excellent control, Diabetes was further controlled Oral Medication prescribed by Dr. Wolfe, Caldwell, Idaho, where the petitioner had relocated early in 1977. during this period he had his last drink of alcohol April 21, 1979 and have been sober continuos to this date, on the smoking the petitioner has not had a Cigarette or any other kind of Nicotine since February 1989, when petitioner was admitted to VA emergency room and Moved to the University hospital where he was operated on for a G.I. Bleed, caused by a medication Fendel prescribed for Arthritis in the left elbow. The Medical Panel as well as Dr. Thueson's report spend a great deal of time on the subject of alcohol and smoking, which all they knew is what the petitioner told them and the petitioner is quite proud of quitting both habits and has helped his health tremendously. Concerning the remark neglect of his

Diabetes if the panel went through the V.A file as they claim they could readily seen the regular visits to the Diabetic clinic, POD clinic, eye clinic all connected with the care of diabetes. The Podiatry clinic [POD] is required for treatment of Diabetes. VA recommends and insists you do not even trim your own toenails if you are Diabetic, it appears the petitioner did not neglect his Diabetes as suggested by the panel.

#### THE VISIT TO THE VA HOSPITAL 1984.

The petitioner had learned that the VA was looking for Veterans, who had been exposed to Atomic fall out which the petitioner was in early September 1945 as a Marine serving in the Occupation forces did walk down the street of Nagasaki, Japan. This set a complete physical and it was noted an irregular heart beat and petitioner was hospitalized over night. This set up for petitioner to get Diabetic medicine from the VA, as well as petitioner gave information that he had done a great deal of Alcohol drinking primarily on business etc. as he done extensive travel for the Company during the 30 years foreign and domestic and had quit April 21, 1979 and done this through AA [Alcoholic Anonymous] which petitioner has attended 4 and 5 meetings a week and have successfully sponsored Judges, Lawyers, Priests, Doctors Truck Drivers etc. and presently completing a two year term as DCMC [District Committee Member Chair] District 2, which covers all groups from 21st South North to Davis County West to Grantsville approximately 60 groups, with the 19 years experience in this field the petitioner would be most happy to debate the Doctors Panel on this issue and have a difficult time why so much time was spent on this and so little time on petitioner's feet injury.

This quote from the Dr. Panel report "1986 he had some kind of growth and ulcer with numbness on the right foot" This is not documented from the records. The visit to the VAMC Salt Lake City was to establish contact and have my records moved from Boise, as petitioner had relocated in Salt Lake City August of 1986 and you do get a physical in this process. "In 1987 insulin therapy was recommended and declined" The VA visits patient is first seen by an Intern who makes recommendations to the Doctor in charge of the clinic and it was the Doctor in Charge, who made the decision to continue at the time with Oral medication.

In February 1989 had a severe GI bleed, caused by a prescribed medication FINDEL for arthritis, The operation was actually preformed at The University Hospital, which has a working and training relationship with

the VAMC. the records will indicate that the petitioner received 34 units of blood to keep him alive thru the night until the operation the next morning and then was confined to the VAMC for several days for recovery, and many visits to the VAMC during the next year of Convalescent.

This quote in the Doctors Panel report "Thru 89-90 he was described as being complacent with Diet and blood sugar a glucose of 315 noted' The facts are in the fall of 1989 after the severe operation in February 1989 the petitioner went into a depression and went to Day Hospital Clinic and for further treatment it was recommended and which the petitioner pushed wheel chairs for patients at the VA Hospital and during this time did volunteer for a research where blood was drawn three times a week it showed 315 (Dr. Clarke should have known since his field is Diabetes this type of glucose reading can happen no matter what} and the nurse rushed the petitioner down to emergency, every thing was fine in a couple of hours, it is amazing the panel would take small inserts of this type out of nearly 600 pages of medical records on file.

"In 1990 he was admitted to be placed on insulin and at that that time reported numbness of the feet in the previous six or seven months however he continued on diet and oral medication November of 1991, when he started on insulin. A month later his leg was reported numb and cold. In March of 1992 he had increasing cramping of the toe and required toe nail care. In May of 1992 he was noted to have aching feet and joints, but no ulcer." The dates quoted are regular visits to the clinic set up the Doctors to follow a Diabetic patient and each time usually the patient has a different INTERN who is in training in the POD and Blue clinics at the V.A. Hospital, Salt Lake City, Utah and the patient if cooperating will tell all the symptoms since the last visit for the benefit on INTERN, which the petitioner was on all visits. " In July 1993 he was seen for a laceration on the right toe and in September he had Drainage from the great left toe and that nail was infected and ulcerated " The petitioner recall specific events on this during the night he had got up to go to the bath room and stubbed his feet and rather than wait for the black toenail to fall off on the regular visits the Doctor removed the toenail. The feet were then treated with a prescription medication SILVADENE.

The Medical panel chose not to report of the research that was started in early 1995 on the left foot on the small trauma also created by the

Ingress and Egress of the Van in November of 1994, which the petitioner did definitely pointed to the chairman of the panel and his comment oh well it is impossible to tell anything about these research projects, Medically this may be true or false; however this the petitioner does know it affected his left foot. as they declared it healed and in May 1995 the petitioner went out a Northwest bank opening as a Volunteer, which is suppose to have insurance but did not collect anything on this, from the advisory Council of FNC, the rewards was a donation to the Council to be used for entertainment etc. for the Seniors at the Center, that evening the left foot was red and a little swollen the next morning the petitioner reported to the V.A and treatment was continuos on a daily basis until June 15, 1995 when the left great toe was amputated and continued regular visit to POD until August 15th, 1995 when the Doctors declared both feet healed and with certain conditions drive the Van again; which were the track on the driver seat be moved back to allow proper egress and ingress and taking a volunteer to help Seniors in and out of the Van. The results of this request previously covered.

The 6th paragraph page 2 Panel report "The records note a large ulcer on the right foot and on 27 November the ulcer was Debrided. He was given antibiotics and followed" this is the blister or ulcer that resulted in driving the new Van referred to in November of 1995, which had the same Ingress and Egress problem as the Van assigned November 1, 1994, which created the original problem. The followed quoted amounted to regularly visits to the VA for treatment from November 27, 1995 until March 26, 1996, when the petitioner was admitted to the hospital and the remaining four toes were removed on the right foot after being confined in the hospital for a couple days then sent home in a wheel chair to recover. In early 1996 petitioner's employment was terminated without any offer of any other employment, even though the petitioner was sent to Start 2 training in Provo by the employer in November of 1995 and a safety job could have been created re the Vans from this training and was suggested to the employer. The petitioner returned to the title V program and was assigned a work site at Fellowship Hall, an Alcohol Support establishment until June of 1997, when the Title 5 program sent the petitioner to the University of Utah ALCOHOL & DRUG TREATMENT school, which the petitioner successfully completed and reassigned to the work site Healthy Aging program, which is part of my Employer Aging Services, where the petitioner worked until June 1998, when the Program sent the

Petitioner to the UNiversity for the 1998 session of the ALCOHOL & DRUG TREATMENT school. The petitioner assigned July 1998 to the election office of the Salt Lake County Clerk's office, Sherrie Swensen, a very rewarding assignment.

#### EXAMINATION;

Toward the end of the interview the Chairman of the Panel commented oh I guess since this is about your feet I guess I had better look at them, which he did a quick look and the usual tapping etc. he done this because felt he had to, this one page 3 under examination  
Panel report to ALJ 9 June 1997.

The final page 4 of the panel report suggests they are using "The AMA Guide to Evaluation Impairment fourth Edition, as modified was used as a reference." The paragraph 1} "There is not a medically demonstrable connection between the petitioner's feet ulcers and the amputation and his work as a van driver during 1994 and 1995,subject to the following comments"

Medically the comments the panel make on alcohol relates only to the fact that the petitioner told him he quit drinking alcohol on April 21, 1979. The panel has no medical proof of the use of the petitioner's use of alcohol and add this just to sound good at doing the panels job. "He has been obese." In checking with the Doctors recently medically Obese is when an individual is 20% higher than the guide lines petitioner Height 6 foot 2 inches guide line weight 202 lbs. Using guide lines the petitioner would have to weigh in excess of 240 lbs. During the period of the medical records the panel has the petitioner weight has been between 190 and 215 lbs. This is just one more reckless statement made by the Medical Panel in this report without any reference to Medical proof. The continue suggestion that because the petitioner told the panel he quit smoking In February 1989 the Chairman of the Panel continues to comment on it without reference to the medical files in a negative way, when in fact if he checked the records he would find from physicals X rays etc the petitioner escaped damage even though he smoked many years. "He had HYPERCHOLESTERMIA " This word is not in my dictionary therefor the petitioner has to assume this a term the panel is using to mislead or impress the ALJ. The use of the word NEUROPATHY is not in the Dictionary Neuro has to do with nervous system and it is known to a diabetic your nerves end

in your feet

and are subject to numbness. "and prior indication of vascular susceptibility and need for special care and treatment."there was no special treatment until December 1994 Most appointments were regular schedules based on the VA system of treating Diabetic patient and has worked very well for the petitioner.

The Medical panel comments on the job while driving the ford Van June, July; August; September & October of 1994 placement was relative ideal, drive a little then walk a little that would have been ideal; however that is not what the job consisted servicing the vehicle checking the list driving thru heavy traffic to pick up the Seniors they didn't just come out and in the Van you went to the door helped most of them to Van thru the sliding door up on the stool into the Van help them buckle the seat belt put the stool inside closed the heavy Van Door go to the next person same performance drive then to the Center unload the people see to it they are safely inside then go get the next load normally they were all in by about 11:00 AM put the van away and at 1:30 pm taking them and do the same in reverse. service the van finish about 3:30 PM you are basically on the job 6 plus hours for four hours pay, Us older Senior are not always happy so you put with a great deal of complaining. The petitioner was quite concerned over this assignment because of the stress and physical activity, many younger drivers had the same complaint, therefore the job was not ideal for a disabled person and the job was beyond what an ordinary person's activities might be expected to include. Referring to Transcript of Tape recorded proceedings page 85 starting line 10 thru 25 John Hutchinson supervisor testifying, relates not only to the fact that the intention was for petitioner to return to work the full four day driving schedule, also confirms that the petitioner did successfully attend a training program UDOT START II PROGRAM, which consisted of detail training in the areas of Driver Safety Inspection, Driver Sensitivity and Passenger Assistance Techniques, Identification of adult Abuse, Quality Improvement Principles, Driver Skills, Emergency Equipment Usage. This course is supported by the UTAH DEPARTMENTS OF TRANSPORTATION {UDOT} and HUMAN SERVICES OF AGING AND ADULT SERVICES. For the Medical Panel to simplify the assignment is reckless and indicates they did not have proper experience to comment. The ALJ in the conclusion decision was based on the panels comments over as stated "Only Dr. Moritzs short one paragraph



statement" The reason Dr. Moritz would not give a detail report when the petitioner went to him after he reviewed Dr. Thueson's report his comments were I am a Doctor I heal your wounds created by the cramped position and the difficult Egress and Ingress and not a Expert on Vans hauling Senior Citizens, this report is enough. The following quote from the ALJ conclusion "Dr.; Thueson and the medical panel clearly had this history and relied upon it significantly in making their conclusion" The petitioner has pointed out the comments of Dr. Thueson in his report is hearsay in the 30 minute interview he had with the petitioner and is not documented with in the context of the 600 plus medical records available and this also applies to the Medical Panel report as pointed out in this BRIEF.

The Petitioner contends that both Dr. Thueson and the Medical Panel have committed MALPRACTICE with the two reports according to Merram Webster Dictionary "dereliction of professional duty or a failure of professional skill that results in injury. loss, or damage " The word DERELICTION is defined "the act of abandoning the state of being abandoned a failure in duty." which mislead the ALJ decision and did damage to the Petitioner by denying compensation based solely on these two medical reports; Therefor the petitioner request the APPEAL COURT to set the ALJ decision aside and award compensation to the Petitioner.

The ALJ spent considerable time at the hearing discussing what the petitioner was entitled to see starting with page 7 line 3 thru page 21 line 25 of the Transcript of the hearing January 1997. Nothing was resolved, so the petitioner in the appeal outlined the following "Last paragraph page 8 from ALJ finding of facts} did request 'help from the Court on the total settlement" in the petitioners search for ;help in this matter refer page 4 Employees Guide to Workmen's Compensation Revised January 1995. Using this formula and figuring 1995,1996,1997 and four weeks in 1994 at \$6.60 per hour arriving at a figure of \$13,992.00. Based on 66% or \$9,235. The next seven years at \$8.00 per hour all based on a 20 hour work week amounts to\$ 65,120.00 66% or \$42,214.00 Making a total of \$52,214.00. Based on the Petitioner work record as a driver and the schooling thru START II, he would be making \$10.00 per hour instead of the \$5.15 in the Title 5 program. The Petitioner is further asking for Punitive damages in excess of

\$25,000.00 making the award to be \$80,000.00.

For references see June 12, 1998 letter to the Appellate Court signed by Sara Jensen transferring all records from the Labor Commission including Certification; instrument number 00001 thru 00799 inclusive and notice letter July 14, 1998 the supplement ;record index [TRANSCRIPT] on this appeal was filed with trial court signed by Paulette Stagg.

DATED This 1st day of September 1998.



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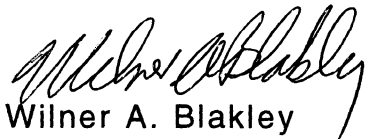
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I, WILNER A. BLAKLEY certify that I took a true and correct copy of the foregoing Brief and hand delivered to the following on this 1st day of September 1998.

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