

1998

Jessica D. Jacobsen v. Labor Commission of Utah, Salt Lake Hilton and United Pacific Reliance Insurance : Brief of Respondent

Utah Court of Appeals

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M. David Eckersley; Prince, Yeates and Geldzahler; Attorney for Petitioner.

Stuart L. Poelman; Dori K. Petersen; Alan H. Hennebold; Deputy Commissioner; Attorneys for Respondents.

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IN THE UTAH COURT OF APPEALS

JESSICA D. JACOBSEN, :
 :
 Petitioner, : Court of Appeals
 : Case No.: 980284-CA
 vs. :
 :
 LABOR COMMISSION OF UTAH, SALT : Priority 7
 LAKE HILTON and UNITED PACIFIC :
 RELIANCE INSURANCE, : Labor Commission
 : Case No.: 92-817
 :
 Respondents.

BRIEF OF RESPONDENTS
SALT LAKE HILTON and UNITED PACIFIC RELIANCE INSURANCE

Appeal from the Labor Commission of Utah
Administrative Law Judge Kathleen H. Switzer

M. David Eckersley (0956)
Attorney for Petitioner, Jessica D. Jacobsen
PRINCE, YEATES & GELDZAHLER
175 East 400 South, Suite 900
Salt Lake City, Utah 84111

Stuart L. Poelman
Dori K. Petersen
Attorneys for Respondents
Salt Lake Hilton and/or
United Pacific Reliance Insurance
77 West 200 South, Suite 400
Salt Lake City, UT 84101-1609

UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 980284-CA

Alan H. Hennebold
Deputy Commissioner
Labor Commission of Utah
160 East 300 South
P.O. Box 1466
Salt Lake City, Utah 84114-6615

FILED

RESPONDENTS RESPECTFULLY REQUEST ORAL ARGUMENT
AND THAT THIS CASE BE REPORTED.

OCT 30 1998

Utah Court of Appeals
Julia D'Alesandro
Clerk of the Court

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Attorney for Petitioner, Jessica D. Jacobsen
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175 East 400 South, Suite 900
Salt Lake City, Utah 84111

Stuart L. Poelman
Dori K. Petersen
Attorneys for Respondents
Salt Lake Hilton and/or
United Pacific Reliance Insurance
77 West 200 South, Suite 400
Salt Lake City, UT 84101-1609

Alan H. Hennebold
Deputy Commissioner
Labor Commission of Utah
160 East 300 South
P.O. Box 1466
Salt Lake City, Utah 84114-6615

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	:	Case No.: 92-817
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JURISDICTION OF THE COURT OF APPEALS

This Petition for Review by Petitioner Jessica D. Jacobsen is from an Order Granting Motion for Review of the Labor Commission, State of Utah, dated April 30, 1998. This Court has jurisdiction over this appeal pursuant to Utah Code Annotated §§ 34A-2-801(8)(a) and 78-2a-3(2)(a) (1998).

ISSUE PRESENTED AND STANDARD OF REVIEW

Whether the Labor Commission correctly applied the legal causation standard as established in Allen v. Industrial Commission, 729 P.2d 15 (Utah 1986), in concluding that Ms. Jacobsen's one-time-only lift of a food tray did not amount to unusual or extraordinary exertion.

This Court's review is governed by the Utah Administrative Procedures Act ("UAPA"), which provides relief if an agency has erroneously interpreted or applied the law. Utah Code

Ann. § 63-46b-16(4)(d) (1998). "The [Labor] Commission has been granted broad discretion to determine the facts and apply the law. The Utah Code expressly provides that 'the commission has the duty and the full power, jurisdiction, and authority to determine the facts and apply the law in this or any other title or chapter it administers.'" Caporoz v. Labor Commission, 945 P.2d 141, 143 (Utah 1997) (quoting Utah Code Ann. § 35-1-16(1)¹). "Where the Legislature's grant of discretion is as broad as that set forth in section 35-1-16(1), the intermediate standard of review . . . applies." Osman v. Industrial Commission, 958 P.2d 240, 242 (Utah Ct. App. 1998). "Under the intermediate standard of review, [the court] look[s] for an abuse of discretion . . . [to] determine whether the agency decision exceeded the bounds of reasonableness and rationality." Id. (quotations omitted). Accord VanLeeuwen v. Industrial Comm'n, 901 P.2d 281 (Utah Ct. App. 1995).

DETERMINATIVE LAW

The determinative provision is Utah Code Ann § 35-1-45(1) (1992)², which reads as follows:

Each employee described in Section 34A-2-104 who is injured and the dependents of each such employee who is killed, by accident arising out of and in the course of the employee's employment, wherever such injury occurred, if the accident was not purposely self-inflicted, shall be paid compensation for loss sustained on account of the injury or death, and such amount for medical, nurse, and hospital services and medicines, and, in case of death, such amount of funeral expenses, as provided in this chapter.

¹This section has been recodified as 34A-1-301 (1998).

²This section has been recodified as 34A-2-401 (1998).

This section of the Workers' Compensation Act was interpreted by the Utah Supreme Court in Allen v. Industrial Commission, 729 P.2d 15 (Utah 1986), to require a claimant to prove medical and legal causation. Particularly, "where the claimant suffers from a preexisting condition which contributes to the injury, *an unusual or extraordinary exertion is required to prove legal causation*. Where there is no preexisting condition, a usual or ordinary exertion is sufficient." Id. at 26 (emphasis added).

STATEMENT OF THE CASE

Nature of the Case, Course of the Proceedings, and Statement of Facts

This case concerns a disputed workers' compensation claim. The Labor Commission has denied Ms. Jacobsen's claim for workers' compensation benefits as a result of an alleged industrial accident which occurred on May 6, 1992, while she was employed as a waitress by Respondent Salt Lake Hilton. She claims that her injury occurred while "lifting a tray of food from a service station."

This case was originally assigned to Administrative Law Judge Timothy Allen, and a hearing was held before him on August 20, 1993.³ (R. at 110-205.) Ms. Jacobsen worked as a waitress for Respondent Hilton Hotel from January 16 to August 29, 1992. (R. at 2-3, 61-62.) Ms. Jacobsen was a part-time employee, (R. at 1-3), whose "work duties included

³Ms. Jacobsen has not challenged the factual findings of the Labor Commission's Order. Rather, she alleges that the Commission erred in applying the legal causation standard established in Allen to these factual findings. The Labor Commission's factual findings are found on pages 614-615 of the Record.

transporting food items from the kitchen to her customers' tables." (R. at 614.) She "typically accomplished this task by placing a large oval tray on a platform outside the kitchen area known as the 'food service station.' The platform was slightly less than chest high. Ms. Jacobsen would load the tray with various food items, then lift the tray to her left shoulder to carry the food items to restaurant patrons' tables." (R. at 614.)

On the day of the alleged accident, while standing straight forward, Ms. Jacobsen placed her left hand under the tray, steadied it with her right hand, and lifted it to her shoulder. (R. at 614-615.) "She bent her knees slightly and lifted the tray to her left shoulder, a vertical distance of between 12 and 18 inches." (R. at 615.) "There was no evidence that the tray was unbalanced or unstable." (R. at 615.) There was no indication that the lifting occurred in any kind of awkward or unusual manner. In fact, Susie Beucher, Ms. Jacobsen's supervisor who witnessed the incident, testified that as Ms. Jacobsen lifted the tray her back was straight, (R. at 189), and there was nothing unusual about the manner in which she lifted the tray. (R. at 190.) The Labor Commission found that the tray weighed between 16 and 30 pounds.⁴ (R. at 614.) As Ms. Jacobsen lifted the tray, she felt pain in her upper back and left arm, and numbness in her left hand. (R. at 615.)

⁴The exact weight of the tray was disputed by the parties. Ms. Jacobsen changed her estimates of the tray's weight at various times during her pursuit of benefits, guessing that it weighed anywhere from thirty to fifty-five pounds. (R. at 118, 243.) At the time that she originally reported her injury, Ms. Jacobsen estimated the weight of the tray to be about thirty pounds. (R. at 140, 223.) In contrast, Ms. Beucher testified that she observed Ms. Jacobsen at the time of her alleged accident and later reconstructed the tray and its content in order to determine its weight. Ms. Beucher testified that the reconstructed tray weighed 16 ½ pounds. (R. at 194-195.)

Ms. Jacobsen sought medical treatment at Workcare the next day, where two treating physicians diagnosed her problem as degenerative disc disease. (R. at 147.) She sought another opinion from Dr. Craig McQueen, who agreed with this diagnosis and placed her in physical therapy until July 15, 1992, when she returned to work. (R. at 61, 147-148.)

Claiming that she was unable to perform her work, Ms. Jacobsen left employment with Hilton permanently on August 29, 1992. (R. at 62-63.) She applied for workers' compensation benefits which Hilton denied.

At the hearing, Ms. Jacobsen's medical records were placed into evidence, (R. at 238-573), demonstrating that she suffered from a pre-existing osteoarthritis condition in her neck which contributed to the injury which she suffered on May 6, 1992. (R. at 79.) The records revealed that Ms. Jacobsen had been involved in a gymnastics accident while she was a teenager, resulting in a head injury and broken arms. (R. at 157.) They also showed that in 1971, she was diagnosed as having a congenital unstable back. (R. at 215.) Further, she sustained a neck injury in 1982 from an automobile accident, (R. at 158), and the next year she was diagnosed with generative disc disease. (R. at 216.) In fact, Ms. Jacobsen was under the constant care of a chiropractor from January 1992 up to and including May 5, 1992, the day before the industrial incident. (R. at 438-451.)

Following the hearing, Judge Allen issued Preliminary Findings of Fact and referred the case to a medical panel. (R. at 40-47.) As a part of the medical panel's report, the panel apportioned two-thirds of Ms. Jacobsen's permanent impairment to the cervical spine to pre-existing conditions. (R. at 54.) On February 4, 1994, Judge Allen issued the Findings of Fact, Conclusions of Law and Order, in which he erroneously found that Ms. Jacobsen did not

suffer from a pre-existing condition which would trigger the legal cause defense as asserted by Respondents pursuant to the criteria set forth in Allen v. Industrial Commission, 729 P.2d 15 (Utah 1986). Upon review of Judge Allen's Order, the Labor Commission found that Ms. Jacobsen did in fact suffer from a pre-existing condition which had been aggravated by her "cumulative" activities while working for Hilton. (R. at 79.) The Labor Commission took it upon itself to characterize those activities to be unusual trauma or stress. The case was then reviewed by this Court, which reversed the Labor Commission, by noting that the Commission had erred in adopting, *sua sponte*, a theory of "cumulative trauma", which had not been properly pled by Ms. Jacobsen in the proceedings before the Commission. Hilton Hotel v. Industrial Comm'n, 897 P.2d 352 (Utah App. 1995). (R. at 58576-585.) This Court reversed the Commission, and remanded this matter to the Commission for determination of a single issue:

. . . we remand the case to the Commission to determine whether that single lifting episode amounted to an unusual or extraordinary exertion.

(R. at 584-585, emphasis added.)

Upon remand, this case was assigned for further proceedings before Judge Kathleen H. Switzer.⁵ (R. at 588.) An additional hearing was held on March 18, 1997, at which time oral arguments were made but no additional factual evidence was presented. (R. at 590.) On November 2, 1997, Judge Switzer issued Findings of Fact, Conclusions of Law and Order, concluding that the lifting incident of May 6, 1992, constituted "extraordinary and unusual

⁵Judge Allen had retired from the Labor Commission as an Administrative Law Judge.

exertion.” Based upon this conclusion, the ALJ ordered Respondents to pay Petitioner workers compensation benefits. (R. at 592.)

On December 1, 1997, Respondents filed a Motion for Review of Judge Switzer's Order. (R. at 595-605.) Ms. Jacobsen filed her response on January 6, 1998. (R. at 607-610.) On April 30, 1998, the Labor Commission entered an order granting Hilton's Motion for Review. (R. at 614-616.) The Labor Commission explained:

The Labor Commission considers Ms. Jacobsen's exertion as similar to lifting boxes or other items onto a closet or garage shelf, or some other storage area. Her exertion also is comparable to lifting items into airplane overhead storage racks and participating in various sporting or exercise activities. It is also similar to lifting and playing with small children. Other activities involving similar exertion could be cited as well. *As such, Ms. Jacobsen's exertion was neither unusual nor extraordinary when compared to the activities of modern everyday life.*

(R. at 615-616, emphasis added.) The Labor Commission accordingly found that Ms. Jacobsen had failed to meet the applicable test for legal causation and determined that her claim is not compensable under the Utah Workers Compensation Act. (R. at 616.)

On May 28, 1998, Ms. Jacobsen filed her Petition for Writ of Review with this Court. (R. at 618.)

SUMMARY OF THE ARGUMENT

Since Ms. Jacobsen suffers from a pre-existing condition to her cervical spine, she is required to demonstrate that her single lifting episode of a 16-30 pound food tray constituted unusual or extraordinary exertion. The determination of what constitutes unusual or extraordinary exertion is made on an objective basis, comparing the exertion required of men

and women engaged in typical activities of modern day life. The Labor Commission properly concluded that Ms. Jacobsen's lift of the food tray did not constitute unusual or extraordinary exertion. The Labor Commission provided numerous examples of common and typical activities which were similar to Ms. Jacobsen's action in lifting the food tray. The Commission's conclusion was well reasoned and a reasonable application of the facts of this case to the higher standard of legal causation under Allen.

This Court should reject Ms. Jacobsen's proposal to adopt a new rule which would award benefits to a claimant any time there is "fair debate" as to what constitutes unusual or extraordinary exertion. The Legislature and appellate courts have recognized the Labor Commission's central role in applying the Workers' Compensation Act and defining the scope of activities which will be considered unusual and extraordinary. The Labor Commission's discretion in determining these matters should be maintained by this Court where it evident that the Commission has applied the law in a reasonable and rationale manner. In the present, case, the Order of Labor Commission reflects that the Commission carefully and fully considered the particular facts of Ms. Jacobsen's action in lifting the food tray and reasonably concluded that they did not constitute unusual or extraordinary exertion. This Court should accordingly affirm the order of the Labor Commission.

ARGUMENT

I. MS. JACOBSEN'S SINGLE LIFTING EPISODE DID NOT AMOUNT TO UNUSUAL OR EXTRAORDINARY EXERTION.

The case of Allen v. Industrial Commission, 729 P.2d 15 (Utah 1986), is the seminal case concerning legal causation in workers compensation cases. In Allen, the claimant was working in a confined cooler located at his place of employment. The claimant was stacking crates from the floor onto a cooler shelf. Each crate contained four to six gallons of milk and weighed approximately fifty (50) pounds. While lifting one crate to about chest level, he suddenly felt a sharp pain in his lower back. Subsequently, the claimant obtained a myelogram which revealed a herniated disc. Id. at 17.

In Allen, the claimant testified he had a history of prior back injuries. The sole issue on appeal was whether the claimant, who had suffered pre-existing back problems and was injured as the result of an exertion usual and typical for his job, was injured "by accident arising out of or in the course of employment" as required by the Workers' Compensation Act. Id. at 18. See Utah Code Ann. § 34A-2-401 (1998).

In order to arise out of and in the course of employment, a causal connection between the injury and employment must exist. The standard of proof for establishing a causal connection is "by a preponderance of the evidence." Allen, 729 P.2d at 23. The court explained,

To meet the legal causation requirement, a claimant with a pre-existing condition must show that *the employment contributed*

something substantial to increase the risk he already faced in every day life because of his condition. This additional element of risk in the workplace is usually supplied by an exertion greater than that undertaken in normal, everyday life, and serves to offset the pre-existing condition of the employee as a likely cause of the injury, thereby eliminating claims for impairments resulting from a personal risk factor rather than exertions at work.

Id. at 25 (emphasis added).

In other words, "where the claimant suffers from a preexisting condition which contributes to the injury, an *unusual or extraordinary exertion* is required to prove legal causation. Where there is no pre-existing condition, a usual or ordinary exertion is sufficient." Id. at 26 (emphasis added). Whether an exertion is usual or unusual is defined according to an objective standard. The comparison does not involve an employee's normal employment exertion and the exertion at the time of injury; rather, the Court must compare the exertion at the time of injury with the exertions of normal non-employment life of men and women in the latter half of the 20th century. Id. Typical activities cited in Allen as requiring normal exertion of men and women in the latter part of the 20th century include "taking full garbage cans to the street, lifting and carrying baggage for travel, changing a flat tire on an automobile, lifting a small child to chest height, and climbing the stairs in buildings." Id.

The Allen case is critical in analyzing the facts of the present case. Since Ms. Jacobsen suffered from significant pre-existing neck condition, the legal causation test requires that her one-time-only lift of a 16 ½ to 30 pound food tray from chest to shoulder height exceed the exertion that is typically required of the average person in non-employment life. The Labor Commission properly concluded that it did not. The Commission explained,

The Labor Commission considers Ms. Jacobsen's exertion as similar to lifting boxes or other items onto a closet or garage shelf, or some other storage area. Her exertion also is comparable to lifting items into airplane overhead storage racks and participating in various sporting or exercise activities. It is also similar to lifting and playing with small children. Other activities involving similar exertion could be cited as well. As such, Ms. Jacobsen's exertion was neither unusual nor extraordinary when compared to the activities of modern everyday life.

(R. at 615-616.) The examples cited by the Labor Commission are ordinary and common activities required of men and women in modern non-employment life.⁶

There is no evidence that the *manner* in which Ms. Jacobsen lifted the tray was in any way unusual or extraordinary. In fact, the single other eyewitness to the episode testified that Ms. Jacobsen was standing with her back straight, facing forward, and lifted her tray in the usual and proper manner. (R. at 189.) Furthermore, the weight of the tray itself was not significant. As evidenced by the numerous examples cited by the Labor Commission, the general public is constantly and repeatedly engaged in lifting weights 16-30 pounds from chest or waist level to at least shoulder level. The court may take judicial notice of the height of closet shelving and the items stored thereon to easily conclude that lifting such weights to such levels is commonplace.⁷

⁶Notably, the Allen court included in its list of typical activities "lifting and carrying baggage for travel" and "lifting a small child." 729 P.2d at 26.

⁷The ALJ found it significant that the food tray was loaded with dishes which required balancing while lifting. Notably, however, "there was no evidence that the tray was unbalanced or unstable" at any time. (R. at 615.) There was nothing awkward or unusual about Ms. Jacobsen's short lift of the tray. Moreover, there is nothing inherently unusual or extraordinary in the exertion required to balance an item while lifting.

The Labor Commission concluded that the exertion required of Ms. Jacobsen in lifting the food tray twelve to eighteen inches was not unusual and extraordinary. Lifting the tray did not, as the Allen court declared, contribute "something substantial to increase the risk [s]he already faced in everyday life because of [her pre-existing neck] condition." Allen, 729 P.2d at 25. The Labor Commission's application of the Allen standard to the particular facts of this case are reasonable and rationale. The Labor Commission carefully and fully reviewed the facts of this case and concluded that lifting the food tray was not unlike many common activities required of men and women of the latter half of the twentieth century. The Labor Commission's properly exercised its discretion in making this conclusion. Accordingly, this Court should affirm the Labor Commission's Order dismissing Ms. Jacobsen's claim.

II. THIS COURT SHOULD REJECT MS. JACOBSEN'S PROPOSAL TO ADOPT A NEW STANDARD WHICH WOULD ELIMINATE THE LABOR COMMISSION'S DISCRETION IN APPLYING THE ALLEN STANDARD.

The application of the higher standard of legal causation established in Allen involves a mixed question of "whether a given set of facts come within the reach of a given rule of law." Drake v. Industrial Comm'n, 939 P.2d 177, 181 (Utah 1997). This Court accordingly applies an intermediate standard of review, looking for "an abuse of discretion" or in other words, "whether the agency decision exceeded the bounds of reasonableness and rationality." Osman v. Industrial Comm'n, 958 P.2d 240, 242 (Utah Ct. App. 1998).

Ms. Jacobsen would have this Court adopt a new standard; one which would completely eliminate the Labor Commission's discretion in adjudicating disputed claims.

Specifically, Ms. Jacobsen asserts that this Court should adopt a new rule that whenever a “workers’ injurious exertion is subject to fair debate as to whether it was unusual or extraordinary, the Commission must, consistent with the previously enunciated law of this State, resolve that issue in favor of the injured worker.” (Petitioner’s brief at 6-7.)

In adopting the higher standard of legal causation in Allen, the Utah Supreme Court stated that “the case law will eventually define a standard for typical ‘nonemployment activity’ in much the way case law has developed the standard of care for the reasonable man in tort law.” 729 P.2d at 26. Shortly thereafter, in Price River Coal v. Industrial Commission, 731 P.2d 1079 (Utah 1986), the court declared that “[t]he concept of ‘unusual or extraordinary’ exertion remains to be fleshed out over time. Of necessity, the process of pouring specific content into that concept *will rely heavily upon the Commission’s expertise in and familiarity with the work environment.*” This Court has also recognized the Labor Commission’s central role in defining the scope of activities which will be viewed as “unusual and extraordinary.” See Smith & Edwards Co. v. Industrial Comm’n, 770 P.2d 1016 (Utah Ct. App. 1989). Accordingly, the both Utah Legislature, through its statutory grant of authority, and the appellate courts, through case law, have repeatedly recognized that the Labor Commission serves an invaluable and central role in defining the scope of activities which will be considered “unusual and extraordinary” for purposes of applying the higher standard of legal causation under Allen.

In Sisco Hilde v. Industrial Commission, 766 P.2d 1089 (Utah Ct. App. 1988), this Court rejected the adoption of a bright line test to determine what constitutes unusual or extraordinary exertion. Rather, this Court declared that what constitutes “unusual or

extraordinary" exertion depends upon the unique facts and circumstances of the employment activity that is required. *Id.* Significant deference and discretion are accordingly afforded to the Labor Commission's application of the *Allen* standard to the particular set of facts in each case. See, e.g., *Drake*, 939 P.2d at 182 (deference is afforded to Commission's decision on scope-of-employment issues because of their highly fact-dependent nature).

Notably, Ms. Jacobsen cites the *Drake* decision in support of her asserted new rule to resolve *any* dispute in favor of the claimant. In *Drake*, the claimant was injured in an motor vehicle accident after making a delivery to the Ogden office of her employer. Ms. Drake argued that her injuries arose out of the course and scope of her employment because she was on a "special errand" for her employer at the time of the accident. The Labor Commission denied Ms. Drake benefits finding that the special errand rule did not apply in her case. On appeal, this Court reversed the Labor Commission. This Court applied a correction of error standard, coming to its own conclusion that Ms. Drake was on a "special errand" at the time her accident. The Utah Supreme Court reversed, finding that this Court had applied an incorrect standard of review. The Supreme Court concluded that because scope of employment issues are highly fact-dependent, the Labor Commission's decisions in such cases should be granted heightened deference. While the Supreme Court recognized that the Workers Compensation Act is to "be liberally construed and applied to provide coverage," the court nevertheless *affirmed* the Labor Commission's *denial* of workers compensation benefits to Ms. Drake stating, "Under the standard enunciated above, *we defer to the Commission's decision and accord a strong presumption* that the deliveries were not 'special,'" and therefore non-compensable. *Id.* at 183.

The Allen court's adoption of the higher standard of legal causation reflects a balance of interests. As the court explained, the statutory requirements were intended to ensure

that compensation is only awarded where there is a sufficient causal connection between the disability and the working conditions distinguish[ing] between those injuries which (a) coincidentally occur at work because a preexisting condition results in symptoms which appear during work hours without any enhancement from the workplace, and (b) those injuries which occur because some condition or exertion required by the employment ***increases the risk of injury*** which the worker normally faces in his everyday life.

729 P.2d at 24 (emphasis added).

The Labor Commission has been assigned the duty to adjudicate *disputed* workers compensation claims. Ms. Jacobsen's proposal that this Court adopt a new rule which would always award benefits to the claimant when there is a "*fair debate*" as to what constitutes unusual and extraordinary exertion completely ignores the role of the Labor Commission. The Commission *only* reviews a claim for benefits when there is a *dispute*. Otherwise, benefits are simply paid by the employer/carrier to the claimant.

Recognizing that the Labor Commission has the knowledge and experience regarding the duties of the workplace, the Legislature expressly granted the Commission the full authority and discretion to find facts and apply the provisions of the Workers Compensation Act. The appellate courts have properly concluded that the Labor Commission's discretion in making these conclusions should be recognized and maintained. The Workers Compensation Act represents a balancing of interests. It provides an employee a more convenient and timely payment of compensation without subjecting her to the rigors of proving fault. To the employer it provides an established set of prerequisites that an employee must meet before they

are eligible for compensation. First and most importantly, the employee must prove, by a preponderance of the evidence, that her injuries were legally and medically caused by her employment. In Allen, the Utah Supreme Court interpreted the Act to require a claimant to who has a pre-existing condition to demonstrate that her employment subjected her to a risk of injury which is substantially greater than that which she faced in performing the tasks of normal, everyday life.

In the present case, the Labor Commission correctly determined that Ms. Jacobsen's single lifting episode of a food tray weighing 16 ½ to 30 pounds⁸ did not constitute unusual and extraordinary exertion. The Order provides an explanation of the Commission's conclusion which is a reasonable and rationale application of the law to the particular facts of this case. The Commission's denial of benefits does not become "unreasonable" simply because there may be "fair debate" as to what constitutes unusual and extraordinary exertion. Accordingly, this Court should affirm the Labor Commission's Order and dismiss Ms. Jacobsen's claim for workers compensation benefits.

CONCLUSION

There is no dispute that since Ms. Jacobsen suffered from a pre-existing cervical spine condition, she must meet the higher standard of legal causation by demonstrating that her employment required unusual and extraordinary exertion. The Labor Commission properly

⁸As noted previously, the weight of the food tray was disputed by the parties. The Commission's finding that the tray could have weighed up to 30 pounds reflects a benefit of the doubt accorded to Ms. Jacobsen on this issue.

concluded that Ms. Jacobsen's exertion was similar to that required in ordinary and common tasks required of men and women in modern lift. The Commission explained that Ms. Jacobsen's action was "similar to lifting boxes or other items onto a closet or garage shelf, lifting items into airplane overhead storage racks, [] participating in various sporting or exercise activities, [and] lifting and playing with small children." (R. at 615.) The Commission's conclusion was a reasonable and rationale application of the workers compensation law to the facts of this case.

This Court should reject Ms. Jacobsen's proposal of a new rule which would award benefits whenever there is a dispute between the parties concerning the application of the Workers Compensation Act. Rather, the Legislature and appellate courts have recognized the Labor Commission's central role in defining the boundaries of activities that will be considered unusual or extraordinary. The Labor Commission's discretion in making this determination should be maintained as long as it is reasonable and rationale.

It is respectfully submitted that Ms. Jacobsen's appeal should be denied, and this Court should affirm the Order of the Labor Commission.

RESPECTFULLY SUBMITTED this 30th day of October, 1998.

BLACKBURN & STOLL

By 

Stuart L. Poelman

Dori K. Petersen

Attorneys for Respondents

Salt Lake Hilton and/or

United Pacific Reliance Insurance

CERTIFICATE OF MAILING

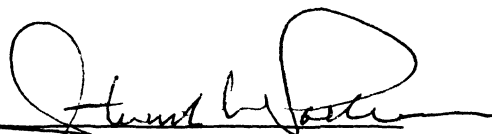
I hereby certify that I serve two true and correct copies of the foregoing **BRIEF OF RESPONDENTS SALT LAKE HILTON and UNITED PACIFIC RELIANCE INSURANCE** by first class mail, postage prepaid, this 30th day of October, 1998, to:

David Eckersley (0956)
Attorney for Petitioner, Jessica D. Jacobsen
PRINCE, YEATES & GELDZAHLER
175 East 400 South, Suite 900
Salt Lake City, Utah 84111

Alan Hennebold
Deputy Commissioner
Labor Commission of Utah
160 East 300 South
P.O. Box 1466
Salt Lake City, Utah 84114-6615

BLACKBURN & STOLL

By



Stuart L. Poelman
Dori K. Petersen
Attorneys for Respondents
Salt Lake Hilton and/or
United Pacific Reliance Insurance