

1998

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

Utah Court of Appeals

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UTAH COURT OF APPEALS

JESSICA D. JACOBSEN,

Petitioner,

vs.

UTAH LABOR COMMISSION, SALT
LAKE HILTON and UNITED PACIFIC
RELIANCE INSURANCE,

Respondents.

Case No. 980284-CA

Argument Priority No. _____

BRIEF OF PETITIONER

WRIT OF REVIEW TO
THE LABOR COMMISSION OF UTAH

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Julia D'Alesandro
Clerk of the Court

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STATEMENT OF JURISDICTION

This Court has jurisdiction of this proceeding pursuant to the provisions of Utah Code Ann. § 78-2a-3(2)(a)(Rep. Vol. 9 1996).

STATEMENT OF ISSUE PRESENTED

Did the Labor Commission err in concluding that an injury caused by lifting a fully loaded serving tray did not constitute an injury by accident within the meaning of the Worker's Compensation Act?

STANDARD OF REVIEW

The conclusion of the Labor Commission as to whether a given set of facts constitutes an accidental injury within the meaning of the Worker's Compensation Act is a legal conclusion which can be reviewed without deference to the Commission, though the Commission may be granted some discretion when applying a legal standard to a given set of facts. Drake v. Industrial Comm'n, 939 P.2d 177 (Utah 1997).

STATEMENT OF DETERMINATIVE PROVISIONS OF LAW

Resolution of this case turns on an interpretation of Utah Code Ann. § 34A-2-401 (Rep. Vol. 4B 1997) (previously appearing at Utah Code Ann. § 35-1-45).

STATEMENT OF THE CASE

Jessica Jacobsen was employed as a waitress at the Hilton Hotel. She suffered an injury to her arm, shoulder and neck on May 6, 1992, while lifting a large oval serving tray, weighing between 16.5 and 30 pounds, filled with meals onto her left shoulder (R. 614-15). Ms. Jacobsen sought worker's compensation benefits as a result of her injury. Her employer denied her claim, asserting that she had a preexisting disability to her neck and that her work activities when injured did not constitute unusual exertion, as required to constitute an injury by accident in the face of a preexisting condition.

The administrative law judge initially hearing the claim failed to find any preexisting condition and awarded benefits. The employer filed a motion for review with the Industrial Commission and submitted a medical report from an examining physician indicating that Ms. Jacobsen did have a preexisting osteoarthritic condition in her neck. The Industrial Commission determined that Ms. Jacobsen was suffering from a preexisting condition, but affirmed her award of benefits on the basis of the cumulative trauma she suffered during the course of her employment with the Hilton.

The employer appealed to this Court, which held that the Commission had erred in applying the cumulative trauma standard because Ms. Jacobsen's application for hearing alleged only a single traumatic event. Hilton Hotel v.

Industrial Comm'n, 897 P.2d 352 (Utah App. 1995). The case was remanded for a determination of whether the lifting of the tray constituted unusual exertion.

On remand, the administrative law judge found that Ms. Jacobsen's injurious activity did constitute unusual exertion and awarded benefits.

The employer sought review by the Labor Commission, which reversed the award after concluding that Ms. Jacobsen's work activity did not amount to unusual exertion. (See Order Granting Motion for Review in the Addendum to this brief.)

SUMMARY OF ARGUMENT

The act of Ms. Jacobsen in lifting a large serving tray with one hand, while simultaneously balancing the tray and shifting it to her shoulder, constitutes unusual exertion when compared with that of typical nonemployment activity. Because the nature of her exertion when injured was, at a minimum, at least arguably unusual, the Labor Commission acted unreasonably in denying her benefits in light of the mandate that the Worker's Compensation Act should be interpreted in such a manner that any doubt respecting the right to compensation must be resolved in favor of the injured worker.

ARGUMENT

THE LABOR COMMISSION'S DENIAL OF BENEFITS CONSTITUTES AN UNREASONABLE FAILURE TO INTERPRET THE WORKER'S COMPENSATION ACT FOR THE BENEFIT OF INJURED EMPLOYEES.

In Allen v. Industrial Comm'n, 729 P.2d 15 (Utah 1986), the Utah Supreme Court set forth the test for determining whether an injured worker who suffered from a preexisting condition which contributes to the claimed industrial injury has met her burden of establishing the legal causation element of her claim. The Court held that

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.

729 P.2d at 26. The Court, though adopting no fixed standard for determining what constituted unusual or extraordinary exertion, emphasized that the injurious work activity should be compared with "the usual wear and tear and exertions of nonemployment life" Id.

Petitioner submits that the typical nonemployment life activities of the usual person does not include lifting large oval serving trays, weighing between 16.5 and 30 pounds, with one hand while simultaneously balancing the loaded tray

as it is repositioned to the shoulder. The administrative law judge who decided this case after remand agreed.

Ms. Jacobsen's tray was loaded with dishes, filled with food, all prone to moving or spilling while she lifted above shoulder height and to one side. This manner of lifting is not typical in nonemployment activities.

Findings of Fact, Conclusions of Law, and Order at page 4. The Labor Commission, however, disagreed, believing that the lifting episode to be equivalent to lifting boxes onto shelves for storage as one might in their nonemployment life. Given that each of these evaluations has plausibility, the question arises as to what standard this Court should apply in reviewing the Commission's Order. Two recent panels of this Court have held that the legislature has given the Commission discretion to interpret the Worker's Compensation Act and that its interpretations are, therefore, given some deference and only reversed if they are unreasonable. See Osman Home Imp. v. Industrial Comm'n, 958 P.2d 240 (Utah App. 1998); Caporoz v. Labor Comm'n, 945 P.2d 141 (Utah App. 1997). Assuming that this intermediate level of review is the correct standard, petitioner submits that in situations where injurious work activity is subject to reasonable arguments on both sides of the issue of whether it is unusual, it is unreasonable for the Commission not to resolve that debate in favor of the injured worker. This is so because of the fundamental purpose of the Worker's Compensation Act, which is to provide

economic protection for employees who sustain injuries arising out of their employment to "alleviate hardship upon workers and their families." Baker v. Industrial Comm'n, 17 Utah 2d 141, 405 P.2d 613, 614 (1965). Our Supreme Court has held that

[t]o give effect to that purpose, the Act should be liberally construed and applied to provide coverage" and that "[a]ny doubt respecting the right of compensation will be resolved in favor of the injured employee.

Drake v. Industrial Comm'n, 939 P.2d 177 (Utah 1997)(quoting State Tax Comm'n v. Industrial Comm'n, 685 P.2d 1051, 1053 [Utah 1984]).

Even assuming the Commission has some discretion to interpret the Act, that interpretation must be consistent with the recognized purpose of the Act and with the principles of its interpretation previously articulated by the Utah Supreme Court. As the Supreme Court has expressly announced that in cases where it is fairly questionable whether an employee is entitled to compensation that question must be resolved in her favor, it was unreasonable for the Commission not to apply that rule in its interpretation of the Act in this case.

The rule which should be announced in this case, and applied to this case, is that if a worker's 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. If this Court fails to adopt such a standard, then workers suffering from preexisting disabilities are subject to denial of benefits from injuries suffered at work solely on the basis of the subjective beliefs of individual commissioners regarding what is usual exertion, which beliefs become unreviewable if they can be said to be other than irrational. Such a system for claim adjudication is at odds with the Supreme Court's announced rule of law, oft repeated, that doubts regarding compensation eligibility are to be resolved in the favor of the injured employee. See, e.g., McPhie v. Industrial Comm'n, 567 P.2d 153 (Utah 1977); M & K Corp. v. Industrial Comm'n, 112 Utah 488, 189 P.2d 132 (1948).

In order for this admonition of the Supreme Court to be anything other than an empty platitude, the Commission must be directed to award benefits in those cases where the unusual nature of the employee's exertion is subject to fair debate and reversed when it fails to do so.

CONCLUSION

Ms. Jacobsen was injured while engaged in an employment activity that was, at a minimum, arguably an unusual exertion. Because the Worker's Compensation Act must be interpreted to resolve any doubt about an employee's entitlement to compensation in the employee's favor, it was unreasonable for the Commission to conclude that Ms. Jacobsen's injury was not the result of unusual

exertion and its order should be vacated and the award of the administrative law judge reinstated.

DATED this 4th day of September, 1998.

PRINCE, YEATES & GELDZAHLER

By M. David Eckersley
M. David Eckersley
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of September, 1998, I caused two true and correct copies of the foregoing BRIEF OF PETITIONER to be mailed, postage prepaid, to the following:

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_____

G \EA\MDE\JACOBSEN\BRIEF
10642-1

ADDENDUM

UTAH LABOR COMMISSION

JESSICA D. JACOBSEN,

Applicant,

v.

SALT LAKE HILTON and UNITED
PACIFIC RELIANCE INSURANCE,

Defendants.

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ORDER GRANTING
MOTION FOR REVIEW

Case No. 92-0817

Salt Lake Hilton and its workers compensation insurance carrier, United Pacific Reliance Insurance (referred to jointly as "Hilton" hereafter), ask the Utah Labor Commission to review the Administrative Law Judge's award of benefits to Jessica D. Jacobsen under the Utah Workers' Compensation Act (Title 34A, Chapter 2, Utah Code Annotated; "the Act" hereafter).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. §34A-2-801(3) and Utah Admin. Code R602-2-1.M.

ISSUE PRESENTED

Did Ms. Jacobsen's lifting and balancing of a food tray while working for Hilton constitute an "unusual or extraordinary exertion" so as to meet the test for legal causation established in Allen v. Industrial Commission, 729 P.2d 15 (Utah 1986).

FINDINGS OF FACT

Because Ms. Jacobsen's eligibility for workers' compensation benefits depends on the precise nature of the work-related activity that led to her injury, the Labor Commission has carefully reviewed the evidence on that point. The record establishes that prior to the events that gave rise to Ms. Jacobsen's claim for workers' compensation benefits, she had worked as a waitress for Hilton for some time. Her work duties included transporting food items from the kitchen to her customers' tables. Ms. Jacobsen 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.

Ms. Jacobsen's injury occurred during her work shift on the evening of May 6, 1992. Following her usual practice, she attempted to lift a loaded tray from the food service station to her shoulder. The tray weighed between 16 and 30 pounds. Ms. Jacobsen placed her left hand under

the tray and steadied it with her right hand. She bent her knees slightly and lifted the tray to her left shoulder, a vertical distance of between 12 and 18 inches. There is no evidence that the tray was unbalanced or unstable. As she lifted the tray, Ms. Jacobsen felt pain in her upper back and left arm, and numbness in her left hand. She now seeks benefits for these injuries.

DISCUSSION AND CONCLUSION OF LAW

To qualify for benefits under the Utah Workers' Compensation Act, an injured worker must establish, among other elements, that the injuries result from an accident "arising out of and in the course of" employment." Utah Code Ann. §34A-2-401. In order to meet this test, the injured worker must prove both "legal causation" and "medical causation". Allen v. Industrial Commission, 729 P.2d 15 (Utah 1986). It is the issue of "legal causation" that is in dispute in Ms. Jacobsen's claim.

In Price River Coal Co. v. Industrial Commission, 731 P.2d 1079, 1082 (Utah 1986), the Utah Supreme Court described the test for legal causation as follows:

Under Allen, a usual or ordinary exertion, so long as it is an activity connected with the employee's duties, will suffice to show legal cause. However, if the claimant suffers from a pre-existing condition, then he or she must show that the employment activity involved some unusual or extraordinary exertion over and above the "usual wear and tear and exertions of nonemployment life." The requirement of "unusual or extraordinary exertion" is designed to screen out those injuries that result from a personal condition which the worker brings to the job, rather than from exertions required of the employee in the workplace. (Citations omitted.)

It has previously been determined that, prior to the events of May 6, 1992, Ms. Jacobsen suffered from a preexisting spinal condition which is related to the injuries for which she now seeks benefits. Consequently, the Commission must hold Ms. Jacobsen to the higher standard of legal causation with respect to her claim. She must show that her activity of lifting the loaded serving tray that evening amounted to an unusual or extraordinary exertion. To determine whether an activity constitutes an unusual or extraordinary exertion, the Labor Commission must evaluate the activity against the kinds of activities that are commonly experienced in modern nonindustrial life. Allen at 26.

Ms. Jacobsen reports her injury resulted from lifting a loaded serving tray weighing between 16 and 30 lbs from approximately chest level to her shoulder. There is no evidence the tray was unbalanced or unstable. Ms. Jacobsen was able to use her right hand to stabilize the tray while she lifted the tray from below with her left hand. 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

JESSICA D. JACOBSEN

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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.

In light of the foregoing, the Labor Commission concludes that Ms. Jacobsen has failed to meet the applicable test for legal causation as established by Allen. Consequently, her claim is not compensable under the Utah Workers' Compensation Act.

ORDER

The Labor Commission grants Hilton's motion for review and reverses the decision of the ALJ in this matter. Ms. Jacobsen's claim for workers' compensation benefits relating to her work accident of May 6, 1992 is hereby denied. It is so ordered.

Dated this 30th day of April, 1998.



R. Lee Ellertson
Commissioner

NOTICE OF APPEAL RIGHTS

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.

JESSICA D. JACOBSEN

PAGE 4

CERTIFICATE OF MAILING

I certify that a copy of the foregoing Order Granting Motion For Review in the matter of Jessica D. Jacobsen, Case No. 92-0817, was mailed first class postage prepaid this 30th day of April, 1998, to the following:

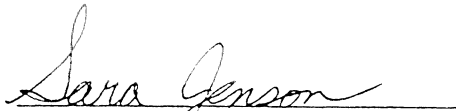
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