

2009

Denny Carradine v. Utah Labor Commission;
Workers Compensation Fund; Tru Flo Mechanical
Systems; and Employer's Resinsurance Fund :
Unknown

Utah Court of Appeals

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Not Listed.

Sawn W. Potter; Powell, Potter & Poulsen.

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FILED
UTAH APPELLATE COURTS

NOV 30 2010

VIA FAX: 801-678-3999

November 29, 2010

Utah Court of Appeals
Attn: Nicole
P.O. Box 140230
Salt Lake City, UT 84114-0230

Re: Carradine vs. Labor Commission Appellate Case No. 20090907

Dear Nicole:

As we discussed by telephone this afternoon, due to an error in preparation of the Brief of the Appellant, which was filed this afternoon a few of the record citations were not properly made in the Section B, Course of the Proceedings & Disposition of the Case and Section C, Statement of the Facts. Enclosed is a properly cited section of the same for insertion into the briefs that were filed earlier this afternoon.

Sincerely,
Powell Potter & Poulsen, PLLC



Shawn W. Potter

B. Course of the Proceedings & Disposition of the Case

At Petitioner's hearing, Petitioner had a seizure and was unable to testify at all and therefore was unable to provide testimony regarding his employment history and gainful employment. An expert neuropsychologist, Dr. Mary Hales, testified at the hearing regarding Petitioner's neurological/psychological injuries. At the time of the hearing Dr. Hales had performed all testing of Petitioner but had not yet prepared a written report. Dr. Hales' written report was submitted to Judge Marlowe and all other parties on November 15, 2006 and became part of the record. The report stated, among other things, that Petitioner has been unable to work since 1991 (Record page 44). The matter was submitted to a medical panel. Due to Petitioner's neurological/psychological disability, he was unable to meet with the medical panel and Petitioner's case was dismissed without prejudice. Petitioner refiled the matter (Case No. 07-0490), and Judge Marlowe required, in an October 12, 2007, letter, (Record page 00076), that she would not allow evidence "which was available at the time of the prior hearing, but not presented." The matter then went to the medical panel. The medical panel determined that Petitioner's current condition was an extension of his previously adjudicated brain and psychological injury. The medical panel also stated that Petitioner last worked in 1988 (*See* record page 100). Judge Marlowe issued a Findings of Fact and Conclusions of Law on September 30, 2008, Record pages 105-120, establishing that petitioner was permanently and totally disabled as a result of the original industrial injury. On approximately November 10, 2008, (record page 134) the Employers Reinsurance Fund

("ERF") filed a letter requesting amendments to the September 30, 2008 Order.

Separately, on November 17, 2008, the ERF filed a formal Motion for Review regarding the factual issue of payment of certain benefits. Record pages 135-138. The Workers Compensation Fund ("WCF") joined the motion to modify other fact issues, including amounts paid to Petitioner over time. At a later point in time, Petitioner discovered that the date established by Judge Marlowe as the date from which his benefits would be paid was in error as he had only been intermittently and not gainfully employed since 1992. Petitioner then filed his own Motion for Review seeking to re-open the hearing to allow the acceptance of evidence regarding dates of gainful employment prior to July 2000. Record pages 166-170. The Motion was denied and Petitioner filed a Request for Reconsideration attaching an affidavit regarding dates of employment –which was also denied. Record page 189-206. Petitioner continues to maintain that he was not gainfully employed between the date of the injury, the 1992 Industrial Commission Proceedings, and July 2000, and that he should be compensated for that time period.

C. Statement of the Facts

Petitioner Denny Carradine suffered a severe knee injury when he fell from a ladder at work for his own company on September 2, 1988. Petitioner received workers compensation benefits and engaged in rehabilitation efforts. In January, 1989, while attending a rehabilitation appointment, he slipped on ice and suffered a substantial shoulder injury. As treatment for the shoulder injury Carradine received two steroid shots, after one of which he suffered a neurological/psychological injury. Carradine

made a claim at the Utah Industrial Commission and he was adjudicated permanently partially disabled. *See Findings of Fact and Conclusions of Law and Order*, Issued June 5, 1992, by Judge Barbara Elicerio at page 4, attached hereto. Carradine was able to obtain some work after the injury, but it was not gainful employment. Record p. 166, 190. Before his accident and for a short time after, from 1982-1990, Carradine had a real estate license. Record p. 192. He had to not renew the license because he could no longer do the things required of a real estate agent including: writing, spelling, tracking business, and providing customer service. Record p. 194. For several years, he was able to collect some rent from properties that he owned, but was unable to survive on the income generated from rental properties and was forced to take loans against his properties and eventually sell some of his properties. Record p. 193. In 1997 he worked for his brother for only a short time as a carpenter's helper, but was fired after two months because he was incapable of doing the work. Record p. 198. From 1998-2000, Carradine worked for Cressfarms, LLC as a project manager. Record p. 198. Carradine was given this job as a favor from a friend. Record p. 198. For a period he lived on the Cressfarms property. Record p. 198. After a falling out with his friend he was no longer employed.

Petitioner's neurological/psychological condition and memory continued to worsen and in March, 2005, Petitioner filed a claim for permanent total disability (Case No. 05-0292).