

2001

# Intermountain Slurry Seal, CNA Insurance v. Labor Commision of Utah, Kyle Stephens : Brief of Appellant

Utah Court of Appeals

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

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INTERMOUNTAIN SLURRY SEAL  
and/or CNA INSURANCE,

Respondents/Appellants,

vs.

THE UTAH LABOR COMMISSION  
and KYLE STEPHENS,

Petitioner/Appellee.

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Case No. 20010271-CA

Priority No. 7

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BRIEF OF APPELLANT

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APPEAL FROM ORDER OF LABOR COMMISSION DENYING  
MOTION FOR REVIEW, ENTERED FEBRUARY 28, 2001

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**FILED**  
Utah Court of Appeals

JUL 13 2001

Paulette Stagg  
Clerk of the Court

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

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## **LIST OF ALL PARTIES**

The caption in this case on appeal contains the names of all parties

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## STATEMENT SHOWING JURISDICTION

The Court of Appeals has jurisdiction to review orders of the Industrial Commission (now the Utah Labor Commission) pursuant to Utah Code Ann. § 34A-1-303(6) (1997)).<sup>1</sup>

## STATEMENT OF THE ISSUES

1. Whether the Labor Commission erred in interpreting and applying Utah Code Ann. § 34A-2-413 ( 1997), that a finding of permanent disability under § 34A-2-413 (10) is not subject to any of the other provisions contain in 34A-2-413. The Court of Appeals reviews the Commission's interpretation of § 34A-2-413 under a correction-of-error standard. E.g., Crapo v. Industrial Commission, 922 P.2d 39 (Utah Ct. App. 1996); See also Luckau v. Board of Review, 840 P.2d 811, 813 (Utah Ct. App. 1992).

2. Whether Utah Code Ann. §34A-2-413(7) which, defines the time period that an employer is required to pay permanent disability benefits, based upon a final order of the Commission, applies in all cases of permanent disability, including a final order determined by subsection (10). The Court of Appeals reviews the Commission's interpretation of § 34A-2-413 under a correction-of-error standard. E.g., Crapo v. Industrial Commission, 922 P.2d 39 (Utah Ct. App. 1996); See also Luckau v. Board of Review, 840 P.2d 811, 813 (Utah Ct. App. 1992).

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<sup>1</sup>The entire Utah Workers' Compensation Act was repealed and recodified effective July 1, 1997, and the Industrial Commission was replaced by the Labor Commission. This brief refers primarily to the Act as it was in effect on September 28, 1998, the date of the applicant's claimed injury. In addition, the brief refers to the "Industrial Commission," or simply the "Commission."

## APPLICABLE STATUTES

Utah Code Ann. §34A-2-413. See Addendum for entire section.

Utah Code Ann. §34A-2-413(7).

(7) (a) The period of benefits commences on the date the employee became permanently totally disabled, as determined by a final order of the commission based on the facts and evidence, and ends:

- (i) with the death of the employee; or
- (ii) when the employee is capable of returning to regular, steady work.

(b) An employer or its insurance carrier may provide or locate for a permanently totally disabled employee reasonable, medically appropriate, part-time work in a job earning at least minimum wage provided that employment may not be required to the extent that it would disqualify the employee from Social Security disability benefits.

(c) An employee shall fully cooperate in the placement and employment process and accept the reasonable, medically appropriate, part-time work.

(d) In a consecutive four-week period when an employee's gross income from the work provided under Subsection (7)(b) exceeds \$500, the employer or insurance carrier may reduce the employee's permanent total disability compensation by 50% of the employee's income in excess of \$500.

(e) If a work opportunity is not provided by the employer or its insurance carrier, a permanently totally disabled employee may obtain medically appropriate, part-time work subject to the offset provisions contained in Subsection (7)(d).

- (f) (i) The commission shall establish rules regarding the part-time work and offset.
- (ii) The adjudication of disputes arising under Subsection (7) is governed by Part 8, Adjudication.

(g) The employer or its insurance carrier shall have the burden of proof to show that medically appropriate part-time work is available.

(h) The administrative law judge may:

- (i) excuse an employee from participation in any job that would require the employee to undertake work exceeding the employee's medical capacity and residual functional capacity or for good cause; or
- (ii) allow the employer or its insurance carrier to reduce permanent total disability benefits as provided in Subsection (7)(d) when reasonable, medically appropriate, part-time employment has been offered but the employee has failed to fully cooperate.



Utah Code Ann. §34A-2-413(10).

(10) (a) The loss or permanent and complete loss of the use of both hands, both arms, both feet, both legs, both eyes, or any combination of two such body members constitutes total and permanent disability, to be compensated according to this section.

(b) A finding of permanent total disability pursuant to Subsection (10)(a) is final.

## **STATEMENT OF THE CASE**

### **I. Introduction**

This is a Petition for Review of an Order by the Utah Labor Commission denying Respondents' Motion for Review. The facts are basically uncontested. The applicant, Kyle Stephens suffered an industrial accident on September 8, 1998, which resulted in the amputation of both legs just below the knee. (R. 88). In accordance with Utah Code Ann. § 34A-2-413(10), it was found that the applicant was permanent and totally disabled. Soon after the applicant's accident, the respondents had a vocational rehabilitation counselor review the applicant's potential to return to work. (R. 89). Sometime in 1999, the applicant began going to college, taking courses in computer electronics, at the expenses of the respondents. (R. 89).

On or about September 28, 1999, the respondents offered the applicant a job with his prior employer. It was indicated by the applicant at the hearing that he would be able to perform the job, however, he reported that he wanted to finish his schooling. (R. 89). Based upon the uncontested facts that the applicant has been offered a job that fits within his abilities and one which both the applicant and the employer testified could be performed by

the applicant, the issue we are faced with is whether disability benefits are "suspended" in accordance with Utah Code Ann. § 34A-2-413(7).

## **II. Procedural History**

The Appellee, Kyle Stephens (the "applicant") instituted these proceedings before the Labor Commission of Utah on July 8, 1999, when he filed an Application for Hearing seeking workers' compensation benefits from his employer, Intermountain Slurry Seal, and its insurer, for the injuries he sustained on September 8, 1998. (R. 2). This was done in spite of the fact that Intermountain Slurry Seal had been making disability payments along with paying for the applicant's schooling and had in no respects contested the claim prior to the filing of the application for hearing. Thereafter, the matter went to a hearing in front of the Honorable Barbara Elicerio, Administrative Law Judge, on November 29, 1999. (R. 77). Following the hearing, Judge Elicerio issued a Preliminary Conclusions of Law and Order. (Attached hereto as Addendum 2.) Thereafter, a second hearing was held on June 8, 2000, wherein Judge Elicerio issued her Final Findings of Fact, Conclusions of Law, and Order holding that it is irrelevant whether or not the applicant is able to return to work in those cases that apply subsection (10) in determining permanent disability. (R. 88)

Respondent Intermountain Slurry Seal filed a Motion for Review with the Industrial Commission on January 4, 2001. (R. 103-109). The Commission, on February 28, 2001 entered an Order, denying Intermountain's Motion for Review. (R. 116-118). Mrs. Schreiber filed a Petition for Review on March 23, 2001.

### **III. Uncontested Facts**

The facts are essentially uncontested. The applicant, Kyle Stephens suffered an industrial accident on September 8, 1998 which result in the amputation of both legs just below the knee. (R. 88). Following the accident, the Respondents began paying disability benefits to the applicant, and have done so continuously. It has been determined that the applicant is permanently disabled because of the loss of both legs in accordance with §34A-2-413(10). (R. 88). It is also uncontested that a job has been provided to the applicant that fits within his abilities and a job that the applicant testified at the hearing he would be capable of performing. (R. 89).

Soon after the applicant's accident, the respondents had a vocational rehabilitation counselor review the applicant's potential to return to work. (R. 89). Following the vocational rehabilitation review, sometime in 1999, the applicant began going to college, taking courses in computer electronics, with the respondents paying for the schooling. (R. 89). In addition, the applicant was offered a full-time dispatcher job by his employer. The dispatching job had a salary of approximately \$2,000 per month, and was a job that fit within the applicant's restrictions. The applicant testified at the hearing that he thought he would be able to do the job. (R. 89). At the time the jobs were offered to the applicant, he reported that he wanted to finish his schooling. (R. 89). At no time has the finding of permanent disability been challenged, rather the question involves the suspension of benefits during the time that the applicant is capable to perform regular steady work as set forth in §34-2-413(7).

## SUMMARY OF THE ARGUMENT

The conflict in this case comes when reviewing Utah Code Ann. §34A-2-413(10). That section in essence states that the loss of permanent and complete loss of use of both feet... constitutes total and permanent disability to be compensated according to this section. Subsection b of that section states “finding of permanent and total disability pursuant to Subsection 10(a) is final.”

In this case, the Labor Commission found that since the finding is to be final, that permanent total disability payments must continue until the death of the employee regardless of his ability to return to regular steady work.

It is the Respondents’ position that even though the finding is to be final, subsection 10 states that the applicant is to receive compensation in accordance with the other provisions of the statute. Therefore, in order to determine the duration of payments of a final order as determined by subsection 10 payment ends at death or when the applicant is able to return to regular steady work. This is clearly the intent of the legislature as it included specific language in subsection 10.

Subsection 7 of Utah Code Ann. §34A-2-413 defines how long the compensation payments are to be made. This subsection applies to every case that has had a finding of permanent disability. It is further the Respondents’ position that Subsection 10(b) making a finding of permanent total disability, pursuant to Subsection 10(a) final does not extend the period of time in which payment shall be made. Clearly, Subsection 7(a)(i) is not affected

by the nature of the disability, and payments would clearly cease upon the death of the employee. Subsection 7(a)(ii) also has the same affect. In other words, when an employee is capable of returning to regular steady work, the payments also cease regardless of the disability. The fact that an employee has lost both of his feet is not an indication in all cases that he cannot work. The facts of this case show that the Respondents offered work that the employee could do based upon his physical and mental capacities. In fact, the testimony at the hearing was, both by the Respondent and the employer, that they thought he could do the job.

Subsection 7 has nothing to do with how a final order of the permanent disability is derived, but merely determines how long payments continue when a person is permanently and totally disabled. Section 10(a) specifically states that if you lose the use of both feet, then that constitutes total and permanent disability “to be compensated according to this section.” In other words, “to be compensated according to this section” relates back to 7(a)(i) and 7(a)(ii). In no instance can the payments be made for a longer period of time than subsection 7 allows, even if the finding of permanent disability is based upon subsection 10.

## **ARGUMENT**

- I. In determining disability benefits, the Commission must consider and give effect to the entire statute regardless of how the underlying disability was derived.

Intermountain's argument is really very simple: Under the plain language of the

Workers' Compensation Act, permanent disability benefits are discontinued at the time that an employee is capable of returning to regular steady work regardless of the underlying disability. The issue in this case involves the interpretation and application of Utah Code Ann. §34A-2-413, and specifically subsections 7 and 10.

Matters of statutory construction are questions of law that are reviewed for correctness. Platts v. Parents Helping Parents, 947 P.2d 658, 661 (Utah 1997); see also Jeffs v. Stubbs, 970 P.2d 1234, 1240 (Utah 1998); Pappas v. Richfield City, 962 P.2d 63, 65 (Utah 1998). In addition, "where the issue is a question of law, . . . appellate review gives no deference to the trial judge's or agency's determination, because the appellate court has 'the power and duty to say what the law is and to ensure that it is uniform throughout the jurisdiction.'" Drake v. Industrial Comm'n, 939 P.2d 177, 181 (Utah 1997).

The courts primary duty in interpreting legislation is to give effect to the intent of the legislature. West Jordan v. Morrison, 656 P.2d 445, 446 (Utah 1982). Additionally, there is a fundamental duty to give effect, if possible, to every word in the statute. Provo City Corp. v. State, 795 P.2d 1120, 1123 (Utah 1990). "In the process of interpretation, the courts may not take, strike, or read anything out of a statute or delete, subtract, or omit anything therefrom." Chris & Dick's Lumber and Hardware v. State Tax Comm'n., 791 P.2d 511, 516 (Utah 1990).

Subsection (7) is unambiguous and must therefore be applied in accordance with its plain language. "Only when we find ambiguity in the statute's plain language need we seek

guidance from the legislative history and relevant policy consideration." City of South Salt Lake v. Salt Lake County, 925 P.2d 954, 957 (Utah 1996) (quoting Gohler v. Wood, 919 P.2d 561, 562-63 (Utah 1996)). In our case, the statute could not be any clearer. Subsection 7 provides how long payments continue when a person is permanently and totally disabled, regardless of the underlying disability and the basis of the final order of permanent disability.

**II. The governing statute plainly requires that disability benefits are discontinued upon death or at the time that an employee is capable of returning to regular steady work.**

Intermountain's argument is really very simple: under the plain language of the Worker's Compensation Act, permanent disability benefits are discontinued at the time that an employee is capable of returning to regular steady work. The issue in this case centers around the interpretation and application of Utah Code Ann. §34A-2-413. The Labor Commission did not even address subsection 7, but relied entirely upon §34A-2-413(10). In so doing, the Commission failed to apply the statute as it was intended. Utah Code Ann. §34A-2-413(10) provides that:

(a) The loss or permanent and complete loss of the use of both hands, both arms, both feet, both legs, both eyes, or any combination of two such body members constitutes total and permanent disability, **to be compensated according to this section.**

(b) A finding of permanent and total disability pursuant to subsection 10(a) is final. (emphasis added).

In reliance upon this section, the Labor Commission in its order denying the motion for review held that "Mr. Stephens is entitled to continuing permanent total disability

compensation.” (R. 117). The Commission completely ignored and failed to apply the rest of the statute, in spite of the language that compensation is to be applied in accordance with §34A-2-413. In it’s application of subsection 10, even though it calls for a final order to be entered, subsection 10 still states that benefits are “to be compensated according to this section.” Subsection 7 of this section specifically deals with the distribution of compensation and addresses how compensation is to be applied.

Our Supreme Court has previously stated that “the courts have a fundamental duty to give affect, if possible, to every word in the statute.” Provo City Corp. v. State, 795 P.d 1120, 1123 (Utah 1990). In addition, "in the process of interpretation, the courts may not take, strike, or read anything out of a statute or delete, subtract, or omit anything therefrom." Chris & Dick's Lumber and Hardware v. State Tax Comm'n., 791 P.2d 511, 516 (Utah 1990). The Commission's interpretation of the statute clearly omits and does not give effect to the statute as a whole.

In the Motion for Review, filed by the Respondent's, Respondents specifically requested that the Labor Commission interpret the law and statute found in the Labor Code under the Worker’s Compensation Act Section 34A-2-413(7). The Respondents requested that the Commission analyze Subsection 7 of the permanent total disability section and the amount of payments required to be made in the present case. (R.104).

It is Respondents position that the interpretation of subsection 7 has nothing to do with the underlying facts and the determination of a final order of permanent disability. Rather,



subsection 7 determines how long payments continue when a final order of permanent disability has been entered. The Commission's interpretation and application of the section would have payments go on forever, because there is no provision in subsection 10 that deals with the termination or suspension of benefits, even upon death. This is because subsection 7 determines the period of compensation in all cases where there has been a final order.

Subsection 7 states as follows:

The period of benefits commences on the date the employee became permanently totally disabled, **as determined by a final order of the commission** based on the facts and evidence, and ends:

- (i) with the death of the employee; or
- (ii) when the employee is capable of returning to regular, steady work.

In accordance with the statute, compensation under a final order is to be suspended at either the death of the employee or when the employee is capable of returning to regular, steady work. This subsection specifically states that it applies to a "final order". It does not differentiate between a final order of permanent disability for someone that has a back injury and is found to be permanently disabled in accordance with subsection 1, versus someone who is determined to be permanently disabled through the application of subsection 10. It applies to all final orders, and clearly there is no distinction made for the underlying disability.

It is the Respondents' position that the interpretation of Section 7 has nothing to do with how a final order of the permanent disability is derived, but merely determines how long

payments continue when a person is permanently and totally disabled. Section 10(a) specifically states that if you lose the use of both feet, then that constitutes total and permanent disability "to be compensated according to this section." In other words, "to be compensated according to this section" relates back to 7(a)(i) and 7(a)(ii). In no instance can the payments be made for a longer period of time than subsection 7 allows, even if the finding of permanent disability is based upon subsection 10. Subsection 7 is unambiguous and therefore must be applied in accordance with its plain language.

**III. Suspending benefits in this case when an individual is capable and able to return to regular steady work accomplishes the purpose of the Worker Compensation Act.**

The Statute in its present form Utah Code Ann. § 34A-2-413 came into affect during the year 1994. At that time, the legislature overhauled the whole statute dealing with permanent total disability. Prior to that time, an employer was only responsible for 312 weeks of payments on any permanent total disability claim. See Utah Code Ann. § 35-1-67 (1994). Thereafter, the payments were taken over by the state. The statute was amended in 1994 to make the employers responsible for the lifetime of the injured employees.

One of the major issues discussed at the time when the Statute was amended, was whether or not rehabilitation efforts should be made mandatory in the state of Utah. It was agreed that they would not be made mandatory, but sufficient benefits and relief from the lifetime payments were given if rehabilitation efforts were voluntarily begun. See Utah Code Ann. § 34A-2-413. It was discussed at the legislature at the time of the passing of this

Statute that by providing the sufficient care, the employers would perform rehabilitation efforts on a voluntary basis because there would be some benefit for doing so. It was also recognized that the rehabilitation efforts would provide substantial benefits to the injured employees. Hence, the rehabilitation section was added to 34A-2-413 and the payments for permanent total disability claims was limited to 1) the lifetime of the employee, or 2) his capability of returning to regular steady work.

The Labor Commission's interpretation of this statute does away with all incentive for an employer to provide rehabilitative efforts to the injured employee because there is no relief in providing such benefit. As stated above, the employer was paying for rehabilitation efforts which included paying for schooling. However, the interpretation of the statute by the Labor Commission eliminated any incentive for the employer to continue paying for schooling and all other efforts of rehabilitation. As a result of totally taking away any incentive for rehabilitation, and much to the disappointment of the applicant, the employer discontinued rehabilitation that they had voluntarily provided. As such, the Labor Commission order is clearly contrary to what the legislator intended when he overhauled the statute.

It is a well known fact that where rehabilitation is possible, rehabilitation is the most satisfactory disposition of an industrial injury from the point of view of an injured employee, the insurer, the employer and the general public. See Larson's Workers Compensation Law §61.26. Based upon the changes to this section by the legislature, and the additional

language dealing directly with rehabilitation it is clear that the legislature wanted to encourage rehabilitation by the employer by providing the incentives to suspend benefits. The Respondents assert that is the very reason that Section 7(a)(ii) was specifically codified.

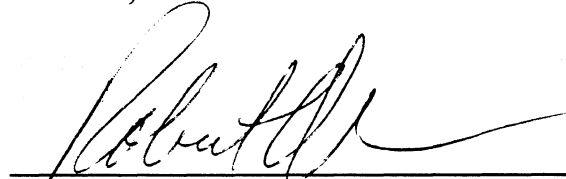
This Statute is relatively new of that there is no case law that the Respondents are aware of which addresses this particular issue in the state of Utah. The Respondents respectfully request that this Court review the statute for the proper interpretation of law and issue an order reversing the Labor Commission's finding that permanent total disability payments must continue indefinitely, and find that benefits should be suspended if the applicant is able to return to regular steady work as in this case.

### **CONCLUSION**

For the foregoing reasons, respondents, Intermountain Surrly Seal respectfully requests that this Court overturn the Labor Commission and find that benefits should be suspended in all cases upon death or when the applicant is capable and able to return to regular, steady work.

DATED this the 13th day of July, 2001.

**PLANT, WALLACE CHRISTENSEN & KANELL**

A handwritten signature in dark ink, appearing to read 'Theodore E. Kanell', is written over a horizontal line.

THEODORE E. KANELL

ROBERT C. OLSEN

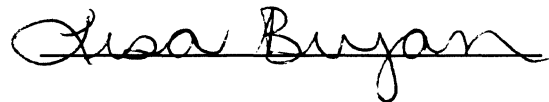
Attorney for Defendant

## CERTIFICATE OF MAILING

I hereby certify that two true and correct copies of the Appellant's Brief on Appeal was mailed on the 13th day of July to the following by first class mail postage prepaid.

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A handwritten signature in cursive script, reading "Lisa Bryan", written over a horizontal line.

## **ADDENDUM**

Addendum No.1: Applicable Statutes

Addendum No.2: Conclusion of Law and Order of the Administrative Law Judge

Addendum No.3: Order Denying Respondent's Motion for Review

## ADDENDUM NO. 1

34A-2-413. Permanent total disability - Amount of payments - Rehabilitation.

(1) (a) In cases of permanent total disability resulting from an industrial accident or occupational disease, the employee shall receive compensation as outlined in this section.

(b) To establish entitlement to permanent total disability compensation, the employee has the burden of proof to show by a preponderance of evidence that:

(i) the employee sustained a significant impairment or combination of impairments as a result of the industrial accident or occupational disease that gives rise to the permanent total disability entitlement;

(ii) the employee is permanently totally disabled; and

(iii) the industrial accident or occupational disease was the direct cause of the employee's permanent total disability.

(c) To find an employee permanently totally disabled, the commission shall conclude that:

(i) the employee is not gainfully employed;

(ii) the employee has an impairment or combination of impairments that limit the employee's ability to do basic work activities;

(iii) the industrial or occupationally caused impairment or combination of impairments prevent the employee from performing the essential functions of the work activities for which the employee has been qualified until the time of the industrial accident or occupational disease that is the basis for the employee's permanent total disability claim; and

(iv) the employee cannot perform other work reasonably available, taking into consideration the employee's age, education, past work experience, medical capacity, and residual functional capacity.

(d) Evidence of an employee's entitlement to disability benefits other than those provided under this chapter and Chapter 3, Utah Occupational Disease Act, if relevant, may be presented to the commission, but is not binding and creates no presumption of an entitlement under this chapter and Chapter 3, Utah Occupational Disease Act.

(2) For permanent total disability compensation during the initial 312-week entitlement, compensation shall be  $66\frac{2}{3}\%$  of the employee's average weekly wage at the time of the injury, limited as follows:

(a) compensation per week may not be more than 85% of the state average weekly wage at the time of the injury;

(b) compensation per week may not be less than the sum of \$45 per week, plus \$5 for a dependent spouse, plus \$5 for each dependent child under the age of 18 years, up to a maximum of four dependent minor children, but not exceeding the maximum established in Subsection

(2)(a) nor exceeding the average weekly wage of the employee at the time of the injury; and

(c) after the initial 312 weeks, the minimum weekly compensation rate under Subsection (2)(b) shall be 36% of the current state average weekly wage, rounded to the nearest dollar.

(3) For claims resulting from an accident or disease arising out of and in the course of the employee's employment on or before June 30, 1994:

(a) The employer or its insurance carrier is liable for the initial 312 weeks of permanent total disability compensation except as outlined in Section 34A-2-703 as in effect on the date of injury.

(b) The employer or its insurance carrier may not be required to pay compensation for any combination of disabilities of any kind, as provided in this section and Sections 34A-2-410



through 34A-2-412 and Sections 34A-2-501 through 34A-2-507 in excess of the amount of compensation payable over the initial 312 weeks at the applicable permanent total disability compensation rate under Subsection (2).

(c) Any overpayment of this compensation shall be reimbursed to the employer or its insurance carrier by the Employers' Reinsurance Fund and shall be paid out of the Employers' Reinsurance Fund's liability to the employee.

(d) After an employee has received compensation from the employee's employer, its insurance carrier, or the Employers' Reinsurance Fund for any combination of disabilities amounting to 312 weeks of compensation at the applicable permanent total disability compensation rate, the Employers' Reinsurance Fund shall pay all remaining permanent total disability compensation.

(e) Employers' Reinsurance Fund payments shall commence immediately after the employer or its insurance carrier has satisfied its liability under Subsection (3) or Section 34A-2-703.

(4) For claims resulting from an accident or disease arising out of and in the course of the employee's employment on or after July 1, 1994:

(a) The employer or its insurance carrier is liable for permanent total disability compensation.

(b) The employer or its insurance carrier may not be required to pay compensation for any combination of disabilities of any kind, as provided in this section and Sections 34A-2-410 through 34A-2-412 and Sections 34A-2-501 through 34A-2-507, in excess of the amount of compensation payable over the initial 312 weeks at the applicable permanent total disability compensation rate under Subsection (2).

(c) Any overpayment of this compensation shall be recouped by the employer or its insurance carrier by reasonably offsetting the overpayment against future liability paid before or after the initial 312 weeks.

(5) Notwithstanding the minimum rate established in Subsection (2), the compensation payable by the employer, its insurance carrier, or the Employers' Reinsurance Fund, after an employee has received compensation from the employer or the employer's insurance carrier for any combination of disabilities amounting to 312 weeks of compensation at the applicable total disability compensation rate, shall be reduced, to the extent allowable by law, by the dollar amount of 50% of the Social Security retirement benefits received by the employee during the same period.

(6) (a) A finding by the commission of permanent total disability is not final, unless otherwise agreed to by the parties, until:

(i) an administrative law judge reviews a summary of reemployment activities undertaken pursuant to Chapter 8, Utah Injured Worker Reemployment Act;

(ii) the employer or its insurance carrier submits to the administrative law judge a reemployment plan as prepared by a qualified rehabilitation provider reasonably designed to return the employee to gainful employment or the employer or its insurance carrier provides the administrative law judge notice that the employer or its insurance carrier will not submit a plan; and

(iii) the administrative law judge, after notice to the parties, holds a hearing, unless otherwise stipulated, to consider evidence regarding rehabilitation and to review any reemployment plan submitted by the employer or its insurance carrier under Subsection (6)(a)(ii).

(b) Prior to the finding becoming final, the administrative law judge shall order:

(i) the initiation of permanent total disability compensation payments to provide for the employee's subsistence; and

- (ii) the payment of any undisputed disability or medical benefits due the employee.
- (c) The employer or its insurance carrier shall be given credit for any disability payments made under Subsection (6)(b) against its ultimate disability compensation liability under this chapter or Chapter 3, Utah Occupational Disease Act.
- (d) An employer or its insurance carrier may not be ordered to submit a reemployment plan. If the employer or its insurance carrier voluntarily submits a plan, the plan is subject to Subsections (6)(d)(i) through (iii).
  - (i) The plan may include retraining, education, medical and disability compensation benefits, job placement services, or incentives calculated to facilitate reemployment funded by the employer or its insurance carrier.
  - (ii) The plan shall include payment of reasonable disability compensation to provide for the employee's subsistence during the rehabilitation process.
  - (iii) The employer or its insurance carrier shall diligently pursue the reemployment plan. The employer's or insurance carrier's failure to diligently pursue the reemployment plan shall be cause for the administrative law judge on the administrative law judge's own motion to make a final decision of permanent total disability.
- (e) If a preponderance of the evidence shows that successful rehabilitation is not possible, the administrative law judge shall order that the employee be paid weekly permanent total disability compensation benefits.
- (7) (a) The period of benefits commences on the date the employee became permanently totally disabled, as determined by a final order of the commission based on the facts and evidence, and ends:
  - (i) with the death of the employee; or
  - (ii) when the employee is capable of returning to regular, steady work.
- (b) An employer or its insurance carrier may provide or locate for a permanently totally disabled employee reasonable, medically appropriate, part-time work in a job earning at least minimum wage provided that employment may not be required to the extent that it would disqualify the employee from Social Security disability benefits.
- (c) An employee shall fully cooperate in the placement and employment process and accept the reasonable, medically appropriate, part-time work.
- (d) In a consecutive four-week period when an employee's gross income from the work provided under Subsection (7)(b) exceeds \$500, the employer or insurance carrier may reduce the employee's permanent total disability compensation by 50% of the employee's income in excess of \$500.
- (e) If a work opportunity is not provided by the employer or its insurance carrier, a permanently totally disabled employee may obtain medically appropriate, part-time work subject to the offset provisions contained in Subsection (7)(d).
- (f) (i) The commission shall establish rules regarding the part-time work and offset.
  - (ii) The adjudication of disputes arising under Subsection (7) is governed by Part 8, Adjudication.
- (g) The employer or its insurance carrier shall have the burden of proof to show that medically appropriate part-time work is available.
- (h) The administrative law judge may:
  - (i) excuse an employee from participation in any job that would require the employee to undertake work exceeding the employee's medical capacity and residual functional capacity or

for good cause; or

(ii) allow the employer or its insurance carrier to reduce permanent total disability benefits as provided in Subsection (7)(d) when reasonable, medically appropriate, part-time employment has been offered but the employee has failed to fully cooperate.

(8) When an employee has been rehabilitated or the employee's rehabilitation is possible but the employee has some loss of bodily function, the award shall be for permanent partial disability.

(9) As determined by an administrative law judge, an employee is not entitled to disability compensation, unless the employee fully cooperates with any evaluation or reemployment plan under this chapter or Chapter 3, Utah Occupational Disease Act. The administrative law judge shall dismiss without prejudice the claim for benefits of an employee if the administrative law judge finds that the employee fails to fully cooperate, unless the administrative law judge states specific findings on the record justifying dismissal with prejudice.

(10) (a) The loss or permanent and complete loss of the use of both hands, both arms, both feet, both legs, both eyes, or any combination of two such body members constitutes total and permanent disability, to be compensated according to this section.

(b) A finding of permanent total disability pursuant to Subsection (10)(a) is final.

(11) (a) An insurer or self-insured employer may periodically reexamine a permanent total disability claim, except those based on Subsection (10), for which the insurer or self-insured employer had or has payment responsibility to determine whether the worker remains permanently totally disabled.

(b) Reexamination may be conducted no more than once every three years after an award is final, unless good cause is shown by the employer or its insurance carrier to allow more frequent reexaminations.

(c) The reexamination may include:

(i) the review of medical records;

(ii) employee submission to reasonable medical evaluations;

(iii) employee submission to reasonable rehabilitation evaluations and retraining efforts;

(iv) employee disclosure of Federal Income Tax Returns;

(v) employee certification of compliance with Section 34A-2-110; and

(vi) employee completion of sworn affidavits or questionnaires approved by the division.

(d) The insurer or self-insured employer shall pay for the cost of a reexamination with appropriate employee reimbursement pursuant to rule for reasonable travel allowance and per diem as well as reasonable expert witness fees incurred by the employee in supporting the employee's claim for permanent total disability benefits at the time of reexamination.

(e) If an employee fails to fully cooperate in the reasonable reexamination of a permanent total disability finding, an administrative law judge may order the suspension of the employee's permanent total disability benefits until the employee cooperates with the reexamination.

(f) (i) Should the reexamination of a permanent total disability finding reveal evidence that reasonably raises the issue of an employee's continued entitlement to permanent total disability compensation benefits, an insurer or self-insured employer may petition the Division of Adjudication for a rehearing on that issue. The petition shall be accompanied by documentation supporting the insurer's or self-insured employer's belief that the employee is no longer permanently totally disabled.

(ii) If the petition under Subsection (11)(f)(i) demonstrates good cause, as determined by the Division of Adjudication, an administrative law judge shall adjudicate the issue at a hearing.

(iii) Evidence of an employee's participation in medically appropriate, part-time work may not be the sole basis for termination of an employee's permanent total disability entitlement, but the evidence of the employee's participation in medically appropriate, part-time work under Subsection (7) may be considered in the reexamination or hearing with other evidence relating to the employee's status and condition.

(g) In accordance with Section 34A-1-309, the administrative law judge may award reasonable attorneys fees to an attorney retained by an employee to represent the employee's interests with respect to reexamination of the permanent total disability finding, except if the employee does not prevail, the attorneys fees shall be set at \$1,000. The attorneys fees shall be paid by the employer or its insurance carrier in addition to the permanent total disability compensation benefits due.

(h) During the period of reexamination or adjudication if the employee fully cooperates, each insurer, self-insured employer, or the Employers' Reinsurance Fund shall continue to pay the permanent total disability compensation benefits due the employee.

(12) If any provision of this section, or the application of any provision to any person or circumstance, is held invalid, the remainder of this section shall be given effect without the invalid provision or application.

#### History

History: C. 1953, 35-1-67, enacted by L. 1988, ch. 116, § 4; 1988 (2nd S.S.), ch. 12, § 1; 1991, ch. 136, § 12; 1992, ch. 53, § 2; 1994, ch. 266, § 2; 1995, ch. 177, § 2; renumbered by L. 1996, ch. 240, § 156; renumbered by L. 1997, ch. 375, § 121.

#### Annotations

Repeals and Reenactments. - Laws 1988, ch. 116, § 4 repeals former § 35-1-67, as last amended by Laws 1985, ch. 160, § 1, relating to permanent total disability, effective July 1, 1988, and enacts the present section.

Amendment Notes. - The 1994 amendment, effective July 1, 1994, rewrote the section to such an extent that a detailed analysis is impracticable.

The 1995 amendment, effective May 1, 1995, rewrote Subsection (1) to include occupational diseases and add Subsections (b)(i) through (b)(iii), (c)(i) through (c)(iv), and (d); added Subsections (7)(b) through (h), (11), and (12) and the second sentence in Subsection (9); and made related subsection redesignations and stylistic changes throughout.

The 1996 amendment, effective July 1, 1997, renumbered this section, which formerly appeared as § 35-1-67; and substituted "department" for "commission" and "chapter" for "title" throughout; substituted "this chapter and Chapter 3a, Utah Occupational Disease Act" for "chapter 1 or 2" in Subsections (1)(d) and (6)(b); substituted "35A-3-703" for "35-1-69" in Subsections (3)(a) and (3)(e); substituted "35A-3-410 through 35A-3-412 and Sections 35A-3-501 through 35A-3-507" for "35-1-65, 25-1-65.1, 35-1-66.1 through 35-1-66.7" in Subsections (3)(b) and (4)(b); substituted "Section 35A-3-114" for "Utah Workers' Compensation Fund Prevention Act" in Subsection (10)(c)(v); and substituted "35A-3-805" for "35-1-87" in Subsection (10)(g).

The 1997 amendment, effective July 1, 1997, renumbered this section, which formerly appeared as § 35A-3-413 ; substituted "commission" and "administrative law judge" for "department" where the terms appear; inserted references to "Chapter 3, Utah Occupational Disease Act" in Subsections (1)(d) and (9) and as a substitute for "Chapter 3a" in Subsection (6)(c); substituted

"34A-2-703" for "35A-3-703" in Subsections (3)(a) and (3)(e), "34A-2-410 through 34A-2-412" and "34A-2-501 through 34A-2-507" for "35A-3-410 through 35A-3-412" and "35A-3-501 through 35A-3-507" in Subsections (3)(b) and (4)(b), "Chapter 8" for Chapter 9, Part 2" in Subsection(6)(a)(i), "34A-2-110" for "35A-3-114" in Subsection (11)(c)(v), and "34A-1-309" for "35A-3-805" in Subsection (11)(g); added "is governed by Part 8, Adjudication" at the end of Subsection (7)(f)(ii); substituted "Division of Adjudication" for "department" in Subsection (11)(f)(i); inserted "as determined by the Division of Adjudication" in Subsection (11)(f)(ii); and made stylistic changes.

## **ADDENDUM NO. 2**

UTAH LABOR COMMISSION  
Case No. 99648

KYLE STEPHENS,

Petitioner,

vs.

INTERMOUNTAIN SLURRY SEAL/  
CNA INSURANCE,

Respondents.

FINAL FINDINGS OF FACT

CONCLUSIONS OF LAW

AND ORDER

\* \* \* \* \*

2<sup>ND</sup> HEARING: Room 334, Labor Commission, 160 East 300 South, Salt Lake City, Utah, on June 8, 2000 at 3:00 o'clock p.m. Said hearing was pursuant to Order and Notice of the Commission.

BEFORE: Barbara Elicerio, Administrative Law Judge.

APPEARANCES: The petitioner was represented by Kevin Robson, Attorney.

The respondents were represented by Theodore Kanell, Attorney.

PROCEDURAL STATUS OF LITIGATION:

On February 1, 2000, the ALJ issued Preliminary Conclusions of Law and Order in the above-captioned matter, concluding that the petitioner was entitled to payment of permanent total disability benefits, regardless of what his capacity was for returning to work. Although the ALJ allowed for additional legal argument on that statutory construction issue, relating to the award of permanent total disability benefits, the parties presented no further argument on that legal issue. A second hearing was held as indicated above, to address the factual issues surrounding the petitioner's ability to return to work. This Order addresses the facts related to the petitioner's ability to return to work currently and affirms the ALJ's preliminary analysis and ruling on the legal issue (addressed in the prior order).

FINDINGS OF FACT:

Soon after the petitioner's September 8, 1998 industrial injury, in which he lost both legs just below the knee, the respondents had a vocational rehabilitation counselor/analyst review the petitioner's work

FINAL ORDER  
RE: KYLE STEPHENS  
PAGE 2

background and skills. The counselor/analyst issued a report, dated October 12, 1998, Exhibit D-4, which concludes that the petitioner had potential for returning to work with his prior employer, Granite Construction/Concrete Products and also had transferable skills that would allow him to perform work in a number of occupations. Apparently, sometime in 1999, the petitioner began going to college, taking courses in computer electronics, with the respondents funding this endeavor. The respondents indicated that they decided to pay for this rehabilitative effort, because they presumed that they would be relieved of the payment of permanent total disability benefits, once the petitioner was rehabilitated and returned to work. It is unclear why the respondents did not offer work or identify work for the petitioner instead.

On September 28, 1999, the respondents offered the petitioner a job with his prior employer (Granite Construction, aka Concrete Products). This job involved primarily telephone work, per the job description submitted at hearing (Exhibit D-2). The salary level for the job is not indicated on the exhibit. About a month later, a second position was offered to the petitioner. This second position was a dispatcher position, paying \$2,000.00 per month (Exhibit D-3). It appears undisputed that the position could be performed from a wheelchair. The position is apparently located in Ogden and would require the petitioner to travel from his home in Logan to Ogden each day. The petitioner indicated, at hearing, that his disability would not necessarily prevent him from making the somewhat lengthy commute. The petitioner stated that he wants to keep his residence in Logan, where his extended family resides, as this family has been supportive and helpful in his recovery from the work injury. The petitioner's salary in his prior position, as of the date of injury, per the application for hearing, was approximately \$3,200.00 per month (\$18.00/hour x 22 days x 8 hours/day). The petitioner stated that he was in school when the jobs were offered and he wanted to complete his schooling.

After the ALJ issued her order on February 1, 2000, the respondents discontinued payment on the petitioner's college courses. The respondents indicated at hearing that, since the ALJ's order indicated that the respondents would be liable for permanent total disability benefits for life, the respondents no longer had any motivation for rehabilitating the petitioner. The petitioner was disappointed and confused by this discontinuance of payment of his college, as the respondents initially encouraged him to pursue the education. Previously, the petitioner had been attending college classes 2 hours per day, 5 days per week, with about 3-4 hours study time per day. The petitioner took a bus to and from his classes. Although he has a van with hand controls in it, so that he can drive



FINAL ORDER  
RE: KYLE STEPHENS  
PAGE 3

himself, the petitioner stated that the van does not run real well and probably needs a new engine, which he cannot afford. He stated that he was able to ambulate using a wheelchair, his prosthetic devices, or crutches. The petitioner wants to continue with his courses and thus he has arranged for payment of his education through the Division of Rehabilitation Services.

The petitioner stated that he has been trying to manage without the wheelchair, as much as possible, using his prosthetic devices, but has been having problems with getting the devices to fit. He stated that his legs continue to shrink, causing gaps between his legs and the prosthetic devices. The gaps cause blisters. In addition, the petitioner stated he has begun to see a physician for severe back pain that is caused by use of the prostheses. The petitioner indicated that considering all the problems he has been having with the prosthetic devices, in order to return to work, he would need to rely exclusively on the wheelchair. He stated he would also need to be gone for a good portion of every work day, because he is currently getting physical therapy for 1-2 hours per day. It is unclear if this would be accommodated with paid leave time.

#### CONCLUSIONS OF LAW:

The respondents argue that the petitioner is capable of returning to regular steady work and thus his permanent total disability benefits cease, as indicated in U.C.A. 34A-2-413 (7)(a)(ii). As indicated in the ALJ's prior order, the ALJ concludes that this provision for cessation of benefits does not apply to subsection (10) cases, involving loss of both limbs. If this analysis is incorrect, and the petitioner's benefits are subject to cessation per subsection (7)(a)(ii), the ALJ finds that the evidence of the petitioner's ability to return to "regular, steady work" is somewhat inconclusive at this point. At best, the ALJ finds that the respondents have identified one job that the petitioner MAY be able to perform. The ALJ has the following questions regarding whether the petitioner can perform this job:

1. Considering the petitioner's recent development of back pain, can the petitioner manage the commute from Logan to Ogden on a daily basis and can the petitioner manage confinement to a wheelchair?

2. How much accommodation in pay and leave will the respondents offer, to allow for the petitioner's treatment needs (i.e. physical therapy and physician appointments, etc.)?
3. Is 2/3 of his prior income sufficient to meet the petitioner's income requirements, considering financial needs he will have that will not be covered by workers compensation insurance (for example: the cost of a new vehicle, so that he can make the commute)?

In addition to the foregoing concerns about the petitioner's ability to perform the job in question, the ALJ has concerns regarding whether one job position opening that the petitioner might be able to perform translates to capacity to return to "regular, steady work." The respondents have alleged that the dispatcher position is "generally available" in the work force. This may or may not be true (no evidence was actually submitted with respect to the general availability of these positions), especially depending on the number and type of accommodations that may be necessary to address the petitioner's disability and complicating factors, such as back pain.

Considering the above-noted concerns, the ALJ finds that if the Commission, or other appellate body, should determine that the petitioner's benefits are subject to cessation per subsection (7), as the respondents have argued, the matter should be remanded for further consideration of the petitioner's ability to perform "regular, steady work," at the point in the future, when this case may be finally decided.

**BENEFITS DUE:**

Because the ALJ has determined that the petitioner is due benefits, regardless of his ability to perform regular steady work, the ALJ will confirm the award of benefits made in the earlier order below. Attorney Robson has indicated that he and the petitioner have decided that the full amount of benefits shall go to the petitioner until 18 months following August 2000 (February 2002). After that, the respondents should pay the petitioner his compensation rate (\$414.00 per week) less 20% (\$82.80 per week), or \$331.20 per week, for 110 weeks (\$82.80/week x 110 weeks = \$9,100.00), or until approximately March 2004, thereafter returning to full benefit payment of \$414.00 per week. Attorney Robson can arrange for a lump sum advance payment of his

FINAL ORDER  
RE: KYLE STEPHENS  
PAGE 5

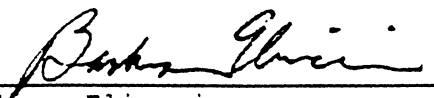
attorney fees (most likely involving a discount to present value) with the carrier, if that is mutually agreeable to the parties. As long as this is arranged per agreement, the ALJ will not need to approve the particulars of this advance payment.

ORDER:

IT IS THEREFORE ORDERED that the respondents, Intermountain Slurry(aka Granite Construction and Concrete Products)/CNA Insurance, pay the petitioner, Kyle Stephens, permanent total disability benefits at the rate of \$414.00 per week, beginning on date of injury, September 8, 1998, and continuing until February 2002. Thereafter, to account for the attorney fee award below, the respondents shall pay the benefits at the rate of \$331.20 for 110 weeks or until approximately March 2004. From March 2004 forward the benefit rate shall be returned to \$414.00 until the death of the petitioner or until further order of the Commission altering the award herein.

IT IS FURTHER ORDERED that the respondents pay Kevin Robson, attorney for the petitioner, the sum of \$9,100.00, plus the percentage of interest that is appropriate per R602-2-4, for services rendered in this matter. This amount is to be deducted from the aforesaid award to the petitioner, in a periodic deduction, as indicated in the preceding order paragraph. The attorney fees are to be remitted directly to the office of Kevin Robson.

DATED this 2 day of November, 2000.

  
\_\_\_\_\_  
Barbara Elicerio  
Administrative Law Judge

FINAL ORDER  
RE: KYLE STEPHENS  
PAGE 6

NOTICE OF APPEAL RIGHTS

A party aggrieved by the decision may file a Motion for Review with the Adjudication Division of the Utah Labor Commission. The Motion for Review must set forth the specific basis for review and must be received by the Commission within 30 days from the date this decision is signed. Other parties may then submit their Responses to the Motion for Review within 20 days of the date of the Motion for Review.

Any party may request that the Appeals Board of the Utah Labor Commission conduct the foregoing review. Such request must be included in the party's Motion for Review or its Response. If none of the parties specifically requests review by the Appeals Board, the review will be conducted by the Utah Labor Commission.

CERTIFICATE OF MAILING

I hereby certify that on the 6<sup>TH</sup> day of November, 2000, I mailed a true and correct copy of the foregoing Settlement of Disputed Claim for Permanent Total Disability Benefits & Order for Approval, in the case of Kyle Stephens v. Intermountain Slurry Seal and CNA Ins., (Case No. 99648) to the following parties:

POSTAGE PREPAID:

KYLE STEPHENS  
408 East 100 North, #1  
Logan, UT 84321

THEODORE E. KANELL, ESQ.  
ROBERT C. OLSEN, ESQ.  
PLANT, WALLACE, CHRISTENSEN &  
KANELL  
136 East South Temple, Ste. 1700  
Salt Lake City, UT 84111

KEVIN K. ROBSON, ESQ.  
5296 South Commerce Dr #100  
Salt Lake City, UT 84107



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Vilma Mosier

## **ADDENDUM NO. 3**

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**UTAH LABOR COMMISSION**

**KYLE STEPHENS,**

**Applicant,**

**v.**

**INTERMOUNTAIN SLURRY SEAL  
and CNA INSURANCE,**

**Defendants.**

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**ORDER DENYING  
MOTION FOR REVIEW**

**Case No. 99-0648**

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Intermountain Slurry Seal and its workers compensation insurance carrier, CNA Insurance (jointly referred to as "Intermountain") ask the Utah Labor Commission to review the Administrative Law Judge's award of benefits to Kyle Stephens under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

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**

Pursuant to §34A-2-413(10) of the Act, is Mr. Stephens entitled to continuing permanent total disability compensation?

**FINDINGS OF FACT**

The Commission adopts the findings of fact set forth in the decision of the ALJ. The facts material to the issue now before the Commission may be summarized as follows. On September 8, 1998, while working for Intermountain, Mr. Stephens was run over by a heavy equipment roller, resulting in amputation of both legs below the knees. Mr. Stephens received compensation for his injuries pursuant to §34A-2-413(10) of the Act, which provides that loss of any two body members constitutes a permanent total disability.

**DISCUSSION AND CONCLUSION OF LAW**

Section 34A-2413(10) of the Act provides:

(a) The loss or permanent and complete loss of the use of both hands, both arms, both feet, both legs, both eyes, or any combination of two such body members constitutes total and permanent disability, to be compensation according to this section.

ORDER DENYING MOTION FOR REVIEW  
KYLE STEPHENS  
PAGE 2

(b) A finding of permanent total disability pursuant to Subsection 10(a) is final.

The foregoing provision has long been a part of Utah's workers' compensation system. It has consistently been interpreted and applied as creating a conclusive presumption of permanent total disability. Such a provision is relatively common among the various states' workers' compensation statutes. As noted in *Larson's Workers' Compensation Law*, §83.08:

Special statutory provisions may supersede the general principles controlling the relation between medical and wage loss factors in determining total disability. The commonest example of this type of statute is the familiar provision that certain combinations of losses of members shall be presumed to constitute total disability. The presumption may be *prima facie* or conclusive. A typical statute applies the presumption to loss or loss of use of both hands, both arms, both legs, both feet, both eyes, or any two of these. . . .

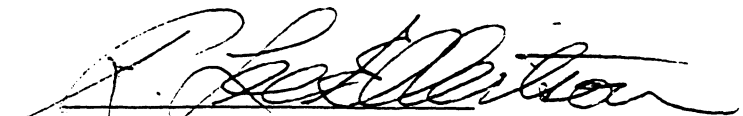
Under such a statute, depending on its wording, evidence of actual earnings would either be entirely immaterial, or would have to be extremely convincing to overcome the presumption.

As previously noted, Utah's statute falls in the former category, where evidence of actual earnings is immaterial. Consequently, Mr. Stephens is entitled to continuing permanent total disability compensation.<sup>1</sup>

**ORDER**

The Commission affirms the decision of the ALJ and denies Intermountain's motion for review. It is so ordered.

Dated this 28<sup>th</sup> day of February, 2001.



R. Lee Ellertson  
Utah Labor Commissioner

**IMPORTANT! NOTICE OF APPEAL RIGHTS FOLLOWS ON NEXT PAGE.**

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This does not mean that the parties cannot, by mutual agreement and with the approval of the Commission, enter into some other arrangement that commutes Mr. Stephens' right to continuing permanent total disability compensation in exchange for vocational training or some other reemployment plan.



ORDER DENYING MOTION FOR REVIEW  
KYLE STEPHENS  
PAGE 3

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.

CERTIFICATE OF MAILING

I certify that a copy of the foregoing Order Denying Motion For Review in the matter of Kyle Stephens, Case No. 99-0648, was mailed first class postage prepaid this 28<sup>th</sup> day of February, 2001, to the following:

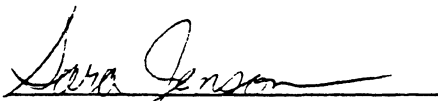
KYLE STEPHENS  
408 E 100 N #1  
LOGAN UT 84321

INTERMOUNTAIN SLURRY SEAL  
1000 N WARM SPRINGS RD  
P O BOX 30429  
SALT LAKE CITY UT 84130

CNA INSURANCE  
P O BOX 17369  
DENVER CO 80217-0369

KEVIN K ROBSON  
BERTCH ROBSON ATTORNEYS  
1996 E 6400 S  
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Sara Jenson  
Support Specialist  
Utah Labor Commission