

2016

**Jp's Landscaping and Auto Owners Insurance Co., Appellants, vs.
Utah Labor Commission and Alberto Mondragon Appellees.**

Utah Court of Appeals

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THE UTAH COURT OF APPEALS

JP'S LANDSCAPING and AUTO
OWNERS INSURANCE CO.,

Appellants,

vs.

UTAH LABOR COMMISSION and
ALBERTO MONDRAGON

Appellees.

Utah Court of Appeals Case No.
20150898

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INTRODUCTION

Alberto Mondragon claimed workers' compensation benefits stemming from an injury to his right knee that occurred while he was working for JP's Landscaping ("JP") on May 22, 2012. JP and its workers' compensation insurance carrier, Owners Insurance Co., denied liability for Mr. Mondragon's right-knee injury, which prompted him to apply for a hearing before the Utah Labor Commission ("Commission"). JP defended against the claim by arguing that Mr. Mondragon should not receive benefits because some alleged details of the mechanism of injury were shown to be incorrect. The Commission recognized that Mr. Mondragon erred with regard to some of the details of the mechanism of injury, but found that Mr. Mondragon's general theory of the claim was supported by the evidence in the record. The Commission therefore concluded that Mr. Mondragon was entitled to the benefits he claimed.

JP's appeal to the court is based on its contention that Mr. Mondragon did not prove entitlement to workers' compensation benefits and that the Commission stepped in to advocate on Mr. Mondragon's behalf with an alternate theory of the case. JP's contention is not accurate, however, because neither the ALJ's decision nor the Appeals Board's decision were based on an alternate theory. Mr. Mondragon's application for hearing alleged that a loaded wheelbarrow he was pushing tipped over and injured his right knee. He later described that he believed the handles of the wheelbarrow struck and twisted his right knee between them, but such description was shown to be incorrect. However, the medical panel explained that people who suffer the type of injury Mr. Mondragon suffered often describe the sensation of being hit in the knee like Mr.

Mondragon did, which makes it easy to understand Mr. Mondragon’s mistake describing the details of the mechanism of injury. JP infers some fraudulent motive behind Mr. Mondragon’s mistaken description, but no actual evidence of fraud was presented. The ALJ’s decision and the Appeals Board’s decision were based on the general theory of the accident alleged by Mr. Mondragon—that his right knee was injured due to the force of the falling wheelbarrow load—even though he was mistaken about the wheelbarrow handles striking and twisting his right knee between them.

JURISDICTION

The Utah Court of Appeals has jurisdiction over JP’s petition for review pursuant to Utah Code Annotated §78A-4-103(2)(a) and §34A-2-801(9).

ISSUE AND STANDARD OF REVIEW

Issue: Whether Mr. Mondragon established that he sustained a work-related and compensable right-knee injury under §34A-2-401(1) of the Utah Workers’ Compensation Act such that he is entitled to benefits for his injury.

Standard of Review: The central issue in this case is whether Mr. Mondragon has established by preponderance of the evidence that his right-knee injury arose out of and in the course of his employment with JP under §34A-2-401(1). This issue turns on whether Mr. Mondragon’s general theory of the accident and his claim for benefits is substantiated by the evidence in the record despite his error regarding details of the mechanism of injury. Accordingly, the appropriate standard of review is whether the Commission’s award of benefits to Mr. Mondragon “is based upon a determination of fact, made or implied by the agency, that is not supported by substantial evidence when

viewed in light of the whole record before the court.” Utah Code Annotated §63G-4-403(4)(g).

Preservation of Issue for Review: JP raised this issue in proceedings before the Commission, thereby preserving the issue for appellate review. (Record at 202-03).

DETERMINATIVE STATUTES

Section 34A-2-401(1). Awards -- Medical, nursing, hospital, and burial expenses -- Artificial means and appliances.

- (1) An 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:
- (a) compensation for loss sustained on account of the injury or death;
 - (b) the amount provided in this chapter for:
 - (i) medical, nurse, and hospital services;
 - (ii) medicines; and
 - (iii) in case of death, the amount of funeral expenses.

Section 63G-4-403(4)(g). Judicial review -- Formal adjudicative proceedings.

- (4) The appellate court shall grant relief only if, on the basis of the agency's record, it determines that a person seeking judicial review has been substantially prejudiced by any of the following:...
- (g) the agency action is based upon a determination of fact, made or implied by the agency, that is not supported by substantial evidence when viewed in light of the whole record before the court;

STATEMENT OF THE CASE

Nature of the Case: JP seeks appellate review of the Commission's award of temporary disability benefits and medical expenses to treat Mr. Mondragon's right-knee injury under §34A-2-401(1), §34A-2-410, and §34A-2-418(1) of the Utah Workers' Compensation Act.

Course of Proceedings: Mr. Mondragon filed an application for hearing with the Commission, in which he claimed temporary total disability compensation, recommended

medical care, and medical expenses stemming from the right-knee injury he sustained while working for JP on May 22, 2012. JP answered Mr. Mondragon's application by denying that any work accident occurred or that the accident medically caused Mr. Mondragon's injury. An evidentiary hearing was held on Mr. Mondragon's claim, during which Mr. Mondragon's description that the wheelbarrow handles hit his right leg above and below the knee was disproved. The ALJ referred the medical aspects of the claim to an impartial medical panel. JP objected to the medical-panel referral, which objection was overruled by the ALJ. JP then filed an interlocutory motion for review with the Commission regarding the referral. The Commission dismissed JP's interlocutory motion for review after finding that the issues raised therein could be rendered moot by subsequent events and were more appropriately addressed after the ALJ had completed adjudication of the claim.

The medical panel issued its report in which it found a medically demonstrable causal connection between the work accident and Mr. Mondragon's right-knee injury. The ALJ relied on the medical panel's conclusions and awarded benefits to Mr. Mondragon. JP appealed the ALJ's award to the Commission, which noted that the medical panel's report was based on the mistaken description of the wheelbarrow handles striking Mr. Mondragon's right leg around his knee. The Commission therefore remanded the matter to the ALJ to correct the error contained in the medical panel's report. On remand, the medical panel corrected its report but reached the same conclusion regarding the medical causal connection between the accident and Mr.

Mondragon's injury. The ALJ again relied on the panel's clarified report and awarded benefits to Mr. Mondragon.

JP again sought review of the ALJ's decision, this time to the Appeals Board. The Appeals Board affirmed the award of benefits. The Appeals Board reasoned that even though Mr. Mondragon was mistaken about the wheelbarrow handles striking his right leg around his knee, there was sufficient evidence to support Mr. Mondragon's underlying and more basic theory that his right knee was injured when the full wheelbarrow he was using tipped over. Following the Appeals Board's decision, JP filed a timely appeal to the court challenging the award of benefits to Mr. Mondragon.

Statement of Facts: The relevant facts, taken from the ALJ's decision, the Commission's Appeals Board's decision, the medical exhibit, and the transcript of the hearing, are as follows.

1. Mr. Mondragon was working for JP on May 22, 2012, as part of its landscaping business. Mr. Mondragon was pushing a large contractor's wheelbarrow full of gravel. He was pushing the wheelbarrow at a fast pace, almost to the point that he was running. (R. 1, 120).

2. As he was pushing the full wheelbarrow at a fast pace, Mr. Mondragon lost control of the load and the wheelbarrow tipped over on its right side. Mr. Mondragon felt a 'pop' in his right knee as the load of gravel tipped over. (R. 120, 221 at pp. 14-15).

3. Mr. Mondragon was seen by Dr. Britt at WorkMed a few hours after the accident. Dr. Britt recounted Mr. Mondragon's description of the accident as slipping when a full wheelbarrow tilted and feeling a sudden "pop" and pain in his right knee but no impact to

the knee. Dr. Britt assessed Mr. Mondragon with a right-knee sprain and released him to light-duty work. (R. 220 at pp. 30-31).

4. JP did not have light-duty work available and terminated Mr. Mondragon's employment. He returned to work on July 15, 2012, with another employer. (R. 119-20).

5. Mr. Mondragon filed an application for hearing on August 17, 2012, seeking benefits stemming from the right-knee injury he sustained while working for JP on May 22, 2012. In his application for hearing, Mr. Mondragon described the accident as pushing a full wheelbarrow when it fell over, caught his right knee, and injured it. (R. 1).

6. On May 7, 2013, Mr. Mondragon sought treatment from Dr. Andruss for pain in his right knee. Dr. Andruss described the injury as a "rotation-type" injury based on Mr. Mondragon's description of the work accident with JP. Dr. Andruss concluded that Mr. Mondragon's right-knee condition was likely medically caused by the 2012 work accident. Dr. Andruss based his diagnosis on Mr. Mondragon's description of the mechanism of injury and his subjective complaints, as well as the examination findings. (R. 220 at pp. 52-54).

7. JP's medical consultant, Dr. Fotheringham, examined Mr. Mondragon's injured right knee during an independent medical examination (IME). Dr. Fotheringham opined that the work accident may have aggravated the underlying degenerative changes in Mr. Mondragon's right knee, but only temporarily. Dr. Fotheringham concluded that Mr. Mondragon's current right knee problems were not medically caused by the work accident and that it was not medically probable that Mr. Mondragon required future medical care as a result of the accident. (R. 220, 120).

8. The ALJ held an evidentiary hearing on Mr. Mondragon's claim and determined that the legal cause of Mr. Mondragon's injury was not in dispute. (R. 118).

9. During the hearing, Mr. Mondragon testified regarding the accident and described that he believed the handles of the wheelbarrow struck and twisted his right knee, causing the injury. Mr. Mondragon was asked to demonstrate how the injury occurred with a wheelbarrow similar to the one he was using at the time of the accident. The demonstration showed that the wheelbarrow handles could not have struck and twisted Mr. Mondragon's right knee as he believed because the handles were too far apart. (R. 119-20).

10. Despite Mr. Mondragon's mistake about the wheelbarrow handles, his testimony established the other circumstances of the accident: he was pushing a fully loaded wheelbarrow at a fast pace when it tipped over and he felt a "pop" in his right knee. The ALJ noted that the exact mechanism of injury was unclear in light of Mr. Mondragon's mistaken description about the wheelbarrow handles, but the ALJ found that it was clear Mr. Mondragon felt a "pop" in his right knee such that his allegation of a work-related injury was not entirely discredited. (R. 119-20).

11. Based on the conflicting medical opinions between Mr. Mondragon's treating physicians and JP's medical consultant, the ALJ referred the medical aspects of the claim to an impartial medical panel. The medical panel consisted of two orthopedics experts, Dr. Smith and Dr. McNaught, who reviewed the ALJ's findings along with Mr. Mondragon's relevant medical history before examining him. (R. 102, 120).

12. The medical panel's initial report included Mr. Mondragon's mistaken description of the wheelbarrow handles striking and twisting his right knee. Due to this error, the medical panel was asked to clarify its findings and issue a second report. (R. 102, 144).

13. The medical panel's clarified report acknowledged that the exact mechanism of Mr. Mondragon's right-knee injury was unclear, but the evidence showed he was carrying a full wheelbarrow very quickly when he lost control of it and the wheelbarrow tipped over. The panel explained that the amount and type of stress on Mr. Mondragon's knee while trying to hold a full wheelbarrow and keep it from tipping over was significant and would cause a meniscal tear. The panel added that individuals who suffer a torn meniscus often describe the sensation of being hit in the knee like Mr. Mondragon. (R. 152-53).

14. The medical panel noted that the right-knee symptoms Mr. Mondragon reported, such as prolonged medial joint line pain, swelling, a positive McMurray's test, and a Baker's cyst all suggested an acute injury to the meniscus and he had not experienced such symptoms with his previous knee problems. The medical panel explained that Mr. Mondragon's right-knee injury was different than his previous knee problems because they did not involve the joint. (R. 153).

15. The medical panel ultimately confirmed that Mr. Mondragon's right-knee symptoms were likely due to a meniscal injury that occurred during the work accident with JP. The panel recommended an arthroscopic evaluation, along with doctor's visits and medication, as treatment for Mr. Mondragon's work injury. (R. 153).

SUMMARY OF ARGUMENT

The main dispute in this matter is over how the Commission should treat an injured worker's mistaken description of certain details of a workplace accident. The more substantial part of the evidence regarding the accident in this case is not genuinely in doubt: Mr. Mondragon was working for JP at the time; he was pushing a wheelbarrow full of gravel that tipped over; the weight and force of the heavy, falling wheelbarrow caused his right knee to twist and "pop," which was eventually confirmed to be a torn meniscus. (R. 220 at pp. 14-15). The only legitimately disputed aspect of the accident was Mr. Mondragon's mistaken description that he believed his right knee was struck and twisted by the wheelbarrow handles. (R. 120).

JP would have the Commission and the court disregard substantial evidence that the work accident caused Mr. Mondragon's injury because of his mistake about the wheelbarrow handles by submitting that Mr. Mondragon's mistake was actually an unsuccessful attempt at deception. JP then seeks to extend that inference of fraud to cloud the remaining evidence pertaining to the work accident in order to explain it away. The Commission considered JP's allegation of fraud on Mr. Mondragon's part, but could find no actual evidence of fraud on Mr. Mondragon's part. The Commission found the evidence of a medical causal connection between the work accident and Mr. Mondragon's right-knee injury to be consistent with his general theory of the claim and sufficient to show that the injury was compensable.

ARGUMENT

I. THE FINDING THAT MR. MONDRAGON WAS INJURED BY ACCIDENT ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT WITH JP WAS A FACTUAL DETERMINATION THAT IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

The Commission awarded workers' compensation benefits to Mr. Mondragon after concluding that he was "injured by accident arising out of and in the course of [his] employment" with JP. Utah Code Ann. §34A-2-401(1). The award was based on the operative facts found by the ALJ and the Commission after weighing the evidence presented, including the factual determination of what occurred during the work accident and what injury resulted from it. (R. 121, 201). Based on Mr. Mondragon's testimony and his medical records, the ALJ and Commission determined that Mr. Mondragon was working for JP pushing a fully loaded wheelbarrow when it fell over and caused Mr. Mondragon sufficient stress to injure his right knee. (R. 121, 203).

Workers' compensation claims generally involve mixed questions of fact and law; however, the above determination regarding the work accident in this case was 'fact-like'¹ in nature because it depended on the particular facts of Mr. Mondragon's actions and did not require analysis of a legal rule. See *Drake v. Industrial Comm'n* 939 P.2d 177, 182 (Utah 1997). See also *Martinez v. Media-Paymaster Plus*, 2007 UT 42 ¶¶26-29. In the present case, the issue of compensability turned on whether Mr. Mondragon established that the accident medically caused his right-knee injury. (R. 203). The Commission arrived at the conclusion that the accident did medically cause Mr.

¹ *Murray v. Labor Commission*, 2013 UT 38, ¶¶36-38.

Mondragon's right-knee injury after weighing and considering his testimony and the medical evidence regarding his injury. (R. 203-04). *See Allen v. Industrial Comm'n*, 729 P.2d 15, 27 (Utah 1986)("Under the medical cause test, the claimant must show by evidence, opinion, or otherwise that the stress, strain, or exertion required by his or her occupation led to the resulting injury or disability"). Legal causation was not in dispute before the ALJ and there is nothing in this case that requires application of a legal rule to the facts as found by the Commission. (R. 118, 203).

As the award of benefits to Mr. Mondragon was based on a 'fact-like' determination that depended on the credibility and authority of the evidence presented, relief from the Commission's award is only appropriate if "such action is based upon a determination of fact, made or implied by the [Commission], that is not supported by substantial evidence when viewed in light of the whole record before the court." Utah Code Ann. §63G-4-403(4)(g). *See also Murray v. Labor Commission*, 2013 UT 38, ¶¶19-20, ¶38. As explained by the Utah Supreme Court, "[a]n administrative law decision meets the substantial evidence test when a reasonable mind might accept as adequate the evidence supporting the decision." *Martinez, supra* at ¶35 (internal citation omitted). *See also Henderson v. Labor Comm'n*, 253 P.3d 1115 (UT App. 2011).

There is adequate evidence to support the decision to award benefits to Mr. Mondragon despite his mistake about his right knee being struck and twisted between the wheelbarrow handles. The Commission could find no precedent, and JP has not offered any, to show that an injured worker's mistake in describing the exact details of the mechanism of injury is fatal to his or her claim for workers' compensation benefits when

the general theory of the claim is substantiated by the evidence presented. Although the detail of Mr. Mondragon's right knee becoming twisted between the wheelbarrow handles was shown to be incorrect, no other evidence has been presented to challenge the other operative facts regarding the accident: Mr. Mondragon was working for JP at the time; he was pushing a wheelbarrow full of gravel that tipped over; the force of the wheelbarrow caused his right knee to twist and "pop." (R. 221 at pp. 14-15). Mr. Mondragon's testimony regarding these facts was evaluated by the ALJ as to its credibility and the testimony is supported by medical evidence, including the medical panel's clarified report on the medical cause of Mr. Mondragon's injury. (R. 118-20, 153).

The medical panel explained that the amount and type of stress on Mr. Mondragon's right knee while trying to hold a full wheelbarrow and keep it from tipping over was significant and consistent with the kind of force that could cause a meniscal tear. (R. 152-53). The medical panel added that individuals who suffer a torn meniscus often describe the sensation of being hit in the knee like Mr. Mondragon. (R. 153). The medical panel's explanation on this point offers a reasonable explanation why Mr. Mondragon believed the wheelbarrow handles struck and twisted his knee other than JP's unsubstantiated implication of fraud on Mr. Mondragon's part. JP asserts that the Commission should have remanded the matter to allow for JP to conduct additional discovery with Mr. Mondragon's family members to substantiate its allegations of fraud; however, the Commission does not have the authority to compel members of Mr. Mondragon's family to participate in the discovery that JP proposed to conduct.

Dr. Andruss also expressed that Mr. Mondragon's right-knee injury was likely medically caused by the work accident and even JP's medical consultant, Dr. Fotheringham, allowed that the accident may have resulted in some type of knee injury. (R. 202, 220). Because the Commission's decision to award benefits to Mr. Mondragon for his right-knee injury was based on his testimony and medical opinions demonstrating a causal connection between the accident and his injury, the court should conclude that Commission's decision meets the substantial evidence test.

II. THE AWARD OF BENEFITS WAS NOT BASED ON AN ALTERNATE THEORY OF THE CLAIM. THE EVIDENCE SUPPORTING THE AWARD IS CONSISTENT WITH MR. MONDRAGON'S GENERAL THEORY OF THE CLAIM AND SHOWS THAT HIS INJURY IS COMPENSABLE.

An injured worker seeking workers' compensation benefits bases his or her claim on a particular theory of events. For example, an injured worker may base his or her claim on an occupational-disease theory or a cumulative-trauma theory depending on the circumstances of the case. Mr. Mondragon's general theory of his claim, as alleged in his application for hearing, was that he sustained an injury in a single accident when the loaded wheelbarrow he was using fell over and it caught and injured his right knee. (R. 1). Even though his right knee was not actually caught or hit by the wheelbarrow handles as he believed, the ALJ and the Commission considered the evidence in light of Mr. Mondragon's general theory that the wheelbarrow fell over and injured his right knee. (R. 118-20, 201-03).

In contrast, JP would require the Commission to construe Mr. Mondragon's theory of the claim much more narrowly to include a specific mechanism of injury that was

shown to be incorrect. JP would then strictly oblige the Commission and Mr. Mondragon to adhere to the mistaken description of the wheelbarrow handles hitting and twisting his right knee between them and contend that his claim was not entirely substantiated due to the mistake. The Commission does not agree with JP that such strict and narrow construction is warranted or reasonable, especially in light of the medical panel's explanation that the type of injury Mr. Mondragon sustained often leads people to believe that their knees were hit similar to what Mr. Mondragon described. Additionally, the strict construction JP would impose upon Mr. Mondragon, an unsophisticated and unrepresented party, is inconsistent with the long-established principle that the provisions of the Workers' Compensation Act should be liberally construed in favor of awarding benefits to injured workers. *See Heaton v. Second Injury Fund*, 796 P.2d 676, 679 (Utah 1990).

JP's assertion that the Commission advocated for Mr. Mondragon by putting forward an alternate theory of the claim on his behalf is not accurate. The only change in Mr. Mondragon's theory of the claim was the reduced detail regarding the mechanism of injury due to his mistaken belief that the wheelbarrow handles hit and twisted his knee between them. As the ALJ described, the exact mechanism of injury was somewhat unclear but the evidence established that Mr. Mondragon's right knee popped and was injured by the force of the wheelbarrow that fell over. (R. 120, 221 at pp. 14-15). This broader mechanism of injury is still generally consistent with what Mr. Mondragon alleged in his application for hearing.

The case of *Acosta v. Labor Comm'n*, cited by JP, is distinct from the present case. *Acosta* involved an ALJ altering the injured worker's theory of the claim. Although the injured worker claimed benefits for an acute injury which she attributed to a single lifting event, the ALJ altered the theory of the claim to include multiple lifting events throughout the day and considered whether the cumulative effect of multiple lifts contributed to the injury. 2002 UT App 67, ¶¶4-5. Unlike the *Acosta* case, the ALJ in this case did not rely on a different theory of the claim; the ALJ relied on the general theory that Mr. Mondragon's right-knee injury was caused by the discrete event of the wheelbarrow tipping over in the course of his employment. (R. 120).

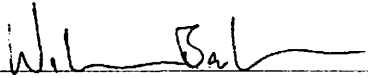
After the detail about the wheelbarrow handles striking and twisting Mr. Mondragon's knee was shown to be incorrect, the Commission had to consider the possibility that Mr. Mondragon's general theory of the claim was unsupported. (R. 201-02). Upon review of the evidence, however, the Commission determined that the operative facts showed that Mr. Mondragon sustained a work-related right-knee injury due to the accident despite his mistake in describing the mechanism of injury. (R. 203). The Commission's review of the evidence, while mindful of Mr. Mondragon's mistaken description, shows that it did not advocate on Mr. Mondragon's behalf and was not predisposed for a particular result in this case. The Commission undertook a fair and careful review of the evidence and based its award of benefits on the operative facts of the case.

CONCLUSION

Mr. Mondragon's claim was properly adjudicated based on the evidence presented. The Commission did not advocate or intervene on Mr. Mondragon's behalf by suggesting or relying on an alternate theory of the claim. Rather, once Mr. Mondragon's mistake was identified, the Commission reviewed the record to determine if the evidence supported an award of benefits. After Mr. Mondragon's pleadings and testimony were determined to be consistent with his general theory of the claim, and the medical evidence showed that his injury was caused by the accident, the Commission concluded that Mr. Mondragon's claim was compensable and should not be foreclosed due to his mistake and an overly narrow construction of the mechanism of injury.

The Commission's evaluation of the evidence included assessment of the credibility and weight of Mr. Mondragon's testimony and medical records, which prompts the substantial evidence test on review. The Commission's award of benefits to Mr. Mondragon is supported by substantial evidence because a reasonable mind would accept the evidence presented as adequate to support the award. Based on the foregoing, the Commission respectfully submits that this court should affirm the award of benefits to Mr. Mondragon.

Dated this 12th day of February, 2016.




William Barlow
Attorney for the Utah Labor Commission

CERTIFICATE OF COMPLIANCE

I certify that this Appellee's Brief in the matter of *JP's Landscaping and Auto Owners Insurance v. Utah Labor Commission and Alberto Mondragon*, Utah Court of Appeals case number 20152898, complies with Utah Rules of Appellate Procedure 24 and 27.

Dated this 12th day of February, 2016.




William Barlow
Attorney for the Utah Labor Commission

CERTIFICATE OF MAILING

I certify that a copy of the foregoing Appellee's Brief in the matter of *JP's Landscaping and Auto Owners Insurance v. Utah Labor Commission and Alberto Mondragon*, Utah Court of Appeals case number 20152898, was mailed first class postage prepaid this 12th day of February, 2016, to the following:

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