2017

Javier Rojas, Petitioner/Appellant, v. Utah Labor Commission, Ferrari Color and/or Workers Compensation Fund, Respondents/ Appellees

Utah Court of Appeals

IN THE COURT OF APPEALS OF THE STATE OF UTAH

JAVIER ROJAS, Petitioner/Appellant, v. UTAH LABOR COMMISSION, FERRARI COLOR and/or WORKERS COMPENSATION FUND, Respondents/Appellees.	Court of Appeals Case No.: 20160644 Labor Commission Case No.: 13-0714

APPEAL FROM UTAH LABOR COMMISSION

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BRIEF OF APELLEE JAVIER ROJAS

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STATEMENT OF JURISDICTION

The court order appealed from was the Labor Commission's Order Modifying ALJ Decision dated July 5, 2016. A Petition For Review was filed with the Utah Court of Appeals on August 4, 2016. This Court has jurisdiction over this matter pursuant to Utah Code Ann. §78A-4-103(2)(a) and Rule 14(a) of the Utah Rules of Appellate Procedure.

ISSUES PRESENTED

ISSUE ONE

Whether the Labor Commission Appeals Board properly held that Mr. Rojas was not entitled to a 15% increase in benefits due to the circumstances of his workplace injury.

Standard of Review: The Utah state legislature has granted the Labor Commission discretion to determine the facts and apply the law in workers' compensation claims. See Utah Code Ann. § 34A-1-301. Because the agency has been granted this discretion, its orders are reviewed for reasonableness and this Court "will uphold the Labor Commission's determination unless it exceeds the bounds of reasonableness and rationality." *Hymas v. Labor Comm'n*, 996 P.2d 1072 (Utah App. 2008).

APPLICABLE STATUTORY PROVISIONS

Utah Code Ann. §34A-2-301

Utah Code Ann. §34A-2-302

STATEMENT OF THE CASE

A. Nature of the case

Ferrari Color (hereinafter "Respondents") bypassed a safety sensor on an industrial printer, and allowed its employees to work with the printer in an unsafe condition. As a result, Mr. Rojas' (hereinafter "Petitioner") left hand was crushed in the industrial printer

on January 18th, 2013, while he was working for Ferrari Color. Petitioner continued to work with the untreated crushed hand injury until February 12th, 2013, after which Respondent terminated Rojas.

Respondents initially denied that the industrial accident on January 18, 2013 medically caused Javier Rojas' injuries, and contended that he suffered no real periods of disability as a result of his accident. Later, Respondents accepted the medical claim only but denied responsibility for the statutory increase in benefits that Petitioner sought. Further, Respondents claimed that it did not willfully allow its industrial printer to operate without a safety sensor that prevents the machine from operating when a safety door panel is open.

B. Course of Proceedings

Petitioner filed an application for hearing with the Labor Commission on September 9, 2013, requesting medical expenses, recommended medical care, temporary total disability compensation, temporary partial disability compensation, travel expenses, and an add-on for a willful safety violation. (Record, p. 1) Respondents filed their Answer on November 1, 2013. (Record, p. 36) On November 20, 2014, a hearing was held on Petitioner's Application for Hearing and Respondents' defenses.

After the hearing, the ALJ issued Findings of Fact, Conclusions of Law and Order on March 3, 2016, awarding all benefits asked for by Petitioner. (Record, p. 358) On March 31, 2016, Respondents filed a Motion For Review with the Utah Labor Commission

Appeals Board, challenging whether Petitioner was entitled to temporary total disability compensation, and whether Respondents had committed a willful safety violation. (Record, p. 373) After considering the Motion For Review, on July 5, 2016, the Appeals Board issued an Order which affirmed the ALJ's Decision in part and set aside the portion of the order awarding an increase of 15% compensation. (Record, p. 437)

C. Disposition of the Court

On March 3, 2016, Administrative Law Judge Brian Stewart issued Findings of Fact, Conclusions of Law and Order. (Record, p. 358) The ALJ ordered Respondents to pay Petitioner all benefits he sought, including temporary total disability compensation, temporary partial disability compensation, medical care and an increase of 15% of the temporary partial disability compensation under Utah Code §34A-2-301. *Id.*

On March 31, 2016, Respondents filed a Motion for Review with the Utah Labor Commission Appeals Board, challenging whether Petitioner was entitled to temporary total disability compensation, and whether Respondents had committed a willful safety violation. (Record, p. 373)

On July 5, 2016, the Appeals Board issued an Order affirming the ALJ's Decision in part and setting aside the portion of the order awarding an increase of 15% compensation. (Record, p. 437)

On August 4, 2016, Respondents filed this appeal.

FACTS

Work Injury Claim

1. On January 18, 2013, Ferrari Color had bypassed a safety sensor on an industrial printer, which allowed its employees to work with the printer in an unsafe condition. Petitioner's left hand was crushed when he was using Respondent's industrial printer that had a safety sensor overridden to allow the printer to run with the safety door open. (Record, p. 359-360)

2. Petitioner continued to work for Respondent, with his left hand crush injury, until February 12th, 2013, after which Respondent terminated him for an alleged time clock violation. *Id.*

3. Respondent denied Petitioner's injury claim and denied paying Petitioner compensation benefits. (Record, p. 358-358a)

Safety Sensor

4. On January 18, 2016, Ferrari Color allowed its employees to work with its industrial printer in an unsafe condition. Specifically, the industrial printer that Petitioner was using had the safety sensor overridden, the left access safety panel removed and the center safety door open contrary to safety warnings posted on the industrial printer, to keep it operating. (Record, p. 363)

5. On April 9th, 2016, 81 days after Petitioner's injury date and on report from Petitioner, UOSH performed an inspection of Respondent's place of business and found that Respondent was still operating its industrial printer with the safety interlock switch bypassed, allowing the industrial printer to run with the door open in violation of the printing machine warnings. *Id.*

6. As part of UOSH's investigation, UOSH interviewed Respondent's employees, one of whom stated that sometimes he had seen tape on the printer safety sensor to override it and allow the industrial printer to run contrary to the safety warnings on the industrial printer machine. *Id.*

7. Respondent's shop supervisor, Travis Baker, testified that he allowed a service technician to operate the industrial printer without the safety sensor operating correctly. *Id.*

8. Based on its investigation, UOSH validated Petitioner's report that Respondent operated the industrial printer in violation of safety regulations and cited Respondent for a "Serious" safety violation for disabling the safety interlock on the access door of the Rho 600 Pictor. (Record, p. 676-683)

9. Based upon the all of these factors, the Court found that the industrial printer was frequently operated with the safety door open and that the safety sensor was overridden. (Record, p. 363)

SUMMARY OF THE ARGUMENT

The Labor Commission Appeals Board erred when it narrowly defined "willful failure" as "deliberate defiance" of safety measures, and therefore determined that Petitioner was not entitled to a 15% increase of the temporary disability compensation under Utah Code §34A-2-301. This section states that if an employee is injured as a result of an employer's "willful failure" to comply with the employer's own written workplace safety programs, the employee's compensation shall be increased by 15%.

The Appeals Board found that the evidence did not support that the employer deliberately defied its own safety programs when Mr. Rojas was injured. However, "deliberate defiance" is not the only action that could be classified as a "willful failure". In this case, Respondents knew that the printer's safety switch had been deliberately overridden on several occasions, and that the printer had been operated with its panel open. Thus, the ALJ correctly found that there existed willful failure by Respondent, and increased Petitioner's compensation accordingly.

ARGUMENT

I. The ALJ Correctly Found Willful Failure by the Respondent in Accordance with 34A-2-301(2) and Utah Case Law

After the ALJ reviewed all of the evidence the parties presented before the Utah Labor Commission, the ALJ correctly found that Respondent Ferrari Color willfully allowed its industrial printer to operate without the safety sensor functioning properly.

(Record, p. 367) As the Utah Courts have held, the applicable statute requires "willful failure" in order for a 15% penalty to be assessed. *Van Waters & Rogers v. Workman*, 700 P.2d 1096 (Utah 1985) and *Salt Lake County v. Labor Commission*, 208 P.3d 1087 (Utah App. 2009).

1. *Van Waters* and *Salt Lake County* Establish a Workable Formula

In *Van Waters* and *Salt Lake County,* the Utah Supreme Court found a "workable formula in distinguishing willful failure from less culpable conduct as set forth in Larson's Workers' Compensation treatise stating:

> [T]he general rule [is] that the deliberate defiance of a reasonable rule laid down to prevent serious bodily harm to the employee will usually be held to constitute willful misconduct, in the absence of showing of . . . specific excuses [.]
> . . .
> . . . If the employee[/employer] had some plausible purpose to explain his violation of a rule, the defenses of violation of safety rules or willful misconduct are inapplicable, even though the judgment of the employee[/employer] might have been faulty or his conduct rash[.]

Id.

The workable formula that *Van Waters* adopted from Larson's is that there must be some plausible purpose to explain the violation of a rule laid down to prevent serious bodily harm to the employee. *Van Waters*, 700 P.2d 1099. Even though *Van Waters* and *Salt Lake County* reviewed the actions of an employee and whether the employee's action constitutes "willful failure", the language of the statute and penalty is the same for an employer who failed to comply with certain safety requirements. *Id.*

Therefore, the test for the employer's willful failure is the same as it is for the employee's willful failure. *Id.* At hearing and in their Motion for Review, Respondents did not provide any plausible purpose to explain why it overrode a safety sensor on an industrial printer. Thus, it was error for the Appeals Board to modify the ALJ's Order and set aside the increase of 15% in the temporary disability compensation due to Mr. Rojas.

2. Respondents Have Not Provided a Plausible Purpose For Its Safety Violation

Reviewing the facts of both *Van Waters* and *Salt Lake County* is instructive to Petitioner's case to determine a plausible purpose for a safety violation. In *Van Waters*, the court considered several facts to determining if the employee's actions constituted a plausible purpose. *Id.*

The *Van Waters* court found that the employee had removed his safety glasses because of his inability to accomplish the task in the freezing wind. *Id.* The freezing wind caused his safety glasses to fog-up, making conditions unsafe for him to pursue his work while wearing them. *Id.* Further, the court noted that the employee could not have anticipated the defective valve he was working on to collect acid which gushed out when he removed the cap. *Id.* The court accepted these facts as supporting a plausible purpose for the safety violation. *Id.*

In *Salt Lake County*, the court found that the employee did not believe he was violating his lifting restrictions while maneuvering a heavy piece of equipment. *Salt Lake County*, 208 P.3d 1091. Additionally, the employee's testimony indicated that the

employee tried to comply with his doctor's restrictions. *Id.* The court found that although the employee's jerking up on the pump technically violated his doctor's lifting restriction, the employee did not consider this action as lifting and therefore was not a willful disregard of his lifting restrictions. *Id.* The court accepted these facts as supporting a plausible purpose for the safety violation. *Id.*

In Petitioner's case, Respondents have not shown a plausible purpose for its safety violation. For example, Respondents' arguments are solely based in the definitions of willful failure. While these definitions were considered in *Van Waters* and *Salt Lake County*, they do not constitute the workable formula to distinguish willful failure from less culpable conduct as outlined by the Utah Supreme Court in *Van Waters. Id.*

3. The Undisputed Facts Do Not Provide a Plausible Purpose For Respondents' Safety Violation

Surprisingly, in light of the *Van Waters* test, Respondents do not dispute the validity of the UOSH finding that Respondents were found to be in "violation from a condition, practice, method, operation, or process in the workplace of which the employer knows or should know through the exercise of reasonable diligence; and there is a substantial possibility that the condition, practice method, operation, or process could result in death or serious physical harm." (Record, p. 411) Though the Respondents want to characterize this finding by UOSH as ordinary negligence, under *Van Waters,* the Utah Supreme Court has defined it as willful failure because the Respondents have presented no evidence of a plausible purpose to explain the safety violation. *Van Waters*, 700 P.2d 1099.

The ALJ used the following facts to support its finding of willful failure. First, Petitioner operated the printer with the doors open. (Record, p. 365) Second, Travis Baker (who was the supervisor in charge at the time of Petitioner's work accident) testified that the left panel was removed when employees operated the printer. *Id.* Third, Travis Baker testified that the safety sensor was overridden and the printer was operated without the safety sensor after Petitioner's accident. *Id.* Fourth, the safety sensor was overridden at the time of the UOSH inspection. *Id.* Fifth, that Respondents' employee confirmed that Respondents' industrial printer was operated with the safety sensor overridden so that the safety doors could be left open. *Id.*

Based upon these findings, the ALJ found that Respondents most likely allowed the industrial printer to be operated without the safety sensor in place and Petitioner was injured as a result of the misuse of the safety sensor on the industrial printer. (Record, p. 364)

II. The Appeals Board Erred In Its Consideration Of What Constitutes "Willful Failure" Under 34A-2-301.

The Appeals Board found that Appellee's actions did not constitute "willful failure" under 34A-2-301. However, when making its decision, the Appeals Board did not properly consider what constitutes willful failure under the statute. It found that "the evidence does not preponderate to show that Mr. Baker or Ferrari Color deliberately defied or bypassed safeguards on the printing machine at the time Mr. Rojas was injured." (Record, p. 442). However, in regards to what constitutes willful failure under the statute, Judge Hatch, the

dissenting judge, was correct when he stated that "deliberate defiance is not the only action by an employer which could be classified as a willful failure." (Record, p. 443)

Utah Code Ann. §34A-2-301(2) provides for a 15% increase in compensation "when injury is caused by the willful failure of an employer to comply with: (a) the law; (b) a rule of the commission; (c) any lawful order of the commission; or (d) the employer's own written workplace safety program." Based upon the undisputed facts of this case, Ferrari Colors' willful failure was responsible for Mr. Rojas' injury.

The Utah Supreme Court has interpreted the Workers Compensation statutes in cases of employee negligence, and has determined what constitutes "willful failure". See *Van Waters*, 700 P.2d 1096 (Utah 1985) and *Salt Lake County*, 208 P.3d 1087 (Utah App. 2009). The statute providing for a decrease in compensation for an **employee's** willful failure in violating workplace safety standards is substantially similar in effect to the statute providing for an increase in compensation for an **employer's** willful failure in violating workplace safety standards. Utah Code Ann. §34A-2-301; §34A-2-302. Thus, *Van Waters* and *Salt Lake* County are applicable to the case at bar. *Id.*

The standard for "willful failure" that these cases provide includes "deliberate defiance", but this is not the end of the inquiry. As explained above, the Utah Supreme Court has held that "deliberate defiance of a reasonable rule . . . will usually be held to constitute willful misconduct, **in the absence of showing of . . . specific excuses**". *Id.* (Emphasis added.) In other words, in the absence of a showing of specific excuses, the

employer's conduct is willful. Consequently, the Appeals Board erred when it limited its inquiry to deliberate defiance rather than also looking at whether Respondents had a plausible purpose for violating a safety standard.

In this case, Respondents did not show that they had a plausible purpose for violating the safety standard. In fact, their arguments to the Labor Commission and Appeals Board do not even mention "plausible purpose." Respondents have not even attempted to provide any sort of reason, excuse, or purpose for violating a safety standard by allowing its employees to operate the industrial printer with the safety door open.

The Labor Commission's holdings in prior cases are also instructive. For instance, in the *Gil* case, the Commission held that an employer's " 'proceedings from a conscious motion of will; voluntary' was willful". *Gil v. Campfire Inc., Labor Commission*, Labor Commission case no. 98-1030. The facts of the present case show that Respondents' actions were conscious, voluntary and therefore willful. The industrial printer that Rojas was using had the safety sensor overridden, the left access safety panel removed and the center safety door open contrary to safety warnings posted on the industrial printer, to keep it operating. (Record, p. 363)

On April 9th, 2016, months after Rojas was injured, UOSH performed an inspection of Respondent's place of business and found that Respondent was still operating its industrial printer with the safety interlock switch bypassed, allowing the industrial printer to run with the door open in violation of the printing machine warnings. *Id.* As part of

UOSH's investigation, UOSH interviewed Respondent's employees, one of whom stated that sometimes he had seen tape on the printer safety sensor to override it and allow the industrial printer to run contrary to the safety warnings on the industrial printer machine. *Id.*

Respondent's shop supervisor, Travis Baker, testified that he allowed a service technician to operate the industrial printer without the safety sensor operating correctly. *Id.* Based on its investigation, UOSH validated Petitioner's report that Respondent operated the industrial printer in violation of safety regulations and cited Respondent for a "Serious" safety violation for disabling the safety interlock on the access door of the Rho 600 Pictor. (Record, p. 68-685). Based upon the all of these factors, the Court found that the industrial printer was frequently operated with the safety door open and that the safety sensor was overridden. (Record, p. 363).

The above facts demonstrate Respondent's willful failure. It knew that the printer's safety interlock switch had been overridden on many occasions. (Record, p. 363-364). It knew that as a result, the employees could operate the printer with its safety door open. *Id.* It knew that having the safety door open while the printer was operating resulted in an unsafe condition for its employees. (Record, p. 363-364, 676-683). Thus, Respondents' actions should have been considered willful pursuant to statute and Utah case law, and the Appeals Board should not have modified the 15% compensation increase.

CONCLUSION

In conclusion, the ALJ's Findings of Fact and Conclusions of Law are soundly grounded in the law and the facts. Based upon the foregoing argument, Petitioner respectfully requests that the Order Modifying ALJ's Decision be reversed.

DATED this 10 day of January, 2017.

LARREAU & LYTHGOE, PC

W. SCOTT LYTHGOE
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CERTIFICATE OF COMPLIANCE WITH RULE 24(F)(1), UTAH R. APP. P.

Certificate of Compliance with Type-Volume Limitation, Typeface Requirements, and Type Style Requirements.

1. This brief complies with the type-volume limitation of Utah R. App. P. 24(f)(1) because this brief contains 3,113 words, excluding the parts of the brief exempted by Utah R. App. P. 24(f)(1)(B).

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DATED this 31 day of January, 2017.

LARREAU & LYTHGOE, PC

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CERTIFICATE OF SERVICE

I hereby certify that on the 17 day of January, 2017, I sent via electronic mail true and correct copies of the foregoing pleading to the following:

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34A-2-301 Places of employment to be safe -- Willful neglect -- Penalty.

(1) An employer may not:

(a) construct, occupy, or maintain any place of employment that is not safe;

(b) require or knowingly permit any employee to be in any employment or place of employment that is not safe;

(c) fail to provide and use safety devices and safeguards;

(d) remove, disable, or bypass safety devices and safeguards;

(e) fail to obey orders of the commission;

(f) fail to obey rules of the commission;

(g) fail to adopt and use methods and processes reasonably adequate to render the employment and place of employment safe; or

(h) fail or neglect to do every other thing reasonably necessary to protect the life, health, and safety of the employer's employees.

(2) Compensation as provided in this chapter shall be increased 15%, except in case of injury resulting in death, when injury is caused by the willful failure of an employer to comply with:

(a) the law;

(b) a rule of the commission;

(c) any lawful order of the commission; or

(d) the employer's own written workplace safety program.

Amended by Chapter 131, 2003 General Session

Effective 5/13/2014

34A-2-302 Employee's willful misconduct -- Penalty.

(1) For purposes of this section:
(a) "Controlled substance" is as defined in Section 58-37-2.
(b) "Local government employee" is as defined in Section 34-41-101.
(c) "Local governmental entity" is as defined in Section 34-41-101.
(d) "State institution of higher education" is as defined in Section 34-41-101.
(e) "Valid prescription" is a prescription, as defined in Section 58-37-2, that:
(i) is prescribed for a controlled substance for use by the employee for whom it was prescribed; and
(ii) has not been altered or forged.
(2) An employee may not:
(a) remove, displace, damage, destroy, or carry away any safety device or safeguard provided for use in any employment or place of employment;
(b) interfere in any way with the use of a safety device or safeguard described in Subsection (2)(a) by any other person;
(c) interfere with the use of any method or process adopted for the protection of any employee in the employer's employment or place of employment; or
(d) fail or neglect to follow and obey orders and to do every other thing reasonably necessary to protect the life, health, and safety of employees.
(3) Except in case of injury resulting in death:
(a) compensation provided for by this chapter shall be reduced 15% when injury is caused by the willful failure of the employee:
(i) to use safety devices when provided by the employer; or
(ii) to obey any order or reasonable rule adopted by the employer for the safety of the employee; and
(b) except when the employer permitted, encouraged, or had actual knowledge of the conduct described in Subsection (4):
(i) disability compensation may not be awarded under this chapter or Chapter 3, Utah Occupational Disease Act, to an employee when the major contributing cause of the employee's injury is the employee's conduct described in Subsection (4); or
(ii) disability compensation to an employee under this chapter or Chapter 3, Utah Occupational Disease Act, shall be reduced by 15% when the employee's conduct is a contributing cause of the employee's injury but not the major contributing cause.
(4) The conduct described in Subsection (3)(b) is the employee's:
(a) knowing use of a controlled substance that the employee did not obtain under a valid prescription;
(b) intentional abuse of a controlled substance that the employee obtained under a valid prescription if the employee uses the controlled substance intentionally:
(i) in excess of prescribed therapeutic amounts; or
(ii) in an otherwise abusive manner; or
(c) intoxication from alcohol with a blood or breath alcohol concentration of .08 grams or greater as shown by a chemical test.
(5)
(a) For purposes of Subsections (3) and (4), as shown by a chemical test that conforms to scientifically accepted analytical methods and procedures and includes verification or confirmation of any positive test result by gas chromatography, gas chromatography-mass spectroscopy, or other comparably reliable analytical method, before the result of the test may

be used as a basis for the presumption, it is presumed that the major contributing cause of the employee's injury is the employee's conduct described in Subsection (4) if at the time of the injury:

(i) the employee has in the employee's system:

(A) any amount of a controlled substance or its metabolites if the employee did not obtain the controlled substance under a valid prescription; or

(B) a controlled substance the employee obtained under a valid prescription or the metabolites of the controlled substance if the amount in the employee's system is consistent with the employee using the controlled substance intentionally:

(I) in excess of prescribed therapeutic amounts; or

(II) in an otherwise abusive manner; or

(ii) the employee has a blood or breath alcohol concentration of .08 grams or greater.

(b) The presumption created under Subsection (5)(a) may be rebutted by a preponderance of the evidence showing that:

(i) the chemical test creating the presumption is inaccurate because the employer failed to comply with:

(A) Sections 34-38-4 through 34-38-6; or

(B) if the employer is a local governmental entity or state institution of higher education, Section 34-41-104 and Subsection 34-41-103(5);

(ii) the employee did not engage in the conduct described in Subsection (4);

(iii) the test results do not exclude the possibility of passive inhalation of marijuana because the concentration of total urinary cannabinoids is less than 50 nanograms/ml as determined by a test conducted in accordance with:

(A) Sections 34-38-4 through 34-38-6; or

(B) if the employer is a local governmental entity or state institution of higher education, Section 34-41-104 and Subsection 34-41-103(5);

(iv) a competent medical opinion from a physician verifies that the amount of controlled substances, metabolites, or alcohol in the employee's system does not support a finding that the conduct described in Subsection (4) was the major contributing cause of the employee's injury or a contributing cause of the employee's injury; or

(v)

(A) the conduct described in Subsection (4) was not a contributing cause of the employee's injury; or

(B) the employee's mental and physical condition were not impaired at the time of the injury.

(c)

(i) Except as provided in Subsections (5)(c)(ii) and (iii), if a chemical test that creates the presumption under Subsection (5)(a) is taken at the request of the employer, the employer shall comply with:

(A)Title 34, Chapter 38, Drug and Alcohol Testing; or

(B) if the employee is a local governmental employee or an employee of a state institution of higher education, Title 34, Chapter 41, Local Governmental Entity Drug-Free Workplace Policies.

(ii) Notwithstanding Section 34-38-13, the results of a test taken under Title 34, Chapter 38, Drug and Alcohol Testing, may be disclosed to the extent necessary to establish or rebut the presumption created under Subsection (5)(a).

(iii) Notwithstanding Section 34-41-103, the results of a test taken under Title 34, Chapter 41, Local Governmental Entity Drug-Free Workplace Policies, may be disclosed to the extent necessary to establish or rebut the presumption created under Subsection (5)(a).

(6)
(a) A test sample taken pursuant to this section shall be taken as a split sample.
(b) One part of the sample is to be used by the employer for testing pursuant to Subsection (5)(a):
(i) at a testing facility selected by the employer; and
(ii) at the employer's or the employer's workers' compensation carrier's expense.
(c) The testing facility selected under Subsection (6)(b) shall hold the part of the sample not used under Subsection (6)(b) until the sooner of:
(i) six months from the date of the original test; or
(ii) when the employee requests that the sample be tested.
(d) The employee has only six months from the date of the original test to have the remaining sample tested:
(i) at the employee's expense; and
(ii) at the testing facility selected by the employee, except that the test shall meet the requirements of Subsection (5)(a).
(7) If any provision of this section, or the application of any provision of this section to any person or circumstance, is held invalid, the remainder of this section shall be given effect without the invalid provision or application.

Amended by Chapter 182, 2014 General Session

APPEALS BOARD
UTAH LABOR COMMISSION

JAVIER ROJAS, **Petitioner,** **vs.** **FERRARI COLOR and WORKERS COMPENSATION FUND,** **Respondents.**	**ORDER MODIFYING ALJ'S DECISION** **Case No. 13-0714**

Ferrari Color and its insurance carrier, Workers Compensation Fund, (collectively referred to as "Ferrari Color") ask the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Stewart's award of temporary disability benefits to Javier Rojas under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Appeals Board exercises jurisdiction over this motion for review pursuant to §63G-4-301 of the Utah Administrative Procedures Act and §34A-2-801(4) of the Utah Workers' Compensation Act.

BACKGROUND AND ISSUES PRESENTED

Mr. Rojas claims workers' compensation benefits for an injury to his left hand that he sustained on January 18, 2013, while he was working for Ferrari Color. Judge Stewart held an evidentiary hearing on the claim and concluded that Mr. Rojas was entitled to benefits for his work injury, including temporary total disability compensation following termination of his employment. Judge Stewart also found that Ferrari Color committed a willful safety violation leading to Mr. Rojas's injury such that he was entitled to an additional 15% of the compensation awarded to him. Ferrari Color challenges Judge Stewart's decision by arguing that Mr. Rojas is not entitled to temporary total disability compensation after he was terminated. Ferrari Color also contends that Judge Stewart erred in finding that it had committed a willful safety violation.

FINDINGS OF FACT

The Appeals Board adopts and summarizes Judge Stewart's findings of fact and finds additional facts from the record to be material to Ferrari Color's motion for review. The Appeals Board outlines the findings of fact as they pertain to Mr. Rojas's employment and the work accident separately from the facts relating to the safety violation, as follows.

Employment and Work Accident

Mr. Rojas worked for Ferrari Color operating a large printing machine. Mr. Rojas was responsible for placing the print media on the machine's rollers and watching the print process to ensure that the media did not become wrinkled. He stood on a box in front of the printer to look through an access panel in the center of the machine; when he noticed media becoming wrinkled, he would quickly reach into the printer and straighten the media without having to stop the printing process.

On January 18, 2013, Mr. Rojas was performing his duties at the printer when he noticed some of the print media becoming wrinkled. He reached his left hand into the printer through the center access panel in an attempt to flatten the media, but he could not remove his left hand before the printer head briefly trapped it against a support bar inside the machine. Mr. Rojas's left hand was freed once the printer head moved back to the other side. The printer head had struck the top of Mr. Rojas's left hand below the knuckles, tearing the skin and causing his left hand to bleed. He reported the injury to his supervisor, Mr. Baker, who asked Mr. Rojas if he needed medical attention. Mr. Rojas declined immediate medical care, but he treated his left-hand injury with a first-aid kit and continued to clean the wound intermittently as he completed his shift. Mr. Rojas did not miss any of his scheduled shifts due to his work injury.

On February 12, 2013, Mr. Rojas was working for Ferrari Color and was scheduled to go to the airport for his vacation immediately after his shift. During his shift, he realized he had forgotten a piece of luggage and asked permission to retrieve it from his home and prepare for his flight. Mr. Baker allowed Mr. Rojas to go home as he requested but instructed him to "clock out" when he left. Mr. Rojas's timecard shows that he did not clock out while he returned home from about 3:50 a.m. to 5:15 a.m. When Mr. Rojas returned from his vacation on February 19, 2013, Ferrari Color terminated his employment for failing to clock out when he returned home to retrieve his luggage a week prior. Mr. Rojas asserted that he did clock out while returning home on that date and that the timeclock failed to record it.

The next day, February 20, 2013, Mr. Rojas sought medical treatment at WorkMed for pain in his left hand and wrist. Cindy Haacke, FNP-C, and Dr. Mattingly assessed Mr. Rojas with a superficial wound as a result of the work accident and released him to full-duty work. On March 5, 2013, Mr. Rojas treated with Dr. Huish, who noted numbness and pain in Mr. Rojas's left hand and wrist area. Dr. Huish restricted Mr. Rojas from repetitive tasks and from lifting more than five pounds with his left hand. On April 16, 2013, Dr. Huish reevaluated Mr. Rojas and restricted him from working with his left hand. Mr. Rojas sought treatment from Dr. Andersen on June 6, 2013. Dr. Andersen prescribed medication to treat Mr. Rojas's left-hand pain, but did not opine on the issue of medical stability or any work restrictions.

Mr. Rojas found employment with HHI Corporation on January 18, 2014, performing maintenance and cleaning duties. Ferrari Color's medical consultant, Dr. Hammon, had difficulty

diagnosing Mr. Rojas's ongoing left-hand problems, but Dr. Hammon attributed such problems to the work accident with Ferrari Color. As of June 2014, Dr. Hammon "favored" a diagnosis of complex regional pain syndrome (CRPS) in Mr. Rojas's left hand and added that Mr. Rojas had not reached medical stability from his work injury. Another of Ferrari Color's medical consultants, Dr. Vanderhooft, evaluated Mr. Rojas in July 2014 and diagnosed him with possible CRPS in his left hand.

Safety Violation

During the evidentiary hearing, Mr. Rojas testified that the safety sensor had been removed from the printing machine he was using when the accident occurred. Mr. Rojas alleged that Mr. Baker had eliminated the safety sensor so the machine would continue to function despite the failure of one of the vacuums that helped feed the media through the machine. Mr. Rojas contacted the Utah Occupational Safety and Health Division ("UOSH") after he was terminated to report Mr. Baker's removal of the safety sensor. In April 2013, a UOSH inspector found that a safety interlock switch had been bypassed, which allowed the printing machine to run with its panels open. UOSH cited Ferrari Color with a serious violation of safety standards.

Mr. Baker disputed Mr. Rojas's allegation at the hearing and denied overriding the safety sensor on the printing machine. Mr. Baker explained that he did not know how to disable the sensor as of the date the accident occurred. Mr. Baker also refuted Mr. Rojas's description of a vacuum failure by noting that such a failure would have prompted a service call; evidence was then offered to show that no service calls were made for vacuum problems in January or February of 2013 and that there was no indication of such a problem on the daily preventative maintenance log. Mr. Baker admitted that he knew the safety sensor had been overridden by a service technician at the time of the UOSH inspection and that he had seen employees operating the same machine Mr. Rojas was using without its left panel in place.

DISCUSSION AND CONCLUSIONS OF LAW

The Utah Workers' Compensation Act provides benefits to workers injured by accident "arising out of and in the course of" employment. Utah Code Ann. §34A-2-401. At this stage of proceedings, there is no dispute that Mr. Rojas was injured by accident arising out of and in the course of his duties with Ferrari Color. The issues before the Appeals Board are whether Mr. Rojas qualifies for temporary total disability compensation in light of the circumstances surrounding his termination and whether any such award of compensation should be increased by 15% due to a willful safety violation by Ferrari Color.

Temporary Total Disability Compensation

Section 34A-2-410 of the Utah Workers' Compensation Act provides that an injured worker is generally entitled to temporary total disability compensation, as long as the disability is total, from

the date of the accident until the healing period has ended. If an injured worker is released to light duty during the healing period, the employer may choose to provide such work. In this case, Mr. Rojas continued to work his normal duties and schedule following the accident until his vacation on February 12, 2013. Upon returning from vacation, he was terminated for failing to clock out while away from the worksite on a personal errand prior to his vacation. Mr. Rojas was not given light-duty restrictions by his physician until after his termination, which means Ferrari Color did not make light-duty work available to him.

Mr. Rojas satisfies the requirements of §410 for an award of temporary total disability compensation because he did not intend to sever his employment relationship when he failed to clock out while attending to personal matters. *See Stampin' Up, Inc. v. Labor Comm'n*, 256 P.3d 250 (Utah App. 2011). However, §410 is not the only applicable section of the Act. Section 34A-2-410.5 was enacted in 2008 to address the circumstances under which temporary disability compensation may be reduced or terminated. Subsection 34A-2-410.5(2) provides the following:

> In accordance with this section, the commission may reduce or terminate an employee's disability compensation for a disability claim for good cause shown by the employer including if:
> (a) the employer terminates the employee from the reemployment and the termination is:
> (i) reasonable;
> (ii) for cause; and
> (iii) as a result, in whole or in part, of:
> (A) criminal conduct;
> (B) violent conduct; or
> (C) a violation of a reasonable, written workplace health, safety, licensure, or nondiscrimination rule that is applied in a manner that is reasonable and nondiscriminatory....

Ferrari Color argues in its motion for review that Mr. Rojas is not entitled to temporary total disability compensation because he was terminated for his failure to clock out while attending to a personal errand during work hours on February 12, 2013. Ferrari Color argues that Mr. Rojas's failure to clock out equates to criminal conduct such that he should not receive temporary total disability compensation under §410.5(2)(a)(iii)(A). However, there is no indication that Mr. Rojas was charged with, let alone convicted of, a crime with regard to his failure to clock out.

Ferrari Color contends that it is not necessary for Mr. Rojas to be charged with a crime for his conduct to be considered criminal under §410.5(2)(a)(iii)(A); however, Ferrari Color cites no precedent or other authority for its position. Instead, Ferrari Color relies on the bald assertion that Mr. Rojas is guilty of theft because he did not clock out on the date in question. The Appeals Board does not have the authority to determine whether Mr. Rojas's conduct rises to the level of a crime under the appropriate legal and evidentiary standards.

Mr. Rojas was not terminated for violent conduct or for a violation of reasonable and written workplace health, safety, licensure, or nondiscrimination rules. Rather, Mr. Rojas was terminated for cause in what appears to be a reasonable implementation of Ferrari Color's workplace rules; however, the enforcement of such rules pertaining to the timeclock does not fall under the criteria for reducing or terminating temporary total disability compensation. Based on the evidence presented, the Appeals Board agrees with Judge Stewart that Mr. Rojas is entitled to temporary total disability compensation under §410 and that such compensation should not be reduced or terminated under §410.5(2).

Safety Violation

Ferrari Color also argues that it was error to increase the award of disability compensation due to a willful safety violation on the part of Ferrari Color. Section 34A-2-301 of the Act provides the following with regard to such violation and increase in benefits:

> (1) An employer may not:
> (a) construct, occupy, or maintain any place of employment that is not safe;
> (b) require or knowingly permit any employee to be in any employment or place of employment that is not safe;
> (c) fail to provide and use safety devices and safeguards;
> (d) remove, disable, or bypass safety devices and safeguards;
> (e) fail to obey orders of the commission;
> (f) fail to obey rules of the commission;
> (g) fail to adopt and use methods and processes reasonably adequate to render the employment and place of employment safe; or
> (h) fail or neglect to do every other thing reasonably necessary to protect the life, health, and safety of the employer's employees.
>
> (2) Compensation as provided in this chapter shall be increased 15%, except in case of injury resulting in death, when injury is caused by the willful failure of an employer to comply with:
> (a) the law;
> (b) a rule of the commission;
> (c) any lawful order of the commission; or
> (d) the employer's own written workplace safety program.

Under §301(2), Mr. Rojas would be entitled to an increase of 15% in temporary total disability compensation if Ferrari Color willfully failed to comply with the provisions of §301(1), which in Mr. Rojas's case involves bypassing safeguards on the printing machine so he was able to reach into the machine through the center-panel opening. It is important to note that §301(2) predicates the 15% increase on a causal connection between Mr. Rojas's left-hand injury and a willful safety violation. With regard to what constitutes a willful safety violation in the workers'

compensation context, the Utah Court of Appeals has explained that "the general rule [is] that the deliberate defiance of a reasonable rule laid down to prevent serious bodily harm to the employee will usually be held to constitute willful misconduct, in the absence of a showing of... specific excuses[.]" *Salt Lake County v. Labor Comm'n*, 208 P.3d 1087, 1090 (Utah App. 2009) (quoting *Van Waters & Rogers v. Workman*, 700 P.2d 1096, 1099 (Utah 1985)).

In the present case, there is insufficient evidence of deliberate defiance of the provisions in §301(1) on the part of Mr. Baker or Ferrari Color. Mr. Baker knew the safety sensor on the printing machine had been overridden by a service technician at the time of the UOSH inspection, but that was months after the work accident in question. Mr. Baker also admitted that he had seen employees operating the machine without its left panel in place; however, there is no indication Mr. Baker or Ferrari Color deliberately defied safeguards for the printing machine at the time of Mr. Rojas's work injury. Although Mr. Rojas testified that Mr. Baker had disabled the safety sensor for the machine due to a vacuum failure, such testimony was rebutted with evidence that the vacuum system was not in need of service during that period of time. Mr. Baker also explained he did not know how to bypass the safety sensor at the time of the accident.

The Appeals Board concludes that while it is possible Mr. Baker and Ferrari Color had Mr. Rojas reach in through the center panel opening or otherwise operate the printing machine by disabling its safeguards, the evidence does not preponderate to show that Mr. Baker or Ferrari Color deliberately defied or bypassed safeguards on the printing machine at the time Mr. Rojas was injured. Accordingly, the Appeals Board finds that Mr. Rojas's left-hand injury was not caused by the willful failure of Mr. Baker or Ferrari Color to comply with §301(1). Mr. Rojas is therefore not entitled to an increase of 15% in his awarded disability compensation.

ORDER

The Appeals Board modifies Judge Stewart's order dated March 3, 2016, by setting aside the portion of the order awarding an increase of 15% in the temporary disability compensation to Mr. Rojas. The Appeals Board affirms the remaining portion of Judge Stewart's order in this matter. It is so ordered.

Dated this 5th day of July, 2016.

Colleen S. Colton, Chair

Patricia S. Drawe

OPINION CONCURRING IN PART AND DISSENTING IN PART

I agree with all aspects of the majority's decision except in one significant area. I believe that a 15% increase in Mr. Rojas' temporary disability compensation should be awarded. On that point, I would affirm Judge Stewart's Order and write this dissent. Whether or not an injured employee is entitled to a 15% increase in his compensation award is covered by U.C.A. § 34A-2- 301(2). That section provides that if an employee is injured as a result of an employer's "willful failure" to comply with the employer's own written workplace safety programs, the employee's compensation shall be increased by 15%.

The gravamen of the dispute, between the parties and between the majority and myself over whether or not there should be a 15% increase in compensation, centers upon the meaning of the terms "willful failure". In order to properly understand the term "willful failure" it is necessary to understand the purpose behind U.C.A. § 34A-2-301(2), and its corollary for employees, U.C.A. § 34A-2-302(3), runs counter to the traditional notions of "no fault" worker compensation. Larson's Workers Compensation, § 105.08(1) notes that these sections within workers compensation codes are not necessarily designed to "punish" wrong doers, but are to encourage both the "enforcement of safety practices" and to compensate the "victims of industrial injury". Every state seems to approach these exceptions to the "no fault" regime differently. Utah appears to be at the low range in add-on compensation of 15% and appears to be mid-range for the legal standard of "willful failure" when compared to other states. When interpreting the phase "willful failure", the above context is important. It is clear from Utah's limited case law that the phase "willful failure" means more than mere "negligence" or "gross neglect" on the part of the employer. See *Salas v. Industrial Commission*, 564 P. 2d 1119 (Utah 1977); *Van Waters & Rogers v. Workman*, 700 P. 2d 1096 (Utah 1985); and *Salt Lake County v. Labor Commission*, 208 P. 3d 1087 (Utah Ct. of App, 2009). *Also see Gil v. Campfire Inc. Labor Commission,* Commission case no. 98-1030. (The *Gil* case has similarities to the case at hand.)

In the current matter, the majority found that the evidence does not support that the employer "deliberately defied" its safety procedures when Mr. Rojas was injured. Although no one would dispute that deliberate defiance of a safety procedure would meet the "willful failure" standard of the statute, deliberate defiance is not the only action by an employer which could be classified as a willful failure. In the *Gil* case, the Utah Labor Commission held that an employer's "proceeding from a conscious motion of will; voluntary" was willful. There are a number of facts in this case which are not in dispute. The safety interlock switch, on the printing machine where Mr. Rojas had been injured, had on several occasions been deliberately overridden to allow the printer to run with its panel open. The dispute facts are who over-rode the safety interlock and was it overridden on the date of the injury. Additionally, it is not disputed that the employer admits that it knew that the printer had been operated on many occasions with its panel open. I believe those simple facts are enough, in light of the purpose of the statute to encourage compliance with safety rules, to find that the employer had willfully failed by permitting its employees to operate the printer with the panels open.

Before I conclude, I want to comment on the UOSH inspection. A great deal has been made of the fact that UOSH only found the employer had committed a "serious" violation of safety rules, instead of a "willful" violation. I do not think that it is particularly relevant in a workers compensation process, that the employer was not charged with a willful violation in a UOSH inspection. We do not know why UOSH did not charge the employer with a willful violation. The UOSH processes, the standards of proof, and the purposes behind the statute are so very different before UOSH than in the workers' compensation regime. In the past, the Utah Labor Commission has so held. I would affirm Judge Stewart's opinion as it related to Section 301(2).

Joseph E. Hatch

NOTICE OF APPEAL RIGHTS

Any party may ask the Appeals Board of the Utah Labor Commission to reconsider this order. Any such request for reconsideration must be received by the Appeals Board 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 hereby certify that a true and correct copy of the attached Order Modifying ALJ's Decision, was mailed on July 5, 2016, to the persons/parties at the following addresses:

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JAVIER ROJAS, Petitioner, vs. FERRARI COLOR and/or WORKERS COMPENSATION FUND, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER Case No. 13-0714 Judge Brian Stewart

HEARING: Labor Commission, 160 E 300 S, PO Box 146615, Salt Lake City, UT 84114-6615, on November 20, 2014 at 8:10 AM and on March 27, 2015 at 8:10 AM. Said Hearing was pursuant to Order and Notice of the Commission.

BEFORE: Hon. Brian Stewart, Administrative Law Judge.

APPEARANCES: The Petitioner, Javier Rojas, was present and represented by attorney Scott Lythgoe.

The Respondents, Ferrari Color and/or Workers Compensation Fund, were represented by attorney Andrea B. Mitton.

STATEMENT OF THE CASE

Javier Rojas ("Petitioner") filed an Application for Hearing with the Adjudication Division of the Utah Labor Commission ("Court") on September 9, 2013, and an Amended Application for Hearing on January 1, 2014, and another Amended Application for Hearing on August 20, 2014, and claimed entitlement to the following workers' compensation benefits: (1) medical expenses; (2) recommended medical care; (3) temporary total disability compensation from March 5, 2013 to January 17, 2014; (4) temporary partial disability compensation from January 18, 2014, to the present and ongoing; (5) travel expenses; and (6) 15% add-on for a willful safety violation. Javier Rojas's claim for workers' compensation benefits arose out of an industrial accident that occurred on January 18, 2013.

Respondents ("Ferrari Color and/or Workers Compensation Fund") denied that the industrial accident on January 18, 2013, medically caused Javier Rojas's injuries. Respondents contended that Javier Rojas suffered no real periods of disability as a result of his accident. Respondents claimed

that Petitioner's employment was terminated before he reported his injury, and that he would not be entitled to light duty work. Respondents maintained that no legal causation existed between Petitioner's injuries and the industrial accident on January 18, 2013, as required by the Utah Supreme Court in *Allen v. Industrial Commission*, 729 P.2d 15, 24-25 (Utah 1986).

COURSE OF PROCEEDINGS

At the hearing, the parties clarified their respective positions. Petitioner claimed medical expenses in the amount of $207.34 incurred at the Taylorsville Clinic; recommended medical care for type 2 complex regional syndrome; temporary total disability compensation from March 5, 2013 to January 17, 2014; temporary partial disability from January 17, 2014 to the present and ongoing; and 15% increase in benefits under Utah Code §34A-2-301(2). Petitioner withdrew his claim for travel expenses.

Respondents denied liability for the $207.34 in expenses because Petitioner had already utilized his one-time right to change treating physicians under Utah Administrative Code R612-300-2(D). Respondents denied that Petitioner can establish medical causation. Respondents asserted that Petitioner's employment was terminated for cause before he had work restrictions in place, and therefore does not qualify for temporary total or temporary partial disability compensation. Respondents further asserted that Petitioner has received all of the medical care necessitated by his industrial accident. Respondents also asserted that Ferrari Color did not engage in a willful safety violation under Utah Code 34A-2-301.

The parties stipulated that Petitioner earned $16.00 per hour at 40 hours per week, and $24.00 per hour overtime at 15 hours per week. The parties also stipulated to the admission of Exhibits J-2 through J-20.

ISSUES

1. Did the industrial accident on January 18, 2013, medically cause Javier Rojas's problems at issue in this case?

2. Did the industrial accident on January 18, 2013, cause Javier Rojas to suffer any periods of temporary total or temporary partial disability?

3. Is Javier Rojas entitled to reimbursement for the medical expenses incurred as a result of his visit with Dr. Curtis Anderson at Taylorsville Instacare on June 6, 2013?

4. What recommended medical care is necessary for the treatment of any injuries caused Javier Rojas by the January 18, 2013, industrial accident?

5. Is Javier Rojas entitled to a 15% increase in workers' compensation benefits under Utah Code §34A-2-301(2) because of the January 18, 2013, industrial accident?

WITNESSES

1. Angela Beirle
2. Melissa Hinderman
3. Travis Baker
4. David Ingebretson

FINDINGS OF FACT

Employment

Respondent Ferrari Color employed Javier Rojas as a printing machine operator on January 18, 2013.

Compensation Rate

Based on the parties' stipulation, at the time of his injury, Petitioner had an average weekly wage of $1,000.00. He would therefore qualify for a weekly compensation rate of $667.00.

Industrial Accident and Injury

On the date of injury, Petitioner was working as a machine operator for a 600 Pictor machine.[1] Petitioner's job duties included placing the media to be printed onto the machine's rollers, and then ensuring that the media ran through the printer without wrinkling and that the printer correctly printed on the media. In order to watch the media as it ran through the printer, Petitioner stood on a box located in front of the printer, and he looked through the center access panel which was open. When he saw the media begin to bubble, he reached in to flatten the media. However, as the printer head moved from the right to the left, Petitioner was not able to remove his left hand quickly enough and it became briefly trapped against the support bar when a portion of the printer head scraped past it. (Exhibit J-2 at 2:30-4:15; Exhibit J-3, 0:01-4:30; Exhibit J-18, Page 6 (right circle not marked with an "I")). Once the printer head moved to the right again, Petitioner's hand was freed, he removed his arm from the printer, and he stopped the printer.

Petitioner believes that the main part of his left hand that was hit is the top of his left hand, a little lower than the knuckles. When he removed his hand, it was bloody, and he noticed some skin inside of the printer. Petitioner initially believed that his hand was broken. He then reported the

[1]The printer operates by use of a printer head which sprays ink onto the media as the printer head moves back and forth from the left to the right as the media advances through the printer. While the media is advance through the printer, UV lights dry the ink. If the media wrinkles as it is going through the printer, it will cause a "head crash", the machine will stop, and the printer head may be damaged. When an operator first notices wrinkled media, he can push a button to stop the printer from printing. However, if fast enough and careful enough, he can also reach into the printer and physically stretch out the media.

injury to the print department manager, Travis Baker. Mr. Baker looked at Petitioner's left hand and he testified that he twice asked Petitioner if he needed medical treatment, or if he needed to go home, but Petitioner declined. Mr. Baker saw a piece of Petitioner's skin inside of the printer, but he believed that Petitioner's injury was more of a "first aid" type of injury, rather than one that needed stronger medical care.[2] Petitioner testified that Mr. Baker acted like he did not care about the injury and told him that Petitioner's job is more important than his hand and to get the job done. In this instance, the Court finds Mr. Baker's testimony regarding his response to learning of Petitioner's injury to be most credible.

Petitioner cleaned his hand and used burn gel from his employer's first aid kit to treat his left hand. He cleaned his hand that night an estimated six to seven times and completed his shift.[3] Petitioner required some help to complete his shift that evening, but he did complete his shift, and the remainder of his scheduled shifts between January 18, 2013, and February 12, 2013, totaling 210 hours, when he took some scheduled time off to travel to Mexico.[4]

Petitioner testified that he did not seek medical care right away because Mr. Baker told him that "Walter" had had his eye of Petitioner and would fire him if he sought treatment. He further testified that he did not seek medical care while in Mexico because someone tried to kill him while there making it too risky to seek any medical treatment.

Petitioner sought professional medical care on February 20, 2013, at WorkMed for his injury on January 18, 2013.[5] (Medical Records Exhibit "MRE", 19). He has received conservative treatment since the accident. His current symptoms include pain in his left hand and fingers. He does not use his left hand to work, and he sometimes wears a brace.

On January 18, 2014, Petitioner began working for HHI Corporation. When he began he was earning $10.00 per hour, but at the time of the hearing his income had increased to $12.70. (Exhibit J-6). His duties include cleaning, sweeping, maintenance, and monitoring welding arcs that fall to the ground to ensure they do not start a fire.

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[2] Mr. Baker's testimony at the hearing was consistent an email that he wrote on February 20, 2013, to Melissa Hinderman. (Exhibit J-10). Exhibit J-18, Page 6 depicts the spot on the fan housing (circle on the right and not marked with "I") that Mr. Baker saw Petitioner's skin.

[3] Exhibit J-19, Page 1 shows Petitioner's hand once he cleaned it and applied the burn gel. Exhibit J-19, Page 2 shows his hand after he cleaned it up again. Exhibit J-19, Page 3 shows Petitioner's hand after he cleaned it up again. Petitioner began taking the photos approximately an hour after the injury occurred.

[4] It is unknown how much help or what help specifically that Petitioner required. Mr. Baker testified that Petitioner did not require additional help that evening. However, the Court finds Petitioner's testimony more credible because Mr. Baker was not in a position to observe Petitioner for the rest of his shift.

[5] The WorkMed record shows a date of injury of January 22, 2013. However, the correct date of injury is January 18, 2013.

At the hearing, Respondents called David Michael Ingebretson as a witness. Before stipulating to Mr. Ingebretson's qualification as an expert witness, Petitioner sought to voir dire the witness. Respondents objected because the witness was called on the second day of what was originally scheduled as a two hour hearing (and which the parties themselves has estimated would only be a two hour hearing) and that it would be too burdensome to allow Petitioner to take additional time to voir dire the witness because Petitioner had known about the witness for three months but failed to inquire about his qualifications previously, and Petitioner had cancelled a previously scheduled deposition with Mr. Ingebretson. Petitioner argued that he should be allowed to voir dire the witness because he was not under an obligation to depose the witness to inquire before the hearing about his qualifications. Because of the limited time that had been scheduled for hearing, the Court sustained Respondents objection to allowing Petitioner to voir dire the witness. Although Petitioner did not stipulate to Mr. Ingebretson's qualification as an expert witness, the parties stipulated that Exhibit R-1 is Mr. Ingebretson's curriculum vitae and that Exhibit R-2 is the report he authored.

In qualify an individual as an expert witness, the Court looks to Utah Rules of Evidence 702.

> (a) Subject to the limitations in paragraph (b), a witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.
>
> (b) Scientific, technical, or other specialized knowledge may serve as the basis for expert testimony only if there is a threshold showing that the principles or methods that are underlying in the testimony
>
> (1) are reliable,
>
> (2) are based upon sufficient facts or data, and
>
> (3) have been reliably applied to the facts.
>
> (c) The threshold showing required by paragraph (b) is satisfied if the underlying principles or methods, including the sufficiency of facts or data and the manner of their application to the facts of the case, are generally accepted by the relevant expert community.

Based on Petitioner's curriculum vitae and his testimony, the Court finds that Mr. Ingebretson is qualified to testify as an expert witness as to the mechanism of Petitioner's injury. Nevertheless, the Court finds that Petitioner's testimony as to the mechanism of injury is more credible.

As explained above, Petitioner testified that his left hand was caught between the printer head and a support bar (on the left-hand side of the center door) as it moved from the right

to the left. Mr. Ingebretson testified and his written report reflects his opinion that there is only a 25% chance that the accident happened the way Petitioner described. Mr. Ingebretson opined that it was much more likely that Petitioner reached his arm through the left access panel, and that his left hand was caught between the printer head and the side wall. In reaching his conclusion, Mr. Ingebretson considered that, if Petitioner's hand had been caught his arm also would have been caught and would have resulted in breakage of his hand and likely derangement of his elbow or wrist ligaments. He further opined that Petitioner would not have had enough time to react because humans require at least .75 seconds to perceive danger, and because the printer head takes four seconds to leave and return to the point Petitioner alleges he was injured, Petitioner would not have had enough time to remove his arm. He further opined that it would have made more sense for Petitioner to reach in through the left access panel because it is easier to access the media. Mr. Ingebretson testified that, in reaching his conclusion, he relied on Mr. Baker's statement to him that Petitioner's skin was found on the left hand side of the printer head. (Exhibit J-18, Page 6, (left circle marked with "I")).

Although Mr. Ingebretson's opinion is reasonable and makes sense, and although Petitioner's testimony of the events that occurred are not without its issues, the Court finds that Petitioner's description is most credible. Specifically, Petitioner was present when the accident occurred and therefore had greater opportunity and capacity to perceive the accident. The Court finds particularly compelling Petitioner's testimony that the accident happened when he reached in through the center panel. Although it may have made more sense for Petitioner to reach in through the left access panel, the mechanism of injury through the left panel would have differed significantly from the mechanism of injury through the center panel. It seems to the Court that, because the mechanisms of injury would be so different, it would be clear in Petitioner's mind whether he was injured in the center access panel or the left access panel. Furthermore, Mr. Ingebretson opined that Petitioner would not have had sufficient time to remove his upper body the center panel, given the .75 second minimum perception-of-danger reaction time and the four second revolution of the printer head. However, Mr. Ingebretson's calculation does not appear to take into consideration that Petitioner may have reached his upper body into the center panel with an already existing perception of the danger. Having worked on the printer for several years previously, he would have been aware of the movement of the printer head, and likely would have been anticipating it when he reached into the printer. Furthermore, Mr. Baker's original identification to Mr. Ingebretson of the location on the printer head where Petitioner's skin was found is not consistent with Mr. Baker's testimony at the hearing.[6] Mr. Baker's testimony at the hearing, however, was consistent with Petitioner's testimony as to the location of the skin.

In determining credibility, the Court also considers bias, consistency with other evidence, inherent improbability, and demeanor. Regarding bias, the Court notes that Petitioner, as the claimant,

[6] Mr. Ingebretson testified that Mr. Baker told him that Petitioner's skin was found on the left side of the fan housing on the printer head. (See Exhibit J-18, Page 6 (left circle, marked with "I")). However, at the hearing, Mr. Baker testified that Petitioner's skin was found to the right of the fan housing on the printer head, which he described as the left side of the carriage on the mounting bracket. (See Exhibit J-18, Page 6, (right circle, not marked with "I").

presumably has his own self-interest in mind and that Mr. Ingebretson, as the witness hired by Respondents to testify, has his own and Respondents' interests in mind.

Regarding inherent improbability, the Court does not find anything inherently improbably about either of the mechanisms of injury described by Petitioner or Mr. Ingebretson. Likewise, there was nothing in the demeanor of Petitioner or Mr. Ingebretson that would call into question their credibility.

Therefore, as explained above, the Court finds that Petitioner injured his left hand when he reached into the center panel opening.

Safety Violation

Petitioner testified that on the date of his injury, the safety sensor had been physically removed from the center access panel, the left panel was removed, and the center door of the printer was open, contrary to the safety warnings posted on the printer. Petitioner testified that one of the vacuums on the printer was broken, and that Mr. Baker eliminated the sensor so that the printer would still function.[7] He further testified that the doors were often left off so that employees can more easily see into the machine to know when there is a wrinkle in the media requiring correction.

After his employment was terminated, Petitioner contacted Utah Occupational Safety and Health ("UOSH") and reported that Mr. Baker had removed a safety sensor on the printer. On April 9, 2013, a UOSH inspector conducted a site inspection and found that a safety interlock switch had been bypassed, allowing the printer to run with the doors open. A citation was then issued on April 22, 2013. (Exhibit J-9).

Mr. Baker testified that he did not override the safety sensor before the date of injury because he did not know how to do it before that time. He further testified that the vacuum would have been operational on the date of Petitioner's injury because, if the vacuum was not operating, the media could not move on the conveyor through the printer, and that such a malfunction would have warranted a call to a Durst service technician. There is no record of a Durst service call for any vacuum problems in January or February 2013. (Exhibit J-14). Furthermore, there was no indication of a problem on the Pictor Daily Preventative Maintenance log. (Exhibit J-15, Page 2). Mr. Baker also testified that he had had seen the left access panel off the printer in past instances when employees were using the printer and when the printer was not operating.

Also in evidence is an audio recording of Petitioner's brother, Guadalupe Luna. He indicated that, at the time of the recording, he had worked for Ferrari Color for five years and sometimes had seen tape on the safety sensor to override it. He further indicated that sometimes he has opened the door to correct a problem with the media wrinkling. While the Court finds his statements to be credible,

[7] The media would lay on a type of conveyor belt as it ran through the printer. The conveyor belt had a number of holes in it and sat on top of a vacuum. When the vacuum was engaged, it created suction to hold the media in place as it moved along the conveyor through the printer. (Exhibit J-18, Page 7).

they are not particularly helpful because they do not indicate when Mr. Luna operated the machine without the door, when he saw the safety sensor overridden, or who placed the tape on the safety sensor to override it. (Exhibit J-5). Nevertheless, the Court recognizes that the statements are evidence that the printer was operated at times with the safety sensor overridden with tape and the center panel door open.

Based on the testimony and other evidence presented, the Court finds that the safety sensor was most likely overridden on the date of Petitioner's injury, and that the left panel was removed and the center panel open on the printer. Petitioner testified, and the Court finds his testimony on this point credible, that the printer was frequently operated without the doors and that the safety sensor was overridden. Although Mr. Baker testified that he did not remove or override the safety sensor before Petitioner's injury because he did not know how to effect an override, he testified that he knew it had been overridden by the Durst service technician at the time of the UOSH inspection. In other words, he allowed the printer to operate without the safety sensor operating correctly. While the UOSH inspection occurred around three months after Petitioner's injury, the Court finds that the weight of the evidence is that the sensor had been overridden on or before the date of Petitioner's injury, and that the printer was operated without the operational safety sensor on a more than occasional basis. However, the Court finds credible Mr. Baker's testimony that he did not override sensor himself. The Court also finds that Petitioner did not override the safety sensor himself.

Time Clock and Termination

During Petitioner's shift on the evening of February 12, 2013 to the morning of February 13, 2013, Petitioner realized that he had left a piece of luggage at home for his flight to Mexico. Because he was departing from work to the airport, he asked for and received permission from Mr. Baker to leave work to obtain it, and to shower at home, as long as he was clocked out during the time he was gone. Petitioner testified that he clocked out and clocked back in when he returned, but the time clock was not functioning properly and did not record his clocking out. He further testified that many employees frequently had problems with the time clock recording them clocking in and out.[8]

Respondents asserted that Petitioner clocked in for work at 10:50 PM on February 12, 2013, and that he then left work in his vehicle, and returned between 11:20 and 11:30 PM to begin working his shift. They further assert that Petitioner left work without clocking out at 3:50 AM on February 13, 2013, to retrieve his luggage, and that he returned at 5:15 AM, worked for another two hours, and then clocked out at 7:19 AM.[9] (Exhibit J-17, page 77). They further asserted that Petitioner had prior warnings about not clocking out for lunch. (Exhibit J-17, page 3 and page 8).

[8] Exhibit J-7 is an example of a timecard with incorrectly recorded punching-in and -out. Specifically, if an employee worked longer than expected, a dash would be placed in the "OUT" column, and the actual clocking-out would be treated by the time-clock as a clock-in for the next shift, as occurred on 1/25/13 and 1/26/13. To make the correction, the employee would need to handwrite the correction.

[9] Exhibit J-11, page 3 appears to show that the actual dates of Petitioner's shift was from February 11-12, 2013, rather than February 12-13, 2013.

Upon Petitioner's return to work from Mexico on February 19, 2013, his employment was terminated by Respondent Ferrari Color because of his alleged failure to clock out when he returned home for his luggage.

After reviewing the testimony offered and the Exhibits admitted, the Court finds that Respondent's reason for terminating Petitioner because of a timeclock violation to be credible. Specifically, while it is clear that the timeclock would frequently confuse clocking-out for clocking-in when an employee worked an unexpectedly long shift, the evidence shows that the timeclock did record the act of clocking-in and –out. The Court does not find credible Petitioner's argument that he clocked-out, but that the timeclock failed to record the clock-out.

Taylorsville Instacare Visit

Petitioner's first visit with a medical professional regarding his injury was on February 20, 2013, at WorkMed when he saw Cindy Haacke, NP. (MRE, 19). Petitioner next saw Dr. Deborah Mattingly at the same clinic. (MRE, 22). He then began treating with Dr. Steven Huish on March 5, 2013. (MRE 30). However, he then sought treatment with Dr. Curtis Anderson at the Taylorsville Instacare, and was prescribed Neurontin and Lortab. (MRE, 28).

BENEFITS

Petitioner is claiming the workers' compensation benefits of medical expenses related to the January 18, 2013, industrial accident; recommended medical care; temporary total disability compensation from March 5, 2013 to January 17, 2014; temporary partial disability from January 17, 2014 to the present and ongoing; and 15% increase in benefits under Utah Code §34A-2-301(2).

CONCLUSIONS OF LAW

The Utah Workers' Compensation Act provides benefits to workers injured by accident "arising out of and in the course of" employment. Utah Code §34A-2-401. To qualify for benefits under this standard, an injured worker must establish that his or her work was both the legal cause and the medical cause of the injury in question. *Allen v. Industrial Commission*, 729 P.2d 15, 25 (Utah 1986).

The central issue in the claim at bar is whether Petitioner's injury was caused by his January 18, 2013, industrial accident.

Legal Causation

The subject claim does not contain a legal causation dispute.

Medical Causation

In *Allen*, the Utah Supreme Court defined the requirements for proof of medical causation in workers' compensation cases:

> 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 lead to the resulting injury or disability.

In the claim at bar, at least five medical professionals have opined that Petitioner's condition was caused by his January 18, 2013, industrial accident. Dr. Deborah Mattingly examined Petitioner on February 27, 2013, and opined that Petitioner's complaints were not related to his January 18, 2013, industrial accident. However, Respondents did not argue that there is a dispute about the cause of Petitioner's condition. Each of the physicians after Dr. Mattingly, include the two IME physicians, opined that Petitioner's condition was caused by his industrial accident.

Willful Violation Penalty under Utah Code § 34A-2-301(2)

At issue is whether Respondents are liable for a 15% penalty under Utah Code § 34A-2-301(2). It states:

1. An employer may not:
    a. construct, occupy, or maintain any place of employment that is not safe;
    b. require or knowingly permit any employee to be in any employment or place of employment that is not safe;
    c. fail to provide and use safety devices and safeguards;
    d. remove, disable, or bypass safety devices and safeguards;
    e. fail to obey orders of the commission;
    f. fail to obey rules of the commission;
    g. fail to adopt and use methods and processes reasonably adequate to render the employment and place of employment safe; or
    h. fail or neglect to do every other thing reasonably necessary to protect the life, health, and safety of the employer's employees.
2. Compensation as provided in this chapter shall be increased 15%, except in case of injury resulting in death, when injury is caused by the willful failure of an

employer to comply with:

a. the law;

b. a rule of the commission;

c. any lawful order of the commission; or

d. the employer's own written workplace safety program.

Based on the evidence, including Petitioner's testimony that he operated the printer with the center panel open; the testimony of Mr. Baker that the left panel was sometimes removed both when employees were operating the printer and when it was not in operation; Mr. Baker's testimony that the safety sensor was overridden and, with his knowledge, the printer operated without the sensor after Petitioner's industrial accident; the fact that the sensor was overridden at the time of the UOSH inspection; and Mr. Luna's recorded statements, the Court finds that Respondents most likely allowed the machine to operate without the safety sensor in place, and that Petitioner was injured as a result of the misuse of the safety sensor. Although the Court believes that Petitioner was aware of the safety risks of reaching into the printer through the center access panel, the Court finds that Respondents willfully allowed the printer to operate without the safety sensor functioning correctly. As such, Petitioner is entitled to a 15% increase in his compensation.

Temporary Total Disability Compensation

At issue is whether Petitioner is entitled to temporary total disability compensation under Utah Code § 34A-2-410 and -410.5 when his employment was terminated "for cause." Respondents asserted that, because Petitioner's employment was terminated do to his own conduct before he was given any work restrictions, he is not entitled to temporary total disability compensation. Petitioner asserted that his right to temporary total disability compensation is not affected by his termination.

Section 34A-2-410 states that "...in case of temporary disability, so long as the disability is total, the employee shall receive 66-⅔% of that employee's average weekly wages at the time of the injury..." and "[i]f a light duty medical release is obtained before the employee reaches a fixed state of recovery and no light duty employment is available to the employee from the employer, temporary total disability benefits shall continue to be paid."

Section 34A-2-410.5 allows the Commission to "reduce or terminate an employee's disability compensation for a disability claim for good cause shown by the employer" when the employer terminates the employee and the termination is reasonable; for cause; and due, at least in part, to the employee's violation of a reasonable, written workplace health, safety, licensure, or nondiscrimination rule that is applied in a manner that is reasonable and nondiscriminatory.

In *Stampin' Up, Inc. v. Labor Comm'n*, 256 P.3d 250 (Utah Ct. App. 2011) the Utah Court of Appeals addressed a similar situation when it upheld the Commission's decision, and explained that, because

there was no evidence the employee intended to sever his employment relationship and did not refuse light-duty work, the employee was entitled to benefits during the periods following his termination while he was released to light-duty work but unable to perform the work because he was no longer working for the employer.

In the present case, there is no evidence that Petitioner intended to sever his employment relationship when he failed to clock out for his time away from work, or that he refused light-duty work. Therefore, the Court finds that § 34A-2-410 does not allow for termination of Petitioner's temporary total disability benefits as a result of his employment termination.

The Court notes that Section 34A-2-410.5 was enacted after the employee in *Stampin' Up* was injured, and the Court of Appeals did not apply that statute. However, the Court finds that, while the termination of Petitioner's employment appears reasonable, there is no evidence that it violated a *written* workplace rule, or even a rule dealing with health, safety, licensure or nondiscrimination. Therefore, § 34A-2-410.5 does not allow the termination of temporary total disability compensation in the present case.

Because of the medical opinions that Petitioner has not reached medical stability or has been released from light duty, he is entitled to temporary total disability compensation benefits from March 5, 2013 to January 17, 2014, when he began employment with HHI Corporation.

Temporary Partial Disability Compensation

At issue is whether Petitioner is entitled to temporary total disability compensation under Utah Code § 34A-2-411 when his employment was terminated "for cause." Respondents' arguments are essentially the same as for termination of Petitioner's temporary total disability compensation. The Court finds that, for that same reasons outlined in the previous section of this Order, Petitioner is entitled to temporary partial disability compensation.

Petitioner began employment with HHI Corporation on January 18, 2014. He is entitled to temporary partial disability compensation under § 34A-2-411, from January 18, 2014 to the present and ongoing, until Petitioner reaches medical stability or reaches the statutory limit on such indemnity, whichever occurs first.

Medical Expenses

At issue is whether Petitioner is entitled to the pharmacy costs resulting from his Taylorville Instacare appointment with Dr. Anderson on June 6, 2013, under Utah Administrative Code R612-300-2. (Exhibit J-16).

The rule states:

1. An injured worker may change health care providers one time without obtaining permission from the payor. The following circumstances do not constitute a change of health care provider:

a. A treating physician's referral of the injured worker to another health care provider for treatment or consultation;

b. Transfer of treatment from an emergency room to a private physician, unless the emergency room was designated as the payor's preferred provider;

c. Medically necessary emergency treatment;

d. A change of physician necessitated by a treating physician's failure or refusal to rate a permanent partial impairment.

2. The injured worker shall promptly report any change of provider to the payor.

3. After an injured worker has exercised his or her one-time right to change health care providers, the worker must request payor approval of any subsequent change of provider. If the payor denies or fails to respond to the request, the injured worker may request approval from the Director of the Division of Industrial Accidents. The Director will authorize a change of provider if necessary for the adequate medical treatment of the injured worker or for other reasonable cause.

4. An injured worker who changes health care providers without payor or Division approval may be held personally liable for the non-approved provider's fees.

In the present case, it appears that Petitioner elected to change his provider, albeit temporarily, when he went to the Taylorsville Instacare for treatment with Dr. Anderson. He had previously seen the providers at WorkMed and then changed to Dr. Huish. The change from WorkMed to Dr. Huish constituted his one-time change that did not require authorization. His change to Dr. Anderson was the second change and it required authorization.

Rule 612-300-2 states that an injured worker who does not obtain the necessary authorization may be liable for the non-approved provider's fees. The rule appears to be limited to provider's fees and not other expenses. Based on Exhibit J-16, the $207.34 in medical expenses are for prescription medications and not provider's fees. The Court finds that, under the stated rule, Petitioner is entitled to reimbursement for the prescriptions for this visit that are related to the industrial accident.

Recommended Medical Care

At issue is whether the Petitioner is entitled to treatment for Complex Regional Pain Syndrome Type II as recommended by Dr. Weston and Dr. Hammon (MRE, 67 and 99). At the hearing, there was some question between the parties as to whether the recommended medical care had been approved or not. Petitioner did not believe that the care had been approved. However, Respondents believed that the care had been approved by the insurance carrier. Nevertheless, because there is no medical opinion that Petitioner should not receive such care, the Court finds that the recommended medical care is necessary to treat his industrial injuries.

ORDER

IT IS THEREFORE ORDERED Ferrari Color and/or Workers Compensation Fund shall pay to Javier Rojas temporary total disability compensation under Utah Code § 34A-2-410 for the period of March 5, 2013 to January 17, 2014, based on Petitioner's stipulated average weekly wage. That amount is accrued, due, and payable in a lump sum, plus interest at eight percent (8%) per annum, under Utah Code § 34A-2-420(3) and Utah Administrative Code R612-200-3.

IT IS FURTHER ORDERED that Ferrari Color and/or Workers Compensation Fund shall pay to Javier Rojas ongoing temporary partial disability compensation under Utah Code § 34A-2-411 from January 18, 2014, until he reaches medical stability from the January 18, 2013, industrial injuries, receives 312 weeks of temporary disability compensation, or he becomes employed at the same or greater salary. Amounts owed through the date of this Order are accrued, due, and payable in a lump sum, plus interest at eight percent (8%) per annum, under Utah Code § 34A-2-420(3) and Utah Administrative Code R612-200-3.

IT IS FURTHER ORDERED that the temporary total disability compensation and the temporary partial disability compensation amounts shall be increased by fifteen percent (15%), under Utah Code § 34A-2-301.

IT IS FURTHER ORDERED that Ferrari Color and/or Workers Compensation Fund shall reimburse Javier Rojas for the prescriptions from the visit with Dr. Curtis Anderson on June 6, 2013, that are related to Mr. Rojas's January 18, 2013, industrial accident, under Utah Code § 34A-2-418 and Utah Administrative Code R612-300-8 and the medical and surgical fee of the Utah Labor Commission.

IT IS FURTHER ORDERED that Ferrari Color and/or Workers Compensation Fund shall pay for the recommended medical care for Complex Regional Pain Syndrome Type II, as recommended by Dr. Raul K. Weston and Dr. Daniel J. Hammon, under Utah Code § 34A-2-418.

IT IS FURTHER ORDERED that statutory attorneys' fees, plus twenty-five percent (25%) of the interest awarded herein, shall be paid directly to Attorney Scott Lythgoe according to Utah Code § 34A-1-309 and Utah Administrative Code, R602-2-4 and R612-200-3. That amount shall be deducted from Javier Rojas's award and sent directly to Mr. Lythgoe's office.

DATED this 3 day of March, 2016.

Hon. Brian Stewart
Administrative Law Judge

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. If a request for review is filed, other parties to the adjudicative proceeding may file a response within 15 calendar days of the date the request for review was filed. If such a response is filed, the party filing the original request for review may reply within 5 calendar days of the date the response was filed. Please see R602-2-2(O) for more information about filing a Motion for Review: http://www.rules.utah.gov/publicat/code/r602/r602-002.htm

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 request review by the Appeals Board, the review will be conducted by the Utah Labor Commissioner.

Javier Rojas vs. Ferrari Color and/or Workers Compensation Fund Case No. 13-0714

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the attached FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER was mailed on March 4, 2016, to the persons/parties at the following addresses:

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UTAH LABOR COMMISSION

Rosalee Clarkson

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