

1992

# Mark King v. Board of Review of the Industrial Commission of Utah, Superior Roofing Company and Workers Compensation Fund of Utah : Reply Brief

Utah Court of Appeals

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Robert Breeze; Attorney for Appellant.

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BRIEF

DOCKET NO. 920464

BEFORE THE UTAH COURT OF APPEALS

MARK KING,	)	
	)	
Plaintiff and Petitioner,	)	
	)	
vs.	)	
	)	
BOARD OF REVIEW OF THE	)	
INDUSTRIAL COMMISSION OF UTAH,	)	
SUPERIOR ROOFING COMPANY and/	)	Case No. 920464 CA
WORKERS COMPENSATION FUND	)	
OF UTAH,	)	Priority No. 7
	)	
Defendants and Respondents,	)	
	)	

REPLY BRIEF OF PETITIONER

BRIEF OF INJURED WORKER SEEKING  
REVIEW OF INDUSTRIAL COMMISSION  
RULING THAT WORKER WAS NOT ENTITLED  
TO WORKERS COMPENSATION BENEFITS  
WHILE IN PRISON

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Attorneys for Respondent

BEFORE THE UTAH COURT OF APPEALS

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	)	
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INDUSTRIAL COMMISSION OF UTAH,	)	
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### DETERMINATIVE STATUTORY PROVISIONS

The Petitioner believes the determinative provisions regarding the issues raised on appeal herein are:

- a. Section 35-1-45 Utah Code Annotated.
- b. Section 35-1-65 Utah Code Annotated.

(See Addendum for text of Code Sections).

The Utah Administrative Procedures Act, Section 63-46b-16(4)(b) and (d) authorize Appellate Court relief when an agency has acted beyond the jurisdiction conferred by statute or erroneously interpreted or applied the law. The standard of review with respect to questions of law the Appellate court does not defer to the Commission and applies a correction of error standard. Morton International v. Utah State Tax Commission, 814 P.2d 581 (1991). The Appellate court need give no deference to the legal interpretation of Section 45 applied by the Industrial Commission. There has been no expressed or implied grant of power to construe said statute. Cross v. Board of Review of Industrial, 824 P.2d 1202, 1204 (Ut. App. 1992).

With regard to questions of fact, the Standard for Review is: "[F]indings of fact will be affirmed if they are 'supported by substantial evidence when viewed in the light of the whole record before the court'". Miriam v. Board of Review, 812 P.2d 447, 450 (Ut App 1991).

### CONSTITUTIONAL PROVISIONS

None.

IN THE UTAH COURT OF APPEALS

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MARK KING,	)	
	)	
Plaintiff and Petitioner,	)	
	)	
vs.	)	
	)	
BOARD OF REVIEW OF THE	)	
INDUSTRIAL COMMISSION OF UTAH,	)	
SUPERIOR ROOFING COMPANY and/	)	Case No. 920464 CA
WORKERS COMPENSATION FUND	)	
OF UTAH,	)	Argument Priority
	)	
Defendants and Respondents,	)	Classification Number

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REPLY BRIEF OF PETITIONER

ARGUMENT

POINT I

IT IS THE LEGISLATURE'S PROVINCE TO  
RESTRICT WORKERS COMPENSATION

In the case of Forshee and Landley Logging v. Peckham, 788 P.2d 487 (Oregon App. 1990) the Oregon Court of Appeals ruled that incarcerated claimants are entitled to compensation.

It should be noted that the theory under which the Court allowed compensation to incarcerated claimants was that the legislature is the proper body to restrict workers compensation to incarcerated claimants.

It is interesting to note that the Utah Workers Compensation Statute is silent with regard to compensation for incarcerated claimants.

Pursuant to the doctrine enunciated in Bevans v. Industrial Commission, 790 P.2d 573, 576 (Utah App. 1990), the Commission is without any equitable power. The power exercised by the Industrial

Commission of Utah is solely that power which is specifically delegated by the legislature to the Commission. The legislature has not empowered the Industrial Commission of Utah to make legislative determinations regarding payment of lawfully due Workers Compensation Benefits to incarcerated claimants.

In Defendants' brief, an argument is made that the Utah Court of Appeals has already ruled on the issue of whether the onset of conditions that prevent medical care terminates the employer's liability. (Defendant's brief at page 5).

However, a careful reading of the Griffin case shows that the actual issue was ". . . was whether the Commission was arbitrary and capricious in concluding that the Plaintiff's ankle injury was stabilized from May 3, 1985 to December 29, 1985." Griffin at 983. The court assumed, but did not specifically decide that a condition subsequently terminated the employer's liability. However, that supposition was not the holding in the case and is therefore dicta and not binding in this case.

"Temporary Total Disability benefits are typically awarded after a worker suffers a job related disability that prevents him or her from returning to work." Booms v. Rapp Construction Co., 720 P.2d 1363, 1366 (Utah 1986). "Temporary Disability Compensation . . . merely provides an employee with income during the time he recuperates from work related injuries until his condition has reached medical stabilization". Griffin v. Industrial Commission of Utah, 754 P.2d 981, 983. (Utah App. 1988).

No one disputes the fact that the claimant did not reach

stabilization until he recovered from the surgery that finally occurred in late January of 1991.

Section 63-46b-16, Utah Code Annotated allows this Court to provide relief to the Claimant if, among other things, (b) the agency has acted beyond the jurisdiction conferred by any statute;

or,

(d) the agency has erroneously interpreted or applied the law.

#### CONCLUSION

The Legislature of Utah has not determined that incarcerated claimants should be denied compensation. The Industrial Commission of Utah has no equitable power to make policy decisions with regard to the issue raised in this appeal. The Claimant did not stabilize until after the final surgery which occurred in late January of 1991.

WHEREFORE, Claimant prays for the following relief:

1. For an Order overturning the legal conclusion reached by the Industrial Commission and awarding benefits to Petitioner;
2. For a judicial determination that the Utah Workers Compensation Act does not provide for termination of Workers Compensation Benefits to incarcerated Claimants.
3. For such other and further relief as may be just and proper under the circumstances.

DATED this 18 day of January, 1993.

  
\_\_\_\_\_  
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**CERTIFICATE OF MAILING**


I certify I mailed four copies of the foregoing Petitioner's

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on this 13 day of January, 1993.

  
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