

2017

**Raymond M. Snyder Petitioner, Appellant vs. Utah Labor  
Commission Western Construction Spec., Utah Property and  
Casualty Curantee Assoc., Fremont Insurance Group Respondent,  
Appellee**

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca3](https://digitalcommons.law.byu.edu/byu_ca3)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah.

---

**Recommended Citation**

Reply Brief, *Raymond M Snyder v Utah Labor Commis*, No. 20160822 (Utah Court of Appeals, 2017).  
[https://digitalcommons.law.byu.edu/byu\\_ca3/3727](https://digitalcommons.law.byu.edu/byu_ca3/3727)

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs (2007– ) by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at [http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

IN THE UTAH COURT OF APPEALS

---

Raymond M. Snyder  
Petitioner, Appellant

)  
)  
)  
APPELLANT RESPONSE TO  
APPELLEE BRIEF

vs.

UTAH LABOR COMMISSION  
WESTERN CONSTRUCTION SPEC.,  
UTAH PROPERTY and CASUALTY  
GURANTEE ASSOC., FREMONT  
INSURANCE GROUP  
Respondent, Appellee

)  
)  
)  
Appeal No. 20160822  
Agency Case No. 14-058

---

S. Grace Acosta, Attorney for Respondents'  
Scalley Reading Bates Hansen & Rasmussen  
15 West South Temple, Suite 600  
Salt Lake City, Utah 84101  
GAcosta@scalleyreading.net

Jaceson Maughan  
Utah Labor Commission  
450 South State St. # 5  
Salt Lake City, Utah 84111  
jacesonmaughan@Utah.gov

Raymond M. Snyder  
PO Box 69  
Aurora, UT 84620  
mx\_snyder@yahoo.com

FILED  
UTAH APPELLATE COURTS

APR 20 2017

## **INCOMPLETE RECORD**

It should be noted that prior to filing my Brief I filed a Petition to Compel the Labor Commission to furnish documents it had with-held from the record and ask to extend the date my Brief was due to allow the Commission adequate time to furnish a complete record. The Commission ignored the Motion. As a result the record does not include the documents I furnished the first Medical Panel nor those I furnished the second Medical Panel. Following the hearing before ALJ Holley the Commission sent me a survey request assessing my opinion of ALJ Holley's handling of the case. I expressed my dissatisfaction that Judge Holley had allowed evidence into the record exhibits that I showed to be fabricated/false and disallowed my exhibits proving those to be fabricated and false. The Commission immediately removed Judge Holley from the case but allowed her ruling to stand. The Commission failed a mention or include the survey in the record or the reason for Judge Holley's dismissal. The Commission did not include into the record the audio recording of the hearing which recording differs significantly from the transcript. The Commission failed to include into the record the original x-rays I provided for the Medical panel, nor did it provide those x-rays to the medical panel, which x-rays clearly confirmed there was no preexisting significant degenerative arthritis in my shoulder at the time of the accident.

## **APPELLANT'S RESPONSE TO APPELLEE'S CLAIMS**

1. Appellee states on pg. 4 of its Brief:

*Snyder claims that the findings of the ALJ that rowing may have contributed to his shoulder arthritis was not supported by the evidence but this is not true. The Medical*

*Record Exhibit is replete with medical records where Snyder and his medical doctors discuss his rowing activities and the fact that rowing aggravated his shoulder pain. Accordingly, there was sufficient evidence in the record to support these findings by the ALJ.*

Appellee statement here is knowingly false. The ALJ's fabricated diagnoses' and findings and attributed them to doctors, then included them into the findings.

ALJ Hann states: ***"Dr. Marble opined that Petitioner's kayaking trip aggravated the Petitioner's pre-existing degeneration in his shoulder and that lead to Petitioner's need for treatment in 2001 with Dr. Petron."*** (R-500). This quote, attributed to Dr. Marble, was fabricated by ALJ Hann. It cannot be found anywhere in the record. This statement by Hann added a false cause for Snyder's shoulder issues - kayaking.

ALJ Newman states ***"The Medical Panel found that external factors contributed to the right shoulder condition, including: Petitioner's extensive work history as an iron and steel worker and Petitioner's participation in rowing and kayaking."*** (R1139). ALJ Newman fabricated this statement he attributes to the Medical Panel that rowing and kayaking contributed to my right-shoulder arthritis/condition then inserted it into the record as a false cause of my shoulder arthritis.

Appellee states on pg. 4 of its Brief:

*Snyder also asserts that there is not substantial evidence to support the conclusion that his shoulder arthritis is not industrial in nature. While it is true that there is some evidence to support Snyder's position, he fails to recognize that the preponderance of the*

*evidence supports the conclusion that at the time of the 1999 accident he had already started developing shoulder arthritis (as evidenced by a cyst that showed up 3 months after the accident) and that this progressed naturally, but separately, from his industrial injury.*

There is not a single document supporting this statement that at the time of the accident arthritis had already started to develop let alone a preponderance of evidence supporting this conclusion. Appellee's own statement *acknowledges* "a cyst that showed up 3 months after the accident". The key wording here is "showed up 3 months after the accident". It was not there at the time of or prior to the accident and Appellee can't substantiate that claim. Appellee seems to believe if it repeats the same false statements often enough they become true. If that were the case every convicted felon is innocent.

Page's 10-11 of Appellee's Brief state:

*The panel's finding that repetitive factors unrelated to the industrial accident contributed to Petitioner's shoulder condition is supported by Dr. Hess's conclusion. [MRE, pp. 179-180]. Furthermore, the Court finds that all of the medical panel's findings are persuasive because the medical panel report is the product of collegial and impartial review of Petitioner's relevant medical history. The medical panel had access to all of Petitioner's 11 relevant medical records and personally examined Petitioner. Based on the foregoing, the Court adopts the findings of the medical panel report.*

This statement is glaringly false. There is not nor was there ever a single image study either x-ray or MRI in the record. The Medical Panel had not even a single image

study either MRI or x-ray on which to base its conclusion. Their opinion is at best a presumption.

In *Barron v. Utah Labor Commission* 274 P.3d 1016 (2012) Utah App 80, the Utah Appellate Court states. 18 .... A presumption is merely a burden-shifting device; it is not evidence.” “The main purpose of presumptions is to shift the burden either of producing evidence or of persuasion. This does not mean that the fact finder may consider or weigh the presumption as evidence.” *Massey v. Griffiths*, 2007 UT 10, ¶ 11, 152 P.3d 312 (quoting *In re Estate of Swan*, 4 Utah 2d 277, 293 P.2d 682, 690 (1956). “ ‘A presumption is not evidence of anything, and only relates to a rule of law as to which party shall first go forward and produce evidence sustaining a matter in issue.’ “*Id.* (quoting *Security State Bank v. Benning*, 433 N.W.2d 232, 234 (S.D.1988).

Appellee on pg. 11 of its Brief states:

*R.1207. Snyder totally discounts the fact that only 3 months after his accident a cyst was noted on his shoulder which shows that at that time he already had degenerative shoulder arthritis. R.1210 p. 2.*

Appellee acknowledges the cyst was present 3 months after the accident not prior to the accident or on the date of the accident. Appellee deliberately falsifies the fact there was arthritis when there was none. The MRI read states:

*No abnormal signals are noted in the bone other than a small degenerative cyst... This cyst is ... directly below the suspected tear in the supraspinatus tendon.”* (MRE-2-3). The single very small cyst was not present on the MRI done 8

months later (MRE-37) or at surgery 10/15/2001, (MRE-106-107). There was no arthritis at the time. If there had been it would have been noted by at least one of the 8 treating physicians. The Medical Panel had no image study to review to confirm there was arthritis present. Appellee can't place it there without an x-ray or MRI confirming it was and they declined to review any. Clearly arthritis wasn't present at the time of the accident.

On page 12 of its Brief Appellee states: *Lastly, Snyder claims that the Labor Commission erred in not giving Snyder special consideration since he was representing himself. This claim is without merit. Snyder elected to terminate his attorney and to represent himself.*

Again Appellee deliberately falsifies a statement. My attorney threatened to quit if I didn't sign off on Appellee's false statements in the Judge Holley's Order. When I declined to sign the Order containing the false statements my attorney filed a Motion to withdraw the Direct Medical Panel Referral, *"to present his case to the Court."* then quit (R-81). I tried to engage another attorney but at that stage of the claim I couldn't find one willing to take it at that stage. I make no apologies for not being as smart as Appellee's attorney or for its attorney's complaints about the construction/contents of my pleadings. Unfortunately I'm dyslexic. As a result was unable to continue my education beyond high school and ended up in construction. The fact that Appellee's professes to be smarter than I and is from a different socio economic status does not afford Appellee's attorney the right to fabricate evidence, make Appellee agents conduct any less unacceptable nor does it distract from the validity of my statements.

ALJ Holley preserved for the record, when she over-ruled Respondents objection, and declared all physicians prior to Dr. Marble agreed (the original 8 treating physicians) that my right-shoulder problems resulted from the injury (T-63-64). The Commission declined to include this in the record or the MRE. It was never considered by the Medical Panel. ALJ Hann replaced ALJ Holley and accepted Holley's rulings (R-496-498). ALJ Newman replaced ALJ Hann and adopted Hann's Order as his own (R-495). In denying Snyder's claim, Newman and the Appeals Board erred in ruling Dr. Hess and the 2 panel's doctors' opinions considered against only Dr. Gries's opinion was a preponderance of evidence favoring Respondent. ALJ Newman and the Commission failed to review the record. Clearly, the preponderance of evidence, the 8 treating physicians prior to Marble, then Dr. College's findings, confirm 9 physicians' agree all my right-shoulder problems stemmed from the accident, and thus my subsequent need for a right-shoulder replacement was the result of the original accident.

### **CONCLUSION**

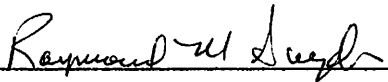
I stand by my Brief and it's references to the record. When considered in its entirety along with the record it confirms the Labor Commission's denial of my benefits relies on Appellee's false and manufactured statements that I was 67 at the time of his accident, that my work was repetitive, heavy and overhead and on the Labor Commission agents' made-up statements that rowing and kayaking contributed to my right-shoulder arthritis, and the Commission and Medical Panel ignoring the accident caused me other problems including upper-back, neck, right-arm, right-hand pain, numbness, and weakness, which still exist.

The Commission may well have wanted to deny my claim for benefits based on the panels conclusion that I had "*Chronic age and activity related degenerative arthritis,*" ... *at the time of the accident*" but it couldn't produce a single document supporting this. Instead the Commission based its ruling on the preponderance of doctors stating so, even though those opinions are based on fabricated diagnoses' and the Medical panel's unsupported presumptions that they were true. ALJ Holley ruled that all doctors who examined me prior to Dr. Marble confirmed my shoulder issues were caused by the accident. When the "reasonable mind" considers the diagnoses' of my 8 treating physicians and the ninth opinion of Dr. College, the Commission preponderance reasoning based on presumptions fails. The preponderance of doctors agree that my shoulder issues were the result of the injury. There's no question the accident is responsible for my shoulder arthritis and resulting need for a shoulder replacement. The Commission's decision is based on total deference to Dr. Hess's diagnoses', the Commission's presenting his diagnoses' to the Medical Panel as fact and the Panel's presumption they were accurate. The Commission's Order is inconsistent with the evidence. The Commission abused its discretion in holding that the "preponderance of evidence", the "panels" 2 physicians relying on Dr. Hess's opinion, weighed against only Dr. Greis's opinion, confirmed that the degenerative arthritis, in my right-shoulder, preexisted the injury. Because the applicable facts rebut the Commission's findings and confirm my work injury was the contributing cause of my right-shoulder arthritis, upper-back, neck, right-arm and hand pain, and necessitated my shoulder replacement, I am entitled to, with interest, the additional 11% whole body disability calculated by Dr. College

The record clearly shows Appellee conned me out of an opportunity to participate in a suit between insurance companies, which I've has shown amounts to fraud. The Commission declined to adjudicate this issue leaving it to be resolved by this court.

Appellee inserted, into the record, statements of fact it knew were false, which were relied upon as fact ultimately resulting in the Commission denying the benefits due me. "The Workers Compensation Act is to be applied liberally in favor of awarding benefits and all doubts as to coverage are to be resolved in favor of the injured worker." *Smith's Food v. Labor Commission* 2011 UT App 678. Based on the facts presented the Commission's Order should be reversed and I should be granted, with interest, the additional 11% disability and provided on-going treatment for my right-shoulder, upper-back pain, neck pain and right-arm and hand issues. Appellee's unlawful actions have been ongoing since 2003. The Third Party Settlement between insurers' should be set aside, all statute(s) of limitations, with regard to my right to file suit against the insurers, set aside and; I should be given a hearing on underpaid benefits as suggested by Judge Holley.

DATED this 2<sup>nd</sup> day of February

  
\_\_\_\_\_

Raymond M. Snyder, Appellant

Form 17. Certificate of Compliance With Rule 24(f)(1)

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)

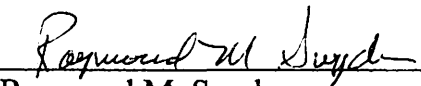
because:

G this brief contains 2193 words, excluding the parts of the brief exempted by  
Utah R. App. P.24(f)(1)(B), or

2. This brief complies with the typeface requirements of Utah R. App. P.27(b)

because:

G this brief has been prepared in a proportionally spaced typeface using Roman  
New Times size 13 font on a Word Processor.

  
Raymond M. Snyder

Dated: Feb 2, 2017

CERTIFICATE OF SERVICE

I Raymond M. Snyder hereby certify that on February 2, 2017, I served a copy of the attached APPELLANT'S RESPONSE TO APPELLEE'S BRIEF by email to address(es):

Kim Shafer Utah Court of Appeals  
Kims@utcourts.gov

Jacson Maugham Utah Labor Commission  
jacsonmaugham@Utah.gov

S. Grace Acosta Attorney for Respondents  
GAcosta@scalleyreading.net

Dated this 2<sup>ND</sup> day of February 2017.

By: Raymond M. Snyder

Raymond M. Snyder, Appellant