

1992

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

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca1



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Benjamin J. Sims; Richard G. Sumsion; Attorneys for Respondent.

Robert Breeze; Attorney for Appellant.

Recommended Citation

Legal Brief, *King v. Board of Review of the Industrial Commission of Utah*, No. 920464 (Utah Court of Appeals, 1992).
https://digitalcommons.law.byu.edu/byu_ca1/4426

This Legal 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 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. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

BRIEF

TO
COURT
FILE

3
110
DOCKET # 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/
WORKERS COMPENSATION FUND
OF UTAH,

Defendants and Respondents,

Case No. 920464 CA

Priority No. 7

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

ROBERT BREEZE #4278
211 East Broadway #215
Salt Lake City, Utah 84111
Telephone: 322-2138

Attorney for Appellant

For Respondent
Industrial Commission of Utah
Benjamin J. Sims
160 E. 300 So.
Salt Lake City, Utah 84111

For Respondent Workers Compensation
Fund and Superior Roofing
Richard G. Sumsion
Attorney at Law
Workers Compensation Fund of Utah
560 South 300 East
Salt Lake City, Utah 84111

Attorneys for Respondent

FII ED

OCT 26 1992

COURT OF APPEALS

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,)	
)	

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

ROBERT BREEZE #4278
211 East Broadway #215
Salt Lake City, Utah 84111
Telephone: 322-2138

Attorney for Appellant

For Respondent
Industrial Commission of Utah
Benjamin J. Sims
160 E. 300 So.
Salt Lake City, Utah 84111

For Respondent Workers Compensation
Fund and Superior Roofing
Richard G. Sumsion
Attorney at Law
Workers Compensation Fund of Utah
560 South 300 East
Salt Lake City, Utah 84111

Attorneys for Respondent

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
I. JURISDICTION AND NATURE OF PROCEEDINGS	1
ARGUMENT PRIORITY CLASSIFICATION	1
II. STATEMENT OF ISSUES AND STANDARD OF REVIEW	1
III. STATEMENT OF THE CASE	2
IV. STATUTORY PROVISIONS.....	1
VI. STATEMENT OF THE FACTS.....	3
VII. SUMMARY OF ARGUMENT.....	3
VIII. ARGUMENT	4
POINT I CLAIMANTS ARE ENTITLED TO BENEFITS WHILE INCARCERATED.....	4
POINT II THE INJURED WORKER SHOULD NOT BE PUNISHED DUE TO UNAVAILABILITY OF MEDICAL TREATMENT.....	8
IX. CONCLUSION	8
CERTIFICATE OF SERVICE	9
ADDENDUM	10

TABLE OF AUTHORITIES

CASES CITED

	Page
<u>Bevans v. Industrial Commission of Utah</u> , 790 P.2d 573 (Ut. App. 1990).....	7
<u>Cross v. Board of Review of Industrial</u> , 824 P.2d 1202, 1204 (Ut. App. 1992)	2
<u>Large v. Industrial Commission</u> , 758 P.2d 954 (Utah App 1988)	5
<u>Miriam v. Board of Review</u> , 812 P.2d 447, 450 (Ut App 1991) .	2
<u>Morton International v. Utah State Tax Commission</u> , 814 P.2d 581 (1991)	2

STATUTES

Section 35-1-45 Utah Code Annotated	1, 4
Section 35-1-65 Utah Code Annotated.....	1, 4
Section 35-1-86 Utah Code Annotated, 1953 as amended	1
Section 63-46b-16(4)(b) and (d).....	2, 4
Section 78-2a-3(2)(a) 1953 as amended	1, 2, 4, 5

SUPPLEMENTAL AUTHORITIES

<u>The Law of Workmen's Compensation</u> , 1954, Arthur Larsen, Matthew Bender and Company Inc.	4
---	---

IN 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,)	

JURISDICTION AND NATURE OF PROCEEDINGS

The Utah Court of Appeals has jurisdiction over this Appeal pursuant to Section 78-2a-3(2)(a) and Section 35-1-86 Utah Code Annotated, 1953 as amended.

STATEMENT OF ISSUES AND STANDARD OF REVIEW

The issue on appeal herein is whether a Utah Workers Compensation Claimant is entitled to receive Workers Compensation Benefits during the time of his incarceration. An additional issue is whether the unavailability of surgical treatment at the Utah State Prison is sufficient justification for the insurer to refuse payment of benefits.

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).

STATEMENT OF THE CASE

This Workers Compensation Case involves a Petition for Review of an Industrial Commission Order affirming the Administrative Law Judge's denial of disputed benefits.

STATEMENT OF THE FACTS

a. Petitioner suffered an on the job injury on or about November 20, 1989. (R. 3, 11).

b. Petitioner sought and received Workers Compensation Benefits. (R. 3, 11).

c. The Petitioner was scheduled for wrist surgery on or about May 30, 1990. (R. 11).

d. On May 22, 1990 the Applicant was arrested for a probation violation and ultimately sent to the Utah State Prison until October 13, 1990. (R. 11).

e. The Applicant sought treatment for his industrial injury while in prison (R 102-103). (R. 102, 103).

f. The surgery originally scheduled for May 30, 1990 did not take place until January 30, 1991. (R. 11).

g. The employer refused to pay benefits for the period during which the Petitioner was incarcerated as well as the interlude before the surgery took place on January 30, 1991. (R. 3, 11).

h. The Administrative Law Judge refused to award benefits for said period. (R. 12, 13).

i. The refusal of the Administrative Law Judge to award benefits was affirmed by the Industrial Commission on June 24, 1992. (R. 57).

SUMMARY OF ARGUMENT

The injured worker is entitled to receive benefits for the period during which he was incarcerated.

The injured worker should not be punished because of the unavailability of surgery while incarcerated.

PRELIMINARY DISCUSSION

It should be noted that the authorities have, and this court should, differentiate between Temporary Total Disability Benefits,

Permanent Partial Disability Benefits, Medical Benefits and Permanent Total Disability Benefits with respect to the issue raised herein. The parties do not dispute that this claimant and this Appeal involve Temporary Total Disability Benefits only.

ARGUMENT

Argument I

CLAIMANTS ARE ENTITLED TO BENEFITS WHILE INCARCERATED

A review of the authorities which have dealt with the subject of Workers Compensation Benefits for incarcerated claimants shows that the vast majority of jurisdictions which have decided the issue have ruled in favor of the Claimant and/or the Claimant's dependents. It should be noted that other courts have, and this court should, analyze the issue of compensation for incarcerated claimants with respect to the varying types of benefits that are available pursuant to the Workers Compensation Act. This case specifically involves Temporary Total compensation benefits. See Section 65 of the Act in Addendum. Section 65 benefits can generically be referred to as those benefits which claimants receive while off work and prior to reaching a fixed state of recovery. Medical benefits are also payable under the Utah Workers Compensation Act, Section 45. Any decision rendered by this Court should consider specifically excluding medical benefits and Permanent or Total Disability Benefits.

Professor Larsen treats the subject at Section 47.31(g) of his treatise, The Law of Workmen's Compensation, 1954, Arthur Larsen, Matthew Bender and Company Inc. A review of Professor Larsen's

treatise shows that the states of New York, Michigan, Louisiana, Arizona, Ohio, and Florida have refused to terminate benefits to incarcerated claimants. The states of Virginia and North Dakota do allow for the suspension or termination of benefits while a claimant is incarcerated. It should be noted that the termination of benefits allowed by North Dakota is statutorily proscribed, however it should be noted that the North Dakota scheme provides that the benefits shall be payable to the family of the incarcerated claimant, if any.

The legal conclusions of the Administrative Law Judge and the Industrial Commission of Utah focus on the issue of causation. The legal conclusion of the Industrial Commission was that the Claimant was at fault, and that the period of disability was due to the fault of the Claimant in being sent to prison.

In the case of Large v. Industrial Commission, 758 P.2d 954 (Utah App 1988) the Utah Court of Appeals stated that: "These factors [proximate cause, foreseeability, negligence, intervening causes] are not present in the statutory Workers' Compensation System, which excludes considerations of fault" i.d. at 956. In Large the Utah Court of Appeals strongly expressed the position that the theories underlying tort liability are simply not applicable to Workers' Compensation Cases.

The facts show that the injured worker went without necessary surgical treatment while he was incarcerated. The Commission and the Administrative Law Judge point the finger of fault at the injured worker and state unequivocally that the lack of treatment

was entirely the fault of the injured worker. Because Workers' Compensation is not a fault based system it is inappropriate for the Industrial Commission to attempt to assign fault to the injured worker.

The Utah Workers' Compensation Statute, as noted by the Administrative Law Judge, does not specifically address the question of compensability during times of incarceration. Should benefits be awarded to an incarcerated Claimant who is eventually acquitted? Should an exception be made for benefits to an incarcerated Claimant who is incarcerated pending trial? Should an exception be made for an incarcerated Claimant who is subject to a parole or probation hold?

The code provides simply that benefits shall be paid, without any exclusion for periods of incarceration.

The implications of the ban on compensation for incarcerated claimants as proposed by the ALJ and the Industrial Commission should not be ignored. Numerous hypothetical examples come to mind which would work a hardship on claimants and be a misapplication of the law. For example, should an incarcerated claimant whose surgery is delayed due to his pretrial incarceration without bail be awarded benefits if said incarcerated claimant is eventually acquitted?

Another example would be an incarcerated claimant whose conviction is overturned on appeal after a long jail stay which delayed surgery.

The position taken by the Industrial Commission ignores the

many factual variations that arise regarding benefits for incarcerated Claimants.

The key issue presented by this Appeal is the legal effect of an extended period of Temporary Total Disability. Although the fact that this Appellant's period or increased period of disability occurred in a prison setting, while subjecting the Claimant to penal sanctions, does not justify removing the Claimant from that general class of claimants whose period of disability was extended for any one of a number of possible reasons. Such reasons might include:

1. A surgeon who is unavailable due to military service or disability;
2. A claimant residing in a remote area whose period of disability is extended due to unavailability of treatment;
3. A claimant whose period of disability is extended due to a non-industrial medical conditions, e.g. a back surgery that cannot be performed due to pulmonary disability.

An additional factor to be discussed in more detail below, is the availability of medical benefits to incarcerated claimants.

The Workers Compensation Act does not, on its face, empower the Industrial Commission to refuse to award benefits to incarcerated claimants. The Industrial Commission is a creation of the legislature of Utah and as such has no equitable power absent a specific delegation of such authority. Bevans v. Industrial Commission, 790 p.2D 573, 576 (Ut. App. 1990).

An all or nothing rule regarding compensation for incarcerated

claimants would be inappropriate due to the fact that there are numerous factual variations to which any rule or rules must apply.

POINT II

THE INJURED WORKER SHOULD NOT BE PUNISHED DUE TO UNAVAILABILITY OF MEDICAL TREATMENT

The record reflects at page 102, 103 that the Claimant reported his industrial related medical problems to the prison medical personnel in due course. The injured worker was not afforded the opportunity to receive a surgery while incarcerated.

If this Court held as a matter of law that incarcerated Claimants were entitled, at least, to medical benefits while incarcerated it is conceivable that the funding level for inmates would rise. The Department of Corrections could seek reimbursement from various Workers Compensation insurance carriers for any treatment paid for by the taxpayer by passing the burden of medical treatment for industrial related conditions onto the industrial insurer.

CONCLUSION

The Utah Workers Compensation Act does not empower the Industrial Commission to withhold Workers Compensation Benefits from incarcerated Claimants. The Utah Workers Compensation Act is not a fault based system. While the Utah Courts have not specifically addressed this issue, the majority position is that benefits should not be terminated.

WHEREFORE, Petitioner 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 25 day of October, 1992.



ROBERT BREEZE
Attorney for Appellant

CERTIFICATE OF MAILING

I certify I mailed four copies of the foregoing Petitioner's Brief to:

BENJAMIN SIMS
Industrial Commission of Utah
Industrial Accident Division
Box 510250
Salt Lake City, Utah 84151-0250

Richard G. Sumsion
Attorney at Law
Workers Compensation Fund of Utah
560 South 300 East
Salt Lake City, Utah 84111

on this 26
25 day of October, 1992.



ROBERT BREEZE
Attorney for Appellant

ADDENDUM

35-1-45. Compensation for industrial accidents to be paid.

Each employee mentioned in Section 35-1-43 who is injured and the dependents of each such employee who is killed, by accident arising out of and in the course of his employment, wherever such injury occurred, if the accident was not purposely self-in-

flicted, shall be paid compensation for loss sustained on account of the injury or death, and such amount for medical, nurse, and hospital services and medicines, and, in case of death, such amount of funeral expenses, as provided in this chapter. The responsibility for compensation and payment of medical, nursing, and hospital services and medicines, and funeral expenses provided under this chapter shall be on the employer and its insurance carrier and not on the employee.

1988

35-1-65. Temporary disability — Amount of payments — State average weekly wage defined.

(1) In case of temporary disability, the employee shall receive $66\frac{2}{3}\%$ of that employee's average weekly wages at the time of the injury so long as such disability is total, but not more than a maximum of 100% of the state average weekly wage at the time of the injury per week and not less than a minimum of \$45 per week plus \$5 for a dependent spouse and \$5 for each dependent child under the age of 18 years, up to a maximum of four such dependent children, not to exceed the average weekly wage of the employee at the time of the injury, but not to exceed 100% of the state average weekly wage at the time of the injury per week. In no case shall such compensation benefits exceed 312 weeks at the rate of 100% of the state average weekly wage at the time of the injury over a period of eight years from the date of the injury.

In the event a light duty medical release is obtained prior to the employee reaching a fixed state of recovery, and when no such light duty employment is

available to the employee from the employer, temporary disability benefits shall continue to be paid.

(2) The "state average weekly wage" as referred to in Chapters 1 and 2 of this title shall be determined by the commission as follows: on or before June 1 of each year, the total wages reported on contribution reports to the department of employment security under the commission for the preceding calendar year shall be divided by the average monthly number of insured workers determined by dividing the total insured workers reported for the preceding year by twelve. The average annual wage thus obtained shall be divided by 52, and the average weekly wage thus determined rounded to the nearest dollar. The state average weekly wage as so determined shall be used as the basis for computing the maximum compensation rate for injuries or disabilities arising from occupational disease which occurred during the twelve-month period commencing July 1 following the June