1963

Gary Wayne Harlan v. Industrial Commission of Utah et al : Petition for Writ of Certiorari

Utah Supreme Court

Cotro-Manes & Cotro-Manes; Attorneys for Petitioner;
C. N. Ottosen; Attorney for Defendants;

IN THE SUPREME COURT OF THE STATE OF UTAH

GARY WAYNE HARLAN,
Petitioner.

vs.

INDUSTRIAL COMMISSION OF UTAH,

and

GARRETT FREIGHTLINES, and TRUCK INSURANCE EXCHANGE,
Defendants.

Case No. 10026

PETITION FOR WRIT OF CERTIORARI

To the Honorable Chief Justice, and the Associate Justices of the Supreme Court of the State of Utah

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Garrett Freight Lines
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STATUTES

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TO THE HONORABLE CHIEF JUSTICE, AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF UTAH

The petitioner, GARY WAYNE HARLAN, respectfully prays that a Writ of Certiorari issue to review the decision of the Industrial Commission of the State of Utah, in Claim No. 6106.

ORDER

The order and decision to be reviewed is the Industrial Commission order set forth fully in the appendix hereto, Page 8.

JURISDICTION

This court has jurisdiction to hear and determine the issues and such jurisdiction is invoked under the provisions of 35-1-83, Utah Code Annotated, 1953, authorizing review by Writ of Certiorari of decisions rendered by the Industrial Commission of Utah.

STATEMENT OF FACTS

The facts material to applicant's position in the above matter are respectfully as follows:

On November 19, 1962, applicant filed a claim with the Industrial Commission of Utah alleging that on September 26, 1962, he sustained an injury arising out of or in the course of his employment while employed at Moab, Utah, by Garrett Freightlines, Inc., claiming that while pulling a cable trying to unload it from a truck he bent over too far and pulled too hard, rupturing a disk.

On July 31, 1963, a hearing was held before the Industrial Commission before Honorable Otto A. Wiesley, Referee, and on the 13th day of September, 1963, an order was made and entered by the commission deny-

ing applicant's claim for compensation. The Industrial Commission, by its order and notice of hearing, did not allow medical testimony at the hearing.

A petition for rehearing was filed on the 8th day of October, 1963, which petition was denied by order of the commission dated October 25, 1963.

The petition for rehearing sets forth pertinent undisputed facts as adduced at the hearing. (The court's attention is respectfully called to the petition in order to avoid repetition herein of the testimony of the various witnesses quoted therein, and the affidavits of Dr. Alexander and Dr. Hall).

The sole defense of the defendants as it appears from the records and files and testimony adduced at the hearing is based on the theory that the applicant did not notify his employer when the accident occurred. The record conclusively shows that applicant was injured on Thursday, the 26th day of September, 1962. He worked Friday and Saturday, and Sunday he did nothing but stay in bed. On Monday, October 1, 1962, he worked until about 10:30 and consulted Dr. Alexander at 2:30, and was hospitalized as shown by the records and files. (R. 5, 6).

ARGUMENT

The petitioner aver in support of this petition that the Industrial Commission of Utah, in rendering its decision and denying a rehearing, acted with and in

excess of its powers and that the findings are unreasonable, that the evidence does not sustain the findings of fact and the findings of fact do not support the decision denying compensation. Said commission acted arbitrarily and capriciously.

Petitioner further aver that the Industrial Commission, by refusing to allow medical testimony at the hearing, acted without and in excess of its powers and that medical testimony would have shown that the injury was acute as set forth in Dr. Alexander's affidavit.

Dr. Alexander examined your petitioner on the 1st day of October, 1962, and as further shown by the affidavit of Dr. Hall:

> "That when he first examined the patient, from a practical point of view, the patient appeared to be in considerable distress so that it seems unlikely that he would have been able to tolerate this degree of discomfort for very long."

Your petitioner further says that assuming he did not notify his employer officially at the time of the injury, Section 35-1-99, Utah Code Annotated, 1953, provides certain penalties or reduction of fifteen (15%) per cent from the award, and does not deprive the applicant of his rights unless:

> " * * * no notice of the accident and injuries is given to the employer within one (1) year from date of accident".

If it be conceded that there was a pre-existing condition (the record discloses none), still as a matter of

law if the alleged injury occurred and aggravated the pre-existing condition the applicant is entitled to relief as provided by law and as this court held in the recent case of Pintar v. Industrial Commission, 14 2d 2nd 256 382 P.2d 414.

WHEREFORE your petitioner prays:

1. That Writ of Review issue out of this court to said Industrial Commission of Utah commanding it to certify fully to this court at a specified time the record and proceedings in said cause, that the same may be inquired into and determined by this Honorable Court.

2. That said matters and record be fully heard and considered by this court and that it be ordered, adjudged and decreed that the decision made by said respondent, Industrial Commission of Utah, against your petitioner be annulled, vacated and set aside and that rehearing be granted and that medical testimony be adduced at that hearing, and for such other and further orders as the court may deem just and proper.

Respectfully submitted,

COTRO-MANES & COTRO-MANES
430 Judge Building
Salt Lake City 11. Utah

Attorneys for Petitioner

APPENDIX A
THE INDUSTRIAL COMMISSION OF UTAH
Claim No. 6106

GARY WAYNE HARLAN,
Applicant,
vs.
GARRETT FREIGHTLINES, Inc., and TRUCK INSURANCE EXCHANGE,
Defendants.

ORDER

The above entitled cause came on regularly for hearing at Salt Lake City, Utah, July 31, 1963, at 9:00 A.M., before the Industrial Commission of Utah, pursuant to Order and Notice of the Commission. Applicant was present and represented by N. J. Cotro-Manes, attorney; defendants were represented by C. N. Ottosen, attorney.

Applicant filed a claim with the Commission on November 19, 1963, alleging that on September 26, 1962, he sustained a back injury while pulling on a cable in the course of his employment by Garrett Freight Lines.

Applicant had a weak back prior to employment by Garrett Freightlines. According to testimony, he commented on several occasions prior to the lifting incident aboupt his sore back. It appears that he did sit down on a culvert for a few minutes because of a back pain following pulling on cable reel. He completed

shift, however, and worked the following two days, was off one day, returned to work the next day for part of a shift before seeing a doctor. He did not report an injury. Gary Wayne Harlan's back condition needed attention before the incident which was quite inconsequential in that it barely received passing notice at the time, even by applicant.

We do not believe that the cable pulling incident caused any significant change in the preexisting back condition.

IT IS THEREFORE ORDERED that the claim of applicant is denied.

(Seal)

Passed by the Industrial Commission of Utah.
Salt Lake City, Utah, September 13, 1963.

Attest:
Gloria B. Hanni
Commission Secretary

OTTO A. WIESLEY
Chairman

CARLYLE F. GRONNING
Commissioner

CASPER A. NELSON
Commissioner