

1983

University of Utah, (Pioneer Memorial Theater), State Insurance Fund and Second Injury Fund v. Russell Cuff : Brief of Plaintiffs

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IN THE SUPREME COURT
OF THE STATE OF UTAH

UNIVERSITY OF UTAH, (PIONEER :
MEMORIAL THEATRE), STATE :
INSURANCE FUND and SECOND :
INJURY FUND, : Case No. 19043
: :
Plaintiffs/appellants, :
: :
vs. :
: :
RUSSELL CUFF, :
: :
Defendant/respondent. :

BRIEF OF PLAINTIFFS

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BRIEF OF PLAINTIFFS

NATURE OF THE CASE

This Writ of Review was brought by plaintiffs on the Order of the Utah State Industrial Commission, State of Utah, wherein plaintiff's Motion for Review was denied and the judgment of the Administrative Law Judge, awarding benefits to the defendant, was affirmed without comment or reason.

STATEMENT OF THE CASE

Defendant, Russell Cuff, was employed as a dancer by plaintiff, University of Utah Pioneer Memorial Theatre. On May 6, 1982, during rehearsal, defendant experienced pain in his left knee. He was treated at the University of Utah Medical Center on that day and again 5 days later, when surgery was performed to remove a loose body from the synovial cavity of his left knee. Defendant sought

Worker's Compensation benefits from his employer, plaintiff herein, as a result of his injury. The Utah State Insurance Fund joined the Second Injury Fund in this matter. This matter was heard on January 7, 1983, before the Administrative Law Judge, who entered his Findings of Fact, Conclusions of Law and an Order in this matter on January 12, 1983. The Law Judge found that defendant was injured in a work related accident and awarded defendant \$135.00, for a three week period of temporary total disability, and payment of medical bills resulting from the accident. The matter was never referred to a medical panel.

RELIEF SOUGHT ON APPEAL

Plaintiffs, University of Utah Pioneer Memorial Theatre and the Utah State Insurance Fund, ask the court to reverse the judgment entered herein and remand the case with instructions to submit the medical issues to a medical panel as mandated by Utah Code Annotated §§ 35-1-77 and 35-1-69 (Supp. 1981).

STATEMENT OF FACTS

The defendant, Russell Cuff, was employed as a dancer with the plaintiff, Pioneer Memorial Theatre. On May 6, 1982, while rehearsing for a performance of "Damn Yankees", the defendant experienced pain in his left knee during a dance routine. He went directly to the University of Utah Medical Center emergency room where the knee was wrapped and the defendant was instructed to apply ice to the knee. (TR at 17). Five days later, defendant returned to the Medical Center for surgery to remove a loose body from the synovial cavity of the knee. (TR at 25). Due to the knee injury, the defendant was unable to participate in the production and, therefore, was unable to

his wages which were approximately \$40.00 per week for three weeks. (TR at 25, 28).

Defendant first experienced knee trouble in September of 1977 while playing high school football. (TR at 18). At that time defendant experienced pain and a hyperextension of the left knee. (TR at 4). The doctor who treated the defendant at that time, recommended that he stay off the leg and gave defendant a brace. (TR at 5). Due to this incident, defendant found it necessary to be off his knee for approximately one to two weeks. (TR at 5). Defendant had no surgery or other major treatment at this time. (TR at 5).

ARGUMENT

THE INDUSTRIAL COMMISSION ACTED IN EXCESS OF ITS POWER BY AWARDING BENEFITS TO DEFENDANT WITHOUT SUBMITTING THE CASE TO A MEDICAL PANEL AS MANDATED BY UTAH CODE ANNOTATED §§ 35-1-77 AND 35-1-69 (1981 Supp.).

This Court has consistently held that Utah Code Annotated §§ 35-1-77 and 35-1-69 (1981 Supp.) mandate referral of the medical aspects of all Worker's Compensation claims to a medical panel. United States Fidelity and Guaranty Company v. Industrial Commission of Utah, 657 P.2d 764 (Utah 1983); Schmidt v. Industrial Commission of Utah, 617 P.2d 693 (Utah 1980); Lipman v. Industrial Commission of Utah, 592 P.2d 616 (Utah 1979).

Defendant, Russell Cuff, had experienced knee trouble prior to the May 6, 1982, injury, and, therefore, Utah Code Annotated Section 35-1-69 is applicable. While defendant testified that he did not think the knee injury he suffered in 1977 contributed to his present problems, that issue cannot be resolved without submission to

a medical panel. Given the often persistent and latent nature of knee injuries, the Commission acted arbitrarily in determining, without the assistance of a medical panel, that the 1977 injury did not cause permanent disability. Any conclusion reached concerning the nature of the 1977 injury requires a qualified medical determination. The applicable language of Utah Code Annotated § 35-1-69 (1981 Supp.) follows:

A medical panel having the qualifications of the medical panel set forth in § 35-2-56, shall review all medical aspects of the case and determine first, the total permanent physical impairment resulting from all causes and conditions including the industrial injury; second, the percentage of permanent physical impairment attributable to the industrial injury; and third, the percentage of permanent physical impairment attributable to previously existing condition or conditions, whether due to accidental injury, disease or congenital causes. The Industrial Commission shall then assess the liability for permanent partial compensation and future medical care to the employer on the basis of the percentage of permanent physical impairment attributable to the industrial injury only and any amounts remaining to be paid herein shall be payable out of the Second Injury Fund; provided, however, that medical expenses shall be paid in the first instance by the employer or his insurance carrier. (Emphasis added)

The foregoing statute makes it clear that a medical panel determination is to precede any determination by the Industrial Commission. In the instant case, no such determination was made and therefore, this Court should remand the case to the Commission for submission to an appropriate medical panel.

This Court in United States Fidelity and Guaranty Company v. Industrial Commission of Utah, 657 P.2d 764 (Utah 1983), held that the medical aspects of all Worker's Compensation claims must be referred to a medical panel. The injured employee in that case was involved in four separate accidents. The Industrial Commission, after a

medical panel determination, concluded that the first accident resulted in a 10% permanent partial disability. Several years later, upon the report of only one doctor, the Commission determined that the subsequent accident contributed an additional 5% permanent partial disability to the employee's condition. This Court remanded the case to the Commission with instructions to submit the case to the medical panel. Referring to Utah Code Annotated § 35-1-69, the Court stated: "The foregoing statute is explicit in its requirement that the Commission 'shall' appoint a medical panel to 'review all medical aspects of the case,' and to determine the percentage of impairment attributable to the various accidents." Id. at 766. In the instant case, the Commission, without the assistance of even one doctor, concluded that the 1977 injury contributed zero percent to this defendant's condition and further concluded that there was no permanent disability. The Commission also concluded the sole cause of Mr. Cuff's surgery was the May 6, 1982, incident. The Commission's conclusion is invalid in the face of a clear statutory mandate and contrary case law. Furthermore, the Commission's determination, made without the assistance of medical evidence, that the 1977 injury did not contribute to defendant's present condition, was arbitrary and capricious.

Even if the Commission had not erred in failing to apply § 35-1-69, Utah Code Annotated § 35-1-77 clearly mandates the referral of all Worker's Compensation cases to a medical panel. The statutory language itself is clear and unambiguous:

Upon the filing of a claim for compensation for injuries by accident or death, arising out of or in the course of employment, where the employer or insurance carrier denies liability, the Commission shall refer the medical aspects of the case to a medical panel appointed by the Commission and having qualifications generally applicable to the medical panel as set forth in § 35-2-56. (Emphasis added)

In Lipman v. Industrial Commission of Utah, 592 P.2d 611 (Utah 1979), this Court, referring to the above-quoted statute,

The foregoing statute is clearly mandatory and requires that a medical panel "shall" be convened "upon the filing of a claim for compensation for injury by accident, or for death, arising out of or in the course of employment," when the employer or the insurance company denies liability.

Id. at 618.

In Lipman, plaintiff's decedent died after suffering a myocardial infarction. Plaintiff argued that the infarction was caused by increased stress at work. The Industrial Commission failed to refer the matter to a medical panel and concluded, on its own, that the death was not job related. This Court is remanding the case, explained the purpose of the medical panel requirement:

In difficult or doubtful cases, the findings of a medical panel may assist in determining whether the death was caused by accident. In this case, it is known that death was caused by a myocardial infarction but the ultimate question is whether or not it can be said that a myocardial infarction was causally related to circumstances occurring on the job. . . .

Findings of a medical panel may well be important in assisting the Commission to determine whether job caused stress induced injury or death in such a matter as to be compensable.

Id. (Emphasis added).

In the instant case, as in Lipman, a causal connection between injury and job-related stress or exertion must be proven before benefits can be awarded. The evidence must establish that that defendant's dancing resulted in the presence of the loose body which was removed from the synovial cavity. No medical evidence was presented to the Commission, in this case, which indicated that the loose body in the synovial cavity resulted from the 1977 incident.

... from the May 6, 1982 dancing or from some other occurrence.

The mere existence of the injury does not justify awarding Worker's Compensation benefits. Sabo's Electronic Service v. Sabo, 642 P.2d 677 (Utah 1982). The statutorily mandated medical panel provides necessary assistance in the resolution of the causation issue. Therefore, the issue cannot be resolved, nor can benefits be awarded, without referral to a medical panel.

In cases such as the instant one, when the injury is unexpected and internal, reference of the matter to a medical panel is crucial. As this Court explained in Schmidt v. Industrial Commission, of Utah, 617 P.2d 693 (Utah 1980), the findings of the medical panel are statutorily required to aid in the determination of the causal connection between injury and employment:

The existence of an unexpected injury, however, is the beginning rather than the end of the Commission's inquiry. This Court's interpretation of 35-1-45 requires the existence of a causal connection between the injury and the employment. . . .

Many times the determination of the existence of a causal connection between the injury and the employment will depend on the production and interpretation of medical evidence. To establish agency expertise in this area the legislature enacted § 35-1-77. . . .

This statute mandates the submission of the medical aspects of the case to the medical panel. In the present case, as in most cases involving internal injury, the determination of the existence of the requisite causal connection depends in part on the accumulation and interpretation of the medical evidence. The language of the statute is clear. When an accidental injury, such as in the present case, has occurred the submission of the medical aspects of the case, including those involving causation, is mandatory. (Emphasis added).

Id. at 695-96.

Finally, this Court's position, that § 35-1-77 mandates the submission of all claims to a medical panel, was evidenced by the recent decision of Johnson v. Industrial Commission, 660 P.2d 244 (Utah 1983). In Johnson, this court remanded the case to the Industrial Commission to determine whether plaintiff's work-related injury exacerbated his multiple sclerosis. This Court instructed the Commission to submit the medical issues to a medical panel:

Inasmuch as the medical panel did not have the benefit of the subsequent determination that plaintiff was suffering from a pre existing condition of multiple sclerosis, on remand the Commission should refer that issue to the medical panel for their determination and guidance in resolving the issues.

Id. at 245.

Certainly resolution of the issues in the instant case require the determination and guidance of a medical panel.

CONCLUSION

Since the Utah State Industrial Commission exceeded or acted without its power by awarding benefits to the defendant without submitting the issues to a medical panel, as mandated by Utah Code Annotated §§ 35-1-69 and 35-1-77 (1981), plaintiff herein respectfully requests the Utah Supreme Court to reverse the decision of the Utah Industrial Commission and to remand the case for submission to an appropriate medical panel.

DATED THIS 6th Day of July, 1983.

BLACK & MOORE

BY 

FRED R. SILVESTER

MAILING CERTIFICATE

I hereby certify that a true and correct copy of the
aforesaid BRIEF was sent this 7th day of July, 1983, to the
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