

2003

Linda R. Acosta v. Salt Lake Regional Medical Center and Liberty Mutual Ins. Co., American Manufacturers, Mutual Ins., Sentry Insurance, and Workers Compensation Fund : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

LINDA R. ACOSTA,	*	
	*	
Appellant,	*	
	*	
vs.	*	
	*	
SALT LAKE REGIONAL MEDICAL	*	
CENTER and LIBERTY MUTUAL INS.	*	
CO., AMERICAN MANUFACTURERS	*	Labor Commission Case No. 2002959
MUTUAL INS., SENTRY	*	
INSURANCE, & WORKERS	*	Appellate No. 20030907-CA
COMPENSATION FUND,	*	
	*	
Appellees.	*	

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FILED
Utah Court of Appeals

FEB 20 2004

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Clerk of the Court

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IN THE UTAH COURT OF APPEALS

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Labor Commission Case No. 2002959

Appellate No. 20030907-CA

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TABLE OF AUTHORITIES

STATUTES

Utah Code Annotated § 78-2a-3(2)(a) (1953, as amended)

RULES

Rule 14, Utah Rules of Appellate Procedure

JURISDICTION OF THE COURT

This appellate review arises from the dismissal of an occupational disease claim by the Labor Commission of Utah. The Utah Court of Appeals has jurisdiction over this proceeding pursuant to Utah Code Annotated § 78-2a-3(2)(a) (1953, as amended) and Rule 14 of the Utah Rules of Appellate Procedure.

STANDARD OF REVIEW

The issue in this case is a question of law and as such, this Court should review the Labor Commission's Order under a correction of error standard. Questar Pipeline Co. v. State Tax Comm'n, 817 P.2d 316 (Utah 1991).

STATEMENT OF FACTS

The appellant, Linda Acosta, was employed in the nursery at Salt Lake Regional Medical Center from December, 1980 through December, 1998. An occupational disease claim, case no. 2002959, which is being appealed, was filed as she allegedly suffered back injuries as a result of this employment. In June, 2000, Ms. Acosta had continued to work for Salt Lake Regional Hospital's successor IASIS, claimed that she suffered an injury to her back when a falling patient pulled her to the floor. With respect to this incident, she filed an industrial accident claim which was case number 20001139. This case went to hearing on July 26, 2001 and an Order was entered by the Labor

Commission on September 19, 2001 dismissing her claim as she did not suffer a compensable industrial accident. The employee filed a Motion for Review with the Labor Commission which was denied on January 31, 2002. Following the entry of that Order, case no. 20001139, Ms. Acosta has not sought additional review of the Order dismissing her claim.

In August, 2002, Ms. Acosta filed an application for hearing alleging injury as a result of an occupational disease, case no. 2002959. In this application, it was noted that her period of injurious exposure was from approximately December, 1980 through December 20, 1998. This appellee, American Manufacturers Mutual, did not begin proving workers compensation coverage to Ms. Acosta's employer, Salt Lake Regional Medical Center's successor IASIS, until October 8, 1999. The date in which this appellee's coverage began has not been contested at any point.

Ms. Costa's occupational disease claim was dismissed by the administrative law judge pursuant to the doctrine of *res judicata* on April 18, 2003 and the Labor Commission upheld this dismissal. Ms. Acosta is now appealing the dismissal of her occupational disease claim but has not raised the issue that American Manufacturers Mutual did not have coverage during her period of injurious exposure from December, 1980 through December, 1998.

SUMMARY OF ARGUMENT

The appellant is seeking to have her dismissed occupational disease claim remanded to the Labor Commission for a hearing on the merits. The appellant claims that she developed low back pain as a result of her employment duties at Salt Lake Regional Medical Center between December, 1980 and December 28, 1998. Respondents, American Manufacturers Mutual Insurance, claim that they should not be parties to this suit as their period of insurance coverage did not commence until October 8, 1999, which is approximately eight months after the appellant's claimed period of exposure ended.

Respondents coverage of the alleged accident of June, 2000, case no. 20001139, was adjudicated by the Labor Commission with a final Order dated September 19, 2001. No appeal was filed.

ARGUMENT

I. THE UNDISPUTED FACTS ESTABLISH THAT AMERICAN MANUFACTURERS MUTUAL INSURANCE DID NOT HAVE COVERAGE DURING THE EMPLOYEE'S OCCUPATIONAL DISEASE EXPOSURE PERIOD

In appellant's application for hearing for an occupational disease, she noted that she was exposed to conditions between December, 1980 and December 20, 1998 which caused her to suffer low back injuries. However, American Manufacturers Mutual Insurance ("American") did not provide coverage for her employer, Salt Lake Regional Medical Center, during any portion of her claimed exposure.

American began providing workers' compensation insurance coverage for Salt Lake Regional Medical Center's successor IASIS beginning on October 8, 1999, which was approximately ten months after Ms. Acosta's claimed occupational disease exposure period ended. This coverage issue was raised by this appellee before the Labor Commission on October 11, 2002 in their Motion to Dismiss and has not been refuted by any party to this case. In fact, Ms. Acosta's brief filed before this Court fails to even address or consider this issue. Since there are no allegations of exposure during American's coverage period there is no claim to be adjudicated.

II. APPELLEE'S 2000 INDUSTRIAL ACCIDENT CLAIM WHICH OCCURRED DURING AMERICAN MANUFACTURERS MUTUAL INSURANCE COVERAGE PERIOD HAS BEEN FULLY AND FINALLY ADJUDICATED

In June, 2000, during American's coverage period, the employee claims that she suffered an industrial injury while working for Salt Lake Regional Medical Center's successor IASIS. This case went to hearing on July 26, 2001 and an Order was entered by the Commission on September 19, 2001. The Commission held that the employee did not suffer a compensable industrial injury and

therefore did not award any benefits. The employee subsequently filed a Motion for Review with the Labor Commission which was denied on January 31, 2002.

Attached to the Order denying the employee's Motion for Review, was a Notice of Appeal Rights. Accordingly, Ms. Acosta had twenty days from the issuance of the Order to file a Motion for Reconsideration with the Labor Commission or to appeal it to the Utah Court of Appeals within thirty days. The employee failed to file either form of appeal and as such, she does not have the right to have her dismissed 2000 application, case no. 20001139 for hearing revisited or reconsidered.

CONCLUSION/STATEMENT OF RELIEF SOUGHT

With respect to this appellee American, Ms. Acosta's occupational disease claim should not be remanded to the Labor Commission for further proceedings as she failed to state a cause of action for their coverage period and any claim she may have had was fully adjudicated without appeal.

DATED this 20 day of February, 2004.

PLANT, CHRISTENSEN & KANELL



THEODORE E. KANELL
D. SCOTT BERRETT

CERTIFICATE OF SERVICE

I hereby certify that on the 20 day of February, 2004, a copy of the foregoing Brief of

Appellees were hand-delivered and sent as follows:

UTAH COURT OF APPEALS
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