

1994

# Lavell H. Helf v. Industrial Commission of Utah and Yellow Freight System, Inc.: Brief of Appellee

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca1](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.

Allen L. Hennebold; David M McConkie; Stuart F. Weed; Kirton & McConkie; Attorneys for Respondent.

Hans M. Scheffler; Attorney for Petitioner.

---

## Recommended Citation

Brief of Appellee, *Helf v. Industrial*, No. 940433 (Utah Court of Appeals, 1994).  
[https://digitalcommons.law.byu.edu/byu\\_ca1/6088](https://digitalcommons.law.byu.edu/byu_ca1/6088)

This Brief of Appellee 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](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.

COURT OF APPEALS

---

IN THE UTAH COURT OF APPEALS

---

LAVELL H. HELF,	:	
	:	
Petitioner,	:	
	:	Case No. 940433-CA
vs.	:	
	:	Priority No. 7
INDUSTRIAL COMMISSION OF	:	
UTAH and YELLOW FREIGHT	:	
SYSTEM, INC.	:	
	:	
Respondent.	:	

---

BRIEF OF RESPONDENT YELLOW FREIGHT SYSTEM, INC.

---

Petition For Review Of An Order Of The  
Industrial Commission Of Utah Dated June 28, 1994

---

Hans M. Scheffler (4246)  
Attorney for Petitioner  
311 South State Street #380  
Salt Lake City, UT 84111

Allen L. Hennebold  
Attorney for Industrial  
Commission of Utah  
160 East 300 South  
Salt Lake City, UT 84111

David M. McConkie (A2154)  
Stuart F. Weed (A5557)  
KIRTON & McCONKIE  
Attorneys for Respondent  
Yellow Freight System, Inc.  
1800 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, Utah 84111-1004  
Telephone: (801) 328-3600

## TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES . . . . .	ii
STATEMENT OF JURISDICTION . . . . .	1
STATEMENT OF ISSUES . . . . .	1
DETERMINATIVE STATUTES AND RULES . . . . .	2
STATEMENT OF THE CASE . . . . .	2
1. <u>Nature of the Case</u> . . . . .	2
2. <u>Course of Proceedings</u> . . . . .	2
3. <u>Statement of the Facts</u> . . . . .	3
SUMMARY OF ARGUMENT . . . . .	6
<u>ARGUMENT</u> . . . . .	10
I. MR. HELF HAS FAILED TO MARSHAL THE EVIDENCE, AND HAS MISSTATED EVIDENCE RECEIVED BELOW. . . . .	10
II. MR. HELF'S INJURY DID NOT ARISE OUT OF HIS EMPLOYMENT WITH YELLOW FREIGHT. . . . .	27
A. Mr. Helf Failed To Prove The Existence Of A Risk Or Hazard Special To His Employment. . . . .	28
B. Idiopathic Falls To Flat Surfaces Do Not Provide The Requisite Employment Related Risk . . . . .	32
C. The Unexplained Fall Theory Is Inapplicable To This Matter. . . . .	40
CONCLUSION . . . . .	45
ADDENDUM	
Findings of Fact, Conclusions of Law, and Order . . . . .	Tab 1
Order Denying Motion for Review . . . . .	Tab 2

## TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
Albertsons, Inc. v. Department of Emp. Sec., 854 P.2d 570 (Utah App. 1993) . . . . .	13
Allen v. Industrial Comm'n., 729 P.2d 15 (Utah 1986) . . . . .	22
Alta Indus. Ltd. v. Hurst, 846 P.2d 1282 (Utah 1993) . . . . .	11
Borden Foods Co. v. Dorsey, 146 S.E.2d 532 (Ga. App. 1965) . . . . .	32
Circle K Store No. 1131 v. Industrial Comm'n., 165 Ariz. 91, 796 P.2d 893 (Ariz. 1990) . . . . .	43
Collins v. Combustion Engineering Co., 490 S.W.2d 394 (Mo. App. 1973) . . . . .	29
Crittendon v. City of Butte, 559 P.2d 816 (Mont. 1977) . . . . .	20
Crockett v. Crockett, 836 P.2d 818 (Utah App. 1992) . . . . .	11
D.H. Perry Estate v. Industrial Comm'n of Utah, 7 P.2d 269 (Utah 1932) . . . . .	28
Dasaro v. Ford Motor Co., 280 App. Div. 266, 113 N.Y.S.2d 413 (N.Y. 1952) .	35, 39
Eggers v. Industrial Comm'n, 157 Ohio St. 70, 104 N.E.2d 681 (1952) . . . . .	45
First National Bank v. County Bd. of Equalization, 799 P.2d 1163 (Utah 1990) . . . . .	12
Gates Rubber Co. v. Industrial Comm'n, 705 P.2d 6 (Co. App. 1985) . . . . .	32, 34
Grassel v. Garde Mfg. Co., 90 R.I. 1, 153 A.2d 527 (1959) . . . . .	45

Hales Sand & Gravel, Inc. v. Audit Div., 842 P.2d 887 (Utah App. 1992)	1, 12
Higley v. Industrial Comm'n, 285 P. 306 (Utah 1930)	29
Howard v. Ford Motor Company, 363 S.W.2d 61 (Mo.App. 1962)	36
Hughes v. Acme Steel and Malleable Iron Works, 200 N.Y.S.2d 185 (N.Y. 1960)	35
Johnson v. Board of Review, 842 P.2d 910 (Utah App. 1992)	11, 12, 27
Kennecott Corp. v. Industrial Comm'n of Utah, 675 P.2d 1187 (Utah 1983)	33
Kraynick v. Industrial Comm'n, 148 NW.2d 668 (Wisconsin 1967)	39
Ledbetter v. Michigan Carton Co., 253 N.W.2d 753 (Mich. App. 1977)	32, 39, 41
Luvaul v. A. Ray Barker Motor Co., 384 P.2d 885 (N.M. 1963)	29, 32, 39
M & K Corporation v. Industrial Comm'n, 189 P.2d 132 (Utah 1948)	29
Martinson v. W-M Ins. Agency, Inc., 606 P.2d 256 (Utah 1980)	31
McAdams v. Saif Corporation, 474 P.2d 80 (Or. App. 1984)	42
McClain v. Chrysler Corp., 138 Mich.App. 723, 360 N.W.2d 284 (1984)	45
Mustard v. Industrial Comm'n of Arizona, 792 P.2d 783 (Ariz. App. 1990)	20
Oldham v. Industrial Comm'n, 487 N.E.2d 693 (Ill. App. 1985)	32, 39, 40

Questar Pipeline Co. v. State Tax Comm'n, 850 P.2d 1175 (Utah 1993) . . . . .	13
Remington v. Louttit Laundry Co., 74 A.2d 442 (R.I. 1950) . . . . .	39
Riley v. Oxford Paper Co., 103 A.2d 111 (Maine 1954) . . . . .	32, 38
Robb v. Anderson, 863 P.2d 1322 (Utah App. 1993) . . . . .	10, 11
Slimfold Mfg. Co. v. Martin, 417 So.2d 199 (Ala. App.1981) . . . . .	45
State v. Larsen, 828 P.2d 487 (Utah App.), cert. granted, 836 P.2d 1383 (Utah 1993) . . . . .	11
State v. Moore, 801 P.2d 732 (Utah App. 1990) . . . . .	10
State v. Piling, 875 P.2d 604, (Utah App. 1994) . . . . .	11
Tavey v. Industrial Comm'n, 106 Utah 489, 150 P.2d 379 (1944) . . . . .	29, 30, 33
Uintah Oil Assoc. v. County Bd. of Equal. 853 P.2d 894 (Utah 1993) . . . . .	1
Utah Apex Mining Co. v. Industrial Comm'n, 67 Utah 537, 248 P. 490 (Utah 1926) . . . . .	29
Walls v. Industrial Comm'n of Utah, 857 P.2d 964 (Utah App. 1993) . . . . .	21, 31, 44
West Valley City v. Majestic Inv. Co., 818 P.2d 1311 (Utah App. 1991) . . . . .	12
Wheaton v. Reiser Co., 419 S.W.2d 497 (Mo.App.1967) . . . . .	45
Williams v. Industrial Comm'n, 232 N.E.2d 744 (Ill. 1967) . . . . .	32

Woodward v. Fazzio, 823 P.2d 474 (Utah App. 1991) . . . . .	10
Zuchowski v. US Rubber Co., 229 A.2d 61 (R.I. 1967) . . . . .	26, 37

Statutes

Utah Code Ann.	
§ 78-2a-3(2)(a)	
§ 35-1-86. . . . .	1
§ 35-1-45 . . . . .	1, 2, 6, 8, 10, 21, 28, 29, 31

Other Authorities

Larson's Workman's Compensation Law § 12.1 . . . . .	33, 35
--	--------



### STATEMENT OF JURISDICTION

This Court has jurisdiction of this matter pursuant to Utah Code Ann. §§ 78-2a-3(2)(a), 63-46B-16, and 35-1-86.

### STATEMENT OF ISSUES

The following issues are before the Court in this matter:

1. Whether the Industrial Commission correctly concluded that under Utah Code Ann. § 35-1-45, Mr. Helf must prove that his injury arose out of his employment before compensation can be awarded. (Standard of Review: Correction of Error. Uintah Oil Assoc. v. County Bd. of Equal., 853 P.2d 894, 896 (Utah 1993).)
2. Whether the Industrial Commission correctly found that Mr. Helf's injury did not arise out of his employment. (Standard of Review: Substantial Evidence. Hales Sand & Gravel, Inc. v. Audit. Div., 842 P.2d 887, 890 (Utah 1992).)
3. Whether the Industrial Commission correctly found that Mr. Helf failed to prove medical and legal causation by a preponderance of the evidence. (Standard of Review: Substantial Evidence. Hales Sand & Gravel, Inc. v. Audit Div., supra.)

## **DETERMINATIVE STATUTES AND RULES**

The following statute is relied upon herein and is determinative of this appeal.

UCA § 35-1-45:

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-inflicted, 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.

## **STATEMENT OF THE CASE**

### **1. Nature of the Case**

This matter came before the Industrial Commission on an application for workers compensation benefits. It has been brought to this Court on Mr. Helf's petition for review of the Industrial Commission's order denying benefits.

### **2. Course of Proceedings**

Mr. Helf filed an application for hearing with the Industrial Commission on January 6, 1993, requesting workers compensation benefits for an injury which occurred on September 9, 1992. (R. 1, 7). A formal evidentiary hearing was

held before the Honorable Timothy C. Allen, Administrative Law Judge ("ALJ") on July 7, 1993. The ALJ entered his Findings of Fact, Conclusions of Law, and Order denying Mr. Helf's application for benefits on August 12, 1993. (R. 54-59).

Mr. Helf's motion for review was denied by the Industrial Commission on June 28, 1994. (R. 116-119). Mr. Helf then filed his Petition for Review with this Court. (R. 120).

3. Statement of the Facts

On September 9, 1992 Petitioner Lavell H. Helf ("Mr. Helf") was employed as a truck driver by Respondent Yellow Freight System, Inc. ("Yellow Freight") in Salt Lake City, Utah. (R. 55). On that same day, at approximately 6:30 p.m., Mr. Helf arrived at Gates Rubber Company in Salt Lake City, Utah to pick up a shipment for his employer, Yellow Freight. (R. 55).

While standing on the Gates Rubber Company loading dock, Mr. Helf bent over and pulled up on a metal ring which released a spring-loaded metal dock plate, causing the plate to raise and extend to the back of his trailer. (R. 55, 168). It took minimal exertion to pull the ring and release the dock plate (less than 20 pounds), and Mr. Helf did not have any problem pulling the ring. (R. 45-46, 55, 174-175).

After pulling the ring, Mr. Helf walked onto the plate toward his trailer. (R. 168). While Mr. Helf was standing on

the plate, his hands went down to his sides (R. 43,45, 55, 160, 179-180), he went rigid (R. 43, 55, 160, 179), jerked back (R. 43,45, 55, 179), and fell straight back hitting his head on the flat cement floor of the loading dock. (R. 43,45-46, 55, 180).

When Mr. Helf fell, he did not call out or make any other sound. (R. 44, 46, 55, 160, 180-181.) He did not attempt to break his fall with his hands. (R. 44, 46, 55, 160-161, 179-181). He was unconscious before he hit the floor. (R. 44, 55, 181-183, 201, 205-208; Exhibit D-1, pp. 118, 165).

The dock plate on which Mr. Helf was standing at the time of his fall was only two inches higher than the surface of the loading dock. (R. 56, 172-174, 184-185). Mr. Helf was injured when his head hit the flat surface of the loading dock. (R. 43, 46, 145, 180).

For several years prior to the fall, Mr. Helf received medical treatment for a heart condition diagnosed as idiopathic hypertrophic subaortic stenosis. (R. 56, 190; Exhibit D-1, p. 1A.) Mr. Helf's fall was caused by an idiopathic syncopal episode of unknown origin. (R. 56, 229; Exhibit D-1, pp. 139-140, 358, ). The fall was not caused by an external cause related to the dock plate or by any other external cause such as tripping, slipping, etc. (R. 43, 46-47, 56, 161, 175-176, 180, 206, 209, 228).

The syncopal episode which resulted in Mr. Helf's fall was not related to his pre-existing heart condition. (R. 56, 229; Exhibit D-1, pp. 139, 358-360, 378).

Mr. Helf's injury coincidentally occurred at work because of his idiopathic condition without any enhancement from the work place. Prior to and at the time of his syncopal episode and fall, Mr. Helf was not engaged in any activity which created any strain, exertion, or stress greater than that of his normal nonemployment life or the normal nonemployment life of any other person. His syncopal episode and injury did not result from any strain, exertion, or stress related to his employment. (R. 43-44, 46, 56, 152, 158, 174-176, 195-198).

Mr. Helf's employment did not contribute anything to increase the risk of injury that he or any other worker normally faces in everyday life. Neither the composition of the cement loading dock nor the fact that the dock plate was two inches higher than the dock floor increased the risk of injury that Mr. Helf or the average worker normally faces in everyday nonemployment life. Mr. Helf's employment did not increase the dangerous effects of his fall. (R. 43, 46-47, 56-57, 180, 209, 299-230).

### **SUMMARY OF ARGUMENT**

The Industrial Commission correctly determined that Mr. Helf failed to meet his burden of proof and that his injury did not arise out of his employment as required by Utah Code Ann. § 35-1-45. Moreover, Mr. Helf has failed to marshal the evidence which supports the findings made by the Industrial Commission, and which he challenges.

When challenging a finding of fact made by an administrative body, appellate courts will not address the challenge unless the petitioner has properly marshalled the evidence. Marshalling the evidence requires listing all of the evidence supporting the finding that is challenged. Merely presenting carefully selected facts and excerpts of testimony in support of petitioner's own position while conveniently omitting negative facts does not begin to meet the marshalling burden. The petitioner must fully assume his adversary's position and present in comprehensive and fastidious order, every scrap of competent evidence which supports the very findings he resists. Having done so, the petitioner must then demonstrate that the findings are not supported by substantial evidence.

Mr. Helf has failed to even attempt marshalling the evidence in this case. He has merely reargued his case which was

made before the Industrial Commission. There is substantial evidence to support the Industrial Commission's findings.

The Commission properly found that Mr. Helf was not engaged in any activity which created any strain, exertion or stress greater than that of his normal non-employment life. Mr. Helf suffered from a syncopal episode personal to himself which caused his fall and injury. Mr. Helf did not slip, trip or fall from any external cause related to his employment. Mr. Helf attempts to argue by implication that he was involved in moving heavy freight, but failed to demonstrate that at the hearing. Moreover, the medical evidence clearly established that stress and exertion were not the medical cause of Mr. Helf's syncope.

The preponderance of the evidence at the hearing established clearly by eye witness testimony that the dock plate on which Mr. Helf was standing at the time of his fall was only two inches higher than the surface of the loading dock to which he fell. Mr. Helf provided no evidence that this two inch height contributed to his injury. Medical evidence submitted by the employer indicated that the additional height did not contribute to Mr. Helf's injury. Case law indicates that heights of only two inches are not sufficient to constitute an additional risk of the employment.

Mr. Helf's injury did not rise out of his employment. The fall itself was not caused by any risk increased by the employment, nor was the injury itself enhanced by the employment.

Utah Code Ann. § 35-1-45 requires that an accident arise out of and in the course of the employee's employment. The statute was amended in 1988 to read as it does now. The employee bears the burden of establishing both of these elements by a preponderance of the evidence.

The term "arising out of" refers to the origin or cause of the injury in question. The injury must result from a risk incident to the employment. A risk common to the public generally and not increased by the circumstances of the employment does not cover a period.

Idiopathic falls to flat surfaces do not provide the requisite employment related risk. A distinct majority of jurisdictions have denied compensation in level fall cases because the employee merely encounters the same risk, a flat surface beneath him, which he encounters everywhere. In Utah's idiopathic fall cases, the Supreme Court has required the finding that the employment places the employee in a position increasing the dangerous effects of the fall, such as on a height, near machinery or sharp corners, or in a moving vehicle. Cases from other jurisdictions with essentially identical facts to those in



this case have found no additional risk from the employment due to the flat surface. Courts have also held that falls from heights below certain levels do not constitute a sufficient risk that is unique to the employment. Falls less than 12½ inches have routinely been held insufficient.

The hardness or softness of the surface to which an employee falls in a level fall case does not constitute a special risk of employment. Several cases involving falls to cement floors have found no added special risk from the employment.

The unexplained fall theory is unapplicable in this matter. A fall which is caused by a syncopal episode is not an unexplained fall. This is true even if the exact reason for the syncopal episode is unknown. Falls which are witnessed and which witnesses describe as unrelated to any external factor are not unexplained falls. They are falls due to reasons personal to the employee, and are not compensable.

Unexplained falls in Utah would still require the employee to bear the burden of proving that the fall occurred because of some risk inherent in the employment. Petitioner has utterly failed to demonstrate through witness testimony or medical evidence that any reason unique to the employment caused his fall or increased the injury resulting from the fall. In fact, the evidence is to the contrary. Mr. Helf has failed to

meet his burden of proof, and the findings and the conclusions of the Industrial Commission should be affirmed.

#### **ARGUMENT**

The order of the Industrial Commission should be affirmed. It correctly determined that Mr. Helf failed to meet his burden of proof and that his injury did not arise out of his employment as required by UCA 35-1-45. Moreover, Mr. Helf has utterly failed to marshall the evidence which supports the findings made by the Industrial Commission which he challenges, and has misstated certain evidence received below. This brief first addresses Mr. Helf's failure to properly marshall the evidence. It then addresses why, in light of all of the evidence, the Industrial Commission was correct in concluding that Mr. Helf's injury did not arise out of his employment.

#### **I. MR. HELF HAS FAILED TO MARSHAL THE EVIDENCE, AND HAS MISSTATED EVIDENCE RECEIVED BELOW.**

When challenging a finding of fact made by an administrative body, appellate courts will not address the challenge unless the petitioner has properly marshalled the evidence. Robb v. Anderson, 863 P.2d 1322, 1328 (Utah App. 1993). The marshaling requirement "'serves the important function of reminding the litigants and appellate courts of the broad deference owed to the fact finder at trial.'" Woodward v. Fazzio, 823 P.2d 474, 477 (Utah App. 1991), quoting State v.

Moore, 801 P.2d 732, 739 (Utah App. 1990). A proper marshaling is required to provide the Court of Appeals with the basis from which to meaningfully and expediently review facts challenged on appeal. Robb v. Anderson, 863 P.2d at 1328. Marshaling relieves the court's burden of researching the record, reminding the petitioner that the court "is not simply a depository in which the appealing party may dump the burden of argument and research." State v. Larsen, 828 P.2d 487, 491 (Utah App.), cert. granted, 836 P.2d 1383 (Utah 1993).

Marshaling the evidence requires listing all of the evidence supporting the finding that is challenged. Alta Indus. Ltd. v. Hurst, 846 P.2d 1282, 1286 (Utah 1993). Merely presenting carefully selected facts and excerpts of testimony in support of petitioner's own position, while conveniently omitting negative facts, does not begin to meet the marshaling burden. Crockett v. Crockett, 836 P.2d 818, 820 (Utah App. 1992). Obviously, incorrectly stating "facts" in order to improve one's position is inappropriate. State v. Piling, 875 P.2d 604, 608 (Utah App. 1994); Johnson v. Board of Review, 842 P.2d 910, 912 (Utah App. 1992). The purpose of the marshaling process was set forth clearly by this Court:

The marshaling process is not unlike becoming the devil's advocate. Counsel must extricate himself or herself from the client's shoes and fully assume the adversary's position. In order to

properly discharge the duty of marshaling the evidence, the challenger must present, in comprehensive and fastidious order, every scrap of competent evidence introduced at trial which supports the very findings the appellant resists. After constructing this magnificent array of supporting evidence, the challenger must ferret out a fatal flaw in the evidence.

West Valley City v. Majestic Inv. Co., 818 P.2d 1311, 1315 (Utah App. 1991) (emphasis added).

In appeals from the Industrial Commission, a party challenging the Commission's factual findings must marshal all of the evidence supporting the Commission's findings and show that despite the supporting facts, and all legitimate inferences that can be drawn therefrom, the findings are not supported by substantial evidence given the record as a whole. The Court must view the facts and all legitimate inferences in the light most favorable to the Commission's findings. Hales Sand & Gravel, Inc. v. Audit Div., 842 P.2d 887, 890-893 (Utah App. 1992).

Substantial evidence is "that quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion." First National Bank v. County Bd. of Equalization, 799 P.2d 1163, 1165 (Utah 1990). Substantial evidence is more than a mere scintilla of evidence, but is something less than the weight of the evidence. Johnson v. Board of Review, 842 P.2d 910, 911 (Utah App. 1992). A reviewing court "does not conduct a de novo credibility determination or reweigh

the evidence." Questar Pipeline Co. v. State Tax Comm'n, 850 P.2d 1175, 1178 (Utah 1993). Nor does a reviewing court substitute its judgment as between two reasonably conflicting views, even though it may have come to a different conclusion had the case come before it for de novo review. Albertsons, Inc. v. Department of Emp. Sec., 854 P.2d 570, 574 (Utah App. 1993).<sup>1</sup>

Mr. Helf has failed to even attempt marshaling the evidence which supports the findings he challenges. He has done nothing more than reargue his case which was unsuccessfully made to the Administrative Law Judge and the Industrial Commission. He has conveniently omitted evidence and facts which are contrary to his position. He has also misstated the evidence. As is demonstrated below, there is indeed ample evidence to support the Industrial Commission's findings under the substantial evidence standard.

The date and location of the injury are undisputed. The Commission found that prior to and at the time of his syncopal episode and fall, Mr. Helf was not engaged in any activity which created any strain, exertion, or stress greater than that of his normal nonemployment life or the normal nonemployment life of any

---

<sup>1</sup>"It is the province of the Board, not appellate courts, to resolve conflicting evidence, and where inconsistent inference can be drawn from the same evidence, it is for the Board to draw the inferences." Albertsons, 854 P.2d at 575.

other person. His syncopal episode and injury did not result from any strain, exertion, or stress related to his employment. (R. 56). Mr. Helf argues that this is not true. However, substantial evidence supports this finding that there was no risk special to Mr. Helf's employment.

Both eyewitnesses to the event testified that prior to the fall, Mr. Helf appeared normal. It was at this time that Mr. Helf moved some freight in his trailer, pulled the pin to release the dock plate, walked on the plate, and stopped just before he fell. Witness James Childs stated, in response to the question whether Mr. Helf appeared to be having any difficulties or problems, that "No. He seemed to be as sharp as the fifty times I'd seen him before that." (R. 152). He later testified that just before Mr. Helf walked over to pull the pin, he "seemed fine" and did not appear tired or stressed. (R. 158).

Mr. Helf alleges in his brief that just prior to pulling the pin for the dock plate, he was moving around stoves weighing 1279 pounds and fiberglass grating weighing 200 pounds. (Petitioner's brief, p. 7). However, there was absolutely no testimony or evidence provided at the hearing to establish what Mr. Helf moved. Nick Valles, the witness who entered the trailer with Mr. Helf and actually assisted him in moving whatever they moved, stated that "he had some awkward objects in there and I

had to move a couple of objects, pieces of freight, and then I came back out and he followed me and I jumped on my lift and was ready to load him and that's when he went to go pop the plate and go into the trailer." (R. 166). This witness also said he "helped him kind of make some room" and "just needed to help him move them" and that the pieces were "kind of heavy, but they were more awkward." (R. 166).

At the hearing, Mr. Helf submitted a freight manifest into evidence which described the items in his trailer. There was absolutely no testimony or evidence regarding what object or objects among these items were moved, or how or where any object was moved (i.e., lifted, pushed, pulled, etc.). There was no testimony regarding the weight of any object that was moved or how the witness helped Mr. Helf. If the witness and Mr. Helf moved an object together, there was no testimony regarding how any weight was distributed between them, whether Mr. Helf had any difficulty moving an object, or whether the activity created any strain, exertion, or stress greater than that experienced in the normal nonemployment life of any other person. In fact, the witness who assisted Mr. Helf agreed that it did not create any such stress.

Q. When Mr. Helf--you helped him move some awkward freight you indicated in the back of the trailer, he didn't appear

overly stressed or tired from moving  
that freight did he?

A. Not that I know of.

Q. Just appeared normal to you didn't he?

A. Yeah. He did.

(R. 176).

Mr. Child testified that Mr. Helf did not appear to be struggling to pull the pin to release the dock plate. (R. 159). Witness Nick Valles testified that pulling the pin to release the dock plate is fairly easy, and that as an employee of Gates Rubber Co. he is familiar with its dock plates and how easy it is to pull the pins. (R. 174).

Q. Okay. Now, tell me about the plate itself as far as pulling the pin. Is it a fairly easy pin to pull?

A. Yes. It is.

Q. And as an employee of Gate's Rubber, you're familiar with the equipment there and how easy it is to pull those pins; is that right?

A. Yes.

Q. And when Mr. Helf pulled the pin that day, did he appear to have any unusual difficulty or any problem pulling the pin?

A. Not that I knew of.

Q. And if you're going to put any kind of a weight, how much force it takes to pull the pin, would you say its ten pounds, maybe?

A. Ten, fifteen, twenty. It's not--you know, its pretty easy.

Q. Not very much?

A. Not very much.

Q. Okay. And when you saw Mr. Helf that day and you talked to him before he even went into the trailer; is that right?

A. Yes.



- Q. He didn't appear to be overly stressed or fatigued to you, did he?  
A. Not that I know of.  
Q. Okay. He appeared just normal to you on that day, didn't he?  
A. Yes.  
Q. Did he appear to be hurried at all any more than normal?  
A. No. It didn't seem like it.

(R. 174-175). Mr. Valles' testimony at the hearing was consistent with his statement taken immediately after the injury, where he stated that there was no indication of any problems with Mr. Helf that day, and that he "seemed like he was normal" and "he seemed pretty normal to me." (R. 46). Mr. Valles also indicated in his statement that the dock plate was "very easy to pop up" and that Mr. Helf didn't have any problem pulling up the pin, "no problem at all." (R. 46). Mr. Valles also signed a sworn affidavit confirming his statement:

Mr. Helf did not appear to have any problems pulling the metal ring to release the dock plate. The ring is very easy to pull up, and Mr. Helf had done it on many prior occasions.

(R. 42-44).

Mr. Helf states in his brief that "it is the weight of the person, walking the dock plate down onto the trailer, which actually forces the plate down. That a 175 pounds [sic] person does not weigh enough to force the plate down and must push against a wall for extra leverage to force the plate down into the trailer." (Petitioner's brief, pp. 4, 18.) Mr. Helf then

argues that "that [dock] plate was spring loaded and would automatically return into its non-use position unless Mr. Helf immediately walked onto it. A person who weighed 175 pounds could not force that plate down without using a "wall" as additional leverage to force that plate down." (Petitioner's brief, p. 19.) Mr. Helf's misstatements may mislead the Court. The allegations are not relevant to any finding or conclusion of the Industrial Commission. The record indicates clearly that it was the witness, James Childs, who weighed 175 pounds and that it was the witness who had to "push on the wall a little bit to get it to come down all the way." (R. 151). Mr. Helf weighed approximately 200 pounds at the time of the accident, (Exhibit D-1, p. 138), and the undisputed testimony from Mr. Helf's own witness was that Mr. Helf's weight brought the plate down and Mr. Helf did not push on any walls on the date of injury. (R. 175-176). Thus, the evidence regarding the travail of the 175 pound man is entirely meaningless, and can only serve to mislead the Court as to the facts.

Clearly, the evidence supports the finding of the Administrative Law Judge, adopted by the Industrial Commission, that Mr. Helf did not engage in any strain, exertion or stress greater than that of his normal nonemployment life. Moreover, contrary to the allegation in his brief at pages 5 and 6, Mr.

Helf submitted no medical evidence whatsoever that his syncopal episode was related to or caused by his alleged exertion or his work. In fact the medical evidence was to the contrary.

Several doctors expressed the opinion that electro-physiologic stress tests performed following the accident did not create any syncopal episode or heart problems. With the exception of Dr. Sochanski, all of the medical opinions submitted into evidence at the hearing concluded that Mr. Helf's syncopal episode was not related to his pre-existing heart condition. Dr. Null and Dr. Speed ruled out heart-related causes based upon the electro-physiologic stress studies conducted by Dr. Freedman. (Exhibit D-1, pp. 139-140, 358-359).

Dr. Sochanski expressed the opinion that Mr. Helf's syncope was a natural incident of his pre-existing heart problem, but confirmed that it was not related to any stress or exertion at his employment. (Exhibit D-1, pp. 1A-1C).

Dr. Null stated in correspondence dated December 3, 1992, just three months after the accident, that ". . . an arrhythmia was not the cause of his fall and subsequent head injury." (Exhibit D-1, p. 140). After the hearing in which the case was dismissed by the Administrative Law Judge, Mr. Helf provided the Industrial Commission with another letter from Dr. Null, dated June 30, 1993, wherein Dr. Null, without any reference to his

previous opinion, expressed just the opposite opinion. (R. 51). Mr. Helf refers to this letter in his brief at page 5. The Commission may reject medical testimony if it is self-contradictory, inconsistent with other testimony, or directly impeached. Crittendon v. City of Butte, 559 P.2d 816, 817 (Mont. 1977); Mustard v. Industrial Comm'n of Arizona, 792 P.2d 783, 784 (Ariz. App. 1990). Clearly, the two opinions are self-contradictory and no explanation is offered for the change in opinion or the conclusion reached in the second letter.

In spite of the fact that his own stress test had ruled out a relationship between physical exertion and Mr. Helf's syncopal episode, Dr. Freedman provided a letter which Mr. Helf submitted after his claim was dismissed by the ALJ. (R. 50). Therein, Dr. Freedman opines that if the syncope was related to Mr. Helf's cardiac condition, it was "likely related to whatever level of exertion was present at the time." However, his own studies had previously determined that the syncope was not related to Mr. Helf's cardiac condition. (R. 50). Far from being evidence of medical causation, this letter suggests that the syncopal episode would have occurred whatever the applicant would have been doing on the day of the accident. Dr. Freedman's letter is based on vague generalities, and is not supported by any tests specifically performed on Mr. Helf. It was Dr.

Freedman's own tests on Mr. Helf that prompted Dr. Hull and Dr. Speed to rule out heart related causes.

To the extent that any of the physicians stated that the injury was related to Mr. Helf's work, the physicians were misstating the law. For example, Dr. Heilbrun stated that "It is my opinion that this patient sustained a head injury while performing his duties at work. On this basis alone the injury must be considered work related." (Ex. D-1, p. 379). As will be discussed below, U.C.A. § 35-1-45 requires that an injury both 1) occur in the course of employment and 2) arise out of the employment. These are two distinct elements, and both must be proven by a preponderance of the evidence for a claim to be accepted. Walls v. Industrial Comm'n of Utah, 857 P.2d 964, 967 (Utah App. 1993). Clearly Dr. Heilbrun did not understand the appropriate legal standard, and is not qualified in any respect to make such a legal conclusion.

Based on the medical evidence submitted at the hearing and after, the Industrial Commission found that Mr. Helf's fall was caused by an idiopathic syncopal episode of unknown origin and was not related to his pre-existing heart condition. Regardless of how much stress Mr. Helf claims he was under, the physical stress tests by Dr. Freedman ruled out a relationship between exertion and the syncopal episode. Moreover, Mr. Helf

provided no medical evidence to indicate that his syncopal episode was medically caused by physical exertion or stress. In order to meet his burden of showing medical causation, "the applicant must show by evidence, opinion or otherwise that the stress, strain or exertion required by his or her occupation led to the resulting injury or disability." Allen v. Industrial Comm'n., 729 P.2d 15, 27 (Utah 1986). Mr. Helf failed to meet his burden by a preponderance of the evidence, and the Industrial Commission ruled with the weight of the evidence. Thus, the finding of the Industrial Commission is supported by substantial evidence in the record.

There is substantial evidence to support the Industrial Commission's finding that Mr. Helf fell because of a syncopal episode of unknown origin. (R. 55). Both eyewitnesses testified that when Mr. Helf fell, he did not call out or make any other sound. (R. 160, 180-181). Witness Nick Valles' testimony to that effect concurred with his previous statement and affidavit. (R. 44, 46). The two eyewitnesses also testified that Mr. Helf did not attempt to break his fall with his hands. (R. 160-161, 179-181). He stopped, went rigid, his hands went to his sides, he jerked back and fell straight back to the floor. (R. 43, 45-46, 160, 179-180). Again, the earlier statement and affidavit of Nick Valles concurred. (R. 44, 46). Mr. Valles also testified

that Mr. Helf appeared unconscious before he hit the loading dock. (R. 44, 181-183, 201, 205-208).

The medical records also state clearly that Mr. Helf suffered a syncopal episode that caused him to fall. (Exhibit D-1, pp. 118, 165, 207). Mr. Helf had a history of spontaneous syncopal episodes, (Exhibit D-1, pp. 225, 278), as the Industrial Commission correctly noted. (R. 116). As demonstrated by the cardiac electro-physiologic studies performed by Dr. Freedman and evaluated by Dr. Speed and Dr. Null, physical stress and exertion were not related to Mr. Helf's syncopal episode. (Exhibit D-1, pp. 139-140, 358-359). Thus, there is substantial evidence from witnesses and medical authorities to support the Industrial Commission's findings that Mr. Helf fell because of a syncopal episode of unknown origin.

The Industrial Commission correctly determined that Mr. Helf did not slip, trip or fall from any external cause, including the dock plate. (R. 56). This was supported by undisputed testimony of both eyewitnesses at the hearing and through affidavit testimony. Nick Valles stated in his affidavit that "[i]t did not appear to me that Mr. Helf's fall was caused by a slip or trip or any other external cause." (R. 43). His testimony at the hearing confirmed this fact:

Q. Now, he didn't slip on anything did he?

A. No.

Q. You didn't see him slip at least?  
A. No.  
Q. And you didn't see him catch his toe or trip or anything?  
A. No.  
Q. Did anybody push him or did any freight fall on him to cause him to fall?  
A. No.

(R. 180). Witness James Childs also stated that "No one pushed him, that's for sure" and "No freight fell on him." He also testified that he did not have "the faintest idea" what caused Mr. Helf to fall. (R. 161). In addition, Dr. Barbuto provided his medical opinion that "when a person falls in the manner described by the witness to Mr. Helf's fall, the implication is that the fall was due to a medical condition personal to Mr. Helf. The incline of the plate would not have contributed to a fall in this manner." (R. 47). Mr. Helf claims in his brief that he "fell backwards while walking the metal dock plate onto his trailer." (Petitioner's Brief, p. 5). The evidence was to the contrary. Mr. Valles testified in his affidavit that the fall was not caused by any external cause. (R. 43). He testified at the hearing that Mr. Helf stopped walking before his hands went to his sides and before he went rigid and fell. (R. 179). The other eyewitness, James Childs, also testified that before Mr. Helf fell he stopped walking. (R. 159-160). There was no testimony from any witness, any physician or any other source to support Mr. Helf's contention that the dock plate or its angle



or Mr. Helf's actions somehow contributed to or exacerbated the effects of his fall.

Mr. Helf complains that the Industrial Commission erred in finding that the minimal elevation of the plate constituted no special or enhanced risk from the employment. The Commission correctly found that the dock plate was only two inches higher than the surface of the loading dock at the time of Mr. Helf's fall. (R. 56, 116). Nick Valles testified at the hearing that his prior statement and affidavit testimony were correct.

- Q. (By MR. McCONKIE) The question was, from the concrete then the plate would be about six inches high, or lower? Your response was about two inches; is that your recollection?
- A. Well, when the plate goes down.
- Q. The plate was about two inches higher than the concrete--
- A. When he fell back.
- Q. When fell back?
- A. Yes.

(R. 174). (See also R. 185). The testimony of the other witness at the hearing was that the difference in height was a few inches higher, (R. 161), but the Administrative Law Judge gave more weight to the testimony of Mr. Valles and its consistency with his statement taken immediately following the accident. (R. 229). The finding that the plate was two inches higher than the loading dock is therefore supported by substantial evidence.

Regardless of the height of the dock plate, Mr. Helf provided no evidence that the height contributed to his injury. Dr. Barbuto opined to the contrary, that the additional height of the plate did not contribute in any measurable degree to Mr. Helf's injury. (R. 47). Thus, the only evidence on this issue supports the finding of the Industrial Commission.

Finally, the Industrial Commission correctly found that the composition of the cement loading dock did not increase the risk of Mr. Helf's injury. Mr. Helf submitted virtually no medical evidence on this issue other than an obscure statement that Mr. Helf's "outcome may have been different, had the patient struck his head on a surface other than concrete." (Exhibit D-1, p. 360). This statement can mean nearly anything, including that Mr. Helf's injuries might have been worse had he struck his head on a surface of featherbeds. The statement adds nothing to the record and certainly does not approach satisfying Mr. Helf's burden of proof.

In the face of this lack of affirmative evidence is the well-accepted rule that courts have refused to find that cement floors constitute an added risk peculiar to the employment.<sup>2</sup>

---

<sup>2</sup>See, e.g. Zuchowski v. U.S. Rubber Co., 229 A.2d 61 (R.I. 1967). This principle is discussed in detail in a subsequent section of this brief.

Thus, the Commission's finding is supported by substantial evidence and as a matter of law.

Mr. Helf has failed to make even a veiled attempt to marshal the evidence in support of the Industrial Commission's findings. Apparently this is because there is in fact substantial evidence to support each of those findings. The Court should not consider Mr. Helf's challenges to the findings of fact because of his failure to marshal the evidence and show that the findings are not supported by substantial evidence. The findings of the Industrial Commission should be accepted.

Johnson v. Board of Review, 842 P.2d at 912.

**II. MR. HELF'S INJURY DID NOT ARISE OUT OF HIS EMPLOYMENT WITH YELLOW FREIGHT.**

The Industrial Commission properly determined that Mr. Helf's injury did not arise out of his employment with Yellow Freight. The fall itself was not caused by any risk increased by the employment, nor was the injury itself enhanced by the employment. The order of the Industrial Commission should therefor be affirmed.

Utah's worker's compensation statutory scheme requires that an applicant establish that his injury arose out of and in the course of his employment. UCA § 35-1-45 (emphasis added). The applicant has the burden of establishing by a preponderance of the evidence that there is a special risk peculiar to the

employment which caused or substantially contributed to cause the injury. Where the case involves an idiopathic fall to a flat surface, the majority of courts have consistently found that there is no risk arising out of the employment, and therefore no worker's compensation benefits are provided. Falls from short heights up to at least 12 inches are also not sufficient to create a risk from the employment. Moreover, the hardness or softness of the surface to which the applicant falls is not considered in determining whether there is an added risk special to the employment. Because applicant's fall was the direct result of an idiopathic condition, and because he fell to a surface only two inches below where he was standing, applicant's injuries did not arise out of his employment.

**A. Mr. Helf Failed To Prove The Existence Of A Risk Or Hazard Special To His Employment.**

Utah Code Annotated § 35-1-45 states clearly that an employee is entitled to compensation under the Act only if he is injured "by accident arising out of and in the course of his employment . . ." (emphasis added). The statute was amended in 1988, as quoted, to require that an accident both (1) occur in the course of employment, and (2) arise out of the employment. In order to establish a claim for benefits, the applicant bears the burden of establishing both of these elements by a preponderance of the evidence. D.H. Perry Estate v. Industrial

Comm'n of Utah, 7 P.2d 269 (Utah 1932); Higley v. Industrial Comm'n, 285 P. 306 (Utah 1930).

The term "arising out of" refers to the origin or cause of the injury in question. Utah Apex Mining Co. v. Industrial Comm'n, 67 Utah 537, 248 P. 490 (Utah 1926). It must have some direct connection to the employment. The injury must result from a risk reasonably incident to the employment. A risk common to the public generally and not increased by the circumstances of the employment is not covered. Luvaul v. A. Ray Barker Motor Co., 384 P.2d 885 (N.M. 1963). There must be a risk or hazard not common to the general public or a special risk peculiar to the employment which caused or substantially contributed to cause the injury. Collins v. Combustion Engineering Co., 490 S.W.2d 394 (Mo. App. 1973); see also Tavey v. Industrial Comm'n, 106 Utah 489, 150 P.2d 379, 383 (Utah 1944) (C.J. Wolfe, concurring).

In M & K Corporation v. Industrial Comm'n, 189 P.2d 132 (Utah 1948), the court addressed the difference between "arising out of" and "in the course of". It compared the statute as it then existed to the statute's language prior to its amendment in 1919. At the time the M & K Corporation case was decided, UCA § 35-1-45 allowed a determination of compensability if an accident arose "out of or in the course of" employment. The statute had been amended in 1919 to read as it did at the time, M & K was

decided. Prior to the 1919 amendment, the statute read as it does today, requiring both that the accident arise out of and in the course of the injured's employment. The court then stated the following:

Since the 1919 amendment to that section when the word "or" which we have italicized above was substituted for the word "and", it is not necessary for the accident to arise both out of and occur in the course of his employment. It is sufficient that the accident only arises in the course of his employment. Workmen's compensation statutes both in this country and throughout the British empire usually require, as before the amendment, that the accident arise both out of and in the course of the employment, and this must be kept in mind in considering the decisions of other jurisdictions. We have often pointed out this distinction and indicated in many cases that the recovery was allowed on that account and that it probably would not have been allowed without the amendment. Tavey v. Industrial Comm'n, 106 Utah 489, 150 P.2d 379; . . .

189 P.2d at 134, citations omitted. Thus, the Utah court recognized that there was a very distinct and significant effect achieved by changing the single word in the statute from "and" to "or". The return of the legislature in 1988 to the pre-1919 statutory language was therefore not without impact, and requires a showing by claimant that there was an added special risk

peculiar to the employment which substantially contributes to the injury.

This Court recognized the additional requirements imposed by the amendment in Walls v. Industrial Comm'n of Utah, 857 P.2d 964 (Utah App. 1993). There, the Court stated the following with respect to Section 35-1-45:

In order to qualify for workers' compensation benefits under Utah Code Ann. § 35-1-45 (1988), Walls has the burden of establishing: (1) that the subject injury occurred "in the course of" her employment", and (2) that the injury "arose out of" such employment. See Martinson v. W-M Ins. Agency, Inc., 606 P.2d 256, 258 (Utah 1980). Moreover, Walls must prove both of these requirements by a preponderance of the evidence. Walls v. Industrial Comm'n, 857 P.2d at 967.

Id. at 965. The Court then repeated that Walls, the claimant, "must satisfy both prongs of the test under Section 35-1-45 to establish compensability. . . ." Id., fn. 1. The 1988 amendment to Section 35-1-45 means that the legislature intended to require both 1) that an accident occur in the course of the claimant's employment, and 2) that there be an added risk from the

employment,<sup>3</sup> and that these be proven by the applicant by a preponderance of the evidence.

**B. Idiopathic Falls To Flat Surfaces Do Not  
Provide The Requisite Employment Related Risk**

Injuries arising out of risks or conditions personal to the claimant do not arise out of the employment unless the employment substantially contributes to the risk or aggravates the injury. Larson's Workmen's Compensation Law makes it clear that a distinct majority of jurisdictions have denied compensation in level fall cases for the very reason that the employment adds no substantial risk. See also, e.g., Gates Rubber Co. v. Industrial Comm'n, 705 P.2d 6 (Co. App. 1985); Borden Foods Co. v. Dorsey, 146 S.E.2d 532 (Ga. App. 1965); Williams v. Industrial Comm'n, 232 N.E.2d 744 (Ill. 1967); Oldham v. Industrial Comm'n, 487 N.E.2d 693 (Ill. App. 1985); Luvaul v. A. Ray Barker Motor Co., 384 P.2d 885 (N.M. 1963); Riley v. Oxford Paper Co., 103 A.2d 111 (Maine 1954); Ledbetter v. Michigan

---

<sup>3</sup>Mr. Helf complains that public policy requires this Court to reverse the Industrial Commission, and that "if the Industrial Commission's decision is allowed to stand, the workers of this State will know that being on the job and doing their job, when they sustain an injury, is not enough to be afforded the protection of the Utah Workers Compensation Act." Brief of Petitioner, p. 20. That is in fact a correct statement of the law, as set forth by the legislature. An injury occurring only in the course of the employee's employment is not compensable. It must also arise out of the employment. This is the public policy established by the legislature in 1988.



Carton Co., 253 N.W.2d 753 (Mich. App. 1977). The employee merely encounters the same risk, a flat surface beneath him, which he encounters everywhere. Larson's Workman's Compensation Law § 12.1. While there are no reported decisions from the Utah Court of Appeals or Utah Supreme Court specifically addressing flat falls, our courts have accepted the idiopathic fall doctrine. However, those Utah cases award benefits only because the employee is injured by some added risk from the employment.

In Kennecott Corp. v. Industrial Comm'n of Utah, 675 P.2d 1187 (Utah 1983), the court affirmed an award of death benefits where an employee had fallen, due to a heart attack, into a tank of water on the employer's premises. He struck his head on the side of the tank and died by drowning. The court quoted Professor Larson in holding that the effects of an idiopathic fall are compensable if "the employment places the employee in a position increasing the dangerous effects of such a fall, such as on a height, near machinery or sharp corners, or in a moving vehicle." Kennecott Corp., 675 P.2d at 1192. (emphasis added). See 1A. Larson, The Law of Workmen's Compensation §

In Tavey v. Industrial Commission, 106 Utah 489, 150 P.2d 379 (1944) the court relied on the idiopathic fall doctrine to award benefits where the employee fainted and struck her head on a bookshelf. Clearly, in both these Utah cases there is an added

element of risk which is not present here. There is no medical evidence in this case of increased injury from the flat cement surface. Those cases which have addressed the issue of flat surface falls have determined that there is no added risk from the employment, and have denied benefits.

In Gates Rubber Co. v. Industrial Comm'n, supra, the employee was standing, waiting for a cart to be unloaded. According to witnesses, the employee's feet suddenly flew out from under him and he fell, striking his head on the concrete floor of the dock area. He made no effort to catch himself as he fell, and one of the witnesses testified that the employee appeared to be having a seizure. The court found that level concrete surfaces such as that upon which the employee struck his head are "encountered on sidewalks, parking lots, streets and in one's home. Such a ubiquitous condition does not constitute a special risk of employment." Gates Rubber Co. v. Industrial Comm'n, 705 P.2d at 7. Thus, the court found, as did the other courts which have been cited, that a level surface to which an employee falls cannot constitute a special risk of employment.

Not only have flat fall cases been regularly held non-compensable, but falls from certain heights have also been so held. Those courts have determined that falls from heights below certain levels do not constitute a sufficient risk that is unique

to the employment. Therefore, even though the falls in question are from a height, the added risk is not unique and therefore there is no additional risk arising out of the employment. Larson points out that the cases addressing this issue are approaching a "line" somewhere between 12½ inches and 18 inches. Larson's Workmen's Compensation Law § 12.14(a). Regardless of where this "line" is ultimately defined, the currently existing lower parameter of 12½ inches is substantially greater than the two inch height involved in the case at hand.

In Hughes v. Acme Steel and Malleable Iron Works, 200 N.Y.S.2d 185 (N.Y. 1960), an employee fell from a raised platform four inches higher than the level to which he struck his head. The claimant argued on appeal that the four inch height constituted an extra hazard or risk of the employment. The court denied the claim, stating:

Indeed, it seems to us highly doubtful that an idiopathic fall from a height of but four inches could ordinarily present a factual situation which would render inapplicable the principle of the Andrea and Dasaro cases (supra) which denied awards for falls at ground or floor level, that in each case being, as here, to a concrete surface.

200 N.Y.S.2d at 188. Thus, a height of four inches was insufficient to create an added risk.

Another case has held that a fall from a height of 12½ inches is not an added risk sufficient to meet the "arising out of" requirement. In Howard v. Ford Motor Company, 363 S.W.2d 61 (Mo.App. 1962), an employer fell from a 12½ inch assembly line platform to a concrete floor, striking his head. The court held that the height was not an added risk from the employment.

The majority rule in the idiopathic fall cases apparently is that the evidence must show a hazard connected with the employment not common to the general public or a special risk peculiar to the employment which caused or substantially contributed to cause the injuries, else liability does not arise.

. . .

Does the 12½ inch drop or step-off any more nearly meet the requirements? Probably it does come closer [than a cement floor] but again we think such a condition is regularly met by the public and is not generally regarded as a real risk or hazard. A substantially comparable step-off is found whenever we walk along a street curbing or step off the sidewalk to cross the street. And when we go down two or more concrete steps from our front door to the sidewalk, from a place of business to the street or down the steps of most court houses, there is a potential possibility of a greater fall, and hence a greater hazard.

Therefore, a height of at least 12½ inches has been held insufficient to create an added risk attributable to the employment. The Administrative Law Judge found that at the time of Mr. Helf's fall, the plate on which he was standing was only

two inches above the loading dock on which he fell. This finding was adopted by the Industrial Commission. The testimony of Nick Valles, a witness to the incident, indicated that the end of the platform on which applicant stood was nearly settled onto the trailer, and that there was only a two inch difference in height between the platform and the loading dock. (R. 170-171). This was also consistent with a statement made by Mr. Valles immediately after the injury occurred. (R. 45). This two inch height is well under the 12½ inch height considered by the courts to be insignificant. In addition, absolutely no medical evidence was provided by Mr. Helf to indicate that this two inch height increased his injury or risk of injury. To the contrary, Dr. John Barbuto stated that he can find no data which would indicate to a reasonable certainty that the additional height of the plate contributed to any measurable degree to Mr. Helf's injury. (R. 47). Thus, the conclusion of the Administrative Law Judge and the Industrial Commission that there was no added risk special to the employment in this case is supported by substantial evidence and the law.

The hardness or softness of the surface to which an employee falls in a level fall case does not constitute a special risk of employment. In Zuchowski v. US Rubber Co., 229 A.2d 61 (R.I. 1967), the Rhode Island supreme court addressed a flat fall

case where the employee landed on a cement floor. The court stated the following regarding the nature of the floor to which the employee fell.

The fact that the floor where petitioner fell was cement does not, in our opinion supply the necessary element of special risk which would make his injuries compensable. Floors of all nature and kind are a normal and customary part of one's life, be one at home or work. We do not believe that the composition of the floor in and of itself should be the determining factor as to whether there is a special risk incident present in one's employment. Such a criterion would send this court into the endless wilds of speculation. As pointed out in Riley v. Oxford Paper Co., supra, one could fall heavily on a cement floor without injury, where another might fall on soft sand and break a wrist. The workmen's compensation act does not provide that every workman who is injured while in his place of employment shall be compensated for his injury. We cannot accept the contention that a level floor made of cement or other hard substance in a place of one's employment is a special risk not encountered on a sidewalk, parking lot or one's home where a similar surface exists.

229 A.2d at 65.

The Supreme Judicial Court of Maine also reached the same conclusion in Riley v. Oxford Paper Co., 103 A.2d 111 (Me. 1954). In that case the decedent was walking along a loading platform at his place of work when he fell. Witnesses stated that he clasped both hands to his left side, cried out and then slumped sideways,

striking his face on the platform. The court found that the fall was idiopathic in nature, and determined that level floor falls add no special risk from the employment.

As was stated in Dasaro v. Ford Motor Co., 280 App. Div. 266, 113 N.Y.S.2d 413, 415, "the ground below is a universal and normal boundary on one side of life. In any epileptic fit anywhere, the ground or the floor would end the fall." It is true that a hard floor may enhance an injury, but in varying degrees all floors are hard. All places of employment must have floors, be such floors only the hard packed soil of mother earth. We do not care to undertake the confusing task of determining from case to case when a floor is hard enough to constitute an appreciable risk or hazard and when not. One might fall heavily upon the cement floor without injury, while another might fall upon soft sand and break a wrist. We feel that the test of "hardness" of the floor too readily lends itself to a reductio ad absurdum.

103 A.2d at 113, 114. Thus, the reasoning of the majority of jurisdictions clearly rejects considering the hardness of the surface to which an employee falls in level fall cases. See Ledbetter v. Michigan Carton Co., supra; Remington v. Louttit Laundry Co., 74 A.2d 442 (R.I. 1950); Oldham v. Industrial Comm'n, supra; Kraynick v. Industrial Comm'n, 148 NW.2d 668 (Wisconsin 1967); Luvaul v. A. Ray Barker Motor Co., supra. In cases where an employee falls to a level floor or surface, the

hardness of the floor is simply not considered in determining whether a special risk or hazard existed.

**C. The Unexplained Fall Theory Is Inapplicable To This Matter.**

Mr. Helf claims that if his idiopathic fall was not caused by his heart condition, he is entitled to workers' compensation benefits under the unexplained fall doctrine. This argument is without merit. A fall which is caused by a syncopal episode (loss of consciousness or faint) is not an unexplained fall. This is true even if the exact reason for the syncopal episode is unknown.

The case of Oldham v. Industrial Comm'n of Illinois, supra, was decided on facts very similar to the present case. In that case, the applicant sustained a head injury when she fell at work. A witness testified that he saw the applicant "go rigid like a board" and fall backwards, "toppling over" and striking her head on a clay tile floor. There was no evidence that the applicant slipped or that the floor was not clean and dry. The attending neurosurgeon stated that the applicant "had suffered a syncope attack of unknown etiology." He explained that this meant that she suffered from a faint or transient loss of consciousness for unknown reasons. The Court ruled that the fall was not an unexplained fall, stating: "While the reason for the



syncope is unknown, the reason for the fall was the syncope itself." 487 N.E.2d 694. The Court went on to hold that the clay tile floor did not constitute a heightened risk. Benefits were denied accordingly.

A similar result was reached by the Michigan Court of Appeals in the case of Ledbetter, supra. In that case, an employee was standing in a locker room when he suddenly began shaking and foaming at the mouth, turned completely stiff, and fell to the floor. The decedent did not attempt to break his fall. His head hit directly onto the concrete floor. The decedent's shaking and subsequent fall were observed by two witnesses.

In rejecting the unexplained fall claim, the Court stated:

While this court firmly believes in the principle that employers should be responsible for work-related injuries of their employees, we do not feel that such responsibilities should be stretched to include injuries predominantly personal to the employee.

In the present case the decedent's fall must be termed idiopathic in nature. . . . The seizure and fall was witnessed by two other employees. This matter cannot therefore be considered as one dealing with falls of unexplained or unknown origin.

253 N.W.2d 753, 756.

The Court also rejected the argument that the composition of the concrete floor aggravated the injury.

Although we recognize that a fall onto a softer surface may have lessened the impact, we are not convinced that the composition of the floor necessarily aggravated the harm. It cannot be said with certainty that had the fall occurred at a different location, away from the employer's premises, the injuries would have been any less serious.

Id.

The Court of Appeals of Oregon reached a similar result in the case of McAdams v. Saif Corporation, 474 P.2d 80 (Or. App. 1984). In that case, an applicant suffered a posterior skull fracture from striking his head on the floor. His treating physician testified that the applicant had suffered a spontaneous fainting spell but was unable to determine the cause, despite extensive testing. The Court rejected the unexplained fall theory, stating: "Here, the cause of the fall was also known, he fainted." 674 P.2d 80. Benefits were denied.

There is no doubt in this case that Mr. Helf's fall was caused by an idiopathic syncopal episode. Two witnesses observed the fall. The medical records refer to the fall as syncopal. (Exhibit D-1, pp. 155, 207). The witnesses' description of the fall makes it clear that it was syncopal in nature.

While Mr. Helf was standing on the plate, his hands went down to his sides, he went

rigid, jerked back, and fell straight back hitting his head on the flat cement floor of the loading dock. When Mr. Helf fell, he did not call out or make any other sound. He did not attempt to break his fall with his hands. He was unconscious before he hit the floor.  
(Finding of Fact No. 5.)

Because the fall was witnessed and was due to a syncopal episode, the unexplained doctrine does not apply. There is no evidence whatsoever that the applicant slipped or tripped or that there was any other external or environmental cause for his fall. There is no medical evidence whatsoever that the fall was caused by Mr. Helf's employment activities. The Administrative Law Judge and Industrial Commission were correct in finding that the Mr. Helf's fall was caused by an idiopathic syncopal episode and that neither the composition of the cement loading dock or the fact that dock plate was two inches higher than the dock floor increased the risk of injury sufficiently to cause this claim to arise out of Mr. Helf's employment.

Mr. Helf argues that Utah should adopt the reasoning of the Arizona courts in Circle K Store No. 1131 v. Industrial Comm'n., 165 Ariz. 91, 796 P.2d 893 (Ariz. 1990). There, the court determined that in an unexplained fall case, the burden is not on the employee to prove that his injury arose out of his employment. It based its decision on its adoption of the positional risk theory:

The positional-risk doctrine has been adopted by various jurisdictions under the reasoning that employees on the job and performing duties for their employers, should be compensated for injuries occurring in the course thereof.

Id. at 898. According to the Arizona court, when an employee is injured "in the course of employment" by some neutral force "neither personal to the claimant nor distinctly associated with the employment," the injury will be presumed to arise out of the employment. Id. This court should not adopt the Arizona rule for two reasons. First, it need not even address the issue in this case. The evidence is overwhelming that Mr. Helf fell because of a condition personal to him. He fainted and did so in front of two witnesses. Thus, the unexplained fall theory does not apply.

Second, even in the case of an unexplained fall, Utah's legislature has clearly stated that a party must prove both that his injury occurred in the course of employment, and that it arose out of his employment. There is no room under the statute's plain language for a court to adopt the Arizona presumption theory. This state has recently moved away from a single rule of "in the course of employment." This court has held that it is Mr. Helf's burden to prove by a preponderance of the evidence that his injury also arose out of his employment. Walls v. Industrial Comm'n., supra.

Therefore, if this were an unexplained fall, the employee must still meet his burden of proof.<sup>4</sup>

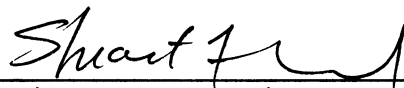
The Administrative Law Judge correctly found that Mr. Helf's fall was not unexplained, but due to a syncopal episode personal to him and unrelated to his work activities. Accordingly, the Industrial Commission's orders should be affirmed.

#### CONCLUSION

For the reasons stated above, Respondent Yellow Freight System, Inc. respectfully requests that this Court affirm the order of the Industrial Commission.

Dated this 14th day of February, 1995.

Respectfully submitted,



David M. McConkie  
Stuart F. Weed  
Attorneys for Respondent Yellow  
Freight System, Inc.

---

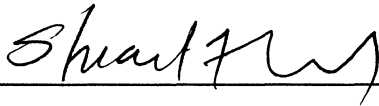
<sup>4</sup>See e.g., Slimfold Mfg. Co. v. Martin, 417 So.2d 199 (Ala. App.1981); McClain v. Chrysler Corp., 138 Mich.App. 723, 360 N.W.2d 284 (1984); Wheaton v. Reiser Co., 419 S.W.2d 497 (Mo.App.1967); Eggers v. Industrial Comm'n, 157 Ohio St. 70, 104 N.E.2d 681 (1952); Grassel v. Garde Mfg. Co., 90 R.I. 1, 153 A.2d 527 (1959).

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the attached and foregoing BRIEF OF RESPONDENT YELLOW FREIGHT SYSTEM, INC. was mailed this 14<sup>th</sup> day of February, 1995, by United States mail, postage prepaid, to the following:

Hans M. Scheffler  
Attorney for Petitioner  
311 South State Street, #380  
Salt Lake City, UT 84111

Allen L. Hennebold  
Attorney for Industrial Commission of Utah  
160 East 300 South  
Salt Lake City, UT 84111

  
\_\_\_\_\_

L:\SSFW\1784-033\BRIEF.APP

Tab 1

David M. McConkie (A2154)  
KIRTON, McCONKIE & POELMAN  
Attorney for Employer  
1800 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, Utah 84111-1004  
Telephone: (801) 328-3600

---

BEFORE THE INDUSTRIAL COMMISSION OF  
THE STATE OF UTAH

---

LAVELL H. HELF,	:	
	:	
Claimant,	:	FINDINGS OF FACT,
	:	CONCLUSIONS OF LAW,
	:	AND ORDER
vs.	:	
	:	
YELLOW FREIGHT SYSTEM, INC.	:	
	:	
Employer.	:	
	:	Case No. 93-20

---

This matter came on regularly for hearing before the Honorable Timothy C. Allen, on the 7th day of July, 1993. Applicant, Lavell Helf, was present and was represented by attorney, Hans Scheffler. Employer, Yellow Freight System, Inc., was represented by attorney David M. McConkie. The Administrative Law Judge, having considered the testimony presented at the hearing and having reviewed the exhibits and



file herein, and good cause appearing, hereby enters the following Findings of Fact, Conclusions of Law, and Order.

### FINDINGS OF FACT

1. On September 9, 1992, Lavell H. Helf was employed as a truck driver by Yellow Freight System, Inc., in Salt Lake City, Utah.

2. On September 9, 1992, at approximately 6:30 p.m., Mr. Helf arrived at Gates Rubber Company in Salt Lake City, Utah to pick up a shipment for his employer, Yellow Freight System, Inc.

3. While standing on the Gate Rubber Company loading dock, Mr. Helf bent over and pulled up on a metal ring which released a spring-loaded metal dock plate, causing the plate to raise and extend to the back of the trailer.

4. It took minimal exertion to pull the ring and release the dock plate (less than 20 pounds) and Mr. Helf did not have any problem pulling the ring.

5. After pulling the ring, Mr. Helf walked onto the plate toward his trailer. While Mr. Helf was standing on the plate, his hands went down to his sides, he went rigid, jerked back, and fell straight back hitting his head on the flat cement floor of the loading dock. When Mr. Helf fell, he did not call out or make any other sound. He did not attempt to break his fall with his hands. He was unconscious before he hit the floor.

6. The dock plate on which Mr. Helf was standing at the time of his fall was two inches higher than the surface of the loading dock.

7. Mr. Helf was injured when his head hit the flat surface of the loading dock.

8. For several years prior to his fall, Mr. Helf received medical treatment for a heart condition diagnosed as idiopathic hypertrophic subaortic stenosis.

9. Mr. Helf's fall was caused by an idiopathic syncopal episode of unknown origin. The fall was not caused by any external cause related to the dock plate or by any other external cause such as tripping, slipping, etc.

10. The syncopal episode which resulted in Mr. Helf's fall was not related to his pre-existing heart condition.

11. Mr. Helf's injury coincidentally occurred at work because of his idiopathic condition without any enhancement from the workplace. Prior to and at the time of his syncopal episode and fall, Mr. Helf was not engaged in any activity which created any strain, exertion, or stress greater than that of his normal nonemployment life or the normal nonemployment life of any other person. His syncopal episode and injury did not result from any strain, exertion, or stress related to his employment.

12. Mr. Helf's employment did not contribute anything to increase the risk of injury that he or any other worker normally faces in everyday life. Neither the composition of the cement loading dock nor the fact that the dock place was two

inches higher than the dock floor increased the risk of injury that Mr. Helf or the average worker normally faces in everyday nonemployment life. Mr. Helf's employment did not increase the dangerous effects of his fall.

13. Mr. Helf failed to show by a preponderance of the evidence that he was injured, by accident, arising out of and in the course of his employment with the employer, Yellow Freight System, Inc.

#### CONCLUSIONS OF LAW

1. Mr. Helf was not injured by accident arising out of and in the course of his employment with his employer.

2. Neither Mr. Helf's employment nor any activities related thereto were the legal cause or medical cause of his injury.

3. The "unexplained fall" doctrine is not applicable to the facts of this case inasmuch as Mr. Helf had a syncopal episode which caused the fall.

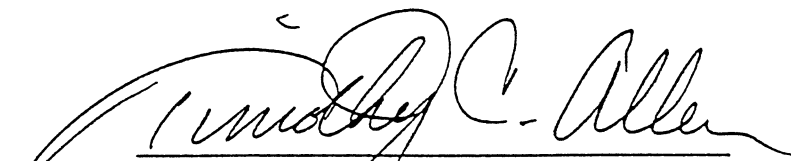
4. Mr. Helf is not entitled to workers' compensation benefits as set forth in § 35-1-1, et seq., Utah Code Ann.

#### ORDER

The Administrative Law Judge, having made and entered his Findings of Fact and Conclusions of Law in the above entitled matter, and good cause appearing therefor, HEREBY ORDERS, ADJUDGES, AND DECREES that this matter be and the same is hereby dismissed with prejudice.

IT IS FURTHER ORDERED that any Motion for Review of the foregoing shall be filed in writing within thirty (30) days of the date hereof, specifying in detail the particular errors and objections, and, unless so filed, this Order shall be final and not subject to review or appeal. In the event a Motion for Review is timely filed, the parties shall have fifteen (15) days from the date of filing with the Commission, in which to file a written response with the Commission in accordance with § 63-46(b)(12)(2), Utah Code Ann.

DATED this 12 day of August, 1993.

  
TIMOTHY C. ALLEN  
Presiding Law Judge

CERTIFICATE OF MAILING

I certify that on August 12th, 1993, a copy of the attached Findings of Fact, Conclusions of Law and Order, in the case of Lavell H. Helf, was mailed to the following persons at the following addresses, postage paid:

Lavell H. Helf  
4916 Cherry Wood Lane  
West Valley UT 84120

Hans Scheffler  
Attorney at Law  
311 South State Street Suite 380  
SLC, UT 84111

David M. McConkie  
Attorney at Law  
Kirton, McConkie & Poelman  
60 East South Temple, Suite 1800  
SLC, UT 84111-1004

Karen Tolbert  
Adjuster  
Yellow Freight System, Inc.  
P O Box 7932  
Overland Park, KS 66207

INDUSTRIAL COMMISSION OF UTAH

By Wilma Burrows  
Wilma Burrows  
Adjudication Division

Tab 2

---

THE INDUSTRIAL COMMISSION OF UTAH

LAVELL HELF,

Applicant,

vs.

YELLOW FREIGHT SYSTEM, INC.  
(Self-Insured),

Defendant.

ORDER DENYING  
MOTION FOR REVIEW

Case No. 93-0020

---

Lavell H. Helf asks the Industrial Commission of Utah to review an Administrative Law Judge's Order denying benefits under the Utah Workers' Compensation Act.

The Commission exercises jurisdiction in this matter pursuant to Utah Code Ann. §35-1-82.53, Utah Code Ann. §63-46b-12 and Utah Administrative Code R568-1-4.M.

FINDINGS OF FACT

The Commission adopts the Findings of Fact set forth in the ALJ's Order of August 12, 1993. A summarization of those facts follows:

For several years prior to the incident in question, Mr. Helf suffered from episodes of unexplained loss of consciousness, known as "syncope" in medical terminology. Such episodes occurred randomly and were not related to any particular activity or situation.

On September 9, 1993, Mr. Helf was employed as a truck driver for Yellow Freight. While preparing to load freight into his trailer, he experienced another syncopal episode. Witnesses report that Mr. Helf toppled backward, with no effort to break his fall. He was apparently unconscious by the time he fell to the flat surface of the loading dock.

Mr. Helf's exertions at work on September 9, 1993 were no greater than those of his nonemployment life, nor were his exertions greater than customarily experienced by average individuals in normal every day life.

DISCUSSION AND CONCLUSIONS OF LAW

Utah's Workers' Compensation Act provides compensation to workers who are injured by accident "arising out of and in the course of" their employment. (Utah Code Ann. §35-1-45.) It is the

LAVELL HELF  
ORDER  
PAGE TWO

worker's burden to prove the causal relationship between his or her work and injury.

The record in this matter establishes that Mr. Helf suffered a predisposition to loss of consciousness. While there is some medical opinion that Mr. Helf's work activities contributed to his loss of consciousness on September 9, 1993, the preponderance of evidence establishes that Mr. Helf's work did not trigger his loss of consciousness.

Because Mr. Helf's loss of consciousness and resulting fall were the result of a condition peculiar to Mr. Helf himself, the injuries that he sustained in the fall are not a consequence of his employment.

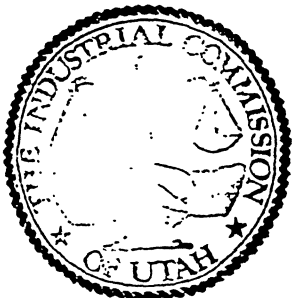
As noted in Commissioner Carlson's dissent, an accident not directly caused by employment may nonetheless be compensable if the danger of injury is enhanced by the conditions of employment. In this case, Mr. Helf's employment did not enhance his risk of injury. When Mr. Helf lost consciousness, he fell to the flat surface of the loading dock. The work environment exposed Mr. Helf to no more danger than would a similar fall on a sidewalk, driveway, or any of the other hard, flat surfaces that are common to everyday life.

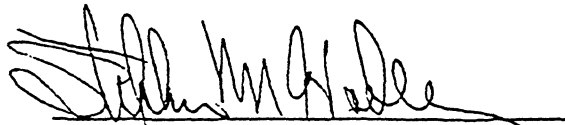
In light of the foregoing, we do not find a causal connection between Mr. Helf's injury and his employment. Because Mr. Helf's injury did not arise out of and in the course of his employment, we conclude the injury is not compensable under the Utah Workers' Compensation Act.

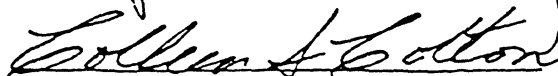
ORDER

The Commission hereby affirms the Order of the Administrative Law Judge dated August 12, 1993.

DATED THIS 28<sup>th</sup> day of June, 1994.



  
Stephen M. Hadley  
Chairman

  
Colleen S. Colton  
Commissioner

00117



LAVELL HELF  
ORDER  
PAGE THREE

DISSENT

At the time of his injury, Mr. Helf, was preparing to load additional freight into his trailer. He moved and adjusted the heavy freight already loaded, and then immediately performed maneuvers required to bring up a heavy, spring-loaded metal plate from the surface of the loading dock to form a ramp between the dock and the trailer. It was customary to lock the plate down into position by walking on the moving plate, which was positioned at a slight upward incline. While doing so, Mr. Helf suddenly fell backward, striking his head on the dock, and receiving severe injury.

Such a fall, even if not directly caused by employment, is compensable if the danger of injury either before or after the fall is enhanced by employment activities or workplace conditions to a degree beyond that which would be experienced by a member of the general public pursuing normal everyday activities. Larson, *The Law of Workmen's Compensation*, 3-349, 3-355, 3-371 (1993). The general public would not have been on a loading dock, shifting heavy freight, and stepping onto a moving metal loading ramp. These circumstances distinguish Mr. Helf's accident from a fall by a someone standing still on a stationary, level floor, as was the situation in Gates Rubber v. Industrial Comm'n, 705 P.2d 6 (Co. App. 1985), or from a slight height, as in Hughes v. Acme Steel, 200 N.Y. S.2d 185 (N.Y. 1960).

A preponderance of medical opinion, i.e., from Drs. Speed, Null, and Freedman, concurs that Mr. Helf's injury arose out of his employment, that is, the fall occurred to some degree due to conditions of the workplace or to physical stress and exertion related to the job, as required by Utah Code Ann. § 35-1-45. Though the medical experts are not in full agreement, evidence indicates that the fall may have resulted from a syncopal episode, or loss of consciousness, that may or may not have been caused by a cardiac condition. It is uncontested that Mr. Helf took regular medication to control idiopathic hypertrophic stenosis, a cardiac problem, and that he took the medication the morning of the accident. Mr. Helf had passed a Department of Transportation medical examination in 1990.

Since everyone on the dock was engaged in other activities when the accident occurred, no one was giving direct attention to Mr. Helf when he fell. Witnesses at the evidentiary hearing differed about the degree of incline, though all agreed the ramp was somewhat inclined, about the amount of movement of the ramp, and about how much exertion was required to raise the platform and lock it into place.

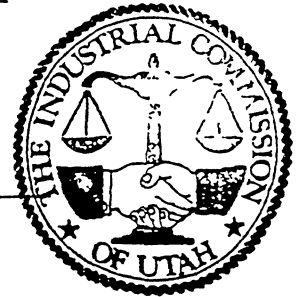
LAVELL HELF  
ORDER  
PAGE THREE

In view of uncertain circumstances surrounding the accident, it is impossible to determine the cause of the fall which resulted in injury. Though the majority opinion found that the fall was caused by a syncopal episode which was personal to the applicant, Mr. Helf was in the act of performing the normal duties required by his employment when he was injured. These conclusions would require the issue to be resolved in favor the injured worker. Based on the foregoing, I would conclude that Mr. Helf's injury is work-related and is compensable. I therefore respectfully dissent.

DATED THIS 28<sup>th</sup> day of June, 1994.



Thomas R. Carlson  
Commissioner



NOTIFICATION OF APPEAL RIGHTS

Any party may ask the Commission to reconsider this Order by filing a Request for Reconsideration with the Commission within 20 days of the date of this Order. Alternatively, any party may appeal this Order to the Utah Court of Appeals by filing a Petition For Review with that Court within 30 days of the date of this Order.

CERTIFICATE OF MAILING


I, Adell Butler-Mitchell, certify that I did mail by prepaid first class postage, except as noted below, a copy of the ORDER DENYING MOTION FOR REVIEW in the case of LAVELL HELF, Case Number 93-20, on 28<sup>th</sup> day of June, 1994, to the following:

HANS SCHEFFLER  
ATTORNEY AT LAW  
311 S. STATE STREET, #380  
SALT LAKE CITY, UTAH 84111

DAVID M. MCCONKIE  
KIRTON, MCCONKIE & POELMAN  
60 E. SOUTH TEMPLE, #1800  
SALT LAKE CITY, UTAH  
84111-1004

KAREN TOLBERT  
ADJUSTER  
YELLOW FREIGHT SYSTEMS, INC.  
P O BOX 7932  
OVERLAND PARK, KS 660207

asb/helf

  
Adell Butler-Mitchell  
General Counsel's Office  
Industrial Commission of Utah

00119