

1994

W. Franklin Stoddard, Water Well and Exploration Drilling v. Gregory Lynn Biddle and Utah Industrial Commission : Brief of Respondent

Utah Court of Appeals

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Roger F. Baron; Attorney for Petitioner; Sharon Eblen; Attorney for Uninsured Employers\' Fund. Scott F. Squire; Attorney for Respondent.

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W. FRANKLIN STODDARD, dba
WATER WELL & EXPLORATION
DRILLING,

-VS-

GREGORY LYNN BIDDLE, and the
INDUSTRIAL COMMISSION OF UTAH,

Court of Appeals of Utah
Case No. 940454-CA

Industrial Commission of Utah
Case No. 92000861

Priority No. 7

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DOCKET NO.

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COURT OF APPEALS

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF JURISDICTION	1
STANDARD OF APPELLATE REVIEW	1
DETERMINATIVE AUTHORITIES	1
STATEMENT OF FACTS	2
SUMMARY OF ARGUMENTS	4
ARGUMENT	5
I. THE INDUSTRIAL COMMISSION RULED CORRECTLY THAT THE STIPULATION IS INVALID AND UNENFORCEABLE ON SUBSTANTIAL EVIDENCE THAT BIDDLE DID NOT VIEW HIS CLAIM TO BE OF DOUBTFUL COMPENSABILITY.	5
II. THE INDUSTRIAL COMMISSION RULED CORRECTLY THAT, WHEN INJURED, BIDDLE WAS WITHIN THE COURSE OF HIS EMPLOYMENT WITH STODDARD.	7
CONCLUSION	9

TABLE OF AUTHORITIES

CASES:

<u>Allen & Assoc. v. Industrial Comm'n</u> , 732 P.2d 508, 508-09 (Utah 1987).	6
<u>M & K Corporation v. Industrial Comm'n</u> , 189 P.2d 132, 134 (Utah 1948)	8
<u>Wilburn v. Interstate Electric</u> , 748 P.2d 582, 585-86 (Utah App. 1988)	1, 5, 6, 7
<u>Wilson v. Industrial Comm'n</u> , 735 P.2d 403, 405 (Utah App. 1987)	6

RULES:

Industrial Commission Rule R568-1-16	1, 4, 6, 9
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STATUTES:

U.C.A. §35-1-86	1
U.C.A. §35-1-90	1, 4, 6, 7, 9

OTHER AUTHORITIES:

Larson, Workmen's Compensation Law §27.41, 48 (1992)	8
Prosser on Torts (2d ed.), p. 352	8
Restatement, Agency, Section 228.	8

STATEMENT OF JURISDICTION

The Court of Appeals of Utah has jurisdiction to review these matters pursuant to Utah Code Annotated §35-1-86.

STANDARD OF APPELLATE REVIEW

Both issues presented to the Court are subject to limited review "and the judgment of the trier will not be disturbed if based on substantial, competent, admissible evidence." Wilburn v. Interstate Electric, 748 P.2d 582, 585 (Utah App. 1988). The Court should show maximum deference to the basic facts determined by the Industrial Commission and sustain its judgment "if there is evidence of any substance that can be reasonably regarded as supporting the determination made." Wilburn, 748 P.2d at 586.

DETERMINATIVE AUTHORITIES

1. U.C.A. §35-1-90.

"No agreement by an employee to waive his rights to compensation under this title shall be valid."

2. Industrial Commission Rule R568-1-16.

Settlement Agreements.

"A. Section 35-1-90, U.C.A., invalidates any agreement which requires an employee to waive his rights. Settlement agreements are appropriate, however, when the parties, in good faith, view the claim as one of the doubtful compensability."

"B. In determining if a claim is of doubtful compensability, the commission will look to the facts of the matter and will not be bound by mere recitations in the settlement agreement."

STATEMENT OF FACTS

1. The employer, Franklin Stoddard, asked Greg Biddle to come to work for him in September, 1989. (Record, p. 144, lines 2-6).

2. Mr. Stoddard acknowledges that Biddle did work for him drilling water wells. (Record, p. 156, lines 17-20).

3. Mr. Biddle worked an average of forty hours per week for Mr. Stoddard and was available to Mr. Stoddard anytime during regular business hours. (Record, p. 145, line 17 through p. 146, line 16).

4. Mr. Biddle never refused work offered him by his employer, Mr. Stoddard. (p. 145, line 17 through p. 146, line 16).

5. Mr. Stoddard acknowledges that Mr. Biddle normally rode with him to work; when Mr. Biddle reported to Stoddard's house for work, Mr. Stoddard drove Biddle to the work site. (p. 165, line 17 through p. 166, line 14).

6. On the date of Mr. Biddle's accident, June 4, 1990, Mr. Stoddard drove Biddle to work. (p. 157, lines 7-25).

7. Mr. Stoddard stopped with Biddle to help Stoddard's cousin set up a drilling rig -- the type of work Mr. Stoddard hired Biddle to do. (p. 156, l. 17-20; p. 157, l. 7-25).

8. Mr. Stoddard estimates it takes one to two hours to set up a drilling rig. (p. 158, l. 4-7).

9. Despite the time required to set up his cousin's drilling rig, Mr. Stoddard never told Biddle to stay off the work site. (p. 168, l. 6-7).

10. Mr. Stoddard did not tell Biddle not to do the work setting up the drilling rig for Stoddard's cousin. (p. 168, lines 8-11).

11. Mr. Stoddard never told Biddle he was not working for him at the time of the accident. (p. 147, l. 16-25).

12. Mr. Biddle was unaware of any dispute regarding the compensability of his claim or Mr. Stoddard's Workers' compensation liability. (p. 148, l. 23 through p. 149).

13. Nearly two years ago, at the February 3, 1993 hearing before Judge Elicerio of the Industrial Commission, Mr. Stoddard's attorney stated why the uninsured Mr. Stoddard was unable to pay workers' compensation benefits to Mr. Biddle: "My client really had no money at that time to pay Mr. Biddle anything...." (p. 132, lines 16-17).

14. In its Order and subsequent denials of Mr. Stoddard's two Motions for Review, the Industrial Commission invalidated the stipulation, finding there was no good-faith dispute on the compensability of Biddle's claim; the Commission

also found Biddle within the course of his employment with Stoddard at the time of his injury.

SUMMARY OF ARGUMENTS

1. U.C.A. §35-1-90 and Industrial Commission Rule R568-1-16 provide that, unless the parties in good faith view a claim as one of doubtful compensability, no agreement waiving an employee's rights to workers' compensation shall be valid. Mr. Biddle never viewed his claim as doubtful, but always intended to obtain his full benefits. Mr. Stoddard never viewed the claim, in good faith, as doubtful -- he entered the stipulation simply because he was unable to meet his workers' compensation obligation to Mr. Biddle. The Industrial Commission was correct in ruling the stipulation invalid and unenforceable.

2. When injured, Mr. Biddle was within the course of his employment with Mr. Stoddard. He was rendering the service he was hired by Mr. Stoddard to perform. Mr. Stoddard never told Mr. Biddle to stop, but was working with him at the time of injury. Stoddard had driven Biddle to the work site. Mr. Biddle had the impression he was expected to assist Mr. Stoddard as part of his employment and was given no indication to the contrary. Mr. Biddle's injuries are compensable.

3. The Court should give maximum deference to the Industrial Commission's findings and not disturb its ruling, which was based on substantial evidence.

4. Mr. Biddle is entitled to additional workers' compensation benefits from Mr. Stoddard as set forth in the Order of the Industrial Commission, which the Court should affirm.

ARGUMENT

I. THE INDUSTRIAL COMMISSION RULED CORRECTLY THAT THE STIPULATION IS INVALID AND UNENFORCEABLE ON SUBSTANTIAL EVIDENCE THAT BIDDLE DID NOT VIEW HIS CLAIM TO BE OF DOUBTFUL COMPENSABILITY.

Mr. Stoddard cites to Wilburn v. Interstate Electric, 748 P.2d 582 (Utah App. 1988), as dispositive on the validity of his stipulation with Biddle. In Wilburn, this Court held:

[I]f the contract is ambiguous and the trial forum finds facts respecting the intention of the parties based on extrinsic evidence, the appellate review is strictly limited and the findings and judgment of the trier will not be disturbed if based on substantial, competent, admissible evidence.

Wilburn, 748 P.2d at 585 (citations omitted)(emphasis added).

In accordance with Wilburn and Industrial Commission Rule R568-1-16, the Administrative Law Judge received extrinsic evidence at the February 3, 1993 hearing on the intention of the parties. Substantial, competent evidence was admitted showing that Mr. Biddle did not intend to waive his rights to further benefits or the payment of additional medical expenses. Mr. Biddle never viewed his claim as one of doubtful compensability. (Record, p. 148, line 23 through p. 149). He entered the stipulation because Mr. Stoddard had no workers' compensation insurance and had told Biddle he was unable to pay the claim.

Looking to the facts, as directed by Industrial Commission Rule R568-1-16(B), the ALJ concluded that Mr. Biddle's claim was not of doubtful compensability, because Mr. Biddle believed he had a valid claim and was entitled to additional benefits in district court.

As Mr. Stoddard points out, the test for determining the enforceability of the stipulation is a subjective one: WHAT DID MR. BIDDLE BELIEVE?

[T]he issue was not so much whether the judge believed the applicant sustained a compensable accident as it was a matter of what the parties believed and acted upon....

Wilburn, 748 P.2d at 586 (emphasis added.) The record shows that Mr. Biddle always believed he had a valid, compensable claim. He entered the stipulation with the understanding that he could obtain additional workers' compensation in district court. Pursuant to U.C.A. §35-1-90 and Rule R568-1-16, the ALJ ruled the stipulation unenforceable, and the Industrial Commission twice affirmed the ruling on review.

In Wilburn, this court deferred to the Industrial Commission:

[W]e give maximum deference to the basic facts determined by the agency, which will be sustained if there is evidence of any substance that can be reasonably regarded as supporting the determination made. Wilson v. Industrial Comm'n, 735 P.2d 403, 405 (Utah App. 1987) (citing Allen & Assoc. v. Industrial Comm'n, 732 P.2d 508, 508-09 (Utah 1987)).

Wilburn, supra (emphasis added). Substantial evidence supports the Industrial Commission's ruling that the stipulation is not enforceable. (Record, pages 132, 148, 149, among others). The stipulation, by which Stoddard seeks to shield himself from his obligations, is invalid: "No agreement by an employee to waive his rights to compensation under this title shall be valid." U.C.A. §35-1-90. The parties -- and Mr. Biddle in particular -- did not view Mr. Biddle's claim to be of doubtful compensability. Statement of Facts, paras. 12 and 13. The Court should affirm the Order of the Industrial Commission.

II. THE INDUSTRIAL COMMISSION RULED CORRECTLY THAT, WHEN INJURED, BIDDLE WAS WITHIN THE COURSE OF HIS EMPLOYMENT WITH STODDARD.

At the time of his injury, Mr. Biddle was within the course of his employment with Mr. Stoddard. In accordance with Wilburn, 748 P.2d at 586, the Court should give maximum deference to the facts determined by the Industrial Commission, which include:

Finally, the ALJ finds that the applicant felt he was working his regular job on June 4, 1990 and was never told anything to the contrary. He was not told to remain in the truck and Stoddard allowed him to assist with the work on June 4, 1990. Therefore, any argument that the appliance was acting as a volunteer on June 4, 1990 and was not in the course of his employment is not supportable.

Findings of Fact, March 8, 1993, page 6.

The Supreme Court of Utah, in M & K Corporation v. Industrial Comm'n, 189 P.2d 132, 134 (Utah 1948), held that an injury occurs in the course of employment if

it occurs while the employee is rendering service to his employer which he was hired to do or doing something incidental thereto, at the time when and the place where he was authorized to render such service.

See also, Prosser on Torts (2d ed.), p. 352; Restatement, Agency, Section 228.

Mr. Stoddard hired Mr. Biddle to drill water wells. (Record, p. 156, lines 17-20). On the injury date, as he normally did, Stoddard drove Biddle to the drilling site. (Record, pages 156-57, 165-66). Biddle was injured during normal working hours while setting up a drilling rig, the type of work Stoddard hired him to do. (Record, pages 156-157). Mr. Stoddard was working with Biddle when he was injured and never instructed Biddle to refrain from working. (Record, page 168). Mr. Biddle intended to benefit Mr. Stoddard, his employer, by assisting with the drilling rig. Biddle was rendering the service to Stoddard which he was hired to do, or, at least, was doing something incidental to his employment. In either case, he satisfied the "course of employment" test of M & K Corporation, above.

At the time of injury, Mr. Biddle was performing the type of work he normally performed while employed by Stoddard. Mr. Stoddard never told him to stop. Professor Larson, in Workmen's Compensation Law §27.41, 48 (1992) (citations omitted) (emphasis added), states:

[W]hen any person in some authority directs an employee to run some private errand or do some work outside his normal duties for the private benefit of the employer or superior, an injury in the course of that work is compensable....

[T]he employer's "order" need not take the form of an outright command, if in the circumstances the employer's "suggestion" or even the employee's impression of what is expected of him in serving the interests of his employer or superior are in fact sufficient to motivate his undertaking the service in question.

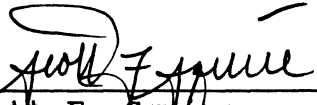
Under the circumstances, Mr. Biddle believed he was expected to assist in the erection of Mr. Stoddard's cousin's drilling rig. Mr. Stoddard drove Mr. Biddle to the site, explained why they were stopping, and never told Biddle not to assist. (Record, p. 168). It was Mr. Biddle's reasonable impression that he was expected to help. When injured while doing so, Mr. Biddle was within the course of his employment with Stoddard.

CONCLUSION

Under U.C.A. §35-1-90, Industrial Commission Rule R568-1-16, and Utah case law, the parties' stipulation is invalid and unenforceable, because Biddle and Stoddard did not in good faith view the claim as one of doubtful compensability. Mr. Stoddard is liable to pay additional workers' compensation benefits, because Biddle was an employee of Stoddard within the course of his employment when injured. Nearly five years after his accident, Mr. Biddle is entitled to the workers' compensation

benefits set forth in the Order of the Industrial Commission,
which the Court should affirm.

DATED this 11th day of January, 1995.



Scott F. Squire
Attorney for Respondent Biddle

CERTIFICATE OF MAILING


This is to certify that I mailed a true copy of the
foregoing BRIEF OF RESPONDENT GREGORY LYNN BIDDLE this 12th
day of January, 1995, postage prepaid and addressed as follows:

Roger F. Baron
Attorney for Petitioner Stoddard
45 North 100 East
Brigham City, UT 84302

The Industrial Commission of Utah
Adjudication Division
160 East 300 South, 3rd Floor
Salt Lake City, UT 84114-6600

Sharon Eblen
Attorney for Uninsured Employers' Fund
160 East 300 South, 3rd Floor
Salt Lake City, UT 84114-6612

Mr. Gregory Biddle
265 North 300 West, #19
Tremonton, UT 84337



compensation to a minor employee, such sum shall be paid only to his legally appointed guardian.

History: L. 1917, ch. 100, § 89; C.L. 1917, § 3150; R.S. 1933 & C. 1943, 42-1-83; L. 1945, ch. 65, § 1.

Cross-References. — Right of action by parents for injury to child, § 78-11-6.

NOTES TO DECISIONS

Construction and application.

This section was enacted to enable a minor not under statutory prohibitions to enter into lawful contracts for the rendering of personal service and to assure him, and incidentally the

employer, the same protection as an adult rendering like service. *Ortega v. Salt Lake Wet Wash Laundry*, 108 Utah 1, 156 P.2d 885 (1945).

COLLATERAL REFERENCES

C.J.S. — 99 C.J.S. *Workmen's Compensation* § 122.

35-1-90. Void agreements between employers and employees.

No agreement by an employee to waive his rights to compensation under this title shall be valid. No agreement by an employee to pay any portion of the premium paid by his employer shall be valid. Any employer who deducts any portion of such premium from the wages or salary of any employee entitled to the benefits of this title is guilty of a misdemeanor, and shall be fined not more than \$100 for each such offense.

History: L. 1917, ch. 100, § 90; C.L. 1917, § 3151; R.S. 1933 & C. 1943, 42-1-84.

NOTES TO DECISIONS

ANALYSIS

Constitutionality.
Agreements to settle claims.
Effect of agreements of settlement.
Rights of commission.

Constitutionality.

This section, invalidating agreements by employees to waive rights under the act (§ 35-1-1 et seq.), is not unconstitutional. *Barber Asphalt Corp. v. Industrial Comm'n*, 103 Utah 371, 135 P.2d 266 (1943).

Agreements to settle claims.

Agreements to settle claims after the injury probably would be invalid under this section. *Aetna Life Ins. Co. v. Industrial Comm'n*, 73 Utah 366, 274 P. 139 (1929); *Barber Asphalt Corp. v. Industrial Comm'n*, 135 P.2d 266 (1943).

There is nothing in this section that either expressly or impliedly restricts right of em-

ployer and employee to make settlements or imposes conditions thereupon. Accordingly, employer and employee's dependents may make settlement for employee's death after an award by commission since such settlement does not amount to a waiver within meaning of that term as used in this section. *Brigham Young University v. Industrial Comm'n*, 74 Utah 349, 279 P. 889, 65 A.L.R. 152 (1929).

This section was no bar to enforceability of a settlement agreement, where there was evidence to support an administrative law judge's finding that the parties had a good faith dispute as to the compensability of the claim, notwithstanding the Court of Appeals' determination that it "would have no difficulty" in finding the claim compensable. *Wilburn v. Interstate Elec.*, 748 P.2d 582 (Utah Ct. App. 1988).

Effect of agreements of settlement.

It is the intention of the Legislature to prevent agreements of final settlement between employer, employee, and the insurance carrier

suing a check payable to the worker and his attorney jointly constitutes a violation of this rule.

R568-1-14. Acceptance/Denial of a Claim.

A. Upon receiving a claim for benefits from an injured employee, the carrier/self-insured employer shall promptly investigate the claim and begin payment of compensation within 21 days of a valid claim or the carrier shall send the claimant written notice, within 21 days, that further investigation is needed and the reasons for further investigation. Each carrier or self-insured employer shall complete its investigation within 45 days of receipt of the claim and shall commence the payment of benefits or notify the claimant in writing that the claim is denied.

B. The payment of compensation shall be considered overdue if not paid within 21 days of a valid claim or within the 45 days of investigation unless denied.

C. Failure to make payment without good cause shall result in referral of insurance companies to the Insurance Department for appropriate disciplinary action and may be cause for revocation of the Certificate of Self-Insurance from self-insured employers.

D. If a carrier or self-insurer begins payment of benefits on an investigation basis so as to process the claim in a timely fashion, the later denial of benefits based on newly discovered information shall be allowed.

R568-1-15. Compensation Agreements.

A. An applicant, insurance company, and/or employer may enter into a compensation agreement for the purpose of resolving a worker's compensation claim. Compensation agreements must be approved by the Commission. The compensation agreement must be that contained on Form 019 of the Industrial Commission forms and shall include the following information:

1. Signatures of the parties involved;
2. Form 122 - Employer's First Report of Injury;
3. Form 123 - Physician's Initial Report;
4. Doctor's report of impairment rating;
5. Form 141 - Payment of Benefits Statement.

B. Failure to provide any of the above documentation and forms shall result in the return of the compensation agreement to the carrier or self-insured employer without approval.

R568-1-16. Settlement Agreements.

A. Section 35-1-90, U.C.A., invalidates any agreement which requires an employee to waive his rights. Settlement agreements are appropriate, however, when the parties, in good faith, view the claim as one of doubtful compensability.

B. In determining if a claim is of doubtful compensability, the Commission will look to the facts of the matter and will not be bound by mere recitations in the settlement agreement.

C. The Commission encourages the settlement of disputed claims on an amicable basis whenever possible. If the claim is not of doubtful compensability, the settlement agreement must be open-ended to the extent allowed under the Workers' Compensation Act. Parties will be bound by their agreement to pay and receive a given amount of compensation for a given injury.

D. Settlement agreements involving claims of doubtful compensability shall be subject to approval by the Commission.

E. The agreement shall be final and not subject to further review upon the same facts merely because of subsequent dissatisfaction.

F. The Commission shall suggest a format for use by parties desirous of settling claims of doubtful compensability.

R568-1-17. Permanent Total Disability.

A. The Commission is required under Section 35-1-67, U.C.A., to make a finding of total disability as measured by the substance of the sequential decision-making process of the Social Security Administration under Title 20 of the Code of Federal Regulations, as revised. The use of the term "substance of the sequential decision-making process" is deemed to confer some latitude on the Commission in exercising a degree of discretion in making its findings relative to permanent total disability. The Commission does not interpret the code section to eliminate the requirement that a finding by the Commission in permanent and total disability shall in all cases be tentative and not final until rehabilitation training and/or evaluation has been accomplished.

B. In the event that the Social Security Administration or its designee has made, or is in the process of making, a determination of disability under the foregoing process, the Commission may use this information in lieu of instituting the process on its own behalf.

C. In evaluating industrial claims in which the injured worker has qualified for Social Security disability benefits, the Commission will determine if a significant cause of the disability is the claimant's industrial accident or some other unrelated cause or causes.

D. To make a tentative finding of permanent total disability the Commission shall rely upon and be guided by the rules of disability determination published by the Social Security Administration Office of Disability publication SSA Pub. No. 64-014, as amended. In short, the sequential decision making process referred to requires a series of questions and evaluations to be made in sequence. These are:

1. Is the claimant engaged in a substantial gainful activity?
2. Does the claimant have a medically severe impairment?
3. Does the severe impairment meet or equal the listed impairments in Appendix 1 of SSA Pub. No. 64-014?
4. Does the impairment prevent the claimant from doing his or her previous work?

E. After a tentative finding of permanent total disability, the applicant shall be referred to the Utah State Office of Rehabilitation for evaluation and rehabilitation work-up. If the Utah State Office of Rehabilitation determines that the applicant is unable to do any other work because of his age, education, and previous work experience, and as a result of an industrial accident, there shall be a hearing to review the determination of the Utah State Office of Rehabilitation and any objections thereto, unless the parties waive the right to a hearing.

F. After a hearing, or waiver of the hearing by the parties, the Commission shall issue an order finding or denying permanent total disability based upon the preponderance of the evidence and with due consideration of the vocational factors in combination with the residual functional capacity as detailed in Appendix 2 of SSA Pub. No. 64-014.

R568-1-18. Burial Expenses.

Pursuant to Section 35-1-81, U.C.A., as amended in 1992, if death results from an industrial injury or occupational disease, burial expenses in ordinary

INDUSTRIAL COMMISSION OF UTAH

Case No. 92-861

GREGORY LYNN BIDDLE,	*	
	*	
Applicant,	*	FINDINGS OF FACT
	*	
vs.	*	CONCLUSIONS OF LAW
	*	
W. FRANKLIN STODDARD dba	*	AND ORDER
WATER WELL & EXPLORATION	*	
DRILLING and UNINSURED	*	
EMPLOYERS FUND,	*	
	*	
Defendants.	*	
	*	
* * * * *		

HEARING: Hearing Room 332, Industrial Commission of Utah, 160 East 300 South, Salt Lake City, Utah, on February 3, 1993 at 1:00 o'clock p.m. Said hearing was pursuant to Order and Notice of the Commission.

BEFORE: Barbara Elicerio, Administrative Law Judge.

APPEARANCES: The applicant was present and was represented by Scott F. Squire, Attorney.

The defendant, W. Franklin Stoddard dba Water Well & Exploration Drilling, was represented by Roger F. Baron, Attorney.

The Uninsured Employers Fund was represented by Thomas Sturdy, Attorney.

This case involves a claim for temporary total compensation (TTC), additional medical expenses and permanent impairment benefits (PPI) related to a June 4, 1990 industrial injury. The present adjudication was initiated by an application for hearing filed by the applicant on July 14, 1992. However, the applicant did file an application for hearing regarding the same injury in October of 1990. At that time, the applicant was represented by Gregory Skabelund, Attorney. The prior application for hearing did not result in a hearing, because the matter was settled pursuant to a settlement agreement approved by another ALJ in July of 1991. That agreement involved the payment of a specified sum of medical expenses in exchange for the applicant's agreement to have the action dismissed with prejudice. The more recent application for hearing claims additional medical expenses, as well as compensation

ORDER
RE: GREGORY L. BIDDLE
PAGE 2

(TTC and PPI). The defendant uninsured employer answered the more recent application for hearing indicating that the applicant was barred from claiming additional benefits associated with the June 4, 1990 injury as he had waived his right to further benefits pursuant to the July 1991 agreement. The applicant argues that the prior agreement does not bar him from claiming additional benefits associated with the June 4, 1990 industrial injury.

FINDINGS OF FACT:

The applicant is a male who was 27 years old on the date of injury and who had no dependents then or at this time. The applicant indicates that he was hired by W. F. Stoddard around September of 1989 at a wage rate of \$4.00 plus per hour. Per Stoddard, he became aware that the applicant was available for work through a man he referred to as Mr. Butler. Stoddard cannot recall if he spoke directly to the applicant regarding the terms of his hire, or merely told Butler what to tell the applicant. Per Exhibit A-1 (a chronological listing of the total hours worked by the applicant for Stoddard) the applicant began working for Stoddard on September 20, 1989. Per Exhibit A-1, the applicant worked from then through December 8, 1989, 4 to 6 days per week, averaging around 35 to 40 hours per week. From December 8, 1989 through February of 1990, the applicant did not work and then he began working for Stoddard again in March of 1990, 4 to 6 days per week, averaging around 35 to 40 hours per week until he was injured on June 4, 1990 (per Exhibit A-1). Taking an average of the hours worked per week overall, the average number of hours per week was 38.91 hours. Stoddard testified that he does not agree that Exhibit A-1 is an accurate listing of the hours that the applicant worked for Stoddard, because the hours listed includes travel time to and from the job. Stoddard claims that the wage rate was \$4.00 per hour and nothing more than that.

The applicant stated that he was hired to work on drilling rigs run by Stoddard. Stoddard testified that his business involved drilling water wells for customers who used the wells for agricultural pursuits or domestic water use. The applicant stated that he was expected to work everyday and was available to do this, but that some days there was no work to do and thus he stayed home. Apparently, on most occasions, Stoddard actually drove the applicant to the site where the drilling was going on and then drove the applicant home again at the end of the work day. The applicant stated that Stoddard paid him sporadically when he

ORDER
RE: GREGORY L. BIDDLE
PAGE 3

himself got paid by his clients/customers. In fact, Exhibit A-1 shows that the applicant got infrequent payments of either \$250.00 or \$200.00 from Stoddard, with occasional other payments of smaller odd amounts.

On June 4, 1990, Stoddard was apparently on his way to a regular drilling site with the applicant in his vehicle. Per Stoddard, on the way, he stopped to assist his cousin on a well he was digging in or near Thatcher, Utah. Per Stoddard, he did not expect the applicant to assist him at this site, but he states he did not specifically tell the applicant NOT to assist him. The applicant did assist setting up a drill rig at this site and got his fingers crushed by a pipe doing so around 10:00 A.M. The only medical record that was presented at hearing was a June 8, 1992 office note of a Dr. J. Malouf from Logan Utah. This note indicates that it was the applicant's left middle and ring fingers that were injured in the accident with pseudoarthritis and loss of normal joint architecture in the fingers. The office note indicates that the applicant was unable to perform his normal line of work from June 4, 1990 through October 15, 1990 as a result of the injury. He found that the applicant had an 11% hand permanent impairment resulting from the June 4, 1990 industrial accident. Per the prior settlement agreement, the applicant incurred expenses related to the June 4, 1990 injury at the Western Surgery Center in Logan, Utah, Bear River Valley Hospital in Tremonton, Utah, Logan Regional Hospital in Logan, Utah, with Dr. Malouf and with Mountain West Physical Therapy. At the time of the hearing, the applicant indicated that there were still outstanding balances of \$28.76 at Logan Radiology and \$1,025.71 at Mountain West Physical Therapy.

At the time of the hearing, the defendant uninsured employer argued that: 1) the applicant's claim for additional benefits related to the June 4, 1990 accident was barred due to the prior agreement and 2) that even if that agreement did not bar a further claim, the defendant was not liable to pay any benefits to the applicant as the defendant was not an employer required to cover the applicant's job injuries because: A) the applicant was only a casual employee and thus no coverage was required and/or B) the employer is an agricultural employer per U.C.A. 35-1-42 (3)(a), because the employer's business involved digging wells for agricultural usage.

With respect to the first argument, the ALJ informed the parties at hearing that any agreement that sought to limit the

ORDER
RE: GREGORY L. BIDDLE
PAGE 4

applicant's entitlement to benefits had to be in compliance with the Commission rule R568-1-16 (i.e. the agreement must be one where the parties in good faith believe the claim involved to be one of doubtful compensability). The applicant testified that he agreed to enter into the July 1991 agreement only because the employer was uninsured and he felt he had no recourse because the employer indicated inability to pay the full claim. Also, the applicant testified that his prior attorney told him that they could pursue the employer in civil court for compensation. The applicant indicated that he was unaware that he could have gotten an award of compensation at the Commission. Finally, he stated that he felt the agreement was that the employer would pay all the medical expenses related to the industrial injury and that the \$5,100.00 stated in the agreement was the full amount of all the expenses and not a limit on what the employer was required to pay. The applicant did acknowledge that he knew that the employer was arguing at the time of the prior application for hearing that the employer owed him nothing on his claim.

With respect to the July 1991 agreement, the employer argues that the agreement clearly states that the action would be dismissed with prejudice based on the limited payment of \$5,100.00 in medical expenses. Because the prior application does indicate a claim for compensation in addition to medical expenses, the employer argues that the applicant was waiving this claim for compensation in agreeing to the with-prejudice dismissal. The employer points to the prior answer filed in response to the initial application for hearing. The employer argues that that answer (Exhibit D-1) clearly shows that the employer felt the claim was one of doubtful compensability, because the answer indicates that Stoddard was not an employer due to the casual employment and the agricultural exemptions. Stoddard testified that he understood that the prior agreement settled the applicant's claim in its entirety. Finally, the Uninsured Employers Fund argues that the applicant was not acting as Stoddard's employee when he was injured (because Stoddard was just helping out his cousin at the time) and thus this is an additional reason why the applicant's claim was of doubtful compensability.

With respect to his solvency, Stoddard testified that the only real property that he owns is the property on which his shop is located in Honeyville, Utah. Stoddard testified that he owns this outright and the property is not mortgaged. He indicated that he also owns a couple of trucks outright and some business equipment. Stoddard did not indicate the value of the property,

ORDER
RE: GREGORY L. BIDDLE
PAGE 5

the equipment or the trucks. Stoddard stated that his business is still operating and that it made \$13,000.00 last year. However, he stated that he owes \$800.00 per month in alimony, he has an income tax liability, and that he is still paying on the \$3,000.00 loan that he took out to pay off the applicant's medical expenses. In addition, he stated he had the normal monthly expenses for rent, food and utilities.

CONCLUSIONS OF LAW:

The applicant sustained a compensable industrial injury on June 4, 1990 and his claim is not barred by the prior settlement agreement or any provision in U.C.A. 35-1-42 or 35-1-43. With respect to the prior settlement agreement, the ALJ notes that the Commission rule (R568-1-16) requires that the ALJ is to consider all the facts surrounding the claim in determining whether it was one of doubtful compensability and is not to rely simply on the recitations in the agreement. In this case, the employer relies heavily on the recitation in the agreement with respect to the applicant's agreement to a with-prejudice dismissal. However, the ALJ finds that the employer may have understood what this meant, but the applicant did not. In fact, the applicant felt that he could still pursue compensation, but per his prior attorney's instructions, he felt he needed to do this in another forum. Therefore, the ALJ feels that the agreement's recitation regarding dismissal is not an indication that the applicant understood his claim to be one of disputed validity.

The ALJ also finds that the applicant may have understood that the employer was arguing that he owed the applicant nothing, but did not agree that there was any arguable basis for this. The applicant clearly did not consider his employment to be "casual." The only evidence presented on the issue of when the applicant worked shows he worked 4 to 6 days per week continuously for months at a time doing work that was in the usual course of Stoddard's business. Therefore, there is no basis in fact for the employer's argument that the applicant came under the casual employee exemption found in U.C.A. 35-1-43(1)(b) and the ALJ is not impressed that the applicant could have believed there was any basis in fact for this argument. The applicant also clearly did not consider Stoddard to be an agricultural employer, simply because he dug some wells that were used for agricultural purposes. The ALJ finds that the plain meaning of "agricultural employer" as it is used in U.C.A. 35-1-42(3)(a) is an employer engaged in crop

ORDER
RE: GREGORY L. BIDDLE
PAGE 6

production or possibly animal husbandry, but not an employer who is engaged in the business of digging wells. Therefore, once again, there is no basis in fact for the employer's argument that he was an exempt employer under the statute and for this reason the ALJ cannot believe that the applicant could have believed there was any basis in fact for this argument.

Based on the foregoing, the ALJ feels that there is no legitimate argument that the applicant's claim was one of disputed validity and there is no convincing evidence that the applicant understood his claim to be one of disputed validity. In addition, the agreement itself does not even recite that the applicant was waiving a claim for future benefits associated with the June 4, 1990 industrial injury. The indication that the "action" could be dismissed with prejudice is unclear in reference as to what "action" was being dismissed. Finally, the ALJ finds that the applicant felt he was working his regular job on June 4, 1990 and was never told anything to the contrary. He was not told to remain in the truck and Stoddard allowed him to assist with the work on June 4, 1990. Therefore, any argument that the applicant was acting as a volunteer on June 4, 1990 and was not in the course of his employment is not supportable. The fact that the customer happened to be a relative of Stoddard does not cause the work to be outside Stoddard's normal course of business. Therefore, there is no doubtful compensability based on a course-of-employment argument. Because the ALJ finds that the applicant's claim was not one of questionable compensability and because the ALJ is not convinced that the applicant understood the prior agreement to waive any right to a further claim for compensation related to the June 4, 1990 industrial accident, the ALJ finds the applicant is not barred from claiming additional benefits associated with that accident.

As the ALJ has determined that the outside-the-course-of-employment defense and the defenses with respect to exemption are not sustainable and as no other arguments have been raised with respect to the compensability of the applicant's June 4, 1990 injury, the ALJ finds that injury to be compensable. As the applicant has not waived any right to benefits associated with that accident, he is due the remainder of his medical expenses, TTC and PPI (based on the only medical evidence submitted, Dr. Malouf's June 8, 1992 office note). The remainder of the expenses for Logan Radiology (\$28.76) and Mountain West Physical Therapy (\$1,025.72) need to be paid. In addition, the applicant is due TTC for the 19.143 weeks indicated in Dr. Malouf's office note (June 4, 1990

ORDER
RE: GREGORY L. BIDDLE
PAGE 7

through October 15, 1990) and PPI for 18.48 weeks based on the 11% hand impairment rated by Dr. Malouf (168 weeks for the hand based on U.C.A. 35-1-66 (A)(2)(a) x .11). The applicant's compensation rate is based on an average weekly wage of \$155.60 (\$4.00 per hour x 38.91 hours per week) and computes to \$104.00/week (\$155.60 x .667). This makes the TTC award to be \$1,990.87 (\$104.00 x 19.143 weeks) and the PPI award to be \$1,921.92 (\$104.00 x 18.48 weeks). Attorney fees are based on Commission rule R568-1-7 at 20% of the benefits awarded and amount to \$782.56 (\$1,990.87 + \$1,921.92 = \$3,912.79 x .20).

Although the ALJ is no accountant, per Stoddard's testimony regarding his assets and liabilities, it appears that Stoddard is not in a position to be able to pay the applicant's claim, as his liabilities completely exhaust his income. It is unclear what the value of his real or business property is and thus the ALJ finds that he is unable to pay the applicant's claim, giving rise to the liability of the Uninsured Employers Fund per U.C.A. 35-1-107.

ORDER:

IT IS THEREFORE ORDERED that the Uninsured Employers Fund, pay the applicant, Gregory Biddle, temporary total compensation at the rate of \$104.00 per week, for 19.143 weeks, or a total of \$1,990.87, for the period of medical instability associated with the June 4, 1990 industrial accident, from June 4, 1990 through October 15, 1990. That amount is accrued and due and payable in a lump sum, plus interest at 8% per annum, per U.C.A. 35-1-78, and less attorney fees to be awarded below.

IT IS FURTHER ORDERED that the Uninsured Employers Fund, pay the applicant, Gregory Biddle, permanent impairment benefits, at the rate of \$104.00 per week, for 18.48 weeks, or a total of \$1,921.92, for the 11% hand impairment sustained by the applicant as a result of the June 4, 1990 industrial accident. That amount is accrued and due and payable in a lump sum, plus interest at 8% per annum per U.C.A. 35-1-78.


IT IS FURTHER ORDERED that the Uninsured Employers Fund pay the outstanding medical expenses incurred as the result of the June 4, 1990 industrial accident; said expenses to be paid in accordance with the medical and surgical fee schedule of the Industrial Commission of Utah.

ORDER
RE: GREGORY L. BIDDLE
PAGE 8

IT IS FURTHER ORDERED that the Uninsured Employers Fund pay Scott F. Squire, attorney for the applicant, the sum of \$782.56, plus 20% of the interest payable on the award, for services rendered in this matter, the same to be deducted from the aforesaid award to the applicant, and to be remitted directly to the office of Scott F. Squire.

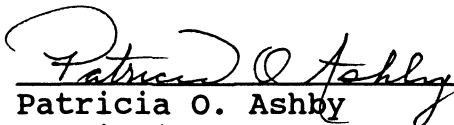
IT IS FURTHER ORDERED that the Uninsured Employers Fund shall retain full reimbursement rights against the uninsured employer, W. Franklin Stoddard dba Water Well and Exploration Drilling, based on the payment ordered herein.

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.

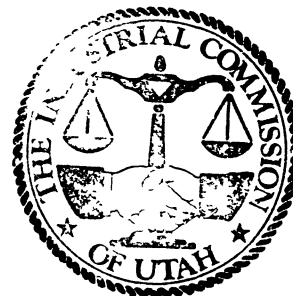


Barbara Elicerio
Administrative Law Judge

Certified by the Industrial Commission
of Utah, Salt Lake City, Utah, this
8th day of March, 1993.
ATTEST:



Patricia O. Ashby
Commission Secretary



INDUSTRIAL COMMISSION OF UTAH
SALT LAKE CITY, UTAH 84114-6600

GREGORY LYNN BIDDLE,

Applicant,

v.

W. FRANKLIN STODDARD dba WATER
WELL & EXPLORATION DRILLING and
UNINSURED EMPLOYERS' FUND,

Respondents.

ORDER GRANTING
IN PART AND
DENYING IN PART
MOTION FOR REVIEW

Case No. 92000861

* * * * *

The Industrial Commission of Utah (Commission) reviews the motion for review of respondent in the above captioned matter, pursuant to Utah Code Annotated, Section 35-1-82.53 and Section 63-46b-12.

The provisions of U.C.A. Sections 35-1-1 et. seq. are applicable in this case.

The order of the administrative law judge (ALJ) is presumed to be lawful and reasonable "until it is found otherwise in an action brought for that purpose, or until altered or revoked by the commission." U.C.A. Section 35-1-20 (1953).

The statutes further provide that:

A substantial compliance with the requirements of this title [Title 35] shall be sufficient to give effect to the orders of the commission, and they shall not be declared inoperative, illegal or void for any omission of a technical nature.

U.C.A. Section 35-1-33 (1953).

The Commission has "the duty ... and ... full power, jurisdiction, and authority to ... administer and enforce all laws for the protection of life, health, safety, and welfare of employees," U.C.A. Section 35-1-16(1)(a)(1953), and to "consider and determine" the matters in issue, U.C.A. Section 35-1-24 (1953).

Additional evidence that the Commission has been granted discretion in its determinations is shown by U.C.A. Section 35-1-88 (1965) which provides:

...The commission may make its investigation in such manner as in its judgment is best calcula-

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ted to ascertain the substantial rights of the parties and to carry out justly the spirit of the Workmen's Compensation Act.

The preceding statute relates to matters at hearings, and shows the extent to which the legislature desired to provide the Commission with the necessary discretion to reach a decision. This statute also provides the authority for the Commission to deviate from common-law rules, statutory rules of evidence, technical or formal rules of procedure, unless provided for in the workers' compensation act, or unless otherwise adopted by Commission rules. Id.

Thus, the statutes expressly and impliedly give the Commission, commensurate with its statutory duty, broad authority and discretion to interpret, construe, consider, and determine the matters before it in the workers' compensation arena.

The respondents filed motions for review asking the commission to review the order of the administrative law judge (ALJ) with regard to the following:

(1) Does the applicant's prior commission approved stipulation which agreed to the dismissal of an earlier application for a hearing bar this application for benefits?

(2) Was the applicant within the course of his employment at the time of the injury?

(3) Was there sufficient proof to establish liability for the uninsured fund?

I. DOES THE APPLICANT'S PRIOR STIPULATION
BAR THE APPLICANT'S CURRENT APPLICATION FOR BENEFITS?

The applicant had an accident on June 4, 1990 in which two fingers on his left hand were crushed while he was helping to assemble a drilling rig. The applicant filed an application for a hearing on October 23, 1990, seeking payment of medical expenses, temporary total compensation and permanent total disability. On July 10, 1991 an order was issued by the commission adopting a stipulation and dismissing the applicant's claim with prejudice. The parties stipulated that:

The parties in the above-entitled action,
hereby stipulate that W. Franklin Stoddard dba
Water Well and Exploration Drilling will pay

Gregory Lynn Biddle
Order
Page three

the medical expenses of the Applicant, Gregory Lynn Biddle, in a sum not to exceed \$5,100. Following said payment, Applicant agrees that this action shall be dismissed with prejudice.

An order appended to the stipulation provided that:

IT IS HEREBY ORDERED that pursuant to the above stipulation, that W. Franklin Stoddard dba Water Well and Exploration Drilling pay all of Applicant's uninsured medical expenses incurred as a result of the industrial accident dated the 4th day of June, 1990 as outlined below up to \$5,100:

The order then listed six medical providers and the amounts to be paid.

Neither the order nor stipulation states that the claim was one of disputed validity, although the stipulation does state that the application is to be dismissed with prejudice.

Under Wilburn v. Interstate Electric, 748 P.2d 582 (Utah App. 1988), the commission must examine the evidence of the intent of the parties at the time of the agreement to determine whether the parties viewed the claim as one of disputed validity. This requirement has been adopted by rule R568-1-16.

The ALJ examined the evidence presented by the parties and found that the applicant's testimony showed that the applicant did not view the claim to be of doubtful compensability at the time he entered into the stipulation. The applicant testified that he agreed to the stipulation because the employer was uninsured and he felt he had no recourse because the employer had indicated that he was unable to pay the entire claim. The applicant also testified that his attorney represented that he could recover the unpaid compensation and disability benefits in an action in district court. Finally, the applicant stated that he believed that the agreement provided that the employer would pay all the medical expenses related to the industrial injury and that the total of those bills was \$5,100.00.

The testimony further showed, and the ALJ found that the employer believed that the settlement resolved the matter entirely. Based upon the above findings of fact, the ALJ concluded that the claim was not one of disputed validity, since the applicant

believed that he had a valid claim and could recover the balance of his award in district court.

It further appears that the agreement contained a mistake of fact with regard to the payment necessary to pay all of the applicant's medical bills, and is voidable. The Workers' Compensation Act provides that "the responsibility for compensation and payment of medical ... expenses .. shall be on the employer and its insurance carrier and not on the employee." U.C.A. § 35-1-45.

Therefore, we find that the stipulation of the parties is not enforceable and, therefore, will not bar to the applicant's claim for additional benefits. We further find that the applicant is not liable for the payment of the medical bills which remain unpaid as a result of the mistake contained in the settlement agreement.

II. WAS THE APPLICANT WITHIN THE COURSE OF HIS
EMPLOYMENT AT THE TIME OF HIS INJURY?

The ALJ found that the applicant was hired by the respondent to work on water well drilling rigs. The applicant believed that he was expected to work everyday unless there was no work. On most days the respondent drove the applicant to the work site in the morning and home at the end of the day. On June 4, 1990, the day of the accident, the men were on their way to a job site when the respondent stopped to assist his cousin in setting up the cousin's rig. The respondent did not expect the applicant to help with this work, but he did not specifically tell the applicant not to help. The applicant did assist in setting up the rig and got his fingers crushed by a pipe around 10:00 a.m..

"Each employee ... who is injured...,by accident arising out of and in the course of his employment, wherever such injury occurred, ... shall be paid compensation for loss sustained on account of the injury.... U.C.A. § 35-1-45 (Supp. 1988). The work the applicant performed on the date of his injury was of the same type that the applicant normally performed for the respondent during the course of his employment. Although the applicant was not ordered to help, he was also not told not to help. According to Professor Larson, "[w]hen any person in some authority directs an employee to run some private errand or do some work outside his normal duties for the private benefit of the employer or superior, an injury in the course of that work is compensable." Larson's Workmen's Compensation Law § 27.41 (1992) [citations omitted]. Further,

...the employer's 'order' need not take the form of an outright command, if in the circumstances the employer's 'suggestion' or

Gregory Lynn Biddle
Order
Page five

even the employee's impression of what is expected of him in serving the interests of his employer or superior, are in fact sufficient to motivate his undertaking the service in question.

Id. at § 27.48 (emphasis added). We believe, based upon the evidence in the record, that under the circumstances, the applicant believed that he was expected to assist in the erection of the drilling rig on the date he was injured. The respondent did nothing to stop or discourage him from helping. We agree with the ALJ that the applicant was within the course of his employment at the time of his injury and, therefore, the injury is compensable.

III. WAS THE EVIDENCE OF RESPONDENT'S INABILITY
TO PAY SUFFICIENT TO ESTABLISH LIABILITY FOR THE
UNINSURED EMPLOYERS' FUND?

The Uninsured Employers' Fund (Fund) asserts that the evidence in the record was insufficient to trigger liability of the Fund. Respondent Stoddard testified that he owns his shop building, some tools and the lot that his shop sits on free and clear. Stoddard did not know what this property was worth. Stoddard also owns a 1962 International Harvester 10 wheel truck with a drilling rig mounted on it and a 1978 1 ton work truck. Stoddard has a Ford 10 wheeler with a drilling rig, which has an outstanding balance owed. Stoddard borrowed \$7,000.00 against the Ford to pay the applicant pursuant to the prior settlement agreement. Stoddard also testified that his net income was \$13,000.00 last year. His monthly obligations included \$800.00 for alimony which is deducted from his income for tax purposes, \$250.00 for income tax, the \$3,000.00 balance on the loan to pay the applicant and food and utility expenses.

The only evidence presented to establish the employer's insolvency was Stoddard's testimony. The testimony was not corroborated by bank statements or tax records, and did not establish the value of Stoddard's primary assets, his shop building and the land upon which it sits. The statute creating the Fund does not address the allocation of the burden of proof of establishing an employer's insolvency.

In the present case, we do not believe that the employer's insolvency was proved by a preponderance of the evidence. Without evidence of the value of the employer's real property or trucks, we cannot determine that Stoddard was insolvent or otherwise unable to pay the award.

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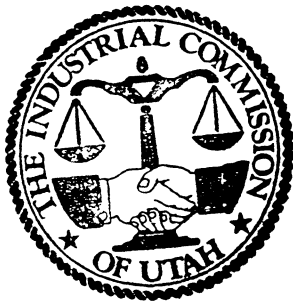
Gregory Lynn Biddle
Order
Page six

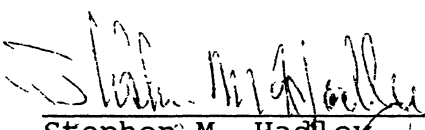
ORDER:

IT IS THEREFORE ORDERED that the Order of the administrative law judge dated March 8, 1993, is affirmed with regard to the rulings that the compensation agreement was not enforceable and that the applicant's injuries arose out of and in the course of his employment.

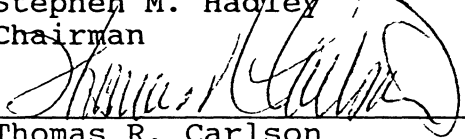
IT IS FURTHER ORDERED that the Order of the administrative law judge which found that the respondent is insolvent is hereby reversed and remanded with instructions that the administrative law judge take additional evidence on the value of the respondent's assets and issue a supplemental order regarding the respondent's solvency and the liability of the Uninsured Employers' Fund.

DATED this 28th day of October, 1993.

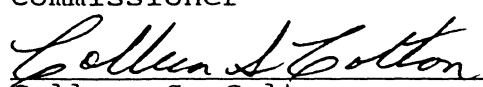




Stephen M. Hadley
Chairman



Thomas R. Carlson
Commissioner



Colleen S. Colton
Commissioner

THE INDUSTRIAL COMMISSION OF UTAH

GREGORY LYNN BIDDLE,

Applicant,

vs.

W. FRANKLIN STODDARD, dba
WATER WELL & EXPLORATION
DRILLING and UNINSURED
EMPLOYERS FUND,

Defendants.

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ORDER DENYING
MOTIONS FOR REVIEW

Case No. 92-0861

The Industrial Commission of Utah has reviewed this matter once before. At that time, the Commission held that Gregory Lynn Biddle was injured in an accident arising out of and in the course of his employment with W. Franklin Stoddard. The Commission also concluded that a prior settlement agreement between Mr. Biddle and Mr. Stoddard did not bar Mr. Biddle from pursuing additional workers' compensation benefits. The Commission remanded this matter to an Administrative Law Judge to determine whether Mr. Stoddard was insolvent, in which case the Uninsured Employers Fund ("UEF" hereafter) would be liable for Mr. Biddle's additional benefits.

Pursuant to the Commission's Order of Remand, the ALJ held an additional hearing on the issue of Mr. Stoddard's solvency and found Mr. Stoddard to be insolvent. Mr. Stoddard and UEF ("the Defendants") then filed their respective Motions For Review, thereby bringing this matter before the Commission once again.

In their Motions For Review, neither Mr. Stoddard nor the UEF challenge the ALJ's conclusion that Mr. Stoddard is insolvent. Instead, they renew the arguments raised in their first set of Motions For Review, that Mr. Biddle's injury is not compensable and that Mr. Biddle's earlier settlement agreement with Mr. Stoddard bars further benefits.

The Commission exercises jurisdiction over these Motion For Review pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. §35-1-82.53 and Utah Admin. Code R568-1-4.M.

FINDINGS OF FACT

The Commission affirms and adopts the findings of fact set forth in the ALJ's decision.

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client
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ORDER DENYING MOTIONS FOR REVIEW
GREGORY LYNN BIDDLE
PAGE TWO

DISCUSSION AND ORDER

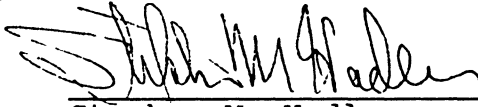
As noted above, neither Mr. Stoddard nor the UEF challenge the ALJ's finding on the issue of Mr. Stoddard's solvency. The Commission therefore adopts the ALJ's finding that Mr. Stoddard is insolvent.

As to Defendant's renewed arguments that Mr. Biddle's injury is not compensable and that Mr. Biddle is bound by his prior settlement agreement, the Commission has already considered those points in its original decision. The Commission hereby reaffirms its prior decision for the reasons stated therein.


In light of the foregoing, the Commission denies Defendants' Motions For Review. It is so ordered.

Dated this 14th day of July, 1994.




Stephen M. Hadley
Chairman


Thomas R. Carlson
Commissioner


Colleen S. Colton
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 by filing a Petition For Review with the Court of Appeals within 30 days of the date of this Order.