

1994

Ivan D. Thompson v. Davis County, Workers Compensation Fund of Utah, and Industrial Commission of Utah : Brief of Petitioner

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

IVAN D. THOMPSON,

Petitioner,

vs.

DAVIS COUNTY, WORKERS COMPENSATION
FUND OF UTAH,
AND INDUSTRIAL COMMISSION OF UTAH,
Respondents.

)
)
) PETITIONER'S BRIEF ON APPEAL
)
) Case Nos. 93-1036 & 93-1037
)
)
) COURT OF APPEALS #940780-CA
)
)
)

IN THE UTAH COURT OF APPEALS

Case No. 940780-CA

PETITIONER'S BRIEF

PETITION FOR REVIEW TO THE UTAH COURT OF APPEALS
FROM THE INDUSTRIAL COMMISSION OF UTAH

ARGUMENT PRIORITY CLASSIFICATION - 7

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FILED

MAY 24 1995

COURT OF APPEALS

IVAN D. THOMPSON,)	
)	
Petitioner,)	PETITIONER'S BRIEF ON APPEAL
)	
vs.)	Case Nos. 93-1036 & 93-1037
)	
DAVIS COUNTY, WORKERS COMPENSATION)	COURT OF APPEALS #940780-CA
FUND OF UTAH,)	
AND INDUSTRIAL COMMISSION OF UTAH,)	
Respondents.)	
)	

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Petitioner's Brief on Appeal

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STATEMENT SHOWING JURISDICTION OF THE COURT OF APPEALS

The statutory authority that confers jurisdiction on this court to decide this appeal is Utah Code Ann. §35-1-86, §63-46b-14(1) and §63-46b-16(1)

STATEMENT OF ISSUES PRESENTED ON APPEAL

The appeal presents the following issues, written in terms and circumstances of the case but without unnecessary detail.

Issue #1. Whether the ALJ and the Commission applied the correct standard of proof on the issue of medical causation. Did the ALJ and the Commission require that medical causation be proved not by a mere preponderance of the evidence but by certainty?

Applicable standard of appellate review:

This question is reviewable under an abuse of discretion standard, that is, whether the agency has abused the discretion delegated by statute to the agency, §63-46b-16 (4)(h)(i), whether the agency's action is contrary to agency past or current practice, §63-46b-16(4)(h)(iii) and (ii), and whether the agency action is arbitrary and capricious, §63-46b-16(4)(h)(iv).

The Utah Supreme Court has held that if the Legislature has by statute granted discretion to an agency to interpret and apply agency specific statutory law and the agency has developed a certain experience and expertise in doing so, an appellate court owes the agency's determinations a certain amount of deference. But the Industrial Commission's interpretation of the operative

provisions of the Workers Compensation Act must be within the limits of reasonableness and rationality. If the Industrial Commission has misconstrued or misapplied the statute or otherwise exceeded the bounds of reasonableness and rationality, the courts have a duty to correct the error. Utah Code Ann. §63-46b-16(4)(d). See Tasters v. Department of Employment Security, 819 P.2d 361 (Utah App. 1991), Robinson v. Department of Employment Security, 827 P.2d 250, 252 (Utah App. 1992), Stokes v. Board of Review, 832 P.2d 56, 58 (Utah App. 1992), Willardson v. Utah Industrial Comm., 856 P.2d 371, 374 (Utah App. 1993) cert. granted, 870 P.2d 957 (Utah 1994), Walls v. Industrial Commission, 857 P.2d 964, 966 (Utah App. 1993).

Issue #2. Whether the ALJ and Commission committed error in determining that Mr. Thompson's evidence as to connections between the presence of chemicals in the workplace, together with Mr. Thompson's use of such chemicals in performing his work, and Mr. Thompson's seizures, did not satisfy the preponderance of the evidence standard. In other words, did the ALJ and the Commission commit error in holding that Mr. Thompson, in trying to prove the causal connection between the presence of and use by Mr. Thompson of chemical agents in the workplace and Mr. Thompson's seizures (or, in the alternative, between Mr. Thompson's pre-existing brain trauma, combined with his exposure to and use of chemicals in the

workplace, and his seizures), did not satisfy the preponderance of the evidence standard?

Applicable standard of appellate review: same as issue #1 above.

Issue #3. Whether the ALJ and the Commission committed error in denying all benefits (even medical expenses) to Mr. Thompson. In other words, did the ALJ and the Commission commit error in determining that even though the medical panel found that the medical care afforded Mr. Thompson was reasonable and justified, Mr. Thompson should still not receive any workers benefits, even payment of medical expenses?

Applicable standard of appellate review: same as issues #1 and #2 above.

DETERMINATIVE STATUTES AND REGULATIONS

Statutes, rules or cases believed to be determinative include: Utah Code Ann. §35-1-45, §35-1-77 and §35-1-81. (Reproduced in Addendum)

STATEMENT OF THE CASE WITH PAGE REFERENCES TO THE RECORD ("R")

This is an appeal from a final agency decision in a Workers Compensation case. The injured worker lost at the agency and hereby appeals to the Court on the ground the agency abused the discretion delegated to it by the Legislature

The facts material to a consideration of the questions presented are as follows:

In 1993, Mr. Thompson was employed as an animal control officer for Davis County. [R1, R2, R65, R129] His work required him to use various chemical agents such as a Chlorox spray to clean and disinfect animal kennels and cages. [R65,66] Chlorox is a solution containing chlorine, a chemical with known toxic properties. [R166]

On June 1, 1993, Mr. Thompson experienced a grand mal seizure. [R66, R129, R162] He suffered this first seizure during work hours and while at work, immediately after using a Chlorox spray to clean and disinfect animal kennels. [R66, R131]

On July 8, 1993, Mr. Thompson experienced a second grand mal seizure. [R66, R129] He suffered this second seizure during work hours, soon after using a Chlorox spray to clean and disinfect animal kennels. [R66, R131]

Mr. Thompson had a few instances of head trauma in his youth. He was involved in boxing in college which on one occasion resulted in a concussion. [R65] A few years later, he hit his head on the door of a truck. [R65] A year before the seizures he, in the course of his work for Davis County Animal Control, was charged by a bull, hit in the chest and knocked to the ground. [R65] He had never suffered a seizure before his first seizure on June 1, 1993. [R129-132] Subsequent to the second seizure he experienced on July 8, 1993, he has not suffered any other seizures.

Davis County terminated Mr. Thompson's employment on August 11, 1993. [R66]

Mr. Thompson's physicians who treated him for the seizures, Dr. Dennis Peterson and then Dr. Roberta Hallquist, attributed both seizures to Mr. Thompson's previous brain trauma plus his exposure to the chemicals present in Mr. Thompson's workplace and used by Mr. Thompson in his particular work duties. [R68, R131, R137, R153, R154, R164, R180]

The Workers Compensation Fund of Utah required Mr. Thompson to submit to an "independent medical examination". [R17] The physician who performed the IME, Dr. Matsuo, of the University of Utah's Neurology Department, did not visit the workplace or perform any tests regarding the use of chemicals by Mr. Thompson in the workplace and merely talked to Mr. Thompson and reviewed the medical records. The IME concluded his evaluation with cautious uncertainty:

It is my understanding that the agent Chlorox (sodium hydrochlorite) is [an] irritant and overexposure would probably be obvious because of local mucosal irritation and possibly upper respiratory symptoms. It does not appear that Mr. Thompson has suffered either acute or chronic symptoms suggestive of such toxic exposure... I am not sure if we have strong reasons to consider neurotoxicity of sodium hydrochlorite (Chlorox) as explanation for the seizures.

(Emphasis added.) [R68, R166-168]

Due to the difference of medical opinion in this matter, the ALJ, following a hearing, appointed a medical panel to provide a

further opinion on the contested issue of medical causation. [R18-34]

This medical panel also only talked to Mr. Thompson and reviewed Mr. Thompson's medical records. [R37-46] The medical panel did not visit the workplace or perform any tests regarding the Mr. Thompson's exposure to or use of chemicals in the workplace. The medical panel did not survey the literature relating to the use of chlorine cleaning agents in the workplace, or otherwise examine the possible connections between the presence and use of chemicals in the workplace and their effect on humans, as Mr. Thompson had suggested they do. The medical panel concluded various factors contributed to the seizures but thought the previous remote instances of brain trauma were more likely the "culprit" than the exposure to chemicals in the workplace which immediately preceded the seizures:

Our conclusion on this is based on an effort to balance various factors that may reasonably be considered as contributory to the occurrence of isolated grand mal seizures. On the one hand, we have the suggestion that one or more of the chemical substances he was exposed to triggered the seizures. It seems quite unlikely that the exposure to the Chlorox solution reached sufficient levels to cause any impact on his cerebral function since there does not appear to have been any of the observed prodromes of significant respiratory distress which ordinarily accompanied even slight exposures to any Chlorox type spray. There is secondly, a significant delay in the occurrence after the last exposure, during which he was apparently able to function well, suggesting there was no acute involvement.

On the other hand, we have a history of a number of other factors which must be considered. The decreased smell function is most commonly an effect of an injury which ruptures the olfactory fibers coming down through the lamina cribrosa beneath the frontal lobes. Although we do not know of a specific injury, this can occur without loss of consciousness or otherwise affect the person in other than loss of olfactory function, especially early in life. Secondly, there is a history of an abnormal ventricle consistent with an injury back in 1988. There is a localized EEG abnormality recorded, which is not likely the result of a diffuse general toxic agent.

There are additional historic events to consider, including the "concussion" in the boxing match when he was in college, sufficient to require emergency room care, and according to his mother, a period when he missed enough school to delay his education. Secondly is the event when he hit his head on the door frame of the vehicle, which was considered sufficient to secure a CT scan at the time. Lastly, there is the slightly low blood sugar noted on arrival at the doctor's office, but this in itself would not have occurred from exposure to the chemicals under consideration. There is a long-standing evidence of asymmetry of the lateral ventricles.

Thus, it appears to the panel in terms of reasonable medical probability these other multiple evidences of impact on the brain were more likely the causative factor than what would have to be an extremely atypical manner of chemical effect on the brain. [R43-44]

Significantly, the medical panel did not address the issue of the effect of historic brain trauma events and the immediate exposure to toxic agents in the workplace acting together or building upon one another.

The medical panel was giving us their best guess. But it remains a guess.

The ALJ determined that "counsel for the applicant has done a commendable job in providing a thorough analysis as to why this case should be decided in favor of the applicant. However, medical causation is lacking, and the weight of medical opinion is contrary to a finding of medical causation." (Emphasis added.) [R69]

By "weight", the ALJ apparently meant the medical panel report because the two treating physicians believed the exposure to the chemicals in the workplace was clearly the most likely causative agent and the IME was equivocal and uncertain. The ALJ placed much more faith in the medical panel's report than it warranted.

Mr. Thompson filed a lengthy Motion for Review for review by the Industrial Commission. [R73-92] On December 2, 1994, the Industrial Commission affirmed the ALJ's decision in a brief opinion without elaboration or meaningful analysis. [R93-96]

SUMMARY OF ARGUMENT

The Administrative Law Judge erred in three critical respects relating to burden of proof, and such errors require a reversal of the ALJ's Order. The Industrial Commission did not thoroughly analyze Mr. Thompson's arguments in his Motion for Review and by its decision denying his Motion for Review compounded the ALJ's errors.

DETAIL OF THE ARGUMENT

Issue #1. The ALJ committed error in requiring certainty in medical causation.

This is a difficult case, factually and legally.

Factually, this case is difficult because the injury is by its very nature, quite mysterious. We are dealing with seizures, which are non-traumatic, totally brain-centered events. There were no eyewitnesses to the seizures other than the person who had the seizures, and that person was not conscious during the seizures and can't tell us a lot about what happened immediately prior to or during the seizures. It is no wonder that identifying the cause or causes of the injury is difficult. Everyone is guessing at what caused the seizures. Several factors, acting cumulatively or in combination, may have caused the seizures. The obvious way to test hypotheses as to causation, namely to replicate the conditions, might seriously injure or kill Mr. Thompson and is thus out of the question.

Legally, this case is difficult because it raises serious questions about the whole concept of causation and the quantum of proof necessary to establish medical causation in cases involving non-traumatic, brain events such as seizures.

A. The ALJ Decision and the Board Affirmance

The Administrative Law Judge determined that the proof Mr. Thompson submitted was simply "insufficient" to establish a medical

connection between Mr. Thompson's work for Davis County Animal Control and his grand mal seizures. [R70]

Mr. Thompson's Motion for Review argued the ALJ had required Mr. Thompson to prove causation in this unique kind of case to a high level of probability or even certainty, thereby applying a too-stringent standard of proof to Mr. Thompson's case. In its decision, the Commission ruled, without any analysis, that "the Commission's review of the ALJ's decision shows that the ALJ applied the correct standard of proof, preponderance of the evidence, to Mr. Thompson's claim." [R94]

This is an incorrect conclusion. The ALJ erroneously assumed that the question of medical causation needed to be answered in absolute terms. This was an incorrect assumption and an abuse of discretion. The law is otherwise. Causation need not be absolute, but may be relative based on natural and reasonable inferences, if the basic facts in the record and common human experience will support such natural and reasonable inferences.

B. Operative Statute, Regulation and Relevant Case Law

Professor Larson, in his treatise, The Law of Workmen's Compensation, §41.32, 41.33(a), recognized this very problem of causation in non-traumatic brain dysfunction cases, and in his work, speaking in the context of occupational diseases, states:

If the employment is attended with unusual germs, poisons, chemicals, fumes, dusts, spores, or similar conditions, the problem of satisfying the distinction [between diseases that are neither accidental nor occupational, but common to mankind and not distinctively associated with employment, and occupational diseases] is not serious. Controverted . . . cases will usually be found to involve, not the definition, but a problem of proof: the question whether these employment conditions in fact produced the disability.

Larson's solution is set forth in § 38.83(e):

Although medical evidence in a particular case may be uncertain or deficient, this will not necessarily bar an award if it is the type of case in which the exertion, taken with other facts, 'raises a natural inference through human experience' of causal contribution.

(Emphasis added.)

This case is the "type of case" in which Mr. Thompson's exposure to known irritants in the workplace immediately prior to his two seizures (which occurred during work hours, and which have never occurred before or after), either alone or together with Mr. Thompson's pre-existing brain condition, does "raise a natural inference through human experience" of a causal connection between his work and his injury.

While something more than a mere logical relationship between the employment and the injury or disease must be shown, Glasrock Home Health Care v. Leiva, 578 So.2d 776 (Fla. Dist. Ct. App. 1991), causation need not be established with absolute certainty. See Jackson v. Greyhound Lines, Inc., 734 S.W.2d 617, 620 (Tenn. 1987):

...[M]edical proof that the injury was caused in the course of the employee's work must not be speculative or so uncertain regarding the cause of the injury that attributing it to the plaintiff's employment would be an arbitrary determination or a mere possibility.... If, however, equivocal medical evidence combined with other evidence supports a finding of causation, such an inference may, nevertheless, be drawn by the trial court under the case law...

(Emphasis added.)

See also Orman v. Williams Sonoma, Inc., 803 S.W.2d 672, 676-77 (Tenn. 1991):

It is entirely appropriate for a trial judge to predicate an award on medical testimony to the effect that a given incident 'could be' the cause of the plaintiff's injury, when he also has before him lay testimony from which it may reasonably be inferred that the incident was in fact the cause of the injury.

Viewing the medical proof ['It seems reasonable that the physicians having greater contact with the Plaintiff would have the advantage and opportunity to provide a more in-depth opinion, if not a more accurate one.'] in combination with the lay testimony ['of the employee and her husband'], we are persuaded that there exists a rational connection between the plaintiff's physical condition and the incident that occurred on September 27, 1985, at the employer's warehouse. We find that the injury arose out of and occurred in the course and scope of the plaintiff's employment. We reiterate the rule that causation need not be established with utmost certainty.

(Emphasis added.)

See also Florida Power Corporation v. Stenholm, 577 So.2d 977, 982-83 (Fla. App. 1st Dist. 1991):

[E]vidence of causation must be shown by something more than it is merely logical that the injury arose out of the claimant's employment, [t]his is not to say that causal relationship requires absolute proof to the exclusion of reasonable inferences.

* * *

[I]n Meehan v. Crowder, the Supreme Court rejected the employer/carrier's contention that causation in that case was based on conjecture, noting that: '[c]onjecture may be said to be supposition without a premise of fact.' [I]n Meehan, the Supreme Court found that the compensation award rested upon an inference of liability which was sustained by the premise of facts to be found, i.e., that the claimant was well immediately preceding the [exposure] and was sick soon after. The court concluded that '[t]he evidence show[ed] a natural sequence of events based on facts from which liability can be inferred.' Id.

Similarly, in Lake v. Irwin Yacht and Marine, the claimant's condition of bronchitis was found to be compensable even though the medical test did not establish the cause of the bronchitis. Rather, causal connection between [the bronchitis] and the employment was found to be shown by the medical testimony to the effect that the claimant's chemical exposure was the most likely cause of the bronchitis based on the claimant's history and the fact that she completely recovered after permanently leaving the employ of Irwin Yacht.

* * *

[T]his court in Wiley held that the reasonable inference of liability therein was supported by the premise of facts to be found, i.e., that the claimant was free of pulmonary difficulties prior to her exposure.... Additionally, her condition improved when she worked for other employers and worsened after she returned to the [former employer's] work environment. Thus, the claimant was exposed to a product which was capable of producing the type of illness which she subsequently developed and the record indicated the existence of 'a natural sequence of events' based on facts from which liability can be inferred.'

(Emphasis added.)

In the instant case, the evidence showed a natural sequence of events based on facts from which liability should have been inferred. The ALJ should have let the natural and reasonable

inferences from the basic facts lead him to a more correct decision.

The case of Peck v. Procter & Gamble, 586 So.2d 714, 717 (La. App. 1991), is similar to the instant case in several respects. In Peck, the plaintiff/employee had several nonwork factors present (such as smoking). He also worked in a setting where he had direct contact with detergents on a daily basis and, at various times during his employment, he was exposed to enzymes used in making some of the detergents. The plaintiff developed respiratory problems and even on one occasion fainted. Plaintiff's physician initially opined that plaintiff had restrictive pulmonary disease which could well be related to his long standing history of dust exposure. After further examination, plaintiff's physician then attributed the pulmonary problems to the fact that he was a chronic smoker. The Defendant's physician evaluated the worker's medical history, examined the worker once and opined that the worker's respiratory problems were most probably caused by his being overweight and his chronic smoking habit. Another physician, at defendant's request, also evaluated the worker's medical history and he too related the worker's condition to his smoking.

The trial court found that the plaintiff had proven by a preponderance of the evidence that there was a causal relationship between his employment and the condition.

The defendant attacked the trial court's decision on grounds of inadequate proof of causation, but the appellate court affirmed:

The trial court was clearly impressed with plaintiff's testimony regarding the nature of his condition and with the testimony indicating that plaintiff's health improved when he was no longer around the enzyme dust.

[T]he plaintiff does not have to prove causal connection to an absolute certainty. It is sufficient that plaintiff establish the cause of his disability by a reasonable probability.

Given this standard of probability, not certainty, the Appellate Court ruled that the totality of the evidence, both lay and medical, provided a reasonable factual basis for its findings.

Thus, in looking at the issue of causation, it is entirely appropriate to consider, in addition to expert medical testimony (invariably from both sides), any factual circumstances which bear on the question of causation, such as the presence or absence of nonwork-related components (which may or may not have contributed to the development of the affliction), the nature and extent of the employee's exposure while employed during work hours or at the workplace and the correlations between the claimant's work history and the development of the affliction, such as whether he had the problem prior to his entry into the workplace and whether the problem continued after he left the workplace.

It is entirely appropriate to draw any and all "natural" or "reasonable" inferences from the facts. See Gay v. J.P. Stevens Co., 339 S.E.2d 490 (N.C. App. 1986).

C. Application to this Case and Discussion

In this case, the ALJ adopted an artificially high and too rigid view of causation.

Because of that, he did not attempt to consider the reasonable inferences which could be drawn from the undisputed facts and instead got tangled up in what the IME physician and medical panel assumed didn't happen (no respiratory distress) instead of concentrating on what did happen. The ALJ concluded medical causation was "lacking" but the ALJ did not give sufficient consideration to the basic facts of when and where the seizures occurred and when and where they did not occur, and did not allow himself to consider the natural and reasonable inferences which could be drawn from those basic facts.

Had the ALJ come to the case with the less rigid, more flexible standard of causation which should be applied in non-traumatic injury cases, he would have drawn those natural and reasonable inferences and found that the facts supported a conclusion consistent with recovery.

In this case, this issue of cause is a mystery, and it is normal to look for clues to solve the mystery. There are, without question, a number of factors which exist in the case - no sense of smell, the boxing incident, the slight concussion in 1988, the

localized EEG abnormality. But what about the causative factors in the workplace?

All of the above listed nonwork-related factors were in existence as of 1988 and 1989. Yet at no time, under any circumstances, until the summer of 1993, did Mr. Thompson suffer a seizure, and he has not suffered any seizure since leaving the workplace. And he suffered not one but two seizures, in relatively short order, both during work hours, both immediately or soon after cleaning the animal kennels with a degreaser and a Chlorox spray.

Mr. Thompson's employment did involve exposure to Chlorox and other chemicals.

Chlorox (chlorine) is a known irritant and dangerous chemical. See, for example, Pittsburgh Bd of Education v. Worker's Comp. Appeal Bd, 529 A.2d 1166 (Pa. 1987).

In this case, there is no dispute that Ivan Thompson's seizures occurred during work hours and soon after he had been exposed to chemicals with known toxic characteristics in the form of an aerosol spray used by him.

This gets him started. See Larson's Law of Workmen's Compensation Law, §38.83(m):

[T]here is something about the occurrence of an injury within the time and space boundaries of employment that gives a substantial head start towards compensability.

On both occasions, when Mr. Thompson did suffer the seizures, it was during work hours, immediately following his work duty of

cleaning the portable kennels, spraying them with the Chlorox solution and exposure to other animal cleaning and treating chemicals in the workplace.

Mr. Thompson's seizures never occurred in any previous workplace or at home or at night or on weekends--they occurred during the day, while he was working for Davis County Animal Control and where he had been using a Chlorox spray and been around other chemicals and just after he left the workplace. The seizures happened not once, but twice, in virtually the same sequence and pattern.

Mr. Thompson's treating physicians, first his family doctor, Dr. Peterson, and then his treating specialist, Dr. Hallquist, believed that Mr. Thompson's exposure to the chlorine agent was the most likely cause of the seizures. [R180]

The seizures have not occurred since July 8, 1993. Admittedly, Mr. Thompson did not return to the workplace after July 8, 1993, and under doctor's orders has carefully avoided exposure to Chlorox, and he has been taking antiseizure medication, etc.--but the fact is, he has been seizure-free since being away from the workplace.

Interestingly, the IME doctor, Dr. Matsuo, was totally uncertain as to causation and the medical panel virtually admitted it was really just guessing as to reasonable probabilities. Yet both agreed that Mr. Thompson should keep himself away from

chemical fumes. Why should he do that if exposure to such fumes was not a likely causative factor?

In this case, the ALJ ignored these natural and reasonable inferences and instead emphasized what presumably didn't happen during the seizures. For example, the ALJ placed some emphasis on the IME and medical panel's "finding" that Mr. Thompson experienced no acute breathing problems prior to the seizures. Whether Mr. Thompson experienced respiratory problems prior to the seizures is a total unknown - (the IME and the medical panel assume he did not but this is entirely an assumption). But the point is this isolated factor should not be given the critical "weight" the ALJ gave this particular "clue." Likewise, whether what happened to Mr. Thompson happened to anybody else (whether coworkers had seizures) is also not dispositive. A seizure is an extremely idiosyncratic event. See Herrera v. Fluor Utah, Inc., 550 P.2d 144, 146.

In this case, questions still exist as to causation. They may always exist. To determine with greater finality the cause of these strange injuries would require Mr. Thompson to subject himself to dangerous testing. See Herrera v. Flour Utah, Inc., 550 P.2d 144 (N.M. App. 1976) at 147:

There was, of course, one way to conclusively determine the cause of the plaintiff's allergy--to expose him to more of the same paint. [The doctors] agreed that the serious dangers to the plaintiff which could result from such a test were not justified by the benefits of knowing

with absolute certainty the cause of the plaintiff's reactions. The law should not require measures which the medical experts decline to take for fear of endangering an individual's health.

(Emphasis added.)

The ALJ faced a difficult call in this case because the central issue of causation involves guesswork, but he should have made reasonable inferences from the fundamental facts as to the similar space and time characteristics of the seizures and the strikingly similar etiology of both seizures. He should have required less than absolute certainty in medical causation.

Had he done so, he would and should have concluded that factors related to the workplace were the predominant causative factor. He could and should have found a rational connection between the workplace and the seizures. He should have come down on the side of allowing benefits rather than denying them. See, generally, Andreason v. Industrial Comm., 98 Utah 551, 558-59, 100 P.2d 202 (Utah 1940):

* * *

There must be a causal connection between his employment, his place of employment, and his illness--something which happened to him in the performance of his duties, or some contact he made at his place of employment while on duty there--which forms the connecting link between his employment and the contraction of the illness.

* * *

But in the present case, the contact with possible carriers [of bacillus enteritidis] is all within the

employment. The disease is uncommon and rare, it is contracted from contact with diseased animals . . . Anderson had such contact at the company plant. It appears affirmatively that he did not have such a contact at any other place. . . . [W]e believe there is only one reasonable inference to be drawn: He contracted the disease in the course of his employment.

(Emphasis added)

The totality of the evidence supports a finding that the connection between the workplace and the seizures is much more than coincidental. The facts support the "natural and reasonable inference" in human experience that the work factors were the predominant or triggering cause of the seizures.

Issue #2. The ALJ committed error in failing to deal with the predisposition/aggravation of a pre-existing condition argument.

Did a unique combination of circumstances come together in such a way as to make Mr. Thompson more susceptible to a seizure and the exposure to chemicals in the workplace push him over the edge? Did nonwork-related factors "prime the pump" so that Mr. Thompson's work in the workplace with the chemicals was just enough to cause him a seizure? See Giles v. Industrial Comm., 692 P.2d 743 (Utah 1984).

The ALJ failed to consider this natural and reasonable inference. Such was an abuse of discretion

A. The ALJ Decision and Board Affirmance

The ALJ, the IME, and especially the medical panel all approached the case in an either/or, all or nothing, manner--the cause of the seizures was either the previous head trauma or it was the exposure to Chlorox, but not both.

In his Motion for Review, Mr. Thompson argued that the ALJ decision failed to address Mr. Thompson's assertion that exposure to disinfecting agents at work may very well have combined with his pre-existing sensitivity to chemicals, thereby resulting in a compensable industrial injury. In its decision, the Industrial Commission, again without any analysis, decided that "While a combination of non-industrial causes can, under some circumstances, combine to produce a compensable injury, it is necessary for the applicant to establish such circumstances by a preponderance of the evidence. Mr. Thompson has failed to do so in this case." [R94]

This was an incorrect conclusion. Mr. Thompson did establish such circumstances by a preponderance of the evidence. He established all of his past brain trauma. He established all of the space and time characteristics of the Seizures. The ALJ, the IME and the medical panel did not analyze the possibility of the two general possible causes acting together, that is, of the idea that Mr. Thompson's lack of a sense of smell and his history of a few past instances of head trauma may have predisposed him to

seizures and that exposure to chemicals in the workplace could have pushed him "over the edge."

B. Operative Statute, Regulation and Case Law

The law, however, is clear that if a workman, in the course of his work, accidentally sustains an injury, the injury is compensable even though such injury would not have occurred had not the employee been predisposed to such an injury through some pre-existing physical defect or condition. A claimant with a pre-existing condition must, of course, prove a later injury is "medically" the result of an exertion or exposure that occurred during a work-related activity and not solely the result of a pre-existing condition.

In other words, a claimant with a pre-existing condition must show that the employment contributed something substantial to increase the risk he already faced in everyday life because of his condition. Thus, situations that accelerate, aggravate or "light up" pre-existing conditions and contribute to the subsequent onset of symptoms of an injury or disease are compensable.

In cases involving exposure to chemical agents courts have been willing to view such exposure as a triggering cause to lower a person's dysfunction threshold already lowered by other factors. Admittedly, these cases have analyzed the problem in the context of occupational diseases.

In Cain v. Guyton, 340 S.E.2d 501, 504-505 (N.C. App. 1986), the plaintiff suffered from pre-existing chronic obstructive pulmonary disease attributable to his smoking cigarettes, his prior work for a prior employer in a setting which exposed him to cotton dust, and his employment in a furniture factory where he was exposed to dangerous fumes. The plaintiff then worked for a new employer as a "battery buster." He then developed a serious lung disease. Faced with the question of whether his work as a battery buster aggravated his lung disease, the court held that an exposure which proximately augmented the disease to any extent, however slight, would qualify as a significant causal factor in the development of the disease and entitle the plaintiff to compensation. The administrative agency had held:

[B]ecause plaintiff's lungs were hyperactive and already affected by cotton dust exposure, wood dust exposure, and furniture glue fumes exposure, it is more likely that the sulfuric acid fumes from the battery busting aggravated and accelerated the lung disease . . .

The employer appealed, arguing insufficient proof of causation. The reviewing court affirmed:

The doctor's testimony that the acid fumes are a respiratory irritant, along with testimony that plaintiff often inhaled those fumes, is sufficient to establish a causal relationship with plaintiff's obstructive lung disease.

Likewise, in Carawan v. Carolina Tel. & Tel. Co., 340 S.E.2d 506, 508-10 (N.C. App. 1986), the plaintiff had a peculiar susceptibility to an insecticide which the employer regularly

sprayed in its building as part of routine building maintenance. The employee eventually developed allergic contact dermatitis. The employer asserted that the conditions and causes which led to plaintiff's disability were not peculiar to a particular trade, occupation or employment because the insecticide was used by the plaintiff in her home and by the supermarket where she shopped. (Plaintiff did not experience the same reaction at home or at the supermarket where she shopped.)

The court disagreed and held that issue of whether a worker has a greater exposure to a substance on the job than does the public generally should be analyzed by whether it is because of the nature of the substance itself and whether the concentrations of the substance in the workplace may be greater than concentrations to which the public generally is exposed. Accordingly, the court found the evidence revealed that plaintiff was exposed to a greater concentration of the chemical than the general public because of the frequency of exposure, the amount of exposure, and the constant close physical proximity to the sprayed area:

The evidence permitted the Commission to find and conclude that the form and quantity of her exposure to chlorpyrifos caused her to contract a compensable occupational disease.

The court also noted that a condition peculiar to the workplace which accelerates the progress of an occupational disease to such

an extent that the disease finally causes the worker's incapacity should be compensable.

See also Robinson v. Saif, 717 P.2d 1202, 1205-06 (Or. App. 1986), where plaintiff had been exposed outside of work to formaldehyde, phenol and hydrocarbons, and then began to work in a furniture store where new furniture (which gives off such fumes) was uncrated every week. The employee began to experience headaches, dizziness and fatigue:

The difficulty in this case is that claimant has become sensitized to chemicals that are present throughout the environment . . . In this case, we must analyze the degree or quantum of exposure to the offending chemicals on and off the job to determine compensability. When viewed as a cause of her sensitivity, we find the claimant's exposure off the job was not substantially the same as her exposure on the job . . . the evidence supports the finding that the concentrations were significantly higher on the job.

. . . She experienced symptoms when working in the showroom but found relief when working in the well-ventilated warehouse or resting at home. These factors support the conclusion that work was the major contributing cause of the disease.

This case presents conflicting medical evidence from three doctors who specialize in allergies. . . . In the absence of countervailing considerations, we accord more weight to the opinions of the treating physicians. . . .

[A] claimant must prove that the conditions at work were the major contributing cause of the disability. . . . Although the specific chemical cause of claimant's sensitivity is not conclusively established, she has shown by a preponderance of the evidence that the major contributing cause was her work environment at Struthers, which exposed her to concentrations of chemicals much greater than she was ordinarily exposed to outside the course of employment. (Emphasis added)

See also Jarrett v. Industrial Commission of Illinois, 511 N.E.2d 144, 153-56 (Ill. App. 1987) in which an employee worked with large blocks containing phenothiazine (used by the agricultural industry to destroy worms). After several months of exposure, he developed dizziness, headaches and then experienced a seizure. The evidence was that he had never experienced any of the symptoms before, and had no history of seizure disorders.

The Commission found that claimant's condition of ill-being was causally related to his exposure to the hazards of an occupational disease; . . .

On April 8, 1986, on administrative review, the trial court found that the Commission's decision was against the manifest weight of the evidence because claimant 'clearly failed to show any causal connection between the alleged seizure activity and exposure to phenothiazine while in the employ' of Staley.

On appeal, claimant contends that the trial court erred in reversing the decision of the Commission because it was not against the manifest weight of the evidence.

. . . A disease is deemed to have arisen out of the employment if it is apparent to the rational mind, upon consideration of all the circumstances, that a causal connection exists between the conditions under which the work is performed and the occupational disease. . . . Claimant's seizure disorder is an occupational disease under the Act if his exposure to phenothiazine creates a risk of contracting the disease which is greater than the risk to the general public. . . .

The court upheld the Commission's finding that a causal connection existed between claimant's work condition and his seizure.

See Judge Learned Hand's opinion in Grain Handling Co. v. Sweeney, 102 F.2d 464 (2nd Cir. 1939): (discussing the issue in the context of an occupational disease):

I can see no reason for limiting the protected class to those who have a normal resistance to such diseases, or for excluding those who are abnormally vulnerable.

See, generally, Tintic Milling Co. v. Industrial Comm., 60 Utah 14, 206 P.278 (Utah 1922) (inhalation of gas in the workplace); Willardson v. Industrial Commission, 216 Utah Adv. Rep. 12 (Utah App. 1993).

C. Application to this Case and Discussion

In this case, the ALJ, the IME and the medical panel did not really consider the possible combination of factors working together. Each looked at the problem as being one factor or the other factor, not both interacting. The ALJ, looking at it in an all-or-nothing fashion, missed the big picture.

The ALJ's Order clearly reflects that the ALJ never really considered the question of whether various factors, coming together or acting together, served as a trigger to induce the seizures. That, however, is probably the most logical scenario. See Dr. Peterson's letter of September 3, 1993, to the Worker's Compensation Fund of Utah:

In his initial episode he presented confused, soaking wet with recent amnesia and without trauma. It was inferred from this that he probably had had a seizure but that it had been possibly provoked by chasing animals through a recently sprayed field or some other kind of

exposure. As far as irritants that may have contributed to that first episode, Dr. Halquist, the neurology specialist who has consulted on the case, felt that chlorine from using Chlorox in the standard way for cleansing the cages that he uses in his truck, etc., could make a significant contribution towards setting off an irritable focus.

The second episode was also on a day where he had been using chlorine extensively and, again, it is felt to be a contributing factor.

The patient had had at least one concussion prior to his employment with D.C.A.C. and had one during an encounter with a young bull when he was knocked flat and hospitalized with multiple contusions. Dr. Halquist felt that these probably were significant in establishing a scarred or irritated focus later exacerable by environmental exposure, fatigue, etc.

Hence, my hindsight would lend credence to the scenario that Ivan's confirmed seizure disorder is triggered into action by some of the chemical used in his employment along with other usual trigger factors such as fatigue, hunger, etc.

In the instant case, upon consideration of all the circumstances, it "should be apparent to the rational mind" that a causal connection exists between the activities or exposures required in the workplace and the seizures. Mr. Thompson suffered

seizures during the workday soon after being exposed to the workplace chemicals. He had never suffered seizures before. He has not suffered them since.

It is a well-settled principle of Utah worker's compensation case law that if there is any doubt respecting right to compensation (and in this case there will always be doubt), such doubt should be resolved in favor of the injured worker and recovery, not against the injured worker and against recovery. M&K Corp. v. Industrial Comm., 112 Utah 488, 189 P.2d 132 (Utah 1948).

Issue #3. The ALJ committed error in denying all worker's compensation benefits.

A. The ALJ Decision and the Board Affirmance

As mentioned before, both Mr. Thompson's family doctor, Dr. Peterson, and then the specialist who treated him, Dr. Hallquist, both strongly suspected that his work activities, especially the exposure to the chlorine diluted spray, had caused the seizures.
[R180]

The treating doctors acted on that basis and provided Mr. Thompson with the medical care for which Mr. Thompson is seeking compensation.

The medical panel, who were asked the question of whether the medical treatment was reasonable and justified, concluded that "because of the circumstances in which the seizures occurred" (that is, during work hours and immediately after performing the function

of cleaning the kennel with the Chlorox spray and not at any other time or after doing anything else) that the medical care was reasonable and that "the medical care was justified." [R44-45]

Yet the ALJ denied all worker's compensation benefits. [R70]

In his Motion for Review, Mr. Thompson argued the ALJ erred in denying all workers' compensation benefits. [R73-95] In its decision, the Commission responded: "In effect, Mr. Thompson suggests that the ALJ should have awarded medical expenses to Mr. Thompson, despite the ALJ's conclusion that Mr. Thompson did not suffer a compensable injury. The Commission finds no merit to this contention. Medical benefits under the Workers' Compensation Act are limited to payment for medical expenses necessary to care for an industrial injury. Here, there was no industrial injury." [R94]

B. Operative Statute, Regulation and Case Law

The Commission has the right and the power to make decisions in disputed cases which would be in the interest of justice.

See generally Kennecott Copper Corp. v. Industrial Commission, 597 P.2d 875 (Utah 1979).

C. Application to this Case and Discussion

If, as in this case, the treating physicians, the IME and the medical panel concluded it was entirely necessary and reasonable to provide an injured employee with medical care (indeed, DeAnn Hess, Mr. Thompson's supervisor, ordered the ambulance after the second

seizure, without obtaining Mr. Thompson's approval) and that Mr. Thompson should continue to avoid contact with chemicals such as Chlorox, and if the ALJ adopted the medical panel's findings, the Commission should at least have considered ordering the carrier to pay medical expenses even though it could have decided not to require Mr. Thompson be paid any other compensation under Utah Code Ann. § 35-1-45.

In other words, in light of the treating physicians' diagnoses and treatment (and consequential medical expenses), and the medical panel's conclusions, it would have been in the interest of justice for the Commission to order the insurance carrier to pay such sums as were necessary to treat the patient and the Commission's failure to do so is an abdication of the role as regulator of the Utah workplace.

CONCLUSION CONTAINING A STATEMENT OF THE RELIEF SOUGHT

Mr. Thompson's testimony as to the facts of exposure to chemicals in the workplace, his testimony as to the time and space characteristics of the seizures, and the remarkable similarity in the pattern of both seizures, along with the opinions of his treating physicians, Dr. Peterson and Dr. Hallquist, is more than sufficient to support a natural, reasonable, inference that there is a rational connection between the workplace and the seizures, at least to the extent of supporting payment of his medical expenses.

The weight of medical evidence was consistent with recovery.

The ALJ should have so decided and his failure to do was an abuse of discretion. The Commission's affirmance was likewise an abuse of discretion. The ALJ was influenced to an extraordinary and improper degree by two issues raised by the IME & medical panel.

(1) The previous instances of relatively minor head trauma suffered by Mr. Thompson.

It is not disputed that years earlier Mr. Thompson had had a slight concussion, and that several years before he hit his head on a truck door . But those experiences never resulted in seizures. Why would they, suddenly, several years later, cause two seizures, only a few weeks apart, in June & July, 1993, during work hours and immediately after performing the same work duties? Is it not a natural or reasonable inference that those previous instances of head trauma were not a cause or, if a cause, only a remote cause of the seizures? That is what his treating physicians concluded. [R131, R137, R153, R154, R164, R180] The ALJ and the Commission should have reached the same conclusion.

(2) That Mr. Thompson experienced no respiratory distress, or other normal indicia of acute exposure, immediately prior to the seizures. [R47]

It is not disputed that Mr. Thompson has no sense of smell. There is little support in the record either for or against the proposition that he did not experience any of the normal indicia of acute chlorine exposure. Mr. Thompson doesn't know what happened seconds before the seizures. Nobody will ever know. The ALJ and the Commission should have given weight to Mr. Thompson's testimony, the treating physicians opinions, and the fundamental similarity between the work conditions preceding the seizures. Instead, the ALJ and the Commission based a conclusion on an assumption that Mr. Thompson, who has no sense of smell, did not experience respiratory difficulties. Yet this assumption is without any support one way or the other. The ALJ and the Commission thereby failed to exercise its discretion with respect to Mr. Thompson and his predicament in a manner consistent with its obligation.

Had the ALJ not made the errors he made in analyzing the question of causation, he and the Commission would have reached a much different conclusion.

The Court should resolve the doubts in this case in favor of compensation.

Dated this 24th day of May, 1995.

ROMNEY & CONDIE

By 
David J. Holdsworth
Attorney for Petitioner

ADDENDUM

- (1) Dr. Peterson's summary statement and conclusion to Workers Compensation Fund of Utah.
- (2) Dr. Hallquist's summary statement and conclusion to Workers Compensation Fund of Utah.
- (3) The Agency Decision sought to be reviewed.
- (4) The Decision of the Board of Review.
- (5) Determinative sections from Workers Compensation Statute.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing PETITIONER'S BRIEF ON APPEAL was placed in the United States mail, postage prepaid, in Salt Lake City, Utah, this 24th day of May, 1995, addressed to the following:

Alan Hennebold, General Counsel
Industrial Commission of Utah
P.O. Box 146615
Salt Lake City, UT 84114-6615

(2 copies)

Ivan Thompson
857 West 1700 North
West Bountiful, Utah 84087

Erie V. Boorman
Employer's Reinsurance Fund
P. O. Box 146611
Salt Lake, City, UT 84114

(2 copies)

Mark Dean
Workers Compensation Fund of Utah
392 East 6400 South
P.O. Box 57929
Salt Lake City, UT 84157-0929

(2 copies)

Rand Holcomb

FAMILY PHYSICIANS ASSOC. P.C.
Dennis R. Peterson, M.D., D.A.B.F.P.

415 SOUTH MEDICAL DRIVE
BOUNTIFUL, UTAH 84010

Telephone 292-7251

September 3, 1993

Workers Compensation Fund of Utah
P.O. Box 57929
Salt Lake City, Utah 84157

Re: Mr. Ivan Thompson
Davis County Animal Control

9317431-D4

Gentlemen,

Mr. Thompson has called me and asked me to bring you up to date on the development of his situation.

In his initial episode he presented confused, soaking wet with recent amnesia and without trauma. It was inferred from this that he probably had had a seizure but that it had been possibly provoked by chasing animals through a recently sprayed field or some other kind of exposure. As far as irritants that may have contributed to that first episode, Dr. Holquist, the neurology specialist who has consulted on the case, felt that chlorine from using Chlorox in the standard way for cleansing the cages that he uses in his truck, etc., could make a significant contribution towards setting off an irritable focus.

The second episode was also on a day where he had been using chlorine extensively and, again, it is felt to be a contributing factor.

The patient had had at least one concussion prior to his employment with D.C.A.C. and had one during an encounter with a young bull when he was knocked flat and hospitalized with multiple contusions. Dr. Holquist felt that these probably were significant in establishing a scarred or irritated focus later exacerbable by environmental exposure, fatigue, etc.

Hence, my hindsight would lend credence to the scenario that Ivan's confirmed seizure disorder is triggered into action by some of the chemical used in his employments along with other usual trigger factors such as fatigue, hunger, etc.

We have explained to him that he cannot drive and is not going to be able to perform any of the major components of his previous position for at least several months and have recommended that he be retrained for other kinds of positions. I will be happy to answer any questions you may have.

Sincerely,



Dennis R. Peterson, M.D.

Roberta R. Hallquist, M.D., F.C.
Board Certified in Adult Neurology

September 17, 1993

Mr. Rod Peterson, Adjuster
392 East 6400 South
P.O. Box 57929
Salt Lake City, Utah 84157-0929

Re: Ivan D. Thompson

Dear Mr. Peterson:

Mr. Ivan Thompson has been under my neurologic care since July 8, 1993. He suffered two generalized tonic-clonic seizures, post-traumatic variety, related to a remote concussion from a boxing injury in his teens, and an indirect head trauma due to being jarred or charged by a bull a year ago at work, plus occupational exposure to chlorine, and other chemical exposure on the work place. He has been maintained on anticonvulsant therapy with Dilantin, and has had an abnormal EEG. The patient has not been released for his usual work or light duty. His condition may be permanent, but if he should remain seizure free for one two years on anticonvulsant therapy and has a normal sleep deprived EEG, there is a chance that he could come off anticonvulsant therapy, although this would still give him as much as a ten percent probability that his seizures might recur off anticonvulsant therapy despite a normal sleep deprived EEG at two years seizure-free.

I think it is never going to be in his best interest to be working in an environment where he is exposed to toxic chemicals. In addition to this, he has had to undergo an otolaryngologic evaluation for a possible neoplasm in his right frontal sinus that requires surgical exploration and removal. He is unable to drive and is to avoid heights, heavy or small machinery, tub baths, and swimming.

Sincerely,

Roberta R. Hallquist, M.D.
Roberta R. Hallquist, M.D.

RRH/ch

7-6-94
Titled

INDUSTRIAL COMMISSION OF UTAH

Case No. 93-1036

IVAN D. THOMPSON,	*	
	*	
Applicant,	*	
	*	FINDINGS OF FACT
vs.	*	
	*	CONCLUSIONS OF LAW
DAVIS COUNTY and/or WORKERS	*	
COMPENSATION FUND OF UTAH,	*	AND ORDER
and/or EMPLOYERS' REINSURANCE	*	
FUND OF UTAH,	*	
	*	
Defendants.	*	
	*	
* * * * *		

HEARING: Hearing Room 332, Industrial Commission of Utah,
160 East 300 South, Salt Lake City, Utah on
February 2, 1994 at 3:00 o'clock p.m. pursuant to
Order and Notice of the Commission.

BEFORE: Benjamin A. Sims, Administrative Law Judge.

APPEARANCES: The applicant, Ivan B. Thompson, was present and
represented by David A. Holdsworth, Attorney at
Law.

The defendant employer, Davis County, and its
insurer, the Workers Compensation Fund of Utah,
were represented by Mark Dean, Attorney at Law.

The Employers' Reinsurance Fund was represented by
Erie V. Boorman, Attorney at Law.

STATEMENT OF THE CASE:

This hearing was initially scheduled for December 12, 1993.
The applicant underwent surgery, and upon his request and the
concurrence of the Workers Compensation Fund of Utah (WCF), the
hearing was delayed until February 2, 1994.

The preliminary findings of fact, and the proposed questions
for the medical panel were sent to the parties on February 17, 1994
allowing them 15 days to make objections. The applicant proposed
some changes to the preliminary findings and instructions to the
medical panel, and where the requested changes were not
inconsistent with the facts as determined from the hearing, the
proposed changes were made. After receipt of the medical films and
X-rays, the case was referred to the medical panel on March 4,
1994, and the medical panel report was received by the Commission
on June 9, 1994.

IVAN D. THOMPSON
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On June 9, 1994, the medical panel report was sent to the parties with instructions to reply not later than the close-of-business on June 24, 1994. Objections were received from the applicant by fax on June 24, 1994. No objections were received from the defendants.

The objections from the applicant to the medical panel report have been reviewed.

FINDINGS OF FACT:

1. The applicant, Ivan D. Thompson, at the time of the alleged injuries on June 1, 1993 and July 8, 1993, was employed by Davis County Animal Control.

2. The applicant had the following work and educational experiences: From 1981-83 he attended college; from 1983-85 he served and completed a mission for the Church of Jesus Christ of Latter-day Saints; in 1985 he returned home and thereafter in 1986-87 he worked for the California Protection Agency; in 1988-89 he worked for Beehive Clothing as a preshrink material fabric operator; in 1990 he worked for Sysco Intermountain Foods, and in 1991 he went to work for Davis County as an animal control officer.

3. As an animal control officer, the applicant picked up animals; answered emergency calls in relation to animals; helped return livestock; sold animal licenses, and performed other related duties.

4. In 1982 while attending college the applicant sustained a head injury while boxing in a fund-raiser when he was knocked "silly," and was hospitalized overnight. He was told by medical personnel that he had suffered a concussion.

5. In 1988 the applicant suffered another concussion when he was loading a washing machine into a pickup truck and hit his head on the crest of the door. He went to the emergency room on the same day.

6. The applicant has no sense of smell (anosmia).

7. After working for a short time as an animal control officer prior to the alleged injuries related to the instant claim, a large animal described as a bull, cow, or calf, depending on which witness was testifying, knocked the applicant to the ground. He experienced pain in his chest, and he was in the hospital overnight.

8. Among the applicant's duties was the task to pick up animals. Depending on the size of the animal, the applicant would

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place the critter into a kennel which was approximately the following dimensions: one foot by one foot by one foot (which was called a "cat" kennel), or three feet by two feet and one half foot by two and one half feet (dog kennel), or a three feet by three feet by four feet (large dog kennel). The applicant would then take the portable kennel, and place it in the bed of his pickup truck which has a covered shell on the back of a pickup truck.

9. The applicant would drive his pickup into the garage facility which was described as "large enough to house a dump truck." The applicant would take the portable kennel out of his pickup truck, and place it on the floor of the garage. If the animal was a dog, the leash used to restrain the animal would be dropped into a bucket containing Parvo disinfectant, a disinfectant for parvovirus. The last step in the process of handling the animal would be for the applicant to spray the portable dog kennel with a solution of Clorox and water. The Clorox was mixed to a solution containing 30 parts of water to one part of Clorox. The applicant described the Clorox as the same as that which can be bought at any grocery store.

10. The clorox spray typically took from 30 seconds to one minute per kennel and the applicant would have to spray anywhere from two to six kennels per day. A typical day included only two kennels.

11. On June 1, 1993, the applicant cleaned his portable kennel before going back into the field. He sprayed it with water, used a scrub brush, and the Clorox water spray. He got into his truck, but does not remember anything after that. The applicant's next recollection was when he saw his wife that afternoon. He experienced tongue pain at which time he went to his doctor. The applicant was "soaking wet from the waist down," and had some green vegetation resembling moss on his pants.

12. At that time the applicant was admitted to the hospital and was kept there for three days. Thereafter he returned to work on June 22, 1993.

13. On July 8, 1993, the applicant picked up a dog and then cleaned his kennel with the water and clorox. He went home for lunch. The applicant next remembered that "the paramedics came through the back door." He looked down and saw vomit on the floor. He was placed in an ambulance, and was taken to Lakeview Hospital in Bountiful.

14. The Parvicide is an antiviral agent used to kill a virus (Parvo) which is exclusive to dogs.

15. The Clorox solution was mixed by a maintenance worker and

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was contained in a portable weed sprayer. The kennels would be sprayed in the garage, and would be left to air dry. The animal control officer would then take a dry kennel, and put it into his truck.

16. The sprayer was marked as to the correct amount of Clorox which should be used in preparation of the clorox/water mixture.

17. The facilities were inspected regularly by the Humane Society of Utah to insure that all substances in use would not be injurious to animals, in the event the animals stood in the liquids.

18. Other chemicals used by the animal control facilities, but not by the other officers or the applicant, was Excidor, a degreaser used by maintenance personnel. The degreaser was used to remove grease excreted by dogs. Also previously used was Lemonfect which was the officers to disinfect kennels prior to the use of the clorox solution.

19. Mr. Thompson was under various stresses during the time he was employed as an animal control officer. He had recently sold his home; he was residing with in-laws; and, he was trying to re-finance a home. The employer was also causing pressure on the applicant for not producing or performing up to her standards. The record indicates that the applicant was having trouble with his license sales.

20. There was no evidence presented that Davis County sprayed insect spray or other contaminants around the animal control facility within several days prior to the applicant's industrial incidents. The evidence shows that mosquito spray was not used within the zone in which the applicant would have expected to be working.

21. The Weber County Crime Lab found no trace of any poisonous chemicals on the pants that the applicant was wearing at the time of admission to the hospital on July 8. This investigation was performed in response to an allegation that perhaps the applicant had been poisoned by someone who was "out to get him" for some unspecified reason.

22. On June 22, 1993, the applicant was depressed and withdrawn. He indicated that he was tired and ready to collapse.

23. The applicant was terminated on August 13, 1993, from his position because the employer thought that he was "dishonest," and had embellished many of his problems.

24. No other employee has ever had any adverse reaction to

IVAN D. THOMPSON
ORDER
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the chemicals at the facility.

25. Dr. Roberta Hallquist, a physician at the Lakeview Hospital, determined over a period of time that the applicant had experienced grand mal seizures as a result of the applicant's exposure to the Clorox solution and other chemicals used at his employment. Dr. Hallquist prescribed Dilantin for the applicant.

26. Dr. Fumizuke Matsuo from the University of Utah Department of Neurology evaluated the applicant and his medical records and radiological study reports, but was not able to review the applicant's original films. Dr. Matsuo concluded that "it does not appear that Mr. Thompson" had suffered either acute or chronic symptoms suggesting a toxic exposure." He was not sure if he had any strong reasons to consider neuro-toxicity of sodium hypochlorite as an explanation for the applicant's seizures, although he indicated that it would appear prudent to manage Mr. Thompson's seizure disorder as a condition of unknown etiology. He further agreed with Dr. Hallquist's decision to place the applicant on an anti-epileptic drug. Dr. Matsuo concluded that reevaluation in one year was recommended and that the applicant could come off phenytoin if Mr. Thompson remained without recurrent symptoms. With regard to the contribution of the Clorox solution (sodium hypochlorite), he did not feel that there was any strong reason to consider that solution as a toxic substance.

27. The medical panel consisted of Dr. Rawlins (toxicologist) and Dr. Thomas (neurologist and chair). The panel met on May 17, 1994, reviewed the file and history, and examined the applicant as well as discussed the applicant's problems with the applicant's wife.

28. The panel concluded in terms of reasonable medical probability the following:

a. There is not a medically demonstrable causal connection between the applicant's 1 June 1993 and 8 July 1993 grand mal seizures and his work as an animal control officer in Davis County during 1991 through 1993.

b. The applicant's seizure problem consisted of two highly probable grand mal seizures.

c. The applicant did not have a nonwork-related disability which was affected by his Davis County work.

d. The medical care which the applicant received since 1 June 1993 was not necessitated by exposure to chemicals while working for Davis County during the relevant periods.

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e. There is no future medical care which can reasonably be expected to be necessitated by the applicant's exposure.

f. The applicant does not appear to have any permanent impairment except for the anosmia and the seizure disorder, both of which are considered nonindustrial.

29. The judge adopts the findings of the medical panel as his own.

DISCUSSION:

Counsel for the applicant has done a commendable job in providing a thorough analysis as to why this case should be decided in favor of the applicant. However, medical causation is lacking, and the weight of the medical opinion is contrary to a finding of medical causation.

The medical panel as well as Dr. Matsuo concluded that it was unlikely that the exposure to the Clorox solution was sufficient to cause any impact on the applicant's cerebral function. There were none of the normal prodromes of significant respiratory distress which ordinarily accompany even slight exposure to any Clorox type spray. Additionally, there was a significant delay in the occurrence of a seizure after the last exposure. During this delay, the applicant was apparently able to function well which suggested to the medical panel that there was no acute involvement.

In the absence of major noticeable respiratory distress, it is not reasonable for there to be any continuing effects of the Clorox type exposure on a cumulative basis. Also, there is no indication that exposure to other agents including the detergent and the Parvosol could have produced a convulsive seizure.

There are other clues unrelated to the applicant's work at Davis County which predated his employment with Davis County and are likely the causative factors. These are noted by the medical panel to be:

a. The likelihood of an injury which ruptured the olfactory fibers as they came down through the lamina cribrosa beneath the frontal lobes of the brain. The evidence shows that the applicant's anosmia predated his work at Davis County.

b. There is history of an abnormal ventricle consistent with an injury back in 1988. A localized EEG abnormality is recorded which is not likely the result of a diffuse general toxic agent.

c. The applicant had a concussion in a boxing match

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while in college sufficient to require emergency room care, and sufficient to require him to miss a period of school.

d. He hit his head on the door frame of his vehicle. This was severe enough to cause him to obtain a CT scan at the time.

e. His low blood sugar noted during one of his seizures would not have occurred from exposure to the chemicals.

f. There is long standing evidence of asymmetry of the lateral ventricles of the brain.

g. The suggestion that his anosmia might have allowed him to have a greater exposure is negated by his intolerance to even minimal exposures to gasoline, paint, or to the Clorox.

The applicant was exposed to small household and laundry type concentrations of Clorox. There was no evidence that any other members of the Davis County animal control section ever became ill as a result of the exposures.

Under such circumstances, it has not been shown to a preponderance that the seizures were medically caused by the work at Davis County, and this case must therefore be dismissed.

CONCLUSIONS OF LAW:

There is insufficient evidence to show that Ivan D. Thompson's grand mal seizures which occurred on June 1, 1993 and July 8, 1993 arose out of and in the course of exposure to Clorox and other chemicals related to his employment for Davis County.

ORDER:

IT IS HEREBY ORDERED THAT the claims of Ivan D. Thompson for worker's compensation benefits based upon exposure to Clorox and other chemicals used while employed by Davis County, allegedly resulting in grand mal seizures on June 1, 1993 and July 8, 1993, are hereby dismissed with prejudice.

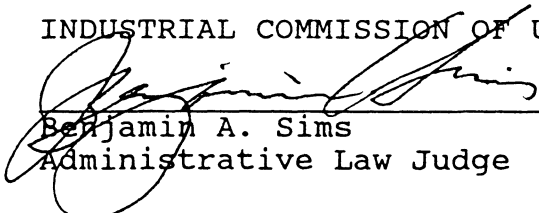
IT IS FURTHER ORDERED that any Motion for Review of the foregoing shall be filed in writing within thirty (30) days of the date hereof, specifying in detail the particular errors and objections, and, unless so filed, this Order shall be final and not subject to review or appeal. In the event a Motion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

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with the Commission in accordance with U.C.A. Section 63-46b-12(2).

DATED THIS 5 day of July 1994.

INDUSTRIAL COMMISSION OF UTAH



Benjamin A. Sims
Administrative Law Judge

CERTIFICATE OF MAILING

I hereby certify that on the 5 day of July 1994, the attached ORDER in the case of Ivan D. Thompson was mailed, postage prepaid to the following persons at the following addresses:

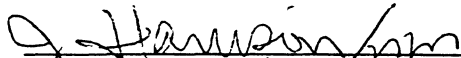
Ivan Thompson
595 N 800 W
W Bountiful UT 84087

David J. Holdsworth, Atty
185 S State #500
Salt Lake City UT 84111

Mark Dean, Atty
The Workers Compensation Fund of Utah (Drop Box)

Erie V. Boorman, Atty
The Employers' Reinsurance Fund

INDUSTRIAL COMMISSION OF UTAH



June S. Harrison, Paralegal
Adjudication Division

/jsh

ORD\THOMPSON

THE INDUSTRIAL COMMISSION OF UTAH

IVAN D. THOMPSON

Applicant,

vs.

DAVIS COUNTY and WORKERS
COMPENSATION FUND OF UTAH,

Defendants.

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ORDER DENYING
MOTION FOR REVIEW

Case Nos. 93-1036
and 93-1037

Ivan D. Thompson seeks review of an Administrative Law Judge's Order which denied Mr. Thompson's claim for compensation under the Utah Workers' Compensation Act.

The Industrial Commission of Utah exercises jurisdiction over this 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 adopts the findings of fact set forth in the ALJ's decision. In summary, Mr. Thompson worked as an animal control officer for Davis County. His employment required that he use various disinfecting agents to clean animal cages.

On June 1 and again on July 8, 1993, Mr. Thompson experienced grand mal seizures while at work. Dr. Hallquist, Mr. Thompson's treating physician, attributed such seizures to Mr. Thompson's exposure to the disinfecting agents used at his work. Dr. Matsuo, from the University of Utah's Neurology Department, concluded that Mr. Thompson's seizures were not caused by the disinfecting agents.

Due to the difference of medical opinion in this matter, the ALJ appointed a medical panel which reviewed Mr. Thompson's records and examining Mr. Thompson himself. The panel found no causal connection between Mr. Thompson's seizures and the disinfecting agents used at his work.

ORDER DENYING MOTION FOR REVIEW
IVAN D. THOMPSON
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Based on the medical panel's report, the ALJ concluded Mr. Thompson had failed to establish that his work caused his seizures. The ALJ therefore denied Mr. Thompson's claim for workers' compensation benefits.

DISCUSSION AND CONCLUSIONS OF LAW

The Utah Workers' Compensation Act requires payment of compensation and medical benefits to workers injured by accident arising out of and in the course of employment. It is the obligation of the worker claiming such benefits to establish a causal connection between work and injury. In this case, the ALJ concluded Mr. Thompson had failed to prove a causal relationship between his work and his injuries.

Mr. Thompson's Motion For Review alleges the ALJ required Mr. Thompson to prove causation "to a certainty," thereby applying a too-stringent standard of proof on Mr. Thompson. However, the Commission's review of the ALJ's decision shows that the ALJ applied the correct standard of proof, preponderance of the evidence, to Mr. Thompson's claim.

Mr. Thompson also contends the ALJ's decision failed to address Mr. Thompson's assertion that exposure to disinfecting agents at work may have combined with his preexisting sensitivity to chemicals, thereby resulting in a compensable industrial injury. While a combination of nonindustrial and industrial causes can, under some circumstances, combine to produce a compensable injury, it is necessary for the applicant to establish such circumstances by a preponderance of the evidence. Mr. Thompson has failed to do so in this case.

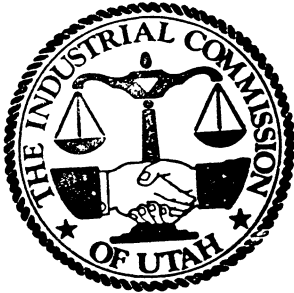
Finally, Mr. Thompson alleges the ALJ erred in denying all workers' compensation benefits. In effect, Mr. Thompson suggests that the ALJ should have awarded medical expenses to Mr. Thompson, despite the ALJ's conclusion that Mr. Thompson did not suffer a compensable injury. The Commission finds no merit to this contention. Medical benefits under the Workers' Compensation Act are limited to payment for medical expenses necessary to care for an industrial injury. Here, there was no industrial injury.

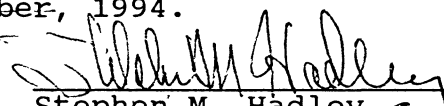
ORDER DENYING MOTION FOR REVIEW
IVAN D. THOMPSON
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ORDER

The Commission affirms the decision of the ALJ and dismisses Mr. Thompson's Motion For Review. It is so ordered.

Dated this 2nd ^{December} day of November, 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 to the Utah Court of Appeals by filing a Petition For Review with that Court within 30 days of the date of this Order.

ORDER DENYING MOTION FOR REVIEW
IVAN D. THOMPSON
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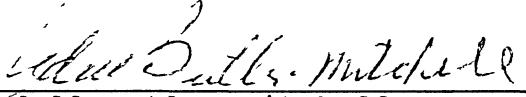
CERTIFICATION OF MAILING

I certify that a copy of the foregoing Order Denying Motion For Review in the matter of Ivan D. Thompson, Case No.s 93-1036 and 93-1037, was mailed, first class, postage prepaid, this 22nd day of December, 1994, to the following:

DAVID J. HOLDSWORTH
ROMNEY & CONDIE
185 SOUTH STATE STREET, SUITE 500
SALT LAKE CITY, UTAH 84111

ERIE V. BOORMAN
EMPLOYER'S REINSURANCE FUND
P O BOX 146611
SALT LAKE CITY, UTAH

MARK DEAN
WORKERS COMPENSATION FUND OF UTAH
392 EAST 6400 SOUTH
P O BOX 57929
SALT LAKE CITY, UTAH 84157-0929


Adell Butler-Mitchell
Support Specialist
Industrial Commission of Utah

64-13-19, except as required by federal statute or regulation. 1993

35-1-44. Definition of terms.

The following terms as used in this title shall be construed as follows:

(1) "Average weekly earnings" means the average weekly earnings arrived at by the rules provided in Section 35-1-75.

(2) "Award" means the finding or decision of the commission as to the amount of compensation due any injured, or the dependents of any deceased, employee.

(3) "Compensation" means the payments and benefits provided for in this title.

(4) "Disability" means becoming medically impaired as to function. Disability can be total or partial, temporary or permanent, industrial or nonindustrial.

(5) "General order" means an order applying generally throughout the state to all persons, employments, or places of employment of a class under the jurisdiction of the commission. All other orders of the commission shall be considered special orders.

(6) "Impairment" is a purely medical condition reflecting any anatomical or functional abnormality or loss. Impairment may be either temporary or permanent, industrial or nonindustrial.

(7) "Order" means any decision, rule, regulation, direction, requirement or standard of the commission, or any other determination arrived at, or decision made, by the commission.

(8) (a) "Personal injury by accident arising out of and in the course of employment" includes any injury caused by the willful act of a third person directed against an employee because of his employment.

(b) The term does not include a disease, except as the disease results from the injury.

(9) "Safe" and "safety," as applied to any employment or place of employment, means the freedom from danger to the life, health, or welfare of employees reasonably permitted by the nature of the employment.

(10) "Welfare" means comfort, decency, and moral well-being. 1991

35-1-45. Compensation for industrial accidents to be paid.

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. 1988

35-1-46. Employers to secure workers' compensation benefits for employees — Methods — Failure — Notice — Injunction — Violation.

(1) Employers, including counties, cities, towns, and school districts, shall secure the payment of workers' compensation benefits for their employees:

(a) by insuring, and keeping insured, the payment of this compensation with the Workers' Compensation Fund of Utah, which payments shall commence within 30 days after any final award by the commission;

(b) by insuring, and keeping insured, the payment of this compensation with any stock corporation or mutual association authorized to transact the business of workers' compensation insurance in this state, which payments shall commence within 30 days after any final award by the commission; or

(c) by furnishing annually to the commission satisfactory proof of financial ability to pay direct compensation in the amount, in the manner, and when due as provided for in this title, which payments shall commence within 30 days after any final award by the commission. In these cases the commission may in its discretion require the deposit of acceptable security, indemnity, or bond to secure the payment of compensation liabilities as they are incurred, and may at any time change or modify its findings of fact herein provided for, if in its judgment this action is necessary or desirable to secure or assure a strict compliance with all the provisions of law relating to the payment of compensation and the furnishing of medical, nurse, and hospital services, medicines, and burial expenses to injured employees and to the dependents of killed employees. The commission may in proper cases revoke any employer's privilege as a self-insurer.

(2) The commission is authorized and empowered to maintain a suit in any court of the state to enjoin any employer, within the provisions of this chapter, from further operation of the employer's business, where the employer has failed to provide for the payment of benefits in one of the three ways provided in this section. Upon a showing of failure to so provide, the court shall enjoin the further operation of the employer's business until the payment of these benefits has been secured by the employer as required by this section. The court may enjoin the employer without requiring bond from the commission.

(3) If the commission has reason to believe that an employer of one or more employees is conducting a business without securing the payment of compensation in one of the three ways provided in this section, the commission may give such employer five days' written notice by registered mail of such noncompliance and if the employer within said period does not remedy such default, the commission may file suit as provided in this section and the court is empowered, ex parte, to issue without bond a temporary injunction restraining the further operation of the employer's business. 1989

35-1-46.10. Notice of noncompliance to employer — Enforcement power of commission — Penalty.

(1) In addition to the remedies specified in Section 35-1-46, if the commission has reason to believe that an employer of one or more employees is conducting business without securing the payment of benefits in one of the three ways provided in Section 35-1-46, the commission may give that employer written notice of the noncompliance by certified mail to the last known address of the employer.

(2) If the employer does not remedy the default within 15 days after delivery of this notice, the commission may issue an order requiring the employer to appear before the commission and show cause why

benefit of all the dependents, as may be determined by the commission, which may apportion the benefits among the dependents in such manner as it deems just and equitable. Payment to a dependent subsequent in right may be made, if the commission deems it proper, and shall operate to discharge all other claims therefor. The dependents, or persons to whom benefits are paid, shall apply the same to the use of the several beneficiaries thereof in compliance with the finding and direction of the commission. In all cases of death where the dependents are a surviving spouse and one or more minor children, it shall be sufficient for the widow or widower to make application to the commission on behalf of that individual and the minor children, and in cases where all of the dependents are minors, the application shall be made by the guardian or next friend of such minor dependents. The commission may, for the purpose of protecting the rights and interests of any minor dependents it deems incapable of doing so, provide a method of safeguarding any payments due them. Should any dependent of a deceased employee die during the period covered by such weekly payments, the right of such dependent to compensation under this title shall cease. Should a surviving spouse, who is a dependent of a deceased employee and who is receiving the benefits of this title remarry, that individual's sole right after such remarriage, to further payments of compensation shall be the right to receive in a lump sum the balance of the weekly compensation payments unpaid from the time of remarriage to the end of six years or 312 weeks from the date of the injury from which death resulted, but in no event shall such amount exceed 52 weeks of compensation at the weekly compensation rate the surviving spouse was receiving at the time of such remarriage. If there are other dependents remaining at the time of remarriage, benefits payable under this title shall be paid to such person as the commission may determine, for the use and benefit of the other dependents, the weekly benefits to be paid at intervals of not less than four weeks. 1977

35-1-74. Increase of award to children and dependent spouse — Effect of death, marriage, majority, or termination of dependency of children — Death, divorce, or remarriage of spouse.

In all cases where an award is made to, or increased because of a dependent spouse or dependent minor child or children, as provided in this title, such award or increase in amount of the award shall cease at the death, marriage, attainment of the age of eighteen years, or termination of dependency of such minor child or children or upon the death, divorce or remarriage of the spouse of the employee, subject to those provisions relative to the remarriage of a spouse as provided in Section 35-1-73. 1979

35-1-75. Average weekly wage — Basis of computation.

(1) Except as otherwise provided in this act, the average weekly wage of the injured employee at the time of the injury shall be taken as the basis upon which to compute the weekly compensation rate and shall be determined as follows:

(a) If at the time of the injury the wages are fixed by the year, the average weekly wage shall be that yearly wage divided by 52.

(b) If at the time of the injury the wages are fixed by the month, the average weekly wage shall be that monthly wage divided by $4\frac{1}{3}$.

(c) If at the time of the injury the wages are fixed by the week, that amount shall be the average weekly wage.

(d) If at the time of the injury the wages are fixed by the day, the weekly wage shall be determined by multiplying the daily wage by the number of days and fraction of days in the week during which the employee under a contract of hire was working at the time of the accident, or would have worked if the accident had not intervened. In no case shall the daily wage be multiplied by less than three for the purpose of determining the weekly wage.

(e) If at the time of the injury the wages are fixed by the hour, the average weekly wage shall be determined by multiplying the hourly rate by the number of hours the employee would have worked for the week if the accident had not intervened. In no case shall the hourly wage be multiplied by less than 20 for the purpose of determining the weekly wage.

(f) If at the time of the injury the hourly wage has not been fixed or cannot be ascertained, the wage for the purpose of calculating compensation shall be the usual wage for similar services where those services are rendered by paid employees.

(g) (i) If at the time of the injury the wages are fixed by the output of the employee, the average weekly wage shall be the wage most favorable to the employee computed by dividing by 13 the wages, not including overtime or premium pay, of the employee earned through that employer in the first, second, third, or fourth period of 13 consecutive calendar weeks in the 52 weeks immediately preceding the injury.

(ii) If the employee has been employed by that employer less than 13 calendar weeks immediately preceding the injury, his average weekly wage shall be computed as under Subsection (1)(g)(i), presuming the wages, not including overtime or premium pay, to be the amount he would have earned had he been so employed for the full 13 calendar weeks immediately preceding the injury and had worked, when work was available to other employees, in a similar occupation.

(2) If none of the methods in Subsection (1) will fairly determine the average weekly wage in a particular case, the commission shall use such other method as will, based on the facts presented, fairly determine the employee's average weekly wage.

(3) When the average weekly wage of the injured employee at the time of the injury is determined as in this section provided, it shall be taken as the basis upon which to compute the weekly compensation rate. After the weekly compensation has been computed, it shall be rounded to the nearest dollar. 1994

35-1-76. Likelihood of increase to be considered.

If it is established that the injured employee was of such age and experience when injured that under natural conditions his wages would be expected to increase, that fact may be considered in arriving at his average weekly wage. 1953

35-1-77. Medical panel — Medical director or medical consultants — Discretionary authority of commission to refer case — Findings and reports — Objections to report — Hearing — Expenses.

(1) (a) Upon the filing of a claim for compensation for injury by accident, or for death, arising out of

and in the course of employment, and if the employer or its insurance carrier denies liability, the commission may refer the medical aspects of the case to a medical panel appointed by the commission

(b) When a claim for compensation based upon disability or death due to an occupational disease is filed with the commission, the commission shall, except upon stipulation of all parties, appoint an impartial medical panel

(c) A medical panel shall consist of one or more physicians specializing in the treatment of the disease or condition involved in the claim

(d) As an alternative method of obtaining an impartial medical evaluation of the medical aspects of a controverted case, the commission may employ a medical director or medical consultants on a full-time or part-time basis for the purpose of evaluating the medical evidence and advising the commission with respect to its ultimate fact-finding responsibility. If all parties agree to the use of a medical director or medical consultants, they shall be allowed to function in the same manner and under the same procedures as required of a medical panel

(2) (a) The medical panel, medical director, or medical consultants shall make such study, take such X-rays, and perform such tests, including post-mortem examinations if authorized by the commission, as it may determine to be necessary or desirable

(b) The medical panel, medical director, or medical consultants shall make a report in writing to the commission in a form prescribed by the commission, and also make such additional findings as the commission may require. In occupational disease cases, the panel shall certify to the commission the extent, if any, of the disability of the claimant from performing work for remuneration or profit, and whether the sole cause of the disability or death, in the opinion of the panel, results from the occupational disease and whether any other causes have aggravated, prolonged, accelerated, or in any way contributed to the disability or death, and if so, the extent in percentage to which the other causes have so contributed

(c) The commission shall promptly distribute full copies of the report to the applicant, the employer, and its insurance carrier by certified mail with return receipt requested. Within 15 days after the report is deposited in the United States post office, the applicant, the employer, or its insurance carrier may file with the commission written objections to the report. If no written objections are filed within that period, the report is considered admitted in evidence

(d) The commission may base its finding and decision on the report of the panel, medical director, or medical consultants, but is not bound by the report if other substantial conflicting evidence in the case supports a contrary finding

(e) If objections to the report are filed, the commission may set the case for hearing to determine the facts and issues involved. At the hearing, any party so desiring may request the commission to have the chairman of the medical panel, the medical director, or the medical consultants present at the hearing for examination and cross-examination. For good cause shown, the commission may order other members of the panel, with or without the chairman or the medi-

cal director or medical consultants, to be present at the hearing for examination and cross-examination

(f) The written report of the panel, medical director, or medical consultants may be received as an exhibit at the hearing, but may not be considered as evidence in the case except as far as it is sustained by the testimony admitted

(g) The expenses of the study and report of the medical panel, medical director, or medical consultants and the expenses of their appearance before the commission shall be paid out of the Employers' Reinsurance Fund 1994

35-1-78. Continuing jurisdiction of commission to modify award — Authority to destroy records — Interest on award — No authority to change statutes of limitation.

(1) The powers and jurisdiction of the commission over each case shall be continuing. The commission, after notice and hearing, may from time to time modify or change its former findings and orders. Records pertaining to cases that have been closed and inactive for ten years, other than cases of total permanent disability or cases in which a claim has been filed as in Section 35-1-98, may be destroyed at the discretion of the commission

(2) Awards made by the Industrial Commission shall include interest at the rate of 8% per annum from the date when each benefit payment would have otherwise become due and payable

(3) (a) This section may not be interpreted as modifying in any respect the statutes of limitations contained in other sections of this chapter or Title 35, Chapter 2, Utah Occupational Disease Act

(b) The commission has no power to change the statutes of limitation referred to in Subsection (3)(a) in any respect 1994

35-1-79. Lump-sum payments.

The commission, under special circumstances and when the same is deemed advisable, may commute periodical benefits to one or more lump-sum payments 1953

35-1-80. Compensation exempt from execution.

Compensation before payment shall be exempt from all claims of creditors, and from attachment or execution, and shall be paid only to employees or their dependents 1953

35-1-81. Awards — Medical, nursing, hospital and burial expenses — Artificial means and appliances.

(1) In addition to the compensation provided in this chapter the employer or the insurance carrier shall pay reasonable sums for medical, nurse, and hospital services, for medicines, and for artificial means, appliances, and prostheses necessary to treat the injured employee

(2) If death results from the injury, the employer or the insurance carrier shall pay the burial expenses in ordinary cases as established by rule

(3) If a compensable accident results in the breaking of or loss of an employee's artificial means or appliance including eyeglasses, the employer or insurance carrier shall provide a replacement of the artificial means or appliance

(4) The commission may require the employer or insurance carrier to maintain the artificial means or appliances or provide the employee with a replace-