

1995

Reva Brunson v. Industrial Commission of Utah, Stouffer Foods Corp. and/or Travelers Insurance : Reply Brief

Utah Court of Appeals

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Wayne A. Freestone; Parker, Freestone, Angerhofer & Harding. Attorney for Petitioner/Appellant.
Steven J. Aeschbacher; Ray, Quinney & Nebeker; Attorney for Respondent/Appellee.

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 950198 CA

UTAH COURT OF APPEALS

REVA BRUNSON,

Petitioner,

vs.

INDUSTRIAL COMMISSION OF UTAH,
STOUFFER FOODS CORP. and/or
TRAVELERS INSURANCE,

Respondent.

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Appeal No. 950198-CA

Priority No. 7

REPLY BRIEF OF PETITIONER/APPELLANT REVA BRUNSON
FOR PETITION FOR REVIEW

Attorney for
RESPONDENT/APPELLEE

Steven Aeschbacher
RAY, QUINNEY & NEBEKER
79 South Main
P.O. Box 45385
Salt Lake City, Utah 84145-0385

Attorney for
PETITIONER/APPELLANT

Wayne A. Freestone
PARKER, FREESTONE,
ANGERHOFER & HARDING
50 West 300 South, #900
Salt Lake City, Utah 84101

FILED

OCT 25 1995

COURT OF APPEALS

UTAH COURT OF APPEALS

REVA BRUNSON,	*	
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	*	
Petitioner,	*	
	*	
vs.	*	
	*	Appeal No. <u>950198-CA</u>
INDUSTRIAL COMMISSION OF UTAH,	*	
STOUFFER FOODS CORP. and/or	*	
TRAVELERS INSURANCE,	*	Priority No. <u>7</u>
	*	
Respondent.	*	
	*	

REPLY BRIEF OF PETITIONER/APPELLANT REVA BRUNSON
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Attorney for
RESPONDENT/APPELLEE

Steven Aeschbacher
RAY, QUINNEY & NEBEKER
79 South Main
P.O. Box 45385
Salt Lake City, Utah 84145-0385

Attorney for
PETITIONER/APPELLANT

Wayne A. Freestone
PARKER, FREESTONE,
ANGERHOFER & HARDING
50 West 300 South, #900
Salt Lake City, Utah 84101

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SUMMARY OF ARGUMENT

The Respondent asserts that the Petitioner failed to marshal the evidence because she did not point out all of the evidence in favor of the Commission's decision and demonstrate why it did not support the Commission Conclusion. The Petitioner set forth all of the Administrative Law Judge's and Commissions' Findings in Support of its decision in her brief. Thus, the petitioner marshalled all of the evidence.

Secondly, The Respondent argues that there was indeed substantial evidence to support the Commission's decision. However, there was in fact, very little, much less, "substantial" evidence to support the Commissions finding of no medical causation.

Third, the respondent argues that legal causation was not established and consequently the Petitioner is not entitled to benefits. Petitioner did in fact establish legal causation. However, the Commission did not make a finding or ruling on the establishment of legal causation, but merely found that no medical causation was proven.

DETAIL OF ARGUMENT

I. Petitioner properly challenged the Commission's Order Denying her Motion for Review.

The Petitioner did marshal the evidence. In her appellate

brief she set forth all of the Findings of Fact by the Administrative Law Judge, adopted by the Industrial Commission, in support of the Administrative Law Judge's decision that no medical causation was established. If Respondent is arguing that the petitioner should have gone through the record and speculated as to what the Administrative Law Judge would consider as evidence supporting his decision, even though he choose not to set it forth in his Findings of Fact, then Respondent is in error. Petitioner went through each of the Administrative Law Judge Findings in Support of his conclusion and discussed those at length in her Appeal Brief. Consequently, Petitioner has marshalled all of the evidence that the Administrative Law Judge used in arriving at his decision.

It is the Petitioner's contention that when all of the Findings of Fact that were considered by the Administrative Law Judge and set forth by the Administrative Law Judge are marshalled, they do not constitute a reasonable basis by which the Administrative Law Judge could have arrived at his decision that there was no medical causation. In fact, as is evident by the lack of any reference to Dr. Colvert and Dr. Egbert's letters, the Administrative Law Judge failed to consider substantial credible evidence in arriving at his conclusion. As indicated in those letters, the language used by those doctors were not "conjecture"

but was set forth in terms of medical probability.

Respondent's claim that because the petitioner could not afford and did not provide a transcript of the hearing that her appeal must fail. Respondent's cite Rules of Appellate Procedure, Rule 11(e)(2) which states:

If the appellant intends to urge on appeal that a finding or conclusion is unsupported by or contrary to the evidence, the appellant shall include in the record of transcript of all evidence relevant to such finding or conclusion.

The Petitioner's contention is simply that the Administrative Law Judge and the Industrial Commission failed to adequately consider competent credible evidence set forth by Dr. Colvert and Dr. Egbert's medical opinions when rendering his decision. A transcript of the hearing would not have shed any light upon the opinions of these doctors. Their opinions were not mentioned nor dealt with in the hearing before the Administrative Law Judge, but were considered as a portion of the medical records exhibit. Consequently, Respondent's argument is not relevant to these proceedings.

II. The Commission's Order denying Brunson's Motion For Review should be overturned because it is not supported by substantial evidence.

The Respondents' argue that the Commission did in fact consider the evidence in the record and specifically evaluated a statement from Petitioner's doctors. The Respondent also states

that the Commission judged them to be of little consequence and within its discretion properly gave them little weight. However, the Respondent does not mention how it came to this conclusion. The Commissions' Findings are woefully inadequate on this subject. They simply take a couple of selective sentences out of each letter and then come to the conclusion that the petitioner did not establish that her fainting and injury resulted from her employment. (See Addendum F Page 1)

Respondent, in its Brief specifically points to words used by the Petitioner's doctors such as "probably" and "most likely" as somehow indicating speculation. However, as pointed out in the Petitioner's Brief on appeal, according to AMA terms set forth by the American Medical Association Guide To Permanent Impairment, those words are used to establish medical probability.

III. The Commission made no finding of no legal causation.

The Respondent argues that the Petitioner did not challenge the Commissions' Finding of no legal causation and consequently her appeal must fail. A review of the Commission's Order Denying Motion For Review, discloses that although the commission mentions that legal causation must be established, it does not make a finding that legal causation was not established in this case. In fact, on page 2 of the Commissions' Order, it states that the focus of this case is on the requirement of medical causation. (Addendum

F page 2). Nevertheless, Petitioner did argue that legal causation was established. (See page 12 and 13 of petitioner's brief). The Petitioner is appealing the order of the Industrial Commission denying her Motion For Review, not the Order of the Administrative Law Judge.

CONCLUSION

Based upon on the fore-going, the Petitioner respectfully requests that the Court grant her Petition For Review and overturn the Order of the Industrial Commission. The preponderance of the medical evidence clearly indicates medical causation. The letters of her doctors were stated in terms of medical probability and were completely disregarded by the Administrative Law Judge. They were only given inadequate consideration by the Industrial Commission. Thus, the Conclusion of the Industrial Commission that there was no medical causation disregarded competent credible medical evidence supporting the medical causation.

A transcript in this matter would not have assisted in the determination of the whether or not the Administrative Law Judge disregarded the competent credible evidence of Petitioner's doctors letters, and consequently were not required.

There was no finding by the Industrial Commission that the Petitioner failed to establish legal causation and consequently was not an issue to be raised upon appeal.

DATED this 25 day of October, 1995.



WAYNE A. FREESTONE
Attorney for Applicant

CERTIFICATE OF MAILING

I hereby certify that on 25 day of October 1995, I caused to be mailed by First-Class Mail, postage pre-paid, a true and correct copy of the foregoing Reply Brief of Petitioner/Appellant Reva Brunson to the following:

Steven Aeschbacher, Esq.
RAY, QUINNEY & NEBEKER
79 South Main
Salt Lake City, Utah 84145-0385

Industrial Commission of Utah
Adjudication Division
160 East 300 South, 3rd Floor
P.O. Box 146615
Salt Lake City, Utah 84114-6615


