

2006

James Hall v. Utah Labor Commission, Consolidated Freightways and/or Fidelity and Guarantee Insurance : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

JAMES HALL,

Appellant,

vs.

UTAH LABOR COMMISSION,
CONSOLIDATED FREIGHTWAYS
and/or FIDELITY & GUARANTEE
INSURANCE,

Appellees.

Appellate Case No.: 20060493 CA

Labor Commission No.: 200231

**BRIEF OF APPELLEE CONSOLIDATED FREIGHTWAYS and/or FIDELITY
& GUARANTEE INSURANCE**

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TABLE OF CONTENTS

	<u>PAGES</u>
TABLE OF AUTHORITIES	3
STATEMENT OF JURISDICTION	4
STATEMENT OF ISSUES PRESENTED FOR REVIEW.....	4
PRESERVATION ON APPEAL	5
STATEMENT OF THE CASE	5
STATEMENT OF THE FACTS	6
SUMMARY OF ARGUMENTS	10
ARGUMENTS	11
I. BECAUSE MR. HALL FAILED TO MARSHAL THE EVIDENCE CONCERNING THE LABOR COMMISSION’S FINDINGS OF FACT, THIS COURT SHOULD REJECT THE CHALLENGE AND FIND THE COMMISSION DECISION IS SUPPORTED BY SUBSTANTIAL EVIDENCE	11
II. BECAUSE THE COMMISSION’S FINDING OF A FULL MEDICAL RELEASE WAS SUBSTANTIALLY SUPPORTED BY THE RECORD, THIS COURT SHOULD UPHOLD THE COMMISSION FINDINGS, CONCLUSIONS AND ORDER	14
III. DESPITE THE COMMISSION’S FINDING THAT A DISCUSSION OF LIGHT DUTY WAS IMMATERIAL, THERE WAS SUBSTANTIAL EVIDENCE IN THE RECORD TO SUPPORT THE FINDING THAT LIGHT DUTY WAS AVAILABLE TO MR. HALL AFTER DECEMBER 18, 2001	15
CONCLUSION	19
CERTIFICATE OF SERVICE	21
ADDENDUM	22

TABLE OF AUTHORITIES

Case Law

	<u>PAGES</u>
<u>Albert v. Ameritemps Inc.</u> , 2005 UT App 491, 128 P.3d 31	5,11,12, 13,19
<u>Campbell v. Box Elder County</u> , 962 P.2d 806 (Utah Ct. App. 1998)	5,11
<u>Drake v. Industrial Comm’n.</u> , 939 P.2d 177 (Utah 1997)	4
<u>Heber City Corp. v. Simpson</u> , 942 P.2d 307 (Utah 1997)	11
<u>Questar Pipeline Co. v. Utah State Tax Comm’n.</u> , 850 P.2d 1175 (Utah 1993)	19
<u>Whitewright v. Labor Comm’n.</u> , 973 P.2d 982 (Utah Ct. App. 1998)	12

STATUTES, RULES AND TREATISES

	<u>PAGES</u>
34A-2-410(2), Utah Code Ann.	15
63-46b-16(1), Utah Code Ann.	4
63-46b-16(4)(g), Utah Code Ann.	4,10
78-2a-3(2)(a) and (j), Utah Code Ann.	4
Rule 14, Utah Rules of Appellate Procedure	4
Rule 24(b)(1), Utah Rules of Appellate Procedure	4

STATEMENT OF JURISDICTION

The Court of Appeals has jurisdiction over this matter pursuant to Utah Code Ann. §§ 63-46b-16(1), 78-2a-3(2)(a) and (j), and Rule 14 of the Utah Rules of Appellate Procedure. This appeal is taken from an Order of the Utah Labor Commission denying Mr. James Hall's (hereinafter "Mr. Hall") Motion for Review and subsequent Motion for Reconsideration, which was then appealed to the Utah Court of Appeals.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

Pursuant to Utah Rules of Appellate Procedure ("URAP") Rule 24(b)(1), Consolidated Freightways (hereinafter "Consolidated") is dissatisfied with the issues presented for review and believes the following issues to be pertinent in this case:

1.) Pursuant to Utah Code Ann. § 63-46b-16(4)(g), the issue presented for review is whether the Labor Commission's determination that Mr. Hall was owed limited temporary total disability benefits for failing to document further light duty restrictions, failing to document requested light duty, and failing to show that his requests for light duty were denied were supported by substantial evidence. Mr. Hall must prove that he has been substantially prejudiced by an agency action based upon a determination of fact, made or implied by the agency, that is not supported by substantial evidence when viewed in light of the whole record before the court. Utah Code Ann. § 63-46b-16(4)(g).

STANDARD OF REVIEW: The Utah Supreme Court has found that "where the issue is purely factual, appellate review is highly deferential, requiring reversal only if a finding is clearly erroneous." Drake v. Industrial Comm'n., 939 P.2d 177, 181 (Utah 1997) (citations omitted). When reviewing the factual findings of the administrative

agency, the reviewing court “will generally reverse only if the findings are not supported by substantial evidence.” *Id.* (citations omitted). Any challenge to the Labor Commission’s findings of fact will fail without marshaling the evidence in support of those findings. *Albert v. Ameritemps Inc.*, 2005 UT App 491, ¶ 27 n.5, 128 P.3d 31, *citing*, *Campbell v. Box Elder County*, 962 P.2d 806, 808 (Utah Ct. App. 1998).

PRESERVATION ON APPEAL

On November 30, 2004, the Labor Commission issued its Findings of Fact, Conclusions of Law and Order. (Appellate Record Index Number (hereinafter “AR”) 47-50). On January 4, 2006, the Labor Commission issued its Supplemental Findings of Fact, Conclusions of Law and Order. (AR 58-63). Mr. Hall filed his Motion for Review before the Utah Labor Commission on February 3, 2006 (AR 64-68). The Labor Commission denied his motion for review (AR 91-94) on February 28, 2006, after which he filed a Motion for Reconsideration on March 16, 2006 (AR 95-99). Mr. Hall’s Motion for Reconsideration was denied on April 28, 2006 (AR 107-109). Mr. Hall filed his Petition for Review with the instant Court on May 30, 2006.

STATEMENT OF THE CASE

Nature of the Case: Mr. Hall filed his claim for workers’ compensation benefits after having been laid off by Consolidated. He filed his claims for medical expenses and temporary total disability. After sending this matter to the medical panel and conducting an evidentiary hearing, the Labor Commission awarded Mr. Hall limited temporary total disability benefits. Mr. Hall filed the instant appeal seeking additional temporary total disability benefits.

Course of Proceedings: On December 28, 2001, Mr. Hall filed his Application for Hearing seeking workers' compensation benefits as a result of an industrial accident. (AR 2). Consolidated files its Answer to the Application for Hearing denying the claim. (AR 12-15). On January 28, 2004, both parties stipulated to have the case go directly to a medical panel. (AR 30-33). On March 26, 2004, the medical panel issued its report. (AR 37-46). The Commission issued its Findings of Fact, Conclusions of Law and Order as a result thereof. (AR 47-50).

After issuing its initial Findings of Fact, Conclusions of Law and Order, the Commission scheduled an evidentiary hearing to determine whether light duty was available. (AR 51). Based upon the evidentiary hearing, the Commission issued its Supplemental Findings of Fact, Conclusions of Law and Order on January 4, 2006. (AR 58-63). Mr. Hall filed his Motion for Review before the Utah Labor Commission on February 3, 2006 (AR 64-68). The Labor Commission denied his motion for review (AR 91-94) on February 28, 2006, after which he filed a Motion for Reconsideration on March 16, 2006 (AR 95-99). Mr. Hall's Motion for Reconsideration was denied on April 28, 2006 (AR 107-109). Mr. Hall filed his Petition for Review with the instant Court on May 30, 2006.

STATEMENT OF FACTS

1. Mr. Hall was employed by Consolidated as a driver since October 2, 1999 and was employed as of October 23, 2001. (AR 59).

2. Mr. Hall did not participate in loading or unloading his truck during the course of his employment with consolidated, but worked as a delivery driver. (AR 59).

3. He drove with his right arm on the gear shift and noted a fair amount of vibration in the gear shift while using the truck. (AR 59).

4. He alleged that in the spring of 2000 he began to experience periodic pain in his right arm with occasional numbness in his fingers on his right hand and periodic numbness in his wrists. (AR 59).

5. Mr. Hall first treated with a physician on October 29, 2001, because of his concerns over his symptoms. (AR 59).

6. He was diagnosed with right arm overuse and bilateral early overuse of the wrists and was told not to drive long-haul until his symptoms resolved. (AR 59).

7. Mr. Hall received treatment for his symptoms, which his doctors related to his industrial work activities. (AR 59).

8. He underwent an Independent Medical Examination and the independent doctor opined that Mr. Hall's symptoms were not work related and Mr. Hall had no industrially related work restrictions. (AR 59-60).

9. The Labor Commission (hereinafter the "Commission") made a finding of fact regarding Mr. Hall's knowledge of workers' compensation procedures when it found he had made prior claims for a rotator cuff tear at a previous job and a claim for carpal tunnel syndrome prior to working for Consolidated. (AR 60).

10. The Commission also found Mr. Hall was aware of Consolidated's policy requiring prompt reporting of any and all injuries believed to be related to industrial work activities for Consolidated. (AR 60).

11. The Commission found Mr. Hall had admitted he had right upper extremity

problems for a year and a half before he reported his industrial injury on October 29, 2001. (AR 60).

12. Mr. Hall reported his industrial injury the day after he was notified that he was no longer going to be working for Consolidated as a result of a corporate layoff. (AR 60).

13. Consolidated presented evidence to the Commission, and the Commission found, that Consolidated sent a letter via certified mail and hand delivery to Mr. Hall on October 28, 2001 that Mr. Hall was being laid off from work with Consolidated. (AR 60).

14. Mr. Hall prepared a written statement of injury wherein he notified Consolidated of his industrial claim on October 28, 2001. (AR 60).

15. Consolidated presented evidence to the Commission, and the Commission found, that Mr. Hall received a letter on January 2, 2002, which provided that he was being recalled from the corporate layoff effective January 21, 2002. (AR 60).

16. Mr. Hall testified that he discussed the layoff with Lew Duffin, a manager with Consolidated, on January 2, 2002, after having received the letter recalling him from his layoff status. (AR 60-61).

17. The Commission found pursuant to the medical records that Mr. Hall was released to light duty on November 1, 2001, and released to regular duty on December 18, 2001. (AR 61).

18. The Commission found through Mr. Hall's direct testimony that Mr. Hall was aware individuals were given light duty, which was consistent with the testimony from

ex-Consolidated Managers Roy Johnson and Steve Hillstead. (AR 61).

19. Based upon the foregoing, the Commission weighed the evidence presented in the case and determined that Mr. Hall's allegations regarding the absence of light duty work was not credible due to Mr. Hall's self-serving statements, his lack of documentation regarding light duty work, and lack of supporting evidence regarding the availability of light duty work. (AR 61).

20. As a result, the Commission found that "[a]lthough it is questionable whether [Mr. Hall] presented documentation to [Consolidated], of his medical restrictions that would justify any temporary total disability compensation, but giving him the benefit of the doubt ... [Mr. Hall's] temporary total disability period would be from 10/29/01 through 12/18/01." (AR 62).

21. Finally, the Commission found there was not a preponderance of the evidence to support Mr. Hall's claims "that he thereafter contemporaneously documented further light duty restrictions, requested light-duty, or that it was denied." (AR 62).

22. Upon Review, the Commission found Mr. Hall was able to return to his usual work duties by December 18, 2001, and despite the fact Mr. Hall may have continued to suffer from some symptoms, those symptoms did not prevent him from doing his regular job duties. (AR 93).

23. Upon Review, the Commission determined that any light duty discussions were unnecessary as Mr. Hall was able to return to his regular work duties as of December 18, 2001. (AR 93).

24. Consequently, the Commission determined that it did not need to discuss

whether light duty was available to Mr. Hall as a result of his ability to continue his normal job functions, which were within his work restrictions. (AR 93).

25. Upon Reconsideration, the Commission upheld its view that Mr. Hall was able to return to work on December 18, 2001 and was not temporary and totally disabled as of that date. (AR 107).

26. The Commission found that Mr. Hall was able to perform his regular work duties after December 18, 2001, it did not matter whether light duty was offered as Mr. Hall was no longer considered to be temporarily and totally disabled. (AR 107).

SUMMARY OF ARGUMENTS

Consolidated's position on appeal is Mr. Hall failed to marshal the evidence to overturn a factual finding made by the Administrative Law Judge and a finding made by the Labor Commission on review. Mr. Hall provides conclusive statements that the Commission's orders were not supported by the greater weight of evidence, but then fails to marshal the evidence in support of the Commission's ruling. This failure allows the Court of Appeals to make a finding that the evidentiary findings of the Commission are supported by substantial evidence. If the findings are supported by substantial evidence then Mr. Hall cannot show prejudice under Utah Code Ann. § 63-46b-16(4)(g) and his appeal fails for lack of prejudice as a result of the factual findings.

Consolidated further argues that Mr. Hall has failed to show that under the facts of the case he is entitled to additional amounts of temporary total disability. The Commission found that Mr. Hall was released to full duty on December 18, 2006, by his doctors. Given his stipulated work restrictions and his testimony at the evidentiary

hearing, Mr. Hall was properly found to have been released to full duty on December 18, 2001 and, as a result, Mr. Hall is not entitled to additional amounts of temporary total disability.

ARGUMENTS

I. BECAUSE MR. HALL FAILED TO MARSHAL THE EVIDENCE CONCERNING THE LABOR COMMISSION'S FINDINGS OF FACT, THIS COURT SHOULD REJECT THE CHALLENGE AND FIND THE COMMISSION DECISION IS SUPPORTED BY SUBSTANTIAL EVIDENCE

Mr. Hall's appeal should be denied and the Commission's ruling upheld as a result of Mr. Hall's failure to properly challenge the findings of fact made by the Commission. If challenging a factual determination made by the Commission, it is Mr. Hall's responsibility to show he has been substantially prejudiced by the agency's findings of fact and to show the finding of fact is not supported by substantial evidence. Mr. Hall did not properly challenge the Commission's findings of fact and, therefore, Mr. Hall's appeal challenging the Commission's findings should be denied and the Commission's rulings upheld.

A failure to properly challenge the findings of fact is fatal as the Court of Appeals will find any such failure will be taken as an indication the record supports such findings of fact and the Court will not disturb them. Ameritemps v. Labor Comm'n, 2005 UT App 491, ¶ 27, 128 P.3d 31, *citing*, Heber City Corp. v. Simpson, 942 P.2d 307, 312 (Utah 1997). To show that a finding of fact is not supported by substantial evidence, Mr. Hall must marshal the evidence in support of the Commission's findings in his opening brief. *Id.* at ¶ 27 n. 5, *citing*, Campbell v. Box Elder County, 962 P.2d 806, 808 (Utah Ct.

App. 1998). Mr. Hall failed to properly marshal the evidence in his opening brief and, therefore, the Commission's order should be upheld as being substantially supported by evidence.

In his Appellate Brief, Mr. Hall provides conclusive statements that the Commission's orders were not supported by the greater weight of evidence, but then fails to marshal the evidence in support of the Commission's ruling. In essence, Mr. Hall is attempting to reargue his points below without supporting his arguments through marshaling.

The Utah Court of Appeals in Ameritemps ruled that selective recitation of the facts is an attempt to indirectly challenge an agency's factual findings. Ameritemps, 2005 UT App 491 at ¶ 27. In addition, the Court provided it "will not disturb the [Commission's] findings simply because another conclusion can be drawn from the evidence in the record." *Id.*, citing, Whitewar v. Labor Comm'n, 973 P.2d 982, 984 (Utah Ct. App. 1998) (stating that "findings will 'not be overturned if based upon substantial evidence, even if another conclusion from the evidence is permissible.'" (citation omitted)). Finally, the Court assumed the facts were supported by substantial evidence as a result of the failure to directly challenge the factual findings. *Id.*

In this case, Mr. Hall argues in Point I of his Appellant Brief that the Commission's finding that Mr. Hall was cleared for regular employment was erroneous. Mr. Hall's Appellant Brief, Page 9. Mr. Hall argues that despite the evidence indicating Mr. Hall was cleared for regular employment Mr. Hall is entitled to additional temporary disability benefits beyond the December 18, 2001 date found by the Commission.

Mr. Hall does not marshal the facts in support of the Commission's findings, but instead points to facts favorable to his position and argues the Commission should have ruled differently as a result of the facts presented by Mr. Hall. As stated by the Court of Appeals in Ameritemps, Mr. Hall is indirectly challenging the factual findings of the Commission without marshaling the evidence. This amounts to rearguing the case below, which is impermissible when a party is seeking to challenge a factual finding by the Commission.

A failure to properly challenge the findings of fact is fatal as the Court of Appeals will find any such failure will be taken as an indication the record supports such findings of fact and the Court will not disturb them. Ameritemps, 2005 UT App 491 at ¶ 27. As a result, this Court should find the Commission's finding that Mr. Hall was able to return to work on December 18, 2001 and was not temporary and totally disabled as of that date (AR 107) was supported by substantial evidence.

If this Court finds the Commission's factual finding was supported by substantial evidence, it must find that Mr. Hall was not substantially prejudiced by a factual finding that was unsupported by the substantial evidence. If Mr. Hall was not substantially prejudiced by the factual finding, Mr. Hall's appeal of the factual findings of the Commission fails and the Court must uphold the Commission's Order. As a result of Mr. Hall's failure to marshal the evidence in support of the Commission's findings, this Court should deny Mr. Hall's appeal in the instant case.

II. BECAUSE THE COMMISSION'S FINDING OF A FULL MEDICAL RELEASE WAS SUBSTANTIALLY SUPPORTED BY THE RECORD, THIS COURT SHOULD UPHOLD THE COMMISSION FINDINGS, CONCLUSIONS AND ORDER

In his Appellant Brief, Mr. Hall argues that he “was in a light duty status until May 9, 2002 due to continuing further treatment, medications and physical therapy.” Mr. Hall’s Appellant Brief, Page 11. Mr. Hall argues that he was on light duty release despite medical evidence that he had been released for regular duty on December 18, 2001. Mr. Hall did not marshal the evidence in support of the Commission’s ruling, but merely quoted medical records that supported his position. Despite this defect, Consolidated will show the supporting evidence in favor of the Commission’s ruling that Mr. Hall was released back to work for full duty employment on December 18, 2001.

Specifically, the Commission’s finding that Mr. Hall was released for full duty is supported by the medical records exhibit (AR 110). Mr. Hall was released to full duty on December 18, 2001, by his treating physician Jeffrey D. Scott, M.D. (AR 110: MEDS 64). Mr. Hall also submitted his Summary of Medical Record to the Labor Commission on December 28, 2001, which provided that Mr. Hall had been released for usual work on 12/18/01. (AR 1). Mr. Hall’s physical therapist provided that Mr. Hall should attain stabilization of his symptoms within 3-4 weeks of November 1, 2001 (the date of the medical record), which would have placed his stabilization at or around December 18, 2001. (AR 110: MEDS 21). Mr. Hall’s physical therapist placed him at stabilization on December 3, 2001. (AR 110: MEDS 41).

In addition, Mr. Hall’s physical capacity evaluation provided that he was able to

utilize the majority of his body functions except for repetitive squeezing with his hands. (AR 110: MEDS 54). The second physical capacity evaluation conducted on December 3, 2001, showed marked improvement in all of Mr. Hall's body functions as well as lifting capacity. (AR 110: MEDS 61). Mr. Hall's Electrodiagnostic Evaluation also returned normal when it was conducted on December 4, 2001 and the doctor anticipated full release in 2 weeks time. (AR 110: MEDS 63). Mr. Hall was released to full duty on December 18, 2001 by his treating physician. (AR 110: MEDS 64).

The evidence in light of the entire record supports the Commission's factual finding that Mr. Hall was released to full duty on December 18, 2001. Because Mr. Hall was released to full duty on December 18, 2001, Mr. Hall was entitled to no additional temporary total disability benefits as found by the Labor Commission in its Order on Motion Denying Motion for Review (AR 91) and its Order Denying Request for Reconsideration (AR 107). This finding is supported by the entire record before the Court and, given Mr. Hall's failure to marshal the evidence, this Court should deny Mr. Hall's appeal and affirm the Commission's ruling.

III. DESPITE THE COMMISSION'S FINDING THAT A DISCUSSION OF LIGHT DUTY WAS IMMATERIAL, THERE WAS SUBSTANTIAL EVIDENCE IN THE RECORD TO SUPPORT THE FINDING THAT LIGHT DUTY WAS AVAILABLE TO MR. HALL AFTER DECEMBER 18, 2001

Mr. Hall contends in his Appellant Brief that discussion of light duty work is material to the instant appeal because under Utah Code Ann. § 34A-2-410(2) temporary total disability benefits should be paid when restrictions are in place and no light duty is available. Mr. Hall's Appellant Brief, Page 10. As noted above, Mr. Hall failed to

properly challenge the Commission's finding of full release on December 18, 2001 and that fact has now been established. Regardless, Mr. Hall fails to take into account his stipulated facts that provided the basis for the Commission's opinion with respect to his work duties.

Specifically, Mr. Hall stipulated that he did not participate in loading or unloading the truck during the course of his employment with Consolidated. (AR 59). This fact is supported by his testimony at the evidentiary hearing. (AR 111: Page 9:6-21). Given the fact Mr. Hall was not required to lift product into his truck, and his restrictions on December 18, 2001, allowed him to conduct all normal aspects of life except for selected lifting restrictions, there was substantial evidence Mr. Hall was cleared to return to work after December 18, 2001. (AR 110: MEDS 64).

Regardless of the stipulations of fact and his trial testimony regarding the same, Mr. Hall argues that light duty was not available to Mr. Hall and argues this allows him to collect additional monies for temporary total disability. Mr. Hall's Appellant Brief, Page 11. Mr. Hall again failed to marshal the evidence regarding the availability of light duty work as found in the Supplemental Order issued by the Commission. The Commission originally found that light duty had been available to Mr. Hall, but Mr. Hall had declined to take the light duty work available. (AR 61).

Specifically, the Commission found Mr. Hall had knowledge of the workers' compensation procedures when it found he had made prior claims for a rotator cuff tear at a previous job and a claim for carpal tunnel syndrome prior to working for Consolidated. (AR 60). The Commission also found Mr. Hall was aware of Consolidated's policy

requiring prompt reporting of any and all injuries believed to be related to industrial work activities for Consolidated. (AR 60).

The Commission found Mr. Hall had admitted he had right upper extremity problems for a year and a half before he reported his industrial injury on October 29, 2001. (AR 60). Mr. Hall reported his industrial injury the day after he was notified that he was no longer going to be working for Consolidated as a result of a corporate layoff. (AR 60). Consolidated presented evidence to the Commission, and the Commission found, that Consolidated sent a letter via certified mail and hand delivery to Mr. Hall on October 28, 2001 that Mr. Hall was being laid off from work with Consolidated. (AR 60).

Mr. Hall prepared a written statement of injury wherein he notified Consolidated of his industrial claim on October 28, 2001. (AR 60). Consolidated presented evidence to the Commission, and the Commission found, that Mr. Hall received a letter on January 2, 2002, which provided that he was being recalled from the corporate layoff effective January 21, 2002. (AR 60). Mr. Hall testified that he discussed the layoff with Lew Duffin, a manager with Condoliated, on January 2, 2002, after having received the letter recalling him from his layoff status. (AR 60-61). The Commission found pursuant to the medical records that Mr. Hall was released to light duty on November 1, 2001, and released to regular duty on December 18, 2001. (AR 61).

The Commission found through Mr. Hall's direct testimony that Mr. Hall was aware individuals were given light duty, which was consistent with the testimony from ex-Consolidated Managers Roy Johnson and Steve Hillstead. (AR 61). Based upon the

foregoing, the Commission weighed the evidence presented in the case and determined that Mr. Hall's allegations regarding the absence of light duty work was not credible due to Mr. Hall's self-serving statements, his lack of documentation regarding light duty work, and lack of supporting evidence regarding the availability of light duty work. (AR 61). Finally, the Commission found there was not a preponderance of the evidence to support Mr. Hall's claims "that he thereafter contemporaneously documented further light duty restrictions, requested light-duty, or that it was denied." (AR 62).

On Review, the Commission noted the discussion on the availability of light duty and tacitly agreed with the ALJ's findings regarding the same. (AR 93). The ALJ's analysis of light duty availability is supported by substantial evidence in the record. If this Court finds that a discussion on light duty is warranted, despite Mr. Hall's full release back to work, this Court should find the Commission's findings pertaining to the light duty issue to be supported by substantial evidence in the record.

The ALJ's findings on the light duty issue are supported by the trial transcript. Mr. Hall knew the policy of reporting workers' compensation injuries immediately after they occurred. (AR 111: Page 8:13-16). He knew that light duty was available while working for Consolidated. (AR 111: Page 8:17-22). Mr. Hal acknowledged talking to Lew Duffin about his industrial injury on October 29, 2001 (AR 57B) and they sent him over to the Salt Lake Industrial Clinic. (AR 111: Page 18:3-10).

The Commission found that Mr. Hall had received a return to work letter on two separate occasions. (AR 57C-57D). This fact was corroborated by Roy Johnson, an ex-employee of Consolidated. (AR 111: Page 24:22-25). He also provided that light duty

was available to injured employees. (AR 111: Page 25:4-13). This fact was further corroborated by Steven R. Hillstead, an ex-employee of consolidated when asked the same questions. (AR 111: Page 32:8-13).

As a result of the entire record, the Commission's analysis and findings regarding the fact that light duty was available to Mr. Hall is supported by substantial evidence in the entire record. As a result, Mr. Hall's attempt to have this Court reweigh the evidence in his favor should be denied. Mr. Hall did not properly marshal the evidence in support of the Commission's findings and, as a result, those findings are deemed to be supported by substantial evidence. Regardless, the findings were supported by findings in the record and the findings should be upheld.

Mr. Hall's attempt to challenge the finding of light duty availability fails as a result of his failure to marshal the evidence. In addition, prior courts have ruled that "when reviewing an agency's decision, [we do] not ... reweigh the evidence." Ameritemps, 2005 UT App 491 at ¶ 27, *citing*, Questar Pipeline Co. v. Utah State Tax Comm'n, 850 P.2d 1175, 1178 (Utah 1993). Mr. Hall would have this Court reweigh the evidence presented at the evidentiary hearing despite there being substantial evidence in the entire record to support the Commission's rulings in this case. As a result, this Court should deny Mr. Hall's appeal and uphold the rulings of the Labor Commission.

CONCLUSION

Based upon the foregoing, Consolidated requests this Court deny Mr. Hall's appeal for failing to show substantial prejudice as a result of a factual finding of the Commission that was not supported by substantial evidence in the record. Mr. Hall failed

to properly challenge the Commission's findings of fact and, as a result, those findings are presumed to be supported by substantial evidence in the record. If the findings were supported by substantial evidence in the record, Mr. Hall cannot show substantial prejudice as required on appeal and his appeal fails. This Court, therefore, should deny Mr. Hall's appeal and uphold the rulings of the Labor Commission.

DATED THIS 11 day of December, 2006.

PLANT, CHRISTENSEN & KANELL

A handwritten signature in dark ink, appearing to read 'Theodore E. Kanell', written over a horizontal line.

THEODORE E. KANELL

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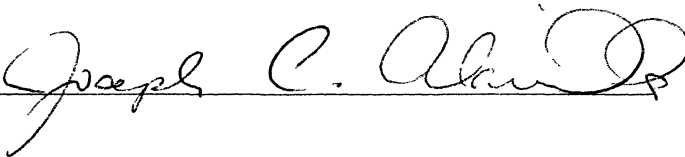
CERTIFICATE OF SERVICE

I hereby certify that on the 1 / day of December, 2006, a true and correct copy of the Brief of Appellee was served, postage prepaid, via first-class mail to the following:

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ADDENDUM

Pursuant to Rule 24(a)(11) of the Utah Rules of Appellate Procedure, an addendum is not included herewith as the relevant information already has been included in Mr. Hall's Appellant Brief.