

1995

# May Bigler v. Industrial Commission of Utah, T.W. Services and Transportation Insurance Co. : Brief of Petitioner

Utah Court of Appeals

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## Recommended Citation

Legal Brief, *State of Utah v. T.W. Services and Transportation Insurance Co.*, No. 950838 (Utah Court of Appeals, 1995).  
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UTAH COURT OF APPEALS  
BRIEF

UTAH  
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DOCKET NO. 950838-CA

IN THE COURT OF APPEALS, STATE OF UTAH

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MAY BIGLER,

Applicant/Petitioner,

vs.

INDUSTRIAL COMMISSION OF UTAH,  
T.W. SERVICES, INC., and  
TRANSPORTATION INSURANCE CO.,

Defendants/Respondents.

Case: 950838-CA  
Priority Classification 7

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BRIEF OF PETITIONER MAY BIGLER

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Petition for Review of an Order of the Industrial Commission of the State of Utah

The Honorable Barbara A. Elicerio  
Administrative Law Judge

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**FILED**

APR - 3 1996

COURT OF APPEALS

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## TABLE OF CONTENTS

Table of Contents .....	i
Table of Authorities .....	ii
Statement of Jurisdiction .....	1
Statement of Issues on Appeal .....	1
Determinative Statutes and Rules .....	2
Statement of the Case	
Procedural History .....	2
Factual History .....	3
Summary of Argument .....	5
Argument .....	6
 THE INDUSTRIAL COMMISSION IMPROPERLY INTERPRETED AND APPLIED THE LAW RELATIVE TO THE HIGHER STANDARD OF CAUSATION UNDER ALLEN V. INDUSTRIAL COMMISSION	
Conclusion .....	9
Mailing Certificate .....	11
Addendum .....	12
 1. Interim findings of Fact, Conclusions of Law and Order	
2. Final Findings of Fact, Conclusions of Law and Order	
3. Order Granting Motion for Review	

## TABLE OF AUTHORITIES

### CASES

<u>Allen v. Industrial Commission</u> , 729 P.2d 15 (Utah 1986) .....	1, 3, 6, 7, 8, 9
<u>King v. Industrial Commission</u> , 850 P.2d 1281 (Utah App. 1993) .....	1, 2
<u>Smith &amp; Edwards Co. v. Industrial Commission</u> , 770 P.2d 1016 (Utah App. 1989) .....	9
<u>Stouffer Foods Corp. v. Industrial Commission</u> , 801 P.2d 179 (Utah App. 1990) .....	7, 9

### STATUTES

Section 63-46b-16(4)(c), U.C.A. ....	1
Section 35-1-86, U.C.A. (1988) .....	1

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**BRIEF OF PETITIONER MAY BIGLER**

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**STATEMENT OF JURISDICTION**

Jurisdiction is proper in this Court pursuant to Utah Code Ann. Section 35-1-86 (1988) as this is an appeal from a final Order of the Industrial Commission.

**STATEMENT OF ISSUES ON APPEAL**

Whether the Industrial Commission improperly interpreted and applied the law relative to the higher standard of causation under Allen v. Industrial Commission, 729 P.2d 15 (Utah 1986) in light of the uncontested facts of the Applicant's injury.

The standard of review is correction of error in erroneous interpretation or application of the law. Section 63-46b-16(4)(c), U.C.A. and King v. Industrial

Commission, 850 P.2d 1281 (Utah App. 1993). There is no specific or implied grant of discretion to the Industrial Commission in the interpretation of the law. See King, id.

## **DETERMINATIVE STATUTES AND RULES**

We are not aware of any statutes or rules that are determinative in this matter.

## **STATEMENT OF THE CASE**

### **Procedural History**

May Bigler filed an application for hearing with the Industrial Commission on March 24, 1994, seeking compensation and benefits for a low back injury that occurred at work on March 11, 1993 (R. at 4).

Mrs. Bigler's claim was heard before an Administrative Law Judge of the Industrial Commission on August 8, 1994. The ALJ issued Interim Findings of Fact, Conclusions of Law and Order on August 17, 1994. In this order, the ALJ found and concluded that Mrs. Bigler had met her burden of legal causation (R. at 21-30). As a result, the matter was referred to a medical panel appointed by the Industrial Commission to consider the contested medical issues of the claim (R. at 32-34). Soon thereafter, the medical panel met with the Petitioner and issued a report (R. at 35-44). The resulting report of the medical panel was circulated to the parties on December 22, 1994 (R. at 45). Timely objections to the medical panel's report were filed by the Defendants' counsel but no hearing was requested thereon (R. at 48-83). Thereafter on

March 24, 1995 the ALJ issued her final Findings of Fact, Conclusions of Law and Order. This Order awarded benefits to Mrs. Bigler (R. at 93-101).

Following the grant of an extension of time, the Defendants filed a timely Motion for Review with the Industrial Commission on May 26, 1995 and the Petitioner responded on June 12, 1995 (R. at 105-169). The Order Granting Motion for Review was issued by the Commissioners of the Industrial Commission on September 29, 1995 (R. at 170-173). This order denied the Petitioner's claim by concluding that Mrs. Bigler's actions resulting in her injury did not meet the higher causational standard required by Allen v. Industrial Commission, 729 P.2d 15 (Utah 1986) of a person with a pre-existing back condition.

The Petitioner filed a timely Motion for Reconsideration on October 18, 1995 (R. at 174-177). An Order Extending Time for Reconsideration allowing the Industrial Commission until December 8, 1995 to issue a decision was entered on November 3, 1995 (R. at 183-185). The Industrial Commission's Order Denying Request for Reconsideration was issued on December 7, 1995 (R. at 186-188).

The Petitioner filed a Petition for Writ of Review with this Court on December 29, 1995.

### **Factual History**

1. Petitioner May Bigler was employed as a cashier with Respondent TW Services as of March 11, 1993. The company provides an on-site lunch room/cafeteria for employees at Discover Card. Mrs. Bigler was working about 35 hours a week at the time and had been with the Defendant for about a year. (R. at 415-416).



2. On March 11, 1993, Mrs. Bigler was standing next to her cash register in the lunch room and was talking with her supervisor who was on the other side of the counter. Her work station consisted of a cash register on a waist high counter situated between two long counters of similar height that ran behind it. These counters allowed patrons on either side to slide their lunch trays toward the cash register to pay for their food (R. at 380-382, 417). The counter was about 2 1/2 feet across (R. at 381). Mrs. Bigler was situated somewhat to her left of the cash register. (R. at 440-441). To her right on the opposite side of the counter on which the cash register sat was a glass menu board holding an 8" x 11" piece of paper advertising cafeteria specials (R. at 417-418, 401).

3. At one point in her conversation with her supervisor, Mrs. Bigler noticed that the menu board was starting to fall forward to the floor. Without thinking she made a sudden lunge from the left to the right across the counter to attempt to catch the falling board with her right hand (R. at 418-419, 440-441). She was unable to do so and the glass in the board shattered on the floor (R. at 401). The force of the sudden dive for the board resulted in her falling on the counter with one of her feet off the floor (R. at 419). She felt immediate sharp pain in her lower back with pain and numbness radiating into her left leg (R. at 420). This sudden jerk for the menu board involved twisting the waist about 25° to the right while quickly lunging forward across the counter to the right, this resulted in her falling up against the counter at which point there was the immediate onset of pain (R. at 419).

4. Mrs. Bigler's medical history shows evidence of preexisting degenerative disk disease in the lumbar and thoracic spine, among other things (R. at 269). The

parties do not dispute the existence of her preexisting conditions. At the time of the incident in question, the Petitioner was 56 years old, stood 5'6" tall and weighed 160 lbs (R. at 37). Before entering the work force in about 1991 or 1992 she had been a homemaker during her adult life. Defendant TW Services was her first employer (R. at 361).

5. The medical panel doctors who examined Mrs. Bigler at the request of the ALJ concluded that a medically demonstrable causal relationship exists between her back problems and the March 11, 1993 industrial injury. They determined a period of temporary total disability from the date of the accident in March of 1993 to April of 1994. She was given a 5% impairment rating for her low back with 1/3 of it due to the industrial accident. She was also given a 5% impairment rating for a somataform pain disorder due to the industrial accident. (R. at 35-44). The findings of the medical panel were adopted by the A.L.J. in her findings of fact (R. at 96).

## **SUMMARY OF ARGUMENT**

The Industrial Commission used too restrictive of an analysis in interpreting and applying the law of the Allen case to the circumstances of Mrs. Bigler's claim. The intensity or violence of the act or exertion that resulted in injury is critical in considering whether the act meets the higher standard of legal causation required of someone with a preexisting condition. The facts, as adopted by the Industrial Commission lead to the conclusion that Mrs. Bigler did meet her burden of establishing legal causation.

**ARGUMENT**  
**The Industrial Commission Improperly**  
**Interpreted and Applied the Law Relative to the Higher Standard**  
**of Causation under Allen v. Industrial Commission**

Upon the Respondents' Motion for Review, the Commissioners of the Industrial Commission reversed the order of the A.L.J. and ruled that Mrs. Bigler's accident was not compensable. Their rationale was that her actions did not meet the higher exertion standards required by the Allen v. Industrial Commission, 729 P.2d 15 (Utah 1986), decision. This overruled the conclusions of the A.L.J. that the Petitioner's exertions did meet the higher standard.

To meet the legal causation requirement, the Allen decision requires a claimant with a pre-existing condition to "show that the employment contributed something substantial to increase the risk he already faced in everyday life because of his condition." Allen, 729 P.2d at 25.

This requirement helps to distinguish between injuries which

(a) coincidentally occur at work because a preexisting condition results in symptoms which appear during work hours without any enhancement from the workplace, and (b) those injuries which occur because some condition or exertion of employment increases the risk of injury which the worker normally faces in everyday life.

Allen, id.

The Court in Allen recognized that the issue must be determined on the facts of each case. Allen at 25. The facts are not in dispute here. The Commissioners adopted the factual findings of the A.L.J. in their Order Granting Motion for Review (R. at 171).

We submit that the law was improperly applied by the Commissioners to the facts of this case. Their interpretation of Allen is unnecessarily restrictive and not in line with the meaning and intent of the law.

As stated in Allen, "[T]he key question in determining causation is whether given this body and this exertion, the exertion in fact contributed to the injury." Stouffer Foods Corp. v. Industrial Commission, 801 P.2d 179 (Utah App. 1990), quoting from Allen at 24.

The A.L.J. made the following factual findings relative to the exertions in question:

The applicant testified that she was standing in front of the register and somewhat to the left of it when she noticed the menu start to fall off the counter on the other side of the register. The Applicant stated that she twisted suddenly to the right and lunged forward to try to catch the falling menu. As she did so, she needed to reach across the end of the counter on the right side of the register with her right hand. The applicant stated that this action was done very suddenly in an attempt to catch the falling menu. She was unable to catch the menu, but felt a sharp pain in her low back at approximately the belt line as she lunged and reached at the same time...

(R. at 23).

The record shows further that she fell across the counter to her right side (R. at 441). As she made this sudden jerk or lung, the Petitioner testified that her right foot went off the floor as well (R. at 419). There is no dispute that her movements to attempt to catch the falling board were very quick and sudden. The A.L.J. found this to be a high-energy activity.

We submit that the quality or intensity or violence of the action resulting in injury can be critical to the determination of whether the higher standard for establishing legal causation is met.

The evidence in the record before the Industrial Commission shows this to have been a high energy event. It was not a casual twist or reach. Mrs. Bigler quickly dove diagonally across the counter in a vain attempt to catch the falling menu frame which then shattered on the floor. It was a sudden twisting lunge at an angle across a waist high counter top.

The quality or intensity of the activity involved with this person and this body resulted in a low back injury. What Mrs. Bigler did was severe enough to meet the higher standard. We submit that it was beyond usual exertions of normal non employment life because of the force or violence of the event.

The Defendants submitted reports from their doctors, as well as from an ergonomics specialist, in an attempt to show that the Petitioner's exertion did not reach that of the type of activities mentioned in Allen which are commonly considered to be typical non employment activities in late 20th Century life.<sup>1</sup> However, HOW those activities are performed has a major difference in the stress and exertion placed upon the body. While a person with a preexisting low back condition who merely lifts a small child to chest height and feels a sudden sharp low back pain may not have sustained a legally compensable industrial accident as a result, the outcome could be

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<sup>1</sup>The Allen case mentions such things as lifting a small child to chest height, changing a flat tire on a car, climbing stairs in buildings, and taking full garbage cans to the street.

entirely different if he, while lifting the child, or something of similar weight, has to move suddenly in a jerking twisting movement while holding that weight.

Again, it is the quality or violence of the act that is the pivotal factor. The intensity of the act is what brings the element of risk of injury to the job. As stated in the Stouffer case, "The usualness or unusualness of a claimant's exertion must be determined in its actual context." Stouffer at 183. This court has rejected the notion that the usualness or unusualness of an activity must be judged by a bright line test, whether it be for weight or the just the general description of an activity. Smith & Edwards Co. v. Industrial Commission, 770 P.2d 1016 (Utah App. 1989).

What happened to Mrs. Bigler at work is clearly within the type of injuries which Allen and its progeny intended to be the ones that should meet the legal standard of unusual or extraordinary exertion. The facts and circumstances of this case show that the injury Mrs. Bigler sustained did not just coincidentally occur at work, but was brought on by exertion required by the circumstances of her employment which increased the risk of injury which a worker would otherwise normally face in life. See Allen at 25.

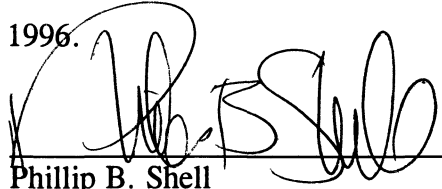
The Industrial Commission improperly applied the Allen standard in this matter. The Industrial Commission's order should be reversed.

## CONCLUSION

Mrs. Bigler has met her burden of establishing legal causation under the higher standard required by the Allen decision. The Industrial Commission has taken a too

restrictive interpretation of the Allen decision. The order of the Industrial Commission should be reversed because of its improper interpretation and application of the law.

Dated this 2nd day of April, 1996.

A handwritten signature in black ink, appearing to read "P.B. Shell", written over a horizontal line.

Phillip B. Shell

Day & Barney

Attorneys for Petitioner May Bigler

### **Mailing Certificate**

I hereby certify that four true and correct copies of the foregoing were mailed, first class, postage prepaid on this 2<sup>nd</sup> day of April, 1996, to the following counsel of record:

MICHAEL E. DYER  
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160 East 300 South  
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Salt Lake City, Utah 84114-6615

A handwritten signature in black ink, appearing to read "Phillip B. Shell", written over a horizontal line.

Phillip B. Shell  
Day & Barney



## **ADDENDUM**

1. Interim Findings of Fact, Conclusions of Law and Order
2. Final Findings of Fact, Conclusions of Law and Order
3. Order Granting Motion for Review

INDUSTRIAL COMMISSION OF UTAH

Case No. 94-273

MAY BIGLER,	*	
	*	
	*	
Applicant,	*	INTERIM
	*	
vs.	*	FINDINGS OF FACT AND
	*	
TW SERVICES/TRANSPORTATION	*	CONCLUSIONS OF LAW
INSURANCE,	*	
	*	ORDER
Defendants.	*	
	*	
* * * * *	*	

HEARING: Hearing Room 334, Industrial Commission of Utah,  
160 East 300 South, Salt Lake City, Utah, on August  
8, 1994 at 8:30 o'clock a.m. Said hearing was  
pursuant to Order and Notice of the Commission.

BEFORE: Barbara Elicerio, Administrative Law Judge.

APPEARANCES: The applicant was present and was represented by  
Phillip Shell, Attorney.

The defendants were represented by Michael Dyer,  
Attorney.

This case involves a claim for temporary total compensation (TTC) and medical expenses related to a March 11, 1993 industrial back injury. The defendants paid initial diagnostic expenses following the March 11, 1993 injury, but currently deny all liability for that injury. The defendants take the position that the applicant did not sustain a compensable industrial accident on March 11, 1993. The primary reason argued by the defendants for the assertion of non-compensability is that the applicant cannot establish legal cause related to that incident. Per the holding in Allen v. Industrial Commission, 729 P.2d 15 (Utah 1986), legal cause is one of the two required elements of compensability. The defendants argue that, in order to establish legal cause in this case, the applicant must be able show that the incident on March 11, 1993 involved exertion beyond what is experienced by 20th century individuals in their daily non-employment lives (ala Allen). The defendants argue that this standard applies to this case because the applicant has a contributory pre-exsiting condition. Per the defendants, the incident on March 11, 1993 did not involve any kind of unusual exertion and thus legal cause and compensability are not established. The defendants rely in part on

INTERIM ORDER  
RE: MAY BIGLER  
PAGE 2

the opinions of Dr. T. Grange and Dr. D. Bloswick for the proposition that the applicant's exertion on March 11, 1994 was less than is required by the ruling in the Allen case.

The applicant concedes that she had a contributory pre-existing back condition on March 11, 1993 and that she therefore must show "unusual" exertion in order to establish the legal cause requirement for compensability. The applicant argues that her exertion on March 11, 1993 does meet the unusual exertion requirement specified in Allen. Counsel for the applicant argued at hearing that the opinions of Dr. Grange and Dr. Bloswick are based on inaccurate facts regarding the nature of the applicant's activity on March 11, 1993. As such, counsel finds the Grange and Bloswick opinions to be irrelevant to the legal cause determination.

At hearing, the ALJ indicated that she would make a ruling on the threshold issue of compensability before she dealt with any other issues that need to be resolved. The ALJ indicated that she would first review the medical record exhibit submitted at hearing. The ALJ indicated that she was not clear at hearing on whether or not the other element of compensability, i.e. medical cause, was also controverted. She indicated that if legal cause was established, she might feel the need to refer the matter to a medical panel in order to get additional input on the other element of compensability, i. e. medical cause. After reviewing the medical records, the ALJ makes the following factual findings.

#### FINDINGS OF FACT:

The applicant is a female who was 56 years old on the date of injury, March 11, 1993, with no dependents at that time. The applicant was employed as a cashier with TW Services on March 11, 1993, making \$5.20 per hour and working 35 hours per week. Although the applicant's current claim is with respect to the March 11, 1993 incident, the applicant did have another back incident a year prior to her injury on March 11, 1993. On or about March 13, 1992, while at work for TW Services, the applicant was lifting a tray of silverware/utensils which weighed approximately 10 pounds. The applicant experienced back pain at that time and went to see her then family doctor, Dr. Johnson. The applicant recalls that he prescribed some muscle relaxers for her and other medical records indicate that the applicant returned to work immediately. Per the other records, the pain eased after about a month and the applicant had no other back concerns until the March 11, 1993 incident.

INTERIM ORDER  
RE: MAY BIGLER  
PAGE 3

On the date of injury currently at issue, March 11, 1993, the applicant was at work standing in front of her cash register. The applicant's work station consisted of a cash register situated in between two waist-high counters that ran from the register back towards the applicant, continuing on behind her. The counters allowed individuals to stand in line and set their cafeteria trays on the counters, sliding them along until they reached the front of the line where they paid the applicant for their food. The applicant stood in front of the register and had a counter running along either side of her. On the opposite side of the register from the applicant, and off to the right of the applicant, there was an 8" x 11" sheet of paper with the daily menu on it, inserted into a plastic stand. The applicant testified that she was standing in front of the register and somewhat to the left of it when she noticed the menu start to fall off the counter on the other side of the register. The applicant stated that she twisted suddenly to the right and lunged forward to try to catch the falling menu. As she did so, she needed to reach across the end of the counter on the right side of the register with her right hand. The applicant stated that this action was done very suddenly in an attempt to catch the falling menu. She was unable to catch the menu, but felt a sharp pain in her low back at approximately the belt line as she lunged and reached at the same time. The applicant stated that she had left leg symptoms (pain and then numbness and tingling) at about the same time.

The applicant was seen at St. Mark's Hospital on March 11, 1993 and was diagnosed with a lumbar strain. A lumbar spine X-ray was read as normal. Medication was prescribed and the applicant was advised to remain off work until March 17, 1993. She was advised to follow-up with an orthopedist if she was not improved in 4 days time. However, the applicant apparently decided to see a chiropractor the next day, March 12, 1993. An office note of Dr. C. Kesler, D.C. indicates that on March 12, 1993, the applicant needed the assistance of her son-in-law in order to walk, but was able to walk on her own by March 15, 1993. The applicant had approximately 8 chiropractic treatments by Dr. Kesler, for low back pain and left leg pain, between March 12, 1993 and March 31, 1993. The applicant was released by Dr. Kesler to return to work on March 29, 1993 and the applicant apparently did return to work at that time, continuing with chiropractic treatments in April 1993. In April 1993, the applicant had just 5 treatments by Dr. Kesler.

On May 5, 1993, Dr. Kesler referred the applicant to Salt Lake MRI Services for an MRI of the lumbar spine. The MRI was read to show a degenerated disc at L4-5, with a small herniation and mild disc bulge, degenerated discs at L5-S1 and L3-4 with no herniations and T11-12 and T12-L1 degenerated discs with disc

INTERIM ORDER  
RE: MAY BIGLER  
PAGE 4

bulges. The applicant had chiropractic treatments in May 1993 and also was seen on May 11, 1993 by an orthopedist, Dr. S. Coleman, and a neurologist, Dr. P. Bray, at the request of the carrier. Dr. Bray's report indicates that he understood that the applicant was reaching for something and twisting on March 11, 1993 when she experienced left low back pain. He noted that she had been wearing a back brace and felt that the chiropractic treatments had improved her pain 50%. The applicant stated at hearing that the chiropractic treatments seemed only to help during the treatment. Dr. Bray noted possible osteoporosis on an X-ray and found no evidence of neurological compromise. His impression was that the applicant had been having back pain over a period of years, with it getting worse during the past year. He concluded that the March 11, 1993 injury was a doubtful source of her then current symptoms and he found that the osteoporosis could be the cause of her symptoms. He recommended hormone therapy for the osteoporosis, considering that the applicant had had her ovaries removed.

Dr. Coleman, the orthopedist who saw the applicant on May 11, 1993, also noted on and off back pain for one full year. He found that the X-rays did show modest degrees of osteoporosis/osteopenia with some loss of disc space at T12-L1. He found that both of these were surely "ancient findings." He found that it would be highly speculative to conclude that the March 1992 and March 1993 episodes were causing the degree of persisting back pain that the applicant described. Dr. Coleman concluded that the applicant did not need further treatment and would reach maximum medical improvement without treatment in 2-3 months. He concluded that she was suffering from a combination of: 1) osteoporosis, 2) possible old healed compression fractures and 3) common mildly herniated discs that everyone has at a certain age.

The applicant discontinued work on May 19, 1993 (because she couldn't stand the pain any more per her hearing testimony) and continued with chiropractic care through July 10, 1993. Per Dr. Kesler's records, the applicant had 16 treatments between May 17, 1993 and July 20, 1993. On May 21, 1993, he prepared a note for the applicant that indicates that she was totally disabled. The note does not specify a time period for the disability. Dr. Kesler referred the applicant to Dr. W. Muir at the Intermountain Spine Institute for a second opinion in September 1993. In his letter referring her over to Dr. Muir, Dr. Kesler indicates that the applicant was injured pursuant to a rapid sudden jerking movement on March 11, 1993 in which she was trying to prevent a menu from falling off a counter. He notes in his September 13, 1993 letter to Dr. Muir that it was his opinion that the applicant's complaints were related to the March 11, 1993 and were not solely the result of her pre-existing conditions of osteoporosis and degeneration that

INTERIM ORDER  
RE: MAY BIGLER  
PAGE 5

were noted by Dr. Bray and Dr. Coleman. Dr. Muir's September 14, 1993 report indicates that he found no significant impingement of the thecal sac or nerve roots in the bottom 3 lumbar degenerated discs. His impression was: multi-level degenerated discs with possible instability and associated pain. He noted that he found the applicant's symptoms to be out of proportion to her findings and therefore questioned the existence of psychogenic or economic factors effecting the lack of improvement. He recommended a psychological evaluation and then possibly a discogram thereafter depending on the results of the psychological evaluation.

On December 16, 1993, Dr. Kesler, D.C. prepared a Summary of Medical Record form indicating that the applicant was still not released for work at that time. He notes on the form that the applicant had an L4-5 disc herniation related to the March 11, 1993 injury and that the applicant might need additional treatment. He indicates on the form that he felt that the applicant had an 11% whole person impairment, with no aggravation of a pre-existing condition.

On February 16, 1994, Dr. J. McGlothlin, saw the applicant after her family physician, Dr. R. Stubbs, referred her over to him. The applicant indicated at hearing that Dr. Stubbs had been prescribing pain medication for her back pain. In addition, Dr. Stubbs had been seeing the applicant for chest pain and shoulder pain since May 1993 and had been monitoring her blood pressure. Dr. McGlothlin was unable to come to any definitive conclusions without further testing, but he noted the following diagnoses: low back syndrome consisting of 1) lumbosacral musculoligamentous sprain/strain syndrome, chronic, 2) probable left sacroiliac joint sprain/strain syndrome, chronic, 3) L4-5 and L5-S1 disc degeneration with mild disc bulging and grade I-II bulge at L4-5 and 4) no evidence of radiculopathy or lower extremity mononeuropathy. Dr. McGlothlin indicated that he wanted to see the actual MRI film, a hip X-ray and an EMG to help him rule out left hip degenerative arthropathy, symptom magnification and adjustment reaction. No further follow-up with Mr. McGlothlin occurred.

On April 6, 1994, Dr. Kesler, D.C. completed another Summary of Medical Record form. This form indicates that the applicant was off work from March 12, 1993 to April 6, 1994 with no prediction as to when the applicant would reach a final state of recovery. He noted only that the applicant was unchanged from February 14, 1994. The form indicates a 10% whole person impairment with the industrial accident apparently causing the L4-5 disc herniation.

INTERIM ORDER  
RE: MAY BIGLER  
PAGE 6

At the bottom of the form, he indicates that the applicant had asymptomatic osteoporosis and a disc herniation (level unspecified) prior to the March 11, 1993 injury.

On June 17, 1994, Dr. T. Grange of WORKMED examined the applicant at the request of the carrier. Dr. Grange noted that the applicant had been receiving Social Security Disability since June of 1993. He indicates that his understanding of the incident on March 11, 1993 was that the applicant reached 25° to the right for a falling menu that was about 2 feet away. He noted that the applicant at that time needed to lie down about 3/4 of the day and drove only short distances occasionally. He noted that the applicant had her daughter do her grocery shopping and that she only occasionally tried to prepare a meal. Dr. Grange's impression was that the applicant had chronic low back pain that was multifactorial in nature. He noted that the applicant perceived that the March 11, 1993 incident was responsible for markedly limiting her activity and for causing her constant severe low back pain. Dr. Grange found that the applicant's symptom course was markedly unusual considering the "low energy mechanism of the injury." He noted that one would have expected a quick resolution and return to work after the isolated incident on March 11, 1993, especially considering that the applicant had a fairly light duty job. He found that there were objective findings for significant psychosocial overlay and pain magnification.

Dr. Grange notes other diagnoses to be: 1) pre-existing degenerative disc disease of the thoracic and lumbar spine, 2) L4-5 small disc herniation which was not significant neurologically (Dr. Grange noted that it was impossible to know whether this herniation existed prior to March 11, 1993, but found that it would not have been uncommon for it to have been present independent of the March 11, 1993 incident), 3) moderate kyphosis, thoracolumbar scoliosis and osteoporosis of long-standing nature, 4) heart disease with bypass and chronic anti-coagulation therapy, 5) COPD with history of remote smoking, 6) delayed recovery and delayed return to work. Dr. Grange explained that the applicant's inability to exercise due to her heart condition complicated her recovery from the back pain. He found that surgery was not recommended and that counseling and pain management was recommended. He noted that he found that the March 11, 1993 incident was an ordinary routine activity and that there was no direct relationship between the industrial event and her current medical conditions. He found that the applicant was stable at that time, both from a neurological and a musculoskeletal standpoint. He rated the applicant as having 5% whole person impairment for her lumbar spine, all related to pre-existing conditions, with no impairment associated with the March 11, 1993 incident.

INTERIM ORDER  
RE: MAY BIGLER  
PAGE 7

Donald E. Bloswick, Ph.D., of Industrial Ergonomics Incorporated, was asked to offer an opinion/analysis of the exertive force involved in the applicant's March 11, 1993 industrial event as compared to changing a tire or lifting a small child, activities noted in the Allen case cited above as not involving unusual exertion. Bloswick concluded from watching a video tape showing the nature of the applicant's reach on March 11, 1993 that the industrial incident involved a compressive force of 504 pounds. Compressive forces on the low back for lifting a small child and lifting a tire were listed as ranging from 604 pounds to 1155 pounds. Per this information, Bloswick concluded that the low back stresses experienced by the applicant in "reaching for the menu" were less than the low back stress occasioned by lifting a small child or lifting a tire.

In closing argument, counsel for the defendants argued that Bloswick's analysis shows that, on March 11, 1993, the applicant was not involved in "unusual exertion" beyond what is experienced by 20th century individuals in their non-employment lives, as this is defined in the Allen case. Per counsel for the defendants, this, in combination with the applicant's contributory pre-existing condition, makes the applicant's March 11, 1993 incident non-compensable. Counsel for the applicant counters that Bloswick was analyzing merely a reach for a menu card, and not a sudden lunge with a twist as the applicant described her work injury. As such, counsel for the applicant argues that Bloswick's conclusions do not assist in making a determination regarding the "usualness" of the applicant's exertion on March 11, 1993.

#### CONCLUSIONS OF LAW:

The ALJ finds that the applicant's industrial incident on March 11, 1993 occurred as she described it at hearing, i.e. as involving a sudden lunge with a twist to right. There has been no evidence presented indicating that the incident was merely a 2-foot reach to the right as the defendants have described the incident to their chosen examining physicians and experts. The mere fact that the applicant was attempting to catch a falling object suggests that her actions were sudden and the fact that she needed to get her arm around the cash register and over the counter suggest that a significant reach/lunge was necessary. The ALJ finds that this kind of twisting lunge is not normally a part of everyday non-employment life in the 20th century, as it is described in the Allen case cited above, and finds that this activity is sufficiently "unusual" to meet the additional risk/causation factor that the Allen case finds is necessary for compensability where



INTERIM ORDER  
RE: MAY BIGLER  
PAGE 8

there is a contributory pre-existing condition. The ALJ also agrees with counsel for the applicant that the Blosswick analysis of compressive force is not supportive of the defendants' position in this matter, simply because Blosswick did not analyze the activity that was truly involved on March 11, 1993.

Based on the foregoing analysis, the ALJ finds that the applicant has established unusual exertion on the date of injury and thereby has established the legal cause element of compensability. However, the compensability analysis also requires a finding of medical cause and the ALJ finds that the evidence with respect to medical cause at this point is very unclear. All the doctors concede the existence of one or more contributory pre-existing conditions in the spine. The evidence as a whole seems to suggest that some kind of aggravation or "lighting up" of symptoms occurred as a result of the March 11, 1993 incident. However, it is unclear from the evidence in the medical record exhibit whether the applicant has stabilized from the effects of the incident and when she did stabilize from the incident if she has in fact already stabilized. There also appears to be medical controversy with respect to whether or not any permanent impairment occurred as a result of the industrial incident on March 11, 1993. These medical factors need to be resolved before it can be determined whether benefits are due the applicant and in what amount. Considering the fact that the examining/treating physicians differ with respect to these issues, the ALJ feels a medical panel referral is appropriate.

The ALJ will therefore direct the applicant's attorney to arrange to have the initial X-ray films taken at St. Mark's Hospital and the MRI film taken at Salt Lake MRI referred to the ALJ so that a medical panel referral can be accomplished. Any Motions for Review based on the findings and conclusions stated in this Interim Order should be withheld and filed after the ALJ has issued her final order in this matter. Those Motions for Review will be considered timely filed if filed with the ALJ within 30 days of the final order.

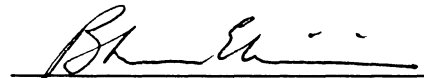
INTERIM ORDER:

IT IS THEREFORE ORDERED that the applicant's attorney arrange to have the relevant X-ray films referred to the ALJ so that a medical panel referral can be accomplished.

INTERIM ORDER  
RE: MAY BIGLER  
PAGE 9

IT IS FURTHER ORDERED that a final ruling will be issued once the medical panel referral is accomplished and that any objections or requests for review of the interim rulings noted in this order will be considered timely if filed within 30 days of the final ALJ order in this matter.

DATED this 17 day of August, 1994.

  
\_\_\_\_\_  
Barbara Elicerio  
Administrative Law Judge

**MAILING CERTIFICATE**

I certify that on August 17, 1994, a copy of the attached Interim Findings of Fact, Conclusions of Law and Order, in the case of May Bigler, was mailed to the following persons at the following addresses, postage paid:

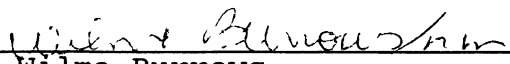
May Bigler  
3810 South Redwood Rd  
WVC, UT 84119

Phillip Shell  
Attorney at Law  
45 East Vine Street  
Murray, UT 84107

Michael Dyer  
Attorney at Law  
77 West 200 South, Suite 400  
SLC, UT 84101

Transportation Insurance  
CNA Insurance  
P O Box 17369 TA  
Denver, CO 80217

INDUSTRIAL COMMISSION OF UTAH

  
\_\_\_\_\_  
Wilma Burrows  
Adjudication Division

RECEIVED

RECEIVED

\*\*\*\*\*

FINAL

## FINDINGS OF FACT

## CONCLUSIONS OF LAW

AND ORDER

BEFORE: Barbara Elicerio, Administrative Law Judge.

The defendants were represented by Michael Dyer, Attorney.

In their answer to the applicant's application for hearing, the defendants specified that the applicant was not entitled to benefits related to the March 11, 1993 work incident at issue, because she did not sustain a compensable work accident at that time. The defendants argued that the applicant could show neither medical nor legal cause, both of which must be established for compensability, per Allen v. Industrial Commission, 729 P.2d 15 (Utah 1986). Because all evidence pertinent to the legal cause issue was before the ALJ at the completion of the hearing on August 8, 1994, the ALJ decided to issue an interim ruling on that issue alone, as resolution of that issue could have resulted in no further need for litigation. After reviewing the medical records and the applicant's hearing testimony, the ALJ concluded that the applicant had met her burden of showing "unusual exertion," so as to establish legal cause. The Interim Order fully discusses the ALJ's findings and reasons for so concluding. In the Interim Order, after explaining her reasons for ruling in the applicant's favor on the legal cause issue, the ALJ noted that the medical causal element of compensability still required resolution.

FINAL ORDER  
RE: MAY BIGLER  
PAGE 2

Because the ALJ found that the medical records contained some lack of clarity on the medical causal connection between the work incident and subsequent symptoms and treatment, the ALJ indicated she would refer the medical cause issue to a medical panel for additional input on that issue.

After collection of X-rays, the matter was referred over to the medical panel on October 19, 1994. The medical panel report was received at the Commission on December 21, 1994 and was distributed to the parties on December 22, 1994, with 15 days allowed for filing objections. The ALJ granted the defendants' request for an extension of time to file objections to the medical panel report. The defendants' objections were filed on January 24, 1995. The applicant responded to the objections on February 7, 1995 and the defendants filed a reply to the applicant's response on February 22, 1995. The matter was considered ready for order on February 7, 1995, but the ALJ is considering all evidence and argument submitted to date, in making her final decision.

#### FINDINGS OF FACT:

For purpose of factual findings related to the issue of medical cause, the ALJ hereby incorporates the Findings of Fact specified in the August 17, 1994 Interim Order.

The medical panel consisted of chairman, Dr. M. Thomas, a neurologist, panelmember, Dr. A. O. Smoot, an orthopedist, and panelmember, Dr. R. Burgoyne, a psychiatrist. The medical panel was requested to answer questions dealing with: the medical causal connection between the March 11, 1993 industrial event and the applicant's back problems, the date the applicant stabilized from the effects of the March 11, 1993 accident, permanent impairment pre-existing the accident and caused by the accident, and what treatment was/will be necessary as a result of the accident. The panel concluded that there was a medical causal connection between the March 11, 1994 work incident and applicant's current back problems. The panel commented: "the panel is impressed that something significant occurred at the time of the accident, which led to her immediate symptoms, which have persisted over time since then." The panel concluded that the applicant was stable in April of 1994, as it appeared that her condition has remained the same since that time. With respect to impairment, the panel found that the applicant had an overall 5% whole person impairment to the low

back, with 1.7% whole person attributable to the March 11, 1993 accident and 3.3% whole person attributable to pre-existing conditions. In addition, the panel found that the applicant had a 5% whole person impairment for somatoform pain disorder. Past medical care was found to be related to the March 11, 1993 industrial accident. Infrequent orthopedic follow-up, and possibly attendance at a pain clinic, were recommended as future treatment.

OBJECTIONS TO THE MEDICAL PANEL REPORT:

The basic premise of counsel for the defendants' Objections to the Medical Panel Report is that the ALJ improperly influenced the panel's decision on medical cause, by discussing her reasons for ruling in favor of the applicant on the legal cause issue in the Interim Order. Counsel argues that the ALJ's discussion in the Interim Order regarding the reliability/applicability of the analyses made by Dr. Grange and Dr. Bloswick, resulted in the panel being influenced to discount the opinions of Dr. Grange and Dr. Bloswick. Per counsel, the ALJ improperly concluded that Dr. Bloswick and Dr. Grange had relied on inaccurate information regarding the nature of the applicant's activities on March 11, 1993. Counsel argues that Dr. Grange and Dr. Bloswick had the same information regarding what occurred on that date as was provided at hearing and thus their opinions regarding the exertion required on March 11, 1993, and Dr. Grange's opinion regarding the lack of a medical causal connection between the work incident and the subsequent symptoms/treatment, are valid reliable opinions. Counsel apparently argues that if the ALJ had so concluded, the panel would have given more credit to the opinions of Dr. Grange and Dr. Bloswick and would not have been influenced to discount their opinions, as did the ALJ. Presumably, counsel argues that had the panel given more credit to the opinions of Dr. Grange and Dr. Bloswick, the panel would have found no medical causal connection between the industrial accident and the subsequent developing back symptoms.

Counsel for the applicant responds to the above argument, noting first that Dr. Grange and Dr. Bloswick both describe the applicant's activity on the date of injury as involving merely a "reach." Counsel states that, even if the deposition transcript indicating a lunge and a jerk was provided to the doctors, neither doctor seemed to take careful note of the lunge/jerk testimony and rather analyzed the relevant activity as involving merely a reach. Counsel argues that this reference to merely a reach is more in

line with what counsel for the defendants states in his cover letter to the doctors than it is with what the applicant stated at her deposition and her hearing. With respect to the defendants' argument that the ALJ's discounting of the opinions of Dr. Bloswick and Dr. Grange caused the panel to also discount those opinions, counsel argues that the panel had the full reports of Dr. Bloswick and Dr. Grange and there is nothing in the panel report to indicate that they wholly discounted those reports.

Counsel for the defendants' reply to counsel for the applicant's response states that the ALJ incorrectly emphasized the unusualness of the activity engaged in by the applicant on the date of injury, as opposed to the unusualness of the exertion engaged in at that time. Counsel argues that, had the ALJ correctly focused on the unusualness of the exertion, she would have found Dr. Bloswick's compressive force analysis to be directly on point, instead of having discounted it (and to follow the argument through, the ALJ presumes that counsel contends that this in turn would have caused the panel to give more credit to the Bloswick compressive force analysis). With respect to the work activity facts used by Bloswick in making his analysis, counsel argues that Bloswick's report recounts facts and information not in counsel's cover letter to Bloswick, and thus this shows that Bloswick had the applicant's testimony (i.e. lunge and jerk) in mind when he did his analysis, and not merely counsel's indication of mere reaching.

#### CONCLUSIONS OF LAW:

The ALJ adopts the findings of the medical panel on the issue of the medical causal connection between the March 11, 1993 work incident and the subsequent developing back problems, treatment and related impairment. The ALJ does so primarily because there are no other well-founded medical opinions that directly controvert the findings of the medical panel on the medical causal issue. Dr. Grange does conclude that he felt the applicant's symptom course was an unusual one to follow such a "low-energy mechanism" as that involved in the industrial accident. However, as has been discussed in the Interim Order, it does not appear that Dr. Grange had accurate facts to rely on in making his assessment of what was involved on the date of injury. In the only place in his report where he describes the industrial event, he quotes directly from counsel for the defendants cover letter which indicates that the industrial incident involved a mere reaching 25° to the right. The ALJ would also consider this description to be

FINAL ORDER  
RE: MAY BIGLER  
PAGE 5

a "low-energy" activity, but this description is not what the applicant described in her deposition and her hearing testimony and it is not what the ALJ found was involved on the date of injury. Based on his statements in his June 17, 1994 report, Dr. Grange was analyzing an activity that counsel for the defendant described to him and was not basing his analysis on the actual facts of the relevant activity, even if he had the actual facts provided to him by way of the applicant's deposition transcript. Just because Dr. Grange was given the applicant's deposition transcript, doesn't mean he read it or relied upon it. It appears evident from his report that he probably did not. Therefore, considering Dr. Grange's conclusions are based on an activity that is different from what the ALJ has found actually occurred, the ALJ finds that his report is not well-founded and therefore does not conflict with the panel report (which analyzes the correct facts as specified in the ALJ's Interim Order).

The ALJ should note that she finds no other medical opinions, besides that of Dr. Grange, that can be interpreted to conflict with the medical panel's causal analysis. Dr. Coleman did indicate that he did not feel that all of the applicant's symptoms were related to the industrial injuries alone, but he did not exclude any causal connection with the March 11, 1993 incident. His opinion is not in conflict with the panel conclusions, as the panel notes that the applicant does have significant pre-existing impairment to the low back and thus not all of her problems are solely related to the industrial injury. Based on the lack of any medical opinions truly conflicting with that of the panel, and based on the fact that the panel has provided a thorough, well-informed and logical causal analysis, the ALJ finds the panel conclusions should be adopted.

With respect to the objections to the medical panel report, the ALJ does not agree that the panel has been improperly influenced in any way by an unrelated finding made by the ALJ or by the ALJ's discussion of her reasoning behind the unrelated finding. The panel was specifically instructed to deal just with the issue of medical cause and the panel was given all the relevant medical evidence and other expert opinion that was offered at the hearing to consider in making its analysis. The ALJ specifically directed the panel to rely on the facts stated in the Interim Order and there is nothing in the panel report that indicates to the ALJ that the panel was relying on anything but the facts stated in the ALJ's Interim Order. The ALJ finds it purely speculative to suggest that the panel was unduly influenced by the ALJ's discounting of the



FINAL ORDER  
RE: MAY BIGLER  
PAGE 6

opinions of Dr. Bloswick and Dr. Grange. The panel had the full reports of those doctors and the ALJ knows of no reason why the panel would be more influenced by something the ALJ indicated as opposed to something that one of their own medical colleagues stated. In actuality, the ALJ believes that most medical panels base their decisions on their own expert analysis and are not unduly influenced by the opinions or statements of any one physician or other individual.

With respect to the argument that the ALJ analyzed the unusualness of the activity as opposed to the unusualness of the exertion, the ALJ should clarify that she did in fact consider the sudden twisting lunge on the date of injury to involve unusual exertion. The Interim Order does state this conclusion in terms of the activity being unusual, but the ALJ was focusing on the exertion involved in the activity when she made her conclusions. The ALJ should note that she does find that the type of evidence supplied by Dr. Bloswick (i.e. the compressive force analysis) can be very helpful in analyzing the "unusal exertion" requirement for legal cause. It can be difficult at times to compare exertion levels, as is required by Allen unusual exertion test. Expert analysis in this area is very helpful, provided the expert is analyzing the correct activity. In the instant case, the ALJ finds that the expert was analyzing an activity suggested to him by counsel and not the activity that was actually involved. In future cases, the ALJ would certainly accept well-founded compressive force analysis evidence and might even welcome this additional evidence.

Based on the medical panel conclusions, the applicant has established medical cause. Legal cause was found established in the Interim Order. Medical and legal cause established, the ALJ finds that the applicant sustained a compensable industrial accident on March 11, 1993. Benefits are thus payable per the medical panel conclusions regarding stability and permanent impairment.

Per the panel report, the applicant is entitled to temporary total compensation (TTC) for the periods off work from the date of injury until April 1994, when the applicant stabilized per the medical panel. The ALJ finds that Dr. Kesler's records indicate a need to be off work until April 6, 1994 and thus the ALJ will use that date in April for the end of TTC. Per the ALJ's Interim Order, the applicant worked between March 29, 1993 and May 19, 1993

FINAL ORDER  
RE: MAY BIGLER  
PAGE 7

and thus the periods of TTC to be awarded are from March 12, 1993 through March 28, 1993 (2.429 weeks) and May 19, 1993 through April 5, 1994 (46 weeks). Her average weekly wage, per her representations on the application for hearing (that have not been specifically denied), is based on 35 hours/week at \$5.20/hour, or \$182.00/week. The compensation rate is thus \$121.00/week ( $\$182.00 \times .667 = \$121.39$ ) when rounded off as required by U.C.A. 35-1-75. The total TTC award is therefore \$5,859.91 ( $\$121.00 \times 48.429$ ). Permanent impairment benefits (PPI) are based on a total of 6.7% whole person impairment (5% for the somatoform pain disorder and 1.7% for the permanent aggravation to the low back caused by the March 11, 1993 accident). The PPI award is thus 20.9 weeks ( $312 \text{ weeks} \times .067$ ) at \$121.00/week, or \$2,528.90. Attorney fees are based on 20% of the full award of compensation, per R568-1-7, and amount to \$8,388.81 ( $\$5,859.91 \text{ for TTC} + \$2,528.90 \text{ for PPI} \times .20$ , or \$1,677.76.

ORDER:

IT IS THEREFORE ORDERED that the defendants, T. W. Services and/or Transportation Insurance, pay the applicant, May Bigler, temporary total compensation at the rate of \$121.00 per week, for 48.429 weeks, or a total of \$5,859.91, for the periods of medical instability associated with the March 11, 1993 industrial accident from March 11, 1993 through March 28, 1993 and from May 19, 1993 through April 5, 1994. That amount is accrued and due and payable in a lump sum, plus interest at 8% per annum, per U.C.A. 35-1-78, and less the attorney fees to be awarded below.

IT IS FURTHER ORDERED that the defendants, T. W. Services and/or Transportation Insurance, pay the applicant, May Bigler, permanent impairment benefits at the rate of \$121.00 per week, for 20.9 weeks, or a total of \$2,528.90, for the 6.7% whole person impairment sustained as a result of the March 11, 1993 industrial accident. That amount is accrued and due and payable in a lump sum, plus interest at 8% per annum, per U.C.A. 35-1-78.

IT IS FURTHER ORDERED that the defendants, T. W. Services and/or Transportation Insurance, pay all medical expenses incurred as the result of the March 11, 1993 industrial accident as specified by the medical panel appointed in this matter; said expenses to be paid in accordance with the medical and surgical fee schedule of the Industrial Commission of Utah.

FINAL ORDER  
RE: MAY BIGLER  
PAGE 8

IT IS FURTHER ORDERED that the defendants, T. W. Services and/or Transportation Insurance, pay Phillip Shell, attorney for the applicant, the sum of \$1,677.76, plus 20% of the interest payable on the applicant's award, per R568-1-7, for services rendered in this matter, the same to be deducted from the aforesaid award to the applicant, and to be remitted directly to the office of Phillip Shell.

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

DATED this 24 day of March, 1995.



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Barbara Elicerio  
Administrative Law Judge

**CERTIFICATE OF MAILING**

I certify that on March 24, 1995, a copy of the attached Final Findings of Fact, Conclusions of Law and Order, in the case of May Bigler, was mailed to the following persons at the following addresses, postage paid:

May Bigler  
3810 South Redwood Road, #204  
West Valley City, UT 84119

Phillip Shell  
Attorney at Law  
45 East Vine Street  
Murray, UT 84107

Michael Dyer  
Attorney at Law  
77 West 200 South, Suite 400  
SLC, UT 84101

CNA Insurance  
P O BOX 17369 TA  
Denver, CO 80217

INDUSTRIAL COMMISSION OF UTAH

Wilma Burrows  
Wilma Burrows  
Adjudication Division

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THE INDUSTRIAL COMMISSION OF UTAH

MAY BIGLER,

Applicant,

vs.

T. W. SERVICES, INC. and  
TRANSPORTATION INSURANCE CO.

Defendants.

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ORDER GRANTING  
MOTION FOR REVIEW

Case No. 94-0273

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T. W. Services, Inc. and its workers' compensation insurance carrier, Transportation Insurance Co. (referred to jointly as "T. W. Services" hereafter) ask The Industrial Commission of Utah to review the Administrative Law Judge's award of benefits to May Bigler pursuant to the Utah Workers' Compensation Act.

The Industrial Commission 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.

**ISSUE UNDER REVIEW**

Has Ms. Bigler established that her accident of March 11, 1993 is the legal cause of the injuries for which she seeks workers' compensation benefits. Because the Industrial Commission finds this issue dispositive, it does not address other issues raised in T. W. Services' motion for review.

**FINDINGS OF FACT**

Because the parties agree that Ms. Bigler suffered a preexisting back conditions that required her to meet the higherstandard of legal causation announced in Allen v. Industrial Commission, 729 P.2d 15 (Utah 1986), it is unnecessary to detail the nature and extent of such preexisting conditions, which are documented in the medical record.

ORDER GRANTING MOTION FOR REVIEW

MAY BIGLER

PAGE 2

As to the accident of March 11, 1993, the Industrial Commission adopts the ALJ's finding, which can be summarized as follows: Ms. Bigler worked as a cashier in a cafeteria, standing behind a cash register located between two waist-high counters. A copy of the daily menu was held in a light-weight plastic stand in front of the cash register, approximately two feet away from Ms. Bigler.

At the time of the accident, Ms. Bigler saw the menu begin to fall. She twisting 25 degrees to the right and lunged forward across the counter in an unsuccessful attempt to catch the menu. As she did so, she felt a sharp pain in her low back. Ms. Bigler now seeks workers' compensation benefits for this injury.

DISCUSSION AND CONCLUSIONS OF LAW

Section 35-1-45 of the Utah Workers' Compensation Act provides benefits for workers injured by accident arising out of and in the course of their employment. A person suffering from a preexisting condition is not necessarily disqualified from receiving workers' compensation benefits. However, in order to establish that the injury arises out of and in the course of employment, "a claimant with a preexisting condition must show that the employment contributed something substantial to increase the risk he already faced in everyday life because of his condition." Allen, 729 P.2d at 25. This requirement, referred to as "legal causation", is met when the claimant demonstrates some exertion greater than that experienced in typical, modern nonemployment life. Allen, 729 P.2d at 26.

The Industrial Commission has carefully considered the nature of Ms. Bigler's exertion on March 11, 1993. The Industrial Commission notes that, not infrequently, objects fall from tables, desks, countertops and shelves. Consequently, it is not unusual for persons to make sudden twisting and lunging movements to attempt to catch such objects. Ms. Bigler's similar activity at work on March 11, 1993 was not atypical of risks generally faced everyday in nonemployment life.

Based on the foregoing, the Industrial Commission finds Ms. Bigler has failed to establish that her accident while employed at

ORDER GRANTING MOTION FOR REVIEW  
MAY BIGLER  
PAGE 3

T. W. Services meets the higher test for legal causation required by Allen. The Industrial Commission therefore concludes that Ms. Bigler's injury is not compensable under the Utah Workers' Compensation Act.

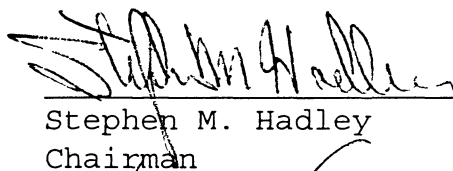
In light of the Industrial Commission's determination that Ms. Bigler has failed to establish legal causation, it is unnecessary to address other issues raised in T. W. Services' motion for review.

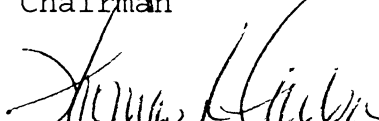
ORDER


The Industrial Commission hereby grants T. W. Services' motion for review and reverses the ALJ's award of benefits to Ms. Bigler. The Industrial Commission denies Ms. Bigler's claim for workers' compensation benefits on the grounds her injury did not arise out of her employment at T. W. Services. It is so ordered.

Dated this 29 day of September, 1995.



  
Stephen M. Hadley  
Chairman

  
Thomas R. Carlson  
Commissioner

  
Colleen S. Colton  
Commissioner

IMPORTANT! NOTICE OF APPEAL RIGHTS FOLLOWS ON NEXT PAGE.

ORDER GRANTING MOTION FOR REVIEW  
MAY BIGLER  
PAGE 4

NOTICE OF APPEAL RIGHTS.

Any party may ask the Industrial Commission to reconsider this Order by filing a request for reconsideration with the Industrial Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with that court within 30 days of the date of this Order.


CERTIFICATE OF MAILING

I certify that a copy of the foregoing Order Granting Motion For Review in the matter of May Bigler, Case No. 94-0273, was mailed first class postage prepaid this 29 day of September, 1995, to the following:

MAY BIGLER  
3810 SOUTH REDWOOD ROAD #2049  
WEST VALLEY CITY, UTAH 84119

MICHAEL DYER, ATTORNEY  
77 WEST 200 SOUTH #400  
SALT LAKE CITY, UTAH 84101

PHILLIP SHELL, ATTORNEY  
45 EAST VINE STREET  
MURRAY, UTAH 84107

  
Adell Butler-Mitchell  
Support Specialist  
Industrial Commission of Utah



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THE INDUSTRIAL COMMISSION OF UTAH

MAY BIGLER,

Applicant,

T. W. SERVICES, INC. and  
TRANSPORTATION INSURANCE CO.

Defendants.

\*  
\*  
\* ORDER EXTENDING TIME  
\* FOR RECONSIDERATION  
\*  
\*

\* Case No. 94-0273  
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On October 18, 1995, May Bigler filed a Motion For Reconsideration in the above entitled matter. Under §63-46b-13 of the Utah Administrative Procedures Act, such a motion is deemed denied unless the Commission issues its Order within 20 days. However, pursuant to §63-46b-1(9) of the Act, the Commission may extend, for good cause, the 20 day period.

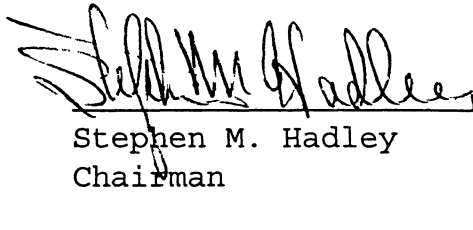
To allow other parties to respond to Mrs. Bigler's Motion and to allow the Industrial Commission of Utah sufficient time to properly consider the matter, the period for determination of Mrs. Bigler's Motion For Reconsideration is hereby extended as follows:

1. Other parties may respond to the Motion in writing no later than November 17, 1995.


ORDER EXTENDING TIME FOR RECONSIDERATION  
MAY BIGLER V. T.W. SERVICES, INC., et al.  
PAGE 2

2. The Commission will issue its decision on the Motion no later than December 8, 1995.

DATED this 30<sup>th</sup> day of November, 1995.

  
\_\_\_\_\_  
Stephen M. Hadley  
Chairman

\_\_\_\_\_  
Thomas R. Carlson  
Commissioner

  
\_\_\_\_\_  
Colleen S. Colton  
Commissioner

**CERTIFICATE OF MAILING**

I certify that a copy of the foregoing Order Extending Time  
for Reconsideration in the matter of May Bigler, Case No. 94-0273,

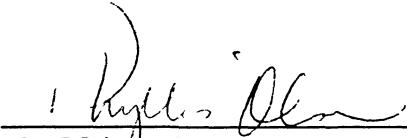
ORDER EXTENDING TIME FOR RECONSIDERATION  
MAY BIGLER V. T.W. SERVICES, INC., et al.  
PAGE 3

was mailed first class postage prepaid this 3<sup>rd</sup> day of November  
1995, to the following:

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\_\_\_\_\_  
Phyllis Olson  
Support Specialist  
Industrial Commission of Utah