

IN THE UTAH COURT OF APPEALS

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Samuel Lee Biers,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner,)	
)	Case No. 20041018-CA
v.)	
)	
Labor Commission, R. Lee)	F I L E D
Ellertson, Liberty Mutual)	(December 22, 2005)
Insurance, and United Parcel)	
Service,)	2005 UT App 547
)	
Respondents.)	

Original Proceeding in this Court

Attorneys: Samuel L. Biers, Boulder, Colorado, Petitioner Pro Se
Alan Hennebold, Dori K. Petersen, and Kristy L.
Bertelsen, Salt Lake City, for Respondents

Before Judges Billings, Bench, and Greenwood.

GREENWOOD, Judge:

Petitioner Samuel Lee Biers appeals the order of the Utah Labor Commission Appeals Board (the Commission) upholding the Administrative Law Judge's (ALJ) denial of Petitioner's request for workers' compensation benefits for permanent partial disability under Utah Code section 34A-2-401. See Utah Code Ann. § 34A-2-401 (2001). We affirm.

Petitioner first argues that the Commission violated his due process rights.¹ Whether an administrative agency has afforded a petitioner due process is a question of law, which we review for correctness. See Color Country Mgmt. v. Labor Comm'n, 2001 UT App 370, ¶17, 38 P.3d 969. "Judicial review of final agency

¹We mention Petitioner's due process and equal protection arguments in spite of his failure to raise these issues below. "As the Utah appellate courts have reiterated many times, we generally will not consider an issue, even a constitutional one, which the appellant raises on appeal for the first time." State v. Webb, 790 P.2d 65, 77 (Utah Ct. App. 1990).

actions is governed by the Utah Administrative Procedures Act [(UAPA)]." Id. at ¶16 (quotations and citation omitted). Under section 63-46b-8 of UAPA, all parties shall be afforded "the opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence." Utah Code Ann. § 63-46b-8(1)(d) (2004).

Specifically, Petitioner contends that his due process rights were violated when the ALJ admitted Dr. Chung's independent medical evaluation (IME) into the record seventy-eight days after the evidentiary hearing, depriving Petitioner the opportunity to cross-examine Dr. Chung or to present evidence challenging the IME. We disagree.

Insofar as Petitioner objects to the admission of a report in lieu of oral testimony, we note that "the technical rules of evidence need not be applied" in a hearing before an administrative agency. Sandy State Bank v. Brimhall, 636 P.2d 481, 486 (Utah 1981); see also Utah Code Ann. § 34A-2-802(2) (2001) (stating that the Commission may receive as evidence and use as proof of any disputed fact all material and relevant evidence, including reports of examining physicians).

In this case, over the objection of Respondents, the ALJ allowed Petitioner to submit a medical report on the day of the hearing. In the interest of fairness, the ALJ left the record open to receive an additional report from Respondents to respond to Petitioner's report. At that time, Petitioner did not object to the ALJ's action. Moreover, the IME submitted by Dr. Chung was consistent with other medical evidence in the record. Hence, "[a]fter a careful review of the record, we conclude that the procedures utilized here did not deprive [Petitioner] of notice or a meaningful opportunity to be heard." Color Country Mgmt., 2001 UT App 370 at ¶28. As a result, Petitioner's due process argument fails.

Petitioner also argues that the Commission deprived him of equal protection of the law because the Commission's actions under section 34A-2-802(1) were unreasonable and without any substantial justification. See Utah Code Ann. § 34A-2-802(1). Whether an administrative agency has violated a petitioner's equal protection rights is a question of law, which we review for correctness. See Horton v. Utah State Ret. Bd., 842 P.2d 928, 931 (Utah Ct. App. 1992).

The thrust of Petitioner's argument appears to be that he was treated differently than others appearing before the Commission. However, Petitioner's claim is "devoid of any 'meaningful analysis.'" State v. Garner, 2002 UT App 234, ¶12, 52 P.3d 467 (quotations and citation omitted). "Specifically,

[Petitioner] has not demonstrated that the statute applies differently to those with whom he is similarly situated" Horton, 842 P.2d at 934. "When a party fails to offer any meaningful analysis regarding a claim, we decline to reach the merits." Garner, 2002 UT App 234 at ¶12. Accordingly, Petitioner's equal protection argument also fails.

In addition, Petitioner contends that the Commission arbitrarily denied him workers' compensation benefits. When a claim is brought alleging that an agency action is arbitrary and capricious, we review the agency action for reasonableness and rationality. See R.O.A. Gen., Inc. v. Utah Dep't of Transp., 966 P.2d 840, 842 (Utah 1998). We will overturn the findings of fact of an administrative tribunal only if they are "not supported by substantial evidence when viewed in light of the whole record before the court." Utah Code Ann. § 63-46b-16(4)(g) (2004). "Substantial evidence is 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" Grace Drilling Co. v. Board of Review of Indus. Comm'n, 776 P.2d 63, 68 (Utah Ct. App. 1989) (quotations and citations omitted).

Petitioner attacks the ALJ's determination that there was no medical evidence in the record attributing Petitioner's degenerative disc disease to the industrial injury he experienced while working as a package driver for United Parcel Service (UPS). However, Petitioner has failed to marshal the evidence supporting the ALJ's findings. "[B]efore we will subject an agency's findings to the substantial evidence test, the party challenging the findings 'must marshal all of the evidence supporting the findings and show that despite the supporting facts, the [agency's] findings are not supported by substantial evidence.'" VanLeeuwen v. Industrial Comm'n, 901 P.2d 281, 284 (Utah Ct. App. 1995) (second alteration in original) (citation omitted).

In addition, Petitioner presented no evidence of an impairment rating, a prerequisite for a finding of a permanent partial disability award. Similarly, Petitioner failed to marshal the evidence to attack the Commission's finding that Petitioner had reached medical stability more than two years before the hearing. See id.

Conversely, there is ample evidence in the record to support the findings of the ALJ and the Commission that Petitioner was not entitled to additional benefits other than those awarded by the ALJ and affirmed by the Commission. Nothing in the record indicates that the findings were arbitrary and capricious. As a result, this argument also fails.

Finally, Petitioner contends that the Commission's refusal to assess a 15% willful violation penalty against UPS was error. Whether an employer's failure was willful is a question of fact. See Van Waters & Rogers v. Workman, 700 P.2d 1096, 1098 (Utah 1985). "[W]e defer to a great degree to the Commission's findings and will reverse only where they are without foundation in the evidence." Id.

Petitioner maintains that UPS willfully disregarded its own written safety policy by forcing Petitioner to lift packages in excess of seventy pounds. As a result, he argues that the 15% penalty provided for in section 34A-2-301 is applicable in this case. See Utah Code Ann. § 34A-2-301(2)(d)(2001).

No evidence was presented to suggest that UPS failed to comply with the law or its own safety guidelines. Nor is there anything in the record to indicate that UPS intentionally injured Petitioner. Hence, Petitioner's claim that the Commission erred in concluding that the evidence did not support a 15% penalty against UPS also fails.

In sum, Petitioner has not demonstrated that either his due process or equal protection rights were violated by the actions of the ALJ or the Commission. Similarly, Petitioner's alternative arguments that the Commission arbitrarily denied him workers' compensation benefits and that the Commission erred in refusing to assess a 15% willful violation penalty against UPS are also unpersuasive.

Accordingly, we affirm.

Pamela T. Greenwood, Judge

WE CONCUR:

Judith M. Billings,
Presiding Judge

Russell W. Bench,
Associate Presiding Judge