

IN THE UTAH COURT OF APPEALS

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A & O Stucco, Inc.,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Petitioner,	)	
	)	Case No. 20051155-CA
v.	)	
	)	
Labor Commission, Uninsured	)	F I L E D
Employers Fund,	)	(April 27, 2006)
	)	
Respondent.	)	<span style="border: 1px solid black; padding: 2px;">2006 UT App 173</span>

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Original Proceeding in this Court

Attorneys: Douglas A. Gubler, Salt Lake City, for Petitioner  
            Elliot R. Lawrence, Salt Lake City, for Respondent

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Before Judges Bench, Billings, and Thorne.

PER CURIAM:

A & O Stucco, Inc. petitions for judicial review of the alleged order of an administrative law judge (ALJ) of the Utah Labor Commission denying a motion for a more definite statement. This matter is before the court on the Uninsured Employers Fund's motion for summary disposition.

Judicial review of administrative orders issued pursuant to the Workers' Compensation Act is limited to those circumstances where a petitioner has first exhausted available administrative remedies. See Utah Code Ann. § 34A-2-801(8)(c) (2005); see also Utah Code Ann. § 63-46b-14(2) (2004) (stating that under the Utah Administrative Procedures Act "[a] party may seek judicial review only after exhausting all administrative remedies available"). In Maverik Country Stores v. Industrial Commission, 860 P.2d 944 (Utah Ct. App. 1993), we held that "a party adversely affected by an order of an ALJ in an anti-discrimination hearing cannot obtain judicial review of that order until it has been subject to administrative review." Id. at 947.

A & O Stucco alleges that on November 28, 2005, the ALJ denied its motion for a more definite statement. However, no such order appears in the record. All that appears is a continuance of the hearing. In fact, the record indicates that

the ALJ did not even conduct a hearing on the merits of this case until April 6, 2006, let alone issue an order subject to administrative review. Further, even if an order existed in the record that could form the basis of an appeal, A & O Stucco fails to demonstrate how waiting for the ALJ's final order and requesting review by the Labor Commission would be an inadequate remedy or subject A & O Stucco to irreparable harm.

Accordingly, because A & O Stucco did not exhaust its administrative remedies, it is not entitled to seek judicial review, and this court lacks jurisdiction to consider the petition for review. See Utah Code Ann. § 78-2a-3(2)(a) (2002) (giving the court of appeals jurisdiction over final orders and decrees from administrative agencies).

Therefore, the appeal is dismissed.

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Russell W. Bench,  
Presiding Judge

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Judith M. Billings, Judge

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William A. Thorne Jr., Judge