

IN THE UTAH COURT OF APPEALS

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Richard D. Grint,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Petitioner,	)	
	)	Case No. 20060253-CA
v.	)	
	)	
Labor Commission, Trimco	)	F I L E D
Molding, and/or Argonaut	)	(April 5, 2007)
Insurance Company,	)	
	)	2007 UT App 114
Respondents.	)	

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Original Proceeding in this Court

Attorneys: Richard R. Burke, Sandy, for Petitioner  
Michael E. Dyer, Kristy L. Bertelsen, and Alan L. Hennebold, Salt Lake City, for Respondents

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Before Judges Bench, Greenwood, and Davis.

BENCH, Presiding Judge:

Richard D. Grint asserts that the Labor Commission (the Commission) erred in ruling that Grint waived his increased compensation claim and in subsequently concluding that the administrative law judge (the ALJ) improperly considered and ruled on the issue. Whether a party properly raises an issue for adjudication is a question of law, which we review for correctness. See Hilton Hotel v. Industrial Comm'n, 897 P.2d 352, 354 (Utah Ct. App. 1995).

In support of its conclusion that Grint waived his increased compensation claim, the Commission cites Hilton Hotel v. Industrial Commission, 897 P.2d 352 (Utah Ct. App. 1995), and Chevron U.S.A., Inc. v. State Tax Comm'n, 847 P.2d 418 (Utah Ct. App. 1993). Grint asserts that his case is distinguishable because, unlike the parties in Hilton Hotel and Chevron, he raised his claim in the initial pleadings.

Despite any factual differences, the policy considerations applied in Hilton Hotel and Chevron also control the outcome here.

In Hilton Hotel and Chevron, we noted that the interests of justice are not served when an administrative agency steps out of its adjudicative role and decides an issue not properly presented. See Hilton Hotel, 897 P.2d at 356; Chevron, 847 P.2d at 421. When a party fails to present evidence on an issue, such failure will generally be considered a waiver. See Chevron, 847 P.2d at 421; Hilton Hotel, 897 P.2d at 356 ("[I]f a party fails to raise an issue and present evidence regarding the same, it has waived the [issue]." (emphasis added)).

In 1985, Grint signed a compensation agreement providing an indemnity benefit of \$55, based on his 1983 wages of \$60 per week. In his 2004 application for a hearing, Grint stated that "[a]t the time of injury/illness my wage was \$14 per hour; and I was working 20 hours per week." Even if this representation constitutes a claim, Grint failed to address the issue at the hearing or to submit any evidence in support of it. At the beginning of the hearing, Grint stated that he was seeking an increased impairment rating and payment for medical bills. At one point in the hearing, the ALJ specifically asked Grint, "[I]s there anything else that you think needs to come out of this hearing Mr. Grint?" Grint stated, "I think that pretty much covers it." On at least two other occasions, the ALJ asked similar questions, and Grint consistently responded that the parties had covered all the issues. In fact, when counsel for Trimco Molding stated that Grint's weekly compensation was \$60, Grint did not dispute or attempt to correct the statement. Upon reviewing the record in this case, it is clear that Grint did not present a claim for increased compensation at the hearing. Grint therefore waived his belated claim, and the Commission correctly concluded that the ALJ erred in addressing it.

Grint also contends that the Commission erred in refusing to consider new evidence that supported the ALJ's award. Utah Code section 63-46b-12(4) states that the Commission, when reviewing an ALJ's ruling, "may by order or rule permit the parties to file briefs or other documents, or to conduct oral arguments." Utah Code Ann. § 63-46b-12(4) (2004). This section gives the Commission discretion on whether to accept additional evidence. Therefore, we will reverse the Commission's decision only if it abused "the discretion delegated to [it] by [the] statute." Utah Code Ann. § 63-46b-16(4)(h)(i) (2004). Because Grint waived his

increased compensation claim, the Commission did not abuse its discretion by refusing to admit the new evidence on wages.

Accordingly, we affirm the Commission's ruling.

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Russell W. Bench,  
Presiding Judge

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WE CONCUR:

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Pamela T. Greenwood,  
Associate Presiding Judge

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James Z. Davis, Judge