

IN THE UTAH COURT OF APPEALS

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Richard D. Prichard,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner,)	
)	Case No. 20070913-CA
v.)	
)	F I L E D
Labor Commission and K-Mart,)	(July 16, 2009)
)	
Respondents.)	2009 UT App 189

Original Proceeding in this Court

Attorneys: David K. Smith, Midvale, for Petitioner
Mark R. Sumsion and Alan L. Hennebold, Salt Lake
City, for Respondents

Before Judges Thorne, Bench, and McHugh.

McHUGH, Judge:

Richard D. Prichard appeals the Labor Commission's (the Commission) decision affirming the Administrative Law Judge's (ALJ) determination that he was not permanently and totally disabled. Prichard contends that the Commission erred in concluding that he retained the functional capacity to perform light to moderate work because the findings of the medical panel on which the ALJ relied were inadequate. Prichard further argues that the Commission erred in determining that he was capable of performing other work reasonably available. We affirm.

Because Prichard's claims involve the Commission's factual determinations, we apply a substantial evidence standard of review. See Martinez v. Media-Paymaster Plus/Church of Jesus Christ of Latter-day Saints, 2007 UT 42, ¶ 23, 164 P.3d 384. "An administrative law decision meets the substantial evidence test when a reasonable mind might accept as adequate the evidence supporting the decision." Id. ¶ 35 (internal quotation marks omitted).

Prichard first claims that the three-member medical panel, convened by the ALJ to address his work restrictions, failed to perform residual functional capacity testing in making the finding that he had light to moderate permanent work

restrictions. Therefore, he contends that it was improper for the Commission to affirm the ALJ. However, Prichard does not cite any case law or statute that would compel the medical panel to make a determination regarding a petitioner's work restrictions only after conducting functional capacity testing. Furthermore, there is no indication in the record that the medical experts Prichard relies on to support his claim of permanent disability performed functional capacity evaluations. Thus, based on Prichard's argument, the restrictions identified by these doctors would likewise be disregarded. The medical panel made its determination after it examined Prichard and reviewed all available medical evidence. We hold that there is substantial evidence to support the conclusion that Prichard was not permanently and totally disabled.

Prichard also argues that there was no support for the medical panel's conclusion that, despite his limitations, he was capable of working an eight-hour work day. At the ALJ's request, the panel clarified that its decision was based on the Department of Labor Guidelines, which specify an eight-hour work day for persons with light to moderate work restrictions. Therefore, the Commission's reliance on the medical panel's determination that Prichard could work an eight-hour day was reasonable.

Prichard next claims that the Social Security Administration's finding that he is totally and permanently disabled creates a presumption of entitlement to benefits. Utah Code section 34A-2-413(1)(d) states otherwise: "Evidence of an employee's entitlement to disability benefits other than those provided under [the Workers' Compensation Act] . . . creates no presumption of an entitlement under this chapter" Utah Code Ann. § 34A-2-413(1)(d) (Supp. 2008) (emphasis added).¹ Because Prichard's argument is contrary to the express language of Utah's Workers' Compensation Act, we reject it.

Finally, Prichard claims that the ALJ did not adequately assess his ability to perform other work reasonably available. See generally *id.* § 34A-2-413(1)(c)(iv) (listing factors to be considered in determining whether an employee can perform other work reasonably available). Specifically, Prichard argues that the ALJ did not properly analyze the commuting distance and wage requirements set forth in Utah Administrative Rule 612-1-10(D)(1). See Utah Admin. Code R612-1-10(D)(1). Although the Commission acknowledged that the ALJ did not "identify or evaluate the 'other work' . . . available" to Prichard, the

¹Because the portions of the Utah Code relevant to our decision are unchanged, we cite to the current version of the code for the convenience of the reader.

Commission made additional findings that supported the ALJ's ultimate conclusion that Prichard was not permanently and totally disabled. The Commission found that a substantial number of well-paying jobs were available that would be appropriate given Prichard's work experience and education, as well as his light to moderate work restrictions. Indeed, a vocational expert identified available jobs in sales, retail, and finance, both in Utah and in Florida, where Prichard had relocated.

In sum, the Commission and the ALJ properly relied on evidence from a medical panel, which concluded that Prichard's work restrictions were light to moderate. Further, the Commission's reliance on the vocational expert's testimony that there was adequate work available to Prichard was reasonable. Thus, the Commission's order was based on evidence that "a reasonable mind might accept as adequate," Martinez v. Media-Paymaster Plus/Church of Jesus Christ of Latter-day Saints, 2007 UT 42, ¶ 35, 164 P.3d 384 (internal quotation marks omitted).

Affirmed.

Carolyn B. McHugh, Judge

WE CONCUR:

William A. Thorne Jr.,
Associate Presiding Judge

Russell W. Bench, Judge