

IN THE UTAH COURT OF APPEALS

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Vaeleen Roberts,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Petitioner,	)	
	)	Case No. 20050695-CA
v.	)	
	)	
Labor Commission; Kindercare	)	F I L E D
Learning Centers, Inc.; and/or	)	(October 5, 2006)
American Assurance Co.,	)	
	)	2006 UT App 403
Respondents.	)	

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Original Proceeding in this Court

Attorneys: Phillip B. Shell, Murray, for Petitioner  
              Bret A. Gardner, Kristy L. Bertelsen, and Alan L.  
              Hennebold, Salt Lake City, for Respondents

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Before Judges Greenwood, Billings, and Thorne.

THORNE, Judge:

Vaeleen Roberts seeks judicial review of the Labor Commission's order denying her workers' compensation claim due to lack of evidence of a medical causal connection between her low back pain and her employment duties.

"An employee . . . who is injured . . . by accident arising out of and in the course of the employee's employment, . . . shall be paid . . . compensation for loss sustained on account of the injury . . . ." Utah Code Ann. § 34A-2-401 (2005). There are two prerequisites to finding a compensable injury. See American Roofing Co. v. Industrial Comm'n, 752 P.2d 912, 914 (Utah Ct. App. 1988); see also Allen v. Industrial Comm'n, 729 P.2d 15, 18 (Utah 1986) (interpreting section 34A-2-401, previously numbered 35-1-45, as creating two prerequisites). First, the claimant must prove the injury occurred "by accident." Allen, 729 P.2d at 18. Second, the claimant must prove a causal connection between the injury and the claimant's employment duties. See id. The element of causation requires proof of both legal cause and medical cause. See American Roofing Co., 752 P.2d at 915.

The Commission has the final responsibility to decide the issues of legal and medical causation. See Intermountain Health Care, Inc. v. Board of Review, 839 P.2d 841, 845 (Utah Ct. App. 1992). The Commission, in its discretion,<sup>1</sup> may refer the medical aspects of a workers' compensation case to a medical panel.<sup>2</sup> See Utah Code Ann. § 34A-2-601(1)(a) (2005); see also Ashcroft v. Industrial Comm'n, 855 P.2d 267, 269 (Utah Ct. App. 1993). "[R]eferral to a medical panel is mandatory only where there is a medical controversy as evidenced through conflicting medical reports." Brown & Root Indus. Serv. v. Industrial Comm'n, 947 P.2d 671, 677 (Utah 1997); see also Utah Admin. Code R602-2-2. "Whether there are conflicting medical reports is a question of fact. We must uphold the Commission's factual findings if such findings are supported by substantial evidence based upon the record as a whole." Brown & Root Indus. Serv., 947 P.2d at 677.

Here, the Commission considered a medical report from Dr. Knoebel, who opined that Roberts's low back problems were not caused, contributed to, or permanently aggravated by her work. Roberts submitted a "Treating Physician's Summary of Medical Records" questionnaire completed by her physician, Dr. Oka. The Commission found that Dr. Oka's responses to the questions were unclear and ambiguous, and did not create a dispute on medical causation.<sup>3</sup> In essence, Dr. Oka did not proffer any opinion on

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<sup>1</sup>Although the Commission has discretion in determining whether to refer a case to a medical panel, it has adopted Utah Administrative rule 602-2-2, which limits that discretion in certain cases. See Utah Admin. Code R602-2-2; see also Willardson v. Industrial Comm'n, 904 P.2d 671, 674 (Utah 1995) (noting that rule 602-2-2's predecessor, rule 568-1-9, limits the Commission's discretion in certain instances).

<sup>2</sup>"The function of the medical panel is to give the Commission 'the benefit of its diagnosis relating to those matters that are particularly within the scope of its expertise.'" Intermountain Health Care, Inc. v. Board of Review, 839 P.2d 841, 845 (Utah Ct. App. 1992) (quoting IGA Food Fair v. Martin, 584 P.2d 828, 830 (Utah 1978)). "[T]he final responsibility of making the decision as to the issues in [a workers' compensation] proceeding is given to the Commission . . . ." Id. (quotations and citations omitted).

<sup>3</sup>The questionnaire specifically asked: "Is there a medically demonstrative causal relationship between the industrial accident (repeated lifting of children and heavy  
(continued...)

medical causation, and as such, no dispute exists to require the Commission to convene a medical panel.

Moreover, with the issue of medical causation plainly in dispute,<sup>4</sup> Roberts had several months prior to the evidentiary hearing to either obtain additional medical opinions establishing medical causation or to obtain clarification from Dr. Oka. She did neither.

In sum, Dr. Knoebel and Dr. Oka were the only doctors that submitted reports regarding medical causation. Their reports do not conflict on the issue of causation. Therefore, we find that the record supports the Commission's findings that there was no medical controversy about the causal relationship between Roberts's work and her low back pain. Thus, the Commission's decision not to refer this issue to a medical panel was proper and will not be disturbed.

The order of the Commission is affirmed.

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William A. Thorne Jr., Judge

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WE CONCUR:

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Pamela T. Greenwood,  
Associate Presiding Judge

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<sup>3</sup>(...continued)  
kitchen work) and the problems you have been treating? If so, explain as necessary: Yes / No (Circle One)." Although the question called for a yes or no answer, Dr. Oka did not mark either. Instead, he merely stated his diagnosis of Roberts's medical condition.

<sup>4</sup>On December 22, 2003, Roberts's employer filed its answer to her claim, specifically disputing medical causation. An evidentiary hearing was conducted before an Administrative Law Judge on July 1, 2004.

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Judith M. Billings, Judge