IN THE UTAH COURT OF APPEALS

RODNEY BENSON, Petitioner, *v.* UTAH LABOR COMMISSION, ET AL, Respondents.	ORDER Case No. 20170872-CA

Before Judges Appleby, Orme, and Christiansen Forster.

This matter is before the court on Rodney Benson's petition for rehearing. The petition fails to demonstrate any points of law or facts that this court overlooked or misapprehended. *See* Utah R. App. P. 35(c).

IT IS HEREBY ORDERED that the petition for rehearing is denied.

Dated this 18th day of January, 2019.

FOR THE COURT:

Kate Appleby

Kate Appleby, Judge

APPENDIX A

CERTIFICATE OF SERVICE

I hereby certify that on January 18, 2019, a true and correct copy of the foregoing ORDER was deposited in the United States mail or was sent by electronic mail to be delivered to:

RODNEY BENSON
rodwcf@gmail.com

CHRISTOPHER C HILL
LABOR COMMISSION
chill@utah.gov

MATTHEW J BLACK
WORKERS COMPENSATION FUND
mblack@wcf.com

By _____
Breeanna Degarmo
Judicial Assistant

Case No. 20170872
District Court No. 13-0852

A

APPEALS BOARD
UTAH LABOR COMMISSION

RODNEY BENSON, Petitioner, vs. DEPARTMENT OF ALCOHOLIC BEV. and WORKERS COMPENSATION FUND, Respondents.	ORDER DENYING REQUEST FOR RECONSIDERATION Case No. 13-0852

Rodney Benson asks the Appeals Board of the Utah Labor Commission to reconsider its prior decision affirming Judge Marlowe's order dismissing Mr. Benson's claim for benefits under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Appeals Board exercises jurisdiction over this matter pursuant to §63G-4-302 of the Utah Administrative Procedures Act.

BACKGROUND AND ISSUES PRESENTED

Mr. Benson claims workers' compensation benefits for a right-knee injury he allegedly sustained while working for the Utah Department of Alcoholic Beverages ("DABC") on June 17, 1992. Judge Marlowe held an evidentiary hearing and referred the medical aspects of Mr. Benson's claim to an impartial medical panel. Following a series of unsuccessful appeals of Judge Marlowe's interim order to the Commission, the Utah Court of Appeals, and the Utah Supreme Court, the matter was forwarded back to Judge Marlowe to complete the adjudication of Mr. Benson's claim.

The medical panel issued its report and concluded that the 1992 work accident resulted in a temporary aggravation of a pre-existing right-knee condition. The panel opined that Mr. Benson reached medical stability from his temporary work injury as of August 1993 and that he did not require any medical treatment for that injury beyond what he received leading up to the date of stability. Judge Marlowe relied on the panel's conclusions over Mr. Benson's objection and dismissed his claim after finding that no benefits were owed to him.

Mr. Benson sought review of Judge Marlowe's decision from the Appeals Board by raising a vague challenge to the evidence regarding the medical cause of his right-knee condition, among other arguments, but failed to address the medical panel's opinion. The Appeals Board affirmed Judge Marlowe's decision to dismiss Mr. Benson's claim based on the medical evidence presented. Mr. Benson now seeks reconsideration of the Appeals Board's decision. In his request for reconsideration, Mr. Benson reiterates his position that his current right-knee condition is medically causally connected to the 1992 work accident. Mr. Benson submits that the opinion of his treating

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physician should carry more weight than the opinions of DABC's medical consultant or the medical panel with regard to medical causation.

DISCUSSION

As outlined in the Appeals Board's previous decision in this matter, the main issue with regard to the compensability of Mr. Benson's ongoing right-knee problems is whether he has demonstrated that such condition is medically causally connected to the 1992 work accident. In considering this issue, the Appeals Board reviewed the medical evidence supporting Mr. Benson's position, including the opinions of his treating physicians, as well as the medical evidence that conflicted with such opinion. The Appeals Board concluded that the preponderance of the medical evidence did not support Mr. Benson's position that his current right-knee condition is medically causally connected to the 1992 work accident notwithstanding the evidence from certain physicians that supported his position.

Mr. Benson's primary argument in his request for reconsideration is that the opinion of his treating physicians in favor of compensability is more reliable than those of DABC's medical consultant, Dr. Knoebel, and the medical panel that undertook an impartial review of the entire medical record in this case. However, Mr. Benson's contention on this point was already considered and rejected by the Appeals Board when it found the panel's conclusions to be persuasive. Specifically, the panel explained that Mr. Benson's current right-knee pathologies could not have resulted from the work accident and would have necessarily pre-dated the work accident. The panel added that Mr. Benson's right-knee problems would likely be the same even if the work accident had not occurred and that he reached medical stability from the 1992 work injury as of August 1993. As stated in the Appeals Board's previous decision, the medical panel's conclusions are persuasive because they are supported by the medical evidence and are the product of impartial, collegial, and expert review of all of Mr. Benson's relevant medical history.

After failing to address the medical panel's report in his motion for review, Mr. Benson now challenges the reliability of the panel's opinion by asserting that panel members "are not free to disagree with the judge." The implication of such assertion is that the panel did not truly act in an impartial or independent manner and is therefore unreliable in rendering an opinion on the medical aspects of his claim. Such is a common argument among parties who do not prevail in cases where a medical panel has participated and such argument has been repeatedly rejected by the Appeals Board and the courts. In reviewing the basis for Mr. Benson's assertion on this point, it appears that he is confusing the panel's role as an evaluator with the fact that medical panels are bound by the findings of fact outlined by an ALJ, a condition that is foundational to the fair adjudication of claims before the Commission.

With regard to the key role played by medical panels in workers' compensation claims, the Utah Court of Appeals has recognized that "when the issue before the Commission is primarily of causation, the importance of the medical panel becomes manifest. It is through the expertise of the

medical panel that the Commission should be able to make the determination of whether the injury sustained by a claimant is causally connected or contributed to by the claimant's employment." *Blair v. Labor Comm'n, et al.*, 262 P.3d 457, 461 (UT App. 2011)(internal citation omitted). This principle is coupled with the authority of the Appeals Board, in its role as the ultimate finder of fact, "to give certain evidence more weight than other evidence." *Virgin v. Bd. of Review of Indus. Comm'n*, 803 P.2d 1284, 1289 (UT App. 1990). The medical panel's determination in Mr. Benson's case regarding the lack of a medical causal connection between his ongoing right-knee problems and the 1992 work accident was persuasive in this matter and represented a preponderance of the evidence. Mr. Benson has not raised any points in his request for reconsideration that would alter the Appeals Board's reliance on the panel's opinion.

Finally, Mr. Benson makes brief reference to the "Amended Interim Order" from Judge Marlowe that was deemed to be a mistake on her part. As addressed in the Appeals Board's previous decision, there was no such order and Mr. Benson's speculation that the medical panel did actually receive such order is unfounded and not evidence of bias or impropriety by the panel. Based on the foregoing, the Appeals Board concludes that Mr. Benson's request for reconsideration should be denied.

ORDER

The Appeals Board denied Mr. Benson's request for reconsideration and reaffirms its previous decision dated August 1, 2017, in this matter. It is so ordered.

Dated this 3rd day of October, 2017.

Patricia Abbott Lammi

Patricia Abbott Lammi, Chair

Patricia S. Drawe

Patricia S. Drawe

Joseph E. Hatch

Joseph E. Hatch

NOTICE OF APPEAL RIGHTS

Any party may appeal this order to the Utah Court of Appeals by filing a Petition for Review with that court within 30 days of the date of this order.

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the attached Order Denying Request for Reconsideration, was mailed on October 3, 2017, to the persons/parties at the following addresses:

Rodney Benson
General Delivery
Shingletown CA 96088

Workers Compensation Fund
designated_agent@wcf.com,pallen@wcf.com

Department of Alcoholic Bev
3802 Pacific Ave
Ogden UT 84405

Matthew J Black
mblack@wcf.com,kklesch@wcf.com

UTAH LABOR COMMISSION
Sara Davidson

B

The Order of the Court is stated below:
Dated: March 26, 2019 08:49:24 AM /s/ Thomas R. Lee Associate Chief Justice

IN THE SUPREME COURT OF THE STATE OF UTAH

----ooOoo----

Rodney Benson, Petitioner, v. Utah Labor Commission, Respondent.	ORDER Supreme Court No. 20190137-SC Court of Appeals No. 20170872-CA Trial Court No. 13-0852

----ooOoo----

This matter is before the Court upon a Petition for Writ of Certiorari, filed on February 18, 2019.

IT IS HEREBY ORDERED that the Petition for Writ of Certiorari is denied.

End of Order - Signature at the Top of the First Page

APPENDIX C

2018 UT App 228

THE UTAH COURT OF APPEALS

RODNEY BENSON,
Petitioner,
v.
UTAH LABOR COMMISSION, UTAH DIVISION OF ALCOHOLIC BEVERAGE CONTROL, AND WCF MUTUAL INSURANCE COMPANY,
Respondents.

Per Curiam Opinion
No. 20170872-CA
Filed December 20, 2018

Original Proceeding in this Court

Rodney Benson, Petitioner Pro Se

Matthew J. Black, Attorney for Respondents Utah Division of Alcoholic Beverage Control and WCF Mutual Insurance Company

Before JUDGES GREGORY K. ORME, MICHELE M. CHRISTIANSEN FORSTER, and KATE APPLEBY.[1]

PER CURIAM:

¶1 Rodney Benson seeks judicial review of the Labor Commission's decision denying his claim for benefits under the Workers' Compensation Act. We decline to disturb the Commission's decision.

¶2 Benson initially argues that he was constitutionally entitled to a jury trial during the formal adjudicative proceeding before the Labor Commission. However, "[t]he right to jury trial under article I, section 10 [of the Utah Constitution] extends only

1. Judge Kate A. Toomey has resumed the use of her birth name and is now known as Judge Kate Appleby.

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to actions that were triable to juries when the Constitution was adopted." *Jensen v. State Tax Comm'n*, 835 P.2d 965, 969 (Utah 1992). The Labor Commission's procedures here are "solely creatures of statute and were not cognizable as civil actions at common law." *Id.* As a result, Benson was not entitled to a jury trial in the Labor Commission proceedings. *See id.*; *see also Curtis v. Loether*, 415 U.S. 189, 194 (1974) (noting that "the Seventh Amendment is generally inapplicable in administrative proceedings, where jury trials would be incompatible with the whole concept of administrative adjudications").

¶3 Benson next asserts that the Labor Commission violated various provisions of both the federal and state constitutions during the course of the proceedings. Benson fails to adequately brief the issue. A party must support his argument on judicial review "with citations to legal authority and the record" and with "reasoned analysis" explaining "why the party should prevail." Utah R. App. P. 24(a)(8). "A brief is inadequate when it merely contains bald citation[s] to authority [without] development of that authority and reasoned analysis based on that authority. As we have repeatedly noted, we are not a depository in which [a party] may dump the burden of argument and research." *Smith v. Four Corners Mental Health Center, Inc.*, 2003 UT 23, ¶ 46, 70 P.3d 904 (quotation simplified). "An inadequately briefed claim is by definition insufficient to discharge an appellant's burden to demonstrate trial court error." *Simmons Media Group, LLC v. Waykar, LLC*, 2014 UT App 145, ¶ 37, 335 P.3d 885. Here, Benson lists various constitutional provisions he claims that the Legislature violated in creating the Labor Commission, or that the Labor Commission violated during the adjudicative process. He also states that "each and every point made in this brief illustrates a violation" of his constitutional rights. However, Benson fails to develop any authority or reasoned analysis as to how each of these "points" is a violation of a constitutional provision. As a result, Benson has failed to

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carry his burden of demonstrating any error on the part of the Labor Commission.

¶4 Benson argues that the Legislature and the executive branch, including the Labor Commission and the Governor's Office, are biased against workers in general, and demonstrated bias against him in particular. In making this argument Benson sets forth numerous alleged theories of bias. Many of these theories concern Benson's belief that there are systemic issues concerning how the Labor Commission resolves complaints filed by injured workers. However, because such issues involve policy considerations, and Benson has failed to demonstrate any constitutional infirmities in the administrative process, they can be resolved only by the Legislature. *See University of Utah v. Shurtleff*, 2006 UT 51, ¶ 53, 144 P.3d 1109.

¶5 Benson also raises numerous points of contention that he believes demonstrate that the Labor Commission was biased against him individually. However, a closer examination of his arguments demonstrates that he is not arguing that the Administrative Law Judge (the ALJ) or the Appeals Board of the Labor Commission was actually biased against him. Rather, he is arguing that they did not treat him fairly.[2] However, in so arguing, Benson fails to cite any applicable statute or administrative rule that was not followed during the proceedings in the Labor Commission. Further, as stated above, he fails to properly develop any argument that the alleged "biases" on the part of anyone at the Labor Commission violated either the state or federal constitutions. We must, therefore, due to the absence of any argument to the contrary, assume that the Labor Commission complied with the procedural requirements

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2. This court cannot find any specific claim in which Benson argues that the ALJ or the Appeals Board had a specific bias against Benson that would have required recusal.

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provided by the statute and administrative rules. Because we assume that the Labor Commission complied with all applicable statutes and rules, Benson cannot demonstrate that the Labor Commission treated him any differently than any other person seeking benefits. As such, Benson fails to demonstrate that the Labor Commission was biased against him.

¶6 The arguments raised by Benson could be construed as a claim that the Labor Commission erred in failing to award him benefits. The Labor Commission's decision to award benefits is a mixed question of fact and law. *Danny's Drywall v. Labor Commission*, 2014 UT App 277, ¶ 9, 339 P.3d 624. "The standard of review we apply when reviewing a mixed question can be either deferential or non-deferential" depending upon whether the question is more fact-like or law-like. *Jex v. Labor Commission*, 2013 UT 40, ¶ 15, 306 P.3d 799 (quotation simplified). "Due to the fact-intensive inquiry involved at the agency level" in determining whether it is appropriate to award benefits, including credibility determinations that an appellate court is "in an inferior position to review," cases like these not lend themselves "to consistent resolution by a uniform body of appellate precedent." *Carbon County v. Workforce Appeals Board*, 2013 UT 41, ¶ 7, 308 P.3d 477 (quotation simplified); *see also Hutchings v. Labor Commission*, 2016 UT App 160, ¶ 23, 378 P.3d 1273 (stating that "[m]edical causation is fundamentally a factual determination"). This decision is therefore more fact-like, and deference to the Labor Commission's decision is warranted.

¶7 Benson asserts that his need for a knee replacement surgery was the result of a work-related accident and was not related to a prior motorcycle accident. In so arguing, Benson points this court to various facts and evidence to support his argument. However, this court has previously concluded that a petitioner must do more than simply point to evidence that supports his argument, the petitioner must "demonstrate that the Commission's medical causation finding itself is not

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supported by substantial evidence." *Hutchings*, 2016 UT App 160, ¶ 31. Here, there is substantial evidence in the record from which the Labor Commission could have reasonably found that Benson's ongoing knee issue was not caused by the industrial accident, but rather by a motorcycle accident that predated the industrial accident, coupled with degenerative changes resulting from age and weight.

¶8 A medical panel's report alone may provide substantial evidence to support the Labor Commission's determination of medical causation. *See id.* ¶ 32. Here, the medical panel reviewed Benson's relevant medical records, considered Benson's diagnostics, and performed its own examination of Benson. After reviewing the totality of the evidence, the medical panel determined that Benson's industrial injury was a temporary aggravation of his pre-existing condition and that aggravation was fully resolved within a year of the industrial accident. The panel added that because of the prior motorcycle accident and the natural progression of degeneration due to age and weight, Benson's current knee problems would likely have been the same even if the work accident had never occurred. The medical panel's report was comprehensive and supported by various medical records generated during the history of Benson's knee problems. Thus, the medical panel's report constituted substantial evidence in support of the Labor Commission's decision. Because substantial evidence supported the Labor Commission's decision, Benson has failed to demonstrate that the Labor Commission abused its discretion.

¶9 For the above reasons, we decline to disturb the Labor Commission's order.

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CERTIFICATE OF MAILING

I hereby certify that on the 20th day of December, 2018, a true and correct copy of the attached OPINION was sent by standard or electronic mail to be delivered to:

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Tammy Berg
Judicial Secretary

TRIAL COURT: LABOR COMMISSION, 13-0852
APPEALS CASE NO.: 20170872-CA

D

UTAH LABOR COMMISSION
ADJUDICATION DIVISION
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RODNEY BENSON, **Petitioner,** **vs.** **UTAH DEPARTMENT OF ALCOHOLIC BEVERAGE; WORKERS' COMPENSATION FUND,** **Respondents.**	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** **Case No. 13-0852** **Judge Deidre Marlowe**

Hearing: March 4, 2016
Appearances:
Rodney Benson appeared *pro se*
Matthew J. Black for the Respondents

PROCEEDINGS

Rodney Benson (hereinafter "Petitioner") filed an application for hearing on October 21, 2013 alleging that he injured his right knee in a work accident on June 17, 1992. He requested recommended medical care of ongoing treatment for his right knee, and permanent partial compensation. The Petitioner also requested treatment for his left knee and hip, on the basis that accommodation of the right knee caused these other body parts to wear and become damaged.

The Utah Department of Alcoholic Beverage and the Workers' Compensation Fund (hereinafter "Respondents") filed an Answer on February 12, 2014 defending on the grounds that the Petitioner's knee condition has progressed past any damage caused by the accident and that they have paid all benefits for which they are liable.

Findings of Fact and Interim Order was issued on August 2, 2016, determining that the case needed to be sent to a medical panel. Dr. Joseph Jarvis, Occupational Medicine, was assigned to chair the panel; he brought in Dr. Joel Dall, Physiatrist, as a member of the panel. The medical panel reviewed the Interim Findings, medical records, diagnostics, and

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examined the Petitioner. The medical panel then filed a report on August 4, 2016 with the Adjudication Division. Copies were promptly distributed to the parties.

The Petitioner filed an Objection to the medical panel report; Response and Reply have been filed. The Judge concludes that the objections are not well-taken. The medical panel report is admitted into the evidentiary record. See further discussion below.

FINDINGS OF FACT

Employment and Compensation

The Petitioner worked for the Utah Department of Alcoholic Beverage as a clerk. The Workers' Compensation Fund provided the Department with workers' compensation coverage for all times relevant to this claim.

The Petitioner's average weekly wage for this claim is $237.60. Exhibit C.

Accident

On June 17, 1992 the Petitioner was working unloading trucks and stocking shelves. As he was stocking shelves, his right knee became painful such that he couldn't stand on it anymore. He reported the injury to his supervisor.

Summary of Medical Care and History

Prior to the instant 1992 work accident, the Petitioner had an accident in 1986 where he was riding his motorcycle and a car took a left turn in front of him. Both knees were injured in the accident; ACL and MCL repairs to the right knee were done in 1989.

After the 1992 industrial accident, X-rays were taken on August 17, 1992; these showed the previous surgical repair and also severe meniscal damage. ME p. 3. Dr. Ken Newhouse recommended reconstruction surgery, which was done on August 27, 1992. ME pp. 17-19. The Petitioner received follow-up care including medications and physical therapy.

Dr. Rosenberg projected the Petitioner to be at medical stability on August 27, 1993. ME p. 22. The knee continued to be symptomatic and the Petitioner continued with a rehabilitation program. Dr. Rosenberg returned to full time work, but with permanent light duty restrictions, on September 3, 1993 due to osteoarthritis of his knee. ME p. 30-33.

On September 8, 1993 Dr. Rosenberg provided a 25% lower extremity rating. ME p. 31.

On September 23, 1993 Dr. Thomas Gritzka evaluated the Petitioner on behalf of the Respondents. He concluded certain problems in the right knee were the result of the motorcycle accident, and certain problems were caused by the 1992 industrial accident. He gave the Petitioner at 35% lower extremity rating, 15% apportionable to the prior motorcycle accident. ME p. 67. The rating was paid to the Petitioner.

At a January 19, 1995 doctor's visit the Petitioner's knee was noted to have some pain, cracking and swelling. Degeneration was noted and ongoing home exercise program and weight loss was recommended, in this and subsequent years. ME p. 38 et seq. A total knee replacement was anticipated in a future year.

By 2011 the total knee replacement was recommended. ME p. 51. By 2014 Dr. Rosenberg was recommending *bilateral* knee replacements due to advanced osteoarthritis. The Petitioner's hips were anticipated to need surgery as well due to osteoarthritis and osteophytes. ME p. 52.

On an undated form Dr. Rosenberg filled out a Summary of Medical Record indicating that the industrial accident caused Petitioner's right grade III ACL insufficiency, Grade III chondrosis, and medial meniscal tear. His previous scope/reconstruction was necessary secondary to the accident, and the Petitioner now needs a total knee replacement. ME pp. 55, 56.

On December 2, 2014 Dr. Richard Knoebel evaluated the Petitioner at the request of the Respondents. Dr. Knoebel opined that the Petitioner's surgery in 1992 was reasonably indicated even prior to the industrial accident, and that progression of the Petitioner's osteoarthritis through the years was non-industrial due to preexisting conditions, obesity and age. Dr. Knoebel concluded that the Petitioner does have end-stage osteoarthritis with a 20% whole person impairment rating, however none of it is attributable to the industrial accident.

Medical Panel Report

Findings of Fact and Interim Order was issued on August 2, 2016, determining that the case needed to be sent to a medical panel. Dr. Joseph Jarvis, Occupational Medicine, was assigned to chair the panel; he brought in Dr. Joel Dall, Physiatrist, as a member of the panel. The medical panel reviewed the Interim Findings, medical records, diagnostics, and examined the Petitioner. The medical panel then filed a report on August 4, 2016 with the Adjudication Division.

The medical panel opined that the Petitioner suffered a temporary aggravation of his pre-existing right knee conditions in the 1992 work accident. This conclusion is based on the pathology reported at the time of the right knee surgery carried out on August 27, 1992. It indicates the Petitioner had an incompetent ACL, tricompartmental osteoarthritis

(medial greater than patellofemoral greater than lateral) and disintegrations of the medical meniscus. None of these pathologies could have been caused by the industrial accident, but all would have necessarily pre-dated 6/17/1992. The medical panel believes the Petitioner did fairly well prior to that date, but increasing symptoms made it difficult for him to return to work.

The medical panel further opined the Petitioner's left knee, bilateral hips and obesity were not caused or worsened by the industrial accident. Even if the industrial accident had not occurred, the Petitioner's knee condition would likely be as it is today, because of the injuries from the motorcycle accident and the natural progression of degeneration due to age.

The Petitioner's industrial aggravation was medically stable a year after on August 27 1992, a time when he was reporting virtually no residual knee pain. Medical care to that date was necessitated by the industrial injuries, and no further care is needed on an industrial basis.

LEGAL CONCLUSIONS

Petitioner's Objection to the Medical Panel Report

Utah Code Ann. 34A2-601(2)(d) allows parties to file objections to the medical panel report. A broad reading of the statute allows for objections based both on admissibility and substance. The Judge is to determine whether the objection to the medical panel report is well-taken or not well-taken. Johnston v. Labor Comm'n, 307 P.3d 615, 2013 Utah App. LEXIS 176, (Utah Ct. App. 2013).

The Petitioner's Objection lists several points of contention. The first is that the Judge threatened him that she would close the case if he asked for time to find a lawyer. At the beginning of the case the Judge gave the Petitioner several opportunities and many months to find a lawyer. However in a November 13, 2015 Order she told the Petitioner that she would continue the hearing one more time to give the Petitioner time to find a lawyer, and he if did not find one he would have to represent himself if he desired to continue pressing the case. The Petitioner determined to continue pressing the case without a lawyer.

The Petitioner next complains about the Judge's choice of Dr. Joel Dall as the medical panel chair, and that she would not choose a doctor in California to evaluate him. However, Dr. Dall was not the medical panel chair but a member of the panel, and was chosen by Dr. Joseph Jarvis, whom the Judge appointed as chair. The Utah Labor Commission, through its Medical Director, trains doctors to serve as medical panel chairs. There is nothing secretive about the training. The Labor Commission does not have any medical panel chairs in

California because there are too few, if any claimants other than the Petitioner, living there. The Petitioner's travel to Utah for his evaluation is part of his cost of pursuing the claim.

Contrary to the Petitioner's allegations, the Judge and the medical panel are not biased against him, and the Judge didn't choose Dr. Jarvis (or Dr. Dall) in an effort to get an opinion that was contrary to the Petitioner's claims.

The Petitioner claims that the medical panel did not review his diagnostics because it did not refer to them in the report. However the Judge sent them to the panel and has no reason to believe it did not review and consider the diagnostics. The Judge told the Petitioner that she couldn't give the Petitioner copies of the x-rays because her business office doesn't have a machine that can make copies of x-rays. Nevertheless, all of the x-rays were returned to the Petitioner once the medical panel was through with them.

The Petitioner takes issue with the medical panel's finding that he had significant preexisting conditions in his knee prior to the industrial accident. He indicates he never made a secret of the fact that his knee had prior damage. He does argue however that the work injury is what caused his knee to need surgery and rendered it painful from thereon out, making it difficult for him to work.

The finding of a preexisting injury is obviously correct because the Petitioner had a motorcycle accident and surgery to the knee prior to the industrial accident. The preexisting condition is significant because the medical finds that it is the fundamental problem underlying the Petitioner's current condition. In other words, the preexisting conditions are more significant than the injury that occurred in the industrial accident. In fact, the panel finds that the Petitioner would probably have the same symptoms and needs for surgery now, even if the industrial accident had not occurred, because the preexisting conditions were significant and have aged and worsened over the years, while the industrial injuries were minor by comparison. This is buttressed by the Petitioner's own doctor, Dr. Rosenberg, who indicated in September 1993 that the Petitioner's light duty status "is permanent due to osteoarthritis of his knee" and not the work injuries.

Lastly the Petitioner implies that the medical panel was incorrect when it found his right knee virtually pain free in August 1992. With regard to a medical stability date, the medical panel wrote "When Mr. Benson was declared to be at medical stability one year following the surgery on August 27, 1992, he was reporting virtually no residual knee pain." This refers to Dr. Rosenberg's projection of a stability date of August 27, 1993 on page 22 of the medical exhibit. The Petitioner is correct that Dr. Rosenberg doesn't report the Petitioner to be virtually pain free on that date. However the Respondents point out, correctly, that a finding of medical stability doesn't also require an absence of pain or other problems. The medical panel indicated, logically, that the Petitioner's current condition could be the same as it is now even had the accident not occurred, due to the natural and painful progression of the Petitioner's preexisting osteoarthritis.

The standard for admissibility of evidence in a workers' compensation proceeding is found primarily at U.C.A. § 34A-2-802 and more generally at U.C.A. § 63G-4-206 (the Utah Administrative Procedures Act). U.C.A. § 34A-2-802 provides that the Commission is not bound by the usual common law or statutory rules of evidence or procedure, and that evidence that is simply relevant and material may be received, including reports of examining physicians.

The Judge considers the Petitioner's specific objections to the substance of the report and the parties' arguments regarding the weight the report should be given, along with the other medical evidence in the record. The medical panel opinion is clearly relevant, material and non-privileged. The Judge concludes that the objection is not well-taken, and the medical panel report is admitted into evidence.

Causation

Utah Code Annotated § 34A-2-401 provides that an employee who is injured "by accident arising out of and in the course of the employee's employment" can receive benefits. In Allen v. Industrial Commission, 729 P.2d 15, 27 (Utah 1986), the Utah Supreme Court adopted a two-part test causation analysis. The first component deals with "legal causation" while the second addresses "medical causation."

There is no dispute that the Petitioner suffered injuries by accident arising from the course and scope of his employment with the Department of Alcoholic Beverages on June 17, 1992. The Petitioner proves legal causation.

With regard to medical causation, the Petitioner must show that any conditions for which he claims benefits are medically causally related to an industrial accident. "Under the medical cause test, the claimant must show . . . that the stress, strain or exertion required by his or her occupation led to the resulting injury or disability." Allen v. Industrial Commission, 729 P.2d 15, 27 (Utah 1986). The burden of proof lies with the Petitioner.

The medical records evince a disagreement of opinion regarding whether the Petitioner's right knee condition continues to be caused by the industrial accident in 1992, or whether other causes such as the 1986 motorcycle accident, obesity and age are the likely causes.

The medical panel reviewed the entire medical exhibit, the Petitioner's diagnostics and examined the Petitioner, conferred with one another, and concluded that the Petitioner's industrial injury was a temporary aggravation of the Petitioner's preexisting conditions, which resolved by August 27, 1993. This is supported by the diagnostics of the right knee showing damage and repair from the motorcycle accident, and other the evidence discussed above.

The Judge concludes that the preponderance of the evidence shows the Petitioner suffered a temporary aggravation of his preexisting conditions in the industrial accident, which resolved by August 27, 1993. The Respondents have paid benefits for that injury and then some. None further are due.

The Petitioner has alleged that both knees and the left hip were affected by the necessity of these body parts to compensate for the right knee. The Petitioner does not allege his right hip has a problematic condition and doesn't know why it continues to be addressed. The answer is that it was simply an oversight to include the right hip as well because Dr. Rosenberg had anticipated that both knees and both hips would need surgery. The Judge finds that there is no support whatsoever in the medical record of a medical causal connection between these complaints and the injuries of the industrial accident, and therefore claims with regard to them are denied in this Order.

ORDER

IT IS HEREBY ORDERED that Rodney Benson's Application for Hearing against the Department of Alcoholic Beverages and the Workers' Compensation Fund is denied and dismissed with prejudice.

DATED this April 27, 2017

Deidre Marlowe
Administrative Law Judge

NOTICE OF APPEAL RIGHTS

A party aggrieved by the decision may file a Motion for Review with the Adjudication Division of the Utah Labor Commission. The Motion for Review must set forth the specific basis for review and must be received by the Commission within 30 days from the date this decision is signed. If a request for review is filed, other parties to the adjudicative proceeding may file a response within 15 calendar days of the date the request for review was filed. If such a response is filed, the party filing the original request for review may reply within 5 calendar days of the date the response was filed.

Any party may request that the Appeals Board of the Utah Labor Commission conduct the foregoing review. Such request must be included in the party's Motion for Review or its response. If none of the parties specifically request review by the Appeals Board, the review will be conducted by the Utah Labor Commissioner.

Rodney Benson vs. Department of Alcoholic Bev and/or Workers Compensation Fund Case No. 13-0852

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the attached Findings of Fact, Conclusions of Law, and Order, was mailed on April 27, 2017, to the persons/parties at the following addresses:

Rodney Benson
General Delivery
Shingletown CA 96088

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designated_agent@wcf.com

Department of Alcoholic Bev
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Matthew J Black
mblack@wcf.com,kklesch@wcf.com

UTAH LABOR COMMISSION

Clerk
Adjudication Division