

1994

Lavell H. Helf v. Industrial Commission of Utah and Yellow Freight Systems In.: Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

LAVELL H. HELF,)
)
 Petitioner,)
)
 v.) Case No. 940433-CA
) Priority No. 7
 INDUSTRIAL COMMISSION OF UTAH)
 and YELLOW FREIGHT SYSTEMS,)
 INC.)
)
 Respondents.)

BRIEF OF PETITIONER

PETITION FOR REVIEW FROM AN ORDER OF THE INDUSTRIAL COMMISSION OF UTAH, DATED JUNE 28, 1994, DENYING THE PETITIONER'S CLAIM FOR WORKERS' COMPENSATION BENEFITS.

UTAH COURT OF APPEALS
BRIEF

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Clerk of the Court

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IN THE UTAH COURT OF APPEALS

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v.)	Case No. 940433-CA
)	Priority No. 7
INDUSTRIAL COMMISSION OF UTAH)	
and YELLOW FREIGHT SYSTEMS,)	
INC.)	
Respondents.)	

Comes now the Petitioner, and by and through his attorney, hereby files the following Brief in support of his Petition for Review seeking a reversal of the June 28, 1994 Order Denying Motion for Review.

JURISDICTION

This court has jurisdiction pursuant to Utah Code Annotated §35-1-82.53(2), §35-1-86 and §63-46b-16.

ISSUES PRESENTED

1. Whether an injury arising from an idiopathic fall is compensable under the Utah Workers Compensation Act?

2. Whether the Industrial Commission erred when it concluded that the unexplained fall doctrine is not applicable to this case?

3. Whether the Industrial Commission erred when it concluded that Mr. Helf was not engaged in any activity that

created any strain, exertion or stress greater than that of his normal non employment life?

4. Whether the Industrial Commission's decision violates the public policy and purpose of the Utah Workers' Compensation Act?

5. Whether Mr. Helf was injured by accident arising out of and in the course of his employment?

6. Whether the Petitioner's evidence proved legal causation?

7. Whether the Petitioner's evidence proved medical causation?

All issues involving questions of fact, such as issues 3, 5, 6 and 7, the court must apply the substantial evidence Chase v. Industrial Commission, 872 P.2d 475, 478 (Utah App. 1994).

All issues involving questions of law, such as issues 1, 2 and 4, the court must apply the corrections of error standard and give no deference to the Industrial Commission. Bevan v. Industrial Commission, 790 P.2d 573 (Utah App. 1990).

DETERMINATIVE STATUTES

The determinative statutes in this case are Utah Code Annotated §35-1-45 and §35-1-65. These statutes are set forth verbatim in the addendum.

STATEMENT OF THE CASE

1. **Nature of the case.** This case involves a Petition for Review seeking the reversal of the Industrial Commission's June 28, 1994 Order denying the Petitioner's claim for workers compensation benefits.

2. **Course of Proceeding.** The Petitioner's Application for Hearing was heard before the Honorable Timothy C. Allen, Administrative Law Judge, on July 7, 1993. On August 12, 1993 Judge Allen entered his Findings of Fact, Conclusions of Law and Order denying the Petitioner benefits. R. 54-59 The Industrial Commission affirmed Judge Allen's Order on June 28, 1994. R. 116-119 This instant Petition for Review was then filed with this court.

3. **Disposition by Industrial Commission.** The Utah Industrial Commission, in a split decision denied the Petitioner's claim for workers compensation benefits on June 28, 1994. R. 116-119

4. **Statement of facts.**

a. That Mr. Helf was employed by the defendant on September 9, 1992, as a truck driver. R. 55

b. That on September 2, 1992, Mr. Helf drove his truck to Gates Rubber Company, arriving at approximately 6:30 p.m. to pick up a shipment for his employer. R. 55

c. That Yellow Freight Systems' trailers, one of which Mr. Helf drove to Gates Rubber, were approximately two to four inches higher than the loading dock. R. 152, 161, 170

d. That it was part of Mr. Helf's duties to lower a steel dock plate which connects, when completely lowered, the loading dock with the trailer. R. 148-156

e. That to lower the metal dock plate, Mr. Helf had to bend over and pull a metal ring which would cause the dock plate to come up approximately three feet. R. 143, 149, 155-156, 168

f. That immediately after pulling the metal ring to "pop up" the metal dock plate, Mr. Helf had to walk up onto the plate, which was approximately three feet up (though there was testimony that said plate pops almost "straight up and down" R. 143), to force the plate down on to his trailer. R. 143, 145, 151, 153, 168

g. That it was "fairly hard" to pull the metal ring because the ring and dock plate were "fairly new." R. 147

h. That it is the weight of the person, walking the dock plate down onto the trailer, which actually forces the plate down. That a 175 pounds person does not weigh enough to force the plate down and must push against a wall for extra leverage to force the plate down into the trailer. R. 151, 153

i. That prior to pulling the metal ring to pop up the plate Mr. Helf, with the assistance of an employee of Gates Rubber, moved some of the freight which was in his trailer. That freight, which was described as "awkward and pretty heavy", consisting of stoves which weighed a total of

1279 pounds and fiberglass grating weighing 200 pounds. R. 79, 81, 82, 167

That counsel for the defendant admitted that the hearing Exhibits reflect the contents of Mr. Helf's trailer. R. 197

j. That the time between Mr. Helf moving the heavy and awkward freight in his trailer and him pulling the metal ring to pop the plate was just "seconds". R. 167

k. That Mr. Helf fell backwards, while walking the metal dock plate onto his trailer. That at the time when Mr. Helf fell, the metal dock plate was still moving down and was on an angle, it was not level. R. 156, 158-159, 169

l. That Mr. Helf sustained a severe head injury as a result of his fall onto the concrete loading dock. R. 51, 56 and all the medical records submitted at the hearing.

m. That Mr. Helf had a known history of idiopathic hypertrophic subaortic stenosis. See medical records of Dr. Null pages 130 to 140 of the medical records exhibit.

n. That Dr. Speed in a November 11, 1992, letter stated:

"Although the cause of [Mr. Helf's] fall at work on September [9], 1992, remains unknown . . . In the absence of any evidence to the contrary, it is therefore my opinion that Mr. Helf's brain injury was work related."

o. That Dr. Null in a June 30, 1993, letter clearly indicates that the stress related to Mr. Helf's job, including the lowering of the dock plate and the heavy work "culminated

in a situation of an arrhythmia which resulted in his syncopal episode and subsequent head injury." R. 51

p. That Freedman in a letter dated November 24, 1992, opined that Mr. Helf's syncope was probably related to his cardiac condition. The doctor further stated that if the syncope was indeed on a cardiac basis, "it is likely that it was related to whatever level of exertion was present at the time." R. 50

q. That Dr. Null, Dr. Freedman and Dr. Speed all opined that the syncopal episode suffered by Mr. Helf on September 9, 1992, was related to his work. R. 50, 51

SUMMARY OF ARGUMENT

That the Petitioner, Mr. Helf, was employed by Yellow Freight Systems, Inc. on September 9, 1992 as a truck driver.

On that day, Mr. Helf drove his truck to Gates Rubber Company, arriving at approximately 6:30 p.m. to pick up a shipment for his employer. The employer's trailers, one of which Mr. Helf drove to Gates Rubber, were approximately two to four inches higher than the loading dock at Gates Rubber.

It was one of Mr. Helf's duties to lower a steel dock plate that connects, when completely lowered, the loading dock with the trailer. To lower the metal dock plate, Mr. Helf had to bend over and pull a metal ring that would cause the dock plate to come up approximately three feet. This ring was

hard to pull because the equipment was fairly new. Immediately after pulling the metal ring to "pop up" the metal dock plate, Mr. Helf had to walk up onto the plate, which was approximately three feet up, to force the plate down onto his trailer. There was however testimony at the hearing before the Industrial Commission that the loading plate popped almost "straight up and down." It is the weight of the person, walking the dock plate down onto the trailer, which forces the plate down. A person who weighed one hundred seventy-five does weigh enough to force the plate down. Such a person must push against a wall for extra leverage to force the plate down into the trailer.

Before pulling the metal ring to pop up the plate Mr. Helf, with the assistance of an employee of Gates Rubber, moved some freight that was in his trailer. That freight, was described as "awkward and pretty heavy," consisting of stoves, which weighed a total of 1279 pounds and fiberglass grating weighing 200 pounds. It was just a matter of seconds between the time Mr. Helf moved the heavy and awkward freight in his trailer and his pulling of the metal ring to pop the dock plate. As Mr. Helf was walking the dock plate onto his trailer, Mr. Helf fell backwards. At the time Mr. Helf fell, the metal dock plate was still moving down and was on an angle, it was not level. Because of the fall Mr. Helf sustained a severe head injury that has left him totally disabled.

Mr. Helf had a known history of idiopathic hypertrophic subaortic stenosis. Dr. Speed in a November 11, 1992, letter stated as follows: "[a]lthough the cause of [Mr. Helf's] fall at work on September [9], 1992, remains unknown . . . In the absence of any evidence to the contrary, it is therefore my opinion that Mr. Helf's brain injury was work related."

Dr. Null in a June 30, 1993, letter clearly suggests that the stress related to Mr. Helf's job, including the lowering of the dock plate and the heavy work "culminated in a situation of an arrhythmia which resulted in his syncopal episode and subsequent head injury."

Dr. Freedman in a letter dated November 24, 1992, opined that Mr. Helf's syncope was probably related to his cardiac condition. The doctor further said that if the syncope was indeed on a cardiac basis, "it is likely that it was related to level of exertion was present at the time."

All the medical evidence presented at the hearing supports the conclusion that the severe head injury sustained by Mr. Helf on September 9, 1992 arose out of and during the course of his employment.

ARGUMENT

I. AN INJURY ARISING FROM AN IDIOPATHIC FALL IS COMPENSABLE UNDER THE UTAH WORKERS' COMPENSATION ACT.

The Industrial Commission was correct when it stated

that the Utah Workers' Compensation Act provides compensation to workers who are injured by accident "arising out of and in the course of" their employment. U.C.A. §35-1-45 R. 116

The Industrial Commission concluded that there is no "causal connection between Mr. Helf's injury and his employment" and that Mr. Helf's "injury did not arise out of and in the course of his employment." R. 117

The only evidence supportive of the Industrial Commission's conclusion that there is no causal connection between his work and the injury is the fact that Mr. Helf did in fact suffer from some a predisposition to loss of consciousness and that he had prior heart condition diagnosed as idiopathic hypertrophic subaortic stenosis. The other evidence that marginally supports the Industrial Commission's conclusion is the fact that at the time of the fall Mr. Helf was walking up the dock plate to lower it into his trailer and he fell back onto the loading dock. R. 143, 158 Finally, the Industrial Commission recklessly states "that Mr. Helf's employment did not enhance the risk of injury." R. 117

In reaching this last conclusion, the Industrial Commission does at least recognize that an accident may be compensable if the risk of injury is enhance by the conditions of the employment. R. 117 This recognition by the Industrial Commission is an acknowledgment that in this State the idiopathic fall doctrine is still an operative legal doctrine.

The idiopathic fall doctrine has been recognized by the Supreme Court of Utah. In Tavey v. Industrial Commission, 150 P.2d 379 (Utah 1944), that court awarded benefits to a worker, who fainted and struck her head on a bookshelf. The court once again in Kennecott v. Industrial Commission, 675 P.2d 1187 (Utah 1983), (involving a claim for benefits when an employee of Kennecott suffered a heart attack, fell into a pool and drowned) recognized and applied the idiopathic fall doctrine. Id. at 1192.¹

Professor Larson has defined the idiopathic fall doctrine as involving claims arising out of a fall caused by a risk or condition personal to the claimant. Larson's The Law of Workmen's Compensation (1994) §12.00 at 3-249

Professor Larson states as follows:

"When an employee, solely because of a nonoccupational heart attack, epileptic fit, or fainting spell, falls and sustains a skull fracture or other injury, the question arises whether the skull fracture or other injury (as distinguished from the internal effects of the heart attack or disease, which of course are not compensable) is an injury arising out of the employment.

The basic rule, on which there is now general agreement, is that the effects of such a fall are compensable if the employment places the employee in a position increasing the dangerous effects of such a fall, such as a height, near machinery or sharp corners, or in moving vehicles." [Emphasis added]

As Professor Larson clearly points out in his

¹The Petitioner recognizes that the applicable statute has been amended since the cited case was decided. But, that does not alter the applicability of the idiopathic fall doctrine to this case.

treaties, the last step, the requisite finding of employment contribution, has been whittled down to such an insignificant degree by the courts that this step is a mere nuisance. Larson §12.12 at 3-356

Thus according to Professor Larson, this court must now determine if Mr. Helf's employment placed him in a position that increased the effects of his fall or if his employment aggravated his injury.

The employment, according to Professor Larson, can increase the risk of such a fall either before or after the fall. If the employment does contribute something to the risk, the injury must be deemed to be one arising out of the employment. Larson, supra, §12.14(b) at 3-370

Hence, the court in resolving this claim must determine if Mr. Helf's employment increased the risk or in some manner contributed, either before or after the fall, to the severe head injury sustained by Mr. Helf.

With respect to before, Professor Larson points out such things as stress and exertion. Id. In this case, there is substantial evidence that Mr. Helf had great stress and exertion. R. 51, 76

The testimony of the witnesses further supports this argument. Mr. Helf had to move the heavy and awkward material in his trailer, he had to engage the mechanism to lower the metal dock plate which was hard to do because it was new equipment, he had to immediately walk up onto that plate

to force it onto his trailer and he had to walk up an angle, or incline, to lower this plate. All of these factors support the argument that the employment contributed and increased the risk before the fall. After all, it is undisputed that at the time of the fall, Mr. Helf was walking up (on an angle) on the plate which was moving down. He was standing at an angle, on a moving piece of machinery when he fell.

With respect to after, Professor Larson points out such things as moving mechanisms, height, sharp corners and moving vehicles. Id.

In this case, once again, Mr. Helf was walking up on a metal loading dock plate which was being forced down by his weight when he fell backwards onto the loading dock. In addition, the plate was approximately three to seven inches higher than the loading dock. It is submitted that it is reasonable to assume that the reason Mr. Helf fell backwards, off the moving loading dock plate onto the concrete loading dock is because he was walking up an incline at the time he fell.

Furthermore, there are medical records which indicate that the outcome of Mr. Helf's fall would have been different had he fallen onto a surface other than concrete. R. 77 The facts and evidence establish that, under the idiopathic fall doctrine, Mr. Helf's severe head injury did arise out of his employment. His employment substantially increased the risk of his injury and placed him in a position

which increased the risk and dangerous effects of his fall.

Professor Larson also asserts that under the idiopathic fall doctrine an injured worker is entitled to workers compensation benefits if the employment has placed the employee in a position where the consequences of blacking out were markedly more dangerous than if the employee had not been so employed. Larson, §12.12 at 3-356 to 3-358

The Industrial Commission briefly addressed this when it ruled that the employment did not enhance the risk of injury. R.117 It is submitted that the Industrial Commission is just simply wrong. Mr. Helf's employment placed him in a position where he had to (after driving in afternoon traffic) move heavy freight, bend over and pull a metal ring (which was hard because it was new equipment), and he then had to walk onto a metal dock plate (which popped up at least three feet) and use his body weight to force the metal plate down into his trailer. These activities and the force involved certainly placed Mr. Helf in a position where the consequences, and likelihood, of him blacking out and falling were markedly more dangerous than if he had not been discharging the duties of his employment.

Although U.C.A. §35-1-45 provides that the injury must arise out of and during the course of employment, Professor Larson does not struggle with the "arising out of" and "during the course" of requirements are being mutually independent and exclusive. Professor Larson states:

In practice the course of employment and arising out of employment tests are not and should not be, applied entirely independently; they are both parts of a single test of work connection, and therefore deficiencies in the strength of one factor are sometimes allowed to be made up by strength in the other. Larson, supra, §29 at 5-476

What Professor Larson is arguing is that in analyzing the compensability of these types of claims, the courts have, and must, in reality balanced the "course of" element with the "arising out of" element and affirm awards of benefits when one element is strong and the other is weak.

As a matter of fact, Professor Larson notes that when the "course" element is so strong awards are becoming increasingly common. Id.

When the Industrial Commission concluded that Mr. Helf's injury did not arise out of and during the course of his employment it ignored the above stated principle as proclaimed by Professor Larson. There are absolutely no facts upon which the Industrial Commission could reasonably conclude that Mr. Helf's injury did not arise during the course of his employment. What was Mr. Helf doing when he fell and suffered the severe head injury? The answer of course is that he was working for Yellow Freight.

The Petitioner will concede that the Industrial Commission's conclusion that the injury did not "arise out" of Mr. Helf's employment is at least supportable. After all, Mr. Helf did not have anything fall onto his head nor he did not injure his back while moving the heavy freight that was in his

trailer.

This court however must look at the entire circumstance that led to Mr. Helf's fall. The driving in afternoon traffic, the moving the heavy, awkward freight, the pulling the pin, the walking onto the metal dock plate and the angle at which he was standing at the time of the fall. These factors, coupled with the medical evidence, certainly overcome the flimsy evidence supporting the Industrial Commission's conclusion.

II. THE INDUSTRIAL COMMISSION ERRED WHEN HE CONCLUDED THAT THE UNEXPLAINED FALL DOCTRINE IS NOT APPLICABLE TO THIS CLAIM.

The Industrial Commission concluded that the unexplained fall doctrine does not apply to this claim "inasmuch as Mr. Helf had a syncopal episode which caused the fall." R. 57

However, Professor Larson defines the unexplained fall doctrine as a fall at work for no discoverable reason "but for" which his employment injury would not have happened if the employee had not been engaged upon an employment errand at the time of the fall. Larson, supra, §10.31(a) at 3-94-95 If there is no way to determine whether the fall was idiopathic, then the fall should be treated as an unexplained fall.

As discussed above, an idiopathic fall is one caused by the internal failure, e.g., heart attack. But, the

Industrial Commission has concluded that Mr. Helf's syncopal episode "was not related to his preexisting heart condition."

R. 56

If this is so, then according to the Industrial Commission, there is no discoverable reason for the fall and, therefore, the Industrial Commission must apply the "unexplained fall" doctrine. That doctrine then requires a finding that "but for" the employment Mr. Helf would not have been injured. Therefore, he is entitled to benefits.

In Moore v. Darling Store Fixtures, 732 S.W.2d 496 (Ark. 1987) the employee fell while either climbing off or after climbing off a forklift. He sustained a heart attack and skull fracture. There was no way to determine what caused the fall. See Circle K Store No. 1131 v. Industrial Commission, 796 P.2d 893, 897-898 (Ariz. 1990) wherein the court also adopted the "but for" standard to be applied in claims involving unexplained falls. In that case, the employee fell, for no known reason, after she had carried out trash to a dumpster.

In the present claim, to follow logically the Industrial Commission's conclusion, there is no way to determine what caused the fall. Thus, this court should fall in line with the majority of the jurisdictions and award Mr. Helf benefits. The basis for this conclusion is altogether simple, Mr. Helf's severe head injury arose out of his employment. The injury would not have occurred "but for" the

fact that the conditions and obligations of his employment placed him in the position where he was injured. Id. at 898 quoting Larson, supra, at §10.31 at 3-94 through 95.

III. THE INDUSTRIAL COMMISSION ERRED WHEN HE CONCLUDED THAT MR. HELF WAS NOT ENGAGED IN ANY ACTIVITY WHICH CREATED ANY STRAIN, EXERTION OR STRESS GREATER THAN THAT OF HIS NORMAL NON EMPLOYMENT LIFE.

In its Finding number 11(R. 56) the Industrial Commission concluded that Mr. Helf, at the time when he fell at work, was not engaged in any activity which created stress, exertion or strain greater than that of his normal life.

The Industrial Commission concluded that Mr. Helf's preexisting heart condition was not related to his fall. The Commission nonetheless found that Mr. Helf's exertion, at the time of the accident, did not exceed that of his nonemployment life. R. 56 This is an error. This conclusion by the Industrial Commission is based upon the Industrial Commission's flawed reasoning that "the work environment exposed Mr. Helf to no more danger than would a similar fall on a sidewalk, driveway, or any other hard, flat surfaces that are common to everyday life." R. 117

The Industrial Commission's conclusion might be supportable if Mr. Helf had fallen while he was standing on the loading dock not doing anything. However, the Industrial Commission conveniently ignores the following facts:

1. Mr. Helf had just moved freight, which was "awkward and pretty heavy", it

consisted of stoves that weighed a total of 1279 pounds and fiber glass grating that weighed 200 pounds. R. 79, 81, 82 and 167

2. Mr. Helf had to bend over to pull a pin that triggered the release of the dock plate; R. 143, 149, 156 and 168 This pin was not easy to pull because it was new equipment. R. 147

3. Mr. Helf had to then immediately walk onto this plate to force it down into the trailer. This plate, which was approximately three feet up (though there was testimony that said plate pops almost "straight up and down" R. 143), to force the plate down on to his trailer. R. 143, 149, 156 Mr. Helf's weight, when he begin to walk up the plate, forced the plate down. A person who weighs 175 pounds person does not weigh enough to force the plate down and must push against a wall for extra leverage to force the plate down into the trailer. R. 151, 153

In light of the foregoing facts, it is baffling how the Industrial Commission failed to recognize the causal connection between Mr. Helf's head injury and his employment.

The only time that a comparison between the employment exertion and the nonemployment exertion is made is in a case where the preexisting condition contributes to the industrial injury. Allen v. Industrial Commission, 729 P.2d 15, 25-26 (Utah 1986).

Even if this claim is one where the application of the Allen test is appropriate, it is submitted that the employment exertion was unusual and extraordinary. Mr. Helf had to move "heavy and awkward" material in his trailer to make room for the shipment he was picking up at Gates Rubber.

He had to bend down and pull a metal ring, which was "fairly hard" in order to "pop up" the metal loading dock plate and then had to walk up onto the plate to force it onto his trailer. That plate was spring loaded and would automatically return into its non-use position unless Mr. Helf immediately walked onto it. A person who weighed 175 pounds could not force that plate down without using a "wall" as additional leverage to force that plate down.

Thus, it is submitted that, if the Allen test does apply to this claim, Mr. Helf's employment on the date of his industrial accident did require unusual and extraordinary exertion.

IV. THE INDUSTRIAL COMMISSION'S DECISION VIOLATES THE PUBLIC POLICY AND PURPOSE OF THE UTAH WORKERS' COMPENSATION ACT.

Mr. Helf, in order to be awarded benefits under the Utah Workers' Compensation Act, must establish that his severe head injury arose out of and during the course of his employment. U.C.A. §35-1-45(as amended).

There is no question or doubt that Mr. Helf was injured during the course of his employment. After all, he was doing his job at the time when he fell. The question is whether his injury "arose out of his employment".

To answer that question, this court cannot forget the social purpose of the Utah Workers' Compensation Act.

Utah courts have long recognized, and held, that the purpose of this Act is to alleviate the financial hardship on an injured worker and his family by spreading the cost of an injury throughout the industry that employs the worker. Maryland Cas. Co. v. Industrial Commission, 364 P.2d 1020,1022 (Utah 1961). To further this purpose, any doubt must be resolved in favor of the injured worker. Heaton v. Second Injury Fund, 796 P.2d 676, 679 (Utah 1990).

The Industrial Commission in this case has dumped the entire financial hardship on Mr. Helf and his family. Mr. Helf who will never be able to return to work,² was not given the benefit of any doubt. Should this court decide to affirm the Industrial Commission's decision, this court will tell all workers of this State that if they are injured while doing there job, they will find themselves without the protection and benefits they thought the Utah Workers' Compensation Act provided for them and their families. For if the Industrial Commission's decision is allowed to stand, the workers of this State will know that being on the job and doing their job, when they sustain an injury, is not enough to be afforded the protection of the Utah Workers' Compensation Act.

² Mr. Helf has been found to be totally disabled by the Social Security Administration, and awarded total disability benefits, as a result of the injury he sustained on September 9, 1992 while working for Yellow Freight.

V. THE EVIDENCE PRESENTED TO THE INDUSTRIAL COMMISSION ESTABLISHES BOTH LEGAL AND MEDICAL CAUSATION.

The Administrative Law Judge concluded that Mr. Helf' "employment nor any activities related thereto were the legal cause or medical cause of his injury." R. 57 The Industrial Commission appears to also reach that conclusion. R. 116-117

This court has ruled that when a claimant has no preexisting risk factors, any exertion connected with the employment will satisfy the legal causation test. Workers Compensation Fund v. Industrial Commission of Utah, 761 P.2d 572, 574 (Utah App. 1988).

As indicated by Commissioner Carlson in his dissenting opinion (R. 118-119) there is no full agreement between the medical experts who have treated or examined Mr. Helf. The Industrial Commission adopted the finding that Mr. Helf's preexisting heart problem did not cause his fall. R. 56, 116

Hence, if the preexisting condition was not a factor in Mr. Helf falling, then "any exertion connected with" Mr. Helf's employment is sufficient to satisfy the legal causation requirement. That exertion, as stated above, entailed the moving heavy freight, pulling the hard to pull pin and then walking onto the metal dock plate to force it down into his trailer.

The medical evidence also established, by more than a mere preponderance, that Mr. Helf's severe head injury was

the direct result of his employment. Drs. Speed, Null, Freedman and Heilbrun all opined that Mr. Helf's injury arose out of his employment. R. 74, 76, 77, 78 and 378 of Volume 2 of the Record

Whether the higher Allen standard is applicable or the lower standard, in either case Mr. Helf has established by more than a preponderance of the evidence both legal and medical causation to be awarded workers compensation benefits.

CONCLUSION

Mr. Helf has demonstrated by a preponderance of the evidence that the severe head injury he sustained while discharging his job duties arose out of and during the course of his employment. Mr. Helf has demonstrated this under the idiopathic fall doctrine and under the unexplained fall doctrine.

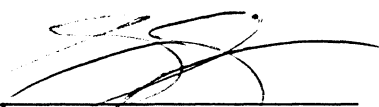
The Industrial Commission's decision clearly confuses those two doctrines. If, as the Industrial Commission found, Mr. Helf's fall was not due to his preexisting heart condition, then it cannot be an idiopathic fall and must be an unexplained fall. As such, Mr. Helf is entitled to benefits based upon the unexplained fall doctrine as it is defined by Professor Larson.

If, however, this court determines, upon examination of the extensive medical records, that the fall was the result of a preexisting condition, then it is submitted that Mr.

Helf is also entitled to benefits. Mr. Helf has established that his employment certainly contributed to and increased the risk of his head injury. Mr. Helf has proven that "but for" his employment he would not have sustained the severe head injury.

Based upon the foregoing, it is respectfully submitted that Mr. Helf be awarded the benefits he claimed in his application for hearing.

Dated this 16th day of December 1994.



Hans M. Scheffler
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of December 1994 two copies of the forgoing were delivered to the following:

David M. McConkie
Attorney for Employer
1800 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111

Alan L. Hennebold
Attorney for Industrial
Commission
160 East 300 South
Salt Lake City, Utah 84111

Dated this 16th day of December 1994.



ADDENDUM

INDEX TO ADDENDUM

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David M. McConkie (A2154)
KIRTON, McCONKIE & POELMAN
Attorney for Employer
1800 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111-1004
Telephone: (801) 328-3600

00054

BEFORE THE INDUSTRIAL COMMISSION OF
THE STATE OF UTAH

LAVELL H. HELF, :
 :
 Claimant, : FINDINGS OF FACT,
 : CONCLUSIONS OF LAW,
 : AND ORDER
vs. :
 :
YELLOW FREIGHT SYSTEM, INC. :
 :
 Employer. :
 : Case No. 93-20

This matter came on regularly for hearing before the Honorable Timothy C. Allen, on the 7th day of July, 1993. Applicant, Lavell Helf, was present and was represented by attorney, Hans Scheffler. Employer, Yellow Freight System, Inc., was represented by attorney David M. McConkie. The Administrative Law Judge, having considered the testimony presented at the hearing and having reviewed the exhibits and

file herein, and good cause appearing, hereby enters the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. On September 9, 1992, Lavell H. Helf was employed as a truck driver by Yellow Freight System, Inc., in Salt Lake City, Utah.
2. On September 9, 1992, at approximately 6:30 p.m., Mr. Helf arrived at Gates Rubber Company in Salt Lake City, Utah to pick up a shipment for his employer, Yellow Freight System, Inc.
3. While standing on the Gate Rubber Company loading dock, Mr. Helf bent over and pulled up on a metal ring which released a spring-loaded metal dock plate, causing the plate to raise and extend to the back of the trailer.
4. It took minimal exertion to pull the ring and release the dock plate (less than 20 pounds) and Mr. Helf did not have any problem pulling the ring.
5. After pulling the ring, Mr. Helf walked onto the plate toward his trailer. While Mr. Helf was standing on the plate, his hands went down to his sides, he went rigid, jerked back, and fell straight back hitting his head on the flat cement floor of the loading dock. When Mr. Helf fell, he did not call out or make any other sound. He did not attempt to break his fall with his hands. He was unconscious before he hit the floor.

11

11

6. The dock plate on which Mr. Helf was standing at the time of his fall was two inches higher than the surface of the loading dock.

7. Mr. Helf was injured when his head hit the flat surface of the loading dock.

8. For several years prior to his fall, Mr. Helf received medical treatment for a heart condition diagnosed as idiopathic hypertrophic subaortic stenosis.

9. Mr. Helf's fall was caused by an idiopathic syncopal episode of unknown origin. The fall was not caused by any external cause related to the dock plate or by any other external cause such as tripping, slipping, etc.

10. The syncopal episode which resulted in Mr. Helf's fall was not related to his pre-existing heart condition.

11. Mr. Helf's injury coincidentally occurred at work because of his idiopathic condition without any enhancement from the workplace. Prior to and at the time of his syncopal episode and fall, Mr. Helf was not engaged in any activity which created any strain, exertion, or stress greater than that of his normal nonemployment life or the normal nonemployment life of any other person. His syncopal episode and injury did not result from any strain, exertion, or stress related to his employment.

12. Mr. Helf's employment did not contribute anything to increase the risk of injury that he or any other worker normally faces in everyday life. Neither the composition of the cement loading dock nor the fact that the dock plate was two

inches higher than the dock floor increased the risk of injury that Mr. Helf or the average worker normally faces in everyday nonemployment life. Mr. Helf's employment did not increase the dangerous effects of his fall.

13. Mr. Helf failed to show by a preponderance of the evidence that he was injured, by accident arising out of and in the course of his employment with the employer, Yellow Freight System, Inc.

CONCLUSIONS OF LAW

1. Mr. Helf was not injured by accident arising out of and in the course of his employment with his employer.

2. Neither Mr. Helf's employment nor any activities related thereto were the legal cause or medical cause of his injury.

3. The "unexplained fall" doctrine is not applicable to the facts of this case inasmuch as Mr. Helf had a syncopal episode which caused the fall.

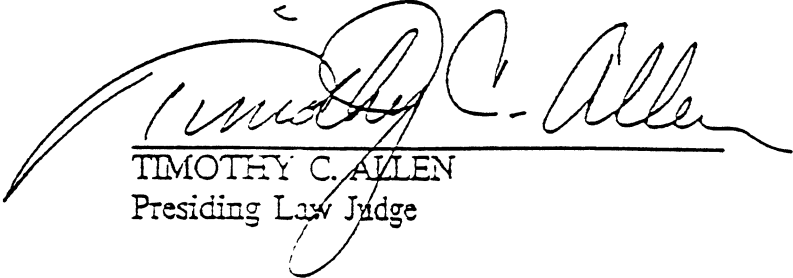
4. Mr. Helf is not entitled to workers' compensation benefits as set forth in § 35-1-1, et seq., Utah Code Ann.

ORDER

The Administrative Law Judge, having made and entered his Findings of Fact and Conclusions of Law in the above entitled matter, and good cause appearing therefor, HEREBY ORDERS, ADJUDGES, AND DECREES that this matter be and the same is hereby dismissed with prejudice.

IT IS FURTHER ORDERED that any Motion for Review of the foregoing shall be filed in writing within thirty (30) days of the date hereof, specifying in detail the particular errors and objections, and, unless so filed, this Order shall be final and not subject to review or appeal. In the event a Motion for Review is timely filed, the parties shall have fifteen (15) days from the date of filing with the Commission, in which to file a written response with the Commission in accordance with § 63-46(b)(12)(2), Utah Code Ann.

DATED this 12 day of August, 1993.


TIMOTHY C. ALLEN
Presiding Law Judge

THE INDUSTRIAL COMMISSION OF UTAH

LAVELL HELF,

Applicant,

vs.

YELLOW FREIGHT SYSTEM, INC.
(Self-Insured),

Defendant.

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ORDER DENYING
MOTION FOR REVIEW

Case No. 93-0020

Lavell H. Helf asks the Industrial Commission of Utah to review an Administrative Law Judge's Order denying benefits under the Utah Workers' Compensation Act.

The Commission exercises jurisdiction in this matter pursuant to Utah Code Ann. §35-1-82.53, Utah Code Ann. §63-46b-12 and Utah Administrative Code R568-1-4.M.

FINDINGS OF FACT

The Commission adopts the Findings of Fact set forth in the ALJ's Order of August 12, 1993. A summarization of those facts follows:

For several years prior to the incident in question, Mr. Helf suffered from episodes of unexplained loss of consciousness, known as "syncope" in medical terminology. Such episodes occurred randomly and were not related to any particular activity or situation.

On September 9, 1993, Mr. Helf was employed as a truck driver for Yellow Freight. While preparing to load freight into his trailer, he experienced another syncopal episode. Witnesses report that Mr. Helf toppled backward, with no effort to break his fall. He was apparently unconscious by the time he fell to the flat surface of the loading dock.

Mr. Helf's exertions at work on September 9, 1993 were no greater than those of his nonemployment life, nor were his exertions greater than customarily experienced by average individuals in normal every day life.

DISCUSSION AND CONCLUSIONS OF LAW

Utah's Workers' Compensation Act provides compensation to workers who are injured by accident "arising out of and in the course of" their employment. (Utah Code Ann. §35-1-45.) It is the

LAVELL HELF
ORDER
PAGE TWO

worker's burden to prove the causal relationship between his or her work and injury.

The record in this matter establishes that Mr. Helf suffered a predisposition to loss of consciousness. While there is some medical opinion that Mr. Helf's work activities contributed to his loss of consciousness on September 9, 1993, the preponderance of evidence establishes that Mr. Helf's work did not trigger his loss of consciousness.

Because Mr. Helf's loss of consciousness and resulting fall were the result of a condition peculiar to Mr. Helf himself, the injuries that he sustained in the fall are not a consequence of his employment.

As noted in Commissioner Carlson's dissent, an accident not directly caused by employment may nonetheless be compensable if the danger of injury is enhanced by the conditions of employment. In this case, Mr. Helf's employment did not enhance his risk of injury. When Mr. Helf lost consciousness, he fell to the flat surface of the loading dock. The work environment exposed Mr. Helf to no more danger than would a similar fall on a sidewalk, driveway, or any of the other hard, flat surfaces that are common to everyday life.

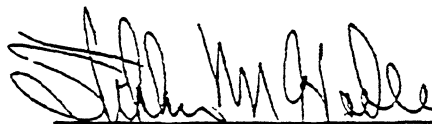
In light of the foregoing, we do not find a causal connection between Mr. Helf's injury and his employment. Because Mr. Helf's injury did not arise out of and in the course of his employment, we conclude the injury is not compensable under the Utah Workers' Compensation Act.

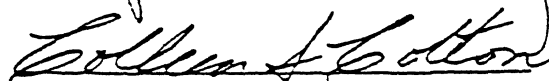
ORDER

The Commission hereby affirms the Order of the Administrative Law Judge dated August 12, 1993.

DATED THIS 28th day of June, 1994.




Stephen M. Hadley
Chairman


Colleen S. Colton
Commissioner

LAVELL HELF
ORDER
PAGE THREE

DISSENT

At the time of his injury, Mr. Helf, was preparing to load additional freight into his trailer. He moved and adjusted the heavy freight already loaded, and then immediately performed maneuvers required to bring up a heavy, spring-loaded metal plate from the surface of the loading dock to form a ramp between the dock and the trailer. It was customary to lock the plate down into position by walking on the moving plate, which was positioned at a slight upward incline. While doing so, Mr. Helf suddenly fell backward, striking his head on the dock, and receiving severe injury.

Such a fall, even if not directly caused by employment, is compensable if the danger of injury either before or after the fall is enhanced by employment activities or workplace conditions to a degree beyond that which would be experienced by a member of the general public pursuing normal everyday activities. Larson, *The Law of Workmen's Compensation*, 3-349, 3-355, 3-371 (1993). The general public would not have been on a loading dock, shifting heavy freight, and stepping onto a moving metal loading ramp. These circumstances distinguish Mr. Helf's accident from a fall by a someone standing still on a stationary, level floor, as was the situation in Gates Rubber v. Industrial Comm'n, 705 P.2d 6 (Co. App. 1985), or from a slight height, as in Hughes v. Acme Steel, 200 N.Y. S.2d 185 (N.Y. 1960).


A preponderance of medical opinion, i.e., from Drs. Speed, Null, and Freedman, concurs that Mr. Helf's injury arose out of his employment, that is, the fall occurred to some degree due to conditions of the workplace or to physical stress and exertion related to the job, as required by Utah Code Ann. § 35-1-45. Though the medical experts are not in full agreement, evidence indicates that the fall may have resulted from a syncopal episode, or loss of consciousness, that may or may not have been caused by a cardiac condition. It is uncontested that Mr. Helf took regular medication to control idiopathic hypertrophic stenosis, a cardiac problem, and that he took the medication the morning of the accident. Mr. Helf had passed a Department of Transportation medical examination in 1990.

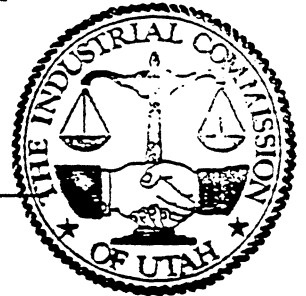
Since everyone on the dock was engaged in other activities when the accident occurred, no one was giving direct attention to Mr. Helf when he fell. Witnesses at the evidentiary hearing differed about the degree of incline, though all agreed the ramp was somewhat inclined, about the amount of movement of the ramp, and about how much exertion was required to raise the platform and lock it into place.

LAVELL HELF
ORDER
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In view of uncertain circumstances surrounding the accident, it is impossible to determine the cause of the fall, which resulted in injury. Though the majority opinion found that the fall was caused by a syncopal episode which was personal to the applicant, Mr. Helf was in the act of performing the normal duties required by his employment when he was injured. These conclusions would require the issue to be resolved in favor the injured worker. Based on the foregoing, I would conclude that Mr. Helf's injury is work-related and is compensable. I therefore respectfully dissent.

DATED THIS 28th day of June, 1994.


Thomas R. Carlson
Commissioner



NOTIFICATION OF APPEAL RIGHTS

Any party may ask the Commission to reconsider this Order by filing a Request for Reconsideration with the Commission within 20 days of the date of this Order. Alternatively, 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, Adell Butler-Mitchell, certify that I did mail by prepaid first class postage, except as noted below, a copy of the ORDER DENYING MOTION FOR REVIEW in the case of LAVELL HELF, Case Number 93-20, on 28th day of June, 1994, to the following:

HANS SCHEFFELER
ATTORNEY AT LAW
311 S. STATE STREET, #380
SALT LAKE CITY, UTAH 84111

DAVID M. MCCONKIE
KIRTON, MCCONKIE & POELMAN
60 E. SOUTH TEMPLE, #1800
SALT LAKE CITY, UTAH
84111-1004

KAREN TOLBERT
ADJUSTER
YELLOW FREIGHT SYSTEMS, INC.
P O BOX 7932
OVERLAND PARK, KS 660207


Adell Butler-Mitchell
General Counsel's Office
Industrial Commission of Utah

asb/helf



May 26, 1993

Hans M. Scheffler
311 So. State Street, Suite 380
Salt Lake City, Utah 84111

Re: Lavell Helf
MRN: 763211-0
DOI: 9-10-92

Dear Mr. Scheffler,

Thank you very much for your letter dated May 24. I saw Mr. Helf today in follow-up. I have discussed with him extensively the appropriateness of initiating vocational rehabilitation, and it appears that Mr. Helf is somewhat more accepting of this idea.

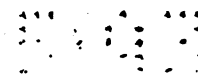
With respect to your question which you broach in your letter regarding my opinion as to Mr. Helf's injuries and how they were sustained, I do feel strongly that the patient's injuries were sustained in the workplace, and did arise in the course of his employment, and due to his employment. I can comfortably state that his outcome may have been different, had the patient struck his head on a surface other than concrete.

If you have any further questions, or if I can be of any further assistance, please do not hesitate to contact me.

Sincerely,

John Speed, M.B. B.S.
Assistant Professor
PM&R

JS/psp



November 11, 1992

RE: Lavell Helf
MRN# 763211-0
Date of Injury: 9/10/92

To Whom It May Concern:

Mr. Helf is a 45 year old man who sustained a traumatic brain injury in a fall while at work on September 9, 1992. The patient was initially taken to Pioneer Valley Hospital and subsequently transported ultimately to the University of Utah Medical Center. A CT scan of his head was obtained and showed a right temporal hematoma, as well as temporal lobe contusion, as well as scattered petechial hemorrhages. There was no midline shift or mass effect.

The patient's head injury was managed conservatively by the neurosurgical team and the patient was then admitted to the Rehabilitation Unit on September 24, 1992.

Mr Helf was transferred to the Cardiology Service on October 9, 1992 after he developed complaints of chest pain. Cardiac monitoring and cardiac catheterization showed no evidence of myocardial infarction, and the patient had no coronary artery pathology noted. Mr. Helf was subsequently transferred back to the Rehabilitation Unit for further management of the cognitive and other functional deficits resulting from his traumatic brain injury.

Recently, Mr. Helf was transferred to Cardiology on November 10, 1992 for pacemaker placement, which represents definitive treatment of his hypertrophic cardiomyopathy.

It should also be noted that the patient has had cardiac electro-physiologic studies performed while an inpatient with the University of Utah Medical Center, and no cardiac arrhythmias could be generated during this study.

Although the cause of the patient's fall at work on September 10th remains unknown, I see no evidence by the patient's history, or examination, or by observation of his behavior during his hospitalization, that it was likely that this was due to the patient's pre-existing cardiac problems. My reason for stating this is that the patient has had no episodes whatsoever of syncope or dizziness while on rehabilitation. Cardiac electro-physiologic studies show no evidence of cardiac arrhythmias, which might be expected to contribute a predisposition to syncope and subsequent falling.



In the absence of any evidence to the contrary, it is therefore my opinion that Mr. Helf's brain injury was work related. However, it should be noted that I am not a cardiologist, but am a physiatrist with a subspecialty interest in traumatic brain injury. More definitive statements regarding the patient's cardiologic status should be obtained from his treating cardiologist.

If there is any question about this information, please do not hesitate to contact me.

Sincerely,

John Speed, M.B.B.S.
Assistant Professor
Division of Physical Medicine & Rehabilitation
UUMC

JS:jb

cc: Eugene Miller, etc.

F. CLYDE NULL, M.D., F.A.C.P.
PROFESSIONAL CORPORATION
CARDIOVASCULAR DISEASE-INTERNAL MEDICINE
DIPLOMATE, AMERICAN BOARD OF INTERNAL MEDICINE
SUITE 3 F, ST. MARK'S OFFICE BUILDING
1220 EAST 3900 SOUTH STREET
SALT LAKE CITY, UTAH 84124
TELEPHONE 263-3892

June 30, 1993

Mr. Hans M. Scheffler
Attorney at Law
311 South State, Suite 380
Salt Lake City, UT 84111

Re: Lavell H. Helf

Dear Mr. Scheffler:

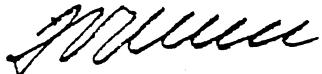
I have reviewed the file on Mr. Lavell Helf with respect to his previous diagnosis of IHSS and the series of events on the day when Mr. Helf had fallen and cracked his head on the cement.

From my discussions and review of the information signed by Alan Sackett, the Safety Administrator for Yellow Freight Lines, it would appear that Mr. Helf was in a situation where he was rushing to complete a hauling job. He was under pressure from the traffic, and it was near closing time. He had pulled a pin and was walking on the plate waiting for the forklift to load his order when he sustained, what would have appeared to have been, an arrhythmic episode or an episode of poor cardiac contractility resulting in a syncopal episode in which he fell and struck his head on the concrete. This resulted in serious damage from a brain standpoint.

Mr. Helf has had a situation with IHSS and episodes of arrhythmia in the past which were stable and controlled and which seemed to have culminated in this episode of syncope. I would think that in this situation where he was under stress to make the pick up, had the stress of removing the pin from the device to lower the plate, and the heavy work which he had been engaging in all culminated in a situation of an arrhythmia which resulted in his syncopal episode and subsequent head injury.

If I can be of further assistance in defining this, please do not hesitate to let me know.

With kindest regards,


F. Clyde Null, M.D., F.A.C.P.

FCN/bf

PROFESSIONAL CORPORATION
CARDIOVASCULAR DISEASE - INTERNAL MEDICINE
DIPLOMATE, AMERICAN BOARD OF INTERNAL MEDICINE
SUITE 3F, ST. MARK'S OFFICE BUILDING
1220 EAST 3900 SOUTH STREET
SALT LAKE CITY, UTAH 84124
-
TELEPHONE 263-3892

December 3, 1992

Mr. Lavell Helf
4916 Cherrywood Lane
West Valley City, UT 84120

To Whom It May Concern:

I have been asked to prepare a letter with respect to Mr. Helf's injury on 9/10/92. I have followed this man for a long period of time because of the findings of hypertrophic subaortic stenosis (obstructive cardiomyopathy) with episodes of chest pain, and occasional episodes of arrhythmia.

Mr. Helf apparently has had a syncopal or falling episode on 9/10/92. Various studies have been done at the University of Utah Hospital, and Dr. Roger Freedman had recently written a statement indicating his feelings regarding Mr. Helf's status.

In view of the known propensity for individuals with IHSS to develop episodes of syncope, he had been carried on an outpatient basis in our office since 1988 utilizing a program consisting of verapamil 80 mg p.o. t.i.d. to control any arrhythmia. He had also been carried on niacin and Lopid to reduce his blood cholesterol levels.


During the course of this injury he sustained, he had been doing some heavy working. Whether he tripped and fell to induce the head injury, or whether he had an arrhythmic episode to induce it was raised. Dr. Freedman and his associates were unable to induce any arrhythmia when Mr. Helf had been taking medications. That would suggest to us that an arrhythmia, as a consequence of his pre-existing heart disease, probably did not cause this episode of falling and injury to his head. Whether he may have tripped to induce this or whatever other events might have transpired to induce it are unknown, since it was not observed by us and would rely on the testimony and observations of the individuals with him at the time of the episode.

To Whom It May Concern
Page Two

In retrospect, I can only state that I am unaware of the cause for his fall and subsequent head injuries. On the basis of the fact that we have controlled his arrhythmia utilizing verapamil, and that no arrhythmia could be induced with the electrophysiological studies on this medication, it would suggest that an arrhythmia was not the cause for his fall and subsequent head injury.

If further details are needed, this office may be contacted.

With kindest regards,



F. Clyde Null, M.D., F.A.C.P.

FCN/bf



Roger A. Freedman, M.D.
Associate Professor of Internal Medicine

November 24, 1992

RE: Lavell Helf

To Whom It May Concern:

Mr. Helf is a patient of mine here at the University of Utah Medical Center whom I treated following a syncopal episode, fall, and cerebral contusion on September 9, 1992. The patient has a known history of idiopathic hypertrophic subaortic stenosis. During his hospitalization here, the patient underwent extensive cardiac and neurologic evaluation. The cause of the patient's syncope could not be determined with absolute certainty, but in my opinion it was probably related to his cardiac condition, and he was treated as such. Syncopal episodes in patients with idiopathic hypertrophic subaortic stenosis are often related to physical exertion, and therefore, if the syncope in this case was indeed on a cardiac basis, it is likely that it was related to whatever level of exertion was present at the time.

Sincerely,

Roger A. Freedman, M.D.
Associate Professor of Medicine
Division of Cardiology

RAF:jlw



Adult Neurosurgery

M. Peter Heilbrun, M.D.
Ronald I. Apfelbaum, M.D.
LaVerne S. Erickson, M.D.
Daniel W. Fults, III, M.D.
Mark V. Reichman, M.D.
Richard H. Tippets, M.D.
Peter M. Sunderland, Ph.D.

Pediatric Neurosurgery

Marion L. Walker, M.D.
Lyn C. Wright, M.D.

January 4, 1992

To Whom It May Concern:

Re: Lavell Helf

The patient and his wife note that they are still having problems and are quite distressed with their inability to convince the Workmen's Compensation carrier that the treated head injury was work related. I have reviewed the letters written by Drs. Null, Freeman and Speed.

It is my opinion that this patient sustained a head injury while performing his duties at work. There is no information in the history that a syncope episode occurred preceding the fall in which the patient struck his head. That such a syncable episode occurred preceding the accident is speculative due to the presence of a pre-existing cardiac condition. I advised Mr. and Mrs. Helf that if the controversy persists that they obtain the services of an attorney who has expertise and experience in this field. They advised me that they had contacted Mr. Dabney. I suggested that he would be one of the most qualified locally to handle this problem for them.

Regards,

M. Peter Heilbrun, M.D.

MPH/ah

cc: Hospital Chart #76-32-11-0

(Tr: 1/4/93)

Department of Neurological Surgery

School of Medicine
50 North Medical Drive
Salt Lake City, Utah 84143
(801) 581-6908
Fax: (801) 581-4385

Research Park Clinic
391 Chipeta Way, Suite 102
Salt Lake City, Utah 84108
(801) 581-5537
Fax: (801) 585-5298

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	DECLARED WT:		
	BARS, BLOCKS, RODS, 1/156640	70	
	HOSE OR TUBING, NMFC ITEM 157004		
	RIGID, LT 2" ID, LT 21" LONG..... S/3	70	
	EXCEEDING 2", LT 5" ID, LT 21" LONG. S/5	77.5	
	FLEXIBLE, 4/54 PCF, NMFC 100130... S/4	150	
	OVER 6" PCF, NMFC 100150	77.5	
	PIPE, IRON / STEEL, PLSTC LND, 1/151220	50	
	GASKET SETS, NUTS, BOLTS, SCREWS,	70	
	CARD MOUNTED, NMFC 104520..... S/1		
	FILTERS NOI ITEM 69095 S/2	70	
	PUMPS, POWER, NOI, NMFC 128000	85	
	TRENCH DRAINS, NMFC 90540	50	

4' x 8' NO. 16

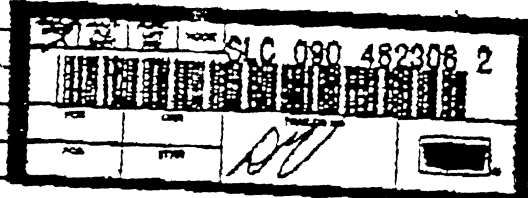
200#

2 1/2' TOTAL

NOI, NMFC ITEM 156600 70

ELECTRIC CUT HAND HELD, NMFC ITEM 131670 S/2 85

CATALOGS, ITEM 4650 (must be prepaid) 50



Charges are to be prepaid, Collect, or 3rd party: **PREPAID** **COLLECT**

3RD PARTY BILLING

Not to Section 7 of conditions of applicable bill of lading, if the shipments to be delivered to the consignee without recourse on the consignor, the consignor sign the following statement: "The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges."

(Signature of Consignor)

The boxes used for this shipment conform to the specifications set forth in the box maker's certificate thereon and all other requirements of Consolidated Freight Classification. The contents are properly classified, described, packaged, marked and labeled, and are in proper condition for transportation according to the applicable regulations of the Department of Transportation.

If a mark in lieu of a carrier's not a part of bill of lading approved by the Department of Transportation. If property moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is a "weight or measure" or "weight and measure" bill of lading. Where the rate is dependent on value, it shall state the declared value of the property to be transported. The carrier's liability is limited to the declared value of the property to be transported unless the shipper has elected to insure the property by the carrier to be not exceeding \$100,000 per package.

PERMANENT ADDRESS OF SHIPPER
1307 W. INDIANA
P.L.C., UT. 84104

Shipper **HARRINGTON**
Per **Daniel King**
4-9-92
111588

THIS SHIPPING ORDER

Must be legibly filled in, in ink, in indelible pencil, or in carbon, and returned by the Agent.

RECEIVE, subject to the classifications and tariffs in effect on the date of the issue of this Shipping Order

NOT to be used for ORDER NOTIFY SHIPMENTS.

DATE **9.9.92**

SLC 090 430557 5	
04	

YELLOW FREIGHT SYSTEM, INC. YFSY

CUSTOMER P.O. NO.	ROUTE	SHIPPER NUMBER
TO CONSIGNEE LEISURE TIME		AUSTROELAMM USA INC
STREET 2200 N. WOODRUFF	STREET NUMBER	2210 Alexander Street, Suite A
(DESTINATION) CITY, STATE, ZIP TDA 410 FALLS ID. 83401	(ORIGIN) CITY, STATE, ZIP	Salt Lake City, Utah 84119

C.O.D. AMT. \$ _____ FEE PPD COL IS CUSTOMER'S CHECK ACCEPTABLE FOR C.O.D.? YES NO

NO. SHIPPING UNITS	CO. HM	KIND OF PACKAGING, DESCRIPTION OF ARTICLES, SPECIAL MARKS AND EXCEPTIONS (LIST HAZARDOUS MATERIALS FIRST)	WEIGHT LBS. (SUBJECT TO CORRECTION)	DECLARED VALUE Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property. If the value is omitted, the shipment will be subject to the lowest actual or released value at ICC NMF 100 rates.
12		F/S PELLET BOWLS (25 Pcs TOTAL) NMFC # 27240 CLASS 70	3,540	The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding
12 ◀ TOTAL			TOTAL ▶ 3,540	

DECLARED VALUE Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property. If the value is omitted, the shipment will be subject to the lowest actual or released value at ICC NMF 100 rates.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

\$ _____

PREPAID COLLECT

IF FREIGHT PREPAID ACCEPTANCE IS COLLECTED BY AGENT, IS THIS ACCEPTED?

YELLOW FREIGHT LIABILITY: Shipments valued at more than \$50 per lb. are of extraordinary value. Carrier's maximum liability is \$50 per lb., subject to \$250,000 maximum total liability, unless the shipper requests excess coverage (at an additional charge) on the bill of lading. Exception: The liability on household goods and personal effects is based on value declared, not to exceed \$5 per lb.

RECEIVED, subject to the classifications and tariffs in effect on the date of this bill of lading, the property described above is received in good order, without apparent loss, damage or defect, and in conformity with the bill of lading. The carrier is not responsible for loss, damage or delay in delivery of the property under the terms of this bill of lading, unless the carrier is notified in writing of the loss, damage or delay in delivery of the property at the time of delivery. It is mutually agreed that the carrier is not liable for loss, damage or delay in delivery of the property under the terms of this bill of lading, unless the carrier is notified in writing of the loss, damage or delay in delivery of the property at the time of delivery. The carrier is not liable for loss, damage or delay in delivery of the property under the terms of this bill of lading, unless the carrier is notified in writing of the loss, damage or delay in delivery of the property at the time of delivery.

This is to certify that the above-named materials are properly classified, described, packaged, marked and labeled, and are in proper condition for transportation according to the applicable regulations of the Department of Transportation.	SHIPPER: AUSTROELAMM	YELLOW FREIGHT SYSTEM, INC.	
	PER: [Signature]	DRIVER: [Signature]	TRAILER: 111589
		PIECES: 12	DATE: 9.9.92

OO-156 REVISED 10/31/91 PRINTED IN U.S.A.

MARK "X" IN "HM" COLUMN FOR HAZARDOUS MATERIALS

Carrier must detach and return this Shipping Order and must sign the Original Bill of Lading

THIS SHIPPING ORDER

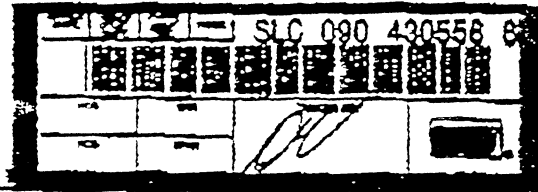
must be legibly filled in, in ink, in indelible pencil, or in green, and received by the Agent.

RECEIVE, subject to the classification and tariffs in effect on the date of the date of this Shipping Order

NOT to be used for ORDER NOTIFY SHIPMENTS.

DATE 9.9.92

YELLOW FREIGHT SYSTEM, INC. YFSI



CUSTOMER P.O. NO. ROUTE SHIPPER'S NUMBER

TO: CONSIGNEE STOVES & MORE FROM: SHIPPER AUSTROFLAMM USA INC.

STREET NUMBER DIRECTION NAME TYPE (BL, BLD) STREET NUMBER 2210 Alexander Street Suite A
Salt Lake City, Utah 84119

DESTINATION CITY STATE, ZIP SPEARFISH SD 57783 ORIGIN CITY STATE, ZIP

C.O.D. AMT \$ FEE PPD COL IS CUSTOMER'S CHECK ACCEPTABLE FOR C.O.D.? YES NO

NO. SHIPPING UNITS	KG	KIND OF PACKAGING, DESCRIPTION OF ARTICLES, SPECIAL MARKS AND EXCEPTIONS (LIST HAZARDOUS MATERIALS FIRST)	WEIGHT LBS. (SUBJECT TO CORRECTION)	DECLARED VALUE (When this rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property. If this value is omitted, the shipment will be subject to the lowest actual or declared value not less than 100 dollars. The agreed or declared value of the property of the property specifically stated by the shipper is binding, exceeding)
2		WEGA PELLET STOVES (6 Pcs TOTAL) NMFC # 27240 CLASS 70	689	
2		E/S PELLET STOVES (4 Pcs TOTAL) NMFC # 27240 CLASS 70	590	
4		← TOTAL	TOTAL → 1279	

LOW FREIGHT LIABILITY: Shipments valued at more than \$50 per lb. are of extraordinary value. Carrier's maximum liability is \$50 per lb., subject to \$250,000 maximum total liability, unless the shipper receives express coverage (at additional charge) on the bill of lading. Exception: The liability on household goods and personal effects is based on value declared, not to exceed \$5 per lb.

RECEIVED: subject to the classification and tariffs in effect on the date of the issue of this Bill of Lading, the property described herein is accepted, good order, weight as stated hereon and free of liability of the carrier, except as provided herein, and delivered to the consignee or his agent at the place and time specified in the bill of lading. It is assumed that the property is in conformity with the bill of lading and that the carrier is not liable for any loss or damage to the property or for any delay in its delivery or for any expense incurred by the consignee or his agent in connection with the receipt of the property. The carrier is not liable for any loss or damage to the property or for any delay in its delivery or for any expense incurred by the consignee or his agent in connection with the receipt of the property.

It is hereby certified that the above-stated bill of lading is true and correct, and that the property is in conformity with the bill of lading and that the carrier is not liable for any loss or damage to the property or for any delay in its delivery or for any expense incurred by the consignee or his agent in connection with the receipt of the property.

SHIPPER Austroflamm DRIVER [Signature]
PER [Signature] TRAILER 11688
PIECES 20 DATE 9/9/92

MARK "X" IN "HM" COLUMN FOR HAZARDOUS MATERIALS
Carrier must detach and retain this Shipping Order and must sign the Original Bill of Lading

A-2

EXHIBIT NO.

YFSI

THE INDUSTRIAL COMMISSION OF UTAH
HEARING ROOM, 160 EAST 300 SOUTH
P.O. BOX 510250
SALT LAKE CITY, UTAH 84151-0250

Case No. 93-20

* * * * *

LAVELL H. HELF,

*

Applicant,

*

vs.

*

EVIDENTIARY HEARING

YELLOW FREIGHT
SYSTEM, INC.,

*

*

Defendant.

*

* * * * *

BE IT REMEMBERED that on the 7th day of
July, 1993, commencing at the hour of 8:30 a.m.,
the Hearing in the above-entitled matter was held
at The Industrial Commission of Utah, Hearing Room
#334, 160 East 300 South, Salt Lake City, Utah.
This Hearing was electronically recorded.

ORIGINAL

STACY & ASSOCIATES
717 Boston Building
Salt Lake City, Utah 84111
(801) 328-1188

A P P E A R A N C E S

For the Applicant: HANS M. SCHEFFLER
 Attorney at Law
 311 South State St., #380
 Salt Lake City, UT 84111

For the Defendant: DAVID MCCONKIE
 Attorney at Law

Administrative Law Judge: TIMOTHY C. ALLEN

* * * *

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1 A It's the dock plate where the accident
2 occurred.

3 Q So this is at Gate's Rubber?

4 A In D-4 for sure and D-3. I can't say about
5 D-5.

6 Q Okay. Can you describe for the Judge how
7 these dock plates work?

8 A Well, you bend over and they're level with
9 the ground and cement floor, steel plate.

10 Q Let me stop you. Level with the ground or
11 with --

12 A Level with the cement floor. They're in
13 place in the floor.

14 Q Which is the loading dock?

15 A In the loading dock, back your trailer to
16 the door, open your door, you have to bend down to the
17 floor, pull the steel ring, the plate pops immediately
18 almost straight up and down.

19 Q Okay.

20 A Then immediately it flips a lip -- the lip
21 out that goes on your trailer, you have to walk that
22 plate immediately, you have to get right on it, or the
23 lip will fall back down.

24 Q Okay.

25 A And walk the plate down to the trailer.

1 THE WITNESS: Yeah. It's spring loaded and
2 you have to walk it down.

3 MR. SCHEFFLER: May I continue? Maybe it will
4 become clear if I could just ask a few more questions,
5 Your Honor.

6 THE COURT: Well, wait a minute. Okay.
7 That's fine, but I thought that the contention was that
8 he struck his head on the plate.

9 THE WITNESS: No. He struck his head on the
10 cement floor.

11 THE COURT: Okay. While he was walking this
12 thing back -- while he was walking the dock plate down?

13 MR. SCHEFFLER: Yes. Yes, sir.

14 THE COURT: Okay. Fine. Okay. Well, we
15 don't need to dwell on that a lot do we? I mean --

16 MR. SCHEFFLER: I think --

17 THE COURT: Okay. It raises up, he's walking
18 it down and then something happens and he falls; right?

19 MR. SCHEFFLER: Yeah. I think though it's
20 important for you in light of what happened that you
21 understand where the plate was, what position it was in
22 at the time that Mr. Helf fell.

23 THE COURT: All right.

24 MR. SCHEFFLER: I think that's a very critical
25 factor for you.

1 A You can see the ring where you have to pull
2 it. There's a ring on the plate and you have to bend
3 over level with the floor and you have to bend over.

4 MR. SCHEFFLER: Just for the record, Your
5 Honor, on D-6 it's on the lower righthand corner of the
6 dock plate.

7 THE COURT: Oh, okay. That's like a recessed
8 pull ring?

9 THE WITNESS: It's a ring. Yeah. Yeah. And
10 it would be level with the floor.

11 THE COURT: And so then you -- So when you
12 pull it up --

13 THE WITNESS: It pops up like it is now.

14 THE COURT: Oh, okay, so it doesn't -- so the
15 opening is not right -- it's actually hinged then on
16 this side?

17 THE WITNESS: Yeah. It's hinged along the
18 bottom.

19 THE COURT: Okay. It's hinged along the
20 bottom.

21 THE WITNESS: With some springs that pop up
22 when you pull this pin.

23 THE COURT: Oh, and so this ring then actually
24 is part of a catch mechanism?

25 THE WITNESS: Yeah. You have to --

1 THE COURT: Like a door latch?

2 THE WITNESS: Yeah.

3 THE COURT: And so you pull that and then it's
4 connected to some --

5 THE WITNESS: It's on a chain.

6 THE COURT: Oh, it's a chain?

7 THE WITNESS: It's on a chain.

8 THE COURT: Okay.

9 THE WITNESS: You pull it on a chain.

10 THE COURT: And then it pulls a catch and that
11 catch causes the dock plate to pop up?

12 THE WITNESS: Yeah.

13 THE COURT: Ah hah. I see said the Judge.
14 Okay. That makes sense now.

15 MR. SCHEFFLER: Now the Attorney will ask a
16 foolish question.

17 THE COURT: Okay.

18 Q (By MR. SCHEFFLER) How far up does this
19 plate actually pop when you pull that ring?

20 A Three feet.

21 Q Okay. So it starts out level with the
22 loading dock?

23 A Uh huh.

24 Q And then when you pull the ring it comes up
25 approximately three feet?

1 A Yeah. Three feet, maybe a little higher.

2 Q Okay. Okay. And -- Now, you mentioned
3 awhile ago there is a lip at the end of this dock
4 plate?

5 A Uh huh.

6 Q What is that lip, which I don't think is --
7 Is that depicted in any of the photographs?

8 A No. You can't see that unless you was
9 looking down on it or -- you can see the plate. When
10 the plate pops up there's a foot lip that's the same
11 width of the plate, there's a foot, it's about a foot
12 wide, and it's a lip and it pops up. That's what goes
13 on the trailer to set it down on the trailer. It's on
14 the hinge and it pops up.

15 THE COURT: Uh huh.

16 THE WITNESS: It's got a hydraulic arm that
17 holds it out there. If you don't walk it up
18 immediately, the lip falls back down.

19 THE COURT: Oh, okay, I'm with you.

20 Q (By MR. SCHEFFLER) And the Judge awhile ago
21 asked the purpose of the plate, and is the purpose of
22 this plate to connect the dock to the trailer so you
23 can drive onto the trailer to load it or unload it?

24 A Yes.

25 THE COURT: With a forklift; right?

1 THE WITNESS: Yeah.

2 THE COURT: Okay.

3 Q (By MR. SCHEFFLER) All right. Now, you
4 pull the pin and you said you have to walk it
5 immediately?

6 A Yeah. You have to walk it right now or the
7 lip will fall back down.

8 Q And you'd have to start all over?

9 A Yeah.

10 Q Okay. How hard is it to walk this plate
11 down?

12 A Well, it's brand new stuff and it's spring
13 loaded. Me myself, sometimes I have to push on the
14 wall to get it all the way down. I mean it's -- I
15 weight 175 pounds and I can't get it to come and land
16 on the trailer. I mean I can't just walk it down.
17 Sometimes I have to push on the wall a little bit to
18 get it to come down all the way.

19 Q Okay. And when you're talking all the way
20 down, you're talking about this lip into the trailer?

21 A Flat on the trailer. When it's sitting flat
22 on the trailer, it's on an incline, because the trailer
23 sits higher than the dock.

24 Q Okay. How much higher does the trailer sit
25 than the dock?

1 A Some three or four inches.

2 Q Okay. And so when the plate and the lift is
3 actually in the trailer, the plate is still about three
4 or four inches above the loading dock?

5 A At the point where the lip is, where your
6 trailer is, it's on an angle going up so you can drive
7 into it with a forklift.

8 Q Okay. Did you see Mr. Helf pull the pin?

9 A Well, I --

10 Q On this date?

11 A -- didn't actually like watch him pull it
12 and walk up. I mean we are standing there talking to
13 Nick that worked for Gate's about my freight, Lavell
14 had his back to us and just kind of popped the plate
15 and I kind of seen him walking into the trailer.

16 Q So he was walking the plate down?

17 A Yeah. We was just -- the three of us were
18 standing there for a minute and he was asking what he
19 was getting and I was talking to Nick about what
20 freight I was getting for the day at the time.

21 Q Let me stop you here. At the time you were
22 talking to Mr. Helf, did he appear to be having any
23 difficulties or problems?

24 A No. He seemed to be as sharp as the fifty
25 times I'd seen him before that.

1 Q Okay. So --

2 THE COURT: Just a second. I guess I'm still
3 somewhat confused. When you're walking down the plate,
4 does that require that -- Okay. You pull the pin, the
5 plate pops up the three feet that it does because it's
6 on that spring, and then do you physically then walk
7 across the plate itself?

8 THE WITNESS: Yeah. You have to walk up that
9 plate to get it to go back down.

10 THE COURT: Okay. Okay. So you walk and then
11 as you're walking you're weight pushes it down?

12 THE WITNESS: Your weight pushes it down.

13 THE COURT: And so when you were testifying
14 that sometimes -- you weight 175 pounds, but sometimes
15 even 175 pounds isn't enough weight to push it down?

16 THE WITNESS: Yeah.

17 THE COURT: And so then what, you put your
18 hand up on the ceiling or --

19 THE WITNESS: Oh, just on -- there's a wall
20 where the doors are and I just kind of push against the
21 wall to get it to go down.

22 THE COURT: Okay. The wall of the truck or --

23 THE WITNESS: No. The wall of the building.

24 THE COURT: Oh, okay, because that's not
25 readily visible here, but that would be like just to

1 the side here then?

2 THE WITNESS: Yeah. Just the wall there, just
3 kind of put my hand on the wall to push it down.

4 THE COURT: Oh, okay. And then as you push
5 that down, then that --

6 THE WITNESS: Get a couple extra pounds.

7 THE COURT: Then that -- Then there's a lip
8 underneath here that we can't see --

9 THE WITNESS: That pops up.

10 THE COURT: That also -- Okay. And that -- So
11 that completes the bridging then between the dock plate
12 and the truck, that one foot lip?

13 THE WITNESS: Yeah.

14 THE COURT: So if we drew a picture it would
15 look like this? I'm a lousy artist, but it would look
16 like this, this would be the dock plate and then this
17 would be that lip?

18 THE WITNESS: Yeah. And it flips out.

19 THE COURT: Okay. You want to see my art?

20 MR. MCCONKIE: I was expecting a little more.
21 I'm sorry.

22 THE COURT: I preference that. Come on, there
23 was a disclaimer there. Thank you, Counsel, for that.

24

25 MR. MCCONKIE: I object to that.

1 THE COURT: Right. Okay. It's been stricken.
2 All right. Thanks.

3 Q (By MR. SCHEFFLER) All right. So you
4 weren't -- To make sure that I don't mischaracterize
5 your testimony, you weren't specifically watching Mr.
6 Helf pull the pin?

7 A No. I wasn't staring at -- sitting there
8 staring at him watching him do this.

9 Q But you did see him start to walk the plate
10 down into the trailer; is that right?

11 A Me and Nick was standing about from me to
12 this man here away from him, maybe a little further,
13 fifteen to twenty feet.

14 Q Fifteen feet. I think he's talking about
15 Mr. McConkie.

16 A And -- Okay. And he had his back to us.

17 Q He being Mr. Helf?

18 A Yes. Mr. Helf. And we were standing I mean
19 looking -- facing, you know, his back, looking at his
20 back. If we were staring, we'd be staring at his back,
21 and we were talking a little bit and he popped the
22 plate up. I mean we seen him, but we didn't stare at
23 him doing it, actually watch every move that he made as
24 far as that goes.

25 Q Let me stop you here. But you're sure he's

1 the one who bent down and pulled this pin that we've
2 talked about?

3 A I'm positive of it.

4 Q Okay. And then what, you're staring at him
5 and then what do you see?

6 A The plate come up, he started walking up it.
7 He was just about to the top, the plate was about maybe
8 two or three inches from being all the way on the
9 trailer, which wouldn't be level, it would be on the
10 trailer when he fell.

11 Q Okay. So at the time you saw him fall, was
12 the plate flat or was it on an angle?

13 A No. It's on an incline going into the
14 trailer.

15 Q Okay. And the plate had not gone all the
16 way down into the trailer?

17 A Not yet.

18 MR. MCCONKIE: Your Honor, I'd object. He's
19 leading his witness right down the road here. I
20 think --

21 THE COURT: Right into the trailer.

22 MR. MCCONKIE: Right into the trailer.

23 MR. SCHEFFLER: That's where we want to go.

24 MR. MCCONKIE: I think he can ask his question
25 and get a more appropriate answer.

1 A I seen him walking up the plate, the plate
2 was almost all the way down like I said, and he was off
3 to the left corner of the plate towards the end almost
4 up towards the very top of the plate when he fell --
5 when his hands -- his hands went -- was to his sides
6 and then he fell backwards.

7 Q Okay. And was his back still towards you
8 when he fell?

9 A Yeah. All we seen was his back.

10 MR. SCHEFFLER: I don't have any further
11 questions, Your Honor, of this witness.

12 THE COURT: Okay. Cross.

13 MR. MCCONKIE: Thank you, Your Honor.

14 CROSS EXAMINATION

15 By MR. MCCONKIE:

16 Q Mr. Childs, you indicated that when you
17 spoke with Mr. Helf before he walked to the plate that
18 he seemed just as chipper and good as ever; is that
19 right?

20 A Seemed fine.

21 Q Didn't appear overly tired or stressed?

22 A I don't know if he showed stress or not.

23 Q But he didn't appear it to you; is that
24 right?

25 A No.

1 Q You also indicate that you did not see him
2 pull the pin; is that right?

3 A No. I said that I seen him pull the pin. I
4 mean we didn't stare at him doing it, but we were
5 looking at him like this. You see a man with a big
6 three foot plate or whatever, you see him pull the pin
7 on it. Yes. We did see it. I seen him pull the pin.

8 Q He didn't appear to be struggling to pull
9 the pin did he?

10 A No.

11 Q Okay. He just pulled the pin just as
12 normal; is that right?

13 A Yeah. Normal on them new plates is jerking
14 on the chain pretty hard though.

15 Q Now, I want you to describe again for us
16 what you saw immediately prior to his fall. You said
17 he stopped his walk; is that right?

18 A I said he walked. No. He walked up to the
19 top. He was almost to the top of the plate.

20 Q Okay. And then what happened?

21 A That's when he fell.

22 Q And then he --

23 A The plate was almost down. It was a couple
24 inches off the --

25 Q Was he walking or was he -- had he stopped

1 appear to. No.

2 Q Okay. He didn't trip did he?

3 A I don't know.

4 Q No one pushed him?

5 A No one pushed him, that's for sure.

6 Q No freight fell on him?

7 A No freight fell on him.

8 Q So you don't know what caused him to fall;
9 is that right?

10 A I haven't the faintest idea.

11 Q Did he appear to you to be unconscious
12 before he hit the floor?

13 A I'm not a doctor. I don't know.

14 Q Well, how did he appear to you?

15 A Didn't. He had his back to me.

16 Q But he didn't try to break his fall?

17 A Not that I seen. No.

18 Q When you talk about the trailer being three
19 or four inches higher than the dock, is that this
20 particular trailer or is that just the normal trailer
21 that you see in there?

22 A That's the average trailer other than
23 Northwest Freight has low profile trailers, low profile
24 tires, and they sit almost even with the dock. Yellow
25 Freight trailers aren't that way and neither is

1 freight; do you recall? I'm sorry.

2 A It was some -- just a couple of pieces of
3 freight. It was just awkward and that's why I helped
4 him kind of make some room in the trailer with him.

5 Q Were these heavy pieces?

6 A They were kind of heavy, but they were more
7 awkward you know.

8 Q But it was awkward?

9 A It was awkward. It was pretty heavy.

10 Q What do you mean by awkward?

11 A Well, you know, like the thing was kind of
12 long. You need someone just to -- I just needed to
13 help him move them -- move them so he could have some
14 room.

15 Q Room for whatever he --

16 A Yeah. So I could put on the freight.

17 Q All right. After you did that, then what
18 happened?

19 A Okay. Then I -- You know, I came out and
20 jumped on my forklift and he came out and popped the
21 plate.

22 Q Did -- How much time elapsed between the
23 moving of the freight on the trailer and the popping of
24 the plate?

25 A Could be seconds. I mean it was just you

1 know --

2 Q Now, what do you mean by when you say popped
3 the plate?

4 A Well, you bend down and pop -- you know, it
5 has a chain -- I mean it's just a little hook with a
6 chain on it and you just pop it up.

7 Q Okay. You pull it?

8 A Yeah. But he had to bend down and pull it.
9 Yeah.

10 Q Did you see Mr. Helf pull this?

11 A Yes. I did.

12 Q And after you saw him pull that, what
13 happened?

14 A You know the plate extends up and then he
15 started walking on it to make it so it goes down and
16 then --

17 Q Did you see him walk on the plate?

18 A Yes. I did.

19 Q And then what did you see?

20 A And then he got well about two or three
21 inches down and then all of the sudden he just flipped
22 back.

23 Q Where were you standing at the time?

24 A I was on the forklift.

25 Q And were you behind Mr. Helf or to his side?

1 A I was right behind him.

2 Q So his back was towards you?

3 A Yes. It was.

4 Q Was the plate all the way down?

5 A When he fell?

6 Q Yes.

7 A No. It wasn't all the way flat. Like I
8 say, it was two or three inches up when he fell back.

9 THE COURT: Two or three inches off the ground
10 or --

11 THE WITNESS: Yes. It wasn't all the way down
12 when he fell.

13 Q (By MR. SCHEFFLER) And when you're talking
14 down, you're talking into the trailer?

15 A Well, it's not -- It's going to be -- I mean
16 when the plate comes up it's going to be elevated and
17 it comes down. I don't think it was all the way down
18 when he fell back.

19 Q When you say down, you're talking down into
20 the trailer?

21 A Yeah. Into the trailer.

22 Q Okay.

23 THE COURT: And then how far -- how big of a
24 distance is there between the floor of the trailer and
25 the loading dock?

1 THE WITNESS: How --

2 THE COURT: Yeah. How much of a step is
3 there? There's a step isn't there?

4 THE WITNESS: Yeah. It's never level.

5 THE COURT: Right.

6 THE WITNESS: It depends on each trailer you
7 know.

8 THE COURT: Right. We had somebody else tell
9 us that there's about three or four inches -- there's
10 about a three or four inch gap; does that sound about
11 right?

12 MR. MCCONKIE: Your Honor, I object. You're
13 leading the witness.

14 THE COURT: I'm sorry. I get to do that.

15 MR. MCCONKIE: No, but you can --

16 THE COURT: The objection is noted.

17 MR. MCCONKIE: I think he can testify
18 without --

19 THE COURT: Okay. What's your estimate?

20 THE WITNESS: I'd say two inches -- two to
21 three inches.

22 THE COURT: Now, this is between the bottom of
23 the truck and the floor of the loading dock?

24 THE WITNESS: Yes. Yes.

25 THE COURT: So you have about a two inch?

1 MR. SCHEFFLER: Plus the stoves, Your Honor.
2 If you look at the stoves that were on Exhibit A-2,
3 which weighed considerably more than two hundred
4 pounds.

5 THE COURT: Well, I don't have A-2.

6 MR. SCHEFFLER: I'm sorry. I walked off with
7 it.

8 THE COURT: Hello.

9 MR. SCHEFFLER: If the Defendants will admit
10 to that, then I have no further evidence and I'll
11 submit the matter.

12 MR. MCCONKIE: Your Honor, we don't -- we'll
13 admit that the truck was loaded, and we don't have any
14 reason to object that these manifests are accurate as
15 to what was in the truck, but we certainly object to
16 the inference that he was moving stoves. There's no --
17 There's no testimony. Still the burden is on the
18 Claimant to show what they were moving, how much it
19 weighed, and the only testimony that could come in on
20 that I suppose is from Mr. Valles, and he certainly
21 didn't provide anything that the Commission can get
22 ahold of to show what -- the weights and sizes or
23 anything, so the fact that there was freight on the
24 truck, we don't object to that, and we don't object to
25 the admission of the documents as being -- actually

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35-1-45. Compensation for industrial accidents to be paid.

Each employee mentioned in Section 35-1-43 who is injured and the dependents of each such employee who is killed, by accident arising out of and in the course of his employment, wherever such injury occurred, if the accident was not purposely self-inflicted, shall be paid compensation for loss sustained on account of the injury or death, and such amount for medical, nurse, and hospital services and medicines, and, in case of death, such amount of funeral expenses, as provided in this chapter. The responsibility for compensation and payment of medical, nursing, and hospital services and medicines, and funeral expenses provided under this chapter shall be on the employer and its insurance carrier and not on the employee

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35-1-65. Temporary disability — Amount of payments — State average weekly wage defined.

(1) In case of temporary disability, the employee shall receive 66 $\frac{2}{3}$ % of that employee's average weekly wages at the time of the injury so long as such disability is total, but not more than a maximum of 100% of the state average weekly wage at the time of the injury per week and not less than a minimum of \$45 per week plus \$5 for a dependent spouse and \$5 for each dependent child under the age of 18 years, up to a maximum of four such dependent children not to exceed the average weekly wage of the employee at the time of the injury, but not to exceed 100% of the state average weekly wage at the time of the injury per week. In no case shall such compensation benefits exceed 312 weeks at the rate of 100% of the state average weekly wage at the time of the injury over a period of eight years from the date of the injury.

In the event a light duty medical release is obtained prior to the employee reaching a fixed state of recovery, and when no such light duty employment is available to the employee from the employer temporary disability benefits shall continue to be paid.

(2) The "state average weekly wage" as referred to in Chapters 1 and 2 of this title shall be determined by the commission as follows: on or before June 1 of each year, the total wages reported on contribution reports to the department of employment security under the commission for the preceding calendar year shall be divided by the average monthly number of insured workers determined by dividing the total insured workers reported for the preceding year by twelve. The average annual wage thus obtained shall be divided by 52, and the average weekly wage thus determined rounded to the nearest dollar. The state average weekly wage as so determined shall be used as the basis for computing the maximum compensation rate for injuries or disabilities arising from occupational disease which occurred during the twelve-month period commencing July 1 following the June 1 determination, and any death resulting therefrom.

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