

2006

Richard D. Grint v. Trimco Molding and/or Argonaut Insurance Company, and Utah Labor Commission : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

RICHARD D. GRINT,)	
)	
Petitioner,)	
)	
vs.)	Case No. 20060253-CA
)	
TRIMCO MOLDING and/or ARGONAUT,)	Agency Case No. 20040182
INSURANCE COMPANY, and UTAH)	
LABOR COMMISSION,)	
)	
Respondents.)	

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UTAH APPELLATE COURTS

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ARGUMENT

1. THIS COURT SHOULD HOLD THAT PETITIONER RAISED HIS CLAIM FOR INCREASED COMPENSATION RATE IN HIS APPLICATION FOR HEARING, AND DID NOT WAIVE THAT ISSUE AT THE HEARING.

This Court should find that Petitioner's claim was supported by the Civil Rules and the Commission's Rules. As set forth in Petitioner's brief, parties raise issues under Rule 8 when the pleadings identify facts that entitle them to relief. Whether Mr. Grint's increased compensation issue was "ripe for adjudication" was not at issue in this case. Respondents Brief at 14. Instead, the only issue was whether Grint raised his claim before the Commission. Under Rule 8, and its counterpart for labor commission cases, Rule 602-2-1, claimants raise issues in their applications for hearing. Petitioner's Brief at 1. It was undisputed that Grint raised the issue before the Commission by alleging higher wages in his application for hearing.¹ This Court should hold that Mr. Grint raised his claim as a matter of law.

¹ As further proof that Mr. Grint raised this issue before the ALJ, the ALJ awarded Mr. Grint's increased compensation rate. Ironically, after presenting supporting documentation of his increased compensation claim to the Commission, the Commission reversed the ALJ and refused to consider his supporting evidence.

The cases cited in Respondents' Brief supported Mr. Grint's position because in every case, the party failed to raise an issue in the pleadings, but Mr. Grint raised the issue in his pleadings. The *Hilton* case cited by Respondents supports Mr. Grint's position. In *Hilton Hotel*, the claimant did not raise the claim in her pleadings. But in Mr. Grint's case, he raised his claim in the pleadings. Compare Mr. Grint's Brief at 2-3 with Respondent's Brief at 14-15. Nor does the case of *Chevron v. Tax Commission*, 847 P.2d 418 (Utah Ct. App) support Respondents' position. Respondents' Brief at 15. In that case, the Division did not raise the issue in the pleadings. *Id.* at 420. Similarly, the case of *Acosta v. Labor Comm'n*, 2002 UT App 67, supports Mr. Grint's position. In that case, the claimant failed to raise an alternative theory of recovery in the pleadings. Unlike *Hilton Hotel*, *Chevron*, and *Acosta*, Mr. Grint squarely raised the issue of increased compensation in his pleadings, and thereby support his position.

Administrative Law Judges (ALJs) can not discharge their statutory duties without identifying all of the issues raised by the parties. As a hearing officer, the ALJ "shall regulate the course of the hearing to obtain full disclosure of relevant facts." Utah Code Ann § 63-46b-8. But the threshold relevancy determination turns on the issues raised by the parties. Accordingly, ALJs must necessarily identify the issues raised in pleadings, and elicit evidence on those issues. That

simply was not done in Mr. Grint's case. Respondents argued that Mr. Grint had the "opportunity" to present evidence, but chose not to do so. Respondent's Brief at 18. But where he was never asked about that issue, there was no such "opportunity." Respondents' position would have required Mr. Grint to take control of the hearing process, instead of deferring to the ALJ's statutory authority (and duty) to regulate the proceeding. The ALJ had the duty to ascertain all of the issues to obtain full disclosure of the relevant facts. This Court should hold that the ALJ erred by failing to ask Mr. Grint about his increased compensation claim.

The hearing transcript showed that the Judge never asked Mr. Grint about his increased compensation claim. Respondents' brief skirted this issue: While ALJ spent "a good deal of time examining with Grint the claim he wished to pursue,"² he never asked Grint about the increased compensation rate claim Grint identified in his pleadings. To the contrary, Mr. Grint began to identify the "primary issues" in the case – claims for PPD and unpaid medical bills. (R 128). From that point forward, however, the judge focused the discussion on those two points, and never asked Mr. Grint about any other issues raised in his pleadings.

² Respondent's Brief at 17.

Respondent's brief also tried to new raise defenses in its Brief not raised in its answer. Respondents never raised the defenses of laches or estoppel in their answer, but argued these defenses in their Brief. Respondents Brief at 21. These defenses were never before the Commission and may not be raised for the first time on appeal.

Respondents brief unsuccessfully tried to question the merits of Mr. Grint's increased compensation claim. *Id.* at 20-21. At bottom, however, Respondents failed to explain why paystubs from his employer "Hoff Companies, Inc. dba Trimco Molding" (R 125) were not the best evidence of his wages. Respondents simply ignored the fact that their name was on the paystubs. Respondents' Brief at 23 ("[T]he evidence submitted by [Mr.] Grint post-hearing has no obvious connection to Trimco Molding, and as the Commission correctly ruled, has only questionable value at best.") Nor did the Brief dispute that it had an opportunity to rebut this evidence before the Commission; yet it complained of due process deprivations. Respondents' Brief at 23. This Court should find that Mr. Grint presented relevant, material and unrebutted evidence of his increased wage rate to the Commission, and reverse the Order.

2. THE COMMISSION ABUSED ITS DISCRETION AS THE ULTIMATE FINDER OF FACT WHEN IT REFUSED TO ACCEPT MR. GRINT'S PAYSTUBS INTO EVIDENCE.

The Commission's refusal to accept Mr. Grint's paystubs was predicated on legal error – that Mr. Grint had not raised his claim before the Commission.³ If this Court finds that Mr. Grint raised his compensation claim before the ALJ, it must also conclude that the Commission abused its discretion when it refused to consider his paystubs.

The Commission has the discretion to accept post-hearing evidence. Due process rights are not implicated when the Commission accepts post-hearing evidence. There are statutory tools that provide for parties' due process:

Our statutes place the responsibility for decision on the Commission, and not on Administrative Law Judges. Under § 35-1-85, it is the *Commission* which has the duty to make findings of fact. The Administrative Law Judge's findings and order become final as an order of the *Commission* under § 35-1-82.52 if the Commission takes no further action in the case. Upon review, the Commission, pursuant to § 35-1-82.54 "shall review the entire record made in said case, and, *in its discretion* may hold further hearings and receive further evidence and make findings of fact and enter its award thereon."

³ But the ALJ granted Mr. Grint's requested compensation increase, even though he failed to ask Mr. Grint about this issue at the hearing.

United States Steel Corp. v. Indus. Comm'n, 607 P.2d 807, 811 (Utah 1980) (emphasis in original). Respondents nonetheless argued that accepting post-hearing evidence amounted to a denial of due process. Respondents' Brief at 22-23. There was simply no legal basis for Respondents' argument, and this Court should reject it.

As more fully set forth in Petitioner's brief, the Commission abused its discretion when it refused to accept Mr. Grint's paystubs into evidence because they were relevant, and material, and because it had a statutory duty to reasonably exercise its discretion as the ultimate finder of fact. Petitioner's Brief at 6-8. This Court should find that the Commission abused its discretion when it refused to accept Mr. Grint's paystubs into evidence.

CONCLUSION

For the reasons set forth in his Brief, this Court should hold that Mr. Grint raised his increased compensation claim before the Commission. It should also hold that the ALJ had a duty to ask about this claim but did not. This Court should also find that the Commission abused its discretion when it refused to accept relevant material evidence post-hearing – paystubs from Mr. Grint’s employer that prove his wage claim. Accordingly, this Court should reverse the Commission and award Mr. Grint’s increased compensation rate, along with interest on the unpaid amounts from the time they became due and payable to him.

DATED this 21 day of December, 2006.

KING, BURKE & SCHAAP, P.C.



Richard R. Burke

CERTIFICATE OF SERVICE

I certify that true and correct copies of the foregoing document were mailed,
first class postage prepaid on the 21 day of December, 2006, to:

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