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**APPEALS BOARD  
UTAH LABOR COMMISSION**

**SOCORRO GUZMAN,**

**Petitioner,**

**vs.**

**CIRCLE 4 FARMS and INDEMNITY  
INSURANCE CO. OF NORTH AMERICA,**

**Respondents.**

**ORDER REVERSING  
ALJ'S DECISION AND  
DENYING BENEFITS**

**Case No. 11-0410**

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Circle 4 Farms and its insurance carrier, Indemnity Insurance Co. of North America, (collectively referred to as "Circle 4") ask the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Marlowe's award of permanent total disability compensation to Socorro Guzman under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Appeals Board exercises jurisdiction over this motion for review pursuant to §63G-4-301 of the Utah Administrative Procedures Act and §34A-2-801(4) of the Utah Workers' Compensation Act.

**BACKGROUND AND ISSUES PRESENTED**

Mr. Guzman claims permanent total disability compensation stemming from a low-back injury he sustained on August 14, 2008, which injury was determined to be work-related in a previous claim, case number 09-0912. Mr. Guzman's current claim for permanent total disability compensation stems from the same work-related low-back injury. Judge Marlowe held an evidentiary hearing and referred the medical aspects of the claim to an impartial medical panel. The medical panel outlined Mr. Guzman's work restrictions and found that he could return to work full time in a light to medium capacity.

Judge Marlowe relied on the medical panel's opinion over Mr. Guzman's objection. Judge Marlowe concluded that Mr. Guzman was entitled to a preliminary award of permanent total disability compensation subject to Circle 4's right to submit a reemployment plan. Circle 4 now seeks review of Judge Marlowe's decision by arguing that Mr. Guzman has not met all the requirements for an award of permanent total disability compensation.

**FINDINGS OF FACT**

The Appeals Board finds the following facts to be material to Circle 4's motion for review. Mr. Guzman was born in Mexico in 1943 and completed up to the fourth grade of elementary

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school. He began working on his family ranch raising livestock and crops at around age 14. When Mr. Guzman was 25 years old, he began working on other farms as well. He continued to do farm work for many years until 1992, when he moved to Beaver, Utah. At that time, Mr. Guzman began working on a dairy farm and also worked at a mill that processed feed for pigs.

Mr. Guzman began working for Circle 4 in 1997, where he performed animal husbandry among other duties. His job with Circle 4 required him to walk and stand between 9 and 12 hours a day, continually lift up to 50 pounds, push or pull up to 250 pounds while squatting, and do other work in a squatting position. On August 14, 2008, Mr. Guzman was working for Circle 4 when a large boar ran into him. The force of the impact caused Mr. Guzman to land on his buttocks and low back on the cement floor of the boar pen.

Mr. Guzman eventually sought treatment for pain in his low back. MRI results showed a disc herniation at the L5-S1 level of Mr. Guzman's lumbar spine, degenerative spondylolisthesis, and foraminal stenosis in the lumbar area. Dr. Brown treated Mr. Guzman for low-back pain and new pain he developed in his right hip. Dr. Brown concluded Mr. Guzman was "unable to go back to work." He underwent physical therapy and steroid injections, which provided some relief. Mr. Guzman stopped working for Circle 4 in July 2009 and has not worked since.

In May 2011, Mr. Guzman was evaluated by Dr. Colledge, who diagnosed him with chronic, mechanical low-back pain, multilevel degenerative disc disease, heart disease, hypertension, bilateral carpal-tunnel releases, and obesity. Dr. Colledge also assessed Mr. Guzman with a 5% whole-person impairment rating, 3% of which was attributable to the 2008 work accident. Dr. Colledge noted the requirements of Mr. Guzman's job with Circle 4, and found that he could not return to such work without modification of his job duties. Dr. Colledge added that Mr. Guzman did not require surgery or additional physical therapy for his low-back condition, but only needed over-the-counter anti-inflammatory medication.

Judge Marlowe referred the issue of Mr. Guzman's permanent restrictions to an impartial medical panel consisting of Dr. Jarvis, an occupational medicine expert, and Dr. Dall, a physiatrist. Dr. Dall also acted as an interpreter for Mr. Guzman. The medical panel reviewed Mr. Guzman's relevant medical history and examined him before finding that Mr. Guzman's disc herniation at L5-S1 from the 2008 work accident limited him from lifting more than 40 pounds occasionally, from lifting more than 20 to 30 pounds frequently, and from repetitive bending, stooping, and squatting. The panel also found that Mr. Guzman's non-industrial conditions restricted him to limited overhead work and limited forceful work with the arms above shoulder level or away from the body. The panel opined that Mr. Guzman could return to work in a light to medium work setting full time.

During the evidentiary hearing, Mr. Guzman testified that his low-back pain radiates into his legs. He also testified that he cannot stand for more than an hour at a time and can sit for a little more than an hour. Mr. Guzman asserted that he needs to lie down for about 45-60 minutes twice in an 8-hour span. He submitted a report from a vocational rehabilitation consultant, Ms. Dina Galli,

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which described that Mr. Guzman was no longer capable of working in his past jobs as they all involved medium to heavy work. However, Ms. Galli did not appear or testify at the hearing. Ms. Galli's report indicated that Mr. Guzman has no transferable skills and retraining is not viable due to his age, limited education, and limited communication skills in English.

**DISCUSSION AND CONCLUSIONS OF LAW**

The focus of the present dispute is whether Mr. Guzman has shown that he qualifies for permanent total disability compensation. Section 34A-2-413(1)(b) of the Utah Workers' Compensation Act provides that, in order to establish entitlement to permanent total disability compensation, an injured employee must show:

- (i) The employee sustained a significant impairment or combination of impairments as a result of the industrial accident...that gives rise to the permanent total disability entitlement;
- (ii) The employee is permanently and totally disabled; and
- (iii) The industrial accident...is the direct cause of the employee's permanent total disability.

**Significant Impairment**

Circle 4 contends that Mr. Guzman has not shown that he sustained a significant impairment as a result of the 2008 work accident as he was assessed with only a 3% whole-person impairment rating from this work-related injury. Circle 4 relies on the Utah Court of Appeals' decision in *Crafts v. Labor Commission*, 2005 UT App. 238, where the court found that a 3% rating was insufficient to establish a significant impairment. However, in the *Crafts* case, the injured worker relied on his impairment rating to meet §413(1)(b)(i).

The Appeals Board has consistently found that an impairment rating by itself is not necessarily dispositive of a significant impairment. The court in the *Crafts* case found that a relatively low impairment rating alone was not enough to demonstrate a significant impairment; however, there is other evidence of Mr. Guzman's impairment beyond his rating. Specifically, the medical evidence shows that as a result of the work accident Mr. Guzman can no longer perform the heavy agricultural work he has performed for most of his life. Preclusion from nearly the only work Mr. Guzman has done is sufficiently significant for his low-back impairment to satisfy §413(1)(b)(i).

**Permanent Total Disability**

Subsection 34A-2-413(1)(b)(ii) requires Mr. Guzman to demonstrate that he is permanently and totally disabled according to the requirements of §34A-2-413(1)(c). It is Mr. Guzman's burden to prove each of the following:

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- (i) The employee is not gainfully employed;
- (ii) The employee has an impairment or combination of impairments that limit the employee's ability to do basic work activities;
- (iii) The industrial impairment or occupationally caused impairment or combination of impairments prevent the employee from performing the essential functions of the work activities for which the employee has been qualified until the time of the industrial accident...that is the basis for the employee's permanent total disability claim; and
- (iv) The employee cannot perform other work reasonably available, taking into consideration the employee's age, education, past work experience, medical capacity, and residual functional capacity.

Mr. Guzman is not gainfully employed. With respect to the next element, §413(1)(c)(ii), the Commission has consistently interpreted the term "basic work activities" as common factors generally required in a wide variety of employment settings. These factors include the ability to report for work on a regular basis and remain at work through the day, as well as a reasonable degree of flexibility, strength, endurance, mental capacity and ability to communicate. The impairments in question need not be related to the work accident. In Mr. Guzman's case, the medical panel found that his impairments limit his ability to do overhead or forceful work with his arms above his shoulder or away from the body, and that they limit him from lifting more than 40 pounds occasionally and more than 20 to 30 pounds frequently. The panel also found Mr. Guzman cannot repetitively bend, stoop, or squat, but can work full time in a light to medium work setting.

The limitations from Mr. Guzman's impairments may hinder his ability to do specific tasks, such as frequent reaching or repetitive bending, but such impairments do not reasonably limit his ability to work in a broad range of jobs. Mr. Guzman can bend, stoop and squat frequently, can do some reaching overhead and away from his body, and can lift up to 40 pounds. The medical panel's conclusion that Mr. Guzman can still work full time in a light to medium work setting also indicates that he can work in a variety of employment settings. The evidence shows that there are no impairments to Mr. Guzman's mental capacity, and that he retains a reasonable amount of strength, flexibility and endurance.

The Appeals Board finds the medical panel's opinion to be persuasive with regard to Mr. Guzman's restrictions and limitations because the panel had the benefit of collegial and impartial review of Mr. Guzman's relevant medical history. The panel's report is more convincing than the other various physician notes on Mr. Guzman's limitations offered throughout his treatment or his testimony at the hearing. The panel outlined a clear set of restrictions that is based on the panel's impartial review of the medical evidence and its examination. Based on the evidence of Mr. Guzman's limitations, including the panel's conclusions, the Appeals Board finds that he is not limited in his ability to perform basic work activities under §413(1)(c)(ii).

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Notwithstanding Mr. Guzman's failure to meet §413(1)(c)(ii), the Appeals Board will consider the remaining factors of §413(1)(c) in the interest of completeness. The next element requires Mr. Guzman to show that his work-related low-back impairment prevent him from performing the essential functions of the work activities for which he has been qualified until the 2008 accident. Circle 4 does not directly dispute this element of the analysis, and the medical evidence shows Mr. Guzman's work injury precludes him from heavy lifting and labor he has done for his entire career. Based on such factors, the Appeals Board finds Mr. Guzman meets §413(1)(c)(iii).

The final element under §413(1)(c) requires Mr. Guzman to show that he cannot perform other work reasonably available considering his age, education, past work experience, medical capacity, and residual functional capacity. Mr. Guzman stopped working for Circle 4 in July 2009 and has not worked since. After reviewing the record, the Appeals Board notes that there is no indication that Mr. Guzman attempted to find other employment after he stopped working for Circle 4. Although Dr. Brown opined that Mr. Guzman could not return to work, such opinion appears to specifically refer to the position with Circle 4 rather than any work at all. Mr. Guzman relies almost exclusively on a report from his vocational rehabilitation consultant, Ms. Galli, as evidence that he cannot find other work. While Ms. Galli's expertise does give her report some value, the Appeals Board is reticent to give the report much weight in light of the fact that Ms. Galli did not testify at the hearing where she could explain her conclusions and be questioned.

The remaining evidence of Mr. Guzman's inability to perform other work reasonably available is somewhat incomplete. While his age and limited education appear to be factors against his ability to perform other work, Mr. Guzman still retains sufficient medical and functional capacity as shown by the medical panel's findings. Based on the evidence provided, Mr. Guzman has not convinced the Appeals Board that he meets §413(1)(c)(iv). The Appeals Board concludes that Mr. Guzman has not shown that he is permanently and totally disabled according to the elements of §413(1)(c).

As Mr. Guzman has not established that he is permanently and totally disabled, it is not necessary to address Circle 4's remaining argument pertaining to the direct cause of the disability. Should Mr. Guzman's work-related condition deteriorate such that a significant change in circumstances occurs, such condition may be revisited in the future. However, as the evidence stands now, Mr. Guzman has not convinced the Appeals Board that he is entitled to permanent total disability compensation. The Appeals Board therefore disagrees with Judge Marlowe's decision regarding permanent total disability and denies Mr. Guzman's claim for such compensation.

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**ORDER**

The Appeals Board reverses Judge Marlowe's preliminary award of permanent total disability compensation of March 31, 2014, and denies Mr. Guzman's claim for such benefits. It is so ordered.

Dated this 30<sup>th</sup> day of June, 2014.

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Colleen S. Colton, Chair

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Patricia S. Drawe

**DISSENT**

I respectfully dissent. However, before I comment on what everyone would agree is a close and very difficult case, I would like to state that both attorneys in this matter filed very excellent and useful memorandums. So often we point out in our opinions how parties have failed to meet the goals of the motions for review, it should also be appropriate to compliment fine lawyering.

My first disagreement with the Majority is over their interpretation of U.C.A. §34A-2-413(1)(c)(ii). That section requires Guzman to prove that he "has an impairment or combination of impairments that limit...[his] ability to do basic work activities" [emphasis added]. The Majority and I do not disagree on the definition of "basic work activities;" we disagree on the term "limit."

It has been long assumed that the term "limit" refers to reasonable limitation. Not every impairment which results in any limitation, no matter how minor, satisfies §413(1)(c)(ii). Using this analysis, the Majority in their decision argue that Mr. Guzman's limitations are too minor to comply with this section. However, the entire record demonstrates that Mr. Guzman's limitations to do basic work activities were not minor, but were very substantial. The law does not require that Mr. Guzman be completely limited in his ability to do basic work activities, only reasonably limited.

I also disagree with the Majority's interpretation of U.C.A. §34A-2-413(1)(c)(iv). That section requires Mr. Guzman to prove that he "cannot perform other work reasonably available, taking into consideration...[his] age, education, past work experience, medical capacity, and residual functional capacity." The Majority finds against Mr. Guzman for two reasons. First, there was no evidence in the record that Mr. Guzman ever looked for a new job. Since when has that been a requirement of §413(1)(c)(iv)? Clearly, looking for a job and being unable to find one is evidence

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that there is not work reasonably available for an injured employee. Failure to present evidence of that fact should not be conditioned upon whether or not the employee satisfied §413(1)(c)(iv). Second the Majority have refused to give much evidentiary weight to the report of the vocational rehabilitation consultant, Ms. Galli, because she “did not testify at the hearing where she could explain her conclusions and be questioned.” The Majority seems to forget that this case is an administrative matter and that a “hearsay” report is admissible and can be relied upon by the Commission. The Majority’s argument on this point could be used to disregard every medical panel report relied upon by the Commission since the authors of those reports rarely testify at hearing to explain their conclusions. Such a requirement as advocated by the Majority could shut down the Commission’s adjudication process. I find Ms. Galli’s report very useful and convincing.

Because of the above, I would hold that Mr. Guzman satisfied the requirements of §413(1)(b)(ii). This leaves the issue as to whether or not Mr. Guzman satisfies the requirement of U.C.A. §34A-2-413(1)(b)(iii). The Majority chose not to answer this issue. However, I would find from the record that there is enough evidence for the Commission to find that Mr. Guzman’s industrial accident of May 30, 2012, was the direct cause of his permanent and total disability.

Based upon the above, I would affirm the ALJ’s decision.

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Joseph E. Hatch

**NOTICE OF APPEAL RIGHTS**

Any party may ask the Appeals Board of the Utah Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Appeals Board 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 the court. Any such petition for review must be received by the court within 30 days of the date of this order.