

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

BRONIA JODOIN,	)	
	)	
Claimant,	)	<b>IC 00-033564</b>
	)	
v.	)	
	)	
FAR WEST CONSULTING, INC., dba	)	
DAYS INN,	)	
	)	<b>FINDINGS OF FACT,</b>
Employer,	)	<b>CONCLUSIONS OF LAW,</b>
	)	<b>AND RECOMMENDATION</b>
and	)	
	)	
GREAT AMERICAN INSURANCE	)	Filed January 28, 2005
COMPANY,	)	
	)	
Surety,	)	
	)	
and	)	
	)	
STATE OF IDAHO, INDUSTRIAL	)	
SPECIAL INDEMNITY FUND,	)	
	)	
Defendants.	)	
_____	)	

**INTRODUCTION**

Pursuant to Idaho Code § 72-506, the Industrial Commission assigned the above-entitled matter to Referee Michael E. Powers, who conducted a hearing in Twin Falls, Idaho, on August 6, 2004. Claimant was present and represented by Jeff Stoker of Twin Falls. W. Scott Wigle of Boise represented Employer/Surety at hearing and R. Daniel Bowen, also of Boise, represented Employer/Surety on their post-hearing brief. Thomas B. High of Twin Falls represented the Idaho Industrial Special Indemnity Fund (ISIF). Oral and documentary evidence was presented. The record remained open for the taking of three post-hearing depositions and the submission of post-hearing briefs. This matter came under advisement on December 2, 2004, and is now ready for decision.

## **ISSUES**

The issues to be decided as a result of the hearing are:

1. Whether Claimant is entitled to further medical care and the extent thereof;
2. Whether Claimant is entitled to permanent partial impairment benefits and the extent thereof;
3. Whether Claimant is entitled to permanent partial or permanent total disability benefits;
4. Whether Claimant is totally and permanently disabled pursuant to the odd-lot doctrine;
5. Whether apportionment for a pre-existing condition is appropriate; and
6. Whether ISIF is liable pursuant to Idaho Code § 72-332 and, if so, apportionment under the *Carey* formula.

## **CONTENTIONS OF THE PARTIES**

Claimant contends that she was rendered totally and permanently disabled as the result of an aggravation of various pre-existing conditions due to a fall she suffered at Employer's place of business. She was 77 years of age at the time of the accident and was suffering from a myriad of health problems; nonetheless, she was able to work 8-10 hours a day in her three months of employment with Employer and perform various activities outside of work that she is no longer able to do after her accident and injury. The injuries she received in her accident have combined with her pre-existing conditions making her totally and permanently disabled, thus invoking the liability of the ISIF.

Employer/Surety argues that while Claimant may presently be totally and permanently disabled, she was also unemployable before her accident. The accident only temporarily aggravated her many pre-existing conditions, as there is no evidence of any anatomical changes

caused by the accident. Further, they question Claimant's medical stability in that physicians have recommended treatment options that may well improve her physical condition, but Claimant has refused to follow through with the recommendations. Due to this refusal, she is not entitled to any further medical benefits. Finally, it is Claimant's clearly pre-existing severe spinal stenosis that is causing most of her current difficulties.

The ISIF argues that Claimant is not medically stable for the same reasons argued by Employer/Surety. They further argue that there is no "combining with" situation here because Claimant was totally and permanently disabled before the present accident and injury and she was working for a sympathetic employer when, in fact, she should not have been working at all.

Claimant replies that had she not been able to perform her duties before her accident, Defendants would surely have called witnesses to that effect but they did not. Further, Claimant's treating chiropractor testified that Claimant was always able to bounce back before her accident, but not after. As to Claimant not following through with treatment recommendations, she points out that most of the physicians making those recommendations are independent evaluators hired by Defendants, not treaters. She is getting a certain amount of palliative relief from her chiropractor, and Defendants should be required to continue to pay for those treatments. Claimant also suggests that ISIF's argument that Claimant is not stable is inconsistent with their argument that she was totally disabled before her accident and injury. Finally, Claimant argues that she should be commended for securing and maintaining employment at her age, not punished.

### **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. The testimony of Claimant, her husband Herbert Jodoin, and friends Gary Hamilton and Charlene Johnson, taken at the hearing;

2. Joint Exhibits 1-13 admitted at the hearing; and,
3. The post-hearing depositions of: Laura Johnson Stevenson, D.C., with three exhibits, taken by Claimant on August 17, 2004; Michael Weiss, M.D., taken by Employer/Surety on September 2, 2004; and William Owens, M.D., taken by Employer/Surety on September 14, 2004.

Claimant's objection at page 18 of Dr. Owens' deposition is sustained.

After having considered all the above evidence and the briefs of the parties, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

### **FINDINGS OF FACT**

1. Claimant was 81 years of age at the time of the hearing and resided with her husband in Jerome, Idaho. She has been primarily a homemaker but has also worked in the home health care field in the past.

#### **Pre-accident medical treatment:**

2. Claimant has endured a constellation of health problems that may be summarized as follows. Beginning in November of 1983, Claimant began treating with Mark M. Saccoman, D.C., for neck and low back pain. Between 1983 and 1997, Claimant saw Dr. Saccoman approximately 51 times for low back and leg pain, numbness in her feet and toes, and left hip pain. A note dated August 26, 1996, recorded that Claimant "fell 2 ft. straight down" the night before. Claimant had another fall on March 31, 1998. Exhibit 5. In May 1997, Claimant returned to Dr. Saccoman for low back pain incurred in a fall while doing yard work and she "Can't stand up straight." *Id.* In a September 10, 1997, letter to an insurance company, Dr. Saccoman indicated Claimant was slowly improving but he wished to continue to treat her for the next six months at four times per month. *Id.* In a "Supplemental Report" dated September 30, 1997, Dr. Saccoman noted that Claimant fell again on September 24, 1997, while

attempting to move part of a waterbed. She was complaining of low back pain with pain down her right leg. Contained within Dr. Saccoman's records is a document filled out by Claimant wherein she stated she was retired. She also indicated she was experiencing pain and symptoms in the following areas: headaches, left shoulder joint pain and bursitis, pain and sensation of pins and needles in her fingers, low back pain, including muscle spasms, pain in left buttocks, pain down left leg, leg cramps, pins and needles in left leg, numbness in left leg, and numbness, cramping and swelling in bilateral feet and toes. *Id.*

3. Claimant decided Dr. Saccoman was seeing her too often when there was nothing wrong with her, so on May 17, 1999, Claimant began treating with Laura Johnson, D.C., nka Dr. Laura Johnson Stevenson (hereinafter Dr. Johnson). In the new patient intake form, Claimant indicated she was seeing Dr. Johnson for "lower back – disc & hip" as well as right leg numbness. Exhibit 6. In addition to the falls for which she received treatment from Dr. Saccoman, Claimant also listed falls in December and May of 1998. She wrote that when she had pain, she had trouble lying down and sitting and standing too long.

4. On January 28, 2000, Claimant saw Elizabeth H. Sugden, M.D., an internist, complaining of shortness of breath for the past two to three days. Dr. Sugden sent Claimant to a local emergency room to rule out atrial fibrillation with a rapid ventricular response. When that diagnosis was confirmed, Claimant was hospitalized from January 27 to January 30, 2000. A portable chest x-ray taken on January 28 revealed congestive heart failure with interstitial pulmonary edema and small pleural effusions. Exhibit 7. On February 3, 2000, Dr. Sugden recommended a referral to a cardiologist for possible valve replacement, a medication called amiodarone to try to get her to sinus rhythm, and a referral for an electrical cardioversion. Claimant "seems reluctant for [sic] any of these referrals" and they were not made at that time.

Exhibit 7. On February 28, 2000, Claimant accepted Dr. Sugden's referral to a cardiologist as she had been having episodic chest pressure and left arm numbness.

5. Claimant saw David M. Kemp, M.D., a cardiologist practicing in Twin Falls, on March 1, 2000. An echocardiogram performed that day revealed an enlarged left ventricle with mild global hypokinesis. Dr. Kemp's physical examination and testing led to the diagnosis of atrial fibrillation of unknown duration that may be correctible, valvular heart disease that may be correctible with valve replacement surgery, congestive heart failure, and non-active reactive airway disease. Dr. Kemp recommended a thyroid profile, a stress nuclear study to rule out underlying myocardial ischemia, and prescribed amiodarone and an ACE inhibitor. If Claimant was still in atrial fibrillation in two weeks, he would recommend a trial of electrical cardioversion. Dr. Kemp noted that Claimant was retired.

6. Claimant returned to Dr. Kemp on March 22, 2000, at which time he noted that she had cancelled a stress nuclear study ". . . due to fear of the test itself." Exhibit 4. Dr. Kemp recommended an electrical cardioversion attempt for Claimant's still symptomatic atrial fibrillation. He diagnosed valvular heart disease with severe mitral regurgitation and severe aortic insufficiency and noted that Claimant remained opposed to consideration of valve replacement surgery. In fact, Claimant refused any further ischemia workup, at least for the present. Her congestive heart failure was somewhat improved on the afterload reduction. There is nothing in the record indicating that any of the recommendations of Dr. Kemp were followed.

**The accident:**

7. On September 11, 2000, in the morning while working as a laundress in the laundry room at Employer's motel facility, Claimant got her foot tangled up in a bundle of sheets on the floor and fell and hit her knee and hand on the concrete floor. She felt no pain at the time of the accident and finished her shift with two or three hours overtime.

### **Post-accident medical treatment:**

8. Claimant testified that when she tried to get out of bed the morning after the accident, she experienced severe pain and swelling in her left leg and she was “. . . sore all over.” Hearing Transcript, p. 51. She had her husband take her to Dr. Johnson, who diagnosed a sprain and took Claimant off work from September 12 through October 31, 2000, after which time Claimant would be released to sedentary work (“desk job”) with no lifting or bending. Dr. Johnson indicated in a letter to Surety dated January 23, 2001, that 40% of Claimant’s restrictions were due to pre-existing conditions as well as Claimant’s age. Exhibit 6. Because Claimant was not responding to her treatment, Dr. Johnson referred her to David A. Hanscom, M.D., an orthopedic surgeon in Ketchum.

9. Claimant first saw Dr. Hanscom on April 20, 2001. She was complaining of pain in her lumbosacral junction as well as concerns about her lack of balance. Dr. Hanscom noted a “markedly abnormal physical examination.” Exhibit 10. He was concerned about her wide-based gait and wanted to rule out a peripheral neuropathy, spinal cord tumor, or a large central disc herniation. He ordered an “urgent” MRI.

10. On April 26, 2001, Claimant again saw Dr. Hanscom to review the results of her MRI that he characterized as follows:

MRI is very impressive. L3-4 shows a severe stenosis. The foramina, although narrow, seem to be reasonable. L4-5 is the number one worse [sic] stenosis I have seen in 15 years. She has essentially just really no canal left and maybe is down to about 1 mm.

Exhibit 10.

Dr. Hanscom opined that Claimant’s gait abnormalities, numbness and tingling “. . . are very easily explained by her severe stenosis.” *Id.* Dr. Hanscom noted that Claimant was probably not healthy enough to be able to endure his recommended laminectomy if done in Sun Valley and referred her to Joseph Michael Verska, M.D., an orthopedic surgeon in Boise.

Claimant did not see Dr. Verska and has not had the recommended surgery because she is afraid she will die due to her heart condition.

11. On June 28, 2001, Claimant saw Timothy E. Doerr, M.D., an orthopedic surgeon in Boise for a second opinion apparently requested by Surety. Claimant informed Dr. Doerr that since her accident she has had back pain radiating into her legs, right greater than left, and associated numbness to the same areas. Dr. Doerr noted a marked gait disturbance with difficulty maintaining balance. Because Dr. Doerr was concerned that further sacral nerve dysfunction could result in loss of bowel or bladder control, he concluded that, “. . . strong consideration should be given for surgical decompression.” Exhibit 8.

12. Claimant returned to Dr. Hanscom on March 7, 2002. Dr. Hanscom noted that Claimant “Had the most severe case of spinal stenosis I had ever seen.” Exhibit 10. Dr. Hanscom also noted “She knows she needs to get the operation but she is in somewhat [sic] denial that the problem is as severe as it is.” *Id.* Dr. Hanscom found Claimant to be “strangely disassociated” and expressed frustration that he made no more progress in convincing Claimant of the need for surgical intervention and the seriousness of not doing so than he did when he last saw her almost one year before.

13. On February 6, 2003, Ryan W. Hardy, M.D., a general surgeon practicing in Jerome, saw Claimant as a referral from Dr. Sugden for a lump on her right breast. A subsequent biopsy revealed breast cancer. Dr. Hardy recommended two separate courses of treatment; one was a lumpectomy with radiation and the other was a mastectomy. Claimant told Dr. Hardy she would not even consider radiation and did not know whether she would have anything done at all. Dr. Hardy at that time and in two subsequent conversations stressed the importance of treatment and the probable consequences of doing nothing. Claimant informed Dr. Hardy that she would seek guidance and direction from Dr. Sugden, and Dr. Hardy encouraged her to do so.

14. In the last note of Dr. Sugden in the record dated February 19, 2003, she noted that she had had a lengthy discussion with Claimant about her breast cancer and her treatment options. Claimant expressed the belief that her anxiety would prevent her from undergoing any kind of an operation, and Dr. Sugden noted, “Her anxiety is actually quite disabling and may interfere with any effective treatment.” Exhibit 7. As of the date of the hearing, Claimant had not undergone treatment for her breast cancer.

15. Although not contained in Dr. Sugden’s records, there was testimony by an independent medical evaluator that Dr. Sugden diagnosed Claimant as having adult onset diabetes in April 2004.

## **DISCUSSION AND FURTHER FINDINGS**

### **Maximum medical improvement (MMI):**

Defendants argue that Claimant has not reached MMI with regard to her heart and back conditions because there have been treatment recommendations that may improve those conditions if she would only follow through with them. Therefore, no determination of disability above impairment can presently be made.

“Permanent impairment” is any anatomic or functional abnormality or loss after maximal medical rehabilitation has been achieved and which abnormality or loss, medically, is considered stable or nonprogressive at the time of the evaluation. Idaho Code § 72-422. (Emphasis added).

16. As of March 25, 2000, Dr. Hanscom, in a letter to Claimant’s former attorney, assigned Claimant a 28% whole person PPI for her spinal stenosis with 20% pre-existing. He assigned that rating even though he strongly recommended a laminectomy at L4-5 and considered her prognosis “dismal” without the procedure.

17. Michael S. Weiss, M.D., MPH., board certified in both Physical Medicine and Rehabilitation and Occupational Medicine, and William C. Owens, M.D., a board certified

cardiologist, saw Claimant at Surety's request on September 4, 2001. At that time, Dr. Owens would not assign a PPI rating for Claimant's heart condition because of unanswered questions regarding her pulmonary and cardiac functioning. Similarly, Dr. Weiss would not give a PPI rating at that time for Claimant's spinal stenosis. However, subsequently, Dr. Owens did provide a PPI rating for Claimant's heart condition as it existed on the date of the IME: 49% of the whole person due entirely to her pre-existing congestive heart failure and other related cardiovascular conditions present in Claimant prior to her accident. Dr. Weiss also subsequently opined that Claimant had some degree of PPI for her back condition, all unrelated to Claimant's accident. He testified that it is not uncommon to rate people whose condition is declining, but that physicians try to wait to see if some treatment modality might improve their condition.

18. While Claimant may have some treatment options available to her that might improve her condition, she has elected to not undergo any invasive procedures due to the fear that she will die from heart failure or some other cause. Her fear is not unreasonable under the circumstances and is shared by the physicians who have made the various recommendations. While Dr. Hanscom has recommended back surgery, he also indicated that there is a significant chance of neurologic deficits that may occur at the time of surgery.

This situation is somewhat analogous to that found in Reynolds v. Browning Ferris Industries, 113 Idaho 965, 751 P.2d 113 (1988). There, the Idaho Supreme Court held that it was permissible for the Commission to assign a permanent partial disability rating even though the claimant's underlying permanent partial impairment was for a condition that would continue to deteriorate as long as the Commission indicated it was considering the claimant's present and probable future ability to engage in gainful activity. Here, Claimant's condition will continue to deteriorate for one reason or another. She cannot be forced to submit to invasive medical procedures and the reasoning behind her reluctance to do so is somewhat understandable.

Claimant wishes to have her PPI determined at this time and at least three physicians and one chiropractor have seen fit to do so. The Referee finds Claimant is at MMI regarding the conditions for which PPI ratings have been given.

**Claimant’s disability as it relates to her accident (causation):**

“Permanent disability” or “under a permanent disability” results when the actual or presumed ability to engage in gainful activity is reduced or absent because of permanent impairment and no fundamental or marked change in the future can be reasonably expected. Idaho Code § 72-423. “Evaluation (rating) of permanent disability” is an appraisal of the injured employee’s present and probable future ability to engage in gainful activity as it is affected by the medical factor of impairment and by pertinent non-medical factors provided in Idaho Code § 72-430. Idaho Code § 72-425. Idaho Code § 72-430(1) provides that in determining percentages of permanent disabilities, account should be taken of the nature of the physical disablement, the disfigurement if of a kind likely to handicap the employee in procuring or holding employment, the cumulative effect of multiple injuries, the occupation of the employee, and his or her age at the time of the accident causing the injury, or manifestation of the occupational disease, consideration being given to the diminished ability of the affected employee to compete in an open labor market within a reasonable geographical area considering all the personal and economic circumstances of the employee, and other factors as the Commission may deem relevant, provided that when a scheduled or unscheduled income benefit is paid or payable for the permanent partial or total loss or loss of use of a member or organ of the body no additional benefit shall be payable for disfigurement.

The test for determining whether a claimant has suffered a permanent disability greater than permanent impairment is “whether the physical impairment, taken in conjunction with non-medical factors, has reduced the claimant’s capacity for gainful employment.” Graybill v.

Swift & Company, 115 Idaho 293, 294, 766 P.2d 763, 764 (1988). In sum, the focus of a determination of permanent disability is on the claimant's ability to engage in gainful activity. Sund v. Gambrel, 127 Idaho 3, 7, 896 P.2d 329, 333 (1995). A claimant carries the burden of proving disability above impairment. Seese v. Ideal of Idaho, Inc., 110 Idaho 32, 714 P.2d 1 (1986).

There is little doubt that Claimant was totally and permanently disabled at the time of the hearing and the Referee so finds. However, the pertinent inquiry at this point is what, if any, effect Claimant's accident at Employer's had on her disability. As outlined above, Claimant had rather significant symptomatic pre-existing conditions prior to her accident and developed yet more after. The dispositive issue to be addressed in this case is whether Claimant's accident on September 11, 2000, resulted in any PPI, and if so, whether Claimant incurred any PPD in excess of her PPI as the result of the accident. To address this issue, it is necessary to examine the medical causation opinions expressed in this matter.

19. Dr. Johnson testified at her deposition:

Q. (By Mr. Bowen): What is your diagnosis? What do you think happened to this woman on September 11, 2000?

A. She basically fell and sprained the area. She already had the stenosis there obviously, but when she fell, she must have finished collapsing the – see, stenosis is not necessarily all bone. It also can be ligament. And when she fell, I think she probably finished dropping that ligament down just a little bit further taking a little more space away from the spinal cord.

Q. Is that demonstrated on any studies that you've undertaken?

A. Basically Dr. Hansom's MRI talks about how the ligament dropped down, and that's partly what's compressing it.

Q. Did you have any prior studies that you could compare that to to confirm that the dropping down of the ligament was due to this event?

A. No.

Q. So it's essentially supposition on your part based upon her complaints?

A. It's my opinion.

Dr. Johnson Deposition, pp. 19-20.

20. Dr. Hanscom wrote a letter to Claimant's former attorney dated March 25, 2000, and stated that Claimant's need for surgery was due to her accident and gave her a PPI rating apportioning some to the fall and some to her "severe" pre-existing spinal stenosis. Exhibit 10.

21. Dr. Doerr, to whom Surety sent Claimant for a second opinion, in his June 28, 2001, office note indicated that in his opinion, Claimant's symptoms were due to her pre-existing lumbar spinal stenosis. He related her need for surgery to that pre-existing condition, not her fall.

22. Dr. Weiss also expressed an opinion regarding causation:

Q. (By Mr. Bowen): Well, now, and [sic] Dr. Johnson, the chiropractor who treated Bronia actively prior to the accident and who has continued to treat her over the years, doesn't share your opinion, Dr. Weiss.

And Dr. Johnson says to us, Well, you know, she's doing a lot worse after this accident; and, therefore, I think the bulk of her impairment is due to the accident.

With that in mind, would you agree or disagree with Dr. Johnson's analysis and basis for her opinion that most of the impairment is due to the accident?

A. If you go back to Bartlett's Familiar Quotations and look up a latin [sic] phrase called "Post hoc ergo propter hoc" - -

Q. Okay

A. - - it will say, "Classical definition of logical fallacy," anonymous. And what that means is after which, therefore because of which. And in 2000 years, there's not been a change to make this a valid conclusion. And Dr. Johnson's logic is a good example of why that's incorrect.

I agree that Bronia gives a history that this got worse after she fell. And even if you give credence to this history, although there is reason not to give credence to it based on the medical records, it's still not enough to establish causation. It is an error in logic.

And the reason is that just because she got worse after she fell, it doesn't mean that that's caused by any more than anything else that happens in her life.

She's also gotten four years older since she fell, but that doesn't mean that her aging is now a function of her falling; it's a function of something else, just like her breast cancer is a function of something else.

No one would say that her development of breast cancer since she fell is somehow related to her tangling her feet in sheets, but that happened afterwards, too. A lot of things have happened to her and in the world since she fell; but it's not causal.

And the reason we know that is because that's not enough to establish causation. There's other means to establish that, such as understanding how things develop and understanding what they call pathophysiology in medicine.

And when one looks at that, all of those things would weigh against a more-likely-than-not conclusion that her fall caused her conditions or impairments.

Q. What, for instance, would you expect to see if you were going to entertain and be able to render an opinion that the accident had permanently worsened Ms. Jodoin's lumbar problems?

A. I would expect to see something objective that happened. I mean, did she fracture a bone in the fall? Did she herniate a disk in the fall? Did she lacerate a muscle in the fall? Did she sustain a bruise in the fall?

Is there something objectively determined that changes anatomically in the accident that we could then decide that that change has progressed in some way to cause her symptoms?

And the answer to that is no. All we have is a history provided by a patient who's contradicted by the medical record that she was just hunky-dory before she had her fall and afterwards became totally impaired because of pain and numbness and weakness and a number of other things. And as I said, it is not credible.

. . .

Q. (By Mr. Stoker): Well, in reference to someone in Ms. Jodoin's situation, according to the testimony presented at the time of hearing, the prior falls, the prior experiences she had, that she sprang back very quickly. A couple chiropractic treatments, a little time off, whatever, and she was back to basically her level of activity prior to the experience.

The testimony was that following this fall, there was a dramatic difference, that she didn't have the ability to go back to the activity level she had before. Do you disagree with that?

A. Well, again, even if it's true, okay, it doesn't establish causation. She has a degenerative condition. If you have a degenerative condition, it means it gradually gets worse. And at some point, it may get to the point where you can no longer do things.

If you have a muscle disease where you're gradually getting weaker and weaker, you wouldn't notice that until you suddenly can't stand up one day. In fact, when you can't stand up one day, you'll have lost 75 percent of your muscle bulk.

But that doesn't mean that something happened on that day when you went from, you know, 74 percent of your muscle bulk to 75 percent of your muscle bulk. It's different than the gradual progression of the disease over the course that led you to go from 100 percent to 75 percent. That's the nature of a degenerative condition.

Q. But you'd agree that traumatic injuries, whether it be a fall or a car accident or something like that, can trigger an increase in symptoms as a result of a degenerative condition?

A. That's exactly what I'm saying I don't agree with. What I'm saying is that if the increase of symptoms are due to a degenerative condition, the sudden increase is very typical of a degenerative condition.

A person who has heart disease doesn't have gradually increasing angina from the onset of the heart disease. They have no problem at all until one day their smoking and their heredity and their eating catches up with them, and they have a heart attack. That's the sudden functional change.

But the underlying problem is the gradual building-up of plaque and narrowing of their arteries. And the same thing goes with muscle disease, and the same thing might go with arthritis and degenerative spinal disease.

That doesn't - - but that's not to say that something could not happen, that she could not fall and have a fracture, or she could not fall and have a dislocation, or she could not fall and have a disk herniation.

The fact that Ms. - - and that was considered. We certainly looked for that, but it's not there in this case.

If you think that there was something that happened in her fall that caused her sudden deterioration as opposed to the underlying process of her established degenerative conditions, then what was it? And when I look for it, I don't see it.

Dr. Weiss Deposition, pp. 22-25, 43-45.

23. The Referee finds the causation opinions of Dr. Weiss more persuasive than those of Drs. Hanscom and Johnson. Dr. Hanscom's conclusionary causation opinion is without foundation and was not tested by the rigors of cross-examination. Dr. Johnson did not explain how a falling down can cause a ligament to "drop down" and take "a little more space away from the spinal cord." While the Referee was unable to locate in the record the MRI referred to in Dr. Johnson's testimony that apparently "talks about how the ligament dropped down," neither Dr. Hanscom nor Dr. Doerr mentions anything about a ligament in their respective discussions concerning the MRI contained within their notes. Further, Dr. Johnson also testified that

Claimant injured her thoracic and cervical spine in her fall without explanation, which further undermines her credibility. She also indicated that all of her post-accident treatments were due 100 percent to the fall even though she also testified that Claimant would have still come to see her even without her fall.

Claimant was being treated for virtually all the same symptoms she was having after her accident before her accident. She did not experience immediate pain in any area of her body until the next day when she had left leg pain and a bump on her knee. In her deposition, Claimant testified that she could not pinpoint exactly when she developed back pain but at hearing she testified it was two or three days after her fall. One would think that if Claimant aggravated her pre-existing stenosis to the extent that she claims she did, she would have felt immediate pain somewhere at the time she fell. Not only did she not experience any pain at the time of the fall, she finished her shift and worked two to three hours overtime.

The Referee finds that, at most, Claimant temporarily aggravated her pre-existing severe spinal stenosis in her fall, returned to baseline, and the natural progression of her pre- (and post-) existing conditions continued their progression and deterioration.

Based upon the above finding, the Referee concludes that neither Employer/Surety or the ISIF have incurred any liability for Claimant's total and permanent disability or any further medical treatment.

### **CONCLUSIONS OF LAW**

1. Claimant has failed to prove her industrial accident of September 11, 2000, resulted in any permanent impairment or disability.
2. Defendants are not responsible for any further medical care.
3. Claimant's Complaint against the ISIF should be dismissed with prejudice.



**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

BRONIA JODOIN,	)	
	)	
Claimant,	)	<b>IC 00-033564</b>
	)	
v.	)	
	)	
FAR WEST CONSULTING, INC., dba	)	
DAYS INN,	)	
	)	<b>ORDER</b>
Employer,	)	
	)	
and	)	Filed January 28, 2005
	)	
GREAT AMERICAN INSURANCE	)	
COMPANY,	)	
	)	
Surety,	)	
	)	
and	)	
	)	
STATE OF IDAHO, INDUSTRIAL	)	
SPECIAL INDEMNITY FUND,	)	
	)	
Defendants.	)	
_____	)	

Pursuant to Idaho Code § 72-717, Referee Michael E. Powers submitted the record in the above-entitled matter, together with his proposed findings of fact and conclusions of law to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant has failed to prove her industrial accident of September 11, 2000, resulted in any permanent impairment or disability.

2. Defendants are not responsible for any further medical care.
3. Claimant's Complaint against the ISIF is dismissed with prejudice.
4. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all issues adjudicated.

DATED this \_\_28\_\_ day of \_\_January\_\_\_\_\_, 2005.

INDUSTRIAL COMMISSION

\_\_\_\_\_  
/s/  
Thomas E. Limbaugh, Chairman

\_\_\_\_\_  
/s/  
James F. Kile, Commissioner

\_\_\_\_\_  
/s/  
R. D. Maynard, Commissioner

ATTEST:

\_\_\_\_\_  
/s/  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_28\_\_ day of \_\_January\_\_\_\_, 2005, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following persons:

JEFF STOKER  
PO BOX 1597  
TWIN FALLS ID 83303-1597

R DANIEL BOWEN  
PO BOX 1007  
BOISE ID 83701-1007

THOMAS B HIGH  
PO BOX 366  
TWIN FALLS ID 83303-0366

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\_\_\_\_\_  
/s/