

CONTENTIONS OF THE PARTIES

Claimant contends he injured his back while bending over installing insulation at ground level during the course and scope of his employment. He reported his accident to his on-site supervisor and was told to go home. Because he feared an adverse reaction from the owner of the business for which he worked if he filed a workers' compensation claim, Claimant initially failed to report his injury as work-related when he sought medical care. However, when he discovered the seriousness of his back injury, he then attempted to get the claim transferred from his private health insurance to Employer's workers' compensation insurance.

Defendants contend that Claimant failed to report his accident as work-related and that they did not know he was claiming such until they were notified sometime later by Claimant's health care facility that he was so claiming. Claimant had missed work in the past due to non-work-related back problems and, while Defendants acknowledge he was sent home with back pain on the day of his alleged accident, that was not unusual and they had no reason to suspect he had had an industrial accident. Finally, because Claimant initially informed his physicians that his back pain came on gradually without any specific event, and because Claimant later gave conflicting versions of the accident, Defendants assert that no such accident occurred.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant, Claimant's wife Beverly Tepfer, Surety's claims examiner Hollie Kurtz, Employer's office manager Brenda Jennings, Claimant's supervisor Travis Jennings, and Employer Harold Mortensen, taken at the hearing;
2. Claimant's Exhibits 1-13;
3. Defendants' Exhibit 1; and,

FINDINGS, CONCLUSION, AND RECOMMENDATION - 2

4. The pre-hearing deposition of Claimant taken by Defendants on July 15, 2004.

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

FINDINGS OF FACT

1. Employer is in the business of insulating the plumbing and HVAC pipes and ductwork in commercial buildings. In early 2004, Employer had a subcontract to provide insulation work for the Idaho Water Center at Broadway and Front streets in Boise. Claimant was employed as a mechanical pipe insulator.

2. Claimant testified as follows at hearing regarding his alleged accident on February 12, 2004:

Q. (By Referee Powers): What were you doing? What was your job?

A. Mechanical pipe insulator. And I was working and carrying a heavy box of material, and I carried it across the room, approximately 25 feet. I set it down on the floor and was on my hands and knees for maybe 30, 45 seconds, a minute, tried standing up and I could not stand up. I had extreme back pain, very extreme lower back pain and pain in my left thigh.

After that – this was around – approximately around 10:30 in the morning. After that I tried to stay at work, but I wasn't able to do hardly anything of physical work [*sic*]. I was kind of inventorying my materials, trying to do something, and hoping I would maybe get better to go to work. And I wasn't able to.

At 1:00 – this was on the fourth floor. At 1:00, I went up to the sixth floor, where my field supervisor Travis Jennings was working, and reported to him that I had an accident, hurt my back, and he told me to go home.

Hearing Transcript, pp. 10-11.

DISCUSSION AND FURTHER FINDINGS

An accident is defined as an unexpected, undesigned, and unlooked for mishap, or untoward event, connected with the industry in which it occurs, and which can be reasonably located as to time when and place where it occurred, causing an injury. Idaho Code

§ 72-102(17)(b). An injury is defined as a personal injury caused by an accident arising out of and in the course of employment. An injury is construed to include only an injury caused by an accident, which results in violence to the physical structure of the body. Idaho Code § 72-102(17)(a). A claimant must prove not only that he or she was injured, but also that the injury was the result of an accident arising out of and in the course of employment. *Seamans v. Maaco Auto Painting*, 128 Idaho 747, 751, 918 P.2d 1192, 1196 (1996). Proof of a possible link is not sufficient to satisfy this burden. *Beardsley v. Idaho Forest Industries*, 127 Idaho 404, 406, 901 P.2d 511, 513 (1995). **A claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability.** *Langley v. State, Industrial Special Indemnity Fund*, 126 Idaho 781, 785, 890 P.2d 732, 736 (1995). (Emphasis added). “Probable” is defined as having “more evidence for than against.” *Fisher v. Bunker Hill Company*, 96 Idaho 341, 344, 528 P.2d 903, 906 (1974).

3. On February 13, 2004, Claimant presented to Primary Health, a facility wherein Employer has private health insurance policies for its employees, and saw Joel Hesby, M.D., who noted, “c/o pain low back area – shooting through l hip and thigh – **has been ↑ over the last month . . .**” Defendants’ Exhibit 1, p. 1. (Emphasis added).

4. Claimant returned to Primary Health on February 15, 2004, where Rusty Dodge, FNP, noted, “ Jeff comes in today complaining of significant lower back pain that has been going on now **for approximately one month.** He states the pain has increased significantly on the last four days to the point he is having severe pain in the lower back with some radiation going down his left leg and into his groin area. Jeff works as professional insulator which requires him to lift insulation and go into very tight attics, sub floors, etc.” *Id.*, p. 5. (Emphasis added). A

handwritten entry for that date states, “Started hurting early Thurs **without hx of injury**. Has hurt for a while but ↑ now into lt. hip et leg.” *Id.*, p. 7. (Emphasis added).

5. Claimant returned to Primary Health on March 1, 2004, at which time Howard Shoemaker, M.D., assessed: “Acute low back strain superimposed upon chronic spondylolisthesis and degenerative disk disease of the lumbar spine with no evidence of significant nerve root compression.” *Id.*, p. 19. Dr. Shoemaker further noted, “Within a reasonable degree of medical probability the pathophysiology is consistent with the above-mentioned mechanism of injury, which at this point appears to be one of **repetitive strain occurring over a period of time. No specific single incident was responsible for his complaints**. It did occur while he was at work doing physical activity.” *Id.* (Emphases added).

6. Claimant again saw Dr. Shoemaker on March 10, 2005, at which time Dr. Shoemaker reviewed Claimant’s February 25, 2004, MRI and noted, “His MRI is certainly not normal, but there is nothing that appears to be particularly **acute**.” *Id.*, p. 20. (Emphasis added).

7. Aside from inconsistencies regarding Claimant’s various descriptions of his accident and his failure to initially report the same as industrial, the Referee finds it dispositive that Claimant has failed to link his injury by medical records and/or testimony to any industrial accident to a reasonable degree of medical probability. To the contrary, all the medical evidence suggests that Claimant’s low back condition came on gradually and was the product of no specific incident or event. Unfortunately, for some reason, Claimant failed to mention the event about which he testified at hearing and in his deposition to any of his treating physicians and he must now bear the consequences of that omission.

CONCLUSION OF LAW

Claimant has failed to prove he suffered an accident causing a personal injury arising out of and in the course of his employment and his Complaint should be dismissed with prejudice.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusion of Law, the Referee recommends that the Commission adopt such findings and conclusion as its own and issue an appropriate final order.

DATED this __20th__ day of __July__, 2005.

INDUSTRIAL COMMISSION

_____/s/_____
Michael E. Powers, Referee

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __26th__ day of __July__, 2005, a true and correct copy of the **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

JEFF TEPFER
10023 HIGHWAY 44
MIDDLETON ID 83644

MAX M SHEILS JR
PO BOX 388
BOISE ID 83701-0388

_____/s/_____

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BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JEFF TEPFER,)	
)	
Claimant,)	IC 04-504242
)	
v.)	
)	ORDER
MORTENSEN ENTERPRISES, INC.,)	
)	Filed July 26, 2005
Employer,)	
)	
and)	
)	
STATE INSURANCE FUND,)	
)	
Surety,)	
)	
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 conclusion of law to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendation of the Referee. The Commission concurs with this recommendation. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusion of law as its own.

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

1. Claimant has failed to prove he suffered an accident causing a personal injury arising out of and in the course of his employment.
2. The Complaint is, therefore, dismissed with prejudice.

3. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all issues adjudicated.

DATED this __26th__ day of __July__, 2005.

INDUSTRIAL COMMISSION

____/s/_____
Thomas E. Limbaugh, Chairman

____/s/_____
James F. Kile, Commissioner

Unavailable for signature _____
R. D. Maynard, Commissioner

ATTEST:

____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __26th__ day of __July__, 2005, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following persons:

JEFF TEPFER
10023 HIGHWAY 44
MIDDLETON ID 83644

MAX M SHEILS JR
PO BOX 388
BOISE ID 83701-0388

____/s/_____

ge