

CONTENTIONS OF THE PARTIES

Claimant contends he injured his back in 2001 and 2003. He is entitled to palliative care for pain resulting from those accidents. Because Employer told Claimant aggravations of back pain were related to the original injuries, Defendants should be estopped from arguing that Claimant's current condition was caused by the "aggravations" and not the injuries. Claimant is entitled to attorney fees for the February 2004 unreasonable denial of further medical care by Surety.

Defendants contend they paid all medical care through March 9, 2004, when Claimant was declared medically stable. Claimant's continuing pain is related to his degenerative disc disease and not to any specific compensable incident. Workers' compensation is not health insurance. He is not entitled to further medical care. Their refusal to authorize further medical care was reasonable.

EVIDENCE CONSIDERED

The record in the instant case consists of the following:

1. Oral testimony at hearing by Claimant and by chiropractor Erika Lynn Putnam, D.C.;
2. Claimant's exhibits 1 – 7;
3. Defendants' exhibits A – I and K; and
4. Posthearing deposition of physiatrist Monte Moore, M.D.

Objections raised in the posthearing deposition are overruled.

FINDINGS OF FACT

Introductory Facts

1. Claimant worked for Employer as a drywall taper. On September 22, 2001, Claimant suddenly experienced low back pain while working. He reported the incident to

Employer. Chiropractor Erika Putnam, D.C., treated him through December 2001 when he returned to full duty and afterward.

2. Claimant had previously experienced episodes of back pain. These did not require medical care and resolved with no residual pain.

3. After September 2001, he irregularly visited Dr. Putnam for relief from low back pain. Claimant usually associated these clusters of visits with some incident at work. He reported these to Employer but did not file claims for them because he considered them exacerbations of the September 2001 or January 2003 injuries.

4. Although a resolution of conflicting evidence of the exact date is immaterial, on January 4 or 11, 2003, he again suddenly experienced low back pain while working and reported that incident to Employer. He again visited Dr. Putnam. By June 2003, Claimant was able to return to full duty, albeit with continuing low back pain. He continued to receive treatment from Dr. Putnam.

5. On February 27, 2004, Dr. Putnam contacted Surety. Surety confirmed it would refuse further chiropractic care.

Medical Care

6. Claimant first visited Dr. Putnam on September 24, 2001. Claimant, on a form entitled "WORK / COMP HISTORY," described the work being done at the time of injury as "lifting, spray texture." He elaborated, "[W]orked all day, went home slept. [W]orked the next day lifting objects. [B]ended down a[nd] had trouble getting back up." Dr. Putnam's medical note begins:

L[ow] B[ack] p[ain]. Lifting w[eigh]ts years ago. Tore something. 1 y[ea]r later again H2O skiing. Antalgic since Sat. [No] known cause. Sheetrocking @ work. [No] previous antalgia. 8(10) constant. [No] meds. Sat is when pain began. Sun

was bad. Thurs & Fri sheetrock. [No] specific. Constantly using tools, lifting. Am[oun]t of w[eigh]t varies. L[ow] B[ack] was aching.”

An X-ray taken that day was essentially normal, except for some tilting caused perhaps by antalgia or poor posture. Dr. Putnam diagnosed “lumbar facet syndrome,” “lumbar disc syndrome,” and “pars defect.” On Claimant’s second visit, Dr. Putnam began referring to Claimant’s condition as a lumbar sprain or strain.

7. Dr. Putnam treated Claimant on the following dates in 2001: September 24, 25, 26; October 2, 5, 8, 9, 11, 15, 17, 19, 30; November 6, 19, 21; and December 28.

8. On January 7, 2002, Dr. Putnam released Claimant from care and recommended he return to full work duties.

9. On January 22, 2002, Claimant again visited Dr. Putnam and she released him from work for two days.

10. On January 23, 2002, Claimant visited Michael A. Chenore, M.D. He diagnosed a lumbosacral strain and allowed Claimant to return to “modified duty” effective January 24 without specific restrictions or modifications.

11. Dr. Putnam treated Claimant on the following dates in 2002: January 22, 29, 31; February 7, 8, 12, 14, 20, 22, 28; March 4, 14, 22; April 4, May 2, 6, 8, 10, 16, 20, 22, 24, 29; June 6, 20; July 3, 31; and August 19.

12. Claimant returned to Dr. Putnam on January 13, 2003. He reported back pain while “breaking down scaffold, threw off some planks [sic] a[nd] pull[ed] something.” Dr. Putnam took him off work for two days followed by light work. On June 5, 2003, Dr. Putnam reported Claimant was pain free and working full time. She released him from care but recommended monthly visits “to maintain proper joint mobility to reduce further

degenerative changes from occurring.”

13. An MRI taken June 29, 2003, showed disc herniations at L4-5 and L5-S1 without neurological impact, as well as mild changes ascribed to degenerative arthritis at both levels.

14. On August 19, 2003, David N. Price, D.C., examined Claimant at Defendants’ request. He diagnosed a herniated disc and opined Claimant was not yet stable. He suggested possible epidural injections or prolotherapy but deferred to Dr. Moore, and suggested aggressive exercises and continued chiropractic care.

15. On September 3, 2003, Dr. Putnam concurred with the impairment rating as opined by Dr. Price. Dr. Putnam referred Claimant to physiatrist Monte Moore, M.D., who first examined Claimant on October 7, 2003. An X-ray series taken November 7, 2003, showed Claimant’s range of motion was limited on flexion, but was otherwise unremarkable.

16. On November 11, 2003, Dr. Moore performed facet joint injections. Claimant reported a reduction in pain. Claimant underwent physical therapy.

17. Dr. Putnam treated Claimant on the following dates in 2003: January 13, 14, 15, 16, 17, 27, 29; February 3, 5, 7, 12, 13, 19, 20, 24; March 3, 5, 12, 24; April 3, 23; May 8; June 5, 12, 16, 19, 23, 25; 30, July 7, 10, 14, 16, 23; August 6, 12, 13, 20, 28; September 11, 22, 29; October 6, 20, 22; November 3, 6, 19, 25; and December 5.

18. On March 9, 2004, Dr. Moore examined Claimant and diagnosed chronic back pain with degenerative disc and facet disease. He opined Claimant medically stable and provided an impairment rating which apportioned 50% to work versus the preexisting condition. He opined prolotherapy might be an option if Claimant quit smoking. He opined both prolotherapy and chiropractic visits would be “palliative.” In deposition, Dr. Moore testified he would not recommend prolotherapy or chiropractic treatment for Claimant.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 5

19. On April 5, 2004, Rodde Cox, M.D., examined Claimant at Defendants' request. He found evidence of myofascial pain without other objective findings. He diagnosed chronic low back pain. He suggested exercise therapy but did not favor prolotherapy. He opined Claimant's condition was causally linked to the reported injury. He opined Claimant medically stable. He provided a rating with a 50/50 apportionment but found no objective basis for any restrictions.

20. On July 2, 2004, Dr. Moore opined, "I think Mr. Maughan needs to learn to live with his back pain. I do not see him benefiting from any further passive treatments, except as above." The "above" considered possible treatment of prolotherapy or physical therapy but Dr. Moore was not optimistic.

21. Dr. Putnam treated Claimant on the following dates in 2004: January 9, 26; February 25, 27; March 1, 3, 5, 10, 11; April 2; May 19, 20, 21, 26; June 10, 17; July 8, 22; August 5, 19; November 15, 19, 22, 24, 29; and December 1, 8, 9, and 13.

22. In deposition, Dr. Moore opined the degenerative disc disease from which Claimant currently suffers is not related to the September 2001 accident. He opined chiropractic treatment is not medically necessary and is unreasonable as a potentially curative measure, but would do no harm and may provide temporary relief. He opined Claimant's general work activities were a factor in the progression of degenerative disc disease. Claimant can expect symptoms whenever his activity level rises. Light or medium work without repetitive bending and twisting would probably not aggravate Claimant's degenerative disc disease. Anti-inflammatories should be as effective as a chiropractic visit at relieving pain. Regular back strengthening exercises would similarly help.

Discussion and Further Findings

23. **Medical care.** Idaho Code § 72-432 requires an employer to provide reasonable care for a reasonable time. This Referee has previously recommended and the Commission has previously ordered purely palliative care. However, the burden to prove eligibility for such care rests with Claimant.

24. Here, Claimant suffers from a degenerative back condition which may generally be linked to his work, but was not caused by either of the two accidents for which claims were filed. Increased activity increases the risk of pain and its severity. He seeks approval for palliative chiropractic care after March 9, 2004, and into the future.

25. Claimant showed he suffered a lumbar sprain or strain on September 24, 2001. His course of treatment with Dr. Putnam showed he recovered from that injury by January 7, 2002. Similarly, Dr. Putnam considered Claimant recovered from his January 2003 work injury by June 5, 2003. What constitutes a new injury and what constitutes a mere exacerbation of a prior injury is a factual question highly dependent upon medical opinions and records. Here, Defendants have accepted and paid for all care between September 2001 and March 9, 2004, when Dr. Moore declared Claimant stable. Given the IME reports of Drs. Price and Cox, neither of which are particularly persuasive to this Referee, Defendants' actions were reasonable and appropriate under the statutes. Indeed, Dr. Moore's records and opinions are persuasive when all of the evidence is considered.

26. Claimant suffered a number of similar injuries on and off of the job both between and after both accidents. Dr. Putnam's notes show Claimant sometimes described an event at work, at home, elsewhere, or sometimes was unable to describe any event at all which precipitated a recent increase in pain.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 7

27. Dr. Moore's opinions about the absence of a medical necessity for further chiropractic treatment was persuasive. Dr. Putnam has shown a willingness to treat Claimant – and bill Surety – without regard to precipitating cause or Claimant's need. In the face of Claimant's admissions in deposition that he performs recommended back strengthening exercises irregularly and that over-the-counter pain medications temporarily relieve occasional pain, *carte blanc* approval of all future chiropractic treatment would be unreasonable.

28. If Claimant continues to overwork his bad back, he may suffer additional accidents at work and elsewhere. He may suffer exacerbations of pain without the occurrence of any accident. Whether medical care for such future pain is compensable under Idaho Workers' Compensation Law will depend upon the facts and circumstances of the events which give rise to such future pain.

29. **Attorney fees.** Dr. Putnam's notes show Surety asserted it was denying authorization for chiropractic visits after February 27, 2004. Claimant attended three chiropractic visits between that date and Dr. Moore's report declaring Claimant medically stable as of March 9, 2004. The record shows that despite its February discussion with Dr. Putnam, Surety did pay those charges. Dr. Moore's report provided a reasonable basis for denying further chiropractic charges. Dr. Cox described potential additional treatments, but these descriptions were not opined to be reasonable and necessary, nor even recommended. Without more, Claimant failed to show Dr. Cox actually supported the treatments described or that Defendants acted unreasonably by not providing such treatments. Claimant failed to show Defendants' actions warrant an award of attorney fees under Idaho Code § 72-804.

CONCLUSIONS OF LAW

1. Claimant is entitled to medical care through March 9, 2004. Claimant failed to show any treatment received thereafter was related to either accident or that future medical care would be compensable.

2. Claimant failed to show he is entitled to attorney fees.

RECOMMENDATION

The Referee recommends that the Commission adopt the foregoing findings of fact and conclusions of law and issue an appropriate final order.

DATED this 10TH day of August, 2005.

INDUSTRIAL COMMISSION

/S/ _____
Douglas A. Donohue, Referee

ATTEST:

/S/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 19TH day of AUGUST, 2005, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

Richard S. Owen
P.O. Box 278
Nampa, ID 83653

Monte R. Whittier
P.O. Box 6358
Boise, ID 83707

db /S/ _____

2. Claimant failed to show he is entitled to attorney fees.

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

DATED this 19TH day of AUGUST, 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 19TH day of AUGUST, 2005, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

Richard S. Owen
P.O. Box 278
Nampa, ID 83653

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P.O. Box 6358
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