BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

RITA BASSETT, Claimant, v. BONNER GENERAL HOSPITAL, Employer, and LIBERTY NORTHWEST INSURANCE CORPORATION, Surety, Defendants.	)	**IC 02-012247** **FINDINGS OF FACT, CONCLUSIONS AND ORDER** Filed November 21, 2005

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Douglas A. Donohue. The case was re-assigned to the Commissioners on March 16, 2005. The Commissioners conducted a hearing, *en banc*, in Sandpoint, Idaho, on July 19, 2005. Claimant appeared *pro se*. E. Scott Harmon represented Defendants Employer and Surety. The parties submitted oral and documentary evidence at the hearing, and subsequently submitted post-hearing briefs. The matter is now ready for decision.

ISSUES

After due notice and by agreement of the parties at hearing the issues are:

1. Whether the condition for which benefits are claimed was caused by an accident arising out of and in the course of Claimant's employment;

2. Whether and to what extent Claimant is entitled to the following benefits:

   a. Temporary partial and/or temporary total disability benefits (TPD/TTD);
   b. Permanent partial impairment (PPI);
   c. Disability in excess of impairment;
   d. Retraining; and
   e. Medical care.

CONTENTIONS OF THE PARTIES

Claimant contends she injured herself while submitting to an employment performance test. She argues that she was already an employee at the time the test was administered – she was just waiting for final approval to begin work. She claims she never fully recovered after the test. The lower half of her body remains sore and prevents her from performing tasks that, prior to the performance test, she could complete without difficulty.

Defendants argue that Claimant's problems are a result of pre-existing conditions, not an accident and injury in the course and scope of her employment. They maintain that no medical records support Claimant's claim to a reasonable degree of medical probability.

EVIDENCE CONSIDERED

The record in the instant case consists of the following:

1. Oral testimony by Claimant at hearing.

2. Claimant's exhibits 1 and 2 admitted at hearing.

3. Defendants' exhibits A through G admitted at hearing.

In their post-hearing brief, Defendants request that Claimant's brief be completely stricken from the record because Claimant failed to make appropriate citations and the brief "is replete with statements not substantiated by the record." The Commission is well versed in reading the submissions of *pro se* claimants and can properly weigh all of the appropriate evidence.

Defendants' request is, therefore, DENIED.

After having fully considered the above evidence and arguments of the parties, the Commission hereby issues its decision in this matter.

FINDINGS OF FACT

1. Claimant was 56 years old at the time of hearing. She resides in Sandpoint, Idaho, and has done so for much of her adult life.

2. Claimant began working for Employer in April 2002. She was required to complete a physical capacity test prior to her placement. Following the test, Claimant experienced muscle soreness in her lower extremities. Although she mentioned the pain to co-workers, Claimant delayed telling her supervisor because she wanted to reach her three-month evaluation and she was hoping the pain would subside.

3. A supervisor approached Claimant about her guarded movements and limp. Claimant explained that the squats she performed during the physical capacity test were difficult and caused her to experience some soreness following the test. Employer set up an appointment for Claimant to be evaluated by J. Craig Stevens, M.D.

4. Claimant saw Dr. Stevens on July 9, 2002. Claimant described "very vague lower extremity symptoms, essentially muscular aching along the anterior aspects of the thighs and pretibial aspect." Defendants' exhibit E. Dr. Stevens believed Claimant to be somewhat deconditioned. He recommended no lifting greater than twenty (20) pounds and no squatting. He added that Claimant did not require further treatment and that her restrictions were "not put in place because of a work injury but rather because of demonstrated reduced physical capacity." *Id.*

5. After receiving Dr. Stevens' report, Employer terminated Claimant because it had no

work available within her restrictions.

6. Claimant underwent a lumbar spine MRI in 2003 that revealed degenerative disk changes and degenerative facet disease. Claimant's exhibit 1. X-rays taken in 2004 revealed early degenerative joint disease of her left hip. Claimant's exhibit 2.

7. Prior to the April 2002 physical capacity test Claimant had been evaluated by Dr. Stevens for gradually increasing right leg discomfort. In October 1999, he noted that Claimant's pain was not well localized, but appeared to center on the right knee and circumferentially beyond the knee. X-rays revealed degenerative changes in her knee and a significant bone spur on her heel. At that time, Dr. Stevens speculated that Claimant's knee pain was most likely a consequence of altered mechanics to avoid the pain of the heel spur. None of the conditions were found to be work-related.

DISCUSSION AND CONCLUSIONS

8. **Causation.** The Idaho Workers' Compensation Law defines injury as a personal injury caused by an accident arising out of and in the course of employment. 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. 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).

9. 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 causal link is not sufficient. *Beardsley v. Idaho Forest Indus.*, 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, Indus. Special Indem. Fund*, 126 Idaho 781, 785, 890 P.2d 732, 736 (1995). "Probable" is defined as "having more evidence for than against." *Fisher v. Bunker Hill Co.*, 96 Idaho 341, 344, 528 P.2d 903, 906 (1974).

10. Claimant contends that after completing Employer's physical capacity test she experienced soreness and aching in her lower extremities that has not abated. She claims her current symptoms are a result of the grueling physical – primarily the squatting requirements. Dr. Stevens opined that Claimant's current condition was not the result of a work related incident, but instead, the result of Claimant's deconditioned state.

11. "Although an accident may and usually does cause the onset of pain, an 'accident' under the worker's [sic] compensation law is not simply the onset of pain. To establish that a mishap or event occurred, an injured worker must do more than show an onset of pain while at Work . . .. Hard work is not an accident." *Konvalinka v. Bonneville County*, 140 Idaho 477, 479, 95 P.3d 628, 630 (2004) (internal citations omitted). Claimant has identified the onset of pain sometime after she completed a demanding physical test. However, she has failed to establish to a reasonable degree of medical probability that any injury she sustained was the result of an accident occurring in the course and scope of her employment. Her resolve to pass the physical and subsequent soreness from the exercise does not constitute an "accident" as it is defined by Idaho Workers' Compensation Law. In addition, the available medical evidence confirms degenerative changes and attributes her complaints to deconditioning, not a work-related event.

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ORDER

1. Claimant failed to prove that she suffered an accident and injury in the course and scope of employment to a reasonable degree of medical probability.

2. The remaining issues are moot.

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

DATED this *21st* day of _November___, 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 _21st day of __November___, 2005, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS AND ORDER** was served by regular United States Mail upon each of the following:

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kas ___/s/_____