



fusion, related to her lumbar spine. Dr. Blair treated her since 1997 and has opined the low back condition and resulting surgery is related to the 1997 accident.

Defendants contend her lumbar condition is not related to the 1997 accident. She suffered from fibromyalgia before the accident and suffered two noncompensable accidents in 2000 and 2001. The absence of medical treatment or complaints about her low back between 1997 and 2000 undermine Claimant's credibility when she testifies she had constant low back pain since 1997.

### **EVIDENCE CONSIDERED**

The record in the instant case consists of the following:

1. Hearing testimony of Claimant;
2. Claimant's Exhibits 1 – 11;
3. Defendants' Exhibits A – T; and
4. Post-hearing depositions of Benjamin Blair, M.D., Henry George West, Jr., D.C., and Richard T. Knoebel, M.D.

After considering the record and briefs of the parties, the Referee submits the following findings of fact, conclusion of law, and recommendation for review by the Commission.

### **FINDINGS OF FACT**

1. Claimant worked for Employer since 1979 and as a fourth-grade teacher since 1983. On March 4, 1997, she slipped on ice in Employer's parking lot and landed hard. Surety paid medical and other benefits relating to her neck and upper back, which included surgical fusion of C5-6. She returned to work in 1998 and continued working until she underwent two low back surgeries, one in 2004 and one in 2005. By timing her surgeries to accommodate the school year, she missed only the first two months of the 2005-06 school year. She returned to work in October 2005 and was working at the time of hearing. At hearing,

she testified that, as her neck healed, her mid-back became more noticeably painful and, as her mid-back healed, her low back became more noticeably painful.

2. Michael S. Baker, M.D., treated Claimant for a variety of conditions before and after the 1997 accident. This treatment included fibromyalgia in Claimant's neck, shoulders and mid-back. When referring to Claimant's lumbar spine, he frequently noted, "back: normal." A September 1998 episode of low back pain was linked to a urinary tract infection. He did not record other subjective or objective lumbar problems until June 21, 2001.

3. Orthopedic surgeon Benjamin Blair, M.D., began treating Claimant on June 5, 1997. He ultimately performed fusions in both her cervical spine and lumbar spine.

4. Pat Farrell, M.D., treated Claimant by providing steroid injections to Claimant's neck and thoracic spine. Despite a few references to "low" back pain in November and December 1997, Dr. Farrell was clearly treating Claimant's T6-7 with epidural steroid injections at that time. Dr. Farrell's records do not show any treatment for Claimant's lumbar spine in 1997 or 1998.

5. On January 8, 1998, a lumbar MRI showed no acute or degenerative condition. A July 17, 2001 MRI showed a "minimal" disc bulge at L5-S1 with desiccation at L4-5 and L5-S1.

6. Physical therapy notes of visits to Allen Martin, RPT, from May 1998 through June 1999 – averaging twice weekly throughout that period – show all visits were for her neck and shoulder girdle musculature. On July 16, 1998, Mr. Martin wrote that Claimant complained of bilateral hip pain which he felt "appears to be trochanteric bursitis." There were a few brief references to "low back" symptoms in September 1998 which contextually relate to T6-7 or higher, but these notes do not reflect any lumbar complaints or symptoms. Mr. Martin's notes show a hiatus in physical therapy from June 15, 1999 to April 11, 2001.

7. On May 17, 1999, Dr. Blair wrote, “She does have mild low back pain; however, she is still functioning with this and overall I am unsure if there is anything further I can offer her.” Despite records showing occasional examination of her lumbar spine, he does not record further subjective or objective lumbar findings until June 26, 2000. Even on that date, Claimant’s complaint was nonspecific about whether her thoracic or lumbar spine hurt.

8. Claimant suffered a slip and fall on June 6, 2000. Dr. Blair characterized this as a “temporary exacerbation” of her original 1997 accident. He opined on August 17, 2000 that this had resolved by that date and that all further treatments would be related to the 1997 accident.

9. Claimant reported a slip and fall at a Jack-in-the-Box restaurant which occurred on or about March 4, 2001.

10. April 11, 2001 is the date of the first of Mr. Martin’s physical therapy records to describe lumbar pain. Thereafter, frequent treatments were directed primarily to Claimant’s lumbar back condition.

11. Robert C. Ward, D.C., provided over two dozen lumbar treatments in May and June 2001.

12. On July 16, 2001, Dr. Blair noted: “Increased onset of low back pain. She states it has been ongoing since her original work-related injury.” X-rays were “essentially unremarkable” with minimal spondylolisthesis at L5 and S1. Thereafter, frequent visits to Dr. Blair focused on low back pain. Ultimately, Dr. Blair performed lumbar fusion surgeries in 2004 and 2005.

13. Dr. Blair opined Claimant’s lumbar condition was caused by the 1997 accident. He took pains to elaborate that his opinion was based upon Claimant’s belated reports that she had suffered continuing low back pain since the 1997 accident.

14. Henry West, D.C., opined Claimant's lumbar condition was caused by the 1997 accident. He suggested that Claimant's "healthy" disks at the time of the accident began a degenerative slide caused by the accident.

15. Richard Knoebel, M.D., opined Claimant's lumbar condition was not caused by the 1997 accident. He gave credence to the extensive time interval between the 1997 accident and the medically recorded onset of Claimant's regular and frequent complaints of low back pain.

### **DISCUSSION AND FURTHER FINDINGS OF FACT**

16. A claimant must prove she was injured as the result of an accident arising out of and in the course of employment. Seamans v. Maaco Auto Painting, 128 Idaho 747, 918 P.2d 1192 (1996). Proof of a possible causal link is not sufficient to satisfy this burden. Beardsley v. Idaho Forest Industries, 127 Idaho 404, 901 P.2d 511 (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, 890 P.2d 732 (1995). A preexisting disease or infirmity does not disqualify a workers' compensation claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. An employer takes the employee as it finds him or her. Wynn v. J.R. Simplot Co., 105 Idaho 102, 666 P.2d 629 (1983).

17. Claimant frequently treated with physicians both before and after the 1997 accident. After careful scrutiny of the entire record, the medical records provided are not consistent with Claimant's memory that she suffered continuing low back pain from the date of the 1997 accident forward. There is no evidence that Claimant is malingering. Indeed, by scheduling surgeries to minimize lost work time she demonstrated a strong work ethic.

Claimant's memory and honestly held belief is simply an insufficient basis to outweigh the mass of medical records which show ongoing treatment for various complaints without significant mention of low back complaints.

18. The voluminous medical records provide no evidence of lumbar spondylolisthesis or degenerative disk disease until some years after the 1997 accident. The 1998 MRI is essentially dispositive in weighing the testimony of medical experts on the question of causation. It is consistent with Dr. Knoebel's opinion that Claimant's lumbar condition which gave rise to surgery was unrelated to the 1997 accident. It is inconsistent with Dr. Blair's opinion. Moreover, when Dr. Blair linked her back condition to the 1997 accident, he repeatedly made it pointedly clear that the overwhelming basis for this opinion was Claimant's statements, beginning in 2000, that she had suffered continuous low back pain since the 1997 accident. Dr. West did not begin treating Claimant until 2001. He too, relied upon Claimant's memory rather than her medical record in forming his opinion.

#### **CONCLUSION OF LAW**

Claimant failed to show her low back condition probably was caused by the 1997 industrial accident.

#### **RECOMMENDATION**

The Referee recommends that the Commission adopt the foregoing Findings of Fact and Conclusion of Law as its own and issue an appropriate final order.

DATED this \_\_23<sup>rd</sup>\_\_ day of June, 2006.

INDUSTRIAL COMMISSION

ATTEST:

\_\_\_\_\_/s/\_\_\_\_\_  
Douglas A. Donohue, Referee

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

**CERTIFICATE OF SERVICE**

I hereby certify that on the 30<sup>th</sup> day of June, 2006, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

Reed W. Larsen  
P.O. Box 4229  
Pocatello, ID 83205-4229

M. Jay Meyers  
P.O. Box 4747  
Pocatello, ID 83205

db

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



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

DATED this \_\_30<sup>th</sup>\_\_ day of \_\_\_\_June\_\_\_\_, 2006.

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 \_\_30<sup>th</sup>\_\_ day of \_\_June\_\_, 2006, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

Reed W. Larsen  
P.O. Box 4229  
Pocatello, ID 83205-4229

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