

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

TRACY SLIGAR,)	
)	
Claimant,)	IC 03-005648
)	
v.)	FINDINGS OF FACT,
)	CONCLUSION OF LAW,
SUN HEALTHCARE dba SUNBRIDGE)	AND RECOMMENDATION
REHABILITATION CENTER,)	
)	
Employer,)	June 30, 2006
)	
and)	
)	
AMERICAN HOME ASSURANCE CO.,)	
)	
Surety,)	
)	
Defendants.)	
_____)	

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Alan Taylor, who conducted a hearing in Twin Falls on January 30, 2006. Claimant, Tracy Sligar, was present in person and represented by Keith E. Hutchinson of Twin Falls. Defendant Employer, Sun Healthcare dba SunBridge Rehabilitation Center, and Defendant Surety, American Home Assurance Co., were represented by W. Scott Wigle, of Boise. The parties presented oral and documentary evidence. This matter was then continued for the taking of post-hearing depositions, the submission of briefs, and subsequently came under advisement on May 2, 2006.

ISSUE

The issue to be resolved is whether Claimant is entitled to a spinal cord stimulator trial.

ARGUMENTS OF THE PARTIES

Claimant suffered a lumbar disc herniation during rehabilitation therapy for her industrial accident to her wrist. She subsequently underwent two lumbar surgeries and now seeks approval for a spinal cord stimulator trial as recommended by her treating surgeon.

Defendants Employer and Surety contend that Claimant will not be benefited by a spinal cord stimulator and assert such treatment is not reasonable, based upon the opinion of an IME physician.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant taken at the January 30, 2006, hearing;
2. Claimant's Exhibit A admitted at the hearing;
3. Defendants Employer and Surety's Exhibits 1-16 admitted at the hearing;
4. The post-hearing deposition of David B. Verst, M.D., taken by Claimant on February 8, 2006; and
5. The post-hearing deposition of Rodde D. Cox, M.D., taken by Defendants on February 28, 2006. Claimant's objection at page 21 of Dr. Cox's deposition is overruled.

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

FINDINGS OF FACT

1. Claimant was 41 years old and lived in Buhl at the time of the hearing. She completed 11 years of formal education but did not graduate from high school. She has not obtained a GED. Claimant worked during high school washing dishes. In approximately 1994, she worked at the Twin Falls Care Center assisting elderly residents. She obtained her CNA certificate.

2. In 1996, Claimant worked for Kings Department Store as a cashier. She later worked at Personal Connection Home Health in Buhl. Commencing in approximately 1998, Claimant worked at Snake River Rehabilitation for two years where she assisted elderly and mentally disabled patients. Thereafter, Claimant commenced working for Defendant SunBridge where she worked in the psychiatric ward and later transferred to the Alzheimer's unit. She assisted patients with activities of daily living including cleaning, dressing, and transporting.

3. In approximately 2002, Claimant was diagnosed with fibromyalgia for which she was treated by several physicians, and eventually received treatment from an herbalist, after which her symptoms promptly resolved.

4. On April 15, 2003, while working for Employer SunBridge, Claimant was helping an Alzheimer's patient get out of bed when the patient became angry, grabbed Claimant's left wrist with both hands and twisted it forcefully. Claimant experienced immediate wrist and hand pain. She was unable to extricate her wrist from the patient's grasp for approximately five minutes. Claimant reported the injury and received medical treatment, including a splint and prescription medications. She was referred to orthopedic surgeon John W. Howar, M.D., who provided two cortisone injections in her left wrist. Her condition did not improve. Claimant was tentatively diagnosed with carpal tunnel syndrome and referred to neurologist Richard Hammond, M.D., who performed nerve conduction testing which showed normal conduction velocities. Claimant was next referred to hand

specialist Charlotte E. Alexander, M.D., who eventually directed her to participate in the Work Fit program, a work hardening therapy program at the Elks Rehabilitation Hospital in Boise.

5. On, November 14, 2003, during Claimant's first week at Work Fit, Claimant was performing leg exercises with weights according to the rehabilitation therapist's direction when she felt a pop in her low back and experienced low back and right leg pain. She reported this immediately to Work Fit personnel who encouraged her to keep exercising. Claimant returned to Work Fit the following week and participated in exercises as directed. She noted increasing back and leg pain. On November 20, 2003, Work Fit physician Dr. Sutherlin directed her to perform more hand exercises and fewer back exercises. Claimant drove herself from Boise back to her home in Buhl the following day and noted increasing back and leg pain. On November 22, 2003, Claimant's back pain was worse and she presented to Dr. Nelson at the emergency room. He instructed her to cease weight exercises at the Work Fit program.

6. On November 24, 2003, Claimant presented again to Dr. Sutherlin in Boise who discharged her from the Work Fit program and referred her to Douglas Stagg, M.D. Dr. Stagg later ordered an MRI which revealed a herniated L4-5 disc with extruded disc fragment trapping the L-5 nerve root. He referred Claimant to orthopedic surgeon David B. Verst, M.D.

7. On January 27, 2004, Dr. Verst performed a microdiscectomy at L4-5. Claimant experienced a reherniation at the same level and on February 4, 2004, Dr. Verst performed a second discectomy. Claimant noted some improvement after the second surgery.

8. Claimant was unable to return to her time of injury job. After recuperating from surgery, Claimant took phlebotomist classes for which she paid herself. She received her phlebotomist certificate in approximately August 2004 and by October 2004 Claimant commenced

working as a phlebotomist at Magic Valley Regional Medical Center.

9. Claimant continues to experience back and leg pain for which she takes Vicodin as prescribed by Dr. Verst. Claimant has indicated that approximately 60% of her pain is leg pain, and 40% is back pain. Dr. Verst has recommended against further surgery but has recommended a trial electrical spinal cord stimulator.

10. At the time of hearing Claimant continued working full-time as a phlebotomist. She loves her job, but it requires a significant amount of standing, bending, and stooping which aggravate her back and leg pain. Claimant testified that her pain is gradually worsening and now precludes her from most social and recreational activities.

11. Having reviewed the record and observed Claimant at hearing, the Referee finds that Claimant is a credible witness.

DISCUSSION AND FURTHER FINDINGS

12. **Entitlement to spinal cord stimulator trial.** The provisions of the Workers' Compensation Law are to be liberally construed in favor of the employee. Haldiman v. American Fine Foods, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990). The humane purposes which it serves leave no room for narrow, technical construction. Ogden v. Thompson, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996).

13. 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). "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). Magic words are not necessary to show a doctor's opinion was held to a reasonable degree of medical

probability; only their plain and unequivocal testimony conveying a conviction that events are causally related. See, Jensen v. City of Pocatello, 135 Idaho 406, 412-13, 18 P.3d 211, 217 (2001).

14. Idaho Code § 72-432(1) mandates that an employer shall provide for an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital service, medicines, crutches, and apparatus, as may be reasonably required by the employee's physician or needed immediately after an injury or manifestation of an occupational disease, and for a reasonable time thereafter. If the employer fails to provide the same, the injured employee may do so at the expense of the employer. Idaho Code § 72-432(1) obligates an employer to provide treatment if the employee's physician requires the treatment and if the treatment is reasonable. Sprague v. Caldwell Transportation, Inc., 116 Idaho 720, 779 P.2d 395 (1989). For the purposes of Idaho Code § 72-432(1), medical treatment is reasonable if the employee's physician requires the treatment and it is for the physician to decide whether the treatment is required. Mulder v. Liberty Northwest Insurance Company, 135 Idaho 52, 58, 14 P.3d 372, 402, 408 (2000).

15. In the present case, Claimant's treating surgeon, Dr. Verst, has recommended a trial spinal cord stimulator and Claimant asserts that Defendants should be ordered to provide such. Dr. Verst testified that spinal cord stimulators have proven helpful in cases of causalgia and are generally more effective in managing leg pain than back pain. A spinal cord stimulator trial would be needed prior to determining whether a permanent stimulator should be implanted. Any spinal cord stimulator trial would not be performed by Dr. Verst, but rather by a pain interventionalist in Twin Falls or Boise.

16. Dr. Verst first examined Claimant on December 8, 2003, and noted significant pain complaints. Dr. Verst opined that Claimant's back injury was related to her injury at the Work Fit

program. However, Dr. Verst did not initially believe Claimant would be a good surgical candidate due to psychological factors including severe pain, anger, a difficult working relationship with her nurse case manager, and an extended period of time off work. However, after treating Claimant conservatively and becoming more familiar with her circumstances and goals, Dr. Verst determined that Claimant was an appropriate surgical candidate. Claimant's first surgery removed a free disk fragment, however, Claimant suffered a recurrent herniation at the same location and a second discectomy was required to remove another large disk fragment resting against the L-5 nerve root.

17. Claimant recovered well from her second surgery, however, after some time her pain began to return. A follow-up MRI showed no further disc herniation, but, a significant amount of scar tissue surrounding the L-5 nerve root and the L4-5 disk space. Dr. Verst testified that in patients with the amount of scar tissue revealed by Claimant's MRI, the scar tissue engulfs and adheres to the nerve root, tethering it to the disc and surrounding structures, causing traction to the nerve itself and preventing it from moving freely—albeit slightly—as it would in a normal spine. This results in neuropathic pain which is constant and not activity related. Such a condition is not amenable to surgical correction because of the high probability of additional scar tissue formation. Dr. Verst testified that Claimant's pain is related to the scar tissue that surrounds the nerve root itself. He further testified that part of Claimant's neuropathic pain is causalgia, and might well respond to a trial spinal cord stimulator. He testified that Claimant's need for a trial spinal cord stimulator is related to her injury at Work Fit and resulting back surgeries.

18. Dr. Verst emphasized that Claimant would be an excellent candidate for a trial spinal cord stimulator because of the mechanical factors causing her pain and because of Claimant's current psychological factors including her full-time employment status, activity level, and goals

relating to raising her children.

19. Psychiatrist Rodde Cox, M.D., examined Claimant at Defendants' request on October 31, 2005, and opined that a spinal cord stimulator trial is not indicated. Dr. Cox based his conclusions on the psychological profile of Claimant performed by Michael McClay, Ph.D., on November 12, 2003, wherein Claimant's MMPI scores revealed a highly defensive posture. Dr. Cox also noted Dr. Verst's concerns regarding Claimant's psychological factors as documented on his initial evaluation in early December 2003. Dr. Cox testified he noted indications of psychological factors related to secondary gain when he examined Claimant in October 2005. He opined that a spinal stimulator would be unlikely to improve Claimant's pain, particularly her back pain, and could actually worsen Claimant's condition.

20. As Claimant's treating surgeon, Dr. Verst has had multiple opportunities to observe and evaluate Claimant as compared to Dr. Cox's single opportunity. Moreover, Claimant's demonstrated commitment to fund and obtain retraining as a phlebotomist, and her steady full-time employment as a phlebotomist, further convince the Referee, as it did Dr. Verst, that secondary gain is not likely motivating Claimant's request for a spinal cord stimulator trial.

21. The Referee finds Dr. Verst's opinion credible and persuasive. Claimant has sustained her burden of proving that she is entitled to a trial spinal cord stimulator as recommended by her treating surgeon.

CONCLUSION OF LAW

Claimant has proven that she is entitled to a trial spinal cord stimulator.

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 ___30___ day of June, 2006.

INDUSTRIAL COMMISSION

/s/ Alan Reed Taylor, Referee

ATTEST:

/s/ Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the ___30___ day of ___June_____, 2006, a true and correct copy of **Findings of Fact, Conclusion of Law, and Recommendation** was served by regular United States Mail upon each of the following:

kkr

/s/

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

TRACY SLIGAR,)	
)	
Claimant,)	IC 03-005648
)	
v.)	
)	
SUN HEALTHCARE dba SUNBRIDGE)	
REHABILITATION CENTER,)	
)	
Employer,)	ORDER
)	
AMERICAN HOME ASSURANCE CO.,)	
)	June 30, 2006
Surety,)	
)	
Defendants.)	
_____)	

Pursuant to Idaho Code § 72-717, Referee Alan Taylor 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:

Claimant has proven that she is entitled to a trial spinal cord stimulator.

Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to the issue adjudicated.

DATED this 30 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 the 30 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 persons:

KEITH E. HUTCHINSON
PO BOX 207
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W SCOTT WIGLE
PO BOX 1007
BOISE ID 83701-1007

kr

/s/

ORDER - 2