

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MICHAEL P. SISK,)
)
 Claimant,)
 v.)
)
 McFARLAND COMPANY, LTD.,)
)
 Employer,)
 and)
)
 WAUSAU BUSINESS INSURANCE COMPANY,)
)
 Surety,)
 Defendants.)
 _____)

IC 97-036189

**FINDINGS OF FACT,
CONCLUSION OF LAW,
AND RECOMMENDATION**

FILED AUG 24 2006

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned this matter to Referee Douglas A. Donohue. He conducted a hearing in Coeur d'Alene on August 15, 2006. Claimant appeared *pro se*. Monte Whittier represented Defendants. The parties presented oral and documentary evidence. No post-hearing depositions were taken. The parties both waived their opportunity to submit briefs. The case came under advisement on August 18, 2006. It is now ready for decision.

ISSUE

After due notice, the sole issue to be resolved is: Whether and to what extent Claimant is entitled to past and future medical care benefits.

CONTENTIONS OF THE PARTIES

Claimant contends he suffered a compensable accident to his right leg nine years ago. Shortly after the accident, he underwent two surgeries. He has residual pain. He needs medical

care and future medical care, including an eventual total knee replacement.

Defendants contend they have paid over \$93,000.00 in medical benefits for Claimant's right leg. They acknowledge he will be entitled to a total knee replacement in the future. Claimant has gone outside the chain of referral for medical care and has failed to submit documentation for medical care which Defendants would have paid if Claimant had been cooperative.

EVIDENCE CONSIDERED

The record in the instant case consists of the following:

1. Hearing testimony of Claimant and his wife, Dosie; and
2. Defendants' Exhibits A – C.

(Claimant sent documents, including medical records, to the Industrial Commission before the hearing, but at hearing expressly declined to include them as exhibits.) 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 suffered a fractured right leg in a compensable accident in 1997. He was 32 years old. He underwent two surgeries to his right leg.
2. Claimant suffers continuing right knee pain. As a result, Claimant's gait is altered.
3. Claimant has not sought medical care for the past three years. He does not take prescription pain relievers.
4. Claimant will eventually require a total knee replacement when his age and the severity of his condition mature.

FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION - 2

5. To the date of the hearing, Defendants have paid \$93,669.27 in medical care benefits. Defendants have also paid some income benefits.

DISCUSSION AND FURTHER FINDINGS OF FACT

6. A claimant must prove he 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).

7. Defendants do not dispute Claimant is entitled to medical care benefits relating to his right knee, including future surgery.

8. At hearing, Claimant was emotionally labile. He is despondent. His wife expressed extreme frustration about Claimant's condition and how it has affected their lives. Moreover, some doctors in and around his home in Bonners Ferry have refused to treat him further.

9. Claimant has failed to maintain proper communication with Defendants regarding medical care received. Claimant must cooperate with Surety to keep Surety apprised when he seeks medical care and to assure that he receives proper referrals. He must submit billing information so Surety will be able to pay the medical benefits to which Claimant is entitled.

FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION - 3

10. With Defendants' admission, Claimant showed he is entitled to medical benefits for his right knee. Claimant did not show he is entitled to medical benefits for any other condition from which he may suffer.

11. Claimant will eventually require a total knee replacement. No doctor has indicated that the time is ripe for such surgery.

CONCLUSION OF LAW

Claimant is entitled to medical benefits for his right knee, including a total knee replacement in the future.

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 18TH day of August, 2006.

INDUSTRIAL COMMISSION

/S/ _____
Douglas A. Donohue, Referee

ATTEST:

/S/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 24TH day of AUGUST, 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:

Michael P. Sisk
P.O. Box 222
Bonners Ferry, ID 83805

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

db

/S/ _____

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

DATED this 24TH day of AUGUST , 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 24TH day of AUGUST , 2006, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

Michael P. Sisk
P.O. Box 222
Bonners Ferry, ID 83805

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

db

/S/ _____