

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MICHAEL MONNIERE,)
)
 Claimant,)
)
 v.)
)
 BURLINGAME INDUSTRIES, INC.,)
)
 Employer,)
)
 and)
)
 STATE INSURANCE FUND,)
)
 Surety,)
 Defendants.)
 _____)

IC 05-502294

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

Filed: October 20, 2006

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Lora Rainey Breen. Christopher Caldwell of Lewiston represented Claimant. Bradley J. Stoddard of Coeur d’Alene represented Defendants. On April 13, 2006, the parties filed a stipulation regarding the issues to be decided and the exhibits to be admitted into evidence. The parties submitted briefs, and the matter came under advisement on July 7. Before Referee Breen had taken up the case, she took medical leave. Because the case was being decided on the record, and because Referee Breen wished to avoid additional delay in issuing a decision, the matter was re-assigned to Referee Rinda Just.

ISSUES

By stipulation of the parties, the issues to be decided are:

1. The nature and extent to which Claimant sustained a personal injury caused by the industrial accident, occurring on or about December 15, 2004; and

2. Whether Defendants are liable for Claimant's additional medical care consisting of a right hip arthroplasty.

CONTENTIONS OF THE PARTIES

Claimant asserts that his December 15, 2004 work injury actually caused a fracture of the weight-bearing portion of his hip, which ultimately necessitated a right hip arthroplasty for which Defendants are responsible.

Defendants contend that Claimant's degenerative hip condition was long-standing and symptomatic before his December 15, 2004 fall from a moving pickup. At most, the fall caused a temporary aggravation of his pre-existing condition. Therefore, Defendants are not responsible for medical care relating to a total hip replacement.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. Exhibits A through L admitted by stipulation filed April 13, 2006 with the following exception: Notwithstanding the parties' stipulation, pages 1 through 4 of Exhibit D are excluded for the reason that they lack relevance to the matter at issue.

All objections made during the deposition of Claimant are overruled. After having considered all the above evidence and the briefs of the parties, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

FINDINGS OF FACT

1. At the time this matter came under advisement, Claimant was 51 years of age, married, and the father of three children.

2. Employer is in the business of raising game birds, including pheasant and chukar quail. The game farm where Claimant worked did business under the name of Flying B Farms.

3. Claimant worked for Employer on two separate occasions. He was first hired to work at Flying B Farms in February 2003. At the end of January 2004, Claimant left Flying B to manage Cash and Carry food store. After approximately nine months with Cash and Carry, Claimant contacted Employer and asked if he could return to work and was immediately rehired.

4. During both periods of work for Employer, Claimant was a farm laborer. He performed general bird maintenance, including feeding, watering, cleaning pens, building and maintaining pens, and catching birds and moving cages full of birds.

PRIOR MEDICAL HISTORY

5. The *earliest medical record* documenting that Claimant had degenerative arthritis in his hips was in 2001. Claimant had sought care from Jeffrey K. Edwards, M.D., for low back pain radiating into his right hip and buttock. The low back films showed degenerative arthritis in both hips with the right worse than the left.

6. Claimant's *first documented complaint* of hip pain was November 10, 2003, when he presented to Michelle H. Gardner, M.D., complaining of right hip and buttock discomfort. Dr. Gardner diagnosed sciatica and bursitis and prescribed prednisone, physical therapy, an anti-inflammatory and a codeine-based analgesic. Claimant was advised to return to the clinic if his symptoms did not improve. The mild discomfort, which Claimant described as a dull ache, resolved, and Claimant did not see Dr. Gardner again until after his December 15, 2004 industrial accident.

7. Claimant has a history of low back complaints dating from a 1988 injury with subsequent injuries or complaints in January 2001, and August 2002. X-rays showed Claimant

had some degenerative disc disease in his lumbar spine with narrowing of the L4-5 disc space.

8. Prior to December 15, 2004, Claimant was able to fulfill his strenuous job duties without accommodation or assistance.

ACCIDENT

9. On December 15, 2004, Claimant and a co-worker were loading cages onto a flatbed truck. Both men stood on the bumper of the flatbed and held on to a metal bar that extended across the back of the flatbed. Jeremy Ringer, another employee of Flying B Farms and Claimant's foreman, was driving the flatbed pickup at a speed of about five miles per hour. When the pickup made an unexpected and abrupt stop, Claimant was first thrown forward against the metal bar and then was thrown off the back of the truck. He landed on his heels on the road, which had a prominent center hump with ruts on either side. Claimant's left foot landed on the center hump and his right leg landed in the rut. Claimant estimated that the distance between the bumper on which he stood and the road on which he landed was between two and three feet. Claimant described feeling an immediate "sharp pinch in my lower back and kind of a crunching pain in my right hip." Ex. C, p. 5.

POST-ACCIDENT MEDICAL CARE

10. Claimant first sought medical care for injuries he attributed to the December 15 accident on January 26, 2005. On that date, he saw Dr. Gardner, described the accident and the mechanism of injury, and told Dr. Gardner that following the accident he had intermittent discomfort after work. He also related to Dr. Gardner that on the previous day, January 25, he was helping lift heavy cages and as he lifted one of the cages he stumbled and experienced acute pain in his back. Claimant localized his discomfort in his hips, buttocks, hamstrings, and shoulder blades and noted that his right hip was usually the most painful. Dr. Gardner diagnosed

low back pain and right hip pain and recommended aggressive physical therapy, NSAIDs, and x-rays of the lumbar spine and right hip. The lumbar x-rays were consistent with those taken in 2001. The right hip x-ray showed severe joint space narrowing, with lytic lesions described as subchondral cysts and geodes that the radiologist attributed to advanced degenerative joint disease.

11. After reviewing the x-ray report for Claimant's right hip, Dr. Gardner opined that Claimant needed to see an orthopedist, and that he would need a total hip arthroplasty. Nevertheless, she continued to treat Claimant for his low back pain, and assumed that his hip pain was radicular in nature and was actually caused by his low back problems. Finally, in April 2005, Dr. Gardner referred Claimant to William R. Bozarth, M.D., a neurologist, for a consultation regarding his low back.

12. Dr. Bozarth took a detailed history and performed a thorough examination of Claimant. He noted Claimant's 2003 report of hip pain but noted that it was mild, resolved, and never impacted Claimant's ability to do his work for Employer. It was Dr. Bozarth's opinion that it was Claimant's hip, not his back, that was causing his pain complaints, and he ordered bilateral x-rays and an MRI of Claimant's hips. The radiology report noted the collapse of the weight-bearing portion of the femoral head of Claimant's right hip. Dr. Bozarth opined that the femoral head collapse was consistent with the mechanics of the December 2004 industrial accident as Claimant described it. Dr. Bozarth referred Claimant to Gregory D. Dietrich, M.D., an orthopedist.

13. Claimant saw Dr. Dietrich on May 6. Dr. Dietrich reviewed the recent imaging of Claimant's right hip and confirmed the subchondral collapse of the femoral head. In his chart note, Dr. Dietrich states:

His symptoms, I think, are clearly explained by the radiographs here. I think that total hip arthroplasty is the only thing that would give him any significant relief of his symptoms.

Ex. K., p. 2. The chart note for this visit does not include any opinion on what caused the subchondral collapse of the femoral head.

14. On May 20, Surety sent a referral letter to Stanley J. Waters, M.D., requesting an independent medical evaluation (IME) of Claimant. Included with the letter were medical records that Surety had obtained. Surety posed several questions: 1) what is the current diagnosis of Claimant's conditions and complaints; 2) whether the diagnoses are directly related to the December 2004 incident or merely a temporary aggravation of a pre-existing condition; 3) what treatment, if any, is recommended to return Claimant to his pre-injury status; and 4) if surgery is recommended, is the medical necessity due to pre-existing conditions or the December 2004 industrial accident?

15. Dr. Waters saw Claimant on June 13, 2005. His report, of even date, does not indicate what medical records, if any, he reviewed in conjunction with his IME. Following exam, Dr. Waters offered diagnoses of lumbosacral spine facet arthritis with congenital spinal stenosis and end-stage osteoarthritis of bilateral hips. Dr. Waters offered the following comments as to the causation of Claimant's right hip:

His hip arthritis was, to a major portion, pre-existing. Radiographic findings of both hips are dramatic and consistent with longstanding end stage osteoarthritis of his hip. The patient's arthritis may have been exacerbated by the episode of 12/15/04. However, the advanced degenerative changes noted on the plain films and MRI have occurred over a number of years. Clearly the osteoarthritis of the right hip is pre-existing. The degree of subchondral bone cysts noted, osteophytes, and joint space narrowing did not occur since 12/04.

Ex. L., p. 9. Finally, Dr. Waters opined that the Claimant would benefit from a total right hip arthroplasty, "however, the need for surgery is due primarily to his pre-existing degenerative

disease of the right hip.” *Id.* Dr. Waters also stated that he believed the Claimant would eventually require a left hip arthroplasty as well.

16. Surety wrote Dr. Waters on July 5 seeking additional information. Surety asked whether Dr. Waters believed that Claimant’s December 2004 industrial injury was a temporary aggravation of his pre-existing condition that had since resolved; if so, whether Claimant sustained any permanent impairment as a result of the industrial injury; whether Claimant needed any medical care (excluding the arthroplasty) as a result of his industrial accident and when Claimant might be expected to be medically stationary; and whether Claimant had any work restrictions related solely to the industrial accident, whether temporary or permanent. Dr. Waters responded by letter dated July 13. In response, Dr. Waters stated that he believed Claimant’s condition was fixed and stable as it pertained to his industrial accident; that he had sustained no permanent impairment; and that he would have permanent restrictions including the need for *ad lib* positional changes, no standing for extended periods, and limitations on bending and squatting.

17. By letter dated August 9, Claimant sought a causation opinion from Dr. Dietrich via a “check if you agree” letter. The question posed was:

Is it your opinion that [Claimant] had a pre-existing condition that was aggravated by the accident on December 15, 2004, as to require a total hip arthroplasty?

Id., p. 4. On August 18, Dr. Dietrich marked the “YES” option and provided a brief explanation:

From what patient tells me he was without symptoms before accident Dec. 15 so as such it does seem directly aggravated if not caused [sic].

Id.

18. Defendants once again contacted Dr. Waters by letter dated August 22, providing additional medical records (including Claimant’s January 26, 2005 visit to Dr. Gardner) and

posing additional questions: 1) did the chart note from Dr. Gardner change any of Dr. Waters' previous opinions regarding Claimant's condition; and was Claimant's need for a total hip replacement in any way caused by the industrial accident? Dr. Waters responded by letter dated August 25:

My medical opinion would not change based on this single office visit note. Based on the plain x-rays of the pelvis and hips dated 4/18/05 and on the MRI scan of both hips, the patient clearly had findings consistent with longstanding osteoarthritis of his hips. The fall clearly may have exacerbated some of the underlying arthritis but I can state with a high degree of medical probability that the fall did not result in the radiographic findings of advanced osteoarthritis of the hip.

* * *

Clearly the patient's fall did exacerbate the patient's hip arthritis, however, it is clearly not the cause of the osteoarthritis nor is his need for a total hip arthroplasty related to the mechanisms of injury described by the patient on 12/15/04.

Id., pp. 14-15.

19. On September 22, Defendants once again contacted Dr. Waters regarding Claimant. Included with the seven-page letter to Dr. Waters was a copy of Claimant's deposition transcript, and additional medical records, in particular the February 2001 x-ray that first documented Claimant's degenerative hip condition. In addition to summarizing Claimant's history and highlighting what Defendants believed to be pertinent portions of Claimant's deposition testimony, the letter identified fourteen issues and sub-issues that Dr. Waters should address in his response. The issues focus on two general areas: First, comparing medical imaging of Claimant's hips before his industrial accident in 2001, after his industrial accident in January 2005, and April 2005; and second, teasing out additional information concerning the causal relationship between the industrial accident and Claimant's need for arthroplasty. Dr. Waters' response can be summarized as follows:

- X-rays from February 2001 show advanced osteoarthritic changes to Claimant's right hip

including a large subchondral cyst and significant joint space narrowing; the January 2005 x-rays show that Claimant's osteoarthritic condition has progressed as evidenced by complete joint space narrowing. The x-rays and MRI images show that the subchondral bone cyst increased in size between 2001 and 2005, and there is progression in the osteophytes evident by comparing the 2001 and 2005 films;

- Objective evidence that Claimant suffered an exacerbation of his pre-existing hip disease is evident in the information Claimant volunteered to Dr. Waters during the IME and in Dr. Gardner's chart note of January 26, 2005;
- It is difficult to find objective evidence of a new injury to Claimant's hip as a result of the December 2004 accident; and
- Claimant did have an exacerbation of his pre-existing osteoarthritis to his right hip,¹ but his need for total hip arthroplasty "was neither aggravated or accelerated due to the mechanism of injury described by the patient" as occurring in December 2004.

20. On October 18, Defendants again contacted Dr. Waters via letter enclosing Claimant's August 9 letter to Dr. Dietrich and Dr. Dietrich's August 18 response. Dr. Waters replied that the information contained in the letter and response did not change his opinion, stating, "I do not agree with Dr. Dietrich's opinion and this does not change my prior impressions provided to you in my last letter." *Id.*, p. 32.

21. On November 1, Dr. Dietrich sent a letter to Claimant further explaining his reasoning and the medical evidence he relied upon in reaching his conclusion that Claimant's need for a right hip arthroplasty was a direct result of his December 2004 industrial accident:

- Prior to the December 2004 accident, Claimant was always able to perform his

¹ To quote Dr. Waters: "As I stated in my original Independent Medical Examination, this patient did have an exacerbation of his pre-existing osteoarthritis to his right hip." Ex. L., p. 29.

duties at the Flying B Ranch;

- Prior to the December 2004 accident, Claimant was able to go elk hunting, hiking significant distances up and down mountains with only “some discomfort”;
- Claimant’s acute flare-up of hip pain following the December 2004 accident is consistent with the collapse of the weight bearing portion of the hip joint into the subchondral cyst;
- The mechanism of injury, the hard landing on his feet when he was thrown off the bumper of the flatbed, is consistent with the type of injury that resulted, *i.e.*, the fracture and collapse of the subchondral cyst;
- Had the December 2004 accident not occurred, Claimant would have had increasing symptoms in his right hip that would have resulted in a total arthroplasty in ten to fifteen years;
- “[T]he immediate and acute onset of [Claimant’s] pain is this subchondral collapse that was caused by the work related injury.”

22. On January 3, 2006, Defendants provided Dr. Waters a copy of Dr. Dietrich’s November 1 letter and asked whether that letter changed Dr. Waters’ opinion regarding Claimant’s injury. Defendants asked Dr. Waters to explain his answer fully. By letter dated January 5, 2006, Dr. Waters responded that Dr. Dietrich’s letter did not change his opinion. Dr. Waters provided no explanation.

DISCUSSION AND FURTHER FINDINGS

23. It is undisputed that Claimant had a work-related accident on December 15, 2004. Despite Defendants’ arguments in their briefing, notice was never at issue, nor was the delay between the accident and Claimant’s first visit to a doctor regarding his injuries. Surety accepted

the claim, and was providing medical care and income benefits until it became evident that Claimant needed a total hip replacement. It is not the fact of Claimant's injury that is disputed, but rather, its extent.

CAUSATION

24. The burden of proof in an industrial accident case is on the claimant.

The claimant carries the burden of proof that to a reasonable degree of medical probability the injury for which benefits are claimed is causally related to an accident occurring in the course of employment. Proof of a possible causal link is insufficient to satisfy the burden. The issue of causation must be proved by expert medical testimony.

Hart v. Kaman Bearing & Supply, 130 Idaho 296, 299, 939 P.2d 1375, 1378 (1997) (internal citations omitted). "In this regard, 'probable' is defined as 'having more evidence for than against.'" *Soto v. Simplot*, 126 Idaho 536, 540, 887 P.2d 1043, 1047 (1994). Once a claimant has met his burden of proving a causal relationship between the injury for which benefits are sought and an industrial accident, then Idaho Code § 72-432 requires that the employer provide reasonable medical treatment, including medications and procedures.

25. The Referee finds that Claimant has met his burden of proving that his need for a total right hip replacement is, to a reasonable degree of medical probability, due to his fall from the flatbed truck on December 15, 2004. The only medical professional who disputes this causal relationship is Dr. Waters; for the reasons set out below, the Referee finds his reasoning and his conclusions unpersuasive.

26. What Dr. Waters did not say, despite numerous attempts by Defendants to coax opinions from him, is as important in this proceeding as what he did say. First, Dr. Waters did *not* say that the injuries Claimant received from the December 2004 accident were merely a *temporary* aggravation of his pre-existing condition. Surety first asked Dr. Waters if the

“incident” was “merely a *temporary aggravation* of a pre-existing condition” in their referral letter. Ex. L., p. 6. Dr. Waters did not answer the question in his initial report. Surety tried again in their July 5 letter to Dr. Waters. *Id.*, at p. 10. In his July 13 response, Dr. Waters restated the question regarding *temporary aggravation* then responded: “I believe in this question, you are asking me if his injury is fixed and stable.” *Id.*, at p. 11. After two unsuccessful attempts to elicit the testimony they sought, Surety allowed their attorney to give it a try. In his September 22, 2005, letter to Dr. Waters, counsel posed question 6c as one of the fourteen or so issues he asked Dr. Waters to address: “Please state your opinion as to whether or not the industrial accident occurring on or about December 15, 2004, was merely a *temporary aggravation* of a pre-existing condition.” *Id.*, at p. 22 (emphasis added). Dr. Waters’ response: “As stated in my original Independent Medical Examination, this patient did have an exacerbation of his pre-existing osteoarthritis to his right hip.” *Id.*, at p. 29.

Despite the best efforts of Defendants, neither would Dr. Waters provide a clear or consistent answer to the *medical* question of whether the right hip replacement was due to the industrial accident. Dr. Waters stated repeatedly that Claimant had pre-existing osteoarthritis in both hips, a fact that was not even in dispute. He also repeatedly stated that the industrial accident exacerbated Claimant’s degenerative hip disease. He refused to opine that the exacerbation was temporary. Dr. Waters was, however, quick to provide his opinion on the ultimate legal question of whether Defendants were responsible for the total hip replacement. He did so in his initial report:

This patient would clearly benefit from a right total hip arthroplasty, however, the need for surgery is due primarily to his pre-existing degenerative disease of the right hip.

Id., at p. 9. Dr. Waters did so again in his August 25, 2005 letter to Defendants’ counsel:

Clearly the patient's fall did exacerbate the patient's hip arthritis, however, it is clearly not the cause of the osteoarthritis nor is his need for a total hip arthroplasty related to the mechanisms of injury described by the patient on 12/15/04.

Id., at p. 15. In his October 5, 2005 response to Defendants' fourteen delineated issues, Dr. Waters' ambivalence is clear. In answer to question 6a inquiring whether there was medical evidence that Claimant suffered a new injury, or an exacerbation and/or acceleration of a pre-existing injury to his right hip as a result of the industrial accident, Dr. Waters responded:

Based on the above x-ray findings and MRI findings, the patient clearly had pre-existing osteoarthritis of his right hip. The objective evidence that the patient experienced an exacerbation of his arthritis can be found in the information volunteered by the patient to me during my Independent Medical Examination and in the office note obtained by Michelle Gardner, M.D. dated 1/26/05.

Id., at p. 28. Question 6d inquired whether the medical evidence showed that the December 2004 accident either aggravated or accelerated Claimant's pre-existing right hip condition "such that it resulted in the need for a right hip arthroplasty sooner than otherwise would have developed without the industrial accident[.]" *Id.*, at p. 29. Dr. Water's answer is unresponsive, discussing a low back injury that Claimant suffered in January of 2001. Question 7a is basically a restatement of question 6d prefaced by excerpts from Dr. Waters' prior statements in which he stated with some alacrity that Claimant's fall did not *cause* Claimant's osteoarthritis, together with his previously cited opinion that it did not cause the need for the total hip replacement:

. . . are you in any way suggesting or stating that the industrial accident of December 15, 2004 as described by [Claimant] **permanently** either aggravated and/or accelerated [Claimant's] right hip condition such that it resulted in the need for a right hip arthroplasty sooner than otherwise would have developed without the industrial accident?

Id., at p. 23. Dr. Waters' response:

No. The patient's need for total hip arthroplasty was neither aggravated or accelerated due to the mechanism of injury described by the patient occurring on 12/15/04.

Id., at p. 29.

27. Aggravation or acceleration of a pre-existing condition is compensable under Idaho's workers' compensation provisions so long as the aggravation or acceleration results from an industrial accident. *Konvalinka v. Bonneville County*, 140 Idaho 477, 95 P. 3d 628 (2004). Here, there is no dispute that there was an industrial accident. Dr. Waters opines, repeatedly, that Claimant's condition was exacerbated by the December 2004 industrial accident. No physician offers an opinion that the injuries Claimant received in that accident resulted in only a temporary aggravation of his condition. Dr. Waters' repeated assertions that Claimant suffered an exacerbation of his pre-existing hip disease as a result of the industrial injury but that the industrial injury is not the cause of the need for a hip replacement both avoids the medical issue and misstates the law.

28. Dr. Waters' opinions are unpersuasive for other reasons as well. He did not have all of the relevant medical records when he wrote his first report. The initial report misstates the mechanics of Claimant's injury and incorrectly states that Claimant did not complain of hip pain until March 2005. Dr. Waters never listed the medical records that he did review, but the frequent correspondence from Surety with additional medical records, most of which were extant at the time of the IME, indicates that Dr. Waters either did not have or did not review all of the medical records.

In none of his numerous opinions does Dr. Waters acknowledge or address in any way the radiological evidence that was clear to both Drs. Bozarth and Dietrich—that essentially Claimant's right hip had fractured and collapsed into the subchondral cyst. This is crucial, objective, and extremely persuasive evidence of an acute injury and it is entirely consistent with the mechanics of the injury as consistently described by Claimant.

Although Dr. Waters opined that Claimant would have permanent restrictions as a result of his industrial injury, he awarded Claimant no permanent impairment rating. Permanent restrictions are usually associated with some permanent impairment rating, however small. This inconsistency, together with his mistaken understanding regarding the compensability of aggravations or exacerbations of pre-existing conditions, suggests that Dr. Waters is unfamiliar with some of the more basic tenets of the workers' compensation process.

Finally, it is apparent that Dr. Waters had some issue with Claimant or the IME process in general. Claimant's unrefuted testimony regarding Dr. Waters' statements and behavior during the course of the IME put his professionalism and objectivity into question.²

29. There is substantial evidence in the record, including the medical opinions of Claimant's treating physicians, that Claimant's need for a total right hip arthroplasty was the direct result of the fracture and collapse of the subchondral cyst that occurred when he was thrown from the flatbed truck on December 15, 2004. While Claimant admittedly had pre-existing bilateral osteoarthritis in his hips that was quite advanced, he was, nevertheless, a fully functional worker before the December 2004 accident. While Claimant's arthritic condition may have predisposed him to the injury he in fact sustained, "[a]n employer takes an employee as it finds him or her," and his pre-existing condition does not preclude his claim where he has clearly established that the accident aggravated or accelerated his condition. *Page v. McCain Foods, Inc.*, 141 Idaho 342, 347, 109 P.3d 1084, 1089 (2005), citing *Wynn v. J.R. Simplot Co.*, 105 Idaho 102, 104, 666 P.2d 629, 631 (1983).

² Claimant described Dr. Waters as "disinterested" in Claimant's attempted explanation of his condition before and after the accident; that the doctor stated "you do need a new hip . . . and I want you to know the State Insurance Fund is not going to pay for this," Ex. L., p. 21; and "I really hate doing this crap, . . ." *Id.*

CONCLUSIONS OF LAW

1. The industrial accident of December 15, 2004, resulted in a fracture of the weight-bearing portion of the femoral head of Claimant’s right hip and its collapse into his pre-existing subchondral cyst, causing the need for a right total hip arthroplasty.

2. Defendants are liable for Claimant’s right total hip arthroplasty.

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 21 day of September, 2006.

INDUSTRIAL COMMISSION

/s/ _____
Rinda Just, Referee

ATTEST:

/s/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 20 day of October, 2006 a true and correct copy of **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon:

CHRISTOPHER CALDWELL
PO BOX 607
LEWISTON ID 83501-0607

BRADLEY J STODDARD
PO BOX 896
COEUR D ALENE ID 83816-0896

djb /s/ _____

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MICHAEL MONNIERE,)
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 Claimant,)
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 BURLINGAME INDUSTRIES, INC.,)
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 STATE INSURANCE FUND,)
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 Defendants.)
 _____)

IC 05-502294

ORDER

Filed: October 20, 2006

Pursuant to Idaho Code § 72-717, Referee Rinda Just submitted the record in the above-entitled matter, together with her 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 recommendation of the Referee. The Commission concurs with this recommendation. 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:

1. The industrial accident of December 15, 2004, resulted in a fracture of the weight-bearing portion of the femoral head of Claimant's right hip and its collapse into his pre-existing subchondral cyst, causing the need for a right total hip arthroplasty.
2. Defendants are liable for Claimant's right total hip arthroplasty.

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

DATED this 20 day of October, 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 20 day of October, 2006, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following persons:

CHRISTOPHER CALDWELL
PO BOX 607
LEWISTON ID 83501-0607

BRADLEY J STODDARD
PO BOX 896
COEUR D ALENE ID 83816-0896

djb

/s/ _____