



## **CONTENTIONS OF THE PARTIES**

Claimant contends he suffered a compensable accident at work and as a result has a herniated lumbar disc. He is entitled to benefits. Defendants unreasonably denied his claim.

Defendants contend Claimant did not suffer a compensable accident. Alternatively, if he did, it did not cause the condition for which Claimant seeks benefits. They reasonably denied the claim. They question Claimant's credibility in describing the "accident."

## **EVIDENCE CONSIDERED**

The record in the instant case consists of the following:

1. Hearing testimony of Claimant, co-workers Mike Allison, Joshua R. Guisti, Robert C. Sanderson, and Christopher S. Crew;
2. Joint Exhibits A – V, except for the statement of Joseph Norton which is part of Exhibit N;
3. Post-hearing depositions of certified family nurse practitioner Rosemary Brown, FNP-C, and orthopedist Richard T. Knoebel, M.D.

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

## **FINDINGS OF FACT**

1. Claimant began working for Employer on August 29, 2005.
2. On September 7, 2005, he sought medical treatment after a pipe dropped on his foot at work. X-rays showed no fracture. This accident is unrelated to the subject accident. Claimant did report a history of chronic back pain.
3. On September 26 or 27, 2005, Claimant was working for Employer. He was on a scissor lift with some MEVA panels. When the lift moved, he was briefly pinned between a rail of the scissor lift and the shifting panels (the "Accident").

### **Prior Medical Treatment**

4. Claimant had low back and left leg pain following a slip and fall at work for another Employer in April 1999. He reported a single episode of numbness to his feet which cleared and did not repeat. X-rays taken in April and June showed no abnormality. He was diagnosed with an acute lumbar strain. He did not respond to conservative treatment. A lumbar MRI showed “minimal diffuse bulging of the L4-5 disc” without other abnormality. This finding was considered not clinically significant. He returned to work at light duty but reported recurring pain. Examinations showed no objective findings. About 60 days after the slip and fall, Claimant reported bladder incontinence. Doctors found no explanation for it and could not relate it to his low back condition. About 90 days after the slip and fall, treatment was discontinued.

5. On May 2, 2005, Claimant sought medical care for his low back while working for another employer. The records are inconsistent: One history reports “no specific injury,” another reports “fell at work.” A lumbar X-ray was negative.

6. On June 22, 2005, Claimant sought medical care for his low back. He reported an injury at work.

7. On August 3, 2005, Claimant sought medical care for his low back. He described the 1999 work injury. Rosemary Brown, FNP-C, treated him. Nurse Brown provided treatment at a pain management clinic. Treatment included prolotherapy injections. Claimant received injections and other low back care on August 9, 25, and 26.

8. After Claimant began working for Employer on August 29, 2005, he received injections and other low back care on August 30, and September 1, 13, and 22. He also visited the pain management clinic on September 7, but the record is unclear whether treatment was restricted to his foot which was injured earlier that day.

### **Post-Accident Medical Treatment**

9. Claimant received medical care for his low back at the Portneuf Medical Center emergency room on September 30, 2005. He described the Accident. He was seeking additional narcotic medication. Examination revealed no objective signs to correlate with his subjective complaints. Discharge diagnosis was “chronic back pain.”

10. Claimant returned to the pain management clinic for injections and other low back care on October 6, 2005. Claimant reported an event at work which occurred on October 5. Except for the date, his description of the event was consistent with his testimony about the Accident.

11. Follow-up injections and other low back care were provided on October 10, 20, and November 2, 4, and 15. Upon examination, objective findings were minimal at best.

12. A repeat MRI conducted on November 1, 2005, confirmed the minimal L4-5 disc bulge without nerve compression.

13. On February 7, 2006, Dr. Stromberg examined Claimant. He found no objective signs to correlate with Claimant’s reported severe pain and significant use of narcotic medications.

14. On February 16, 2006, Dr. Knoebel examined Claimant at Defendants’ request. Claimant’s examination showed inconsistencies with distraction and positive Waddell signs. Dr. Knoebel diagnosed pre-existing nonspecific low back pain without verifiable radiculopathy. He opined Claimant suffered no temporary disability nor permanent impairment related to the described accident. He opined Claimant’s low back complaints were entirely preexisting.

15. Nurse Brown opined Claimant suffered an injury from the described accident because the symptoms he reported changed.

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

16. **Accident and Causation.** 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 condition does not disqualify a workers' compensation claim if the employment aggravated, accelerated, or combined with the preexisting condition to produce the disability for which compensation is sought. An employer takes the employee as it finds him. Wynn v. J.R. Simplot Co., 105 Idaho 102, 666 P.2d 629 (1983).

17. Here, the occurrence of the Accident is undisputed. The dispute arises over whether it caused any injury.

18. Mr. Crew was operating the scissor lift and witnessed the Accident. His testimony about whether weightlifting at Claimant's home occurred before or after the Accident is persuasive. Defendants' suggestion that Claimant may have injured his back lifting weights at home is not. However, Claimant's weightlifting activities are inconsistent with the amount of pain he reported to his physicians.

19. Claimant was undergoing a regimen of low back treatment before and after the Accident. He worked after the Accident without complaint. He reported it to his supervisor only after the September 30 emergency room visit.

20. Claimant's credibility is at issue. His testimony is impeached by a conviction for a felony involving honesty. He was incarcerated for three years beginning in 2000.

21. The medical reports of Claimant's 1999 injury are like the medical reports following the Accident. Both describe overdramatic complaints of pain without significant objective signs to support them. Claimant admitted he was familiar with narcotic addiction but claimed he had overcome his addiction.

22. Claimant received no medical care as a result of the Accident. He merely attended previously scheduled appointments for treatment of his preexisting condition and visited the emergency room seeking a refill of his previously prescribed narcotics.

23. The paucity of objective signs and the absence of change in the minimal objective signs before and after the Accident undercuts Nurse Brown's opinions of causation.

24. The medical opinions of Dr. Knoebel are persuasive. The absence of change in Claimant's back condition between the two MRIs supports a finding that Claimant did not suffer any injury as a result of the Accident.

### **CONCLUSIONS OF LAW**

1. Claimant failed to show it medically probable that the Accident caused any injury.
2. All other issues are moot.

### **RECOMMENDATION**

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

DATED this 13<sup>TH</sup> day of March, 2007.

INDUSTRIAL COMMISSION

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

ATTEST:

/S/ \_\_\_\_\_  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the 26<sup>TH</sup> day of MARCH, 2007, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

James C. Arnold  
P.O. Box 1645  
Idaho Falls, ID 83403-1645

Russell E. Webb  
P.O. Box 51536  
Idaho Falls, ID 83405

db

/S/\_\_\_\_\_



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

DATED this 26<sup>TH</sup> day of MARCH, 2007.

INDUSTRIAL COMMISSION

/S/ \_\_\_\_\_  
James F. Kile, Chairman

/S/ \_\_\_\_\_  
R. D. Maynard, Commissioner

/S/ \_\_\_\_\_  
Thomas E. Limbaugh, Commissioner

ATTEST:

/S/ \_\_\_\_\_  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on 26<sup>TH</sup> day of MARCH, 2007, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

James C. Arnold  
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