

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

SYLVIA TAYLOR,)
)
 Claimant,)
)
 v.)
)
COVENANT DOVE, INC.,)
)
 Employer,)
)
 and)
)
EMPLOYERS INSURANCE OF)
WAUSAU,)
)
 Surety,)
)
 Defendants.)
_____)

IC 2005-506692

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

Filed April 24, 2007

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Michael E. Powers, who conducted a hearing in Boise on December 12, 2006. Claimant was present and represented by P. Rick Tuha of Nampa. Monte R. Whittier of Boise represented Employer/Surety. Oral and documentary evidence was presented. No post-hearing depositions were taken. The parties submitted post-hearing briefs and this matter came under advisement on March 12, 2007.

ISSUES

The issues to be decided as the result of the hearing are:

1. Whether Claimant suffered an injury arising out of and in the course of her employment;
2. Whether Claimant’s condition is due in whole or in part to a pre-existing or subsequent injury or disease not work related;
3. Whether Claimant is entitled to medical care; and

4. Whether Claimant is entitled to total temporary disability (TTD) benefits.

CONTENTIONS OF THE PARTIES

Claimant, a registered nurse, contends that while helping two co-workers place a “combative” Alzheimer’s patient into a “merry walker,” she injured her shoulder and cartilage in her chest.

Defendants contend that according to the testimony and recorded statements of Claimant’s two co-workers, the incident Claimant described never happened. While Claimant was briefly in the patient’s room, she at no time came near enough to the patient to have any contact with him. Further, the patient was already in the merry walker when Claimant entered his room. Finally, Claimant has presented no medical evidence linking her costochondritis or left shoulder strain to her “accident.”

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant, her husband, and co-workers Kimberly S. Elmore and Shelly D. Miles presented at the hearing;
2. Claimant’s Exhibits 1-9 admitted at the hearing; and
3. Defendants’ Exhibits A-K admitted at the hearing.

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. Claimant was 48 years of age and resided in Nampa at the time of the hearing. She was a registered nurse and worked as a supervisor/charge nurse for Employer. Employer’s care facility had a special care unit (SCU) for Alzheimer’s and dementia patients. While working on the SCU at approximately 5:30 a.m. on March 17, 2005, Claimant testified that she heard someone yell for help from a patient’s room. Claimant immediately went to the room and observed two CNAs struggling to get a combative Alzheimer’s patient into a portable walker known as a merry walker. Claimant further

testified that the patient was flailing his arms and that she was afraid he would strike one or both CNAs and/or fall forward to the floor. In order to prevent that from happening, Claimant reached in with her left arm and held the patient and guided one of his flailing arms to the railing of the merry walker so he could grip it. In doing so, the patient was leaning on Claimant and she felt a pulling sensation in her left upper chest area and had a bruise on her left forearm where the patient hit her. The patient was eventually confined in the merry walker.

2. Both CNAs testified that neither of them yelled for help and that when Claimant entered the patient's room, he was already in the merry walker and could not have fallen to the floor. They also testified that the patient was not combative, was not flailing his arms, and was not strong enough to cause any damage even if he did accidentally strike one of them. Significantly, both testified that Claimant was not near enough to either themselves or the patient to have come into contact with either of them or the patient. They testified that Claimant never came any closer to where they and the patient were than right inside the door to the patient's room. Finally, Claimant did not complain of any pain at the time of the alleged incident.

3. Claimant's shift ended shortly after the alleged incident and she went home and went to bed without any pain. At about 1:00 p.m., Claimant awoke with severe pain in her left upper chest going up to her left shoulder. Claimant's husband took her to Quick Care in Nampa; however, the staff there suspected a myocardial infarction and sent her to Mercy Medical Center nearby. There, a heart attack was ruled out and Claimant was referred to Job Care.

4. Claimant presented to Job Care on March 21, 2005, where the following history was taken:

The patient was at work on the 17th and apparently an individual was in a confrontation with another client. She went to put her arm between them to hold them apart and the individual struck her on the arm and partially fell on the arm. Basically since then she has noticed some pain in her left shoulder and left anterior chest. She has had some bruising over the left forearm.

Defendants' Exhibit D, p. 18.

Upon examination, it was noted that there were no bruises or contusions on Claimant's left forearm. Claimant was diagnosed with costochondritis,¹ left shoulder strain, and left forearm contusion resolved. She was given Naprosyn and placed on restricted duty that Employer was unable to accommodate.

5. After a course of physical therapy, Claimant's symptomatology had resolved without residuals by the time of the hearing.

DISCUSSION AND FURTHER FINDINGS

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 is 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, 412-413, 18 P.3d 211, 217-218 (2001). A physician's testimony is not required in every case, but his or her medical records may be utilized to provide "medical testimony." *See, Jones v. Emmett Manor*, 134 Idaho 160, 997 P.2d 621 (2000).

6. Assuming, without deciding, that Claimant's version of events regarding her "accident" is the correct one, her claim still must fail. There is no medical evidence, by medical records or otherwise, that links in any way the condition for which Claimant was treated to her alleged accident. Such medical evidence is even more important in cases where there is a gap between the "accident" and the onset of symptoms. Here, Claimant went home without symptoms and woke up with symptoms. This case is somewhat analogous to *Roberts v. Kit Manufacturing Company*, 124 Idaho 946, 866 P.2d 969 (1993). There, Claimant spent a day unloading windows and refrigerators. Although claiming an injury-causing

¹ Costochondritis is defined as the inflammation of one or more costal cartilages, characterized by local tenderness and pain of the anterior chest wall that may radiate, but without the local swelling typical of Tietze syndrome. *Stedman's Medical Dictionary*, 28th Edition.

accident on that day, Claimant experienced no pain or other evidence of an injury. Upon awakening the next morning, Claimant had some pain between his shoulder blades and in his arm and hand. Claimant eventually underwent cervical surgery and filed a Complaint alleging an accident with injury occurred on the day he unloaded windows and refrigerators. The Commission denied his claim and he appealed. The Idaho Supreme Court affirmed the Commission holding that an equivocal letter from Claimant's treating physician did not equate to a reasonable degree of medical probability linking his injury to his alleged accident. Such is the case here, only here, there is no medical evidence, equivocal or not, ". . . proving there was a probable causal link between his employment and the injury for which he seeks relief." *Id.*, at p. 947.

7. The Referee finds that Claimant has failed to prove she suffered an accident causing an injury arising out of and in the course of her employment.

CONCLUSIONS OF LAW

1. Claimant has failed to prove that she suffered an accident arising out of and in the course of her employment.

2. All other issues are moot.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Referee recommends that the Commission adopt such findings and conclusions as its own and issue an appropriate final order.

DATED this __13th__ day of __April__, 2007.

INDUSTRIAL COMMISSION

_____/s/_____
Michael E. Powers, Referee

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __24th__ day of __April__, 2007, a true and correct copy of the **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

P RICK TUHA
1226 E KARCHER RD
NAMPA ID 83687-3075

MONTE R WHITTIER
PO BOX 6358
BOISE ID 83707-6358

____/s/_____

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ORDER

Filed April 24, 2007

Pursuant to Idaho Code § 72-717, Referee Michael E. Powers 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 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. Claimant has failed to prove that she suffered an accident arising out of and in the course of her employment.
2. All other issues are moot.

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

DATED this __24th__ day of __April__, 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 the __24th__ day of __April__, 2007, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following persons:

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