

4. Whether Claimant's March 1996 claim is barred by applicable statutes of limitation.

CONTENTIONS OF THE PARTIES

Claimant contends he suffered neck, back, and knee injuries in five accidents. These have not resolved. He is not yet stable and needs additional medical care. He is entitled to temporary disability.

Defendants contend the facts underlying the two 1996 claims do not constitute accidents. The claims which do constitute accidents did not cause any injuries which lasted beyond a few weeks, at most. He currently suffers from no condition related to these accidents for which benefits are due.

EVIDENCE CONSIDERED

The record in this case consists of the following:

1. Oral testimony at hearing by Claimant;
2. Claimant's exhibits 1-4, 6, 9;
3. Defendants' exhibits 2A, 6-8, 13, 15, 22; and
4. Affidavit of Angela Bussert with attached documents, approved at hearing and submitted posthearing by stipulation.

Defendants filed a motion *in limine* to exclude Claimant's proposed exhibits upon Claimant's failure to provide them timely under JRP Rule 10. At hearing, Defendants limited their motion to specific exhibits. The Referee granted the motion, in part, for all documents newly produced within the 10-day time frame. Defendants then identified which of Claimant's proposed exhibits could be admitted under the ruling *in limine*. After having fully considered all of the above evidence, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

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

FINDINGS OF FACT

1. Claimant worked for Employer as a security officer. He has filed five claims which are the subject of this decision, alleging specifically:

Event 1 – IC 94-861050 – November 5, 1993 – neck pain after walking into an overhanging pipe;

Event 2 – IC 96-016971 – March 18, 1996 – left knee popped while traversing stairs;

Event 3 – IC 96-030308 – April 30, 1996 – stiff back after hand wandung at a metal detector;

Event 4 – IC 97-003127 – December 31, 1996 – slipped on ice, hurt back, etc.;

Event 5 – IC 03-515085 – July 23, 2003 – back pain after bending to hook a chain;

2. Claimant has filed a 2005 claim which is not a part of this decision.

Event 1: November 5, 1993

3. The record contains no medical records for dates between Events 1 and 2.

Events 2 & 3: March/April 1996

4. On March 19, 1996, Gerald Bush, M.D., examined Claimant. He found bilateral knee crepitus, but no other objective findings. He diagnosed mild recurrent left knee strain. He imposed no restrictions.

5. On April 29, 1996, Craig H. Stagg, M.D., examined Claimant. He found no objective basis for Claimant's reports of left knee and leg pain. He considered it might be related to varicose veins. He considered the possibility, but did not opine, whether the symptoms Claimant reported might be work related.

6. On May 2, 1996, Anthony Joseph, M.D., examined Claimant. X-rays showed mild degenerative changes in Claimant's low back. He opined Claimant's knee pain "is a

manifestation, actually, of back pain and radicular symptoms.” He opined Claimant could return to full duty.

7. On May 6, 1996, Dr. Bush examined Claimant. He noted no objective findings.

8. On October 29, 1996, William Belk, M.D., opined Claimant’s back pain “is of a degenerative nature” without injury. Claimant was noncompliant with physical therapy recommendations. On November 27, 1996, Dr. Belk noted X-rays showed no significant pathology. He gave Claimant a permanent 50-pound lifting restriction.

Event 4: December 31, 1996

9. On January 15, 1997, Dr. Bush examined Claimant. No contusions or abrasions were seen which would correlate to Event 4. Dr. Bush diagnosed chronic hip pain. He noted Claimant has a permanent lifting limit but did not specify how much. He found Claimant stable and noted Claimant had missed no work.

10. On January 23, 1997, Dr. Belk examined Claimant. Claimant reported low back, left hip and thigh pain “in a rather unusual distribution” without objective findings. Dr. Belk recommended one more week of physical therapy and expected no work restrictions thereafter. On January 30, Dr. Belk characterized Claimant’s complaints as an aggravation from a preexisting injury. He opined Claimant medically stable from Event 4.

11. On June 30, 1998, M. Elizabeth Gerard, M.D., reported electrodiagnostic testing on Claimant’s left arm and both legs. The EMG was abnormal, but not diagnostic. Claimant was unable to tolerate complete testing.

12. On September 17, 1998, Benjamin Blair, M.D., examined Claimant. He found no objective signs of injury. He reported X-rays as significant for multi-level degenerative changes. A MRI was similarly negative for acute injury. He did not opine a diagnosis.

A myelogram and CT scan showed a disc bulge at L4-5 with other changes all consistent with degenerative disc disease.

13. On June 16, 1999, D. Peter Reedy, M.D., examined Claimant. He opined that although surgery might help, he did not recommend performing an L4-5 fusion.

14. On October 14, 1999, Dr. Belk examined Claimant. Claimant described neck and left arm symptoms. Dr. Belk diagnosed degenerative arthritis. He opined these symptoms were not occupationally induced.

Event 5: July 23, 2003

15. On August 7, 2003, a lumbar MRI showed a small disc bulge at L4-5 and at L5-S1.

16. On August 28, 2003, David C. Simon, M.D., reviewed medical records and examined Claimant at the request of Defendants. He found the left straight leg raising test to be positive, but no other objective findings. He reviewed spine X-rays, noted mild degenerative changes, and knee X-rays which he found normal. He diagnosed left L5 radiculopathy secondary to neuroforaminal narrowing at L4-5. He opined, “[I]t is clear that Mr. Rupp’s current problems are not due to the industrial injuries as he claims.” Mr. Rupp’s problems are more likely due to a preexisting progressive degenerative condition.” He opined Claimant medically stable with no permanent impairment.

17. On August 27, 2003, Claimant returned to Dr. Blair for the first time since December 1998. On September 29, 2003, Dr. Blair recommended Claimant work only light duty, part time with a gradual increase to full-time work.

18. On September 30, 2004, Kevin R. Krafft, M.D., reviewed medical records and examined Claimant at Defendants’ request. He diagnosed left leg radiculopathy, spondylolysis,

and symptom magnification behavior. He opined Claimant suffered from degenerative spine disease, preexisting any alleged injury in 1996. He opined Claimant was medically stable from the events in 1996 and any permanent impairment (12%) would be assigned to the preexisting degenerative condition.

19. On March 9, 2005, a myelogram and CT scan showed degeneration throughout Claimant's lumbar spine with mild disc bulges but no herniations. The radiologist who reported the 2003 myelogram and CT scan found no changes when comparing the two sets of images. On March 18, 2005, diskography at L3-4, L4-5, and L5-6 all produced back pain. L6-S1 was untestable. Dr. Blair considered these findings confirmative of degenerative disc disease.

20. Claimant has continued to seek occasional medical care related to his back and knees.

Discussion and Further Findings

21. It is well settled in Idaho that the Workers' Compensation Law is to be liberally construed in favor of the claimant in order to effect the object of the law and to promote justice. 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, 910 P.2d 759 (1966). Although the worker's compensation law is to be liberally construed in favor of a claimant, conflicting evidence need not be. Aldrich v. Lamb-Weston, Inc., 122 Idaho 316, 834 P.2d 878 (1992).

22. **Statue of Limitations.** The record does not reflect any benefits paid to Claimant as a result of Event 2. Therefore, Event 2 is not compensable as Claimant failed to timely file the complaint within 1 year of its occurrence. Under Idaho Code § 72-701, proceedings are barred ". . . unless. . . a claim for compensation . . . shall have been made within one (1) year

after the date of the accident. . . .” Event 2 occurred March 18, 1996. The complaint was filed July 2, 1998, nearly two years after the alleged accident and 14 months past the one year statute of limitations.

23. **Accident.** Claimant bears the initial burden of demonstrating a *prima facie* case. *See, Seamans v. Maaco Auto Painting*, 128 Idaho 747, 918 P.2d 1192 (1996). “‘Accident’ means an unexpected, undesigned, and unlooked for mishap, or untoward event, connected with the industry in which it occurs, and which can be reasonably located as to time when and place where it occurred, causing an injury.” Idaho Code § 72-102(18)(b). It is axiomatic in Idaho Workers’ Compensation Law that “hard work is not an accident.” *See, e.g., Konvolinka v. Bonneville County*, 140 Idaho 477, 95 P.2d 628 (2004).

24. Claimant is a poor historian. He is otherwise credible. However, his description of Event 3 does not reveal any mishap or untoward event. Moreover, a mere onset of pain at work does not constitute an accident. *See, Perez v. J.R. Simplot*, 120 Idaho 435, 816 P.2d 992 (1991). Therefore, he has failed to prove Event 3 was an accident as defined by Idaho’s Workers’ Compensation Law.

25. **Causation.** A claimant must prove he was injured as the result of an accident arising out of and in the course of employment. *Seamans, supra*. 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). Claimant bears the burden of proving it likely he suffered an injury as a result of the alleged accidents.

26. Claimant failed to show he suffered an injury as a result of Event 1. The total

absence of medical records relating to Event 1 precludes finding any compensable injury. Similarly, Claimant failed to provide sufficient proof of medical causation regarding Event 2 or 3. The medical records generated in 1996 by Drs. Bush, Stagg, Joseph, and Belk contain little information about the cause of Claimant's knee condition, and none of the doctors relate the knee condition to an accident on March 18, 1996, to a reasonable degree of medical probability. No doctor linked Claimant's back pain to wandering at a metal detector on April 30, 1996 either.

27. Claimant showed he suffered an accident causing minor injury or aggravation of a preexisting condition relating to Event 4. He is entitled to medical benefits for the period between December 31, 1996 and January 15, 1997, when Dr. Bush opined him stable. The medical records indicate no time loss benefits nor permanent impairment are awardable. The overwhelming consensus of medical opinion shows Claimant's continuing and episodic complaints of neck, back, and leg pain are not due to the alleged accidents, but rather to Claimant's preexisting degenerative condition.

28. Claimant established he suffered an accident at the time of Event 5. However, the medical opinions do not support Claimant's position that Event 5, bending to hook a chain, caused an injury or resulted in permanent impairment. Claimant failed to show he is entitled to any temporary disability benefits as a result of Event 5.

29. Claimant has suffered intermittent pain for over 10 years. Except for the brief exacerbation related to Event 4, Claimant has failed to establish any of this was caused by his work. Claimant has a degenerative condition that will remain with him for life.

30. The medical records and Claimant's testimony show Claimant has become obsessed with blaming his work for his pain. Despite almost 10 years of litigating this matter,

Claimant was unable to provide a *prima facie* case for four of his five claims. Moreover, the only claim for which compensability was established, Event 4, required brief medical care which resolved within three weeks.

CONCLUSIONS OF LAW

1. Claimant failed to show he suffered a compensable accident causing injury for his claims designated Events 1, 2, 3, and 5;
2. Event 2 is barred under Idaho Code § 72-701;
3. Claimant suffered a compensable accident causing injury on December 31, 1996 (Event 4) and is entitled to medical care benefits for the period from December 31, 1996 through January 15, 1997, and Defendants are entitled to credit for medical benefits paid on this claim;
4. Claimant failed to show he suffered TTD or permanent impairment as a result of the December 31, 1996 accident;
5. All other issues are moot.

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 18TH day of May, 2007.

INDUSTRIAL COMMISSION

/S/_____
Douglas A. Donohue, Referee

ATTEST:

/S/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 6TH day of JUNE , 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:

Craig R. Jorgensen
P.O. Box 4904
Pocatello, ID 83205-4904

Alan R. Gardner
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db

/S/_____

4. Claimant failed to show he suffered TTD or permanent impairment as a result of the December 31, 1996 accident;

5. All other issues are moot.

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

DATED this 6TH day of JUNE, 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 6TH day of JUNE , 2007, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

Craig R. Jorgensen
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