



## **CONTENTIONS OF THE PARTIES**

Claimant contends he needs back surgery to extend prior back fusions upward to his eleventh thoracic vertebra (T11). He has previously undergone multiple back surgeries and fusions. He has six lumbar vertebrae and has been fused from L2 through S1. These fusions put extra strain on the L1 and T12 vertebrae and disks at L1-2 and T12-L1. Treating physicians have recommended the fusions be extended to T10 or T11.

Defendants contend Claimant's need for surgery is related to a progressive degenerative condition in his spine and not to a compensable accident. Appropriate medical care and other benefits have been fully paid.

## **EVIDENCE CONSIDERED**

The record in the instant case consists of the following:

1. Hearing testimony of Claimant;
2. Claimant's Exhibits 1 – 15;
3. Defendants' Exhibits A – C; and
4. The posthearing depositions of Arden Reynolds, M.D., and R. Tyler Frizzell, M.D., both with exhibits.

Objections raised in the posthearing deposition are overruled. 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 worked as director of nursing at the Idaho maximum security prison. He began working for Employer in Idaho in 1996. His duties included both clinical and administrative work. He suffered a back injury in a compensable accident in December 1999.

2. Diagnostic imaging showed prior surgery and arthritis in his lumbar spine.
3. Initial treatment included conservative care, medication, epidural steroid injections, physical therapy, and light duty restrictions.
4. On July 24, 2000, an MRI showed prior surgical changes and mild disc disease. The report also noted, "Vertebral body heights are well maintained." A September MRI was equivocal.
5. As a last conservative effort before acquiescing to surgery, Claimant tried acupuncture.
6. Surgery was performed by Timothy Johans, M.D., on November 2, 2000. Dr. Johans found a large disk herniation. Claimant experienced immediate pain relief which unfortunately returned within 30 days. Dr. Johans diagnosed a recurrent disk herniation and again performed surgery on December 6, 2000. An MRI confirmed it and mentioned degenerative changes as well. Dr. Johans characterized the herniation he saw during this second surgery as "enormous." The pathology consultant noted tissue showed degenerative changes.
7. His paresthesias resolved. His pain reduced in frequency, but remained severe.
8. He returned to full-time work on March 26, 2001. He was declared medically stable and assigned an impairment rating. Pain continued.
9. From December 2001 to April 2002, Claimant worked in New Mexico and was treated there. Claude Gelinas, M.D., diagnosed a herniated "L5-S1" disk and opined Claimant was not a surgical candidate.
10. From April 2002 through September 2003, Claimant was under the care of Aleksander Curcin, M.D., in Baltimore, Maryland. On June 19, 2002, Dr. Curcin performed an

L3-S1 fusion. After experiencing temporary relief, pain returned. Diagnostic imaging on August 19, 2002 showed degenerative and surgical changes and bulging discs without herniation. Additional imaging on October 17, 2002 and January 2, 2003 showed consistent findings. During a workup for an unrelated cardiac condition on February 28, 2003, a chest X-ray showed degenerative changes in his thoracic spine. On April 7, 2003, Dr. Curcin removed the old fusion appliances and replaced them, extending the fusion from L2-S1. Claimant experienced about two months' relief, then began reporting recurring back pain. On September, 8, 2003, diagnostic imaging revealed compression fractures in his lower two or three thoracic vertebrae.

11. From October 2003 to November 2006, Claimant was treated by a group of doctors, primarily Drs. Holt, Sloan (M.D.s) and Talley (D.O.) in Illinois. The immediate issue was a broken arm which developed avascular necrosis at the humeral head and required surgery. He later fell on that shoulder and required treatment, including hemiarthroplasty and rotator cuff repair. The chronic issue of low back pain was treated with emphasis on weaning Claimant from overuse of pain medications. Eventual inpatient Methadone treatment was required to free Claimant of his dependency. Other treatment included concerns related to his heart and a seizure disorder. Medical evaluations for Social Security Disability were performed. Diagnostic imaging in December 2003 and again from September 30 through December 6, 2005 showed progressive degenerative changes in his lower thoracic spine.

12. R. Tyler Frizzell, M.D., opined Claimant's thoracic degeneration could not be related to the fusion because it was two levels above the fusion. He opined about 10% of his fusion patients require additional surgery.

13. Paul Montalbano, M.D., opined Claimant's thoracic degeneration could not be related to the fusion.

14. Arden Reynolds, M.D., opined Claimant's thoracic degeneration was related 75% to the fusion and 25% to degenerative disease. He opined that the risk of developing adjacent segment disease increases about three or four percent per year.

15. All doctors agree the fusion should be extended into Claimant's thoracic spine because of compression fractures and instability.

### **Prior Medical Care**

16. Polio left Claimant's left leg somewhat weak.

17. Claimant suffered a prior back injury working as a hospital nurse in 1990. Claimant's lumbar spine has an anatomical variant which results in disparate numbering of lumbar vertebrae by different physicians. The medical records inconsistently refer to either a 6<sup>th</sup> lumbar vertebra or a lumbarized S1 vertebra. A disk at L5-6 (or L6-S1) was removed in October 1990. After about an eight-week period of recovery, he returned to work.

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

18. 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). Here, Claimant must show it probable that his need for additional

surgery to extend the fusion is probably caused by the fusion which was performed to correct the injury from the accident. It is not enough to show that degeneration, compression fractures, and instability *might be* adjacent segment disease related to the 2002 and 2003 fusions. Rather, Claimant must show that it *probably is* so caused.

19. Claimant's need for an additional surgery is well documented by the medical records and opinions of medical professionals consulted. The treating physician, Dr. Reynolds, testified that Claimant's case is one of those for which additional surgery is required to correct adjacent segment disease. Even so, he would apportion causation 75% to the accident and 25% to preexisting degenerative disease. Dr. Frizzell testified that Claimant's condition arises from degenerative disease and not the fusion. The opinions of both doctors appear reasonable. The percentages expressed by both doctors do not address the likelihood of one cause versus another in a case where additional surgery is required.

20. Claimant has a long history of degenerative disease in his back. Degeneration has appeared in his shoulder and ankle following unrelated trauma. Claimant underwent his first back surgery more than 10 years before the subject accident. Claimant failed to show it likely that his degenerative condition relates to the subject accident and subsequent surgery. It appears more likely that Claimant's degenerative condition is related to aging or to the cumulative effects of degeneration brought on or exacerbated by trauma and surgery in 1990.

### **CONCLUSIONS OF LAW**

1. Claimant failed to show it likely that his need for additional fusion surgery is related to the subject accident and subsequent medical treatment; and
2. The issue of additional benefits is moot.





2. The issue of additional benefits is moot.

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

DATED this 25th day of October, 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 25th day of October, 2007, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

Richard S. Owen  
P.O. Box 278  
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Glenna M. Christensen  
P.O. Box 829  
Boise, ID 83701

db

/s/ \_\_\_\_\_