

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

COLEEN HOLLINGER,)
)
 Claimant,)
)
 v.)
)
 COVENANT DOVE, INC.,)
)
 Employer,)
)
 and)
)
 EMPLOYERS INSURANCE)
 COMPANY OF WAUSAU,)
)
 Surety,)
 Defendants.)
 _____)

IC 2006-527287

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

March 11, 2008

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Susan Veltman, who conducted a hearing in Boise on December 7, 2007. Raymond W. Setzke of Boise represented Claimant. Monte R. Whittier of Boise represented Defendants. The parties submitted oral and documentary evidence. The parties submitted post-hearing briefs and this matter came under advisement on February 13, 2008 and is now ready for decision.

ISSUES

By agreement of the parties at hearing, the issues to be decided are:

1. Whether the condition for which Claimant seeks benefits was caused by the industrial accident;

2. Whether Claimant's condition is due in whole or in part to a pre-existing and/or subsequent injury/condition; and

3. Whether and to what extent Claimant is entitled to medical care.

CONTENTIONS OF THE PARTIES

It is undisputed that Claimant sustained an injury to her lumbar spine on November 13, 2006 while working for Employer. Claimant contends that she is entitled to on-going treatment for her injury. Specifically, Claimant seeks treatment with Michael O. Sant, M.D., who has recommended a fluoroscopically guided sacro-iliac (SI) injection. Claimant argues that her treatment was discontinued prematurely based on the opinion of Allan R. Wilson, M.D., who evaluated Claimant at the request of Defendants. Defendants maintain that Claimant has received appropriate treatment for her injury and that there is no objective evidence of on-going pathology. Defendants agree with Dr. Wilson who has opined that no additional treatment is medically necessary to treat the industrial injury.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant, taken at hearing; and
2. Defendants' Exhibits A-K¹.

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 born on March 7, 1983 and was 24 at the time of hearing. Claimant began working for Employer as a certified nurse assistant (CNA) at a retirement/nursing home in

¹ Claimant did not offer documentary evidence, but joined in the offering of Defendants' Exhibit G.

September of 2006. On November 13, 2006, Claimant was transferring a patient with the assistance of a co-worker when she sustained a lifting/twisting injury to her lumbar spine.

2. Initial medical treatment was sought at St. Luke's emergency room on November 16, 2006 with Michael C. Ross, M.D., who diagnosed a lumbar sprain. Claimant was prescribed medications and released to modified duty work. Claimant's neurological examination was normal and she was referred to Northwest Spine Care Institute for follow-up care.

3. Claimant followed up with Kevin Chicoine, M.D., at the referral of Employer on November 17, 2006, at which time Dr. Chicoine agreed with the lumbar sprain diagnosis and documented tenderness over the left SI joint. He noted that the low back pain was non-radiating and not associated with numbness, tingling or weakness. He modified Claimant's prescriptions and referred her to physical therapy.

4. On November 21, 2006, Claimant was re-evaluated by Dr. Chicoine and reported on-going pain over the SI joint. She was instructed to remain off of work and continue physical therapy after which Claimant returned to Dr. Chicoine on November 27, 2006, with no improvement after two or three physical therapy visits. Tenderness over the left SI joint was documented and Dr. Chicoine made a secondary diagnosis of SI joint dysfunction. Additional therapy was ordered by Dr. Chicoine and Claimant was instructed to continue her off-work status. Claimant's pain was not significantly improved by her visit of December 1, 2006 and a lumbar MRI was ordered.

5. A lumbar MRI of December 8, 2006 revealed an incidental finding of a likely ovarian cyst but was negative for lumbar pathology. Dr. Chicoine noted the normal MRI and recommended more aggressive physical therapy.

6. Claimant reported increased pain during her evaluation of December 29, 2006. Dr. Chicoine referred Claimant to Michael O. Sant, M.D., for consultation and documented that Claimant's SI joints were mildly tender. Pending the evaluation by Dr. Sant, Dr. Chicoine performed a urinalysis to rule out infection and referred Claimant to chiropractic treatment to address facet joint pain as he felt that Claimant had reached maximum benefit from 20 physical therapy sessions.

7. Claimant's course of physical therapy spanned from November 21, 2006 through January 15, 2007. At the initial visit, Claimant completed a questionnaire and pain drawing in which she reported symptoms in her right buttock and right lower extremity. Multiple therapy notes reflect symmetrical SI joints. Pain to the left hip and ilio-lumbar area was noted in late December of 2006 and early January of 2007 by the physical therapist.

8. Dr. Chicoine's final visit with Claimant was on January 30, 2007, at which time Claimant reported ongoing low back pain with no improvement from chiropractic treatment or physical therapy. Dr. Chicoine described subjective lumbo-sacral tenderness and provided a diagnosis of lumbo-sacral strain. Claimant was instructed to follow up with Dr. Sant for further evaluation and treatment.

9. Dr. Chicoine made reference to a consultation with or referral to Dr. Sant in four chart notes from December 29, 2006 through January 30, 2007, and indicated on January 5, 2007 that he received authorization for the referral to Dr. Sant. Dr. Chicoine was aware of Claimant's normal lumbar MRI findings when the referral to Dr. Sant was made.

10. Allan R. Wilson, M.D., orthopaedic surgeon, reviewed medical records and evaluated Claimant on January 30, 2007 at the request of Defendants. Dr. Wilson diagnosed lumbago and a forward flexed posture of unclear etiology. He noted functional pain behaviors

and subjective complaints that were inconsistent with objective findings and normal physical examination. He opined that Claimant did not require additional diagnostic testing or treatment as the result of her industrial injury, and that Claimant did not have permanent impairment associated with her injury. Dr. Wilson commented on Claimant's flat affect and felt that she might be demonstrating signs of depression. He confirmed that past treatment was reasonable and that there was no indication of pre-existing injury or degenerative conditions impacting Claimant's condition.

11. Dr. Sant is board certified in physical medicine and rehabilitation. He evaluated Claimant on February 20, 2007 and diagnosed sacroiliitis with pain localized to the left SI joint. Dr. Sant acknowledged that he was not sure what caused Claimant's pain to persist for so long after her injury, but recommended a fluoroscopically guided SI joint injection in hopes of getting the situation "turned around as soon as possible." He felt that the injection would provide diagnostic information and was hopeful that it would be of therapeutic value.

12. Defendants terminated medical care on January 31, 2007, based on the opinion of Dr. Wilson.

DISCUSSION AND FURTHER FINDINGS

13. Generally, an employee is entitled to reasonable medical treatment for a compensable injury. Idaho Code § 72-432(1). The determination as to whether or not a specific treatment is reasonable and required is determined by the employee's physician. Sprague v. Caldwell Transportation, Inc., 116 Idaho 720, 722, 779 P.2d 395 (1989). However, the employee bears the burden of proving that the condition for which treatment is sought is causally related to the compensable injury. Sweeney v. Great W. Transp., 110 Idaho 67, 71, 714 P.2d 36 (1986). 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). "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). No "magic" words are necessary where a physician plainly and unequivocally conveys his or her conviction that events are causally related. Paulson v. Idaho Forest Industries, Inc., 99 Idaho 896, 901, 591 P.2d 143, 148 (1979). A physician's oral testimony is not required in every case, and medical records may be utilized to provide "medical testimony." Jones v. Emmett Manor, 134 Idaho 160, 997 P.2d 621 (2000).

14. In the present case, there is no evidence that Claimant experienced pre-existing problems with her lumbar spine or sacro-iliac area. There is no evidence or assertion that Claimant sustained a subsequent intervening injury. Medical reports reflect that Claimant may have an ovarian cyst and may suffer from depression, but Claimant is not alleging these conditions are related to her injury. Although Claimant's lumbar spine has been worked up and treated, diagnostic studies were not performed to confirm or rule out the existence of an injury to the sacro-iliac area. Accordingly, the crux of the dispute is whether or not Claimant's injury extends to include on-going symptoms associated with sacroiliitis and, if so, whether the proposed treatment by Dr. Sant is necessary and reasonable.

15. Dr. Chicoine offered no opinion as to why Claimant's symptoms of low back and SI joint pain failed to resolve with medication, physical therapy, time off from work and chiropractic treatment. However, he did not determine that Claimant was medically stable and indicated on multiple occasions that an evaluation and additional treatment by Dr. Sant would be appropriate.

16. Dr. Sant's report reflects an understanding of Claimant's mechanism of injury and subsequent course of treatment. He recommended a fluoroscopically guided SI joint injection for the purpose of getting a definitive amount of medication into Claimant's left SI joint for both diagnostic and therapeutic purposes. Although Dr. Sant's report does not specifically address causation of Claimant's ongoing symptoms, other than to acknowledge that he "is not sure what has gone on to cause [Claimant's] pain to be persistent this long out from her initial injury", the totality of his report is sufficient to establish that he believes that the next step to treat Claimant's injury is to perform the proposed injection. There is no indication in the report from Dr. Sant, or any other physician, that the SI joint complaints are fabricated or the result of anything other than the industrial injury.

17. The report of Dr. Wilson is consistent with the normal lumbar MRI findings but fails to address sacroiliitis. Although Dr. Wilson correctly articulated Claimant's mechanism of injury and accurately outlined Claimant's subsequent medical treatment, he did not provide an addendum report or otherwise address the recommendation of Dr. Sant which was made after Dr. Wilson's evaluation. Dr. Wilson indicated that Claimant did not have tenderness over the SI joint at the time of his evaluation which is inconsistent with Dr. Sant's findings and the multiple reports of SI joint symptoms by Dr. Chicoine.

18. The referral to Dr. Sant by Dr. Chicoine was properly made prior to the evaluation by Dr. Wilson and Dr. Chicoine obtained approval (presumably from Surety) for an evaluation by Dr. Sant. The fluoroscopically guided SI injection constitutes necessary and reasonable treatment for Claimant's industrial injury.

CONCLUSIONS OF LAW

1. Claimant's compensable injury of November 16, 2006 consists of a lumbar sprain/strain and extends to include sacroiliitis.

2. Claimant's condition is not the result of a pre-existing or subsequent injury/condition.

3. Claimant is entitled to reasonable and necessary medical care at the direction of Dr. Sant, including a fluoroscopically guided sacro-iliac injection.

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 4 day of March 2008.

INDUSTRIAL COMMISSION

/s/ Susan Veltman, Referee

ATTEST:

/s/ Assistant Commission Secretary

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Claimant,)	IC 2006-527287
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v.)	
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COVENANT DOVE, INC.,)	
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Employer,)	
)	ORDER
)	
EMPLOYERS INSURANCE)	
COMPANY OF WAUSAU,)	
)	March 11, 2008
Surety,)	
)	
Defendants.)	
_____)	

Pursuant to Idaho Code § 72-717, Referee Susan Veltman 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 recommendations of the Referee. The Commission concurs with these recommendations. 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's compensable injury of November 16, 2006 consists of a lumbar sprain/strain and extends to include sacroiliitis.
2. Claimant's condition is not the result of a pre-existing or subsequent injury/condition.
3. Claimant is entitled to reasonable and necessary medical care at the direction of Dr. Sant, including a fluoroscopically guided sacro-iliac injection.

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

DATED this __11_ day of ____March_____, 2008.

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 __11__ day of __March_____, 2008, a true and correct copy of the foregoing **Findings, Conclusions and Order** was served by regular United States Mail upon each of the following persons:

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jkc

_____/s/_____