

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

ANTHONY DAHMER, )  
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 Claimant, )  
 )  
 v. )  
 )  
 BUCK KNIVES, )  
 )  
 Employer, )  
 )  
 and )  
 )  
 WAUSAU UNDERWRITERS INSURANCE )  
 COMPANY, )  
 )  
 Surety, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

**IC 2006-005272**

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

Filed April 30, 2008

**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 Coeur d'Alene on November 15, 2007. Claimant was present and represented by Starr Kelso of Coeur d'Alene. E. Scott Harmon of Boise represented Employer/Surety. Oral and documentary evidence was presented. One post-hearing deposition was taken, the parties submitted post-hearing briefs, and this matter came under advisement on March 21, 2008.

**RECOMMENDATION - 1**

## **ISSUE**

The sole issue to be decided by the Commission as the result of the hearing is whether Claimant is in need of a left shoulder surgery and, if so, whether the need for the surgery is the result of his industrial accident.<sup>1</sup>

### **CONTENTIONS OF THE PARTIES**

Claimant contends that not only did he injure his right shoulder in an industrial accident, but that he injured his left shoulder as well. The reason he did not report this injury sooner than he did is because his right shoulder was masking the pain in his left shoulder. Once his right shoulder was surgically repaired and began to heal, he began to pay more attention to the pain his left shoulder was causing. Finally, Claimant's treating physician for his right shoulder has supplied the necessary medical causation opinion, and the Commission should reject the opinions of Defendants' IME physician.

Defendants respond that Claimant is a poor historian and his treating physician has relied solely on Claimant's version of events to reach his opinion regarding causation. There is too wide of a gap between Claimant's accident and his first report of pain in his left shoulder, and that gap provided their IME physician the basis for his opinion that Claimant did not injure his left shoulder when he injured his right shoulder. In any event, according to their medical expert, there is nothing wrong with Claimant's left shoulder that requires surgery.

### **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. The testimony of Claimant taken at the hearing;

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<sup>1</sup>On February 19, 2008, Claimant filed a Notice of Issue Withdrawal, wherein he withdrew the issue of whether Claimant should be allowed to be evaluated by a neurosurgeon as recommended by his treating physician for his neck and back problems, on the ground that subsequent to Dr. Stevens' deposition, Defendants authorized the evaluation.

2. Joint exhibits<sup>2</sup> A-I admitted at the hearing;
3. The pre-hearing deposition of Adam J. Olscamp, M.D., taken by Claimant on October 29, 2007; and
4. The post-hearing deposition of J. Craig Stevens, M.D., taken by Defendants on November 30, 2007.

All objections made during the taking of the above depositions are overruled.

After having considered all the above evidence and the briefs of the parties, the Referee submits the following findings of fact and conclusion of law for review by the Commission.

#### **FINDING OF FACT**

1. Claimant was 27 years of age and resided in the Coeur d'Alene area at the time of the hearing. He was receiving Social Security Disability for Charcot-Marie-Tooth disorder.

2. On February 16, 2006, Claimant was employed in blade preparation for Employer, Buck Knives. He was carrying finished blades on trays and describes his injury as follows:

I was walking to the pallet, and I slipped. And as I slipped, I reached up to balance myself, but I caught my hand on this shelf and then I fell. And I was still holding the trays. And when I fell, I let go of the trays. And I had to brace myself, push myself back up, because I couldn't get my hand off the shelf because it got caught in the grates. And then I picked up the blades - -

Hearing Transcript, p. 21.

3. Claimant felt immediate, intense pain in his neck and right shoulder. He did not notice any left shoulder pain at the time. He rated his right shoulder pain at 10/10. A maintenance worker took Claimant to North Idaho Immediate Care Center (NIICC) in Post Falls. There, Dr. Hjeltness recorded a history of Claimant slipping at work and, "He fell forward with

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<sup>2</sup> The Referee appreciates the effort of counsel in preparing joint exhibits.

his right arm being forced into a hyperextension at the shoulder as he was supported by the bench next to him.” Exhibit B, p. 2. He was diagnosed with a right shoulder strain, treated with a muscle relaxant and an anti-inflammatory, and was to return in one week.

4. Claimant continued to follow up at NIICC with no improvement to his right shoulder. He was placed on light duty at work but was eventually terminated because certain medications made him drowsy and he was caught sleeping while on the job. In an April 26, 2006, office note from NIICC, it was reported that Claimant had been in physical therapy for six weeks and was feeling 70% better. On May 10, 2006, Claimant reported that the physical therapy was making his right shoulder AC strain worse. He was given a Kenalog/Marcaine injection with complete relief of his symptoms. On May 23, 2006, Claimant reported that his right shoulder pain had flared up again in physical therapy. The attending physician discontinued physical therapy and Claimant was to call for a follow-up appointment if necessary, after a pending surety-scheduled second opinion. Claimant never returned to NIICC.

5. On June 5, 2006, Claimant saw J. Craig Stevens, M.D., a physiatrist, at Surety’s request for a second opinion regarding his right shoulder. Dr. Stevens physically examined Claimant’s right shoulder and determined an MRI was necessary to determine whether there may be a labral or rotator cuff tear. Dr. Stevens recorded, “I strongly suspect that the MRI will not reveal traumatic features and he will most likely be granted a full work release, likely against his wishes.” Exhibit F., p. 50. Claimant testified at the hearing that he had no idea why Dr. Stevens made the comment about returning to work because Claimant has always wanted to be able to work again. In any event, the MRI did indeed reveal a small tear in the infraspinatus, so Dr. Stevens referred Claimant to Douglas P. McInnis, M.D., an orthopedic surgeon.

#### **RECOMMENDATION - 4**

6. Because Dr. McInnis does not treat shoulder problems, Claimant came under the care of Adam J. Olscamp, M.D., another orthopedic surgeon in Dr. McInnis' clinic who does treat shoulder conditions. On September 1, 2006, Claimant underwent a right shoulder rotator cuff repair at the hands of Dr. Olscamp.

7. Claimant participated in physical therapy post-surgery beginning September 19, 2006. At that time, Claimant reported significant pain in his right shoulder and the inability to "do anything at all" with his right upper extremity. By October 9, 2006, the physical therapy notes indicate that Claimant was still using the sling for his right shoulder 24 hours a day, 7 days a week. Claimant was also sleeping poorly secondary to right shoulder pain. On November 8, 2006, Claimant told his therapist that his left shoulder was now hurting more than his right shoulder. On November 9, 2006, Dr. Olscamp noted that Claimant's right shoulder was "dramatically better" but, "His left shoulder is bothering him a great deal and I think that at this stage he should undergo left shoulder MRI given that he has some crepitus in the left shoulder as well as similar symptoms that he had on the right." Exhibit E, p. 39.

8. On April 17, 2007, Dr. Stevens saw Claimant again for an IME at Surety's request. Dr. Stevens opined that there was no objective abnormality in Claimant's left shoulder and an MRI was not necessary.<sup>3</sup> He further opined that even if an MRI showed left shoulder pathology, such could not be related to Claimant's industrial accident because Claimant did not relate left shoulder pain for a "prolonged period of time" post-accident. Dr. Stevens concluded, "I suspect that he may have very low-grade impingement phenomenon on the left, but that was not caused or aggravated by this work injury." Exhibit F, p. 55. Surety denied payment for the left shoulder MRI.

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<sup>3</sup> It should be noted here that Dr. Stevens said the same thing about Claimant's right shoulder, but recommended a right shoulder MRI nonetheless.

9. Claimant borrowed money to obtain a left shoulder MRI in May 2006. The MRI was “an essentially unremarkable exam.” Exhibit C, p. 30. Nevertheless, Dr. Olscamp believes Claimant has a subacromial impingement not detected by the MRI and recommends an arthroscopic surgery to explore the cause of Claimant’s continuing left shoulder complaints. Surety has denied Dr. Olscamp’s request.

### **DISCUSSION AND FURTHER FINDINGS**

Idaho Code § 72-432(1) obligates an employer to provide an injured employee reasonable medical care as may be required by his or her physician immediately following an injury and for a reasonable time thereafter. It is for the physician, not the Commission, to decide whether the treatment is required. The only review the Commission is entitled to make is whether the treatment was reasonable. *See Sprague v. Caldwell Transportation, Inc.*, 116 Idaho 720, 779 P.2d 395 (1989). 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).

However, as Defendants point out, the issue here is not only the reasonableness of the care recommended by Dr. Olscamp, but also whether the recommended care is related to the industrial accident. *See Henderson v. McCain Foods, Inc.*, 142 Idaho 559, 565, 130 P.3d 1097, 1103 (2006).

### **RECOMMENDATION - 6**

As is not uncommon in contested workers' compensation cases, there is a significant difference of opinion between the two medical experts in this case.

**Dr. Stevens**

10. Dr. Stevens is board-certified in physical medicine and rehabilitation, as well as electrodiagnostic medicine and by the American Board of Independent Medical Examiners. He practiced and taught in his specialties on the east coast for about 20 years until coming to Northern Idaho in 1998. He sees patients about one-half the time and conducts IMEs the other one-half with about 80% being for the defense and 20% for claimant/plaintiffs.

11. Dr. Stevens performed an IME regarding Claimant's left shoulder on April 17, 2007. Dr. Stevens testified as follows regarding causation:

Q. (By Mr. Harmon): And your opinion is again?

A. More probable than not he did not sustain any left shoulder condition as the result of his injury. And I believe that I addressed that in the conclusions of the second IME, and based that conclusion in part on the absence of any left shoulder symptoms described in the early post-injury time frame. Mechanism of injury, well, he was describing over-use. I find that to be an unlikely cause for a pathologic condition other than aching muscles, if one is over using.

. . .

Q. (By Mr. Kelso): Doctor, let's take a look at your IME report under "Diagnosis," Page 4, April 17, 2007. It indicates, "The diagnosis that it relates to Mr. Dahmer's left shoulder is that he exhibits a normal examination of the left shoulder. While he may have underlying mild impingement, that is a preexisting factor and does not elate [*sic*] to the specific date of injury of February 16, 2006."

Correct?

A. Correct.

Q. What is the preexisting factor? Where do you delve that prior to February 16, 2006, Mr. Dahmer had a mild impingement on his left shoulder?

A. Just a supposition that he may have a mild impingement. It's not apparent on his physical exam, but based just on his symptoms.

Dr. Stevens Deposition, pp. 17, 54-55.

## **Dr. Olscamp**

12. As one might expect, Dr. Olscamp disagrees with Dr. Stevens' assessment of Claimant's condition. Dr. Olscamp is a board-certified orthopedic surgeon who has practiced in Coeur d'Alene since 1996. He is familiar with the standard of care for orthopedic surgeons in his community. Dr. Olscamp recommended the left shoulder MRI that Claimant obtained with his own funds and related the need therefor to his industrial accident primarily because Claimant was not having any left shoulder problems until the right shoulder was injured and being treated. Further, even though the left shoulder MRI did not reveal any obvious pathology such as a torn rotator cuff, Dr. Olscamp testified that because Claimant's left shoulder is "still killing him," the MRI yielded a false negative.

13. Dr. Olscamp summarizes the basis for his opinion regarding the need to perform an exploratory arthroscopy on Claimant's left shoulder this way:

Q. (By Mr. Kelso): Okay. And for the sake of probably redundancy, could you explain for the record the basis for that opinion?

A. Well, he did not state his left shoulder injury was bothering [*sic*] when I first saw him in July of 06. He certainly did complain that his left shoulder was bothering him as I followed him up after fixing his right shoulder. As you point out, didn't seem to be malingering or overstating his problems. He told me that his shoulder started hurting - - his left shoulder started hurting about the same time as his right when he had the fall at work. I had no reason to doubt that that was true. And while his MRI is normal, at least from a - - my reading of it, and the radiologist's reading of it - - again an MRI has a reasonably high level of false negative results. He has got ongoing pain for more than two years. And in somebody in his age group that's pretty unusual so I think it is probably a reasonable thing to diagnostic [*sic*] - - arthroscopy on his shoulder to find out why.

Dr. Olscamp Deposition, p. 24.

14. The Referee agrees with Dr. Olscamp. It is difficult to understand why Claimant would "make up" his left shoulder pain. In spite of Defendants' assertion that Claimant is a poor

historian regarding his work history and living arrangements, he credibly testified that he enjoys working and would like to return to the workforce but for his left shoulder pain. More likely than not, he injured his left shoulder in his fall<sup>4</sup> (perhaps minor in nature) and failed to timely report it because of the more serious (and painful) injury to his right shoulder. There is no evidence that Claimant had any pre-existing left shoulder problems or suffered any subsequent injury (other than perhaps in physical therapy – see below). The course of treatment for his right shoulder was lengthy and it is reasonable to infer that his right shoulder pain was masking his left shoulder pain. Claimant described in some detail at hearing how the exercises in physical therapy for his right shoulder aggravated the pain in his left shoulder<sup>5</sup> to the point where the physical therapist noted that his left shoulder hurt more than the right. Even Dr. Stevens mentioned “overuse” of the left shoulder, although he found that to be an unlikely cause for any pathology.

15. The Referee finds that Claimant injured his left shoulder on February 16, 2006, and the treatment recommended by Dr. Olscamp is reasonable and directly related to his industrial accident.

### **CONCLUSION OF LAW**

Claimant has proven he is entitled to the treatment recommended by his treating physician, Dr. Olscamp.

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<sup>4</sup> Claimant struggled somewhat at hearing describing the “exact” mechanism of his fall.

<sup>5</sup> Even if Claimant had not injured his left shoulder at the time of his accident, an injury to that shoulder in physical therapy for his right shoulder would still render Defendants liable under the compensable consequences doctrine, assuming medical causation was proven.

**RECOMMENDATION**

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

DATED this \_\_23<sup>rd</sup>\_\_ day of April, 2008.

INDUSTRIAL COMMISSION

\_\_\_\_\_/s/\_\_\_\_\_  
Michael E. Powers, Referee

ATTEST:

\_\_\_\_\_/s/\_\_\_\_\_  
Assistant Commission Secretary

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**IC 2006-005272**

**ORDER**

Filed April 30, 2008

Pursuant to Idaho Code § 72-717, Referee Michael E. Powers submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusion 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 conclusion of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant has proven he is entitled to the treatment recommended by his treating physician, Dr. Olscamp.

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

DATED this \_\_30<sup>th</sup>\_\_ day of \_\_April\_\_, 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 \_\_30<sup>th</sup>\_\_ day of \_\_April\_\_ 2008, a true and correct copy of **FINDINGS, CONCLUSION, AND ORDER** were served by regular United States Mail upon each of the following:

STARR KELSO  
PO BOX 1312  
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SCOTT HARMON  
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\_\_\_\_/s/\_\_\_\_\_