

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BRYAN LARREA,)
)
 Claimant,)
)
 v.)
)
 IRON EAGLE EXPRESS, INC.,)
)
 Employer,)
)
 and)
)
 LIBERTY NORTHWEST INSURANCE)
 CORPORATION,)
)
 Surety,)
 Defendants.)
 _____)

IC 2007-006279

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

Filed: May 2, 2008

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Rinda Just, who conducted a hearing in Boise, Idaho, on September 11, 2007. Richard S. Owen of Nampa represented Claimant. E. Scott Harmon of Boise represented Defendants. The parties submitted oral and documentary evidence. The parties took no post-hearing depositions, but did submit post-hearing briefs. The matter came under advisement on December 12, 2007, and is now ready for decision.

ISSUES

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

1. Whether Claimant has complied with the notice limitations set forth in Idaho Code § 72-701 through Idaho Code § 72-706, and whether these limitations are tolled pursuant to Idaho Code § 72-604; and
2. Whether Claimant suffered an injury from an accident arising out of and in the

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course of employment on the date specified in the Complaint.

All other issues are reserved.

CONTENTIONS OF THE PARTIES

Claimant asserts that he slipped and fell while unloading his trailer in Secaucus, New Jersey, on November 6, 2006, and that he notified Employer of the accident and injury within sixty days as required by Idaho Code § 72-701.

Defendants argue that Claimant has failed to carry his burden of proving that he sustained an injury from an accident on November 6, 2006. Defendants further contend that if Claimant's alleged accident and injury occurred in July 2006 or September 2006, as asserted in some of the exhibits, that Claimant did not provide timely notice of the accident and injury to Employer as required by Idaho Code § 72-701.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant and Nikki Larrea, taken at hearing;
2. Joint Exhibits A through N admitted at hearing;
3. Exhibit O, offered by Claimant and admitted at hearing; and
4. The Industrial Commission legal file, and in particular, the Memorandum Memorializing Administrative Case History Search for Claimant Bryan Larrea, filed September 18, 2007.

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. At the time of hearing, Claimant was forty-four years of age. He was born and raised in the Treasure Valley, and dropped out of school after completing the ninth grade.

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2. Claimant is a long-haul trucker and does not maintain a permanent residence. He receives mail at his mother's home in Nampa, Idaho. Claimant is married, and his wife, Nikki, travels with him.

3. Claimant's work history is sketchy, but after quitting school he worked off and on for his father, who operates a hay hauling business. During the times that he was not employed by his father, he had various jobs—working at a carwash, building trusses, and driving tractor-trailer for several long-haul trucking firms.

4. At hearing, it was evident to the Referee that Claimant had difficulty reading. He testified that “[i]t's all blurry to me.” Tr., p. 26. It remains unclear to the Referee whether Claimant has a vision problem, is functionally illiterate, or has some other disability that affects his ability to read and comprehend, as such explanations are at odds with the fact that Claimant possesses a CDL (commercial drivers' license), which requires both a written test and regular medical exams.

5. Claimant went to work for Employer in December 2005 as a driver. He operated a refrigerated tractor-trailer unit carrying loads throughout the lower forty-eight states. Nikki accompanied Claimant on all his travels. She testified that she did “[e]verything but drive.” *Id.*, at p. 100. Claimant testified that Nikki “did all my paperwork for me and all my phone calling for me . . .” *Id.*, at p. 20. Claimant confirmed at hearing that much of the work-related paperwork offered into evidence was in Nikki's handwriting and that she had prepared it.

6. Claimant testified that Nikki kept his governmentally mandated daily drivers' logs, and Nikki testified that Claimant completed his own logs. Both testified that the logs had been falsified in order to comply with regulatory requirements and Employer's policies and were not a reliable record of their travels. On October 24, 2006, Employer warned Claimant that his company paperwork was incomplete and that his logs were “deficient in information and

signatures.” Claimant was given an opportunity to attend a refresher course in log procedures. Ex. G, p. 70.¹

7. Claimant was not required to “lump,” *i.e.*, load and unload his own cargo. Pallets of freight were ordinarily loaded by the shipper and unloaded by the recipient. Claimant testified that on November 6, 2006, he decided that he and Nikki would unload the trailer themselves at a drop in Secaucus, New Jersey. Claimant testified that he was running late for the delivery and his next appointment and believed that he and Nikki could unload faster than if they waited for the lumpers. Claimant stated that because the trailer was refrigerated, the floor was slippery, and when he attempted to move a pallet of cargo with a pallet jack, he slipped and fell, landing on his right side on the trailer floor. After getting to his feet, he finished unloading the cargo. Nikki testified that at the time of Claimant’s fall, she was out of the trailer, on the loading dock, breaking down the pallets, and that she observed the fall.

8. Claimant could not state with any assurance that he had personally spoken with anyone at Employer’s dispatch offices regarding the incident in Secaucus, but believed that Nikki had done so. Nikki testified that she personally spoke with dispatchers on November 6 about the incident, and informed them that Claimant had sustained an injury as a result of the

¹ Exhibit G (Claimant’s personnel file) was admitted at hearing over the objection of Claimant who asserted that it was not a medical record and contained hearsay. “Strict adherence to the rules of evidence *is not* required in Industrial Commission proceedings and admission of evidence in such proceedings is more relaxed.” *Hagler v. Micron Technology, Inc.*, 118 Idaho 596, 598, 798 P.2d 55, 57 (1990) (emphasis in original). The Commission should have the discretionary power to consider any type of reliable evidence having probative value, even though that evidence may not be admissible in a court of law. *Stolle v. Bennett*, 144 Idaho 44, 156 P.3d 545 (2007). Included in the exhibit at page 70 is a document that records a number of occasions on which job performance issues were noted and customer complaints were recorded. While there was no testimony offered at hearing as to how the document came into existence, the specificity with which dates, times, names, and incidents are discussed strongly suggests that it was created from an original source where the events had been contemporaneously recorded. Because the document bears indicia that it was created in the normal course of business, captured contemporaneous documentation, and has probative value, the Referee deems it sufficiently reliable for consideration in deciding this matter.

fall. According to Employer's records, Claimant or his wife were in contact with Employer on November 8, November 16, November 17, November 24, November 27, November 30, and December 1, 2006. The entries document a number of behavioral and job performance problems, but are notably lacking in any mention of an accident or injury. *Id.*

9. According to Claimant's daily driver logs, he stopped for the night in Secaucus, New Jersey at 8:00 p.m. on November 5, 2006, and was in the sleeper until midnight. Ex. L, p. 116. On November 6, he remained in the sleeper until 10:00 a.m. The log indicates that Claimant and his wife unloaded the freight on the morning of November 6 from 10:00 a.m. until 10:30 a.m., then drove for an hour and three-quarters until 12:15 p.m. He remained on-duty but not driving from 12:15 p.m. until 12:30 p.m., was off duty for an hour, and then in the sleeper from 1:30 p.m. until midnight. *Id.*, at p. 117. The following day, November 7, the log indicates that Claimant was in the sleeper the entire twenty-four hour period. *Id.*, at p. 118. Claimant remained in the sleeper until 10:00 a.m. on November 8--a total of forty-four hours and thirty minutes according to the logs. When he returned to duty on November 8, he was in Vineland, New Jersey. Claimant could only speculate as to why he was off duty for such an extended period of time. Tr., p. 37, lines 6-25. According to the Employer's record, dispatch contacted Claimant about a load on November 8. Nikki answered, advised dispatch that Claimant was "out of hours, and has to take 34 hours off," then hung up and turned off the phone. *Id.*

10. According to the daily log, Claimant made his way west from New Jersey over the ensuing days until November 12, where the logs terminate following a five-and-a-half hour drive from Walnut, Iowa. There are no logs covering the period from 11:00 a.m. on November 12 until November 21, at which time there is a partial-day log that ends at 3:45 p.m. Claimant testified that between November 12 and November 21 he continued to work his way back to Nampa. The log for November 21, 2006, indicates that he arrived in Nampa around 12:30 a.m.,

and then left an hour later heading toward Oregon. Nikki testified that they did a short turn-around in Nampa and then headed to California with a Thanksgiving load, returning to Nampa on December 1 or 2.

11. Claimant presented at the emergency department of St. Luke's Meridian Medical Center (SLMMC) on December 3, 2006. Murray B. Sturkie, D.O., was the treating physician. According to the chart note, Claimant and his wife provided the history. Claimant has no independent recollection of his visit to the ER on December 3. He testified that Nikki would have supplied any information contained in the medical records. Nikki testified that she told the nurses and Dr. Sturkie that Claimant's injury was the result of a slip and fall while unloading freight. Tr., p. 122.

12. According to the medical records, Claimant's chief complaint was "[h]ip pain: non traumatic." Ex. C, p. 3. More particularly the note states: "Chief complaint/quote: 'I've been having problems with my hip. I drive 700 miles a day driving truck and it's really bothering me.'" *Id.* The record also reflects that Claimant denied having back pain or numbness or tingling radiating into his leg. *Id.*, p. 6. X-rays of the right hip were negative for acute fracture or subluxation. Claimant received an intramuscular injection and a prescription for pain medication. He was advised to take over-the-counter anti-inflammatories, and to follow up with an orthopedist if he did not improve with medication.

13. On December 4, 2006, Claimant and his wife met with Employer and other company representatives. The record is not clear whether Employer called the meeting or whether Claimant and his wife came to the office and a meeting ensued. Nikki testified that she and Claimant went to Employer's office to inform Employer of Claimant's November 6 injury and to show Employer the medical records from SLMMC. Records in Claimant's personnel file reflect that he was discharged on December 4, and a subsequent letter discussed the substance of

the December 4 meeting and confirmed Claimant's discharge from employment for reasons related to his performance, his conduct, and the conduct of his wife.

14. Claimant returned to the emergency room at SLMC on December 5. His wife accompanied him. The chart note for that date states in relevant part:

A 43-year-old male presents to the emergency department today because of continued problems of pain in his right hip. The patient denies any specific injury. He was seen here 2 days ago by Dr. Murry [sic] Sturkie, and was prescribed tramadol for pain. The patient denies any particular injury or trauma. He is a long distance truck driver, drives about 700 miles a day. He has been having pain for several weeks. He denies any back pain, denies any history of disk disease in his back. He denies any numbness or tingling weakness in his right lower extremity. He did have x-rays done 2 days ago by Dr. Sturkie, that showed some calcifications at the hip joint, uncertain whether this could represent a loose body.

Id., at p. 14. The record also notes that Claimant requested stronger pain medication and had an appointment scheduled with Stanley Waters, M.D., an orthopedic surgeon, two days hence. Claimant received a prescription for Percocet and was directed to follow up with Dr. Waters.

15. Claimant saw Dr. Waters on December 7. Nikki testified that she filled out the new patient intake forms. Ex. E, pp. 38-41. The date of injury that appears on the patient intake forms is September 15, 2006. At hearing, Nikki testified that she did not have her detailed trip notes with her when she filled out the form, so she just estimated when the accident occurred. The chart note itself recounts a patient history of a fall in July 2006 where Claimant landed on his right hip.² At hearing, neither Claimant nor Nikki was able to explain how or why the July 2006 date made its way into the chart note. Dr. Waters diagnosed right-sided sciatica and mild right hip trochanteric bursitis. He ordered an MRI and refilled Claimant's prescription for Percocet.

² There was much confusion at hearing about Dr. Waters' notes because they described a fall in 2005 and a fall in July 2006. A careful review and comparison of the typed and handwritten notes supports the conclusion that the 2005 date was a transcription or typographical error, and that, in fact, Claimant only described one incident, which occurred in July 2006, where he slipped and landed on his right hip.

16. Also on December 7, Claimant signed a First Report of Injury or Illness report (Commission Form 1A-1). Nikki filled out the form at the Commission offices and filed it with the Commission the same day. The date of injury appears on the form as 09-15-06 – 12-03-06, with the time of the injury noted to be 7:30 p.m. In preparing the Form 1A-1, Nikki listed the date that Employer was notified as December 4, 2006. The activity engaged in at the time of injury she states to be, “fell out of trailer, due to slippery because of icy floors,” and that the injury occurred “due to driving many miles. Nerve damage.” Ex. A, p. 1. Again, Nikki testified that she did not know the exact date of the injury without her notes, so she identified a time period within which the accident occurred. The Form 1A-1 does not include any information as to where the trailer was located geographically at the time of the accident.

17. Claimant had an MRI of his lumbar spine on December 8, 2006. As read by the radiologist, the MRI showed:

Degenerative disk disease at L4-5, broad-based bulge with superimposed bi-lobed right paracentral and right posterior disk extrusion with slight cephalad migration. This results in moderate proximal right neural foraminal stenosis with abutment of the exiting right L4 nerve root in the superior aspect of the right neural foramen. It also indents the ventral dural sac mildly right where the right L5 nerve root is expected to course out of the dural sac towards the subarticular recess. It does not result in central canal stenosis.

Ex. D., p 37. Otherwise, the MRI was normal.

18. Claimant did not return to Dr. Waters. Instead, he sought treatment by Samuel S. Jorgenson, M.D. Claimant first saw Dr. Jorgenson on December 20, 2006. Under the heading of “History,” the chart note states that Claimant sustained an industrial injury in September 2006. Following the accident, he had pain initially in his lumbar spine which slowly progressed into his leg. At the time of the visit, he attributed forty percent of his pain to his back and sixty percent of his pain to his leg. The note indicates that initially Claimant was treated conservatively, but following a positive MRI was referred to Dr. Jorgenson for a surgical consultation. The record

sheds no light on who might have referred Claimant to Dr. Jorgenson.

19. Following exam and a review of the imaging studies, Dr. Jorgenson diagnosed L4-5 disc extrusion and right lumbar radiculopathy:

The patient has symptoms consistent with his MRI findings and disc extrusion. Based on his history and MRI findings as well as presentation his symptoms are related to his industrial injury on a medically more probable than not basis.

Ex. F, p. 45. Dr. Jorgenson discussed treatment options, including injection therapy and surgical intervention. Claimant advised he was seeking authorization for coverage under workers' compensation and would return to discuss further treatment. In the meantime, he had returned to work for his father hauling hay and wished to continue driving.

20. Claimant returned to Dr. Jorgenson on January 2, 2007, but had not received a determination on his claim. During the visit, he reported he was taking up to 12 Percocet per day, and requested that the doctor increase his prescription from Percocet 5 to Percocet 10. Claimant returned on January 8 per Dr. Jorgenson's orders. His condition was unchanged and he had not yet had a determination on his claim. Dr. Jorgenson counseled that he could not continue to provide the level of narcotics that Claimant was using in order to continue working. He advised Claimant that he may have to quit driving if the driving was necessitating the high level of narcotic consumption.

21. Surety denied Claimant's claim by letter dated January 8. Claimant returned to Dr. Jorgenson on January 22 and advised him of the denial. Claimant had no non-industrial medical coverage. His condition was unchanged, treatment options were discussed, and Claimant was once again cautioned about his narcotic use.

22. In March 2007, Claimant went to work as a driver for Motor-West. Claimant testified that he was doing light duty, but did not explain why the position was considered light duty.

23. Dr. Jorgenson continued to monitor Claimant during visits on April 9, May 7, and June 20, 2007 while Claimant awaited the hearing on his claim. Dr. Jorgenson continued to recommend surgery, and continued to authorize prescription narcotic pain medication while at the same time cautioning Claimant about the risks of habituation.

24. Claimant is a poor witness. He was able to answer only the simplest questions unless led by his attorney. The consistently-leading questions engendered objections that the Referee noted were well-made, but overruled for the simple reason that it was apparent that without such questioning, it would be difficult to obtain Claimant's testimony. Claimant is not a reliable historian. Apart from the most basic personal information, he had virtually no independent recollection of the most fundamental elements of his claim.

25. Claimant's wife, Nikki, was marginally better as a witness than Claimant. While she was better able to comprehend and respond to questions, her testimony was disingenuous, inconsistent or contradictory, and defensive. Her explanation of the many inconsistencies between and among her testimony, Claimant's testimony, and the written record, were implausible. She was dismissive when medical records contradicted or failed to support her testimony, asserting that "all of these dictations are totally wrong." Tr., p. 141.

DISCUSSION AND FURTHER FINDINGS

26. At issue in this proceeding are two questions that are prerequisite to any finding of compensability. First, did the claimant sustain an injury as a result of an accident arising out of and in the course of his or her employment? And then second, if so, did he or she provide timely notice of the accident and injury to the employer?

27. Within the workers' compensation statutes, "accident" and "injury" are terms of art and have particular meaning:

“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(17)(b). “Injury” is defined by Idaho Code § 72-102(17)(a) and (c):

(a) “Injury” means a personal injury caused by an accident arising out of and in the course of any employment covered by worker’s [sic] compensation law.

* * *

(c) “Injury” and “personal injury” shall be construed to include only an injury caused by an accident, which results in violence to the physical structure of the body. The terms shall in no case be construed to include an occupational disease and only such nonoccupational diseases as result directly from an injury.

28. The claimant bears the burden of proof in a workers’ compensation case:

The claimant must prove not only that he was injured, but also that his injury was the result of an accident arising out of and in the course of his employment. His proof must establish a probable not merely a possible connection between cause and effect to support his contention that he suffered an accident.

Neufeld v. Browning Ferris Industries, 109 Idaho 899, 902, 712 P.2d 500, 603 (1985). As *Neufeld* suggests, the claimant’s burden is two-fold—not just that there was an accident and an injury, but that there was medical cause and effect between the accident and the injury. This second part of the proof requirement is further explicated in *Hart v. Kaman Bearing & Supply*, 130 Idaho 296, 299, 939 P.2d 1375, 1378 (1997):

The claimant carries the burden of proof that to a reasonable degree of medical probability the injury for which benefits are claimed is causally related to an accident occurring in the course of employment. Proof of a possible causal link is insufficient to satisfy the burden. The issue of causation must be proved by expert medical testimony.

(internal citations omitted). "In this regard, 'probable' is defined as 'having more evidence for than against.'" *Soto v. Simplot*, 126 Idaho 536, 540, 887 P.2d 1043, 1047 (1994).

29. Applying the stated law to the facts in this case, the Referee finds that Claimant has failed to meet his burden of proving that an industrial accident occurred on November 6, 2006. Further, Claimant has failed to prove that his protruding L4-5 disc was, to a reasonable

degree of medical probability, the result of the alleged industrial accident. Each of these findings is discussed with more particularity below.

ACCIDENT

30. From the outset of this proceeding, the parties have characterized it as turning on the credibility of Claimant and his wife. The parties devoted substantial time during the hearing to either highlighting or explaining away contradictions or inconsistencies. As discussed elsewhere in these findings, the Referee found that neither Claimant, nor his wife, were reliable and credible witnesses. The Referee had the opportunity during the hearing to observe both witnesses. At the time of the hearing, the Referee noted that, without the assistance of blatantly leading questions, Claimant could not answer crucial questions about his claim. He regularly deferred to his wife for the answers. Claimant had little independent recollection of significant events or details that were central to his claim. Claimant exhibited limited ability to place events into a chronology that could be compared to more reliable written records. Claimant's wife demonstrated better verbal and reasoning skills, but her testimony was rife with contradictions and inconsistencies. Both Claimant and his wife appeared agitated and had difficulty answering questions without going off on tangents. Getting a straight answer from either of them proved difficult for their own attorney as well as opposing counsel.

The unreliability of Claimant and his wife as witnesses also extends to much of the documentary evidence admitted into the record. Both Claimant and his wife testified that the drivers' logs were unreliable. Nikki's testimony also established that many of the forms she prepared, including the Form 1A-1 or medical intake forms, were not reliable.

31. An accident as defined by Idaho workers' compensation law must be reasonably located as to the time when and place where the accident occurred. Claimant stated that he unloaded his own load in Secaucus because he was going to be late for his next delivery.

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Although of questionable accuracy, the daily logs for November 5 and 6 suggests that Claimant spent the night in Secaucus and unloaded the following morning at 10:00 a.m. This is at odds with the Form 1A-1 that Nikki prepared and filed on December 7, 2006, wherein she identified the accident taking place at 7:30 p.m. Further, Nikki testified that it took about an hour or an hour-and-a-half for the two of them to unload the freight, but the log for that day indicates that it only took thirty minutes.

Nikki testified that she contacted Employer about the accident and injury on several occasions beginning on November 6. Although the Employer kept contemporaneous records of notable dealings with Claimant, the compiled information does not include any hint of an incident. Equally inexplicable is that on November 8, *after* Claimant had been off duty for forty-four consecutive hours, Nikki advised dispatch that Claimant was out of hours and could not drive until he had taken thirty-four hours off. The summary of the November 8 conversation makes no mention of an injury nor that there was any reason Claimant could not drive other than that he was out of hours. Finally, when preparing the Form 1A-1 on December 7, she indicated that Employer was notified on December 4.

32. Given the unreliability of the testimony, the driver's logs, and other documents prepared by Claimant and his wife, the medical records necessarily become some of the more probative evidence in this proceeding. According to the medical records, Claimant described a fall that occurred in July 2006, September 2006, or sometime between September and December 2006. Claimant stated at hearing that immediately following his fall, he experienced pain in his right hip. The earliest medical records also note that he was complaining of right hip pain and denying any back pain. At the same time, and contrary to his testimony at hearing, Claimant repeatedly denied that there was any traumatic event associated with his hip complaints. Again and again, he ascribed his right hip pain to the amount of driving that he did. By the time

Claimant saw Dr. Jorgenson, the medical records reflect a different history—a fall with *immediate* lumbar pain that eventually moved into Claimant’s right leg.

Medical professionals are not digital recorders. They do not take down everything that is said when seeing a patient. But successful treatment requires good data collection and accurate recording of relevant details of a patient’s complaints, history, and treatment. Every doctor who saw Claimant based their diagnosis and treatment upon Claimant’s reported history. Whether Claimant or his wife provided the history, it was entirely subjective and not subject to corroboration. Both Claimant and his wife have admitted to the unreliability of their information. Both Claimant and his wife denied telling the doctors that Claimant fell in July or September of 2006, yet those dates appear in the medical records. Nikki testified that she put a range of dates from mid-September to early December on some of the paperwork because she could not remember exactly when the slip and fall occurred. She clung to this position despite its implausibility:

Q [By Mr. Harmon] Ma’am, your husband testified in this – earlier this morning that you have a pretty good memory. Do you think that’s true?

A For the most part, yes.

Q Could you explain, then, why it is that three months – three weeks after the asserted dated [sic] of this accident you couldn’t remember whether it happened three weeks ago or four months ago?

A I had a lot of paperwork. My husband was in pain. I was dealing with him. Had a lot of stress.

Q And you couldn’t recollect whether that had been going on three weeks or four months, uh?

A That’s why I put in approximate estimated date.

Tr., p. 134. Medical professionals do not generally fabricate the substance of their medical dictation, and the Referee does not believe that they did so here.

33. Although Claimant presented a version of the accident, there are simply too many inconsistencies in the testimony, and too little reliable corroborative evidence in the record to say

with any certainty that Claimant had an industrial accident on November 6, 2006, in Secaucus, New Jersey.

MEDICAL CAUSATION

34. In addition to proving that there was an industrial accident that happened at a particular time and in a particular place, a claimant must also establish, by the use of medical evidence, that the injury of which he complains was likely caused by the industrial accident. Dr. Jorgenson's diagnoses and recommended treatment are not in question. However, his opinion on causation does not withstand scrutiny. Claimant's MRI findings may very well coordinate with his presenting symptoms. His imaging studies and presentation may be consistent with a fall on his right side. However, Dr. Jorgenson's opinion on causation presumes the existence of an industrial accident based solely on the Claimant's subjective history—a history that has varied substantially in all material respects and is demonstrably unreliable. As discussed at length herein, Claimant's account is unreliable standing alone and unverifiable using the documentary evidence submitted into evidence. Because the presumption upon which Dr. Jorgenson based his opinion is unfounded, so, too, is his causation opinion.

NOTICE

35. Because Claimant has failed to prove the predicate accident and injury, the Referee need not reach the issue of notice as required by Idaho Code § 72-701.

CONCLUSIONS OF LAW

1. Claimant has failed to carry his burden of proving that he suffered an injury from an accident arising out of and in the course of employment on November 6, 2006, as asserted in his Complaint.

2. Absent a compensable accident and injury, the issue of timely notice pursuant to Idaho Code § 72-701 is moot.

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RECOMMENDATION

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

DATED this 18 day of April, 2008.

INDUSTRIAL COMMISSION

/s/ _____
Rinda Just, Referee

ATTEST:

/s/ _____
Assistant Commission Secretary

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BRYAN LARREA,)
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 Claimant,)
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 Defendants.)
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IC 2007-006279

ORDER

Filed: May 2, 2008

Pursuant to Idaho Code § 72-717, Referee Rinda Just 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 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 carry his burden of proving that he suffered an injury from an accident arising out of and in the course of employment on November 6, 2006, as asserted in his Complaint.
2. Absent a compensable accident and injury, the issue of timely notice pursuant to

Idaho Code § 72-701 is moot.

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

DATED this 2 day of May, 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 2 day of May, 2008, a true and correct copy of the foregoing **FINDINGS, CONCLUSIONS**, and **ORDER** were served by regular United States Mail upon each of the following persons:

RICHARD S OWEN
PO BOX 278
NAMPA ID 83653-0278

SCOTT HARMON
PO BOX 6358
BOISE ID 83707-6358

djb

/s/ _____