

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

KEVIN SILLIN, )  
 )  
 Claimant, ) **IC 2006-530455**  
 v. )  
 )  
 ANDERSON FARMS, INC., ) **FINDINGS OF FACT,**  
 ) **CONCLUSIONS OF LAW,**  
 Employer, ) **AND RECOMMENDATION**  
 and )  
 )  
 IDAHO STATE INSURANCE FUND, )  
 ) **FILED MAY 23 2008**  
 Surety, )  
 Defendants. )  
 \_\_\_\_\_ )

**INTRODUCTION**

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned this matter to Referee Douglas A. Donohue. He conducted a hearing in Twin Falls on January 9, 2008. Dennis Petersen represented Claimant. M. Jay Meyers represented Defendants. The parties presented oral and documentary evidence. They took posthearing depositions and submitted briefs. The case came under advisement on April 22, 2008. It is now ready for decision.

**ISSUES**

According to the amended notice and by agreement of the parties, the issues are:

1. What injuries did Claimant suffer as a result of the industrial accident of November 18, 2006;
2. Whether Claimant is entitled to further medical care as a result of the accident of November 18, 2006 and the extent of that care;
3. Whether Claimant is entitled to temporary total disability (TTD) benefits as a result of the November 18, 2006 accident.

Other issues are reserved.

**RECOMMENDATION - 1**

## **CONTENTIONS OF THE PARTIES**

Claimant contends he injured his back in an accident after he blacked out while driving a truck. He is entitled to the medical care recommended by his treating physician, Dr. Samuel Jorgenson, M.D. Claimant is entitled to TTD benefits from February 5, 2007 forward.

Defendants contend Claimant is not credible. His back condition preexisted the accident. He did not complain of back pain for a long time after the accident. Surety has paid all medical bills for treatment related to the accident. Treatment for his low back is unrelated. Claimant's TTD claim is for a period of temporary disability unrelated to the accident.

## **EVIDENCE CONSIDERED**

The record in the instant case consists of the following:

1. Hearing testimony and deposition of Claimant;
2. Claimant's Exhibits 1 – 4;
3. Defendants' Exhibits A – J; and
4. Posthearing depositions of orthopedic surgeons Samuel Jorgenson, M.D., and David Verst, M.D.

The record was held open for receipt of certain medical records pertaining to Dr. Jorgenson. These were submitted as attachments to his deposition. All objections raised in the depositions 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 a truck driver for Employer. On November 18, 2006, his rig jackknifed and struck a railroad abutment. He was not wearing a seat belt. He struck his head

**RECOMMENDATION - 2**

and suffered injuries to his shoulder, knees, and abdomen – bruises, cuts, and abrasions.

2. The accident occurred shortly after 6:00 p.m. Claimant did not stay with the wrecked rig. He arrived home about 4:00 a.m. the next morning. Claimant first sought medical care shortly before 6:00 a.m. He presented at Minidoka Memorial Hospital. His major complaint was memory loss. Among other things, he complained of “soreness” in all extremities. CT of his head showed no acute fracture, edema, or other injury. CT of his cervical spine showed degenerative changes but no acute injury. Drug and alcohol screens were negative. Diagnosis included “cerebral concussion.” The ER report indicated Claimant could “return to work at once with no restrictions.” Employer fired Claimant.

3. Claimant cannot remember the events immediately preceding the accident. His memory of the hours before he arrived home is vague and incomplete.

4. On November 27, 2006, Claimant next sought medical treatment with his family physician, nurse practitioner Janet King. Her notes do not indicate any complaint or discussion about back pain. Claimant remembers the visit differently. In deposition, nurse King could not recall Claimant ever mentioning back pain to her. Her only contact with Claimant after November 27, 2006 occurred in a telephone call on January 26, 2007.

5. On February 5, 2007, Claimant next sought medical treatment. Nurse King had referred Claimant to Brent Gochnour, D.O. On that date, Claimant complained of back pain with radiculopathy. By history, Claimant reported he had back pain since immediately after the accident. Dr. Gochnour examined Claimant and ordered an MRI.

6. The MRI, taken April 11, 2007, has two reports, which were apparently dictated within minutes of each other on April 12, 2007. The second report is labeled an “Addendum” to the first and states, “The first report dictated on this patient is incorrect. Following is the

correct report.” Both reports show degenerative changes. The first reports significant S1 nerve root impingement on the right. The second reports greater degenerative changes at L4-5 and L5-S1 than the first, but does not report any clinically significant nerve root involvement.

7. On April 17, 2007, at Claimant’s request “so that he could get workers’ comp pay,” Dr. Gochnour provided Claimant a letter stating he was unable to work.

8. On April 30, 2007, Dr. Gochnour completed a “Lumbar Spine Residual Functional Capacity Questionnaire” in support of Claimant’s application for Social Security Disability. On June 4, 2007, Dr. Gochnour referred to this questionnaire as the basis for opining that Claimant was unable to drive truck, but could have worked light duty when Dr. Gochnour was treating him.

9. Claimant was referred to Dr. Jorgenson and first saw him on May 17, 2007. By history, Claimant did not reveal prior injuries or episodes of back pain. Dr. Jorgenson’s examination indicated lumbar nerve root impingement in the L4-S1 area. He restricted Claimant from work as of that date. The restriction was based entirely upon Claimant’s low back condition and not on his supposed “black out” or any other factors. Claimant’s condition was unchanged when he last examined him on December 12, 2007.

10. In deposition, Dr. Jorgenson admitted he had not seen the MRI but had merely read the report(s). He opined that Claimant’s low back condition likely was causally related to the November 18, 2006, accident. He acknowledged that having a fuller set of medical records “does raise a question as to the accuracy of the patient’s description of his back pain.” Dr. Jorgenson opined that the absence of any record of medical treatment for back symptoms between 2000 and 2006 supports his opinion of causation. The knowledge of prior back pain and treatment might cause Dr. Jorgenson to opine about apportionment, but would not change his

basic causation opinion.

11. Dr. Jorgenson recommended a repeat MRI before deciding upon any course of treatment, including any consideration of possible surgery.

12. On June 14, 2007, Dr. Verst evaluated Claimant at Defendants' request. He reviewed the MRI and found it to be of satisfactory quality. He opined Claimant's back condition was preexisting. He does not recommend surgery. He opined Claimant's belated reports of back pain are consistent with intermittent flare-ups resulting from the underlying and preexisting degenerative condition. He opined Claimant's back condition in late 2006 and/or early 2007 was unrelated to the accident. He recommended future treatment of "physical therapy and [a] work hardening program. Following this, I would declare his condition as MMI and back to base line."

13. In a July 30, 2007 letter, Dr. Verst opined Claimant did suffer myofascial pain from the accident.

#### **Prior Medical Care**

14. Claimant has suffered prior episodes of intermittent back pain. He sought medical treatment for it.

15. **1993.** Claimant visited James Luckock, D.C., six times for low back pain after a workers' compensation claim. Dr. Luckock's records also show four visits in 1994, and three in 1996.

16. **1998.** Claimant again saw Dr. Luckock in August for low back pain after a workers' compensation claim.

17. **1999-2000.** Claimant again saw Dr. Luckock in August for low back pain in January, February, and May of 1999. Richard Sandison, M.D., also treated Claimant's

back pain. In December 1999, Claimant reported associated left hip and leg pains with his low back pain. Claimant last saw Dr. Luckock on April 15, 2000.

18. **2001.** In December, Claimant wrecked another truck. He suffered only a left thigh contusion.

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

19. **Credibility.** Claimant suffered a concussion. His amnesia before and for hours after the accident does not affect his credibility for other periods of time. At hearing, Claimant's demeanor did not cause the Referee to significantly doubt Claimant's veracity. Claimant has been a poor historian when reporting to his doctors, but appeared forthright answering detailed questions at hearing. He did demonstrate memory lapses unrelated to the time of the accident. For example, although he described inquiring with the Veterans Administration (VA) about dental care in 1987 and claimed no contact since, Dr. Luckock's records show a 1997 authorization Claimant signed to have his record of low back treatment with Dr. Luckock released to the VA. Claimant's testimony, where inconsistent with the medical records or testimony of a physician, receives less weight.

20. **Causation.** 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).

21. Claimant's treating physicians' jobs have been made harder by Claimant's failure to provide complete and accurate information. Nevertheless, Claimant likely suffered mild, temporary, myofascial low back pain as a result of the accident. Claimant failed to show it likely that his degenerative condition was aggravated by the accident.

22. **Medical care.** Claimant's medical care for diagnosis and treatment of his low back was reasonably related to the accident. Moreover, Dr. Verst's recommendations for physical therapy and work hardening are reasonable.

23. Dr. Jorgenson's office's inability to get its computer to show the MRI is not a basis for a repeat scan. Dr. Verst was able to view the MRI. Moreover, a repeat MRI could only show Claimant's condition *now*, not near the time of the accident. This is not to say another MRI is *unreasonable*.

24. **TTDs.** Claimant's temporary disability, if any, appears to have originated at Claimant's request of Dr. Gochnour. Moreover, Dr. Gochnour reported Claimant was able to do light duty. Finally, Claimant failed to prove it likely that his temporary disability, if any, was related to the myofascial low back pain which was caused by the accident. It is much more likely that his temporary disability, if any, was related solely to the degenerative condition which has produced intermittent symptoms for many years. Claimant's fortunate respite from 2000 through 2006 does not indicate he had no degeneration, only that his symptoms, if any, were manageable without treatment by a physician.

### **CONCLUSIONS OF LAW**

1. Claimant likely suffered a temporary myofascial back strain without aggravation of his underlying degenerative condition as a result of the accident.

2. Claimant is entitled to medical care to date. Whether he is entitled to additional

medical care is undetermined because physicians have not separated the impact of the myofascial pain from the underlying degenerative condition.

3. Claimant failed to show it likely his lost work time was due to his myofascial pain from the accident.

### **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 16th day of May, 2008.

INDUSTRIAL COMMISSION

/S/ \_\_\_\_\_  
Douglas A. Donohue, Referee

ATTEST:

/S/ \_\_\_\_\_  
Assistant Commission Secretary



3. Claimant failed to show it likely his lost work time was due to his myofascial pain from the accident.

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

DATED this 23rd 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 23rd day of MAY, 2008 a true and correct copy of **FINDINGS, CONCLUSIONS, AND ORDER** were served by regular United States Mail upon each of the following:

Dennis R. Petersen  
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Idaho Falls, ID 83403-1645

M. Jay Meyers  
P.O. Box 4747  
Pocatello, ID 83205

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/S/ \_\_\_\_\_