

CONTENTIONS OF THE PARTIES

Claimant contends she suffers seizures as a result of being struck in the face by a falling valance at work on December 28, 2002.

Defendants contend the force of the accident was insufficient to cause seizures. Claimant did not lose consciousness as a result of the accident. She had a pre-existing condition which caused the seizures to appear after the accident.

EVIDENCE CONSIDERED

The record in the instant case consists of the following:

1. Hearing testimony of Claimant, her husband Ford Bortz, and Employer's representative Scott Auld;
2. Claimant's Exhibits 1 – 18;
3. Defendants' Exhibits A – J; and
4. Posthearing depositions of neurologists William Stump, M.D., and James Lea, M.D.

The exhibit to Dr. Lea's deposition and the deposition itself were pre-marked as Claimant's exhibits 19 and 20. These are admitted into evidence. 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 for Employer as a housekeeper on December 28, 2002. In the room she was cleaning, there was a plastic valance for a window blind. When she pulled its adjustment cord, it popped off its plastic wall-anchor and struck her on her face at her left cheek. (This "window" blind was actually affixed above the frame of a door which had a large

RECOMMENDATION - 2

glass windowpane in it.) This accident was witnessed by a co-worker.

2. At Employer's first aid station, the nurse noted a small abrasion with swelling on Claimant's left cheek. The time notation reported the accident occurred about 11:30 a.m.

3. Claimant's husband was unaware if Claimant suffered any seizure or was diagnosed with any seizure-related condition before the accident on December 28, 2002. He believes she did not and was not.

4. Claimant's husband arrived home after his work. Claimant complained of a headache, dizziness, and a feeling of déjà vu. She lay down. About 20 minutes later, she suffered a seizure. After a trip to the hospital, Claimant reported amnesia for the six months preceding the seizure. Her memory mostly returned, but Claimant's husband believes Claimant's memory has been "spotty" since. He believes she has also suffered additional seizures.

5. On December 29, 2002, a little after 6:00 p.m., an ambulance was dispatched to Claimant's home. She complained of nausea and a pounding heart. While the paramedics were there, she had her first seizure. She arrived at the emergency room at 7:24 p.m. She remained hospitalized for two days. Perhaps thanks to hurried handwriting of the word "window," hospital records mistakenly refer to the valance as being "wooden." Attending physician Bradley Schwartz, M.D., noted upon admission, "The patient's seizure appears to be related to her head trauma from yesterday. It is unusual that she had no loss of consciousness originally." CT scans of Claimant's head showed some atrophy of uncertain clinical significance and the scarring or sclerosis of the mesiotemporal lobe. MRI scans of Claimant's brain showed the mesiotemporal sclerosis affecting the right hippocampus. Treating physician Thomas Lawrence, M.D., noted at discharge, "It is probable that the injury

RECOMMENDATION - 3

to her head may have led to the sequence of events and certainly played a role in a lot of her medical treatment to this point.”

6. Claimant went from Bonner General to Kootenai Memorial Medical Center where she was treated by James Lea, M.D. By history, it was reported that she “was not knocked out but was dazed” by the accident. Moreover, the valance was now reported as being made of “oak.” Claimant’s lack of memory was noted. An EEG was normal. In his discharge summary, Dr. Lea noted, “With regards to the relationship of the injury and the seizures, it is at least probable at this time that the minor head injury might have been a triggering event for the underlying seizure, although, the trauma itself is not reasonably related to the mesial temporal MRI abnormality.”

7. On January 16, 2003, Dr. Lea diagnosed “post traumatic seizure.” In later notes, his diagnosis was “post concussion syndrome – seizures.” On March 27, 2003, Dr. Lea ordered a repeat MRI to confirm Claimant was ready for “case closure.” A repeat MRI on April 1, 2003 showed the right hippocampal activity was resolving to baseline normal.

8. Dr. Lea continued to treat Claimant with anti-seizure and other medications. She has had no more *grand mal* seizures, but reports continuing “episodes,” “*déjà vu*,” and “auras.” Dr. Lea termed these “partial complex seizures.”

9. In deposition, Dr. Lea opined Claimant’s cognitive and memory problems were related to her anti-seizure medications. He opined she had a pre-existing mesiotemporal sclerosis, a form of epilepsy, which was asymptomatic before the accident. He opined the mesiotemporal sclerosis was not caused by the accident. He opined the accident brought on seizures from the previously asymptomatic condition. By history, he believed Claimant suffered an “alteration of consciousness” but not a loss of consciousness from the accident.

RECOMMENDATION - 4

He opined the MRI findings demonstrate residual from the seizures and not evidence of brain injury from the accident. He opined seizures may result from a number of possible triggers when a person has an underlying mesiotemporal sclerosis.

10. William Stump, M.D., evaluated Claimant at Defendants' request on June 2, 2006. In deposition, he opined the cause of Claimant's seizures was unknown. Seizures may begin from a variety of triggers or without any known trigger. The accident described to him was insufficient to cause trauma to the interior of the brain where the mesiotemporal sclerosis existed. Traumatically induced epilepsy requires a loss of consciousness from the trauma. It is not impossible, but also not probable, that the accident brought on Claimant's seizures.

DISCUSSION AND FURTHER FINDINGS OF FACT

11. **Causation.** A claimant must prove she 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).

12. At first blush, it appears to a layperson that the minor contact of the lightweight plastic valance to Claimant's left cheek would be unlikely to affect the deep brain tissue in the right temporal lobe. However, it is for the experts – the physicians – to provide the medical testimony. In depositions, neither Dr. Lea nor Dr. Stump provided a significantly better explanation for his differing medical opinion than the other. Dr. Lea had the advantage

RECOMMENDATION - 5

of examining Claimant closer in time and for a longer period of time than Dr. Stump.

13. Claimant showed it likely that the accident aggravated a preexisting mesiotemporal sclerosis and caused her initial seizure.

14. Whether Claimant's assertions of subjective vague mental abnormalities after March 27, 2003 are related to that accident remain an open question with other issues in this case. The physicians did not opine about whether this condition, like a muscle strain superimposed upon a degenerative condition, was temporarily or permanently aggravated by the accident.

CONCLUSIONS OF LAW

1. Claimant showed it likely her initial seizure was caused by the accident which aggravated an underlying condition.

2. Whether that aggravation was temporary or permanent, together with other issues, is reserved.

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 28TH day of May, 2008.

INDUSTRIAL COMMISSION

/S/ _____
Douglas A. Donohue, Referee

ATTEST:

/S/ _____
Assistant Commission Secretary

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2. Whether that aggravation was temporary or permanent, together with other issues, is reserved.

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

DATED this 4TH day of JUNE, 2008.

INDUSTRIAL COMMISSION

Dissent without comment

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 4TH day of JUNE, 2008 a true and correct copy of **FINDINGS, CONCLUSIONS, AND ORDER** were served by regular United States Mail upon each of the following:

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db

/S/_____

ORDER - 2