



## **CONTENTIONS OF THE PARTIES**

Claimant contends he fell at work and injured his jaw because of fumes in his work area. He should be entitled to benefits.

Defendants contend Claimant fell because of vasovagal syncope unrelated to fumes or any other aspect of his work. Claimant's credibility is in question.

## **EVIDENCE CONSIDERED**

The record in the instant case consists of the following:

1. Hearing testimony of Claimant and Employer's representative Todd Menti;
2. Claimant's Exhibits 1 – 5; and
3. Defendants' Exhibits A – F.

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 on January 3, 2007. He felt lightheaded and nauseous. He left his work station, went to the bathroom, dry heaved, rested briefly, and began to return to his work station. As he approached his work station he fell, struck his chin, and broke his jaw. He needed stitches to close his chin wound and had his jaw wired shut.

2. Claimant began working for Employer on December 10, 2006. He worked primarily in a tarp-covered enclosure. He moved lumber, moldings and such, into the enclosure by means of a forklift. He applied stains to the wood products.

3. No physician has opined that Claimant's lightheadedness or other symptoms were related to his work. Defendants' expert, Richard Wilson, M.D., opined the cause of the fall was not related to his work.

## **RECOMMENDATION - 2**

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

4. **Credibility.** Claimant made a material misstatement of fact at hearing. He had testified in deposition that he had not eaten breakfast that morning. At hearing, he claimed he had eaten a donut or Twinkie at work before he fell. His hearing testimony was irreconcilably inconsistent with his deposition testimony. Shortly after the accident, Claimant told Mr. Menti that he fainted because he had not eaten breakfast. At hearing, Claimant denied any recollection of making that statement. His testimony is further contradicted by his testimony that he “dry heaved.”

5. **Course and Scope.** A claimant’s injury must arise from an accident arising out of and in the course of employment. Idaho Code § 72-102(18); Seamans v. Maaco Auto Painting, 128 Idaho 747, 918 P.2d 1192 (1996). Here, Claimant’s injury occurred in the course of employment but did not arise out of employment. Both the forklift and the stains probably emitted fumes. However, the area was ventilated. Claimant failed to show it likely he fainted because of fumes or any other aspect of his employment.

6. **Causation.** A claimant must prove he was injured as the result of an accident arising out of and in the course of employment. Seamans, supra. 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). Here, Claimant failed to produce any medical testimony to support his claim that his injury was caused, to a reasonable degree of medical probability, by his work.

**CONCLUSIONS OF LAW**

1. Claimant failed to show it likely that he suffered an accident arising out of his employment.
2. Claimant failed to show it likely that his injuries were caused by his work.
3. All other issues are moot.

**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 30TH day of May, 2008.

INDUSTRIAL COMMISSION

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

ATTEST:

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

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3. All other issues are moot.

4. 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

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