

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

KELLY COPSEY-HAMMER,	)	
	)	
Claimant,	)	<b>IC 2004-009414</b>
	)	
v.	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW,</b>
7-ELEVEN, INC.,	)	<b>AND RECOMMENDATION</b>
	)	
Employer,	)	
	)	
and	)	
	)	
ACE AMERICAN INSURANCE COMPANY,	)	Filed August 21, 2008
	)	
Surety,	)	
	)	
Defendants.	)	
_____	)	

**INTRODUCTION**

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Alan Taylor, who conducted a hearing in Coeur d’Alene on March 19, 2008. Claimant, Kelly Copsey-Hammer was present in person and represented herself pro se. Defendant Employer, 7-Eleven, Inc., and Defendant Surety, Ace American Insurance Company, were represented by Thomas Baskin of Boise. The parties presented oral and documentary evidence. This matter was then continued for the taking of post-hearing depositions, the submission of briefs, and came under advisement on June 11, 2008.

**ISSUES**

The issues to be resolved are:

1. Whether Claimant suffered an injury from an accident arising out of and in the course of employment;
2. Whether Claimant's condition is due in whole or in part to a pre-existing and/or subsequent injury or condition;
3. Claimant's entitlement to medical care;
4. Claimant's entitlement to permanent partial impairment;
5. Claimant's entitlement to permanent disability in excess of impairment; and
6. Apportionment of Claimant's permanent disability pursuant to Idaho Code § 72-406.

### **ARGUMENTS OF THE PARTIES**

Claimant asserts she suffered an industrial accident on July 30, 2004, when lifting a heavy container of concentrated soft drink syrup. She alleges her industrial accident caused her a permanent increase of her pre-existing back pain and other physical complaints.

Defendants contend that Claimant had a pre-existing back condition and that her accident on July 30, 2004, did not produce any permanent symptoms. Defendants also assert that in light of Claimant's pre-existing condition she has not proven that her need for additional medical care or other benefits is related to her July 30, 2004, accident.

### **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. The testimony of Claimant and Claimant's husband, Mark Hammer, taken at the March 19, 2008, hearing;
2. Defendants' Exhibits 1 through 34 admitted at the hearing; and

### **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 2**

3. The post-hearing deposition of Douglas Crum, taken by Defendants on April 28, 2008.

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

### **FINDINGS OF FACT**

1. Claimant was born in 1965. She lived in Coeur d'Alene and was 42 years old at the time of the hearing. Claimant completed the 11<sup>th</sup> grade and later obtained her GED. She has completed several basic computer training courses.

2. After high school Claimant worked regularly as a housekeeper or custodian in various motels and care centers where she customarily earned from \$5.50 to \$6.50 per hour.

3. In 1996, Claimant suffered a low back injury when she slipped and fell on a wet floor while working at a motel. She was diagnosed with an L5-S1 disk herniation which was surgically treated by Bret Dirks, M.D. Claimant was given a 10% permanent impairment rating with restrictions of no lifting more than 30 pounds. She improved after back surgery and returned to working.

4. Claimant's medical records document a number of episodes of back pain between 1996 and 2004.

5. In November 2003, Claimant commenced employment with 7-Eleven as a sales associate. She served customers, stocked shelves, and cleaned the store. She earned approximately \$7.30 per hour.

6. On July 30, 2004, Claimant was working for 7-Eleven when the Coca-Cola dispenser ran out of concentrated syrup and Claimant attempted to place another container of concentrated

syrup in the dispenser. The syrup container weighed in excess of 50 pounds. Upon attempting to lift the container Claimant felt immediate intense back pain and was unable to continue working. Another employee, who later became Claimant's husband, saw her distress and completed Claimant's assigned shift.

7. Claimant received medical treatment by Dr. Dirks who ordered an MRI, concluded no surgical intervention was warranted, and ultimately referred Claimant to a pain management clinic. Epidural steroid injections were not particularly helpful. Claimant later attempted to return to work but experienced increasing pain and was unable to continue. Thereafter she attempted secretarial work unsuccessfully.

8. On February 9, 2005, Claimant was examined by Ronald Vincent, M.D., at Defendants' request. Dr. Vincent concluded that Claimant suffered a lumbar strain due to her July 2004 accident, but had reached maximum medical improvement, needed no further medical treatment, and had suffered no additional permanent impairment due to her 2004 accident.

9. In November 2006, Claimant commenced working at the Post Falls Food Court as a restaurant worker. At the time of hearing, Claimant was working full-time at the Food Court and had been promoted to the position of supervisor. She managed five to seven employees, ordered supplies, counted tills, and served customers. Claimant was earning \$10.50 per hour and was a certified manager for Jack in the Box, Taco Johns, and Arby's at the time of the hearing.

10. Claimant still suffers lower back pain which radiates into her thigh. She has difficulty climbing stairs or walking any significant distance. Claimant experiences nearly continual back pain and her sleep is disturbed by pain, however, she takes no prescription pain medication. Due to back pain, Claimant must drive a vehicle with an automatic transmission because she can no

longer drive a stick shift.

11. Having compared Claimant's testimony with the medical records and testimony of other witnesses, the Referee concludes that Claimant is generally a credible witness.

### **DISCUSSION**

12. The provisions of the Workers' Compensation Law are to be liberally construed in favor of the employee. Haldiman v. American Fine Foods, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990). The humane purposes which it serves leave no room for narrow, technical construction. Ogden v. Thompson, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996). However, the Commission is not required to construe facts liberally in favor of the worker when evidence is conflicting. Aldrich v. Lamb-Weston, Inc., 122 Idaho 361, 363, 834 P.2d 878, 880 (1992).

13. **Accident.** Claimant's testimony regarding the occurrence of an industrial accident while working for 7-Eleven on July 30, 2004, is credible and is supported by substantial credible evidence. Defendants do not contest Claimant's assertions of the accident. The Referee finds Claimant suffered an industrial accident on July 30, 2004.

14. **Medical causation.** The crux of the instant case is whether Claimant's current condition for which she seeks benefits was caused by her July 30, 2004, industrial accident. Defendants contend that Claimant has not shown her ongoing back pain is caused by her July 30, 2004, industrial accident.

15. A claimant must prove not only that he or she suffered an injury, but also that the injury was the result of an accident arising out of and in the course of employment. Seamans v. Maaco Auto Painting, 128 Idaho 747, 751, 918 P.2d 1192, 1196 (1996). Proof of a possible causal link is not sufficient to satisfy this burden. Beardsley v. Idaho Forest Industries, 127 Idaho 404, 406,

901 P.2d 511, 513 (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, 785, 890 P.2d 732, 736 (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). Magic words are not necessary to show a doctor’s opinion was held to a reasonable degree of medical probability; only their plain and unequivocal testimony conveying a conviction that events are causally related. See, Jensen v. City of Pocatello, 135 Idaho 406, 412-13, 18 P.3d 211, 217 (2001).

16. Claimant herein at one time asserted that her July 30, 2004, accident caused her various concerns including psychological problems, abdominal swelling, hypertension, and migraine headaches. Claimant admitted at hearing that either she no longer asserts her July 30th accident caused these conditions and/or she acknowledges that no doctor has advised her that her July 30, 2004, accident caused these conditions.

17. Claimant continues to assert that her July 30, 2004, accident caused an increase in her back symptoms. She readily admits pre-existing back pain, but maintains that prior to July 30, 2004, her back pain was intermittent and she was able to manage it, whereas it is now constant, more severe, and more debilitating.

18. Dr. Vincent concluded that Claimant suffered a lumbar strain due to her July 30, 2004, accident but by February 2005 had reached maximum medical improvement and needed no further medical treatment due to her 2004 accident.

19. Dr. Dirks, Claimant’s treating physician, concluded that Claimant’s July 30, 2004, accident caused a temporary aggravation, but no permanent worsening, of Claimant’s low back

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condition. Dr. Dirks has opined that Claimant has no permanent injury or impairment due to her 2004 accident and that she has sustained no further limitations or restrictions due to her 2004 accident. Dr. Dirks opined that Claimant's increased symptoms and need for additional medical treatment currently are due to the natural progression of her 1996 accident and injury.

20. No medical expert has opined that Claimant's July 30, 2004, accident caused her additional permanent low back injury necessitating additional restrictions. Claimant has not proven that her present back condition and symptoms are related to her 2004 industrial accident.

21. **Additional medical care.** An employer is only obligated to provide medical treatment necessitated by the industrial accident. The employer is not responsible for medical treatment not related to the industrial accident. Williamson v. Whitman Corp./Pet, Inc., 130 Idaho 602, 944 P.2d 1365 (1997).

22. As noted above, Drs. Vincent, and Dirks have concluded that Claimant needs no further medical treatment due to her 2004 accident. Having failed to prove that her present back condition is due to her 2004 industrial accident, Claimant has also failed to prove that her need for additional medical treatment is due to her July 30, 2004, industrial accident.

23. **Permanent impairment, permanent disability, and Idaho Code § 72-406 apportionment.** "Permanent impairment" is any anatomic or functional abnormality or loss after maximal medical rehabilitation has been achieved and which abnormality or loss, medically, is considered stable or non-progressive at the time of evaluation. Idaho Code § 72-422. When determining impairment, the opinions of physicians are advisory only. The Commission is the ultimate evaluator of impairment. Urry v. Walker & Fox Masonry Contractors, 115 Idaho 750, 755, 769 P.2d 1122, 1127 (1989).

24. Claimant herein alleges entitlement to additional permanent impairment, however; no physician has opined that Claimant suffers any permanent impairment due to her 2004 accident. Drs. Vincent and Dirks opined that Claimant suffers no additional permanent impairment due to her July 30, 2004, industrial accident. Claimant has not proven she suffers any permanent impairment due to her July 30, 2004, accident.

25. Absent a finding of permanent impairment caused by Claimant's July 30, 2004, accident, the issues of permanent disability and apportionment pursuant to Idaho Code § 72-406 are moot.

### **CONCLUSIONS OF LAW**

1. Claimant has proven she suffered an industrial accident on July 30, 2004, which caused a temporary aggravation of her pre-existing back condition.

2. Claimant has not proven that her current back condition was caused by her industrial accident of July 30, 2004.

3. Claimant has not proven her entitlement to additional medical care due to her July 30, 2004, accident.

4. Claimant has not proven that she suffered any permanent impairment due to her July 30, 2004, industrial accident.

5. The issues of permanent impairment and apportionment pursuant to Idaho Code § 72-406 are moot.

### **RECOMMENDATION**





4. Claimant has not proven that she suffered any permanent impairment due to her July 30, 2004, industrial accident.

5. The issues of permanent impairment and apportionment pursuant to Idaho Code § 72-406 are moot.

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

DATED this 21st day of August, 2008.

INDUSTRIAL COMMISSION

\_\_\_\_\_  
/s/  
James F. Kile, Chairman

\_\_\_\_\_  
/s/  
R.D. Maynard, Commissioner

\_\_\_\_\_  
/s/  
Thomas E. Limbaugh, Commissioner

ATTEST:

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/s/  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the 21st day of August, 2008 a true and correct copy of **Findings, Conclusions, and Order** was served by regular United States Mail upon each of the following:

KELLY COPSEY-HAMMER  
5885 WEST MAIN SPACE L  
SPIRIT LAKE ID 83869

THOMAS P BASKIN  
PO BOX 6756  
BOISE ID 83707

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/s/

**ORDER - 2**