

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

DAVID M. BROWN,	)	
	)	
Claimant,	)	<b>IC 2007-035199</b>
	)	
v.	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSION OF LAW,</b>
ST. LUKE’S REGIONAL MEDICAL	)	<b>AND RECOMMENDATION</b>
CENTER,	)	
	)	
Self-Insured	)	
Employer,	)	Filed November 5, 2008
	)	
Defendant.	)	
_____	)	

**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 Boise on May 1, 2008. Claimant, David M. Brown, was present in person and represented by Roger Brown of Boise. Defendant self-insured Employer, St. Luke’s Regional Medical Center (St. Lukes), was represented by Alan Hull of Boise. The parties presented oral and documentary evidence. This matter was then continued for the submission of briefs, and subsequently came under advisement on August 20, 2008.

**ISSUE**

The sole issue to be resolved is whether Claimant suffered an accident arising out of and in the course of his employment. All other issues are reserved.

## **ARGUMENTS OF THE PARTIES**

Claimant asserts he suffered an industrial accident at St. Lukes on October 8, 2007, when he injured his left knee. Defendant contends that Claimant's account of an industrial accident is refuted by the testimony of others and is not credible.

## **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. The testimony of Claimant, Karey Winchester, Mark Clark, Jesika Brown, Stephanie Kathan, Bette Pfnister, and Vicky Major taken at the May 1, 2008, hearing; and
2. Joint Exhibits 1 through 15 admitted at the hearing.

After having considered all of the above evidence, and the arguments of the parties, the Referee submits the following findings of fact and conclusion of law.

## **FINDINGS OF FACT**

1. Claimant was born in 1973. He was 34 and resided in Meridian at the time of the hearing. Claimant served in the U.S. Marines from 1991 until 1994. He injured his right knee in a training accident. The injury did not require surgical treatment. Claimant was honorably discharged in 1994 and awarded a 20% service disability due to his right knee. Claimant has chronic right knee pain due to subpatellar chondromalacia.

2. Claimant worked as a grill cook and banquet cook for several businesses before commencing work with St. Lukes.

3. In October 2005, St. Lukes hired Claimant as a presentation cook at its Meridian hospital. Claimant worked full-time from 8:00 a.m. to 4:30 p.m. and earned \$12.50 per hour. As a presentation cook his duties included preparing and cooking all of the food for lunch. The kitchen area was small and included two prep tables, a slicing table, fryers, a grill, a steamer, and a walk-in

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fridge and freezer. Claimant worked mostly in the back of the kitchen on a wooden prep table. Diane Clout and sous chef Sean Campbell worked nearby. Claimant's duties included preparing for lunch service, taking food out for serving, and presenting the lunch meal from 11:00 a.m. until 2:00 p.m. He then took his own lunch break from 2:15 until 2:45 p.m. Thereafter he prepared foods for the next day. As a St. Lukes employee Claimant was regularly instructed that all work injuries were to be reported immediately to a supervisor and an appropriate accident report completed.

4. In February 2007, Claimant began working several evenings each week at FedEx Freight Inc. (FedEx), as a dock worker. While working for FedEx on July 5, 2007, Claimant fell, cut his eyebrow, and sustained a cervical strain. Claimant promptly reported his accident to FedEx and was treated by Ralph Sutherlin, D.O. Dr. Sutherlin's office where Claimant received treatment is located in St. Lukes Meridian hospital, two floors above the kitchen where Claimant worked as a presentation cook. Claimant continued to work for FedEx and St. Lukes during his recovery. Claimant last saw Dr. Sutherlin for his cervical strain on October 1, 2007, when he reached maximum medical improvement and his case closed.

5. Claimant worked for FedEx on October 5, 2007. He did not work for FedEx on October 7, 2007.

6. Claimant testified that while working for St. Lukes on Monday, October 8, 2007, after his lunch break while preparing vegetables on the prep table in the back of the kitchen he turned to his right and felt a pop in his left knee. Claimant testified that with the pop, pain shot up from his left knee to his hip and down to his left foot. He continued working and completed his shift. Claimant could not recall who was working on the shift with him, but testified that he did not mention his alleged knee injury or pain to anyone at St. Lukes that day. Claimant testified that after work that day he went home and just sat on the couch because his knee hurt.

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7. Claimant's wife testified that he called her from St. Lukes during the early or middle of the afternoon of October 8, 2007, saying that he had turned and popped his knee and it was sore. Claimant's wife picked him up from St. Lukes that day between 4:00 and 4:30 p.m. She testified that Claimant was limping as he left St. Lukes. She testified that she had never seen Claimant limp on his left side and was unaware of any prior left leg or knee complaints.

8. Claimant apparently did not work for FedEx on or after October 8, 2007.

9. Claimant testified that the next day, Tuesday, October 9, 2007, his knee was very, very sore and that he took ibuprofen and limped at work. Claimant testified that on October 9, 2007, he told sous chef Sean Campbell that he had twisted his knee the day before. Claimant testified that Campbell asked if Claimant had filled out an accident report and that when Claimant said "no," Campbell just walked away.

10. Campbell provided a written statement that he noticed Claimant was limping on or about October 9, 2007, and Claimant told him his knee was bothering him. Campbell indicated he did not ask why, and Claimant did not tell him.

11. Claimant testified that on or about October 9, 2007, he told supervisor Bette Pfnister that he had twisted his knee at work, but did not tell her how. Pfnister is a retail supervisor at St. Lukes and oversees the cafeteria. Claimant testified that Pfnister asked if Claimant had filled out an accident report to which Claimant responded "no." Claimant understood that he needed to fill out an accident report if he were injured at work. Claimant indicated that Pfnister took no further action at that time.

12. Pfnister did not work on October 8, 2007. Pfnister testified that she worked and saw Claimant on October 9 and 10, 2007. Pfnister testified that Claimant mentioned no accident or injury to her on October 9, 2007. Pfnister testified that on October 10, 2007, she noticed that

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Claimant was limping after lunch service and specifically inquired about his limping. She asked about filling out an accident report but Claimant insisted he was “OK” and it was “no big deal.” She testified that Claimant said that he had twisted his ankle at FedEx.

13. Claimant testified that he believed that on October 9, 2007, he told Stephanie Kathan that he had injured his knee, but gave her no details. Kathan works at St. Lukes in an office near the kitchen. She and Claimant are friends. Their residences are several blocks apart and both have children who play hockey. Kathan has watched Claimant’s home while Claimant and his family were away.

14. Kathan worked on October 8, 2007, until 2:00 p.m., but testified that Claimant did not tell her he was hurt that day. Kathan testified that on Tuesday, October 9, 2007, she saw Claimant limping at work and asked him what happened. She testified that Claimant responded: “I got hurt last night at my other job.” Transcript p. 132, Ll. 16-18. She testified that Claimant did not specifically tell her he got hurt at FedEx but she understood that his other job was at FedEx. Kathan testified Claimant did not tell her he had been hurt at St. Lukes.

15. Claimant testified on rebuttal that he did not tell Kathan or any coworker at St. Lukes that he injured his knee at another job or at FedEx.

16. Vicky Major, production supervisor at St. Lukes, did not work on October 8, 2007. She worked on October 9, 2007, and testified that Claimant did not report that day that he was hurt. Major testified she saw Claimant again on October 10, 2007, and Claimant never reported to her that he was hurt at St. Lukes. Major did not notice Claimant limping on October 9 or 10, 2007.

17. On October 10, 2007, Claimant worked nearly his full shift at St. Lukes, leaving 45 minutes early, to go to the VA Emergency Room. Claimant presented to the VA Emergency Room complaining of left knee pain. Claimant testified he went to the VA Emergency Room because he

could not get in to see his primary physician at the VA. Claimant admitted that he understood medical treatment was available to him at St. Lukes. He explained that he did not seek treatment at St. Lukes because he had not yet filled out an accident report. Claimant has not worked since October 10, 2007.

18. Claimant testified that he told the attending physician in the VA Emergency Room on October 10, 2007, that his left knee injury happened while working at St. Lukes. However the emergency room records noted Claimant's report that he twisted his knee on Monday, October 8, 2007, but contain no mention of any work activity or employer.

19. On October 15, 2007, Claimant presented with his wife to Dr. Sutherlin at St. Lukes. Dr. Sutherlin recorded Claimant's account as follows: "The patient states that 1 week ago he was standing in front of his lunch counter when he twisted and felt a popping pain to his left knee." Exhibit 3, p. 27.

20. St. Lukes denied Claimant's claim and Claimant then sought medical treatment through the VA. An MRI was eventually performed which revealed a torn meniscus in Claimant's left knee. Claimant told his treating physician at the VA that he hurt his knee at St. Lukes.

21. FedEx managers Mark Clark and Carey Winchester testified that Claimant never advised them or any supervisor at FedEx that he suffered a left knee injury while working at FedEx. They also testified that Claimant had never advised them of his longstanding right knee condition, and they were unaware that Claimant always wore a right knee brace while working at FedEx.

22. At the time of hearing, Claimant continued to suffer left knee pain. He had been on a list for several months awaiting left knee surgery at the VA.

23. Having observed Claimant and all the hearing witnesses, compared their testimony, and carefully examined the record herein, the Referee finds Kathan and Pfnister more credible than

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Claimant.

### **DISCUSSION AND FURTHER FINDINGS**

24. **Accident.** 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). Facts, however, need not be construed 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).

25. In the present case, Claimant's testimony regarding the occurrence of an alleged October 8, 2007, industrial accident at St. Lukes raises several concerns. Claimant has alleged slightly different locations for his injury. Claimant testified at hearing that he was working at the prep table at the back of the kitchen when his accident occurred. The records of Dr. Sutherlin indicate Claimant reported he was standing in front of the lunch counter when his knee injury occurred.

26. The medical records of the VA Emergency Room where Claimant testified he first sought care for his left knee injury fail to mention any report of an alleged work-related cause for Claimant's complaints even though Claimant testified at hearing that he reported the work-related nature of his injury to the Emergency Room physician who examined him.

27. Most concerning are the irreconcilable conflicts in the testimony regarding notice and reporting of the alleged industrial accident. Claimant testified that he told Kathan and Pfnister of his knee injury at St. Lukes. Both Kathan and Pfnister testified Claimant did not tell them he was injured at St. Lukes but rather expressly told them he hurt his knee or ankle at his other job or at FedEx. Pfnister testified she expressly asked about completing an accident report and Claimant

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declined. Claimant testified Pfnister took no action to complete a report after he notified her of his accident.

28. The testimony of Kathan and Pfnister, which directly conflicts with some of Claimant's testimony, raises doubt as to the veracity of Claimant's account of an accident at St. Lukes. The principal elements of Kathan and Pfnister's hearing testimony were consistent with and memorialized by statements written by Kathan and Pfnister within 30 days of Claimant's alleged October 8, 2007, accident. Claimant's rebuttal testimony that he never made any statements about injuring his left knee or ankle at FedEx does not satisfactorily resolve the concerns raised by Kathan and Pfnister's testimony. Although Kathan and Pfnister work for St. Lukes, they had no apparent personal stake in supporting or refuting Claimant's assertions of a work accident. They could have easily acknowledged Claimant's report of a work accident; if in fact Claimant provided such. Kathan was Claimant's personal friend as well as a coworker. Claimant has failed to offer any meaningful response or explanation to the concerns raised by Kathan and Pfnister's testimony.

29. The Referee is not persuaded that Claimant's coworkers were fabricating when testifying that Claimant did not report his alleged work injury at St. Lukes to them, declined to complete an accident report when specifically asked about such, and expressly advised them he injured his left knee or ankle somewhere other than St. Lukes.

30. The Referee is not persuaded by Claimant's testimony alleging an industrial accident on October 8, 2007, at St. Lukes. Claimant has failed to prove he suffered an industrial accident on or about October 8, 2007.

### **CONCLUSION OF LAW**

Claimant has failed to prove he suffered an accident arising out of and in the course of his employment with St. Lukes on October 8, 2007.

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

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

ATTEST:

/s/ \_\_\_\_\_  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the 5th day of November, 2008 a true and correct copy of **Findings, Conclusions, and Order** was served by regular United States Mail upon each of the following:

ROGER L BROWN  
PO BOX 6190  
BOISE ID 83707-6190

ALAN K HULL  
PO BOX 7426  
BOISE ID 83707

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/s/ \_\_\_\_\_