

2. All other issues are moot.

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

DATED this 5TH day of DECEMBER, 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 5TH day of DECEMBER, 2008 a true and correct copy of **FINDINGS, CONCLUSIONS, AND ORDER** were served by regular United States Mail upon each of the following:

Jerry Gordon
1352 Big Creek
Kellogg, ID 83837

E. Scott Harmon
P.O. Box 6358
Boise, ID 83707

db

/S/ _____

ORDER - 2

4. Whether Claimant's condition is due in whole or in part of a subsequent intervening cause;
5. Whether and to what extent Claimant is entitled to medical benefits; and
6. Whether the Commission should retain jurisdiction beyond the Statute of Limitations.

CONTENTIONS OF THE PARTIES

Claimant contends he was injured while lifting at work. The condition worsened. Medical care was required.

Defendants contend Claimant's condition was not caused by his work. No accident occurred.

EVIDENCE CONSIDERED

The record in the instant case consists of the following:

1. Hearing testimony of Claimant; and
2. Defendants Exhibits A and B.

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. He had been lifting bundles of newspapers. Gradually, a day or two later, he noticed inguinal soreness. He sought medical attention and was told not to lift anything for a while. Initially, the doctor diagnosed a scrotal hematoma.

2. Claimant's condition worsened. Surgery was required.

3. Surgery showed Claimant suffered a scrotal abscess caused by an infection that included staph and other bacteria. Surgeon Randil Clark, M.D., opined in writing that Claimant's condition, more likely than not, was not caused by lifting at work.

RECOMMENDATION - 2

DISCUSSION AND FURTHER FINDINGS OF FACT

4. **Credibility.** Claimant is a pleasant, somewhat soft-spoken gentleman who at all times appeared entirely credible.

5. **Causation.** A claimant must prove his condition likely was caused by his work in order to be eligible for any benefits under the Idaho Workers' Compensation Law. 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).

6. This case arises largely because of a mistaken initial diagnosis by an emergency room physician who accepted Claimant's reported history of a lifting event followed by gradual pain and made a diagnosis largely based upon the coincidental timing of events. Although this initial diagnosis was later shown to be inaccurate, confusion about causation remained in Claimant's understanding of his condition.

7. The preponderance of evidence of record demonstrates that Claimant's medical condition was not caused by work or any accident at work.

8. All other issues are moot.

CONCLUSIONS OF LAW

1. Claimant failed to show his medical condition was more likely than not caused by an accident at work.

2. All other issues are moot.

RECOMMENDATION - 3

RECOMMENDATION

The Referee recommends that the Commission adopt the foregoing Findings of Fact and Conclusions of Law as its own and issue an appropriate final order.

DATED This 28TH day of November, 2008.

INDUSTRIAL COMMISSION

/S/ _____
Douglas A. Donohue, Referee

ATTEST:

/S/ _____
Assistant Commission Secretary

db