

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

SYLVIA TAYLOR,)
)
 Claimant,)
)
 v.)
)
 SUNBRIDGE HEALTHCARE)
 CORPORATION, dba SUNBRIDGE)
 CARE & REHABILITATION FOR)
 EMMETT and AACO-A1 HEALTH)
 CARE SERVICES, INC.,)
)
 Employer,)
)
 and)
)
 LIBERTY NORTHWEST INSURANCE)
 CORPORATION,)
)
 Surety,)
)
 Defendants.)
 _____)

IC 2006-520699

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

Filed March 12, 2009

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Michael E. Powers, who conducted a hearing in Boise on October 15, 2008. Claimant appeared *pro se*. Monte R. Whittier of Boise represented Employer/Surety. Oral and documentary evidence was presented. The parties submitted post-hearing briefs and this matter came under advisement on February 12, 2009.

ISSUES

The issues to be decided are:

1. Whether Claimant suffered a personal injury arising out of and in the course of her employment;
2. Whether Claimant’s alleged injury was the result of an accident arising out of and in the course of her employment;

RECOMMENDATION - 1

3. Whether and to what extent Claimant is entitled to:
 - (a) Medical benefits; and
 - (b) Temporary Total Disability (TTD) benefits.

CONTENTIONS OF THE PARTIES

Claimant is a nurse. She contends that while she was giving a patient medications, another resident of Employer's care facility came up behind her in his wheel chair and grabbed and squeezed her buttocks area, causing her injuries including decreased sphincter tone requiring the occasional use of adult diapers. Claimant seeks reimbursement for medical bills and time-loss benefits.

Defendants contend that Claimant's assertions "border on the unbelievable." She has a habit of suing Alzheimer's patients and this claim is but another in a pattern. The patient who allegedly grabbed Claimant is an elderly Alzheimer's patient who was not physically capable of causing the claimed harm. Claimant is upset because the Sheriff's office refused to press criminal sex abuse charges against the patient. She has also filed a claim with the Idaho Human Rights Commission. More importantly, none of the care providers who examined Claimant shortly after the alleged incident recorded any signs of trauma to Claimant's buttocks area. However, even giving Claimant the benefit of the doubt, she could not have been injured by the alleged "attack" as seriously as she claims.

Claimant counters that the handwritten records prepared concurrently with various examinations reveal abrasions, contusions, and other signs of trauma. Also, photographs of her buttocks area taken by her husband a few days after the incident show a handprint and thumb mark. Moreover, her "attacker" had left a bruise on her arm when he tried to strike her that demonstrates he had the strength to inflict the damages claimed. Finally, the patient had assaulted her before and was known to Employer as a "problem" patient.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant and her husband, Ray, and Gem County Deputy Sheriff Ray Reyes taken at the hearing.
2. Claimant's Exhibits A-K admitted at the hearing.
3. Defendants' Exhibits A-H admitted at the hearing.

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

FINDINGS OF FACT

1. Claimant was 50 years of age and resided in Coquille, Oregon, at the time of the hearing. She resided in Nampa at the time of the alleged incident. Claimant has worked as a nurse for approximately 30 years.
2. Employer is in the business of providing care for the elderly and Alzheimer's patients. She testified as follows regarding her version of the alleged assault:

Well, the issue is that I was injured by a patient on August 26, 2006. I was working as a nurse. I was an agency nurse. I was working at Sunbridge Rehabilitation in Emmett and I had passed most of my new medications by that time and I was finishing up. I had crushed some medicines for one person and mixed them in applesauce and I was giving it to him very carefully, because he had a tendency to choke. And, then, I had to give him some Metamucil stuff and I had to be very careful, because he had a tendency to choke and I was really kind of concentrating on him when I got assaulted from behind by this resident¹ that grabbed my right buttocks and rectal area and pinched me very hard causing bruises and contusions and pain and damage to my rectal area, buttock.² And, then, when he turned - - I turned around to see what he was doing and to see who it was and who was grabbing me and stuff and, then, I counseled him that [that] behavior was inappropriate and a person - - another - - CNA came in the room at that time and I said did you see what he did to me and she wouldn't answer me.

¹ The resident's exact age cannot be determined from the record, but the First Report of Injury or Illness lists his age at 89, and Claimant did not dispute the listed age when given that information at hearing.

² At various times, Claimant has indicated that her anus was digitally penetrated and at other times she was not sure. In her brief, she admitted that she was not so penetrated. She was also fully clothed at the time of the alleged assault and her clothing was not ripped afterwards, although she did notice a bit of stool on her underwear.

So, I don't know if she saw it or not. And she wouldn't tell me her name, so I don't have a name. But she helped me move him away from me, because he was in a wheelchair and he - - at that point he took a swing and I went to block it and he hit me on the arm and I have a bruise on my right arm - - I took a picture. That's Exhibit G. On my right arm. A bruise. And he got the rectal area in the right buttock. There is [sic] pictures showing bruises on the lateral side of my buttock with the fingers, four fingers, and drainage in the rectal area, so - -

Hearing Transcript, pp. 8-9.

3. Claimant presented to Saltzer Medical Group (Saltzer) in Nampa on August 26, 2006, with a chief complaint of: "Patient works at a local nursing home when she was grabbed from behind by a resident. [H]e grabbed her buttocks on the R and into the perineum. [S]he feels pain and thinks she was bruised. [H]e did a similar thing to her a few mos [sic] ago." Defendants' Exhibit B, p. 2. It was further noted that, "patient has tenderness on the right buttock near the anus. [T]here is **no visible abrasion or bruising.**" *Id.* Emphasis added. Claimant was "agitated and upset." *Id.* She was to follow up with her own physician, was not taken off work,³ nor was she prescribed any medications.

4. Claimant returned to Saltzer on August 29. She was diagnosed with rectal tenesmus (painful ineffectual straining with stool) based on her history. On August 30, Claimant again returned to Saltzer, appearing in moderate distress and once again agitated and upset. Pertinent objective findings were: "**No abnormal skin markings are [sic – or] bruises were noted about the external anal area or buttocks areas.** Anoscopic was negative for rectal bleed, mucosal injury or bruise, or traumatic hemorrhoidal masses. No pain was expressed by the patient during the entire exam." *Id.*, p. 8. Emphasis in original. Further, "The rectal exam was negative for anal irritation, anal redness, blood and rectal discharge. The sphincter tone is decreased. The perineum sensation is decreased." *Id.* Claimant was to follow-up on September 13.

³ The "SOAP" printed record from Saltzer for August 26 does not indicate that Claimant was taken off work. However, a printed form dated August 26 and entitled "Injured Employee Report Form" (Claimant's Exhibit D, pp. 1-2) indicates Claimant was to be off work until August 30.

5. After she left Saltzer on August 30, Claimant presented to Mercy Medical Center's Emergency Department seeking counseling, pain medication, and anti-depressants. It was noted that Claimant was experiencing mild buttocks discomfort. She complained that she was never taken off work (*see*, footnote 3) and was not ready to return. She was given a warm blanket and Nampa Police were called to assist. They recommended that Claimant follow-up with their "Victim's Unit." There is no evidence of record that Claimant ever contacted them.

6. Rather than waiting for her September 13 appointment, Claimant returned to Saltzer on August 31 seeking anti-depressants. Claimant informed the treater that she had presented to the emergency department at Mercy Medical Center the day before, after her appointment at Saltzer, because she was unable to return to work and needed counseling, pain medications, and an anti-depressant. Claimant and her husband left Saltzer before counseling could be arranged. In Saltzer's parking lot, Claimant's husband exclaimed, "We are done." Claimant's husband stated in Claimant's recorded statement to Surety that Saltzer wanted to have Claimant "committed," so they left. *See*, Defendants' Exhibit G, p. 40.

7. Apparently on her own, Claimant switched her care from Saltzer to Saint Alphonsus Occupational Medicine on Garrity Blvd. in Nampa (Garrity). She first presented to Garrity on September 6, 2006, seeking a second opinion, as she did not believe she had received proper treatment from Saltzer. Claimant informed Sherwood, P.A./Shields, M.D., that she considered the "assault" sexual in nature and intended on pressing charges. Claimant also expressed dissatisfaction with Saltzer for sending her back to work.⁴ She had attended three counseling sessions paid for by her husband's insurance. Those records, if any, are not in evidence. Her chief complaint was stool leakage and "severe pain in the rectal area." Defendants' Exhibit E, p. 22. Claimant's assessment was: 1. Gluteal contusion secondary to trauma. 2. Decreased anal sphincter tone, also secondary to trauma. 3. Perirectal hematoma, also secondary to trauma. Anti-inflammatory and pain medication was prescribed and Claimant

⁴ This assertion is contrary to Claimant's assertion that she was taken off work by Saltzer.

was not to return to work until “adequate” counseling could occur and the stool leakage was resolved.

8. Claimant returned to Garrity in follow-up on September 20, 2006. She reported that she was improving in all aspects of her symptomatology. Interestingly it is noted, “She denies any history of buttocks or rectal trauma.” *Id.*, p. 25. Claimant’s assessment was: Much improved buttocks/rectal contusion. She was returned to work with a 35-pound lifting restriction.

9. Claimant returned to Garrity for the last time on October 2, 2006. It was noted, “Patient says she no longer has any buttocks or rectal pain. She denies any swellings or skin color changes involving the anus or buttocks. She denies any fecal incontinence.” *Id.*, p. 27. Claimant was released from care. She indicated that she would probably be pursuing a different career.

DISCUSSION AND FURTHER FINDINGS

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 is 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, 412-413, 18 P.3d 211, 217-218 (2001).

10. There are a number of problems interfering with a finding of compensability in this matter, in addition to believing that an elderly Alzheimer’s patient could provide enough grip strength to cause the damage claimed. Of paramount concern is the August 26, 2006, Saltzer office note that indicates “. . . there is no visible abrasion or bruising.” The note was prepared at roughly 8:00 o’clock p.m. The incident allegedly occurred at approximately noon.

See, Report of Injury or Illness, Defendants' Exhibit A, p. 1. A reasonable inference can be made that some objective evidence of harm would have been visible to and noted by a trained medical care provider some eight hours later. Another problem is Claimant's apparent obsession that the "attack" was some form of sexual assault. It is telling that Claimant sought out the Gem County Sheriff's office to report the "attack" before she sought medical attention, which leaves the impression that she was more interested in building a lawsuit than obtaining medical treatment. Considering the necessity of the State proving criminal intent, it is no surprise that the Gem County prosecutor declined to prosecute. *See*, Claimant's Exhibit C, p. 1. Claimant also filed a complaint with the Idaho Human Rights Commission, which was denied. That is another example of Claimant's dissatisfaction with the "system" that refused to view her as a sexual assault victim.

11. Claimant submitted photographs of her buttocks area and right arm purportedly taken by her husband on August 28, 2006. The right arm bruise (barely visible) was allegedly made by the patient when he went to strike Claimant and was offered to show he was strong enough to create a bruise, so he was strong enough to cause injury by grabbing and pinching. However, there is a difference between striking out at someone in a striking motion and a grab/pinch. The photographs of Claimant's buttocks and right hip were offered to show a pinch and thumb mark in the perianal area. However, even with Claimant's detailed explanation regarding what the photographs ostensibly show, the Referee is unable to discern any thumb mark or finger marks made by grabbing and pinching. Further, if the photographs were taken on August 28, as is indicated in writing on the back of the photographs, they cannot be reconciled with Salter's August 30 office note wherein it is indicated, "No abnormal skin markings are [*sic*] bruises were noted about the external anal area or buttocks areas." Defendants' Exhibit B, p. 8. While C. Sherwood, P.A./H. Shields, M.D., noted some swelling on Claimant's right buttocks, a possible hematoma just inside the anal opening, and some intermittent stool leakage on September 6, 2006, during Claimant's examination for a second opinion, there is no medical

evidence relating those “conditions” to the alleged “attack” nor any explanation regarding why any or all of those “conditions” were not earlier noted.

12. In sum, there are too many inconsistencies presented by the record in this matter to ignore. Simply, Claimant’s version of the incident is not credible and is not supported by objective medical evidence. The Referee finds that Claimant has failed to prove more probably than not that she suffered an injury from an accident arising out of and in the course of her employment.

13. Based on the above finding, the issues of whether Claimant is entitled to medical and TTD benefits are moot.

CONCLUSIONS OF LAW

1. Claimant has failed to prove she suffered an injury from an accident arising out of and in the course of her employment.

2. The remaining 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 __4th__ day of March, 2009.

INDUSTRIAL COMMISSION

_____/s/_____
Michael E. Powers, Referee

ATTEST:

_____/s/_____
Assistant Commission Secretary

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

DATED this ___12th___ day of March, 2009.

INDUSTRIAL COMMISSION

_____/s/_____
R.D. Maynard, Chairman

_____/s/_____
Thomas E. Limbaugh, Commissioner

_____/s/_____
James F. Kile, Commissioner

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __12th__ day of March, 2009, 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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Gina Espinosa