

3. Whether and to what extent Claimant is entitled to the following benefits:
 - (a) temporary total or partial disability (TTD/TPD);
 - (b) permanent partial impairment (PPI);
 - (c) permanent disability in excess of PPI;
 - (d) retraining; and
 - (e) medical care.

CONTENTIONS OF THE PARTIES

Claimant contends he contracted chronic lymphocytic leukemia (“CLL”) as a result of working as a fireman. Specifically, he claims benzene in the diesel exhaust from the fire engines and ambulances is the cause. He asserts that the literature supports a link between CLL and exposure to diesel exhaust. He questions why he should be burdened with proving his exposure levels and proving his CLL was specifically caused by diesel exhaust. Claimant asserts his claim is raised as much to protect all Idaho firefighters as to establish compensability for his personal occupational disease.

Defendants contend Claimant failed to show medical evidence to support his claim. He failed to establish his exposure levels and whether those levels would be sufficient to be a factor in causing Claimant’s disease. He failed to provide evidence of a physician’s opinion stating that his CLL was likely caused by his work. Moreover, he has lost no work time, suffered no impairment or disability, nor been assigned any work restriction.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. Hearing testimony of Claimant;
2. The admission of Claimant’s exhibits 1–44 was reserved at hearing upon objection by Defendants. The Referee carefully read every proposed exhibit. Claimant’s exhibits 1–44 are not admitted. (Exhibit 39 is discussed separately below.) These documents

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are of a widely varying quality of trustworthiness. Some are merely advertisements for legal services. (See proposed exhibits 17-18.) Although these documents may have some relevance to the proposition that diesel exhaust may cause some cancers, this proposition is not at issue in this matter. These proposed exhibits do not significantly assist in Claimant's attempt to establish that Claimant was exposed to diesel exhaust or that his exposure made it more likely that he contracted CLL. These documents are not relevant to any proposition necessary to be proven by Claimant to establish the compensability of his claim. They constitute hearsay generally inadmissible in Commission proceedings. No admissible exceptions have been identified.

Claimant's exhibit 39, although unsigned, appears to be drafted by Claimant in his own words. This document is still hearsay and therefore inadmissible, but is accepted as a part of Claimant's non-testimonial closing argument and considered to that extent and for that purpose. Defendants' objections to Claimant's exhibits 1-44 are SUSTAINED.

3. Defendants' exhibits A-G.

Claimant additionally attached a newly proposed, two-page exhibit to his reply brief. This document is not admitted nor considered because Commission rules require all such evidence to be prepared and submitted at or before hearing. After having considered all 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 worked for Employer as a paramedic. Hired in 1987 as a fireman, he certified as a paramedic and has been performing those duties since about 1993.

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2. The emergency vehicles are powered by diesel engines. These run inside the station house sometimes. Claimant is unaware of the specific extent of his exposures to diesel fumes. He is aware of the odors. The station house is annually washed down and exhaust particulates are cleaned from the walls. Moreover, he noticed exhaust odors from time to time at response sites, depending upon, for example, whether he was working near the exhaust or it was accumulating between close buildings.

3. In 1998, Claimant was diagnosed with thyroid cancer. He does not include this as part of his claim for benefits.

4. By his recollection, Claimant was diagnosed with CLL about October 2004. Limited medical records admitted indicate he was diagnosed about November 2004. For all purposes herein, these dates are consistent.

5. On December 1, 2007, Claimant's treating physician, oncologist A. Scott Pierson, M.D., opined "there is no proof that Mr. Knapp's exposure to diesel fumes at work caused his CLL." Dr. Pierson in 2006 noted Claimant remains asymptomatic and commented in 2005 that medium life span for similar cases was 20 years. In briefing, Claimant described some subjective symptoms which he attributes to his CLL.

6. No physician of record has opined Claimant's CLL, more probably than not, arose as a result of exposures at work.

DISCUSSION AND FURTHER FINDINGS

7. The burden of proving a probable causal connection between the work environment and an occupational disease rests with a claimant. *Wichterman v. J.H. Kelly, Inc.*, 144 Idaho 138, 158 P.3d 301 (2007). Evidence of expert medical opinion is required to establish this causal link. *Hart v. Kaman Bearing and Supply*, 130 Idaho 296, 939 P.2d 1375 (1997).

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8. Here, Claimant was unable to provide any physician who would support Claimant's assertions that such a causal link probably exists. While Claimant's research and proposed documents suggest a possible link between various potential chemical exposures and various types of cancer, the documents did not suggest that *Claimant's* exposures actually contributed to the onset of *his* CLL. Lacking the necessary relevance to Claimant's claim, they cannot be admitted. Nevertheless, the Commission appreciates Claimant's general concerns for the health and safety of Idaho workers.

9. Claimant failed to show his personal claim for benefits was compensable under Idaho Workers' Compensation Law. Thus, all other issues relevant to Claimant's claim for benefits are moot.

CONCLUSIONS OF LAW

1. Claimant's claim should be dismissed for failure to establish his claimed occupational disease was, in fact, caused by exposures related to his work;

2. All other issues are rendered moot by the failure of establishing causation.

RECOMMENDATION

The Referee recommends that the Commission adopt the foregoing findings of fact and conclusions of law and issue an appropriate final order.

DATED this 23RD day of March, 2009.

INDUSTRIAL COMMISSION

/S/ _____
Douglas A. Donohue, Referee

ATTEST:

/S/ _____
Assistant Commission Secretary

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

DATED this 2ND day of APRIL, 2009.

INDUSTRIAL COMMISSION

/S/ _____
R. D. Maynard, Chairman

/S/ _____
Thomas E. Limbaugh, Commissioner

Thomas P. Baskin, Commissioner

ATTEST:

/S/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 2ND day of APRIL, 2009 a true and correct copy of **FINDINGS, CONCLUSIONS, AND ORDER** were served by regular United States Mail upon each of the following:

John D. Knapp
412 Parkway
Pocatello, ID 83201

M. Jay Meyers
P.O. Box 4747
Pocatello, ID 83205

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/S/ _____

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