

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BRADLEY WILSON,)	
)	
Claimant,)	IC 2007-022938
)	
v.)	
)	
SPOKANE ROCK PRODUCTS,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Employer,)	AND RECOMMENDATION
and)	
)	
LIBERTY NORTHWEST INSURANCE)	
CORPORATION,)	Filed: July 29, 2009
)	
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 December 18, 2008. Claimant, Bradley Wilson, was present and represented by Stephen Nemecek of Coeur d’Alene. Defendant Employer, Spokane Rock Products (Spokane Rock), and Defendant Surety, Liberty Northwest Insurance Corporation, were represented by Kent Day of Boise. The parties presented oral and documentary evidence. This matter was then continued for post-hearing depositions and briefing and subsequently came under advisement on April 1, 2009.

ISSUES

The issues to be resolved are:

1. Whether Claimant’s claim is barred by the statute of limitations.
2. Whether Claimant’s condition is due, in whole or in part, to a preexisting injury,

disease, or condition.

3. Whether Claimant suffers from a compensable occupational disease.

ARGUMENTS OF THE PARTIES

Claimant argues that his bilateral wrist condition is an occupational disease resulting from his work at Spokane Rock. Defendants assert that Claimant's bilateral wrist condition is a preexisting condition not causally related to his work at Spokane Rock, that his claim for benefits is barred by Nelson v. Ponsness-Warren Idgas Enterprises, 126 Idaho 129, 879 P.2d 592 (1994), for lack of an accident that aggravated a preexisting condition, and that his claim is also barred by the statute of limitations.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant taken at hearing;
2. Claimant's Exhibits 1 through 5 admitted at hearing;
3. Defendants' Exhibits A through K admitted at hearing; and
4. Deposition of Judith Ann Heusner, M.D., taken by Defendants on January 9, 2009.

After having considered the above evidence and the arguments of the parties, the Referee submits the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Claimant was 46 years old at the time of the hearing. He is right hand dominant and has resided in Post Falls at all relevant times. Claimant struggled academically in high school and dropped out without graduating. He later earned his GED.

2. In approximately 1985, Claimant fell on ice and broke his left wrist. He received medical treatment, the fracture healed, and he noted no problems with his wrist after approximately

one year.

3. In May 2001, Claimant sustained a nondisplaced fracture of the distal radial metaphysis of his left wrist in a motorcycle accident. Emergency room records indicate Claimant complained of right wrist pain and showed swelling and mild deformity of the right wrist. However, Claimant testified at hearing that he did not injure his right wrist in the motorcycle accident, only his left wrist. The medical records establish that only his left wrist was x-rayed and splinted. No x-rays were taken and no treatment was provided for his right wrist. The Referee finds that Claimant injured only his left wrist, and not his right wrist, in the motorcycle accident, contrary to references in the medical records. His left wrist healed after this injury.

4. On approximately April 8, 2003, Claimant hyperextended his left thumb in a non-industrial accident. X-rays showed the healed left distal radial wrist fracture, left wrist arthritis, and no other fracture.

5. Claimant worked as a heavy equipment mechanic for various employers for over 20 years. He regularly used an eight-pound sledge hammer, impact wrenches, hand wrenches, and similar tools. Claimant noted passing hand and wrist fatigue as a result of his usual work activities. By approximately 1996, Claimant began experiencing recurring wrist and hand discomfort, more noticeable in his left hand than in his right. These symptoms generally arose with heavy work and resolved when the heavy work activity ceased. They did not compromise Claimant's performance of any of his work or other activities.

6. In September 2004, Claimant was hired at Spokane Rock as a heavy equipment mechanic. Claimant was a working foreman with responsibility for field and shop repairs. He supervised several other mechanics and worked approximately 60 hours per week. His duties included everything from changing flat tires to replacing a drive train in the field. In the shop he

replaced motor mounts, transmission mounts, shocks, brakes, and engines. Claimant typically used an air wrench, hand wrenches, and a sledge hammer to loosen rusted bolts and disassemble components during repairs. He customarily held the air wrench or sledge hammer in his right hand and used a hand wrench or bar in his left hand. Claimant testified that his left hand therefore sustained more stress and repetitive strain than his right hand. Claimant began to experience pain in his wrists when pounding on bearings or loader pins with the sledge hammer or using the air wrench. His wrist pain came on more quickly and was more severe in his left wrist. Initially this discomfort went away when he ceased pounding or within a few hours thereafter. Over time the discomfort increased to biting pain in his wrists. By January or February 2007, Claimant's symptoms were frequent and severe, particularly in his left wrist. He noted that his hands began to feel stunned even when he was not pounding to loosen rusted bolts. Claimant also noted night-time tingling in both of his hands. Claimant thought he might be developing carpal tunnel syndrome.

7. On March 29, 2007, Claimant presented to Henry Downs, M.D., who diagnosed bilateral wrist arthritis. Dr. Downs suggested Claimant file a workers' compensation claim and referred Claimant to wrist and hand surgeon Peter Jones, M.D.

8. In April 2007, Claimant had several conversations with his supervisor, Tim Stump, about his hand symptoms.

9. On May 1, 2007, Dr. Jones examined Claimant and noted positive Phalen's wrist flexion sign bilaterally and x-ray confirmation of bilateral joint space narrowing with degenerative radioscaphoid joint changes. Dr. Jones diagnosed bilateral scapholunate advanced collapse (SLAC) deformities, an advanced form of wrist arthritis, and probable mild carpal tunnel syndrome bilaterally. Claimant advised Dr. Jones that he had fractured his left wrist 25 years earlier and then again seven years earlier. Claimant recalled no right wrist trauma. Dr. Jones noted that Claimant

reported he had suffered bilateral wrist pain for over 10 years.

10. Claimant's wrist pain increased until he could no longer tolerate his usual work duties. Spokane Rock had no other work available for him and let him go on June 11, 2007. Claimant has not worked for Spokane Rock, or any other employer, since that time.

11. On July 5, 2007, Claimant filed his notice of injury and claim for benefits. Defendants denied the claim. On December 4, 2007, Claimant filed his Complaint herein.

12. On approximately August 19, 2008, Judith Heusner, M.D., examined Claimant at Defendants' request. She diagnosed bilateral SLAC but opined that Claimant's condition predated his employment at Spokane Rock and was more probably related to his prior bilateral wrist trauma than to his work at Spokane Rock. Defendants' Exhibit H. Dr. Heusner opined that Claimant's SLAC was the natural progression of the arthritis shown in his 2003 left wrist x-rays.

13. On August 20, 2008, Dr. Downs opined that Claimant's bilateral SLAC and probable mild carpal tunnel syndrome resulted from his employment as a heavy equipment mechanic at Spokane Rock where he used air guns, wrenches, and sledgehammers on a daily basis. Claimant's Exhibit 2. Dr. Downs retired from the practice of medicine whereupon Claimant began treating with Dana Colbert, D.O.

14. On November 19, 2008, Dr. Colbert opined that Claimant's bilateral SLAC and probable mild carpal tunnel syndrome resulted from his employment as a heavy equipment mechanic at Spokane Rock where he used air guns, wrenches, and sledgehammers on a daily basis. Claimant's Exhibit 3. Dr. Colbert noted that Claimant's bilateral osteoarthritis of his hands correlated with a repetitive overuse of both hands and that Claimant had gone several years without a specific traumatic incident to cause his condition.

15. Having reviewed the evidence and observed Claimant at hearing, the Referee finds

that Claimant is a credible witness.

DISCUSSION AND FURTHER FINDINGS

16. 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, 793 P.2d 187 (1990). The humane purposes which it serves leave no room for narrow, technical construction. Ogden v. Thompson, 128 Idaho 87, 910 P.2d 759 (1996).

17. **Statute of limitations.** The first issue is whether the claim is barred by Idaho Code § 72-448 for Claimant's failure to give timely notice to Spokane Rock of an occupational disease within 60 days after its first manifestation, or failure to timely file a claim with the Industrial Commission within one year after the first manifestation of an occupational disease.

18. The timeliness of Claimant's notice of claim and request for hearing all depend upon the date of the manifestation of his alleged occupational disease. Manifestation is defined by Idaho Code § 72-102(19) as "the time when an employee knows that he has an occupational disease, or whenever a qualified physician shall inform the injured worker that he has an occupational disease."

19. In the present case, Dr. Heusner testified that x-rays of Claimant's left wrist in 2003 showed evidence of left wrist arthritis existing at that time. However, Claimant worked for nearly three years thereafter. He reported to Dr. Heusner, and testified at hearing, that he was never informed by any medical practitioner that he had arthritis in his wrists until March 29, 2007, when Dr. Downs so advised him. Furthermore, there is no contention that any medical practitioner informed Claimant that his wrist condition was related to his employment until March 29, 2007, when Dr. Downs told Claimant that his condition was likely related to his work.

20. Defendants argue that Claimant was aware of recurring bilateral hand symptoms from

approximately 1996 onward and realized that some of his work activities aggravated his symptoms.

Claimant's situation herein is somewhat similar to that described in Sundquist v. Precision Steel & Gypsum, Inc., 141 Idaho 450, 111 P.3d 135 (2005), wherein the Court stated:

Precision argues that because Sundquist suffered from pain prior to coming to work for Precision, the Industrial Commission was wrong to find that Sundquist's occupational disease was not a preexisting condition.

An occupational disease exists for the purposes of the worker's compensation law when it first manifests.

.... [M]anifestation ... is defined as "the time when an employee knows that he has an occupational disease, or whenever a qualified physician shall inform the injured worker that he has an occupational disease." Ch. 274, § 1, 1997 Idaho Sess. Laws 799, 802. This definition is subjective. The employee must know that he has an occupational disease or have been so informed by a qualified physician. In addition, the knowledge required is that he has an occupational disease, not that he has symptoms that are later diagnosed as being an occupational disease. Knowledge of symptoms is not synonymous with knowledge the symptoms are caused by an occupational disease. Boyd v. Potlatch Corp., 117 Idaho 960, 793 P.2d 192 (1990).

Sundquist, 141 Idaho 453-454, 111 P.3d 138-139. The Court expressly noted that Sundquist had not sought any medical care with respect to the pain he was experiencing in his elbow and wrist prior to his employment with Precision.

21. In the present case, Claimant was aware of intermittent symptoms before his employment with Spokane Rock and understood that some of his work activities aggravated his symptoms. Aside from his left wrist fractures, he did not seek medical care for either wrist until March 2007. He did not take any medication for his wrist or hand symptoms—not even over-the-counter medications. Claimant is not a medically sophisticated individual. He testified that when he went to see Dr. Downs in March 2007, he thought he might have carpal tunnel and did not know what arthritis was until Dr. Downs advised him of it on March 29, 2007. Even now Defendants and their medical expert deny that Claimant has an occupational disease by denying that his condition was caused by his employment, yet Defendants urge that Claimant's recognition that his work

aggravated his symptoms suffices to establish the manifestation—which amounts to the legal birth—of an occupational disease. The Referee finds that Claimant did not know he had an occupational disease prior to being so informed by Dr. Downs on March 29, 2007. The date of the manifestation of Claimant’s occupational disease was March 29, 2007.

22. Claimant did not file his notice of injury and claim for benefits until July 5, 2007. However, by early April 2007, Claimant had several conversations with his supervisor, Tim Stump, about his hand condition. Claimant testified:

I had several discussions with Tim about it when I first went to the doctor and [he] told me I had arthritis in March. I went to see another doctor, Dr. Jones. He confirmed that. I had discussions with Tim about what we were going to do. You know, he told me that they would do whatever it would take to keep me there and keep me in the company. And then about a week before they let me go, they came and told me that they were going to let me go. And I filed a – the claim with my doctor that—that day or the next day and told me that was my last day.

Defendants’ Exhibit I, p. 61 (Claimant’s Deposition p. 23, Ll. 8-21).

23. Defendants assert that Claimant merely reported his bilateral wrist symptoms to Stump, but did not give notice of an occupational disease in that Claimant did not assert that his wrist symptoms were work-related. However, Claimant’s recorded statement to Surety’s agent Diane Mattoon on August 2, 2007, indicates:

Q. Okay. You never got a form from your employer to fill out?

A. No, you know, I talked to the Human Resources officer in April and asked her if there was something with the company I could retrain be [sic] lateral over to another position or something, you know, and I told them do I need to file worker’s [sic] comp or what and she said she’d get back to me; she never got back to me, they never did anything about it and I was trying to work with them on the insurance and see what could be done and nothing happened.

Defendants’ Exhibit G, p. 32.

24. Claimant’s conversations with Tim Stump and Spokane Rock’s human resource officer in April 2007 gave Spokane Rock actual notice of not only Claimant’s hand symptoms, but

also the alleged work-related nature of his symptoms, well within the 60 days required by Idaho Code § 72-448. Claimant gave Spokane Rock written notice of his claim on July 5, 2007, and filed his Complaint herein on December 4, 2007, well within the one-year period required by Idaho Code § 72-706. Claimant's occupational disease claim is not barred by the statute of limitations.

25. **Preexisting condition.** The second issue is whether Claimant's Complaint seeks benefits for a preexisting condition and is barred for lack of an accident aggravating his preexisting condition. Under Idaho law the aggravation of a preexisting condition is not compensable unless the aggravation is by an industrial accident. Nelson v. Ponsness-Warren Idgas Enterprises, 126 Idaho 129, 879 P.2d 592 (1994), Konvalinka v. Bonneville County, 140 Idaho 477, 95 P.3d 628 (2004). Defendants assert that Claimant's arthritis in his wrists preexisted his employment at Spokane Rock and his claim is barred by Nelson and DeMain v. Bruce McLaughlin Logging, 132 Idaho 782, 979 P.2d 655 (1999). Claimant readily acknowledges that he suffered no industrial accident at Spokane Rock and pursues his claim as an occupational disease. However, Claimant cites Sundquist v. Precision Steel & Gypsum, Inc., 141 Idaho 450, 111 P.3d 135 (2005), and argues that Nelson does not apply because Claimant's bilateral arthritis was not a preexisting disease relative to his employment at Spokane Rock.

26. In DeMain v. Bruce McLaughlin Logging, 132 Idaho 782, 979 P.2d 655 (1999), DeMain suffered degenerative disc disease and a disc herniation which improved to the point of being asymptomatic prior to starting work for McLaughlin Logging as a skidder operator. DeMain's back became symptomatic after operating a grapple skidder which caused repetitive jarring and trauma to his spine. The Commission found that DeMain's preexisting back condition did not rise to the level of an occupational disease, concluded that repetitive trauma from operating the grapple skidder aggravated DeMain's preexisting weakness to the point of incapacitation, and granted

benefits under an occupational disease theory. The Idaho Supreme Court reversed, citing the Nelson doctrine and stating:

Although the evidence in Nelson established that the claimant suffered from a pre-existing occupational disease, the holding in Nelson is not limited to those cases where the pre-existing condition amounts to an occupational disease. In Nelson the court relied on several earlier cases in reaching its decision, including Carlson v. Batts, 69 Idaho 456, 207 P.2d 1023 (1949). In Carlson the Court held that in order to receive compensation for aggravation of a “pre-existing bodily weakness, infirmity or susceptibility” a claimant must establish that the aggravation or injury was the result of an accident. Id. at 458, 207 P.2d at 1025. The reliance on Carlson indicates that the holding in Nelson extends to all pre-existing conditions, whether they are occupational diseases or simply weakness or susceptibilities. This Court recently clarified this point in Reyes v. Kit Manufacturing Co., 131 Idaho 239, 953 P.2d 989 (1998), when it stated:

The essence of Nelson is that a preexisting occupational disease is just like any other preexisting condition. For a current employer to be liable for the aggravation of the condition, there must be an accident.

DeMain, 132 Idaho at 784, 979 P.2d at 658.

27. In Sundquist v. Precision Steel & Gypsum, Inc., 141 Idaho 450, 111 P.3d 135 (2005),

the Court addressed the Nelson doctrine stating:

The Nelson doctrine provides that a claimant seeking compensation for the aggravation of a *preexisting condition* must prove his injuries are attributable to an accident that can reasonably be located as to the time and place it occurred. The Nelson doctrine does not apply to *all* cases where there is an occupational disease, only in those where the claimant's occupational disease *preexisted* employment with the employer from whom benefits are sought.

An occupational disease exists for the purposes of the worker's compensation law when it first manifests.

.... [M]anifestation ... is defined as “the time when an employee knows that he has an occupational disease, or whenever a qualified physician shall inform the injured worker that he has an occupational disease.” Ch. 274, § 1, 1997 Idaho Sess. Laws 799, 802.

For an occupational disease to be a preexisting condition under the holding in Nelson v. Ponsness-Warren Idgas Enterprises, 126 Idaho 129, 879 P.2d 592 (1994), there must have been a prior manifestation of the disease.

Sundquist, at 453-454, 111 P.3d 138-139 (emphasis in original). The Court then concluded:

On the basis of substantial and competent evidence the Industrial Commission determined that Sundquist's occupational disease did not manifest itself within the meaning of I.C. § 72-102(18) until May 16, 2002. Because Sundquist's occupational disease was not manifest prior to his employment with Precision, it was not a preexisting condition relative to that firm. As a result, the Industrial Commission correctly declined to apply the Nelson doctrine under the present facts.

Sundquist, at 456, 111 P.3d 141.

28. At first blush Sundquist and DeMain may appear at odds. However, the essence of the Court's holding in DeMain is that Nelson applies to a preexisting condition whether or not it is an occupational disease. The essence of the holding in Sundquist is that when the preexisting condition is an occupational disease, Nelson does not apply if that occupational disease was not manifest, as defined by statute, prior to the claimant's starting work with the employer from whom benefits are sought.

29. In the present case, Claimant's two left wrist fractures and left thumb hyperextension injury, all of which predate his employment with Spokane Rock, do not collectively or individually constitute an occupational disease. Dr. Heusner opined that Claimant's SLAC was the natural progression of the arthritis shown in his 2003 left wrist x-rays. Defendants assert that these traumatic injuries caused his bilateral SLAC. Neither Claimant nor Defendants argue that Claimant's bilateral SLAC amounts to an occupational disease which pre-existed his employment with Spokane Rock. Similarly, neither party argues that Claimant's left wrist arthritis amounts to an occupational disease which pre-existed his employment with Spokane Rock. However, x-rays taken of Claimant's left wrist in 2003 showed arthritis. Although there is no evidence that Claimant was advised in 2003, or any time before March 29, 2007, that he had arthritis in his left wrist, this is not material under Nelson and DeMain because no party asserts that Claimant had a preexisting occupational disease of left wrist arthritis prior to his employment at Spokane Rock. Thus, under

these circumstances, Sundquist does not apply. Claimant's left wrist arthritis is established by his 2003 x-rays and constitutes a documented preexisting condition. The Referee concludes that Claimant's request for benefits for SLAC in his left wrist is barred by Nelson and DeMain.

30. Although Claimant acknowledged intermittent right wrist discomfort prior to his employment at Spokane Rock, he consistently testified that he experienced less discomfort in his right wrist than in his left. Prior to commencing work with Spokane Rock he never sought medical attention for his right wrist and took no medication—not even over-the-counter medication—for his discomfort. The discomfort was not debilitating. Claimant worked for Spokane Rock continually for nearly three years before he sought medical attention for his right wrist. There is no credible medical evidence that his right SLAC or bilateral carpal tunnel syndrome preexisted his employment at Spokane Rock. As regards Claimant's right wrist, his situation is similar to that reported by the claimant in Sundquist and does not rise to the level of a preexisting condition under Nelson.¹

31. Claimant's right SLAC and probable mild bilateral carpal tunnel syndrome are not preexisting conditions relative to his employment at Spokane Rock. There was no manifestation of Claimant's right SLAC and bilateral carpal tunnel syndrome until March 29, 2007. His claim for right SLAC and bilateral carpal tunnel syndrome is not barred by Nelson or its progeny.

32. **Occupational disease.** Claimant alleges his bilateral SLAC and bilateral carpal tunnel syndrome constitute a compensable occupational disease. The Idaho Workers' Compensation Law defines an "occupational disease" as "a disease due to the nature of an employment in which the hazards of such disease actually exist, are characteristic of, and peculiar to the trade, occupation, process, or employment" Idaho Code § 72-102(22)(a). The law further provides that:

¹ Defendants argue that prior trauma caused Claimant's bilateral SLAC. However, there was no prior right wrist trauma, thus Defendants' causation argument fails as to Claimant's right SLAC and bilateral carpal tunnel syndrome. Any assertion that Claimant's work prior to Spokane Rock caused his right SLAC or bilateral carpal tunnel syndrome would invoke a manifestation requirement as in Sundquist, and no manifestation has been shown prior to

[w]hen an employee of an employer suffers an occupational disease and is thereby disabled from performing his work in the last occupation in which he was injuriously exposed to the hazards of such disease, . . . and the disease was due to the nature of an occupation or process in which he was employed within the period previous to his disablement as hereinafter limited, the employee, . . . shall be entitled to compensation.

Idaho Code § 72-437.

33. Disablement means “the event of an employee’s becoming actually and totally incapacitated because of an occupational disease from performing his work in the last occupation in which injuriously exposed to the hazards of such disease,” and “disability means the state of being so incapacitated.” Idaho Code § 72-102(22)(c). Idaho Code § 72-439 limits the liability of an employer for any compensation for an occupational disease to cases where (1) “such disease is actually incurred in the employer’s employment,” and (2) for a nonacute occupational disease, where “the employee was exposed to the hazard of such disease for a period of 60 days for the same employer.” The 60-day period of exposure required by Idaho Code § 72-439 need not be a single continuous period. Jones v. Morrison-Knudsen Co., Inc., 98 Idaho 458, 567 P.2d 3 (1977).

34. Thus, under the statutory scheme, a claimant must demonstrate (1) that they were afflicted by a disease; (2) that the hazards of such disease actually exist, are characteristic of, and peculiar to the trade, occupation, process, or employment in which they were engaged; (3) that they were exposed to the hazards of such nonacute disease for a period of 60 days with the same employer; (4) that the disease was incurred in, or arose out of and in the course of their employment, and (5) that as a consequence of such disease, they become actually and totally incapacitated from performing their work in the last occupation in which they were injuriously exposed to the hazards of such disease. In addition, a claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability. Langley v. State, Industrial Special

March 29, 2007.

Indemnity Fund, 126 Idaho 781, 890 P.2d 732 (1995). Probable is defined as having more evidence for than against. Fisher v. Bunker Hill Co., 96 Idaho 341, 528 P.2d 903 (1974).

35. Disease. Drs. Heusner, Downs, Jones, and Colbert agree, and Defendants do not dispute, that Claimant suffers bilateral SLAC. Drs. Jones, Downs, and Colbert have opined that Claimant also suffers probable mild carpal tunnel syndrome bilaterally.

36. Hazard and exposure. Dr. Heusner opined that the medical literature reported a very mild association of a higher incidence in the occurrence of SLAC in males and manual laborers, but no definitive supporting epidemiologic studies. Defendants' Exhibit H, p. 50. Dr. Jones indicated he had seen:

a number of cases over the years where people, who apply heavy loads to their wrists, operating jack hammers, etc., develop this condition. Clearly the job duties of a mechanic require heavy and repetitive use of the hands. Often times, mechanics impact wrenches with their outstretched hand producing significant loads on the scapholunate ligament.

Claimant's Exhibit 4.

37. The wrist and scapholunate ligament loading described by Dr. Jones is a characteristic of the work of a heavy equipment mechanic which Claimant performed at Spokane Rock. Dr. Heusner reported that carpal tunnel syndrome is a condition which can be caused by the type of work that Claimant performed. Defendants' Exhibit H, p. 53. Claimant's nearly three years as a heavy equipment mechanic at Spokane Rock exposed him to the peculiar hazards resulting from heavy wrist loading, overuse of his wrists, and sustained forceful gripping which are not characteristic of all occupations.

38. Causation. Defendants vigorously deny that Claimant contracted and incurred an occupational disease from his employment. They assert that Claimant's SLAC was caused by pre-employment trauma rather than by his work at Spokane Rock.

39. Dr. Heusner opined that Claimant's bilateral SLAC predated his employment at Spokane Rock and resulted from prior wrist trauma many years earlier. Her opinion as to SLAC in Claimant's right wrist is based upon 2001 medical records which report mild swelling and deformity in Claimant's right wrist after a motorcycle accident, but only mention x-rays and casting of his left wrist. Dr. Heusner acknowledged that failure to x-ray Claimant's right wrist in 2001, if it was actually slightly deformed and swollen, would be highly unusual. As noted previously, the Referee finds this particular reference in the 2001 medical records in error. In her deposition, Dr. Heusner opined that even assuming Claimant did not injure his right wrist in his 2001 motorcycle accident, Claimant must have injured his right wrist some other place that is not revealed in the medical records. Heusner Deposition, p. 36. Dr. Heusner's opinion is based upon her review of medical literature concluding that SLAC is most often the result of traumatic injury and her presumption that Claimant sustained a traumatic injury to his right wrist. However, Claimant expressly denied any traumatic right wrist injury and there is no credible evidence that Claimant ever sustained a traumatic right wrist injury. Consequently, Dr. Heusner's opinion that Claimant's right SLAC was caused by prior trauma is not persuasive. Dr. Heusner suggested definitive electro-diagnostic studies but did not dispute Claimant's physician's findings of probable mild carpal tunnel bilaterally. She expressly acknowledged that the heavy equipment mechanic work Claimant performed could cause carpal tunnel syndrome.

40. Dr. Downs and Dr. Colbert opined that Claimant's bilateral SLAC and probable mild carpal tunnel syndrome are the result of his employment as a heavy equipment mechanic at Spokane Rock using air guns, wrenches, and sledgehammers on a daily basis. Claimant's Exhibits 2-3. Dr. Colbert noted that Claimant has bilateral osteoarthritis of his hands which correlated with a repetitive overuse of both hands and that Claimant had gone several years without a specific

traumatic incident to cause his condition.

41. Dr. Jones recognized that trauma is the most common cause of SLAC but also opined that repetitive heavy wrist loading, as in Claimant's case, can also produce SLAC. He wrote:

The most common cause of scapholunate advanced collapse deformity is a traumatic fall on an outstretched hand. This is often interpreted as a sprain by the patient and often goes untreated. Over time, the ligament tear at the scapholunate articulation produces wrist instability with associated degenerative changes. However, I have seen a number of cases over the years where people, who apply heavy loads to their wrists, operating jack hammers, etc., develop this condition. Not uncommonly there is no specific history of wrist trauma. I think the condition may develop due to repetitive loading of the wrist with attenuation and eventual failure of the scapholunate ligament. This would then go on to produce the degenerative changes seen with scapholunate advanced collapse deformity. Clearly the job duties of a mechanic require heavy and repetitive uses of the hands. Often times, mechanics impact wrenches with their outstretched hand producing significant loads on the scapholunate ligament.

Claimant's Exhibit 4.

42. The opinions of Dr. Jones, Dr. Downs, and Dr. Colbert as to the cause of Claimant's right SLAC are adequately explained, rest upon credible evidence, and are more persuasive than the opinion of Dr. Heusner. The Referee finds that Claimant's work at Spokane Rock caused his right SLAC and his probable bilateral carpal tunnel syndrome.

43. Incapacity. It is undisputed that by June 2007, Claimant was totally disabled and incapacitated from performing his usual duties as a heavy equipment mechanic at Spokane Rock, due to his wrist and hand condition. Claimant's duties required bilateral hand strength and dexterity. Regardless of the condition of his left wrist, he was incapacitated from performing his occupation because of the work-related condition of his dominant right hand and wrist.² This satisfies the statutory requirement.

44. Claimant has proven that the SLAC in his dominant right wrist and his probable

² The impact of Claimant's left wrist condition on his permanent impairment and disability, if any, is not

bilateral carpal tunnel syndrome constitute a compensable occupational disease which Claimant contracted and incurred as a result of his work at Spokane Rock.

CONCLUSIONS OF LAW

1. Claimant has proven that his occupational disease claim is not barred by Idaho Code § 72-448 or Idaho Code § 72-706(1).
2. Claimant's claim for left SLAC is barred by Nelson v. Ponsness-Warren Idgas Enterprises, 126 Idaho 129, 879 P.2d 592 (1994). His claim for right SLAC and bilateral carpal tunnel syndrome is not barred.
3. Claimant has proven that he contracted and incurred the compensable occupational disease of right SLAC and probable bilateral carpal tunnel syndrome due to his employment at Spokane Rock.

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 16th day of July, 2009.

INDUSTRIAL COMMISSION

/s/ _____
Alan Reed Taylor, Referee

ATTEST:

/s/ _____
Assistant Commission Secretary

presently before the Commission for determination.

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of July, 2009, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

STEPHEN J NEMEC
1626 LINCOLN WAY
COEUR D'ALENE ID 83814-2435

KENT W DAY
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BOISE ID 83707

sc

_____/s/_____

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BRADLEY WILSON,)
)
 Claimant,)
) **IC 2007-022938**
 v.)
)
 SPOKANE ROCK PRODUCTS,)
) **ORDER**
 Employer,)
)
 and)
)
 LIBERTY NORTHWEST INSURANCE)
 CORPORATION,)
) **Filed: July 29, 2009**
 Surety,)
)
 Defendants.)
 _____)

Pursuant to Idaho Code § 72-717, Referee Alan Taylor submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusions of law to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee’s proposed findings of fact and conclusions of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant has proven that his occupational disease claim is not barred by Idaho Code § 72-448 or Idaho Code § 72-706(1).

2. Claimant’s claim for left SLAC is barred by Nelson v. Ponsness-Warren Idgas Enterprises, 126 Idaho 129, 879 P.2d 592 (1994). His claim for right SLAC and bilateral carpal tunnel syndrome is not barred.

3. Claimant has proven that he contracted and incurred the compensable occupational disease of right SLAC and probable bilateral carpal tunnel syndrome due to his employment at Spokane Rock.

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

DATED this 29th day of July, 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 29th day of July, 2009, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

STEPHEN J NEMEC
1626 LINCOLN WAY
COEUR D'ALENE ID 83814-2435

KENT W DAY
PO BOX 6358
BOISE ID 83707

sc

/s/