

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

DEBORAH BOWNE,)	
)	IC 2007-032770
Claimant,)	
)	FINDINGS OF FACT,
v.)	CONCLUSIONS OF LAW,
)	AND RECOMMENDATION
BRIGHAM YOUNG LODGE,)	
)	Filed: September 16, 2009
Employer,)	
Defendant.)	
_____)	

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Rinda Just, who conducted a hearing in Pocatello, Idaho, on March 17, 2009. Claimant and Defendant each appeared *pro se*. The parties submitted oral and documentary evidence during the hearing and each filed post-hearing briefs. The matter came under advisement on May 29, 2009 and is now ready for decision.

ISSUES

By agreement of the parties at hearing, the issues to be decided are:

1. Whether Claimant sustained an injury from an accident arising out of and in the course of her employment;
2. Whether the condition for which Claimant seeks benefits was caused by the industrial accident;
3. Whether Claimant’s condition is due in whole or in part to pre-existing or subsequent injuries or conditions;

4. Whether and to what extent the Claimant is entitled to the following benefits:
 - a. Medical care;
 - b. Temporary total or temporary partial disability benefits (TTD/TPD);
 - c. Permanent partial impairment (PPI); and
 - d. Disability in excess of impairment (PPD); and
5. Whether Employer is liable to Claimant for the penalties that are set forth in Idaho Code §72-210 for failing to insure liability.

CONTENTIONS OF THE PARTIES

Claimant asserts that she injured her back on June 8, 2007, while performing housekeeping duties at Brigham Young Lodge (BYL) as directed by Employer. Because Employer did not have workers' compensation liability coverage and Claimant could not afford to see a doctor, she did not receive medical care for her injury until August 25, 2007 at the emergency room at Caribou Memorial Hospital. Emergency room physicians referred Claimant to Benjamin Blair, M.D., a surgeon, but she has not been able to see him or any surgeon because she has no private insurance and lacks the financial means to pay for her care. Claimant avers that she is entitled to medical care, time loss benefits, permanent impairment, and disability in excess of her impairment. Because Defendant did not carry workers' compensation insurance as required by law, Claimant asserts that she is also entitled to a penalty of 10% of all compensation awarded plus litigation costs.

Defendant asserts that while Claimant did work for BYL, it is not liable on the claim because Claimant's injury occurred while working for Rhead and Mason, a separate legal entity in which Mr. Mason was a partner.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant, Danny Bowne, June Mason and Boyd Mason taken at hearing; and
2. Claimant's Exhibits A through E, admitted at hearing.

The transcript of the hearing reflects an extensive discussion regarding the admissibility of exhibits. Defendant failed to serve Claimant with its proposed exhibits as required by Rule 10, J.R.P. For its failure to comply with the rule, the Referee excluded Defendant's exhibits. One of Defendant's proposed exhibits was a handwritten statement signed by Chantell Baker and Seth Lundquist. The statement purported to contradict the Claimant's testimony as to when she was injured. Upon reviewing the documents in preparation for writing this Recommendation, the Referee discovered that Claimant's exhibits (offered into evidence and admitted without objection), included the disputed document. Therefore, the statement signed by Baker and Lundquist became a part of the record at Claimant's request.

Defendant submitted a number of documents to the Commission at various times prior to the hearing, and attached some documents to its post-hearing brief. Because the documents were submitted *ex parte* and in violation of Rule 10, J.R.P, the Referee did not review or consider any of them in making these findings and conclusions.

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

BACKGROUND

1. June and Boyd Mason own and operate a small motel and RV park, hereinafter

referred to as Brigham Young Lodge or BYL, in Soda Springs, Idaho. The Masons have been in business for fifty-five years, and have owned BYL for approximately thirty-five years. Mrs. Mason testified that BYL operated as a sole proprietorship. The motel rooms are primarily kitchenettes, and there are a number of RV spaces available for rent. Several mobile homes owned by BYL are also located on the property and available to rent. Rhead and Mason, a partnership that included Boyd Mason, owns three additional mobile homes located on BYL's property. Rhead and Mason paid rent to BYL for the mobile home spaces they occupied and Rhead and Mason handled the rental and maintenance of those units.

2. June Mason, by her testimony, handled most of the management of BYL, while her husband, Boyd, was involved with the management of the Rhead and Mason partnership. Mrs. Mason rented the kitchenettes and RV spaces as well as the mobile homes owned by BYL. She arranged for help to maintain the grounds and to assist with housekeeping in the rental units.

3. Mrs. Mason also handled the accounting for BYL, which appears from the testimony to be rather an informal affair. Mrs. Mason testified that she kept "a receipt book" that contained the information about when a unit was rented, for how long and when it needed to be cleaned. She also testified that whenever Claimant worked for BYL, she received a check in payment and that Mrs. Mason had a record of all checks written. Defendant did not offer either the receipt book or check register into evidence. Mrs. Mason testified that she did not find the receipt book until five days prior to the hearing.

4. Prior to the filing of Claimant's Complaint, Defendant had never purchased workers' compensation insurance.

5. Claimant first met the Masons in September 2006, when she and her husband rented a kitchenette from BYL. At the time, Mr. Bowne was working as a truck driver and the

couple was looking for a small place to rent for a short term. The Bownes rented from BYL from approximately September 16 until September 22, 2006, at which time the Bownes entered into a rent-to-own agreement with Rhead and Mason for a home in Soda Springs.

6. Mrs. Mason first hired Claimant to work at BYL in February 2007. Claimant's duties included light housekeeping—dusting, vacuuming, and cleaning bathrooms, primarily in the kitchenettes. Claimant testified that she worked approximately sixty-five hours per month at an hourly rate of \$7.50. Mrs. Mason testified that Claimant never worked alone cleaning any of the units. "I stay with the girl that I hire. I have done this since the very beginning because it's the only way I can justify what is being done." Tr., p. 54.

THE ACCIDENT

7. Claimant testified that on June 8, 2007 she was cleaning one of Defendant's rental mobile homes. Claimant testified that she was working alone as Mrs. Mason was working elsewhere on the BYL premises. When Claimant was nearly finished cleaning the unit, Mr. Bowne came in and was helping her finish, having completed his own work. Claimant picked up the vacuum to put it away and heard a loud pop, then fell to the floor on her right side, dropping the cleaning caddy that she was carrying. Claimant described the sensation as "tingly and then numb and then excruciating pain." Tr., p. 29. At hearing, she described the pain as in her low back, below the belt line. Mr. Bowne came to her aid and finished putting away the vacuum and cleaning supplies and helped Claimant to the car.

8. Claimant testified that before leaving the premises she found Mrs. Mason and told her that she had hurt her back and needed to go home. Once at home, Claimant used ice, heat, rest and anti-inflammatories to try to relieve her pain, but without success. Claimant testified that she was not able to return to work for Defendant or any other employer because of her pain

and her difficulty walking, sitting, and standing for any length of time.

9. Mrs. Mason testified that Claimant worked on the following dates in June 2007: June 7 (kitchenette); June 13 (kitchenette); June 14 (for Rhead and Mason with Mrs. Mason's granddaughter, Chantell Baker, and her boyfriend, Seth Lundquist). Mrs. Mason testified that she needed a unit cleaned on June 16 or 17 and called Claimant. Mr. Bowne answered and said that Claimant was in bed. Several days later Mrs. Mason called again and spoke with Claimant, who "told me herself that she had carried some things up the flight of stairs, which agitated her back and that she had to go to bed." Tr., p. 55.

MEDICAL CARE

10. Claimant testified that by August 25, 2007 she could not stand the pain any longer and went to the emergency room at Caribou Memorial Hospital. There, she saw John Franson, M.D. Claimant stated that Dr. Franson told her to treat with an ice pack, gave her prescriptions, imposed some restrictions, including a five-pound lifting restriction, and referred her to Benjamin Blair, M.D. The evidence admitted at hearing does not include any medical records from Caribou Memorial Hospital. However, Claimant's Ex. D includes three prescription labels for Tramadol 50mg tablets, issued by Dr. Franson. The first date on the prescriptions is August 25, 2007. Additional prescriptions for Tramadol were dated September 5 and September 18, 2007. The handwritten First Report of Injury or Illness, filed with the Commission on September 26, 2007, identifies Dr. Franson as a treating physician and includes a notation that Claimant saw him on August 25, 2007.

11. Claimant testified that she tried to make an appointment with Dr. Blair, but could not get one because she had no means to pay. When Claimant was unable to schedule an appointment with Dr. Blair, she asked Defendant to pay for her care. By letter dated September

12, 2007, Defendant denied Claimant's claim asserting that Claimant had not established that she sustained an injury as a result of an accident arising out of her employment with Defendant (Claimant's Ex. C, p. 1).

12. Claimant testified that she followed Dr. Franson's recommendations, but her condition did not improve. She returned to the ER at Caribou Memorial Hospital, where she saw Dr. Smith, who gave her a prescription for Tylenol 3 and told her to use ice and heat. He continued the restrictions imposed by Dr. Franson and recommended that she see a specialist. Again, there are no medical records of this visit in the record.

13. On July 11, 2008, Claimant sought care from SpinalAid Centers of America, a franchise medical provider that offers "nonsurgical spinal decompression." The records (Claimant's Ex. D) identify the presenting complaint as low back pain with radiculopathy extending both anteriorly and posteriorly from the top of the calf to the top of the right ankle. The mechanism of trauma is identified as "lifting vacuum at work heard 'pop' went to knees," and identifies the date of occurrence as June 8, 2007. The chart note indicates that x-rays were taken on July 15, but no findings are discussed. The note does not include an identifiable diagnosis, but proposes a four-phase treatment plan that includes:

- Treatment three to four times per week for two to three weeks (initial phase), then
- Two times a week for six weeks (tissue regeneration phase), followed by
- Six times a week for twelve weeks (tissue remodeling phase), and concluding with
- Six treatments per week for twelve months (core strengthening phase.)

14. On December 2, 2008, Claimant saw Brian Anderson, D.O. Dr. Anderson prepared a letter documenting the visit. The letter in evidence does not include an addressee, and it appears that the address block has been redacted. The letter states in pertinent part:

I saw [Claimant] in my office on the above-mentioned date. As you probably know she is a 44-year-old female who suffered an on-the-job injury 06/08/07 while working at Brigham Young Lodge. The working diagnosis is lumbar herniated disc with nerve impingement causing chronic low back pain and right lower extremity radiculopathy. After taking the history again today and examining her, I believe that she is unable to work at this point in time.

Claimant's Ex. D. Dr. Anderson ordered an MRI of Claimant's lumbar spine. The MRI, performed on December 13, 2008, showed a "large right paramedian L4-5 disc extrusion, which *significantly* impresses upon the roots of the cauda equina and thecal sac." *Id.* Emphasis in original. Other findings included mild hypertrophic changes of the facet joints at L4-5 and some desiccation and narrowing with minimal bulging at L5-S1.

15. Claimant submitted two invoices from Caribou Memorial Hospital, both dated February 23, 2009. The first invoice is for services provided December 13, 2008 (the date of Claimant's MRI) and shows \$1570.00 due. The second invoice ~~\$167.13~~ includes services provided September 17, 2008 for an ER visit (\$69.00) and \$95.00 for services provided December 2, 2008. Service and/or finance charges of \$3.13 were also included in the second invoice. The second invoice does not specify the services provided, but the dates of service appear to coincide with one of Claimant's visits to Dr. Franson and her visit to Dr. Anderson.

PRIOR MEDICAL HISTORY

16. Claimant testified that in 1996, while working as a janitor, she suffered an industrial injury to her low back. Dr. Blair diagnosed bulging discs and ordered six weeks of physical therapy. Claimant made a complete recovery. Surety accepted Claimant's workers' compensation claim, and paid for her medical care. Claimant did not incur any time loss from that accident. Claimant stated that after her recovery, she had no further problem with her low back until the June 8, 2007 accident at BYL. She stated that she did not curtail any of her normal activities in deference to her 1996 low back injury.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 8

CREDIBILITY

17. Making findings in “he said/she said” cases like this one can be challenging. Such cases become even more difficult when both parties appear without benefit of counsel—crucial questions are not asked and relevant documents may not be in the record, and *pro se* litigants are often unaware of fundamental legal concepts such as burden of proof. So it is with the case at bar. Both parties have much at stake and there is little documentary evidence to corroborate testimony or to reconcile irreconcilable versions of events. Despite the obstacles, findings must be made. For the following reasons, the Referee finds that Claimant is the more credible party in this proceeding.

18. Much of Claimant’s testimony is corroborated by the invoices from Caribou Memorial Hospital, the labels on the Tramadol prescribed by Dr. Franson, the records from SpinalAid Centers of America, and by Dr. Anderson’s letter regarding Claimant’s condition. Although there are only a few medical records, those records are consistent with regard to the date of injury, the mechanics of the injury, the symptoms following the injury, and the dates of care. Those medical records are also consistent with the First Notice of Injury or Illness filed with the Commission the day after Claimant’s first visit to the emergency room. The results of the MRI confirm that Claimant has documented pathology that accounts for her symptoms, and, at least to this layperson, suggest an acute rather than a chronic or degenerative condition.

19. In contrast, the Referee finds the testimony of both Mr. and Mrs. Mason less credible. According to Mr. Mason, he and his wife had been operating businesses for fifty-five years, and BYL for thirty-five. In addition, Mr. Mason was a partner in at least one other business of unknown duration. Yet Defendant had no bookkeeping system or accounting records that documented income and disbursements. This matter was first set for hearing May 13, 2008,

and was reset twice more before finally being heard in March 2009. Surely, if Defendant had evidence that proved Claimant's version of events to be wrong, it would have located that evidence prior to May of 2008. Yet, Mrs. Mason testified that she only found the receipt books that constituted BYL records a few days before hearing. Defendant offered no check registers or duplicate checks into evidence to show payments made to Claimant, nor did Defendant provide any time sheets or other records showing when Claimant worked and for how long. These are among the most basic records created in the ordinary course of a business, and utilized on an almost daily basis, yet Defendant did not produce them. Further, Defendant did not withhold state and federal taxes from Claimant's pay, nor did it provide a W2 or 1099 for tax purposes. Finally, the Referee finds it incredible that in fifty-five years of operating businesses in general, and thirty-five years of owning and operating BYL in particular, Defendant and its principals remained entirely ignorant of such basic legal requirements as the need to carry workers' compensation insurance.

20. Finally, throughout the pendency of this judicial action, Defendant's strategy appeared to be to create delay. Defendant first retained counsel who had no experience in the workers' compensation arena and took no action to move the case forward for over six months. Defendant then discharged the attorney just days before the first scheduled hearing. As a result, the hearing date was vacated. A new hearing date was set for December 19, 2008. The Commission had to vacate the second scheduled hearing when Defendant's substitute counsel withdrew from the case as the result of a conflict that had arisen subsequent to his acceptance of the case. Claimant objected strenuously to vacating both hearings, suggesting that she should not be deprived of a timely hearing due to Defendant's actions or the actions of its attorney. Claimant noted that the delay was particularly onerous, because she was not receiving necessary

medical care. While the Referee agreed with Claimant's concerns, it would not have been appropriate to force the Defendant to hearing in December 2008 without having had an opportunity to obtain new counsel. Defendant ultimately opted to appear *pro se*, and the hearing was eventually scheduled for March 2009, almost two years after the accident. Mr. Mason testified at hearing regarding the cause for all of the delay, including a family medical situation in the spring of 2008 and the death of his partner in Rhead and Mason in the spring of 2008. Mr. Mason testified, ". . . so with all the confusion and all that's come on us, we haven't been there where we could tend things very good." Tr., p. 65. Finally, Mr. Mason stated, ". . . I feel personally that [*sic*, if?] anything needs to be brought up, we should have a right to, to [*sic*, an?] attorney." Tr., p. 67.

DISCUSSION AND FURTHER FINDINGS

21. A claimant in a worker's compensation case has the burden of proving that she is entitled to benefits. The claimant must prove not only that she was injured, but also that her injury was the result of an accident arising out of and in the course of her employment. Her proof must establish a probable, not merely a possible, connection between cause and effect to support her contention that she suffered an accident. *Neufeld v. Browning Ferris Industries*, 109 Idaho 899, 902, 712 P.2d 500, 603 (1985).

INJURY/ACCIDENT

22. The Referee finds that Claimant did suffer an injury as the result of an accident that occurred in the course of her employment with Defendant on or about June 8, 2007. As discussed elsewhere in these findings, despite the paucity of dots, the dots that do exist match up with the Claimant's testimony and that of her husband. While Defendant asserted that Claimant was not working for BYL on June 8, Defendant presented no evidence to support its assertion.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 11

23. The Referee gives little, if any, weight to the signed statement of Ms. Baker and Mr. Lundquist regarding Claimant's activities on June 14, 2007. First, it sheds no light on Claimant's activities on June 8, and, to that extent, is not probative on the issue of whether Claimant suffered an injury as a result of an accident. While the letter contradicts Claimant's testimony that she was not able to work after June 8, the veracity and reliability of Ms. Baker and Mr. Lundquist could not be evaluated, since they were not asked to testify and their statement was not given under oath. Finally, Ms. Baker is the granddaughter of the Masons, and neither the Claimant nor the Referee had an opportunity to inquire whether Ms. Baker and Mr. Lundquist gave the statement voluntarily or in exchange for some benefit.

MEDICAL CAUSATION

24. In addition to proving the accident and injury, a claimant must also prove medical causation:

The claimant carries the burden of proof that to a reasonable degree of medical probability the injury for which benefits are claimed is causally related to an accident occurring in the course of employment. Proof of a possible causal link is insufficient to satisfy the burden. The issue of causation must be proved by expert medical testimony.

Hart v. Kaman Bearing & Supply, 130 Idaho 296, 299, 939 P.2d 1375, 1378 (1997) (internal citations omitted). "In this regard, 'probable' is defined as 'having more evidence for than against.'" *Soto v. Simplot*, 126 Idaho 536, 540, 887 P.2d 1043, 1047 (1994). Once a claimant has met his burden of proving a causal relationship between the injury for which benefits are sought and an industrial accident, then Idaho Code § 72-432 requires that the employer provide reasonable medical treatment, including medications and procedures.

25. Where, as in this case, Claimant received only minimal medical care, Claimant lacks the medical evidence necessary to establish the precise nature of her injury and a more

likely than not causal connection to the accident. Yet, what little medical evidence does exist (the MRI) showed only minor pre-existing degenerative changes apart from the significant finding at L4-5. A lack of significant on-going disc disease makes it more likely that Claimant's significant L4-5 disc pathology is the result of her industrial injury. The only way that Claimant can obtain the medical evidence she needs to prove that causal connection is to receive the medical care denied her at the time of the accident. Defendant should not benefit, and Claimant should not suffer, because of Defendant's initial refusal to pay for reasonably necessary medical care, which, in this case, includes at least one appointment with Dr. Blair.

26. Having found that Claimant suffered an injury as the result of an industrial accident, she is entitled to reasonably necessary medical care as set out in Idaho Code § 72-432. As of the date of hearing, this includes payment for her emergency room visits, doctor visits, and prescription costs. ER physicians twice referred Claimant to Dr. Blair for additional care, but she was not able to see him because of her lack of insurance and inability to pay. Therefore, Defendant shall pay for an office visit to Dr. Blair and such other medical treatment as he may recommend, should he be of the opinion that Claimant's L4-5 disc extrusion was the result of her industrial accident.

TTD/TPD

27. Pursuant to Idaho Code § 72-408, a claimant is entitled to income benefits for total and partial disability during a period of recovery. The burden of proof is on the claimant to present expert medical evidence to establish periods of disability in order to recover income benefits. *Sykes v. C.P. Clare & Company*, 100 Idaho 761, 763, 605 P.2d 939, 941 (1980).

28. Claimant testified that Dr. Franson imposed some work restrictions on Claimant following her first visit to the ER, and Dr. Smith continued those restrictions when he treated her

at the ER. Without actual chart notes, the Referee relies upon Claimant's testimony as to her restrictions. As with the issue of medical causation, since Claimant was unable to obtain meaningful medical treatment, she is at a significant disadvantage in establishing her period of disability in order to recover income benefits for that period. It is manifestly unfair to deny Claimant an opportunity to prove her entitlement to income benefits because of Defendant's failure to provide required medical care. Dr. Blair should be asked to make a determination on Claimant's period of disability for purposes of determining what, if any, TTD or TPD benefits are due and owing to Claimant.

29. For purposes of calculating income benefits, the Referee finds that Claimant's average weekly wage was \$115.39, which entitles her to a compensation rate of 90% of her average weekly wage. This results in a compensation rate of \$103.85 per week during her period of disability. Claimant's average weekly wage is based on Claimant's unrefuted testimony that she earned approximately \$500 per month during her employment with Defendant. To determine the weekly rate, the monthly rate is multiplied by .23077 which results in the weekly rate of \$115.39.

PERMANENT PARTIAL IMPAIRMENT/DISABILITY IN EXCESS OF IMPAIRMENT

30. The issues of permanent partial impairment (PPI) and disability in excess of impairment (PPD) are not ripe for decision. Claimant has not yet been treated for her injury, and PPI cannot be determined until Claimant has reached medical stability, as determined by Dr. Blair, or any physician to whom she is referred by Dr. Blair. PPD cannot be determined unless and until Claimant receives a PPI rating.

STATUTORY PENALTY

31. Idaho Code § 72-210 provides for a mandatory statutory penalty of 10% of

benefits awarded for an employer's failure to secure workers' compensation insurance. In this case, BYL admitted it had no worker's compensation insurance in effect at the time of Claimant's injury. Claimant is entitled to payment of a statutory penalty of 10% of benefits awarded. At the time of decision, only medical costs of \$1,834.13 (Caribou Memorial Hospital) and prescription costs of \$27.00 (Eastman Drugstore) were liquidated amounts. Defendant shall pay Claimant the sum of \$186.11 as a statutory penalty immediately. Defendant shall be responsible for all future medical costs related to this claim and, in addition to paying the providers, shall be required to pay Claimant an amount equal to 10% of the medical costs incurred. Finally, Defendant shall be required to pay Claimant income benefits at the rate specified in this recommendation for the period of time determined by a physician to constitute her period of recovery and, in addition, shall pay the Claimant an amount equal to 10% of all income benefits paid. Should Claimant ultimately be awarded PPI or PPD benefits, Defendant shall pay such benefits together with a 10% penalty of the total amount of such benefits. Claimant is also entitled to reimbursement for her costs, which include photocopying, long-distance phone charges, mileage for travel, postage, etc. Claimant shall provide an itemization of costs to Defendant for payment. Because Claimant appeared *pro se*, she is not entitled to an award of attorney fees.

RETENTION OF JURISDICTION

32. Although neither party asked the Commission to retain jurisdiction of this matter, the Referee feels that retention of jurisdiction is necessary. Where neither party is represented by counsel, and the Commission has mandated certain actions, and where issues such as PPI and PPD remain unresolved, retaining jurisdiction is necessary to assure that the purposes of the workers' compensation laws are upheld and the rights and obligations of the parties are satisfied.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 15

CONCLUSIONS OF LAW

1. Claimant sustained a low back injury from an accident arising out of and in the course of her employment. Because Claimant was denied meaningful medical evaluation and care immediately following her accident the extent of Claimant's injury remains uncertain pending an evaluation by Dr. Blair or similarly qualified specialist.

2. Because Claimant was denied medical care immediately following her accident, it remains unclear whether Claimant's L4-5 disc extrusion is causally connected to her industrial accident. Claimant is entitled to benefits for all compensable consequences of her industrial injury as may be determined by Dr. Blair or similarly qualified specialist.

3. There is insufficient medical evidence in the record to determine whether some or all of Claimant's L4-5 disc pathology is due in whole or in part to pre-existing or subsequent injuries or conditions. Dr. Blair treated Claimant previously for a back complaint, and he, or another similarly qualified specialist with access to Claimant's prior medical records is in the best position to determine whether pre-existing or subsequent injuries or conditions are a factor in Claimant's current condition (L4-5 disc extrusion) and to properly apportion causation, if necessary.

4. Medical care. Claimant is entitled to reimbursement for all medical care received to the date of the hearing. This includes payments to Eastside Drugstore and Caribou Memorial Hospital of \$1,861.13. In addition, Defendant will be responsible for paying for an office visit to Dr. Blair along with any additional treatment and testing he may order that he determines is causally related to the industrial injury.

5. TTD/TPD Benefits. Claimant is entitled to temporary total or temporary partial disability benefits at the rate of \$103.85 per week from June 8, 2007 until such date as Dr. Blair determines Claimant is or was medically stable.

6. The issues of permanent partial impairment and disability in excess of impairment are not yet ripe for determination.

7. Employer is liable to Claimant for the penalties that are set forth in Idaho Code §72-210 for failing to insure liability. This includes immediate payment of 10% of the liquidated medical costs of \$186.11. In the future, Defendant will be liable to Claimant for additional penalties of 10% of all future medical costs, all past and future income benefits, and future impairment and disability benefits, if any.

8. Retention of jurisdiction is necessary to protect the rights and obligations of both parties and ensure a complete resolution of this proceeding.

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 1 day of September, 2009.

INDUSTRIAL COMMISSION

Rinda Just, Referee

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

DEBORAH BOWNE,)	
)	
Claimant,)	IC 2007-032770
)	
v.)	
)	ORDER
BRIGHAM YOUNG LODGE,)	
)	Filed: September 16, 2009
Employer,)	
Defendant.)	
_____)	

Pursuant to Idaho Code § 72-717, Referee Rinda Just submitted the record in the above-entitled matter, together with her proposed 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 recommendation of the Referee. The Commission concurs with this recommendation. 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 sustained a low back injury from an accident arising out of and in the course of her employment. Because Claimant was denied meaningful medical evaluation and care immediately following her accident the extent of Claimant's injury remains uncertain pending an evaluation by Dr. Blair or similarly qualified specialist.

2. Because Claimant was denied medical care immediately following her accident, it remains unclear whether Claimant's L4-5 disc extrusion is causally connected to her industrial accident. Claimant is entitled to benefits for all compensable consequences of her industrial injury as may be determined by Dr. Blair or similarly qualified specialist.

3. There is insufficient medical evidence in the record to determine whether some or all of Claimant's L4-5 disc pathology is due in whole or in part to pre-existing or subsequent injuries or conditions. Dr. Blair treated Claimant previously for a back complaint, and he, or another similarly qualified specialist with access to Claimant's prior medical records is in the best position to determine whether pre-existing or subsequent injuries or conditions are a factor in Claimant's current condition (L4-5 disc extrusion) and to properly apportion causation, if necessary.

4. Claimant is entitled to reimbursement for all medical care received to the date of the hearing. This includes payments to Eastside Drugstore and Caribou Memorial Hospital of \$1,861.13. In addition, Defendant will be responsible for paying for an office visit to Dr. Blair, along with any additional treatment and testing he may order that he determines is causally related to the industrial injury.

5. Claimant is entitled to temporary total or temporary partial disability benefits at the rate of \$103.85 per week from June 8, 2007 until such date as Dr. Blair determines Claimant is or was medically stable.

6. The issues of permanent partial impairment and disability in excess of impairment are not yet ripe for determination.

7. Employer is liable to Claimant for the penalties that are set forth in Idaho Code §72-210 for failing to insure liability. This includes immediate payment of 10% of the liquidated medical costs of \$186.11. In the future, Defendant will be liable to Claimant for additional penalties of 10% of all future medical costs, all past and future income benefits, and future impairment and disability benefits, if any.

8. Retention of jurisdiction is necessary to protect the rights and obligations of both

parties and ensure a complete resolution of this proceeding.

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

DATED this 16 day of September, 2009.

INDUSTRIAL COMMISSION

/s/ _____
R.D. Maynard, Chairman

/s/ _____
Thomas E. Limbaugh, Commissioner

/s/ _____
Thomas P. Baskin, Commissioner

ATTEST:

/s/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 16 day of September, 2009, a true and correct copy of the foregoing **FINDINGS, CONCLUSIONS,** and **ORDER** were served by regular United States Mail upon each of the following persons:

DEBORAH A BOWNE
111 N 2ND EAST
GRACE ID 83241

BRIGHAM YOUNG LODGE
C/O BOYD AND JUNE MASON
246 S 2ND E
SODA SPRINGS ID 83276

djb

/s/ _____