



## **CONTENTIONS OF THE PARTIES**

Claimant contends he suffered a groin strain pushing a cart at work. He did not initially report the accident because he had access to discounted medical care and wanted to save Employer some money. After he was referred to more expensive medical treatment he reported the accident. He suffered some temporary disability, first total, then while on light duty. He again strained it after he returned to full duty. He claims entitlement to \$953.81 in medical benefits and \$2,224.80 in TTD.

Defendants contend Claimant did not suffer a compensable industrial accident. He reported pain, but did not claim an accident until he discovered medical treatment would be costly.

## **EVIDENCE CONSIDERED**

The record in the instant case consists of the following:

1. Hearing testimony of Claimant, and of plant manager Bradley Spencer;
2. Claimant's Exhibits 1 – 5; and
3. Defendants' Exhibits A – I.

After examining the evidence, the Referee submits the following findings of fact, conclusions of law, and recommendation for review by the Commission.

## **FINDINGS OF FACT**

1. Claimant worked for Employer as a laborer beginning February 4, 2008. He first sought medical care on March 12, 2008.
2. Although he is relatively young, age 24 at the date of hearing, Claimant suffers from adult-onset diabetes. He was being treated for this and an ear problem in early 2008. A March 10, 2008 doctor's note indicates he failed to show for that day's appointment.

3. On March 12, 2008, Claimant visited the doctor's office complaining of right groin pain aggravated by lifting. Nurse practitioner, Selena Ankarberg, FNP, considered a possible inguinal hernia to be the cause. She excused him from work. Subsequent treatment revealed no hernia was present.

4. Brad Spencer received the physician's note excusing Claimant from work. After a conversation with Claimant, Mr. Spencer believed Claimant was out sick because of his diabetes.

5. On March 17, 2008, physician's assistant Kent Hamilton, PA-C, examined Claimant. The note does not indicate that Claimant reported his pain was caused by or began at work. Claimant was allowed to return to work "as tolerated."

6. On March 25, 2008, Claimant visited the emergency room at Holy Rosary Medical Center. Claimant described recurrent pain after returning to full-duty work and lifting. ER physician Brad Barlow, M.D., returned him to light-duty work. Holy Rosary completed paperwork showing this visit to be classed as worker's compensation.

7. On March 26, 2008, Claimant returned to nurse Ankarberg to obtain a note releasing him from work.

8. A first report of injury or illness ("Form 1") was prepared on March 27, 2008. Brad Spencer was contacted by a Holy Rosary representative who told him Claimant's medical treatment was billed as a worker's compensation claim. This was the first indication Mr. Spencer received that Claimant's condition might be work related. He checked with Claimant's supervisors who reported that Claimant reported he was in pain on March 11, but neither Claimant nor the supervisors related it to Claimant's work. Mr. Spencer again spoke with Claimant, but Claimant "was very vague on everything." To Mr. Spencer,

Claimant “made it sound like it was done elsewhere, had been hurting for quite awhile.”

9. On an April 1, 2008 visit, nurse practitioner Patrick Barfield, FNP, recorded, “The patient states he believes this was sustained at work, but he does not have a specific date and when he first complained of it at work, his employer asked him (this is the patient’s report) if he had injured it at work and he said he didn’t think so, now he believes that he has, . . .”

10. On April 22, 2008, he visited Roman Babij, M.D. He described feeling a “pinch” at work, pain which increased over the course of the previous month. This is the first recorded history where Claimant asserted his condition began at work. New patient paperwork indicates Claimant has no insurance. Dr. Babij’s note for Claimant’s visit on April 23 is the first recorded history where Claimant mentions pushing a cart. Dr. Babij ruled out a hernia and diagnosed a groin strain.

11. On May 16, 2008, an unstated physician at Valley Family Health Care, possibly nurse Barfield, released Claimant to return to work without restriction.

12. Claimant’s attendance record shows he missed scheduled work from March 12 through 17 (4 days), worked March 18 through 24, and again missed work from March 25 through May 19, 2008.

#### **DISCUSSION AND FURTHER FINDINGS OF FACT**

13. **Credibility – Claimant.** Claimant’s demeanor was equivocal. Claimant was very soft spoken at hearing. It appeared Claimant was reluctant to testify. Examination and cross-examination required a significant amount of leading. The content of his testimony indicated deception. His testimony was often inconsistent with the documented evidence. Claimant’s story of pain arising from pushing the cart appears fabricated after Claimant realized medical treatment would cost more than five dollars per visit, the

amount he was accustomed to paying.

14. **Accident and injury.** The statute defines an “accident” as “an unexpected, undersigned, and unlooked for mishap, or untoward event, connected with the industry in which it occurs, and which can be reasonably located as to time when and place where it occurred, causing an injury.” Idaho Code § 72-102(18)(b). An accident includes a normal event in which the worker suffers injury. Wynn v. J.R. Simplot Co., 105 Idaho 102, 666 P.2d 629 (1983). Still, there must be a precipitating event. Perez v. J.R. Simplot Co., 120 Idaho 435, 816 P.2d 992 (1991). Gradual onset of pain is insufficient. Dolph v. Hecla Mining Co., 119 Idaho 715, 810 P.2d 249 (1991).

15. Here, Claimant failed or refused to assert any work related event had occurred for two weeks after he first sought medical treatment. Not until Holy Rosary decided to class the treatment provided as a worker’s compensation case did Employer have a hint that Claimant’s absences might be from work related pain. Claimant did not identify a precipitating event until more than one month of medical treatment and missed work had occurred.

16. Moreover, there was no objective component to Claimant’s condition. He complained of pain. He reacted to palpation by physicians. He had similarly complained, almost annually, of temporary, vague, abdominal discomfort for each of the preceding few years.

17. Claimant’s initial reports to Employer that his condition was not work related, his early reports to physicians that he could not identify the cause of his alleged pain, followed by a vague attribution of a “pinch” occurring at work, all undercut the credibility of his later allegations and testimony that he recalled a specific moment when he pushed a cart and his pain immediately arose. Indeed, Claimant’s reluctance to testify at hearing on this point suggests he knew that testimony was lacking in foundation.

18. **Causation.** 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).

19. Medical records suggesting that physicians believed Claimant’s condition was related to work are all based on physicians’ acceptance of Claimant’s assertions that it was so related. Claimant failed to show it likely that his condition was caused by work.

### **CONCLUSIONS OF LAW**

1. Claimant failed to show that he suffered an accident and injury at work or that his asserted condition was caused by an industrial accident; and

2. All other issues are moot.

### **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 21<sup>ST</sup> day of December, 2009.

INDUSTRIAL COMMISSION

/S/ \_\_\_\_\_  
Douglas A. Donohue, 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 \_\_\_\_\_ day of \_\_\_\_\_, 2009.

INDUSTRIAL COMMISSION

Participated but did not sign

\_\_\_\_\_  
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 30<sup>TH</sup> day of DECEMBER, 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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db

/S/\_\_\_\_\_