

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARIE JEANNE COUTURE,)
Claimant,)
v.)
CHRISTOPHER & BANKS,)
Employer,)
And)
SENTRY INSURANCE A MUTUAL CO.,)
Surety,)
Defendants.)
_____)

IC 2007-037315

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

September 13, 2010

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee LaDawn Marsters, who attended the hearing conducted by Referee Michael Powers in Boise on April 13, 2010. Claimant, Marie Jeanne Couture, *pro se*, appeared telephonically, and Defendants were represented in person by Alan R. Gardner. The parties presented oral and documentary evidence. Post-hearing depositions were taken and briefs were later submitted. The matter came under advisement on August 10, 2010.

ISSUES

The issues to be decided by the Commission were confirmed at the hearing and include the following:

1. Whether or not the condition for which Claimant seeks benefits was caused by the industrial accident of October 27, 2007;
2. Whether and to what extent Claimant is entitled to additional reasonable medical care; and

3. The identity of Claimant's treating doctor.

CONTENTIONS OF THE PARTIES

Claimant contends that she is entitled to additional reasonable medical care for new pain in her right wrist, including but not limited to carpal tunnel release surgery, following an October 2007 industrial injury in which she fractured that wrist. Claimant relies upon test results and chart note comments from various physicians and the verbal recommendation of a Dr. Jay Dennis to support her position.

Defendants contend that Claimant's new pain symptomatology, which began in August or September 2008, after Claimant started drawing regularly as a commercial artist, is unrelated to her October 2007 right wrist injury and that surgical intervention is not reasonable, in any event. They rely upon the opinions of Dr. Mark Clawson, Claimant's treating physician for her 2007 industrial injury, and Dr. William Lenzi, an orthopedic surgeon specializing in hand surgery, who were both retained by Surety after Dr. Clawson released Claimant from his care.

Neither party argues the third issue. By their mutual failure to address it, the parties have waived the third issue, so it will not be decided. Defendants raise a potentially related issue, whether Claimant is entitled to an order for a change of physician, for the first time in their responsive brief. Claimant did not address this issue, and it was not included in the Notice of Hearing. Whether Claimant is entitled to a change of physician will likewise not be addressed in this decision.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. The pre-hearing deposition testimony of Claimant, taken October 7, 2009;
3. The testimony of Claimant, taken at the April 13, 2010 hearing;

4. Claimant's Exhibits 1 through 13 and A-1 admitted at the hearing;
5. Defendants' Exhibits 1 through 20;
6. The post-hearing deposition of Michael H. McClay, M.D., taken May 6, 2010;
and
7. The post-hearing deposition of William D. Lenzi, M.D., taken May 12, 2010.

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

OBJECTION

Defendants' objection noted at page 13 of the Hearing Transcript is overruled.

FINDINGS OF FACT

History

1. Claimant was 63 years old and resided in Florida at the time of the hearing. Previously, she resided in Caldwell. Before then, Claimant lived in California, where she incurred a workplace injury to her bilateral shoulders and elbows in 2006 that resulted in a 13% whole person permanent partial impairment (PPI) rating. Her medical history is also notable for a facelift and a drug overdose in 2007, as well as a previous event confirmed by Claimant as a suicide attempt.

2. On October 27, 2007, while working for Employer, Claimant fell and injured her right side, including her right shoulder, hip and wrist. Claimant is right-handed. Claimant was eventually referred to Mark Clawson, M.D., a hand surgeon. On November 27, 2007, Dr. Clawson diagnosed a right distal radius fracture with scapholunate widening, in part based upon computed tomography (CT) scan results from November 20, 2007. The radiologist who interpreted the CT scan could not rule out a scapholunate ligament tear. Dr. Clawson recommended a wrist splint as needed and mobilization of the wrist, on a limited basis, in

connection with Claimant's shoulder injury therapy. Claimant's condition improved over the following weeks.

3. Over time Claimant developed pain and numbness into her right median nerve distribution¹. On February 4, 2008, Dr. Clawson examined Claimant and found moderate irritability and positive Phalen's and Tinel's signs over her right median nerve, as well as pain on carpal compression testing. He assessed right Carpal Tunnel Syndrome (carpal tunnel syndrome) secondary to Claimant's right distal radius fracture², and ordered an electromyogram with nerve conduction testing (EMG/NCT), which was performed at Boise Neurological Consultants, PLLC, on February 22, 2008. The EMG/NCT yielded results in the normal range. The radiologist reported, "There is no evidence of a significant median or ulnar neuropathy." Defendants' Exh. 12, p. 175. Thereafter, Dr. Clawson abandoned his carpal tunnel syndrome diagnosis.

4. By February 25, 2008, Dr. Clawson determined Claimant was at maximum medical improvement (MMI). He assessed an upper extremity PPI rating of 1% in consideration of Claimant's residual median nerve symptoms despite her normal EMG/NCT. He did not assess a PPI rating to Claimant's distal radius fracture because he determined that she had fully recovered from that injury. Simultaneously, Dr. Clawson released Claimant from his care.

Onset of new pain

5. Claimant moved to Florida in March or April 2008 and continued to experience the same numbness and tingling in her right thumb, index and middle finger. In approximately mid-July 2008, Claimant immersed herself "full-force" in a commercial venture in which she

¹ The right median nerve distribution into the hand includes the right thumb, index and middle fingers, and half of the ring finger.

² The median nerve is the only nerve that passes through the carpal tunnel, where it may be compressed to cause carpal tunnel syndrome.

produced notecards from pictures she sketched with color pencils. Defendants' Exh. 14, p. 182. She estimated that she would spend "a couple of hours here and there" on her art. Defendants' Exh. 14, p. 188. Several weeks later, at the end of September, she began to feel new pain radiating from her right wrist to her right forearm.

Dr. Massoumi and Dr. Zuniga

6. On November 5, 2008, Claimant presented to Mas G. Massoumi, M.D., an orthopedic surgeon specializing in hand surgery, with numbness in her right thumb, index and middle fingers, and pain radiating from her right radial styloid (wrist) to her right forearm and shoulder. Dr. Massoumi examined Claimant, reviewed her previous medical records and assessed 3 new x-ray views. He diagnosed a number of conditions, four of which he "opined" were due to the 2007 industrial injury, to varying degrees of certainty:

A) Fracture of the radial styloid right wrist with most likely intercarpal ligament injury of the scapho-lunate with **DORSAL INTERCALATED SEGMENTAL INSTABILITY OF THE LUNATE (DISI)**. This shows the angle between the scapho-lunate on lateral projection is increased to about 70° and the upper normal limit should be 65°, and in supination fist view x-ray there is increasing gap between the scapho-lunate. This also has been documented by CT scan which has been done of the wrist and radiologist suspected that.

B) Intraosseous cyst of the distal radius at the level of radial styloid. At this time it is difficult to say that this is due to the fracture or an intraosseous lesion due to other problems; therefore we have to watch this, repeat the x-ray and possibly do additional work up such as magnetic resonance imaging (MRI) or CT scan on that area to rule out any potential osteolytic lesion in that area.

C) Evidence of **WARTENBERG'S SYNDROME** due to compression neuropathy and/or injury to dorsal sensory branch of the radial nerve at the distal right forearm.

D) Probable formation of subcapsular ganglion of volar and radial aspect of the right wrist with probable stenosing tenosynovitis of flexor carpi radialis unless proven otherwise.

Claimant's Exh. 6, p. 9-10 (emphasis in original). Dr. Massoumi also identified other conditions which *may* have been exacerbated or aggravated by the 2007 industrial injury.

7. Dr. Massoumi recommended conservative treatment with oral cortisone, which Claimant declined because she thought it would increase her appetite and cause her to gain weight. Instead, she agreed to take Aleve twice a day. Dr. Massoumi noted that if Claimant did not improve, he would seek a triple wrist arthrogram to rule out scapho-lunate ligament rupture and disassociation. In a related comment he wrote:

...but that is too much information to share with her at this time especially since from the psychological stand-point she is over-reactive and is somewhat paranoid and I have a feeling that she tries to treat herself and does not wish to follow the instructions.

Claimant's Exh. 6, p. 12.

8. When Claimant failed to improve, Dr. Massoumi ordered a triple wrist arthrogram of Claimant's right wrist. The procedure was completed on December 15, 2008. Based upon evidence of "...slight egress of contrast into the midcarpal row...consistent with a scapholunate ligamentous tear...[and]... [a] fine linear area of contrast...into the distal radioulnar joint at the attachment with the radius ...," the radiologist diagnosed tears of both the scapholunate ligament and the triangular fibrocartilage. Claimant's Exh. 5.

9. Based upon Claimant's positive arthrogram and previous findings, Dr. Massoumi assessed an injured scapholunate ligament and an injured triangular fibrocartilage complex (TFCC). Consistent with his original November 5, 2008 assessment, Dr. Massoumi continued to opine that Claimant's scapholunate ligament tear, and associated dorsal intercalated segmental instability of the lunate (DISI) is causally related to the subject accident. Moreover, Dr. Massoumi's reports and notes do not state, but do imply, that Claimant's TFCC tear is, likewise, causally related to the wrist trauma she suffered as a consequence of the subject accident. For example, in his note of April 13, 2009, Dr. Massoumi stated:

"For injury to TFCC, if she develops painful distal radio-ulnar joint problem, most likely she may require reconstructive surgery in that area and may develop

compression neuropathy of the ulnar nerve at the Guyon's canal and may even develop hypothenar hammer hand syndrome, which all indirectly will be related to an injury which has occurred there, and has not been properly treated on a timely basis."

Dr. Massoumi does not specifically relate the TFCC tear to the subject accident. Dr. Massoumi noted that although the wrist arthrogram does demonstrate a TFCC tear, his clinical examination of Claimant failed to elicit any significant findings in the distal radial ulnar joint. Dr. Massoumi recommended a neurological workup and electrodiagnostic evaluation to determine the extent of surgical procedures to be performed.

10. On February 9, 2009, Claimant was examined by Jose A. Zuniga, M.D., a neurologist. Dr. Zuniga noted Claimant had hand numbness and wrist pain and that her pain was exacerbated around September or October 2008, when "...she was using her hand more frequently." Claimant's Exh. 4, p. 1. He also noted that Claimant was no longer taking Aleve to reduce her pain symptoms even though it had previously helped reduce her wrist pain. Dr. Zuniga conducted an EMG/NCT (Claimant's second) and concluded that Claimant demonstrated evidence of a mild stretch injury or compression of the sensory fibers of the right superficial radial nerve, as well as a mild stretch injury of the sensory fibers of the median nerve on the right side with early compression of the motor fibers of the ulnar nerve across the cubital tunnel on the right elbow. With respect to the median nerve injury, Dr. Zuniga surmised, "This may suggest a stretch injury of the sensory fibers of the median nerve across the carpal tunnel on the right side at the time of the fall." Claimant's Exh. 4, p. 3. He did not discuss whether all or any of his other findings are attributable to the industrial accident.

11. Dr. Massoumi incorporated Dr. Zuniga's findings into his assessment and recommended that several surgical procedures should *all* be performed, including: cubital tunnel release, neurolysis of the ulnar nerve, subcutaneous anterior transposition of the ulnar nerve,

radial tunnel release, neurolysis of the sensory branch of the radial nerve, DeQuervain's release with pulley reconstruction, carpal tunnel release and reconstruction of the scapholunate ligament. He also warned Claimant of some associated risks, specifically including a less-than-1% chance of developing complex regional pain syndrome, formerly known as reflex sympathetic dystrophy, a debilitating and painful permanent condition.

Reactions to Dr. Massoumi's recommendations

12. Dr. Massoumi's recommendations frightened Claimant, who testified that they were "eccentric in nature and scary at best." Tr., p. 27. She further explained that she would not consent to all of the procedures recommended by Dr. Massoumi, but that she did believe that some sort of treatment is appropriate. "It seems to be the consensus that I definitely have a carpal tunnel issue and instability of the carpal tunnel area of my hand and with possibility of that worsening and that is what worries me." Tr., p. 27. Claimant's testimony mischaracterizes Dr. Clawson's records, which indicate that he abandoned his carpal tunnel syndrome diagnosis after Claimant's EMG/NCT results came back normal.

13. Likewise, Dr. Massoumi's recommendations shocked Surety, so it sought the opinion of Dr. Clawson. In mid-March 2009, after reviewing Dr. Massoumi's records, Dr. Clawson concluded, in relevant part, that the following conditions were not related to Claimant's industrial injury:

- a. The cyst identified at the radial styloid;
- b. Wartenberg's Syndrome; and
- c. The FCR tendonitis and ganglion cysts (though focal to the industrial injury region, these are more likely related to abnormalities of the basal joint region of the thumb, including the STT and CMC joint regions, than to Claimant's wrist fracture).

Dr. Clawson added that he cannot support going forward with surgical decompression of

multiple nerves at multiple levels in Claimant's case because the proper diagnosis for Claimant's pain symptoms given her two normal EMG/NCTs is limb pain and paresthesias, and not a compression neuropathy. He asserted that the EMG/NCT interpreted by Dr. Zuniga produced results in the normal range and, therefore, it does not evidence carpal tunnel syndrome or any other compression neuropathy, as posited by Dr. Massoumi.

With respect to Claimant's scapholunate widening, Dr. Clawson noted that he identified this condition when Claimant was in his care; however, he opined that scapholunate ligament repair is not indicated, for three reasons. First, he performed scaphoid shift tests on several different occasions and they were all negative. Second, scapholunate gaps normally range from 2-8 millimeters, and Claimant's was measured at 4 millimeters. Finally, at 1 ½ years post-injury, a repair procedure would not likely do well. Dr. Clawson further opined that hand surgery is generally contraindicated in Claimant's case because her profile puts her at increased risk for developing a post-operative dystrophy.

14. Surety also retained William Lenzi, M.D., an orthopedist specializing in hand surgery, to review Claimant's records and provide an opinion. On April 7, 2009, Dr. Lenzi authored a report rejecting Dr. Massoumi's recommendation for surgery. He adopted Dr. Clawson's opinions and concluded, "...it would be unreasonable and not medically indicated to perform any of the...procedures that have been recommended by Dr. Massoumi." Defendants' Exh. 15, p. 193.

15. Based upon the reports of Drs. Clawson and Lenzi, on April 10, 2009 Surety denied Claimant's request for surgery and treatment. It is notable, however, that neither Dr. Clawson nor Dr. Lenzi denigrated Dr. Massoumi's conclusion that the arthrogram did confirm that Claimant had suffered a scapholunate ligament tear, and that said tear is causally related to the subject accident. Rather, the conclusions expressed by Drs. Clawson and Lenzi, at least in

their writings, are that a surgical repair of the scapholunate tear is not medically indicated at this time. Although Dr. Clawson did offer extensive written comments on the scapholunate ligament tear, his notes and correspondence do not reflect that he offered an opinion on the TFCC tear, either as to its genesis, or on the question of whether or not that condition warranted medical treatment.

Dr. Massoumi's response

16. In a letter dated April 20, 2009, Dr. Massoumi responded to the opinions of Drs. Clawson and Lenzi. In summary, Dr. Massoumi presented a 4-page, mostly single-spaced, defense of his recommendations in the form of an April 13, 2009 chart note. He emphasized that Claimant's second EMG findings were *not* normal, citing the radiologist's impressions, including mild stretch or compression injuries to the radial, median and ulnar nerves. However, he does not address how or whether Dr. Clawson's multiple negative scaphoid shift tests should figure into the analysis. He also does not dispute that the normal range for scapholunate widening is 2-8 millimeters, but nevertheless seems to argue that any dye leakage detected on arthrogram study is an indicator that surgical intervention is required. Dr. Massoumi acknowledged that he was no longer authorized to treat Claimant, expressed some frustration with the controversy involved in Claimant's case, reminded Surety he needed to be paid and, presumably, released Claimant from his care.

Dr. Rosenfield and Dr. Dennis

17. Claimant's symptoms persisted after Surety denied her claim, so she personally assumed the expense of further evaluation and treatment. On May 5, 2009, Claimant was examined by Jeffrey Rosenfield, M.D., an orthopedist specializing in hand surgery. Following objective testing and x-ray images identifying scapholunate widening of 3-4 millimeters and a minimal DC deformity of the lunate, Dr. Rosenfield diagnosed a "probably chronic" right wrist

scapholunate tear. Claimant's Exh. 2.a., p. 2. He recommended surgery to repair the scapholunate tear, but not necessarily the same procedure Dr. Massoumi recommended. He also suggested a carpal tunnel release for Claimant's "carpal-tunnel-like symptoms." *Id.*

18. Claimant followed up with Dr. Rosenfield, on June 2, 2009, indicating that she wished to proceed with surgery and also requesting additional clinical evidence of her pathology. Dr. Rosenfield ordered an MRI of Claimant's right wrist. In addition, he noted that Claimant's previous x-rays indicated a widened scapholunate gap "in excess of 4 millimeters" with "dorsal tilting of the lunate consistent with a scapholunate interosseus ligament injury." Claimant's Exh. 2. He did not indicate on what date(s) the x-rays of note were taken. The record is void of any opinion that Claimant's scapholunate gap has ever exceeded 4 millimeters.

19. On June 4, 2009, Claimant underwent magnetic resonance imaging (MRI) of the right wrist. The radiologist concluded:

1. Rupture of the ulnar attachments of the triangular fibrocartilage complex (TFCC) with degeneration of the TFCC meniscus.
2. Mild negative ulnar variance in the absence of lunatomalacia.
3. Mild distal carpal row osteoarthritis.
4. Partial rupture of the scapholunate ligament involving the volar and intramembranous components. The dorsal band is intact.
5. Dorsal intercalated segment instability (DISI).

Claimant's Exh. 1, p. 2.

20. Claimant followed up with Dr. Rosenfield on June 9, 2009. He diagnosed a right scapholunate high grade tear, a TFCC tear, mild midcarpal arthritis and a DISI deformity to the lunate. Surgical options were discussed, and Dr. Rosenfield arranged to bring his practice partner, Dr. Kohn, in for a consultation. On June 11, 2009, Claimant met with Drs. Rosenfield and Kohn, who sought to determine the extent of her symptoms caused by the scapholunate tear

versus those related to her carpal tunnel³. Claimant underwent a cortisone injection into her carpal tunnel for diagnostic purposes. She later testified that her symptoms did not change after this treatment. In any case, Claimant was displeased that Dr. Kohn was not already on-board with Dr. Rosenfield's recommendation for surgery when he examined her, so she wrote a letter to that effect to Dr. Rosenfield. As a result, Dr. Rosenfield declined to provide further services to Claimant. Dr. Rosenfield did not offer any opinions as to the possible causes for the conditions he diagnosed.

21. Claimant testified that, in approximately July 2009, she was examined by a Dr. Jay Dennis. According to Claimant, Dr. Dennis recommended a carpal tunnel release surgery but did not offer any opinion as to causation. Dr. Dennis' records were not offered as exhibits at the hearing, and they are not in the Commission file, as Claimant stated in her brief. Dr. Dennis's records are not in evidence and must be given no weight for the purpose of establishing any medical facts.

Independent medical examination: Dr. Clawson and Dr. Lenzi

22. In early October 2009, Surety flew Claimant back to Idaho, where she underwent an independent medical examination (IME) by Drs. Clawson and Lenzi on October 7, 2009. On objective examination of Claimant's right hand, Claimant demonstrated a positive Tinel's sign over the median nerve with radiation into the long finger and retrograde radiation into the forearm, a positive Phalen's test, and pain with pressure on the median nerve at the carpal canal. She also demonstrated a positive grind test over the CMC joint, a positive compression test, a painful CMC range of motion and point tenderness over the STT joint. There was no sign of instability of the scapholunate ligament and Claimant's scaphoid shuck test was normal. X-ray

³ Dr. Rosenfield did not diagnose carpal tunnel syndrome, but notes references to that condition in Claimant's prior records.

evaluation of stress tests in pronation and supination revealed a 2-3 millimeter widening of the scapholunate space “which is within normal limits.” Defendants’ Exh. 17, p. 200. Similar findings were confirmed for the left hand.

23. Drs. Clawson and Lenzi diagnosed neuritis of the median nerve evidenced by paresthesias and numbness, as well as intermittent pain in the thumb, index and long fingers. They also assessed possible carpal tunnel syndrome and osteoarthritis of the CM and ST joints of the right thumb. They recommended repeat EMG/NCT of Claimant’s bilateral median and ulnar nerves by the same facility that performed Claimant’s March 3, 2008 EMG/NCT (Boise Neurological Consultants, PLLC) to determine whether surgery with decompression or neurolysis of the median nerve was indicated.

24. On October 8, 2009, Claimant underwent a third EMG/NCT, her second performed by Boise Neurological Consultants, PLLC. Her responses were all within normal limits. On October 9, Dr. Lenzi wrote to Defendants’ attorney, “In light of the most recent EMG and nerve conduction studies, the patient does not have carpal tunnel syndrome.” Defendants’ Exh. 20, p. 241. On November 20, he followed up with a letter stating that Claimant “...has no anatomical reasons for her pain and she does not need surgery.” Defendants’ Exh. 15, p. 194.

25. Based upon the recommendations of Drs. Clawson and Lenzi, Surety continued to deny benefits for further medical care.

Psychological evaluations: Dr. McClay and Dr. Gaudreau

26. Also on October 8, Claimant underwent a Panel Evaluation at Surety’s request. Michael H. McClay, Ph.D., a clinical psychologist, conducted the evaluation. He interviewed Claimant, reviewed her medical records and administered tests⁴. In summary, Dr. McClay

⁴ Dr. McClay administered a pain scale, a mental status exam, the MMPI-2, a sleep history and a SF-36.

determined that Claimant's results show she was trying to present herself in a better light than was actually the case, that she may be motivated by secondary gain, and that she appeared to be suffering a long-standing depression that predated her hand and wrist problems. He opined that she needs treatment for her depression, but at her own expense. Dr. McClay recommended proceeding cautiously with respect to any plans for surgery because "[p]atients that are depressed are at higher risk for poor outcomes with aggressive medical intervention such as surgery." Defendants' Exh. 19, p. 239. For her part, Claimant did not deny that she battles depression. She asserted that she has developed skills to cope with its effects.

27. On November 16 and 18, 2009, Claimant underwent an independent psychological evaluation by Louise P. Gaudreau, Ph.D., a clinical neuropsychologist she retained. Dr. Gaudreau interviewed Claimant, reviewed her medical history and administered tests⁵. She found no depressive symptoms or other pathology, and opined that Claimant's profile was consistent with a person who functions well in life. "Her only goal is to receive the medical treatment or surgeries that were recommended to improve her mobility and decrease her pain." Claimant's Exh. A-1, p. 5.

Claimant's credibility

28. Claimant at all times comported herself professionally in these proceedings. She represented herself well as a *pro se* litigant through her verbal communications in depositions, at the hearing and during telephone conferences, and also through her written documents filed with the Commission. That being said, Claimant became focused on obtaining surgery during her time in Dr. Massoumi's care and has maintained that focus ever since. This may be a reasonable reaction to Dr. Massoumi's extreme recommendations. In any event, the Referee finds Claimant generally credible while remaining mindful that her opinions concerning the appropriateness of

⁵ Dr. Gaudreau administered the BDI-II, MAQ, MMPI-2 and MCMI-3.

any medical treatment, including surgery, must yield to the weight of the medical evidence.

DISCUSSION AND FURTHER FINDINGS

29. 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, 956, 793 P.2d 187, 188 (1990). The humane purposes which it serves leave no room for narrow, technical construction. Ogden v. Thompson, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996). Facts, however, need not be construed liberally in favor of the worker when evidence is conflicting. Aldrich v. Lamb-Weston, Inc., 122 Idaho 361, 363, 834 P.2d 878, 880 (1992).

Causation

30. The Idaho Workers' Compensation Act places an emphasis on the element of causation in determining whether a worker is entitled to compensation. In order to obtain workers' compensation benefits, a claimant's disability must result from an injury, which was caused by an accident arising out of and in the course of employment. Green v. Columbia Foods, Inc., 104 Idaho 204, 657 P.2d 1072 (1983); Tipton v. Jannson, 91 Idaho 904, 435 P.2d 244 (1967).

31. The claimant has the burden of proving the condition for which compensation is sought is causally related to an industrial accident. Callantine v. Blue Ribbon Supply, 103 Idaho 734, 653 P.2d 455 (1982). Further, there must be medical testimony supporting the claim for compensation to a reasonable degree of medical probability. A claimant is required to establish a probable, not merely a possible, connection between cause and effect to support his or her contention. Dean v. Drapo Corporation, 95 Idaho 958, 560-61, 511 P.2d 1334, 1336-37 (1973). See also Callantine, Id.

32. The Idaho Supreme Court has held that no special formula is necessary when medical opinion evidence plainly and unequivocally conveys a doctor's conviction that the

events of an industrial accident and injury are causally related. Paulson v. Idaho Forest Industries, Inc., 99 Idaho 896, 591 P.2d 143 (1979); Roberts v. Kit Manufacturing Company, Inc., 124 Idaho 946, 866 P.2d 969 (1993).

33. Finally, it is well settled in Idaho that the Workers' Compensation Law is to be liberally construed in favor of the claimant in order to effect the object of the law and to promote justice. Haldiman v. American Fine Foods, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990). However, our Supreme Court has also held that the Commission is not required to construe facts liberally in favor of the worker when evidence is conflicting. Aldrich v. Lamb-Weston, Inc., 122 Idaho 361, 363, 834 P.2d 878, 880 (1992). The Idaho Workers' Compensation Act places an emphasis on the element of causation in determining whether a worker is entitled to compensation. In order to obtain workers' compensation benefits, a claimant's disability must result from an injury, which was caused by an accident arising out of and in the course of employment. Green v. Columbia Foods, Inc., 104 Idaho 204, 657 P.2d 1072 (1983); Tipton v. Jansson, 91 Idaho 904, 435 P.2d 244 (1967).

34. Claimant seeks carpal tunnel release surgery for pain relief. She also seeks periodic evaluation of her right wrist and hand, and assurance that Surety will pay for future treatment related to her scapholunate tear, DISI and TFCC conditions. However, as noted above, before determining the extent and degree of medical treatment to which Claimant is entitled as a result of work-related conditions, some determination must be made as to whether or not those conditions are, in fact, causally related to the subject accident. With respect to Claimant's proposed diagnosis of carpal tunnel syndrome, it is clear that Claimant has suffered some type of injury to her median nerve as a consequence of the subject accident, although it is not clear that she qualifies for the diagnosis of carpal tunnel syndrome. On clinical exam, she had signs and symptoms consistent with carpal tunnel syndrome. However, electrodiagnostic testing has not

supported this diagnosis. At any rate, even the physicians upon whom Defendants rely in support of their position appear to endorse a lesser median nerve injury of some type; Dr. Clawson awarded Claimant a 1% PPI rating for Claimant's persistent median nerve symptoms. This impairment rating was not disturbed by Drs. Clawson and Lenzi in their subsequent independent medical evaluation. Where Drs. Clawson, Lenzi, and Massoumi part ways is on the issue of whether Claimant would benefit from additional surgical treatment of her median nerve injury. Because Claimant does not exhibit electrodiagnostic evidence of carpal tunnel syndrome, both Drs. Clawson and Lenzi strongly urge that she is not a surgical candidate for a carpal tunnel repair. The Referee finds this testimony to be persuasive.

35. Similarly, there appears to be no dispute that Claimant has suffered a scapholunate ligament tear, a potential precursor to DISI, as a consequence of the subject accident. However, there is disagreement about whether or not this condition warrants the surgical treatment proposed by Dr. Massoumi. Drs. Clawson and Lenzi have demonstrated that although such a tear may exist, there are a number of reasons why surgery is inappropriate for treatment of this condition. Again, the Referee finds this testimony persuasive.

36. In summary, although Claimant has demonstrated that she has suffered a median nerve injury, as well as a scapholunate ligament tear with associated evidence of potential DISI, all as a consequence of the accident, she has failed to adduce evidence sufficient to support a conclusion that she is entitled to the medical treatment proposed by Dr. Massoumi, at this time.

37. Concerning the TFCC tear, although Dr. Massoumi implies that this tear, like the scapholunate ligament tear, is causally related to the subject accident, there is a dearth of any testimony specifically relating the TFCC tear to the subject accident. Though the Referee suspects that had Dr. Massoumi been asked, he would have related this condition, too, to the subject accident, there is simply no evidence of record upon which the Referee can rely to

conclude that Claimant has met her burden of proving a causal relationship between the subject accident and her TFCC tear. Because Claimant has not met her burden of proving that her TFCC is causally related to the accident, the Referee does not reach the question of whether she is entitled to a particular type of treatment for that condition. Also, although Claimant does not appear to be requesting the Commission to approve the various other procedures proposed by Dr. Massoumi, it is worth noting that the only disputed causal relationship that has been proven is that between the subject accident, the median nerve injury and the scapholunate tear.

38. As respects Claimant's median nerve injury and her scapholunate ligament tear, Claimant is entitled to future evaluation, and treatment if necessary. Although the Referee has ruled that Claimant is not currently entitled to any of the treatment recommended by Dr. Massoumi, because the Referee has found that her median nerve injury and her scapholunate tear are causally related to the subject accident, she is entitled to seek medical care in the future should these conditions evolve, and so long as she is able to demonstrate that her need for future treatment of these conditions is medically necessary and related to the subject accident. All other issues are moot.

CONCLUSIONS OF LAW

1. Claimant has proven that her median nerve injury and her scapholunate ligament tear are causally related to the October 27, 2007 industrial accident. Claimant has failed to prove that she is currently entitled to surgical care for these conditions. However, nothing in this decision shall foreclose Claimant from seeking further medical care for the compensable conditions should these conditions change or progress in the future.

2. All other issues are moot.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, 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 , 2010.

INDUSTRIAL COMMISSION

 /s/
LaDawn Marsters, Referee

ATTEST:

 /s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 13 day of September , 2010, 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:

MARIE JEANNE COUTURE
5124 BELVEDERE ROAD
HAVERHILL, FL 33415

ALAN R. GARDNER
1410 W WASHINGTON
BOISE, ID 83702

jc

 /s/

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARIE JEANNE COUTURE,)	
)	
Claimant,)	IC 2007-037315
)	
v.)	
)	
CHRISTOPHER & BANKS,)	
)	
Employer,)	ORDER
)	
SENTRY INSURANCE A MUTUAL)	
COMPANY,)	September 13, 2010
)	
Surety,)	
)	
Defendants.)	
_____)	

Pursuant to Idaho Code § 72-717, Referee LaDawn Marsters 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 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 failed to prove that the condition for which she seeks benefits was caused by the October 27, 2007 industrial accident.
2. All other issues are moot.
3. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all issues adjudicated.

DATED this 13 day of September , 2010.

INDUSTRIAL COMMISSION

 unavailable for signature
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 __13__ day of __September_____, 2010, a true and correct copy of the foregoing **Order** was served by regular United States Mail upon each of the following persons:

MARIE JEANNE COUTURE
5124 BELVEDERE ROAD
HAVERHILL FL 33415

ALAN GARDNER
P O BOX 2528
BOISE ID 83701-2528

jkc

_____/s/_____

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARIE JEANNE COUTURE,)
)
 Claimant,) **IC 2007-037315**
) **ERRATUM**
 v.)
)
 CHRISTOPHER & BANKS,)
) **9/24/10**
 Employer,)
)
 and)
)
 SENTRY INSURANCE A MUTUAL CO.,)
)
 Surety,)
)
 Defendants.)
 _____)

On September 13, 2010, the Findings of Fact, Conclusions of Law, and Recommendation; and Order were filed by the Commission in the above-entitled case. The following change should be made:

On the Order, Page 1, second paragraph, the sentence "1. Claimant has failed to prove that the condition for which she seeks benefits was caused by the October 27, 2007 industrial accident," should read, "1. Claimant has proven that her median nerve injury and her scapholunate ligament tear are causally related to the October 27, 2007 industrial accident. Claimant has failed to prove that she is currently entitled to surgical care for these conditions. However, nothing in this decision shall foreclose Claimant from seeking further medical care for the compensable conditions should these conditions change or progress in the future."

DATED this 24 day of September, 2010.

INDUSTRIAL COMMISSION

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 24 day of September, 2010 a true and correct copy of **Erratum** was served by regular United States Mail upon each of the following:

MARIE JEANNE COUTURE
5124 BELVEDERE ROAD
HAVERHILL, FL 33415

ALAN GARDNER
1410 W WASHINGTON
BOISE ID 83702

/s/