

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

MARIA GOMEZ,	)	
	)	<b>IC # 2009-018790</b>
Claimant,	)	
v.	)	<b>ORDER DENYING</b>
	)	<b>RECONSIDERATION</b>
DURA MARK, INC.,	)	
	)	
Employer,	)	
	)	Filed April 7, 2011
and	)	
	)	
STATE INSURANCE FUND.	)	
_____	)	

On February 11, 2011, Claimant filed a motion for reconsideration of the Commission’s order in the underlying case, and attached a supporting affidavit from Claimant’s attorney. The Commission found that Claimant had failed to prove that the medical treatment she received after Dr. Simon’s February 16, 2010, IME is related to her industrial accident and injury, and that all other issues were moot.

Claimant argues the Commission inappropriately based its decision on a non-noticed issue—causation. Claimant presents that she assumed that causation had already been established because neither party raised it as an issue in the prehearing conference or at the hearing. Claimant argues that medical causation is distinct from the issue of reasonable and necessary medical care under Idaho Code § 72-432, and the case should have been limited to the latter issue. Claimant contends that the Commission violated her constitutional right to due process by including causation as an issue, which prejudiced her case. Claimant requests that the Commission vacate its Order dated January 31, 2011, and set a status conference for a new hearing so that both parties may reopen the record for additional evidence on causation.

Claimant's attorney submitted an affidavit in support of Claimant's request for reconsideration. The affidavit expresses that Claimant's attorney was unfairly surprised by the Commission's inclusion of causation in the case. Claimant's attorney admits that his case preparations did not cover the causation issue, and had he known causation was at issue, he would have presented the case differently. Further, Claimant's attorney states that he was prejudiced due to lack of notice on the issue of causation, and denied the opportunity to provide evidence to prove on this issue.

Defendants filed a response to the motion for reconsideration on February 14, 2011. Defendants argue that the issue of causation was encompassed in the first of the two noticed issues: "whether the claimant is entitled to reasonable and necessary medical care as provided by Idaho Code § 72-432, and the extent thereof." Defendants contend that medical care which is not related to injuries caused by an industrial accident cannot be medically necessary or reasonable under Idaho Code § 72-432. Thus, it is axiomatic that Claimant show that the requested medical treatment is causally related to her industrial accident. Further, Defendants argue it is clear that medical causation was contested in the case, given their contention that Dr. Poulter's medical care was not medically necessary or reasonable because it was not related to an injury she suffered in her accident. Defendants rely on Drs. Simon's and Montalbano's conclusions that Claimant's post-IME medical treatment was not related to her injuries suffered in her industrial accident. Further, Defendants argue that Claimant was well aware that Dr. Simon opined that Claimant's need for continuing medical care was not medically necessary, as it was not related to the injury suffered in the accident. Defendants ask the Commission to deny Claimant's request for reconsideration, as Claimant is simply attempting to reopen the case to introduce evidence that was available to her before the hearing.

Claimant did not file a reply to Defendants' response.

Under Idaho Code § 72-718, a decision of the Commission, in the absence of fraud, shall be final and conclusive as to all matters adjudicated; provided, within twenty (20) days from the date of filing the decision any party may move for reconsideration or rehearing of the decision. In any such event, the decision shall be final upon denial of a motion for rehearing or reconsideration, or the filing of the decision on rehearing or reconsideration. J.R.P. 3(f) states that a motion to reconsider "shall be supported by a brief filed with the motion." Generally, greater leniency is afforded to *pro se* claimants. However, "it is axiomatic that a claimant must present to the Commission new reasons factually and legally to support a hearing on her Motion for Rehearing/Reconsideration rather than rehashing evidence previously presented." Curtis v. M.H. King Co., 142 Idaho 383, 388, 128 P.3d 920 (2005). On reconsideration, the Commission will examine the evidence in the case, and determine whether the evidence presented supports the legal conclusions. The Commission is not compelled to make findings on the facts of the case during a reconsideration. Davison v. H.H. Keim Co., Ltd., 110 Idaho 758, 718 P.2d 1196. The Commission may reverse its decision upon a motion for reconsideration, or rehearing of the decision in question, based on the arguments presented, or upon its own motion provided that it acts within the time frame established in Idaho Code § 72-718. *See*, Dennis v. School District No. 91, 135 Idaho 94, 15 P.3d 329 (2000) (*citing* Kindred v. Amalgamated Sugar Co., 114 Idaho 284, 756 P.2d 410 (1988)).

Claimant is correct that the Commission based its decision on causation, and did not reach the question of whether the care required by Claimant's treating physician was reasonable. Specifically, the Commission found that Claimant failed to prove that the medical treatment after Dr. Simon's February 15, 2010, Independent Medical Exam (IME) was related

to her industrial accident and injury. Therefore, the Commission found the Sprague v. Caldwell Transportation analysis unnecessary. 116 Idaho 720, 779 P.2d 395 (1989). The Commission's approach is consistent with the Idaho Supreme Court's analysis in Henderson v. McCain Foods, Inc., 142 Idaho 559, 130 P.2d 1097 (2006), and the expert testimony presented by the parties.

As in the instant matter, the claimant in Henderson, supra, argued that she had been denied due process as a result of the Commission's denial of a request for medical treatment on the non-noticed issue of causation. Henderson pursued her claim for benefits at two separate hearings before the Commission. Id. Following the first hearing, the Commission found that Henderson suffered an industrial accident which injured to her neck, and awarded reasonable future medical care as deemed necessary by her treating physician. Henderson, 142 Idaho 559 at 562. At some point after the first hearing, Claimant underwent neck surgery which she contended was needed as a result of the subject accident. The compensability of this surgery was addressed at a second hearing, and at that hearing, the Commission found Henderson had failed to prove her entitlement to neck surgery because she had not shown a causal relationship between her industrial accident and her industrial injury. Id. On appeal, Henderson argued that she was not on notice that she would have to prove a causal connection between her industrial accident and her neck surgery, and that the Commission applied the incorrect legal standard when deciding reasonable medical care under Idaho Code § 72-432 based on the Court's holding in Sprague v. Caldwell Transportation Inc., 116 Idaho 720, 779 P.2d 395 (1989). Id. at 562-565.

The Court found Henderson had notice she would have to establish a causal connection between her industrial accident and her requested medical treatment as a fundamental

prerequisite to her request for further reasonable and necessary treatment under Idaho Code § 72-432.

Our prior decisions have made it clear that an employee seeking compensation for medical care must prove that there is a causal relationship between the industrial accident and the need for the medical care. The Commission did not address at the first hearing whether the Claimant was entitled to medical benefits for her neck surgery because it had not occurred by the time of that hearing. One of the issues to be addressed in the second hearing was whether the Claimant was entitled to benefits for her medical expenses related to that surgery. In order to recover, she was required to prove a causal connection between her industrial accident and the need for the surgery. *Because the Claimant put causation at issue by virtue of her claim for additional medical benefits, she was not denied due process by the Referee's failure to expressly state that causation was one of the facts Claimant must prove in order to recover those medical benefits.* Hernandez v. Phillips, 141 Idaho 779, 118 P.3d 111 (2005). (*Emphasis added*).

Henderson v. McCain Foods, Inc., 142 Idaho 559 at 564.

The Court noted that “a worker’s compensation claimant has the burden of proving, by a preponderance of the evidence, all the facts essential to recovery.” Henderson, 142 Idaho 559 at 563, *citing* Evans v. Hara’s, Inc., 123 Idaho 473, 479, 849 P.2d 934, 940 (1993). Because an employer is *only* liable for medical expenses incurred as a result of an injury, a causal connection between the requested medical care and the industrial accident is an essential element for a claimant to prove. Id. Thus, Henderson was effectively on notice she would have to prove causation when she brought her claim for additional medical benefits, even though the Referee failed to expressly state that causation was at issue in the case. Id. at 565, *citing* Hernandez v. Phillips, 141 Idaho 779, 118 P.3d 111 (2005).

Further, the Court found that the Commission did not err in requiring the claimant to prove a causal connection between her industrial accident and the need for her requested neck surgery under the legal standard for Idaho Code § 72-432. Id. at 565. The Court elaborated on the appropriate legal standard for evaluating reasonable medical care under Idaho Code § 72-432. Id. Claimant argued that under the Sprague v. Caldwell Transportation Inc., 116 Idaho

720, 779 P.2d 395 (1989), and Idaho Code § 72-432(1), the correct legal standard is whether the requested medical care is reasonable under the Sprague three-part test.<sup>1</sup> Id. While the issue of whether or not certain medical care is reasonable is a separate issue from whether or not the need for such care was caused by the industrial accident, reasonable medical care must be causally related to the accident in order to be compensable. Id. However, the Court held that Idaho Code § 72-432 does not eliminate the need to show causation, as an employer can only be held liable for medical expenses related to any on-the-job accident or occupational disease. Henderson, 142 Idaho at 565. Therefore, the Court held that the legal standard for requested medical care under Idaho Code § 72-432 requires a claimant to show that the medical care is reasonable under the three-part Sprague test *and* causally related to the industrial accident to be compensable. Id. at 565.

Claimant's arguments in the instant matter are similar to those raised in Henderson v. McCain Foods, supra. Claimant focused her attention in the underlying briefing on the three-part test the Court identified in Sprague v. Caldwell Transportation to prove "reasonable" medical care under Idaho Code § 72-432. Claimant argued she did not address causation because she was unaware it was at issue and because Defendants had conceded causation in the case. However, although Claimant needed to establish she met the requirements in Sprague v. Caldwell Transportation, she was also on notice that she was required to establish causation as a crucial element of her request for additional medical benefits. Sprague does not abrogate this requirement. For reasons discussed above, the Commission is not persuaded by Claimant's arguments regarding notice and the appropriate legal standard for evaluating "reasonable"

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<sup>1</sup> The Sprague v. Caldwell Transportation three-part test for reasonable medical care as follows: (1) the employee made gradual improvement from the treatment received; (2) the treatment was required by the employee's physician; and (3) the treatment was within the physician's standard of practice and the charges for the treatment were fair, reasonable, and similar to charges in the same profession. 116 Idaho 720, 779 P.2d 395 (1989).

medical care under Idaho Code § 72-432. This leaves the remaining issue in Claimant's request for reconsideration of whether Defendants had conceded causation in this case.

The Commission is persuaded that Defendants had not conceded the causation element of the claim. Throughout the proceedings, the parties' experts disagreed about whether Claimant's purported symptoms were caused by her industrial accident, and the type of treatment that would appropriately address her symptoms. Claimant was well aware of the dispute between the experts in this case on causation, and marshaled expert testimony in support of her case. As discussed below, the fight between the experts was centered on explaining whether there was an anatomic cause of Claimant's symptoms, and if so, whether that anatomic condition was causally related to the work accident.

Claimant's industrial accident occurred on July 24, 2009, when she was lifting a 60-65 pound box. On November 11, 2009, Claimant sought treatment with Dr. Honeycutt based on her complaints of pain, weakness, and numbness in her right leg as well as low back pain. Dr. Honeycutt diagnosed a herniated lumbar disk with radiculopathy and low back pain. With respect to causation, Dr. Honeycutt first deferred to a physical medicine specialist and referred Claimant to Dr. Poulter. Dr. Poulter opined that Claimant's MRI matched the pain distribution of the impinged nerve root at the L4-L5 level.

The expert testimony presented by Defendants, specifically that of Dr. Simon, challenged the causal relationship between Claimant's complaints and her industrial accident, and the appropriate treatment for Claimant's symptoms. As the case developed, Drs. Montalbano and Biddulph concurred with Simon's interpretation of Claimant's MRIs and his conclusions.

Dr. Simon conducted an IME of Claimant on February 16, 2010. Dr. Simon opined that

Claimant's physical examination results and pain complaints were inconsistent with a disk herniation and radiculopathy, and that even if what Dr. Poulter claimed he identified on the MRI were true, it still would not provide an anatomical basis for Claimant's symptoms. Dr. Simon remarks clearly challenge Dr. Poulter's conclusions about the causal relationship between Claimant's symptoms and the objective findings, the cause of Claimant's symptoms (whether acute or chronic), the interpretation of Claimant's MRI records, and the existence of neuroforaminal stenosis.

Dr. Simon disagreed with the finding that there was an "acute" herniation of L4-L5 based on Claimant's prior medical records and his evaluation, indicating that Claimant's complaints could be due to a chronic protrusion. Dr. Simon noted that Claimant failed to disclose her prior low back problems, and believed Claimant had exaggerated pain behaviors. Dr. Simon found Claimant at MMI without any further need for treatment. Dr. Simon concluded that there was *no relationship* between the symptoms reported by Claimant and her industrial accident, noting that even if it be assumed that Claimant suffered from a work-caused L4-5 lesion, Claimant's symptoms are in an anatomic distribution inconsistent with such a lesion, necessarily compelling the conclusion that the symptoms for which Claimant seeks treatment are unrelated to an alleged work-related injury to the L4-5 disk.

Based upon the foregoing reasons, Claimant's request for reconsideration is hereby DENIED.

IT IS SO ORDERED.

DATED this \_7th\_\_\_ day of \_\_\_April\_\_\_\_\_, 2011.

INDUSTRIAL COMMISSION

/s/ \_\_\_\_\_  
Thomas E. Limbaugh, Chairman

/s/ \_\_\_\_\_  
Thomas P. Baskin, Commissioner

participated but did not sign \_\_\_\_\_  
R.D. Maynard, Commissioner

ATTEST:

/s/ \_\_\_\_\_  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on 7th day of April, 2011 a true and correct copy of the foregoing **ORDER DENYING RECONSIDERATION** was served by regular United States mail upon each of the following:

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cs-m/amw

/s/ \_\_\_\_\_