

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

TERESA L. IBARRA,)	
)	
Claimant,)	
)	IC 2009-024409
v.)	
)	
POTATO PRODUCTS OF IDAHO, LLC,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Employer,)	AND RECOMMENDATION
)	
and)	Filed: August 16, 2011
)	
STATE INSURANCE FUND,)	
)	
Surety,)	
Defendants.)	
_____)	

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 Idaho Falls, Idaho, on September 29, 2010. Dennis Petersen of Idaho Falls represented Claimant. M. Jay Meyers of Pocatello represented Defendants. The parties submitted oral and documentary evidence, conducted two post-hearing depositions, and submitted post-hearing briefs. The matter came under advisement on February 23, 2011 and is now ready for decision.

ISSUES

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

1. Whether Claimant suffers from a compensable occupational disease; and
2. Whether and to what extent the Claimant is entitled to:
 - A. Medical care; and

B. Temporary partial and/or temporary total disability benefits (TPD/TTD).

The Notice of Hearing included additional issues of entitlement to attorney fees and whether the Commission should retain jurisdiction over the claim. Claimant withdrew these issues at the outset of the hearing. All other issues, including impairment and disability, are reserved.

CONTENTIONS OF THE PARTIES

Claimant asserts that she acquired an occupational disease—carpal tunnel syndrome (CTS) in her right upper extremity—as a result of performing repetitive work duties on the production line for Employer. As a result of her CTS, Claimant is entitled to medical care and income benefits for time loss related to the treatment and care of her CTS.

Defendants take issue with Claimant’s assertions in several respects. They contend that Claimant’s current symptoms are not consistent with a diagnosis of CTS; that even if she has CTS, her work for Employer did not cause it; and, finally, that Employer terminated Claimant for reasons not related to her work injury, so she suffered no compensable time loss as a result of her alleged occupational disease.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant, Liliana Rosas, Ernando Sanchez, and Nathan Bronson, taken at hearing;
2. Claimant’s exhibits 1 through 10;
3. Defendants’ exhibits A through H; and
4. The post-hearing depositions of R. Timothy Thurman, M.D., taken October 26, 2010 and Richard Knoebel, M.D., taken November 18, 2010.

Defendants’ objections proffered at pages 14, 20, and 21 of Dr. Thurman’s deposition are

sustained. 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. At the time of hearing, Claimant was thirty years of age and resided in Idaho Falls, Idaho, with her husband and three of her four children.

2. Claimant was born and raised in the San Fernando Valley in California. She completed tenth grade, and later obtained her GED. Before moving to Idaho in 2009, Claimant completed the course work for a medical assistant certification in California.

3. Claimant's work history is scanty. Her first job was in the mid-1990s for a plastics manufacturer, where she stayed only a few weeks. In the fall of 2005, she went to work for Gangi Studios, a printing company. Claimant worked at Gangi Studios for three or four months. During her employ, Claimant became pregnant, and began experiencing pain in her left upper extremity. Employer laid her off in January 2006. In 2007, Claimant went to work for K-Mart as a retail sales clerk, where she stayed approximately six months.

4. After leaving K-Mart, Claimant trained to become a medical assistant. She obtained her certificate, but never worked in the medical field.

5. In early 2009, Claimant moved to Idaho and began working for Employer. Claimant was a laborer, and worked on the production line in a number of different jobs. In the spring of 2009, Claimant became pregnant. She continued to work until September when she began to complain of right upper extremity symptoms. Employer terminated Claimant on September 14, 2009 for failing to show up for work on September 11 and September 14.

6. In July 2010, Claimant began working for Center Partners, a call center, where she remained employed at the time of hearing.

RELEVANT PRIOR MEDICAL HISTORY

7. During the time that Claimant worked for Gangi Studios, she became pregnant. Claimant's physician advised Claimant that she could continue to work, but should wear a mask to limit the amount of printing chemicals that she inhaled. About the same time, she began experiencing pain in her left upper extremity.¹ Claimant never saw a physician for her left upper extremity complaints. When she told Employer about her pregnancy, Employer laid her off.

8. Claimant filed both a gender discrimination claim and a workers' compensation claim against Gangi Studios. On January 30, 2006, Claimant saw Mark Greenspan, M.D., for a qualified medical evaluation in relation to her workers' compensation claim. Dr. Greenspan's report (D. Ex. F, pp. 30-34) includes a subjective history and some findings, but does not include any diagnosis or any opinion connecting Claimant's upper extremity complaints to her work. At the time of the evaluation, Claimant weighed 195 pounds (she is five feet, three inches tall). The medical report makes no mention of whether Claimant was pregnant at the time of the evaluation.

9. Claimant ultimately settled her California workers' compensation claim for a modest sum.

¹ There is some dispute whether Claimant's complaints were bilateral or only involved the left upper extremity. Many of the administrative documents pertaining to the matter include the phrase "bilateral upper extremity." There is one reference in the medical record to a bilateral examination of Claimant's upper extremities. However, the medical report also clearly states that Claimant denied any symptoms in the right upper extremity, and the exam revealed no indication of pathology in the right upper extremity.

EMPLOYER

10. Claimant began working for Employer in January 2009. Employer is a processor and packager of baked potato products, including whole baked potatoes, twice-baked potatoes, and baked sweet potatoes. The production lines all involve multiple stations with a variety of work duties. For example, the production line for twice-baked potatoes starts with a whole potato. The potato is baked, cooled, and cut in half. The next step in the production line involves scooping out the baked pulp, leaving the potato shell. The shells are frozen, then filled with a mashed potato mixture from a nozzle. After filling the potato shells, workers finish them with cheese or other toppings, freeze them, then package them in various plastic sleeves, trays, and boxes. At many points in the process, workers must pick up, manipulate, and replace product onto a tray, the conveyor, or into a machine for packaging. Other products may use different processes, but each involves multiple steps.

11. Employer runs two ten-hour shifts of workers at its facility. Production employees work four ten-hour shifts—usually Monday through Thursday. The day shift starts early in the morning, working until 4:00 p.m. The swing shift starts at 4:00 p.m. and works until 2:00 a.m.

12. Nathan Bronson is the technical services manager for Employer. He is responsible for quality assurance, research and development, and coordination of the safety program. Claimant did not report to Mr. Bronson. Claimant reported to a shift supervisor (Ernando Sanchez), who reported to a production manager; the production manager and Mr. Bronson reported to Brent Michelson, the general manager.

13. Mr. Bronson testified that Employer rotates production workers to a different job station every two to three hours during a shift, so no employee would be performing any given repetitive task for very long. In his statement to Surety's investigator, he stated that Claimant

was a general laborer, and was not trained for or assigned to the station where workers filled the twice-baked potatoes.

14. Ernando Sanchez was Claimant's direct supervisor. In the investigative interview conducted by Surety on October 8, 2009, he stated that Claimant rarely worked in labor positions on the line, and spent most of her work time as a quality assurance inspector.

2009 OCCUPATIONAL DISEASE CLAIM

15. Claimant avers that she experienced an acute onset of right wrist, forearm, and hand pain on or about September 1, 2009. According to her testimony, she was "filling the twice bakes," but the activity she describes was scooping out the baked potato from the halved potatoes. Filling the scooped-out potato shells is a step that occurs at a later time in the production process. Claimant testified that her right hand started to tingle and get numb, and she had to turn off the machine.

16. Claimant continued to work the remainder of her shift that day and until the end of her workweek on Thursday night/Friday morning. Claimant did not tell any of her supervisors about her upper extremity pain that week. Claimant had regularly scheduled days off on Friday, Saturday, and Sunday. Monday was a holiday—Labor Day—and so she did not return to work until Tuesday.

17. Claimant believes that she spoke with Mr. Bronson about her upper extremity complaints on either September 8 or 9. As she relates the conversation, she denied any specific event that she associated with the onset of the right upper extremity symptoms, but told Mr. Bronson that it came on while she was at work. Mr. Bronson told her to see her own doctor.

18. According to Mr. Bronson's recollection of the conversation, he asked Claimant a number of questions designed to elicit "whether she was asking us as a company to send her to

see a doctor or if she was asking us as a company to allow her time to go see a doctor.” Tr., p. 90. Mr. Bronson concluded that Claimant was asking the company to allow her time to go see a doctor, and told her to be sure and let her supervisor know.

19. On September 10, 2009, Claimant left work early and presented at the emergency department at a local hospital about 10:15 p.m. Emergency department staff diagnosed Claimant with CTS on the right, placed her in a splint for two weeks, and released her to return to work wearing the splint. Although Claimant testified that ER staff released her from work altogether for September 11, 2009, the actual medical records clearly reflect that she was released to return to work with a wrist splint. Claimant was directed to follow-up in two weeks with a local physician who treated CTS. Claimant did not seek further treatment for her hand following her visit to the emergency department.

20. Claimant did not go to work on September 11, 2009. She did not call in to say she would not be at work. Claimant testified that emergency department staff had told her to rest her hand and not go to work on Friday, September 11. The following Monday, September 14, Claimant called in before her shift to say she would not be in because her right hand still hurt. Later that evening, Mr. Sanchez called her and terminated her employment for attendance and tardiness issues.

MEDICAL OPINIONS

Dr. Thurman

21. On March 17, 2010, Claimant saw Dr. Thurman upon referral by her attorney. Her reported history of the onset of her right upper extremity complaint is consistent with her testimony. She denied any prior history of right upper extremity injury. She did not advise Dr. Thurman that she was pregnant at the time her symptoms began.

22. On exam, Dr. Thurman reported:

- No visual evidence of muscle wasting;
- Static two-point discrimination equal bilaterally in all digits;
- Positive Tinel's sign with percussion at right supraclavicular, cubital tunnel and volar distal forearm and left cubital tunnel;
- Reduced grip strength on the right; and
- Positive Phalen's maneuver in the right upper extremity.

Based on his examination and testing, Dr. Thurman ordered electrodiagnostics testing. Nerve conduction studies and EMG testing completed in mid-May 2010 showed "very mild right carpal tunnel syndrome, sensory and demyelinating only." D. Ex. C, p. 3. Claimant did not return to Dr. Thurman following the testing to discuss a diagnosis and treatment.

Dr. Knoebel

23. At Surety's request, Claimant saw Dr. Knoebel for a medical evaluation on June 17, 2010. Dr. Knoebel reviewed Claimant's medical records, including her nerve conduction studies and EMG results, took a patient history, and conducted an exam.

24. On exam, Dr. Knoebel noted:

- Claimant was 5'3" and weighed 210 pounds;
- No observed or measured atrophy of the upper extremity musculature or the thenar or hyperthenar area of either hand;
- Palpation of the right upper extremity results in mid-forearm pain;
- Tinel's sign gives localized tenderness of the right wrist and right cubital tunnel;
- Phalen's test on the right gives immediate numbness complaints over the long, ring, and little fingers;
- Pinch strength was normal and equal bilaterally;
- Grip strength testing suggested "a spurious loss of grip strength with a greater than 20%

deviation from the mean on the left, and less than 15% of the effort considered normal for the Claimant's age and gender on the right. D. Ex. D, p. 6; and

- Normal pinprick sensation over all digits bilaterally and normal two-point discrimination in all digits bilaterally.

25. Based on his exam, Claimant's history, and his review of the medical records, Dr. Knoebel concluded that Claimant's subjective complaints "far outweigh" any objective findings of CTS. D. Ex. D, p. 7. He noted that objective clinical findings were limited to non-specific pain complaints with palpation of the right arm. Phalen's test and elbow flexion test show non-specific and non-anatomic findings of numbness not indicative of either CTS or cubital tunnel syndrome. Dr. Knoebel also noted Claimant's aberrant results on grip-strength testing, and her exaggerated pain diagram. Dr. Knoebel concluded:

- Claimant's complaints at the time of exam were not consistent with mild CTS;
- Claimant was six months pregnant at the time she reported the onset of her right upper extremity symptoms, and her subsequent EMG findings of mild CTS are most consistent with her morbid obesity, and increased symptoms in September of 2009 would be consistent with her pregnancy at that time;
- Claimant continued to complain of symptoms, though she had not worked for approximately nine months; and
- Claimant denied a specific accident or event that precipitated the sudden onset of her symptoms, and her work activities, though repetitive, were not consistent with a sudden onset of pain as she described.

DISCUSSION AND FURTHER FINDINGS

COMPENSABLE OCCUPATIONAL DISEASE

26. Idaho Code defines an occupational disease as:

. . . a disease due to the nature of an employment in which the hazards of such disease actually exist, are characteristic of, and peculiar to the trade, occupation, process, or employment . . .

Idaho Code § 72-102(22)(a). The law further provides that:

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

Idaho Code § 72-437. Idaho Code § 72-439 limits the liability of an employer for payment of compensation for an occupational disease to cases where: (1) “such disease is actually incurred in the employer’s employment,” and (2) where “the employee was exposed to the hazard of such disease for a period of 60 days for the same employer” [not at issue here]. Finally, Idaho Code § 72-439(3) states:

[w]here compensation is payable for an occupational disease, the employer, or the surety on the risk for employer, in whose employment the employee was last injuriously exposed to the hazard of such disease, shall be liable therefor.

Thus, in order to prevail on her claim, this Claimant must prove:

- That she was afflicted by a disease;
- That the hazards of such disease actually exist, are characteristic of, and peculiar to the trade, occupation, process, or employment in which she was engaged;
- That the disease was incurred in, or arose out of and in the course of her employment;
- That her last injurious exposure to the hazard of the disease occurred while she was employed by Employer; and
- That she became disabled as a result of the disease.

27. As with industrial accident claims, an occupational disease claimant also has the burden of proving, to a reasonable degree of medical probability, a causal connection between the condition for which compensation is claimed and an occupational exposure to the substance or conditions which caused the alleged condition. *Hagler v. Micron Technology, Inc.*, 118 Idaho 596, 598, 798 P.2d 55, 57 (1990). *Langley v. State, Industrial Special Indemnity Fund*, 126

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

28. For the reasons set out below, the Referee finds that Claimant has failed to establish the elements required to prove a compensable occupational disease claim.

Disease

29. Initially, Claimant bears the burden of demonstrating that she suffers from a disease that is causally related to her employment. In connection with the issue of causation, it is first important to arrive at a diagnosis of Claimant’s condition. Some diagnoses would in and of themselves rule out an industrial cause, thus ending the inquiry at that point. On the other hand, some diagnoses may be consistent with an industrial origin, thus requiring further analysis of the question of whether or not Claimant’s condition is causally related to the demands of her employment. Here, it is proposed that Claimant suffers from such a condition, carpal tunnel syndrome.

30. However, it is not clear that Claimant suffers from CTS. The medical experts differ on whether Claimant’s symptoms are consistent with the disease. Dr. Thurman points to his clinical findings, along with EMG results, in opining that Claimant’s symptoms are indicative of CTS. However, he admitted during his deposition that he was unaware that, at the onset of Claimant’s symptoms, she was six or seven months pregnant. He agreed that pregnancy was a likely factor in her condition, but noted that Claimant’s complaints persisted even after she delivered her child. Dr. Knoebel, on the other hand, does not believe that Claimant has CTS, because her symptoms were non-specific, in a non-anatomic distribution, and her grip-strength testing was inconsistent. He believes that the most likely causes of her symptoms were her pregnancy and her morbid obesity.

31. After a careful review of the medical testimony, the Referee concludes that Claimant's medical expert, Dr. Thurman, did not persuasively explain that Claimant's symptoms were consistent with a CTS diagnosis, in light of competing explanations for Claimant's condition. Claimant's proffered medical testimony does not overcome the doubts raised by the alternative explanations for her symptoms. Therefore, Claimant has failed to establish that she qualifies for a diagnosis of carpal tunnel syndrome.

32. Even assuming that Claimant does suffer from carpal tunnel syndrome, it is clear that her claim fails due to her inability to demonstrate that this diagnosis is causally related to the demands of her employment. A claimant seeking compensation for an occupational disease must prove that the disease was incurred in, or arose out of and in the course of his or her employment. In the instant case, both Drs. Knoebel and Thurman testified that CTS is associated with a *host* of risk factors, including most notably, being female, being obese, and being pregnant. Both doctors agreed that medical literature suggests that occupational CTS is primarily associated with heavy labor activities, high force, awkward positioning, and use of power and vibratory tools, none of which were characteristic of Claimant's job duties.

Characteristic of and Peculiar to the Occupation

Her failure to prove causation notwithstanding, the claim also fails because Claimant has failed to establish that her condition meets the requirements set out in *Bowman v. Twin Falls Construction, Inc.*, 99 Idaho 312, 323, 581 P. 2d 770, 781 (1978) defining "peculiar to the occupation." For the reasons discussed in the following paragraphs, the Referee finds that Claimant has failed to meet the "peculiar to" requirement.

33. In *Bowman*, the Idaho Supreme Court set out its definition of "peculiar to the occupation," as follows:

The phrase, “peculiar to the occupation,” is not here used in the sense that the disease must be one which originates exclusively from the particular kind of employment in which the employee is engaged, but rather in the sense that the conditions of that employment must result in a hazard which distinguishes it in character from the general run of occupations.

Id., overruled on other grounds, *DeMain v. Bruce McLaughlin Logging*, 132 Idaho 782, 979 P.2d 655 (1999). More than thirty years later, that definition still governs the analysis of an occupational disease claim in Idaho.

34. The Court’s discussion in *Ogden v. Thompson*, 128 Idaho 87, 910 P.2d 759 (1996) is particularly apposite to the case at bar. Walter Ogden worked primarily in grocery stores and mechanical occupations most of his life, starting when he was fifteen. His employment history included working in a gas station, as a mechanic, as a reserve police officer, and, finally, as shop manager of a tire store. Ogden’s work installing tires on vehicles required substantial lifting, bending, and twisting. In November and December 1992, Ogden worked a significant amount of overtime to meet the change-of-season demand for services. By February 1993, Claimant noticed he was experiencing increasing low back pain. He sought medical care and was diagnosed with disc herniation and radiculopathy. Ogden filed a workers’ compensation claim. The Commission analyzed Ogden’s case using dual theories of injury/accident and occupational disease, finding his injury noncompensable under either theory. With regard to his occupational disease claim, the Commission found that:

. . . Ogden’s work was, in fact, “not distinguishable from many other occupations which involve strenuous or heavy labor” and concluded that he did not contract an occupational disease in the course of his employment.

The Commission noted that Ogden’s duties involved a significant amount of heavy lifting, twisting, and bending. These activities are certainly not exclusive to Ogden’s occupation and are typical of activities common to the general run of occupations involving manual labor.

Id., at 128 Idaho 761, 910 P.2d. 89 (internal citations omitted). In particular, the Commission found that:

Ogden failed to present sufficient evidence regarding the particular hazards of his job as shop manager to justify a finding that he contracted an occupational disease. Ogden relied solely on the testimony of his medical expert as the basis for his occupational disease claim which, as we noted above, conflicted with that of another expert.

Id., 128 Idaho 762, 910 P.2d. 90. The Court upheld the Commission's decision, citing in particular to the Commission's findings discussed, *supra*.

35. Clearly, many of the job duties on Employer's production line are repetitive. However, employees regularly rotate between stations, so the nature of the repetitive activity changes throughout the workday and from day to day, as did that of the claimant in *Ogden*. The fact that Claimant engaged in a variety of jobs, each of which included a repetitive component, is not sufficient by itself to establish CTS as a hazard that is peculiar to Claimant's employment. Claimant cited no activities that she performed continuously and repeatedly in a manner that would distinguish her job from the general run of production line jobs.

Disabled From Her Work

36. Finally, in order to receive indemnity benefits for an occupational disease claim, a claimant must prove that he or she is disabled from performing the work in the last occupation in which he or she was injuriously exposed to the hazards of such disease. *Mulder v. Liberty Northwest Inc. Co.*, 135 Idaho 52, 14 P.3d 372 (2000); Idaho Code § 72-102(22)(a). Claimant was not disabled from performing her work on Employer's production line. No doctor took her off work in the fall of 2009. Employer terminated Claimant because she failed to show up for work on September 11, 2009—an offense she admitted. Nothing prevented Claimant from

seeking other work, and, at the time of hearing, she was working at a call center, where she used her right hand to keyboard and use a mouse.

CONCLUSIONS OF LAW

1. Claimant has failed to establish that she suffers from a compensable occupational disease.
2. All other issues are moot.

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 26 day of July, 2011.

INDUSTRIAL COMMISSION

/s/ _____
Rinda Just, Referee

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

TERESA L. IBARRA,)

)

Claimant,)

)

v.)

IC 2009-024409

)

POTATO PRODUCTS OF IDAHO, LLC,)

)

ORDER

Employer,)

)

and)

Filed: August 16, 2011

)

STATE INSURANCE FUND,)

)

Surety,)

Defendants.)

_____)

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 has failed to establish that she suffers from a compensable occupational disease.
2. All other issues are moot.
3. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all

matters adjudicated.

DATED this 16 day of August, 2011.

INDUSTRIAL COMMISSION

/s/ _____

Thomas E. Limbaugh, Chairman

Unavailable for signature

Thomas P. Baskin, Commissioner

/s/ _____

R.D. Maynard, Commissioner

ATTEST:

/s/ _____

Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 16 day of August, 2011, 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:

DENNIS R PETERSEN

PO BOX 1645

IDAHO FALLS ID 83403-1645

M JAY MEYERS

PO BOX 4747

POCATELLO ID 83205-4747

djb

/s/ _____