BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARCUS MCGRAY, Claimant, v. HOLIDAY INN AIRPORT, Employer, and ZURICH AMERICAN INSURANCE COMPANY Surety, Defendants.	**IC 2006-003118** **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION** FILED:6/15/12

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 Kuna, Idaho, on January 27, 2012. Claimant appeared *pro se.* Mark C. Peterson of Boise represented Defendants. The parties submitted oral and documentary evidence. There were no post-hearing depositions, and only Defendants submitted a timely brief. The matter came under advisement on April 16, 2012 and is now ready for decision.

ISSUES

The primary issue in this proceeding is:

Whether Claimant is entitled to additional medical care, in particular an MRI, for an accepted industrial injury that occurred in June 2006.

Subsidiary issues are:

1. Whether the condition for which Claimant seeks the additional medical care is due to the industrial accident or a pre-existing or subsequent injury or condition; and

2. Whether Surety is relieved from liability for further medical care because Claimant sought care outside Surety's chain of referral.

At hearing, Defendants explained they included the issue regarding chain of referral because they were unable to determine if Claimant received medical care outside the chain of referral for the industrial accident. At hearing, Claimant stated that he had not sought medical care for his low back from private providers, but did have treatment from institutional doctors while incarcerated subsequent to his industrial accident. Based on the discussion held on the record regarding these issues, it appears that subsidiary issue two is moot.

CONTENTIONS OF THE PARTIES

Claimant asserts that he has had back pain ever since his industrial injury that requires on-going medical care.

Defendants assert that Claimant's industrial injury resulted in an acute low back strain that resolved without residual impairment. The symptoms for which Claimant seeks additional medical care are not attributable to his industrial accident but to a pre-existing degenerative condition in his low back that has worsened over time. Claimant has failed to provide any medical evidence that he requires an MRI or any other treatment related to his industrial injury.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant, taken at hearing; and

2. Defendants' exhibits 1 through 5, admitted at hearing;

After having considered all the above evidence and Defendants' brief, the Referee submits the following findings of fact and conclusion of law for review by the Commission.

FINDINGS OF FACT

1. At the time of hearing, Claimant was 60 years of age, and an inmate under the jurisdiction of the Idaho Department of Corrections (IDOC). He was serving a sentence for felony driving under the influence. The Referee convened the hearing at the Idaho Maximum Security Institution operated by the IDOC.

2. Claimant was also incarcerated at the time of his industrial injury, and was working for Employer while completing an earlier sentence at the correctional work center (CWC). Claimant first went to work for Employer as a CWC worker in 2005 in the restaurant kitchen. His job included washing dishes, kitchen maintenance, and other general kitchen labor.

ACCIDENT

3. Claimant reported to work as usual on the morning of March 8, 2006. Upon arrival, he noticed that the night shift employees had set the kitchen garbage cans outside the kitchen in the sally port, but had not emptied them. The kitchen garbage cans were heavy due to the nature of the waste material in them. It had been cold overnight, and the garbage cans had frozen to the ground. The area around the dumpster was icy, and it was often greasy as well. When Claimant picked up one of the cans to empty it, he slipped while holding the can and twisted his back. At the time of the incident, Claimant heard a pop and felt a strain.

4. Claimant reported the accident to his supervisor, who filled out a first report of injury and suggested that Claimant seek medical care. Officials at the CWC agreed, and on

March 10, 2006, Claimant presented at the ER at St. Luke's Meridian Medical Center.

MEDICAL CARE

5. At the ER, Claimant complained of low back pain that he had since he twisted his back emptying a garbage can several days earlier. Claimant also advised that he had a history of intermittent back pain. As noted on the discharge note: "His history and physical are not consistent with fracture, herniated disk, cauda equina syndrome. Will treat him for back strain." Ex. 2, p. 09. Claimant received prescriptions for Flexeril and Motrin and was advised to follow up with St. Luke's Occupational Medicine clinic the following week.

6. On March 20, 2006, Claimant saw Ralph M. Sutherlin, D.O., at St. Luke's occupational health clinic. Claimant reported that he injured his back emptying a garbage can while working for Employer as a dishwasher, but advised Dr. Sutherlin that Employer no longer needed him. Claimant also reported that on the occasion of the visit his back pain was much better. Dr. Sutherlin also noted that Claimant only had one week remaining on his sentence, and because he did not have employment in Boise, he would be traveling to north Idaho where he had family and owned a home.

7. On exam, Dr. Sutherlin found no evidence of sensory, neurologic, or radicular symptoms, and diagnosed acute thoracic and lumbar muscular strain. Dr. Sutherlin continued Claimant on Flexeril and Motrin, recommended the continued use of heat and ice, and referred him to David Price, D.C., for two chiropractic sessions. Dr. Sutherlin imposed temporary restrictions including no lifting more than 30 pounds, and no repetitive stooping or bending.

8. Claimant treated twice with Dr. Price for chiropractic care as prescribed by Dr. Sutherlin, and returned to see Dr. Sutherlin on March 24, 2006. Dr. Sutherlin noted that Claimant's pain level had decreased and his range of motion had improved.

> The patient will continue with Motrin 800 mg 3 x per day, as well as Flexeril at night. The patient will have 1 more chiropractic session tomorrow, with Dr. Price, and then in 3 days he will be released from prison and return home to Sandpoint in Northern Idaho. The patient will be at full work activity and continue with his ice and heat at home, as well as his stretches. I would suggest that the patient is followed up for 1 last appointment in 1.5 to 2 weeks for recheck and closure of the case at that time.

Ex. 2, p. 06.

9. On June 13, 2006, Claimant obtained follow-up treatment at Sandpoint Urgent Care. He complained of chronic back pain and obtained refills for his pain medication. His prescriptions were refilled with a comprehensive exam and evaluation scheduled for the following week. Claimant did not return to the clinic, but in December 2006 called to get prescriptions refilled. The clinic staff told Claimant that he must come in for a comprehensive examination before the doctor could refill his prescriptions, but he never did.

10. On October 30, 2008, Claimant once again presented at Dr. Sutherlin's office. Claimant was back in prison in Boise and was working in the prison laundry. Claimant reported that he still had pain in his low back since the time of his March 2006 injury. He described "crunching in the lower back with pain shooting down both legs with burning and pain in the right foot." *Id.,* at p. 11. An examination of Claimant's low back was unremarkable except for limited back extension secondary to stiffness. Otherwise, range of motion was normal, straight-leg raises were negative bilaterally, and sensation was intact bilaterally.

11. Dr. Sutherlin diagnosed "probable new onset of bilateral L5 radiculopathy secondary to spinal stenosis from degenerative joint disease." *Id.,* at p. 12. Dr. Sutherlin did order an x-ray to document chronic changes and confirm the degenerative joint disease. Dr. Sutherlin opined that Claimant was a maximum medical improvement for the March 2006 industrial injury, and could continue to work without restrictions.

12. Lumbar x-rays taken October 30, 2008 showed retrolisthesis L2-3 (3 mm) and L3-4 (7 mm) with degenerative disc disease present at L3-4 (moderately severe), L1-2 and L2-3 (mild to moderate), and L4-5, L5-S1 (mild).

13. Surety accepted the claim and paid the medical expenses incurred in treating Claimant's back injury through October 2008.

SUBSEQUENT EVENTS

14. On February 25, 2008, Claimant filed his initial Complaint in the above-entitled action. Surety filed an Answer.

15. In mid-February 2009, Claimant returned to see Dr. Sutherlin. The chart note does not identify a presenting complaint, but briefly reviewed the history of Claimant's industrial accident and the x-rays showing the pre-existing degenerative disc disease. Dr. Sutherlin reiterated that he believed Claimant's industrial injury was fully resolved in October 2008, and that Claimant's continuing complaints did not relate to the industrial injury. He recommended that Claimant seek care from his own physicians for his pre-existing degenerative disc disease.

16. The Commission dismissed Claimant's Complaint without prejudice on August 24, 2009 due to inactivity.

17. On January 26, 2010, Claimant filed a Complaint seeking to reopen his workers' compensation claim, and the matter proceeded slowly toward hearing.

18. On January 5, 2012, at the request of Surety, Claimant saw Robert H. Friedman, M.D., for an independent medical exam (IME). Dr. Friedman reviewed Claimant's medical records, took an oral history, and performed an examination. Dr. Friedman concluded in relevant part that:

- Claimant's March 2006 injury was a low back strain which had subsequently resolved; and
- Claimant's continuing complaints are not related to his March 2006 industrial accident but instead are consistent with the normal progression of his underlying arthritic degenerative condition.

Dr. Friedman did recommend work restrictions and did give Claimant an impairment rating for his degenerative back condition only. Dr. Friedman also suggested a treatment protocol for Claimant, but again, related solely to his pre-existing degenerative condition.

DISCUSSION AND FURTHER FINDINGS

19. The burden of proof in an industrial accident case is on the claimant.

> 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.

20. In this proceeding, the uncontroverted medical evidence establishes that Claimant suffered a low back strain in March 2006 that resolved without impairment. Surety paid for all of the medical care related to Claimant's industrial back injury through October 2008. No physician has recommended that Claimant receive additional medical care related to the industrial accident. No physician has recommended that Claimant needs an MRI incident to the

industrial accident. It is undisputed that Claimant does have an on-going chronic degenerative back condition for which he will need treatment, but there is no medical evidence that the March 2006 injury caused or aggravated Claimant's pre-existing degenerative condition.

CONCLUSION OF LAW

1. Claimant has failed to carry his burden of proving that he is entitled to additional medical care relative to his March 2006 industrial injury.

RECOMMENDATION

Based upon the foregoing Findings of Fact, Conclusion of Law, and Recommendation, the Referee recommends that the Commission adopt such findings and conclusion as its own and issue an appropriate final order.

DATED this 14 day of June 2012.

INDUSTRIAL COMMISSION

/s/_____
Rinda Just, Referee

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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 conclusion 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 conclusion of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant has failed to carry his burden of proving that he is entitled to additional medical care relative to his March 2006 industrial injury.

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

DATED this 15 day of June, 2012.

INDUSTRIAL COMMISSION

/s/_____

Thomas E. Limbaugh, Chairman

/s/_____

Thomas P. Baskin, Commissioner

_____

R.D. Maynard, Commissioner

ATTEST:

/s/_____

Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 15 day of June, 2012, a true and correct copy of the foregoing **FINDINGS, CONCLUSION,** and **ORDER** were served by regular United States Mail upon each of the following persons:

MARCUS MCGRAY

IDOC# 70363

ICC P1, #40B

PO BOX 70010

BOISE ID 83707

MARK PETERSON

PO BOX 829

BOISE ID 83701

kla /s/_____