

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

CHRISTOPHER L. BROWN,

Claimant,

v.

ROCKY'S BODYSHOP & TOWING, INC.,

Non-Insured Employer,

Defendant.

IC 2011-029615

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

Filed July 23, 2013

INTRODUCTION

Claimant filed his Complaint on December 2, 2011, seeking compensation for a back injury sustained when he was lifting a door at Employer's body shop. The Idaho Industrial Commission served Claimant's Complaint on Employer on December 20, 2011. On January 20, 2012, the Commission served what was construed as Claimant's notice of intent to take default unless Employer answered within 21 days. On January 23, 2012, Employer, *pro se*, filed its Answer to Complaint denying each and every allegation of Claimant's Complaint. Because Employer lists his business as a corporation, his Answer was stricken because it was not prepared by an attorney as is required by JRP 2(B). Employer has not participated further in this matter.

On March 14, 2012, Claimant filed a "motion of default" construed as a Motion for Entry of Default, which was served by the Commission on Employer on March 21, 2012. On April 25, 2012, Referee Just signed an Order Entering Default.

Upon Referee Just's retirement, this matter was reassigned to Referee Michael E. Powers, who conducted a default hearing via video conferencing on April 19, 2013.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 1

Claimant was present at the Coeur d'Alene field office; Referee Powers participated from the Commission's main office in Boise. Oral and documentary evidence was presented. There were no post-hearing depositions and Claimant did not file a post-hearing brief. This matter came under advisement on May 7, 2013, and is now ready for decision.

ISSUES

The issues to be decided as the result of the hearing are as follows:

1. Whether Claimant suffered an injury from an accident arising out of and in the course of employment;
2. Whether and to what extent Claimant is entitled to the following benefits:
 - a. Medical care; and
 - b. Total partial and/or temporary total disability benefits (TPD/TTD);
3. Whether Employer is liable to Claimant for the penalties set forth in Idaho Code § 72-210 for failing to insure liability;
4. Whether the Commission should retain jurisdiction beyond the statute of limitations.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

Claimant's Exhibits A-C, previously provided by Claimant to the Commission and formally admitted at the hearing.

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

FINDINGS OF FACT

1. Claimant was 62 years of age and resided in Coeur d'Alene at the time of the hearing.

2. On August 15, 2011, while employed by Employer, Claimant was lifting a pickup door from the floor to a stand. He testified that the door was heavy and awkward to lift. As he lifted the door, Claimant felt a sharp pain in his back and his left leg went numb.

3. Claimant told Employer the next day that he had hurt his back lifting a door the day before. According to Claimant, Employer denied that Claimant hurt his back.

4. Claimant did not seek immediate medical attention because he was on parole and keeping a job meant the difference between remaining free or returning to prison, which was not an option for Claimant.

5. Claimant testified that due to his back pain, he was unable to continue with all aspects of his work and requested lighter duty. Sometime in December, Employer called Claimant to his shop and informed Claimant that he had no light-duty work for him, and Claimant was fired.¹

6. Claimant informed Employer that he was going to file a Complaint with the Industrial Commission, and Employer told him that he would simply deny that Claimant was an employee.

7. Claimant became involved with the Idaho Department of Vocational Rehabilitation (IDVR) and was sent to a physician to determine his potential disability.

¹ At the time of their falling out, Claimant was living in Employer's house and needed to borrow money from a friend for a motel room, where he resided at the time of the hearing.

IDVR has paid for all of Claimant's medical bills. For financial reasons, Claimant has been unable to obtain treatment for his back condition.

8. Employer was uninsured for workers' compensation purposes on August 15, 2010.

DISCUSSION AND FURTHER FINDINGS

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).

An accident is an unexpected, undesigned, and unlooked for mishap, or untoward event, connected with the industry in which it occurs, and which can be reasonably located as to time when and place where it occurred, causing an injury. Idaho Code § 72-102(17)(b).

An injury is a personal injury caused by an accident arising out of and in the course of any employment covered by the workers' compensation law. Idaho Code § 72-102(17)(a).

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 558, 560-61, 511 P.2d 1334, 1336-37 (1973), *overruled on other grounds by Jones v. Emmett Manor*, 134 Idaho 160, 997 P.2d 621 (2000). *See also Callantine, Id.*

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).

Accident

9. The Referee finds that, based on Claimant's un rebutted testimony, he suffered an accident on August 15, 2011, when lifting a door.

Medical care

10. The only medical record in evidence regarding Claimant's accident is dated January 12, 2012. The note indicates that Claimant presented with complaints of low back pain for the past two months. This would place Claimant's accident in November of 2011 rather than August of 2011. Further, the only mention of Claimant's accident is this notation: "Pt. lifting door and felt a sharp pain and has pain on and off since then." Claimant's Exhibit I, p. 2.

11. The Referee finds that Claimant has failed to establish by medical evidence a causal connection between his accident and his injury for two reasons. First, because Claimant has an admitted history of back pain, it is important to know the date of his accident in that there was about a five-month delay between the accident and the first medical record regarding the accident. There is almost a three-month gap between

Claimant's August 15, 2011 accident and the date range he gave the doctor on January 12, 2012 (back pain for two months). Second, the Commission has held that "A physician does not render an opinion as to what caused an injury merely by recording **without comment** the history related by claimant." *Caudel v. Boulder Mountain Village*, 91 IWCD 52, p. 4198, at p. 4201 (1991). Emphasis added. Such is exactly the case here. There is no indication regarding how the door lifting incident caused Claimant to have the low back pain for which he was being seen (especially in light of Claimant's history of low back pain). There is certainly no **unequivocal** opinion from a physician that Claimant's injury is in any way related to his accident to a reasonable degree of medical probability.

CONCLUSIONS OF LAW

1. Claimant has failed to prove that his accident caused an injury arising out of and in the course of his employment.
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 __28th__ day of June, 2013.

INDUSTRIAL COMMISSION

_____/s/_____
Michael E. Powers, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the __23rd__ day of __July__, 2013, 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:

CHRISTOPHER L BROWN
1808 NORTHWEST BLD #22
COEUR D'ALENE ID 83814

ATTN: NASSER SHADMAN
C/O ROCKY'S BODYSHOP & TOWING INC
108 E HANLEY
DALTON GARDENS ID 83815

ge

Gene Espinosa

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

CHRISTOPHER L. BROWN,

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ROCKY'S BODYSHOP & TOWING, INC.,

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ORDER

Filed July 23, 2013

Pursuant to Idaho Code § 72-717, Referee Michael E. Powers submitted the record in the above-entitled matter, together with his recommended 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 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 his accident caused an injury arising out of and in the course of his employment.
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 23rd day of July, 2013.

INDUSTRIAL COMMISSION

/s/ _____
Thomas P. Baskin, Chairman

PARTICIPATED BUT DID NOT SIGN
R. D. Maynard, Commissioner

_____/s/_____
Thomas E. Limbaugh, Commissioner

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __23rd__ day of __July__ 2013, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

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ATTN: NASSER SHADMAN
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_____/s/_____
