BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BARBARA DALTON, Claimant, v. LINCOLN COUNTY, Employer, and STATE INSURANCE FUND, Surety, Defendants.	**IC 2011-008985** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** **FILED OCTOBER 18, 2013**

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Alan Taylor, who conducted a hearing in Boise on February 19, 2013. Claimant, Barbara Dalton, was present and represented by Dennis Petersen of Idaho Falls. Defendant Employer, Lincoln County (County), and Defendant Surety, State Insurance Fund, were represented by Neil McFeeley of Boise. The parties presented oral and documentary evidence. One post-hearing deposition was taken. Briefs were submitted and the matter was deemed under advisement as of August 1, 2013.

ISSUES

The issues to be decided include:

1. Claimant's entitlement to additional medical care;
2. Claimant's entitlement to temporary disability benefits; and
3. Whether Claimant is entitled to a change of physician.

All other issues are reserved.

CONTENTIONS OF THE PARTIES

All parties acknowledge that Claimant suffered an industrial accident on March 26, 2011. Defendants assert that Claimant received appropriate medical treatment for her industrial low back strain, returned to her pre-injury condition, and that any need for further treatment is due to her pre-existing back condition. Claimant alleges that she sustained a herniated lumbar disk as a result of the industrial accident and is entitled to additional medical treatment, including lumbar surgery, temporary disability benefits through the time of hearing, and a change of physician to Michael Hajjar, M.D.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission's legal file;
2. The testimony of Claimant taken at the February 19, 2013 hearing;
3. Claimant's Exhibits A through M admitted at hearing;
4. Defendants' Exhibits 1 through 4 admitted at hearing; and
5. The post-hearing deposition of Michael V. Hajjar, M.D., taken by Claimant on May 1, 2013.

All objections made during Dr. Hajjar's post-hearing deposition are overruled.

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.

FINDINGS OF FACT

1. **Background.** Claimant was born in 1950. She was 62 years old and resided in Twin Falls at the time of the hearing. In 1968, she graduated from high school in California and thereafter obtained an associate nursing degree and worked as an LPN at a community hospital until 1974. During this time she also transcribed court reporter audio tapes on the side.

2. In 1974, Claimant moved to New Mexico and worked for the U.S. Forest Service in fire prevention and in processing wood cutting and drilling permits. In 1977, she moved to Hawaii where she worked as the membership secretary for the University of Hawaii. In 1978 she returned to New Mexico and then moved to California where she worked as a legal secretary or legal assistant until 1984. From 1984 until 1997 she worked as a paralegal. By 1999, she was an administrative coordinator. Claimant developed carpal tunnel syndrome while working in California. She did not undergo surgical treatment and remained on industrial disability for two years.

3. In approximately 2002, Claimant moved to Seattle where she worked as a paralegal. On April 19, 2005, Claimant presented to the Virginia Mason Medical Clinic in Kirkland, Washington reporting chronic low back pain. This may have resulted from moving boxes at work. On October 31, 2005, Claimant again presented to the Virginia Mason Medical Clinic reporting that she wondered if she had injured her back. She reported that she usually had low back pain, but now had upper back pain. Laurel Morrison, M.D., assessed thoracic back pain. On October 3, 2006, Claimant presented to the Virginia Mason Medical Clinic with a chief complaint of sun associated skin changes. She also reported chronic low back pain as well as neck pain and back pain. On September 11, 2007, Claimant presented to the Virginia Mason Medical Clinic with a chief complaint of right shoulder discomfort. She was assessed with adhesive capsulitis. She was also noted to have arthritis of her spine. Claimant continued to work in Seattle as a paralegal through approximately 2008.

4. In 2009, Claimant moved to Idaho and began working for Lincoln County as the 4-H Project Coordinator.

5. On January 17, 2011, Claimant presented to Mark Wright, M.D., with a principal

complaint of left knee pain. She also reported back pain, joint pain, and joint swelling. Dr. Wright injected Claimant's left knee with cortisone.

6. **Industrial accident and treatment.** On March 26, 2011, Claimant was at work helping with youth disaster training. She assisted three others in demonstrating a four-person blanket lift and then assisted one other person in demonstrating a two-person chair carry. Claimant testified that she felt immediate low back pain at the belt line and radiating down both legs. She notified her supervisor of the incident on March 28, 2011, and then sought treatment from her family physician who prescribed anti-inflammatory medication and physical therapy. X-rays taken March 28, 2011, revealed normal lumbar alignment, adequately maintained vertebral bodies, relatively mild degeneration of L4-5 and possibly L5-S1 disks, and advanced bilateral facet arthrosis at L3-4, L4-5, and L5-S1. Claimant continued working.

7. On March 30, 2011, the physical therapist recorded that Claimant "reports increased lumbar pain 2 hours after lifting and was excruciatingly worse the next day. She reports she has lumbar pain right > left with radiation into her LE's [sic] just above the knee." Claimant's Exhibit F, p. 20.

8. In May 2011, Claimant traveled to Alaska on a cruise for a 4-H America Conference.

9. On May 24, 2011, Claimant underwent a lumbar MRI that revealed:

> At L2-3 and L3-4 there is mild spinal stenosis primarily due to hypertrophy of the posterior elements. At L4-5 there is moderate spinal stenosis primarily due to advanced hypertrophy of the posterior elements. There is also broad-based annular bulging posteriorly in the midline and slightly left of midline. At L5-S1 epidural lipomatosis[1] envelops and appears to compress the dural sac and the S1 nerves.

[1] "Epidural lipomatosis can occur with obesity and/or steroid use. It is occasionally symptomatic due to its compressive effect on the dural sac and/or nerve roots." Claimant's Exhibit E, p. 11.

Claimant's Exhibit E, p. 12.

10. By May 26, 2011, Claimant reported to her physical therapist lower extremity pain radiating to her ankles bilaterally. Claimant participated in physical therapy until May 31, 2011. Her family physician then referred her to orthopedic surgeon David Verst, M.D.

11. On June 9, 2011, Dr. Verst examined Claimant and recorded her complaints of back and leg pain and bladder incontinence. He recorded that Claimant was five foot three inches tall and weighed 265 pounds. Dr. Verst prescribed epidural steroid injections. Claimant received an injection on July 6, 2011, which decreased her pain for about six weeks.

12. During the summer of 2011, Claimant moved into her parents' home in Twin Falls to care for her mother with dementia and her father who was partially paralyzed by a stroke. She continued her work at the County.

13. On September 8, 2011, Dr. Verst wrote the Surety noting:

> Clearly the MRI scan demonstrates spinal stenosis, acute herniated disc in the face of the L4-5 spondylolisthesis. Absent any other findings from past medical records, on a more probable to-not [sic] basis, I feel that her current condition is related to the industrial injury of 03/26/11. I am recommending treatment to include an L5 selective nerve root block. …. If this does not improve her symptoms, she may require surgical intervention to remove the pressure on the nerve root.

Claimant's Exhibit G, p. 39.

14. On September 28, 2011, Claimant received another injection which was not helpful. On October 6, 2011, Dr. Verst noted that Claimant continued with back and bilateral leg pain and complained of urinary incontinence. She last saw Dr. Verst on October 21, 2011.

15. On October 31, 2011, Claimant ceased her employment with Lincoln County. She has not worked since that time. At hearing, Claimant testified that her work for the County required her to lift tables and chairs, walk on uneven ground, carry lunch trays, and bend down to

access files in lower drawers. She testified that she quit because of the back pain she experienced from performing these duties.

16. On November 17, 2011, Richard Knoebel, M.D., examined Claimant at Defendant's request. He diagnosed low back pain without verifiable radiculopathy, pre-existing history of stress incontinence, pre-existing morbid obesity, and osteoarthritis. He found that she was medically stable, had no permanent impairment, was able to return to work without restrictions related to her industrial accident, and needed no further medical treatment due to her industrial accident. Dr. Knoebel recorded that Claimant quit her job for Lincoln County because of a hostile work environment. He noted that she continued with her regular work duties until she voluntarily quit. Dr. Knoebel also concluded that Claimant's reported incontinence was consistent with stress incontinence and not cauda equina syndrome.

17. On December 1, 2011, Dr. Verst agreed with Dr. Knoebel's findings.

18. On February 22, 2012, Claimant presented to neurosurgeon Michael Hajjar, M.D. Dr. Hajjar reviewed Claimant's post-injury medical records, noting her history of low back and radiating bilateral lower extremity pain which started as a work related injury. He noted Dr. Verst's correspondence with Surety wherein he concluded that Claimant's L4-5 disk herniation was related to her industrial accident and also Dr. Verst's agreement with Dr. Knoebel's findings that as of November 17, 2011, Claimant was medically stable, without permanent impairment, and needed no further medical treatment as a result of her industrial accident.

19. Dr. Hajjar recorded that Claimant had been unable to work since the time of her industrial injury. He found Claimant had relatively symmetrical bilateral lower extremity strength, symmetrical deep tendon reflexes, and no pathological reflexes or sensory changes. Dr. Hajjar concluded that Claimant was not medically stable, recommended a repeat lumbar MRI

scan, and then further treatment. He recommended that Claimant avoid lifting more than 20 pounds frequently and 30 pounds occasionally.

20. On June 27, 2012, Dr. Knoebel disagreed with Dr. Hajjar's conclusions.

21. Defendants authorized a repeat MRI and on August 9, 2012, Claimant underwent a second lumbar MRI which revealed:

> [S]light interval progression of degenerative disk disease at L4-L5 where there has been interval development of a moderate sized caudally direct, central disk protrusion. This severely narrows the left lateral recess and moderately narrows the right lateral recess with impingement upon the transiting L5 nerve roots, left side greater than right. …. Degenerative disk disease at L4-L5 combine with facet hypertrophy and ligament flavum laxity results in mild to moderate spinal canal narrowing as well.

Claimant's Exhibit E, p. 15.

22. Claimant testified that approximately a week after her August 2012 MRI, she bent over to remove an item from her dishwasher and felt pain down her legs. She testified that since that time she has had urinary incontinence. She differentiated this from previous incontinence from coughing or sneezing.

23. On September 26, 2012, Dr. Hajjar wrote that Claimant suffered an industrial injury requiring surgery. He also noted that she experienced a change in her symptoms about a week after her August 2012 MRI scan and reported new bladder symptoms. Dr. Hajjar opined that these new symptoms were related to the progression of her industrial condition. He recommended another lumbar MRI to rule out any new pathology prior to surgery. Based on Claimant's August 9, 2012 MRI, Dr. Hajjar recommended lumbar surgery including L4-5 decompression, fusion, and instrumentation.

24. On November 29, 2012, Keith Holley, M.D., examined Claimant at Defendants' request. He found Claimant medically stable and without permanent impairment due to her industrial accident.

25. At hearing Claimant testified that she continued to have low back pain, that she could sit no more than one hour and could not climb stairs. She testified that she cleans her kitchen and does her laundry, but hires a maid to vacuum and do heavy house cleaning. She reported that her back pain prevents her from tying her shoes, putting on her socks, or being active. Claimant has not worked since leaving her employment with the County in October 2011. She continues to live with and care for the needs of her elderly parents.

26. Claimant testified that she wants Dr. Hajjar as her treating physician and wants lumbar surgery to "get her life back." She continues to take various medications prescribed prior to her industrial accident.

27. **Claimant's credibility.** Claimant testified at hearing that she experienced some low back pain over the years. She remembered low back pain in approximately 2004, but testified that she never saw a doctor for low back pain. As noted above, Claimant's medical records establish that she reported low back pain to physicians in April and October 2005, October 2006, September 2007, and even January 2011—two months before her industrial accident.

28. Claimant testified at hearing that she left her job with the County on October 31, 2011, because of back pain. Dr. Knoebel recorded three times in his November 17, 2011 evaluation that Claimant reported she left her job—just 17 days earlier—because of the hostile work environment. Dr. Knoebel also noted inconsistencies in Claimant's physical examination and inappropriate responses to credibility testing.

29. Having observed Claimant at hearing, and reviewed the evidence, the Referee finds that Claimant's credibility is suspect.

DISCUSSION AND FURTHER FINDINGS

30. The provisions of the Idaho 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).

31. **Additional medical care.** The first issue is Claimant's entitlement to additional medical care. Idaho Code § 72-432(1) mandates that an employer shall provide for an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital service, medicines, crutches and apparatus, as may be required by the employee's physician or needed immediately after an injury or disability from an occupational disease, and for a reasonable time thereafter. If the employer fails to provide the same, the injured employee may do so at the expense of the employer. Idaho Code § 72-432(1). Of course an employer is only obligated to provide medical treatment necessitated by the industrial accident. The employer is not responsible for medical treatment not related to the industrial accident. Williamson v. Whitman Corp./Pet, Inc., 130 Idaho 602, 944 P.2d 1365 (1997).

32. In Sprague v. Caldwell Transportation, 116 Idaho 720, 722-723, 779 P.2d 395, 397-398 (1989), the Court held that medical treatment already received is reasonable when: 1.) the claimant made gradual improvement from the treatment; 2.) the treatment was required by the claimant's physician; and 3.) the treatment was within the physician's standard of practice,

the charges for which were fair, reasonable, and similar to charges in the same profession. The Court has announced no similar standard for prospective medical treatment; thus, Sprague provides some guidance but the instant case must be judged on the totality of the circumstances. Ferguson v. CDA Computune, 2011 IIC 0015 (February 25, 2011); Richan v. Arlo G. Lott Trucking, Inc., 2001 IIC 0008 (February 7, 2011).

33. In the present case, Claimant asserts entitlement to additional medical care; specifically, an MRI and lumbar surgery by Dr. Hajjar. She relies upon the opinion of Dr. Hajjar to establish her claim. Defendants dispute that Claimant is entitled to further medical care due to her industrial accident. They rely upon the opinions of Dr. Knoebel, Dr. Holley, and Dr. Verst. The opinions of all four physicians are addressed below.

34. *Dr. Hajjar*. Dr. Hajjar testified via post-hearing deposition on behalf of Claimant. He testified that when he examined Claimant in February 2012, she told him her symptoms included a combination of back pain and pain radiating down both legs. Dr. Hajjar noted that Claimant's May 2011 lumbar MRI showed moderate L4-5 disk herniation. He recommended another MRI to evaluate her status. The second lumbar MRI, completed August 9, 2012, showed a slight increase in the arthritic changes as compared to the first MRI. When Claimant reported experiencing increased pain and some bladder symptomology a week or so after the August 2012 MRI, Dr. Hajjar recommended a third MRI. However, he noted that Claimant displayed relatively symmetric lower extremity strength bilaterally, symmetric deep tendon reflexes, and no pathological reflexes or sensory changes.

35. Dr. Hajjar testified that assuming no significant change from the August 2012 MRI, he recommends L4-5 nerve decompression, stabilization, fusion, and instrumentation with bone graft. He opined that such surgery would be related to Claimant's industrial accident.

36. Claimant did not inform Dr. Hajjar of her prior chronic low back pain. During Dr. Hajjar's post-hearing deposition, he was briefly advised of medical records from Claimant's 2005, 2006, and 2007 visits to the Virginia Mason Medical Center wherein she reported chronic low back pain, and records of a 2009 visit wherein Claimant reported loss of bladder control. Dr. Hajjar acknowledged Claimant's pre-existing degenerative arthritic changes in her lumbar spine, but opined that the L4-5 disk herniation was an acute event more likely than not caused by her industrial accident. He testified: "one of the things that is a clear change is that, prior to that event, Ms. Dalton was active. She was working. After the event, she is not working because of pain and symptomatology related to her back condition." Hajjar Deposition, p. 19, ll. 2-6.

37. In rendering his opinion, Dr. Hajjar was not informed that only two months before her industrial accident, Claimant reported back pain to Dr. Wright. Nor was Dr. Hajjar informed that Claimant worked for seven months after her industrial accident. Rather, Claimant told Dr. Hajjar her back and leg pain "started at the time of the March 2011 injury. She stated she was unable to work since the time of the injury." Hajjar Deposition, p. 7, ll. 4-8. Dr. Hajjar was not informed that three months before her industrial accident Claimant sought treatment because of knee pain limiting her mobility to the point she found it difficult to arise from a chair and could no longer walk on her lunch hour. At that time she weighed 275 pounds.

38. *Dr. Knoebel.* Dr. Knoebel examined Claimant at Defendants' request on November 17, 2011. He diagnosed low back pain without verifiable radiculopathy, pre-existing stress incontinence, morbid obesity, and osteoarthritis. Dr. Knoebel found Claimant medically stable, without permanent impairment, and able to return to work without restrictions. He found she needed no further medical treatment due to her industrial accident. He noted that she had a family history of degenerative lumbar disease. Dr. Knoebel recorded: "The claimant worked for

Lincoln County as a 4-H program coordinator. The claimant reports she quit this job because of a 'hostile work environment' on 10/31/11." Claimant's Exhibit I, p. 48. She reported having taken sick days, but no temporary total disability due to her industrial injury. Dr. Knoebel recorded: "It is also noted that the claimant was able to continue with her regular duty work until voluntarily quitting her job." Claimant's Exhibit I, p. 52. Dr. Knoebel found Claimant had 90 degree painless seated straight leg raising bilaterally, normal symmetric knee and ankle reflexes, intact sensation L3-S1 bilaterally, normal lower extremity muscle strength bilaterally, and normal lumbar motion but with grimacing and groaning. He noted that the objective findings showed Claimant was:

> [W]ithout evidence of significant neural impingement on MRI scan and without evidence of an acute injury to the spine on x-ray or MRI scan. The claimant has evidence of lipomatosis obesity and degenerative changes at multiple levels of the lumbar spine, neither of which is reasonably secondary to the subject industrial accident. …. She has a normal neurologic exam.

Claimant's Exhibit I, p. 50. He concluded that Claimant's presentation was not credible, noting:

> It is significant that the claimant's subjective complaints far outweigh the objective findings in the face of the inconsistencies on physical examination and numerous inappropriate responses to credibility testing.
>
> ….
>
> The claimant at most suffered a temporary low back pain secondary to the lifting incident at work. There is no indication of any permanent impairment related to this incident. Her industrial low back condition has certainly resolved by this time with no indication of any permanent impairment or of any lumbar injury reasonably present. She has no evidence of fracture, dislocation, disc herniation or neurologic impingement on physical exam or diagnostic studies.

Claimant's Exhibit I, p. 51. Dr. Knoebel concluded that Claimant's reported incontinence was consistent with stress incontinence and not cauda equina syndrome.

39. *Dr. Verst.* Dr. Verst was Claimant's treating physician. He examined Claimant on June 9, 2011, August 25, 2011, and September 9, 2011. Dr. Verst initially opined that

Claimant's L4-5 disc herniation was more probably than not due to her industrial accident. However, on December 1, 2011, Dr. Verst agreed with Dr. Knoebel's IME conclusions. As noted, Dr. Knoebel concluded that Claimant's L4-5 disk bulging was a degenerative finding.

40. *Dr. Holley.* On November 29, 2012, orthopedic surgeon Keith Holley, M.D., examined Claimant at Defendants' request. He noted Claimant was five foot three inches tall and weighed 270 pounds. Dr. Holley found normal symmetric deep tendon lower extremity reflexes bilaterally, normal lower extremity muscle strength, and intact symmetric sensation bilaterally in all dermatomes. He diagnosed lumbar strain related to Claimant's industrial accident and opined that her lumbar spondylosis, degenerative disk disease, including broad based annular disc bulging at L4-5 is an age-related and pre-existing degenerative condition, not related to her industrial accident. He found Claimant sustained no permanent impairment due to her industrial accident, needed no further medical treatment due to her industrial accident, and could return to her pre-injury work as a 4-H coordinator. Dr. Holley considered Dr. Hajjar's surgical recommendation and concluded:

> In my opinion, lumbar spine surgery as recommended by Dr. Hajjar is not recommended for Ms. Dalton, as her imaging findings show relatively moderate degenerative changes not unusual for a person of Ms. Dalton's age, and she has a normal neurologic examination. There is also no evidence of instability. In my opinion, Ms. Dalton's ongoing back pain has more to do with her obesity, musculoskeletal deconditioning, and posture, and would best be managed by conservative measures and weight loss.

Claimant's Exhibit K, p. 74.

41. *Weighing the conflicting medical opinions.* Dr. Knoebel disagreed with Dr. Hajjar's surgical recommendation, noting that even Dr. Hajjar found Claimant's neurologic exam normal, with normal bilateral lower extremity strength, sensation and reflexes. Dr. Knoebel also disagreed with Dr. Hajjar's finding of L4-5 disc herniation, noting that the

radiologic interpretation of the MRI was L4-5 disc bulging—primarily a degenerative condition.

42. All of the examining physicians reported normal neurologic examinations, symmetrical lower extremity strength bilaterally, normal deep tendon reflexes, and no sensory changes. Drs. Knoebel, Holley, and Verst concurred that Claimant's L4-5 disk abnormality disclosed on MRI scanning is consistent with age-related degenerative changes.

43. Dr. Hajjar's opinion relies heavily upon the history Claimant reported to him. He expressly affirmed that his opinion was based on his understanding that Claimant was active prior to the industrial accident, but not able to work thereafter. In reality, Claimant worked at the County for approximately seven months after her accident. She even attended an Alaskan cruise during May 2011. Seventeen days after leaving her employment with the County, Claimant told Dr. Knoebel she quit because of the hostile work environment. She did not then ascribe her departure to back pain.

44. The Referee finds that Dr. Hajjar's opinion is not more persuasive than the opinions of Drs. Knoebel, Holley, and Verst. Claimant has not proven her entitlement to additional medical care, including lumbar MRI and surgery, for her industrial accident**.**

45. **Temporary disability benefits.** The next issue is Claimant's entitlement to temporary disability benefits. Idaho Code § 72-102 (10) defines "disability," for the purpose of determining total or partial temporary disability income benefits, as a decrease in wage-earning capacity due to injury or occupational disease, as such capacity is affected by the medical factor of physical impairment, and by pertinent nonmedical factors as provided for in Idaho Code § 72-430. Idaho Code § 72-408 further provides that income benefits for total and partial disability shall be paid to disabled employees "during the period of recovery." The burden is on a claimant to present medical evidence of the extent and duration of the disability in order to recover

income benefits for such disability. Sykes v. C.P. Clare and Company, 100 Idaho 761, 605 P.2d 939 (1980).

46. In Malueg v. Pierson Enterprises, 111 Idaho 789, 791-92, 727 P.2d 1217, 1219-20 (1986), the Supreme Court noted:

> [O]nce a claimant establishes by medical evidence that he is still within the period of recovery from the original industrial accident, he is entitled to total temporary disability benefits unless and until evidence is presented that he has been medically released for light work *and* that (1) his former employer has made a reasonable and legitimate offer of employment to him which he is capable of performing under the terms of his light work release and which employment is likely to continue throughout his period of recovery *or* that (2) there is employment available in the general labor market which claimant has a reasonable opportunity of securing and which employment is consistent with the terms of his light duty work release.

47. In the present case, Claimant has not proven her need for additional medical care is caused by her industrial accident. Drs. Knoebel, Holley, and Verst all opined that Claimant reached medical stability from her industrial accident and needed no further medical care due to her accident after November 17, 2011. Claimant was not within the period of recovery from her industrial accident after November 17, 2011.

48. Claimant has not proven she is entitled to temporary disability benefits.

49. **Change of physician.** Having failed to prove her entitlement to additional medical care due to her industrial accident, Claimant has not proven she is entitled to a change of physician.

CONCLUSIONS OF LAW

1. Claimant has not proven that she is entitled to additional medical care including lumbar MRI and lumbar surgery due to her industrial accident.

2. Claimant has not proven she is entitled to temporary disability benefits.

3. Claimant has not proven she is entitled to a change of physician.

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 1st day of October, 2013.

INDUSTRIAL COMMISSION

_____/s/_____
Alan Reed Taylor, Referee

ATTEST:

____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the _18th_____ day of __October_____, 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:

DENNIS R PETERSON
PO BOX 1645
IDAHO FALLS ID 83403-1645

NEIL MCFEELEY
PO BOX 1368
BOISE ID 83701-1368

mg ____/s/_____

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BARBARA DALTON, Claimant, v. LINCOLN COUNTY, Employer, and STATE INSURANCE FUND, Surety, Defendants.	**IC 2011-008985** **ORDER** **FILED OCTOBER 18, 2013**

Pursuant to Idaho Code § 72-717, Referee Alan Reed Taylor 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 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 not proven that she is entitled to additional medical care including lumbar MRI and lumbar surgery due to her industrial accident.

2. Claimant has not proven she is entitled to temporary disability benefits.

3. Claimant has not proven she is entitled to a change of physician.

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

DATED this 18th day of October, 2013.

INDUSTRIAL COMMISSION

_____/s/_____
Thomas P. Baskin, Chairman

_____/s/_____
R.D. Maynard, Commissioner

_____/s/_____
Thomas E. Limbaugh, Commissioner

ATTEST:

____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of October, 2013, a true and correct copy of the foregoing **ORDER** was served by regular United States mail upon each of the following:

DENNIS R PETERSON
PO BOX 1645
IDAHO FALLS ID 83403-1645

NEIL MCFEELEY
PO BOX 1368
BOISE ID 83701-1368

mg _____/s/_____