

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

ROSE R. PINCENTI,

Claimant,

v.

BONNER GENERAL HOSPITAL, INC.,

Employer,

and

LIBERTY NORTHWEST
INSURANCE CORPORATION,

Surety,
Defendants.

IC 2010-031621

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

Filed August 20, 2014

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Industrial Commission assigned the above-entitled matter to Referee Douglas A. Donohue. He conducted a hearing in Coeur d'Alene, Idaho, on November 14, 2013. Stephen Nemecek represented Claimant. Lea Kear represented Defendants Employer and Surety. The parties presented oral and documentary evidence and later submitted briefs. The case came under advisement on April 16, 2014. This matter is now ready for decision.

The undersigned Commissioners have chosen not to adopt the Referee's recommendation and hereby issue their own findings of fact, conclusions of law, and order.

ISSUES

The issues to be decided as agreed to by the parties at hearing are:

Whether and to what extent Claimant is entitled to past and future medical care benefits for her alleged complex regional pain syndrome (CRPS) formerly known as reflex sympathetic dystrophy (RSD).

The terms “CRPS” and “RSD” are used interchangeably by physicians in the record and in this decision. All other issues were resolved prior to hearing.

CONTENTIONS OF THE PARTIES

Claimant contends she is due the amounts billed for medical care for CRPS under *Neel*, and that she is entitled to future medical care for that condition. From 2012 to the date of hearing she has incurred medical bills totalling \$130,136.04 to treat her CRPS. She anticipates a surgery to revise the neurostimulator leads which quiet her CRPS symptoms.

Defendants contend Claimant has received all benefits due her. A diagnosis of CRPS is clinically unsupported. The treatment does not meet standards of compensability under *Sprague*. Surety should not be liable under *Neel* for charges they have already paid or which are unrelated to the accident. Some of both are included in Claimant’s suggestion for the amount of award. Specifically, the Commission approved prior to hearing a lump sum settlement agreement in which Surety compensated Claimant’s health care insurer for some of these charges which it had paid.

EVIDENCE CONSIDERED

The record in the instant case included the following:

1. Oral testimony at hearing of Claimant, and her husband;
2. Claimant’s exhibits 1 through 14 admitted at hearing;
3. Defendants’ exhibits A through K, admitted at hearing; and
4. Posthearing depositions of treating physicians J. Craig Stevens, M.D., and J. Sorin Ispirescu, M.D.

All objections raised in posthearing depositions are overruled.

The Commission, having evaluated all evidence of record, submits the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Claimant worked as a housekeeper for Employer. On December 14, 2010 Claimant sprained her ankle and broke two bones, her talus and calcaneus, in her right foot and ankle in a compensable accident.

2. Claimant immediately sought treatment. Bonner General Hospital ER diagnosed an ankle sprain. An X-ray failed to identify the talus fracture, calling it an “irregularity . . . probably developmental in nature.” The radiologist did not mention the calcaneus at all.

3. On December 16, 2010 Claimant first visited J. Craig Stevens, M.D. By history, he noted that X-rays were initially interpreted as showing “an avulsion of the talus” but that the radiologist reported the talus was not fractured. Dr. Stevens proceeded to treat based upon a diagnosis of ankle sprain. He ordered physical therapy.

4. Claimant underwent physical therapy from December 20, 2010 to April 15, 2011.

5. In follow-up visits despite continued bruising, swelling, and pain, and despite his own recommendation on January 4 to order an MRI on January 13, Dr. Stevens did not order an MRI on January 13. Instead, he noted, “She is describing a significant amount of disability somewhat out of proportion to the physical findings at this late stage.”

6. On January 20, 2011 Dr. Stevens asserted, “Her degree of disability appears far out of proportion to the objective findings.” He did, however, order an MRI.

7. On January 24, 2011 an MRI of the ankle discovered the calcaneus fracture which included a small nondisplaced fragment. Consensus among physicians was that by that date, the fracture was too far along the healing process to perform a reduction or to cast.

8. On January 25, 2011 Dr. Stevens referred her care to orthopedist Brent Leedle, M.D. Dr. Stevens did not see her again until September 29, 2011.

9. On February 1, 2011 a CT showed the fracture of the talus.

10. On February 2, 2011 Claimant was examined by Brent Leedle, M.D., upon referral from Dr. Stevens. He treated her during this part of her recovery, got her to full weightbearing, and noted skin color changes as he considered whether a CRPS diagnosis was appropriate. He referred Claimant to Dr. Ispirescu for pain management. After an April 13, 2011 visit, Dr. Leedle did not see her again until February 2012.

11. A March 9, 2011 CT showed the fractures were healing.

12. On March 15, 2011 Claimant first visited anesthesiologist J. Sorin Ispirescu, M.D., for pain management. He diagnosed RSD and osteoarthritis in Claimant's right ankle. He noted she had "some symptoms consistent with RSD" including pain out of proportion to the injury, swelling or vasomotor changes, color changes, and allodynia. He prescribed medication and physical therapy.

13. At an April 13, 2011 visit Dr. Ispirescu recommended lumbar sympathetic blocks. The first of these was administered on April 21, with others on May 26, June 2, 23, and 30, July 7 and 14.

14. Claimant made additional follow-up visits with Dr. Ispirescu on August 1, September 27, November 21, and December 13, 2011.

15. Claimant attended 13 physical therapy sessions from September 2 to October 19, 2011. Patient reported lessening pain and showed increased function after sessions.

16. On September 29, 2011 Dr. Stevens again evaluated Claimant. He noted crepitus in the ankle. He ordered electrodiagnostic testing which revealed no abnormality. He opined that CRPS is "frequently" diagnosed in error. Despite the examination finding of crepitus, he noted, "her treatment at this time appears to be entirely symptom-driven without any truly

objective abnormalities noted on her current physical examination.”

17. On an October 6, 2011 examination Dr. Stevens noted the absence of swelling, and color and temperature changes in her skin to support an RSD diagnosis. He expressly disagreed with that diagnosis.

18. On October 26, 2011 Dennis Chong, M.D., reviewed records and examined Claimant at Defendants’ request. He opined Claimant did not have CRPS, did not need more treatment, was at MMI, and suffered zero PPI.

19. In the November 21 note, Dr. Ispirescu noted that light touch, even by a bed sheet, increased Claimant’s foot pain. He disputed Dr. Chong’s opinions. He recommended another series of nerve blocks and a TENS unit. He raised the possibility of a spinal neurostimulator if the recommended treatments failed. In the December note, Dr. Ispirescu identified a “flare-up” of symptoms.

20. In 2012, Claimant visited Dr. Ispirescu for another set of nerve blocks on January 5, February 2 and 16, March 1, and April 5, with an office visit on February 20. These did not work as well as the first set. Dr. Ispirescu implanted electrodes for the spinal neurostimulator trial on May 3. Other visits occurred on May 9, June 5, and July 16.

21. Claimant returned to Dr. Leedle on February 8 and 15, 2012. After he ruled out a nonunion of a fracture, he diagnosed CRPS “without Orthopedic etiology.”

22. On February 13, 2012 an MRI showed no acute or healing fractures. The report was essentially normal for soft tissue as well.

23. On February 27, 2012 Carl Haugen, PhD., performed a psychological evaluation. He opined Claimant suffered no psychological condition which would interfere with pain management treatments.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER - 5

24. On March 5, 2012 a nuclear bone scan showed a mild shoulder joint condition but no focal indications of a right foot problem.

25. On July 16, 2012 Claimant first complained to Dr. Ispirescu of hip pain. More nerve blocks were performed on July 19, August 2, 16, and 30, and September 20. On an October 10 visit Dr. Ispirescu noted the neurostimulator trial had not significantly helped her condition.

26. After a December 4, 2012 visit to Dr. Ispirescu in which he recommended a Boston Scientific (BS) spinal cord stimulator, Claimant received another nerve block on December 20 and in 2013 on January 3.

27. On January 31, 2013 Dr. Ispirescu implanted electrodes to try the BS spinal cord stimulator. On February 6 Claimant reported it provided 50% pain reduction.

28. March 19 and 28, 2013 follow-up visits after the BS stimulator was implanted showed incisions were healing.

29. At an April 18, 2013 visit Claimant reported to Dr. Ispirescu that the BS stimulator was not fully addressing all locations of pain. Adjustment was performed on May 8. Also on May 8, Dr. Ispirescu opined Claimant at MMI and returned her to full-duty work.

30. Claimant continued to work full time within just a few weeks after the accident but was unable to continue working after the BS stimulator was placed. Claimant testified that she would like to return to work if the BS stimulator was as effective on the lateral side of her right foot as it was on the medial side. Although Claimant testified that she quit her job because she could no longer tolerate the right foot pain, she also testified that she did experience some pain relief with the BS stimulator.

31. At a July 25, 2013 visit to Dr. Ispirescu Claimant reported foot pain had been relieved, but she now had hip and lumbar pain. A bursal injection was performed on July 29. At the next visit on August 13 Claimant reported it had not helped much. She also reported significant foot pain again.

32. Claimant obtained Social Security Disability benefits effective September 2013.

Medical Opinions

33. On September 16, 2010 John McNulty, M.D., performed an IME at Claimant's request. He reviewed records and examined Claimant. Dr. McNulty took a history from Claimant that she suffered from pain of severity 10/10 over the lateral aspect of her right foot. However, she told Dr. McNulty that the spinal cord stimulator relieved her medial-sided pain. She complained that she was unable to wear socks or regular shoes because of her right-footed discomfort. She also complained of pain in the right hip which she felt was secondary to gait alteration. On exam Claimant was found to have an antalgic gait favoring her right lower extremity. Range of motion of her right ankle was restricted as compared to the left. Dr. McNulty noted that Claimant had hypersensitivity to even light touch, present over the lateral aspect of the foot. This hypersensitivity was present even with distraction. Claimant exhibited some swelling in the right lower extremity, although she had normal skin tone and color in the right foot. However, Dr. McNulty noted that the right foot was slightly cooler to touch than the left. While Dr. McNulty conceded that Claimant did not meet "strict criteria" for a diagnosis of CRPS, he nevertheless diagnosed Claimant with a mild case of CRPS, Type 1. He gave Claimant a 3% PPI rating and imposed significant restrictions.

34. In his October 26, 2011 IME report Dr. Chong opined the CRPS diagnosis was "absolutely incorrect. . . . There are no findings that meet the required criteria to merit the

diagnosis according to the *AMA Guides*.” He opined that a TENS unit was “not necessary” and that a spinal cord stimulator was “completely inappropriate” and that additional medication was “not appropriate.” He opined Claimant was at MMI with zero PPI. He opined she needed no future treatment.

35. Dr. Ispirescu is a Coeur d’Alene anesthesiologist who is also fellowship trained in pain management. He first saw Claimant on December 14, 2010. By April 13, 2011 Dr. Ispirescu concluded that Claimant’s presenting symptoms and clinical findings were most consistent with a diagnosis of CRPS. In this regard, he noted the following symptoms which supported this diagnosis: vasomotor changes, pain out of proportion to physical findings, temperature changes, swelling, decreased range of motion and skin changes. Dr. Ispirescu testified that he considered a number of differential diagnoses for Claimant’s condition, but that the diagnosis of CRPS still best fits the clinical picture. However, Dr. Ispirescu acknowledged, as did Dr. McNulty, that Claimant’s is not the most impressive case of CRPS he has seen. She lacks a number of the objective criteria that are frequently associated with this diagnosis. Still, he testified that CRPS is the diagnosis that best fits Claimant’s condition.

36. Dr. Ispirescu testified that CRPS is a type of sympathetically maintained pain, and that Claimant did enjoy some improvement in her symptoms with the lumbar sympathetic blocks that he administered. However, Claimant’s persistent symptoms led him to consider the spinal cord stimulator as a treatment of last resort. Claimant underwent a trial of such a device manufactured by Medtronic. This trial was not successful in resolving Claimant’s pain so Dr. Ispirescu appropriately decided against permanent implantation of the device.

37. However, in January of 2013, Dr. Ispirescu recommended that Claimant consider a trial with another device, this one manufactured by BS. Dr. Ispirescu explained that the BS

device employs completely different algorithms to control each lead, and is thought to offer improved outcomes. (Ispirescu Depo., 32/3-33/20). Claimant underwent a trial of the BS stimulator on January 31, 2013. She reported to Dr. Ispirescu that she was able to work her eight hour shift in far less pain. He therefore recommended permanent implantation of the device. By May of 2013 Claimant reported to Dr. Ispirescu that she had excellent coverage of pain and had been able to return to full time work. However, by August 2013, Claimant's pain had worsened. Dr. Ispirescu speculated that while Claimant initially had good coverage of the whole foot, over time, as the leads "settle in" some of that coverage has been lost. He noted, however, as has Claimant, that she retains good coverage on the medial aspect of the right foot. Dr. Ispirescu proposes that Claimant may need additional surgery to revise the placement of the leads. (Ispirescu Depo., 19/8-20-1).

38. Although Dr. Stevens criticized the diagnosis of CRPS because it relied largely on Claimant's subjective presentation, he also acknowledged that CRPS Type 1 is typically a diagnosis based on subjective complaints, as opposed to objective findings. (Stevens Depo., 12/13-13/2). Dr. Stevens believes there is a possibility that Claimant may be overstating her complaints for the purposes of secondary gain. (Stevens Depo., 23/11-19). However, Dr. Stevens made a similar observation at the time of his initial evaluation of Claimant, when she was suffering from an as yet undiscovered talar fracture. Dr. Stevens testified that a diagnosis of CRPS is not to be made lightly, and should be made by more than one physician. In this case, he acknowledged that Dr. McNulty, Dr. Ispirescu and Dr. Leedle have all come to the conclusion that Claimant suffers from CRPS. Dr. Stevens noted that Claimant's bone scan and EMG were negative for findings suggestive of CRPS. This supported his conclusion that Claimant did not meet the diagnostic criteria for this condition. Dr. Stevens did not believe that Claimant should

have undergone all of the nerve blocks performed by Dr. Ispirescu. Nor did he believe a dorsal column stimulator was an appropriate treatment modality for Claimant. In this regard, he agreed with Dr. Chong that such treatment is inappropriate.

DISCUSSION AND FURTHER FINDINGS OF FACT

39. 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 need not be construed in a worker's favor when the evidence is conflicting. *Aldrich v. Lamb-Weston, Inc.*, 122 Idaho 361, 834 P.2d 878 (1992).

40. An employer is required to provide reasonable medical care for a reasonable time as recommended by an injured worker's treating physician. Idaho Code § 72-432(1).

41. Dr. Ispirescu is a treating physician within the chain of referral. He has treated Claimant during her recovery for the most significant amount of time. Surety initially approved Dr. Ispirescu's diagnosis and treatment. This distinguishes his care from that provided in a case like *Sprague* where a Claimant went outside the chain of referral to obtain denied treatment. *See, Sprague v Caldwell Transportation, Inc.*, 116 Idaho 720, 779 P.2d 395 (1989).

42. Dr. Stevens acknowledged the radiologist's equivocation about a possible talus fracture in an early note. He then proceeded to blame Claimant for complaining of pain on the false assumption that no fracture existed. Upon MRI proof that his diagnosis was wrong he immediately sent her elsewhere for care and did not see her for about six months, then provided two follow-up visits which appear to be more directed at providing opinions than treatment. We note the inconsistencies between his contemporaneous observation note

and his deposition testimony on the question of secondary pain issues. We note that he exaggerated when he opined that Clamant had no objective examination findings despite his note of finding crepitus. Dr. Stevens' opinions carry less weight than Dr. Ispirescu's. Finally, while Dr. Stevens appears to acknowledge that CRPS Type 1 is a diagnosis based largely on subjective complaints, he criticized those physicians who have relied on Claimant's subjective complaints, at least in part, to make the diagnosis.

43. The tenor of Dr. Chong's opinions similarly shows exaggerations claiming an absence of criteria which would tend to support a CRPS diagnosis. Some symptoms, swelling, skin color changes, skin temperature changes, and excess pain, are well documented.

44. By contrast, Dr. McNulty's opinions appear well founded and consistent with Dr. Ispirescu's opinions and with Dr. Leedle's concerns as shown by Dr. Leedle's treatment notes.

45. Based on the foregoing, we conclude that Claimant has met her burden of establishing that she suffers from the work related condition of CRPS Type 1.

Medical Treatment

46. Following the Idaho Code § 72-433 exam performed by Dr. Chong, Defendants denied responsibility for treatment of Claimant's diagnosis of CRPS. Claimant requests an order from the Commission holding Defendants responsible for treatment she has received since that denial for her CRPS diagnosis, and for such future treatment she may require for that condition. In particular, Claimant contends that she is entitled to the past treatment that has been provided by Dr. Ispirescu, to include the dorsal column stimulator trials and the implantation.

47. In order to recover medical benefits, the injured worker must prove that the medical care is both required and reasonable. It is for a physician, not the Commission, to decide

whether the treatment in question is required. The only review the Commission is entitled to make is whether the required care is “reasonable”. See *Sprague v. Caldwell Transportation, Inc.*, 116 Idaho 720, 779 P.2d 395 (1989). Under the peculiar facts at issue in *Sprague*, the Idaho Supreme Court held that medical treatment is reasonable when three circumstances exist: (1) the claimant made gradual improvement from the treatment received; (2) the treatment was required by the claimant’s physician; and (3) the treatment was within the physician’s standard of practice, and the charges were fair, reasonable and similar to charges in the same profession. This analysis is not applicable to all cases. See *Richan v. Arlo G. Lott Trucking, Inc.*, IC 2007-027185 (February 2011). Here, Defendants challenge Dr. Ispirescu’s treatment, and the dorsal column stimulator implantation in particular, alleging that Claimant enjoyed no improvement from the treatment. Therefore, they argue, the treatment is not “reasonable”.

48. Defendants correctly note that Claimant did not experience any significant improvement as the result of the Medtronic trial. Though the trial was unsuccessful in this sense, it was successful in another; it provided Dr. Ispirescu with information that informed his decision to abandon designs upon permanent implantation of the device.

49. Several months later Dr. Ispirescu recommended that Claimant undergo a trial of a different stimulator, this one made by BS. As Dr. Ispirescu has explained it, this device was different enough from the Medtronic device to warrant further investigation as to its suitability for treating Claimant’s condition. The BS stimulator trial did provide Claimant with pain relief. Per Dr. Ispirescu, she was able to work her entire eight hour shift in far less pain than she had without the device. Therefore, he recommended permanent implantation, and this was accomplished in early 2013. Dr. Ispirescu testified that following permanent implantation, Claimant had good coverage of her pain, at least initially. However, as time passed, Claimant

lost coverage on the lateral side of her right foot. However, she has continued to enjoy relief of pain on the medial side of the right foot. Even so, Claimant's difficulties remain significant enough that she was unable to continue in her employment. She resigned in the summer of 2013 explaining that she simply could not take the pain anymore. (Transcript at 33/6-11). However, Dr. Ispirescu's records and testimony make it clear that ongoing medial right foot pain was not the sole reason for Claimant's decision to quit her job. Rather, because of gait alterations, Claimant developed right hip pain which did not respond to bursal injections provided by Dr. Ispirescu. Both conditions appeared to be implicated in Claimant's decision to quit her job. (Ispirescu Depo., 17/17-19/7).

50. Based on the foregoing, we conclude that Claimant did experience some permanent pain relief as a result of the implantation of the BS stimulator. We do not believe our finding in this regard is inconsistent with the fact that Claimant's pain complaints, generally, became severe enough in the summer of 2013 that she felt it necessary to quit her employment.

51. We conclude that Claimant is entitled to the care rendered to date by Dr. Ispirescu, and others, for care of her right foot. Claimant is also entitled to such other reasonable future care as may be required under Idaho Code § 72-432 for treatment of her right foot and right hip conditions, such treatments to include further revisions to the BS stimulator previously implanted by Dr. Ispirescu.

52. Claimant asserts entitlement to amounts billed under *Neel v Western Construction*, 147 Idaho 146, 206 P.3d 852 (2009). Some medical treatment was paid as part of a partial settlement before hearing. The Commission approved this agreement. As a result of that final order, Claimant is not entitled to additional payment for that medical treatment under *Neel*. Also, Defendants identified specific bills unrelated to Claimant's right foot,

ankle, or hip. To the extent treatment unrelated to the accident was included in the bills, it is not compensable. The remaining unpaid medical bills should be paid at the rate set forth in *Neel*.

CONCLUSION OF LAW AND ORDER

1. Claimant is entitled to both curative and palliative reasonable medical care, past and future, relating to CRPS arising as a compensable consequence of the accident, including stimulator trials and implantation; and

2. Subject to specific exceptions for medical care previously paid in settlement and for medical care unrelated to Claimant’s compensable conditions, Defendants are liable for billed amounts under *Neel*.

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

DATED this 20th day of August , 2014.

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 ___20th___ day of ___August_____, 2014, a true and correct copy of **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** were served by regular United States Mail upon each of the following:

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_____/s/_____