BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

REA CASIANO, Claimant, v. SEARS, ROEBUCK & CO., Employer, and INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, Surety, Defendants.	**IC 2008-036727** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** **Filed November 19, 2014**

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Michael E. Powers, who conducted a hearing in Boise on February 11, 2014. Claimant appeared *pro se*. Nathan T. Gamel represented Employer and its Surety ("Defendants"). Oral and documentary evidence was presented. Defendants submitted a post-hearing brief; Claimant did not. This matter came under advisement on November 3, 2014 and is now ready for decision.

ISSUE

Claimant suffered an accepted industrial accident on November 7, 2008. Defendants paid for Claimant's medical care until she was released to return to work without restrictions on December 4, 2008, at which time Defendants stopped paying any

benefits. Claimant obtained further medical treatment after that date. It is for this treatment that Claimant seeks payment and/or reimbursement.

CONTENTION OF THE PARTIES

Claimant contends that she never fully recovered from injuries she received when her service van struck a deer. She blames her accident for a litany of post-accident symptoms and argues that Defendants should be required to pay for the treatment of all of her injuries.

Defendants counter that Claimant's symptoms after she was declared at MMI on December 4th, 2008 are not related to her accident. Claimant's symptoms immediately post-accident were all on her left side, unlike her post-MMI symptoms that were on the right side. Further, and most importantly, Claimant has failed to produce even a shred of medical evidence that supports her position, and therefore, her claim must fail.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant adduced at the hearing.
2. Defendants' Exhibits (DE) 1-10.

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

FINDINGS OF FACT

The accident

1. Claimant was 43 years of age and residing in Boise at the time of the hearing. She was a service technician for Employer.

2. On November 7, 2008, while returning from a service call in Idaho City, Claimant struck a deer that jumped in front of her service van. The accident occurred on Highway 21 near the road to Arrowrock Dam. Claimant was able to drive the van from that location to her home in Boise.

Post-accident medical treatment

3. Claimant presented to an emergent care facility on November 11, 2008 with complaints of pain in her left shoulder, left forearm, and lumbar spine radiating to her left leg and left hip; left-side head numbness; and left hand tingling. See DE 3, p. 3. She was diagnosed with a low back strain and left shoulder contusion. She was restricted from lifting more than 40 pounds for one week, after which it was anticipated she would be able to return to regular duty.

4. Claimant returned to the clinic the following day where it was noted: "Lt side of pt feels numb tingly from head to toe." *Id.*, p. 5. She was diagnosed with a head/neck injury and was referred to St. Alphonsus Emergency Department (ED) for further evaluation for her head complaints.

5. Claimant presented to St. Alphonsus ED on November 12, 2008, complaining of a headache, numb head on the left, and left hand and leg aching and numbness. The office note for that date indicated that Claimant had hit a deer causing "major" damage to the front-end of her van (yet her airbag did not deploy and she was able to drive the van to her home). DE 4, p. 9. She denied any head trauma. CT scans of Claimant's head and cervical spine were normal. The treating physician described Claimant's low back pain as "mechanical." *Id.*, p. 10. Work restrictions were assessed and pain medication was prescribed.

6. Claimant presented to Jacob Kammer, M.D., on November 14, 2008, complaining of shooting pains down her left leg, left forearm pain, left shoulder pain, and low back pain. Dr. Kammer assessed work restrictions and prescribed physical therapy.

7. Claimant returned to Dr. Kammer on November 21, 2008, complaining of a lower lumbar contusion, left shoulder strain, neck strain, and left arm strain. Dr. Kammer noted: "The shoulder and neck are feeling fine. Her neck or shoulder popped the other day and the numbness on the left side went away." *Id*., p. 21. Dr. Kammer diagnosed Claimant with a lower lumbar contusion and left shoulder, left arm, and neck strains. Dr. Kammer continued Claimant's work restrictions and physical therapy.

8. Claimant next saw Dr. Kammer on December 4, 2008, at which time she informed him that she was doing much better and that her pain level had dropped. Also, "Over the last holiday weekend she moved abruptly to support another individual, her back popped and since then it has been fine." *Id*., p. 23. Dr. Kammer's diagnosis was "lower lumbar contusion, left arm strain, left shoulder strain, neck strain, resolved." *Id*. Claimant was released to full duty work without restrictions and her physical therapy was discontinued. Dr. Kammer did not anticipate any further follow-up. He dictated his notes in Claimant's presence and she had no corrections or modifications.

Post MMI treatment

9. On February 11, 2010, Claimant presented to Saint Alphonsus ED with a complaint of a "bothersome" right medial clavicular pain and swelling over the course of several months. She reported no history of recent trauma and had no other complaints. A right clavicle x-ray revealed no pathology. The treating doctor diagnosed right sternoclavicular joint inflammation and prescribed an anti-inflammatory.

10. Claimant returned to Dr. Kammer on February 23, 2010, with chief complaints of pain and swelling in her right clavicle (evident on examination), and low and mid-back pain and neck pain. She reported to Dr. Kammer that her back pain had never resolved and the physical therapy he prescribed for her did not help. She also reported swelling in her right shoulder that she first noticed on Thanksgiving 2009. Dr. Kammer recommended lumbar and cervical spine MRIs and an orthopedic evaluation for her clavicle problem.

11. Claimant next saw Dr. Kammer on March 2, 2010 and informed him that she believed her right clavicle swelling was caused by trauma from using her seatbelt at the time of her accident. She asked that she be restricted from commercial driving and Dr. Kammer agreed. Dr. Kammer again recommended diagnostic testing of her neck and low back and an orthopedic referral for her clavicle. He would provide no follow-up care pending a determination of her claims status.

12. On March 8, 2010, Claimant presented to Stephen Asher, M.D., a neurologist, on referral from Dr. Kammer. Claimant was complaining of headaches, lumps in her neck, decreased hearing, hypertension, chest discomfort,[1] bruisability, arthritis, joint pain, anxiety without depression, and neck and low back pain. Dr. Asher diagnosed widespread pain of undetermined etiology and atypical headache disorder. He ordered a brain MRI which was unremarkable.

13. Claimant then saw Joachim Franklin, M.D., on March 21, 2010 at St. Lukes ED with the chief complaint of non-traumatic low back pain. Claimant reported that she

[1] Claimant reported that her upper sternal area and along her clavicle was painful and she believed her right clavicle was "movable" or "floating" and would occasionally obstruct her airflow. *See*, DE 6, p. 54.

has had back pain since her accident and that the pain sometimes radiates into her left lower leg. The pain had not gotten any worse, but it had not gotten any better, either. She rated her pain at 10/10. A lumbar X-ray revealed mild end plate degenerative changes, but was otherwise unremarkable.

14. Claimant saw Paul Montalbano, M.D., a neurosurgeon, on December 1, 2010 for further evaluation of her neck and low back pain, and lower and upper extremity symptomatology. In a December 2 letter to Defendants' counsel, Dr. Montalbano indicated, "Ms. Casiano's symptomatology has undergone an exhaustive workup. There is no evidence of objective criteria to explain her current complaints. She is certainly not a surgical candidate. She may return to work without restrictions." DE 8, p. 67.

15. The last medical record in evidence concerns a May 9, 2013 visit to the Elmore Medical Center Emergency Room where Claimant was complaining of left hip (10/10) and back pain. She informed the treater that she broke her sternum in her 2008 industrial accident.[2] X-rays of Claimant's left hip were normal.

Claimant's credibility

16. The Referee finds that Claimant was not a credible witness, either observationally or substantively. Her hearing testimony was argumentative, even regarding insignificant matters. She blamed her industrial accident for every single ache and pain she has experienced since. She would agree with medical records when to do so advanced her cause and would disagree when they did not. When comparing her testimony

[2] There is no medical evidence supporting Claimant's contention that she broke her sternum. In fact, the right clavicle X-ray referred to in finding number 14 above showed no pathology. Claimant testified that she hit her chin on her chest during the accident that loosened her teeth. There are no medical or dental records discussing the loosened teeth issue. This is another example of Claimant's tendency to exaggerate her symptoms.

to the medical records, the latter will be given more weight than Claimant's testimony about them.

DISCUSSION AND FURTHER FINDINGS

Idaho Code § 72-432(1) obligates an employer to provide an injured employee reasonable medical care as may be required by his or her physician immediately following an injury and for a reasonable time thereafter. It is for the physician, not the Commission, to decide whether the treatment is required. The only review the Commission is entitled to make is whether the treatment was reasonable. *See, Sprague v. Caldwell Transportation, Inc.*, 116 Idaho 720, 779 P.2d 395 (1989). **A claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability**. *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 Company*, 96 Idaho 341, 344, 528 P.2d 903, 906 (1974). No "magic" words are necessary where a physician plainly and unequivocally conveys his or her conviction that events are causally related. *Paulson v. Idaho Forest Industries, Inc*, 99 Idaho 896, 901, 591 P.2d 143, 148 (1979). A physician's oral testimony is not required in every case, but his or her medical records may be utilized to provide "medical testimony." *Jones v. Emmett Manor*, 134 Idaho 160, 997 P.2d 621 (2000).

17. The Referee finds that Claimant has failed to prove her entitlement to further medical care. There was a 14-month gap in treatment from when she was given a full release by Dr. Kammer,[3] and when she resumed seeking medical treatment. The majority

[3] Claimant testified that she could not afford medical treatment during this time frame. However, she never asked Surety for further treatment because "I didn't have a phone number." HT, p. 57.

of the symptoms Claimant was complaining about after February 2010 were entirely different from the symptoms she was experiencing immediately after her accident. The only medical evidence of record concerning the relationship between her post-December 2008 symptoms and her accident was the December 2, 2010 letter from Dr. Montalbano stating that the cause of her subsequent symptomatology was unknown. That opinion is unrebutted. Dr. Asher also could find no explanation for Claimant's myriad pain complaints. Claimant has produced no medical evidence relating her post-December 2008 symptoms to her November 2008 industrial accident.

CONCLUSIONS OF LAW

1. Claimant has failed to meet her burden of proof in establishing her entitlement to further medical benefits after December 4, 2008.

2. Claimant's Complaint should be dismissed with prejudice.

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 __7th___ day of November, 2014.

INDUSTRIAL COMMISSION

__/s/_____
Michael E. Powers, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the __19th___ day of ___November___, 2014, 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:

REA CASIANO
4808 GAGE ST
BOISE ID 83706

NATHAN T GAMEL
PO BOX 1007
BOISE ID 83701-1007

ge

Gina Espinosa

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

REA CASIANO, Claimant, v. SEARS, ROEBUCK & CO., Employer, and INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, Surety, Defendants.	**IC 2008-036727** **ORDER** **Filed November 19, 2014**

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 meet her burden of proof in establishing her entitlement to further medical benefits after December 4, 2008.
2. Claimant's Complaint is dismissed with prejudice.

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

DATED this __19th___ day of __November___, 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 __19th___ day of __November___ 2014, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

REA CASIANO
4808 GAGE ST
BOISE ID 83706

NATHAN T GAMEL
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ge Gina Espinosa