BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

TED HATFIELD, Claimant, v. HOWELL MACHINE, INC., Employer, and IDAHO STATE INSURANCE FUND, Surety, Defendants.	**IC 2012-005680** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** Filed November 1, 2016

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Brian Harper, who conducted a hearing in Lewiston, Idaho, on December 9, 2015. Claimant was represented by Scott Chapman, of Lewiston. Mark Monson, of Moscow, represented Howell Machine, Inc., ("Employer"), and Idaho State Insurance Fund ("Surety"), Defendants. Oral and documentary evidence was admitted. Post-hearing depositions were taken and the parties submitted post-hearing briefs. The matter came under advisement on August 30, 2016.

ISSUES

The issues to be decided are:

1. Whether Claimant sustained an injury from an accident arising out of and in the course of employment;

2. Whether the condition for which Claimant seeks benefits was caused by an industrial accident; and

3. Whether and to what extent Claimant is entitled to the following benefits:
   a. Medical care;
   b. Permanent Partial Impairment (PPI)
   d. Permanent Partial Disability in excess of Impairment.

(Hearing Transcript 4/24-5/14).

CONTENTIONS OF THE PARTIES

Claimant asserts he injured his neck on February 28, 2012 as the result of an accident arising out of and in the course of his employment with Employer. This industrial injury led to surgery. Claimant is entitled to all applicable benefits associated with his injury.

Defendants argue Claimant did not prove an accident occurred. Furthermore, Claimant suffered no disability above his 5% whole person impairment. Claimant has no compensable claim.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. Claimant's hearing testimony;

2. Joint Exhibits (JE) 1 through 16, admitted at hearing;

3. The post-hearing deposition transcript of John McNulty, M.D., taken on January 27, 2016;

4. The post-hearing deposition transcript of Bret Dirks, M.D., taken on March 3, 2016; and

5. The post-hearing deposition transcript of William Stump, M.D., taken on April 27, 2016.

Referee Harper submitted Findings of Fact, Conclusions of Law and Recommendation to the Commission for its review. Having reviewed the same, the Commission agrees with the outcome proposed by Referee Harper, but prefers to provide additional analysis supporting the decision. For this reason, the Commission declines to adopt the proposed Decision and adopts this Decision in lieu thereof.

FINDINGS OF FACT

1. At the time of hearing, Claimant was a 48 year old man living in Clarkston, Washington.

2. Claimant went to work for Employer in approximately January of 2003. From his date of hire, to the date of the claimed accident, Claimant was employed as a fabricator. He described his job responsibilities as follows:

> A. Well, I mean, it would have been much, much more physical than it is now. I mean, it would be - - a typical day would be - - I mean, I walked through the door at 7:00 in the morning and put my helmet on and start working as a fabricator, welder.
>
> That may mean a production run. For example, those boxes that I talked about that we move the product back and forth. I mean, we may be doing a production run on 300 of those boxes.
>
> So I mean, it - - it was pretty much, you know, physical labor until lunch. Half an hour for lunch break, and then back - - back in to working until it was time to go home at 3:30, which, you know, as a fabricator, I mean, a lot of heavy lifting. All that steel has to get from one place to another. And as it gets broke down, I mean, it comes down finally to where you're handling it by hand. Most all of those pieces need to be prepped. And by "prepped," prepped for weld, prepped - - you know, deburred and everything, which is generally done with a grinder and then assembled and - - and welded in some manner, you know.
>
> Q. Did it involve heavy lifting throughout the day?
>
> A. Sure. I mean, some - - some days are obviously heavier than others. It depends on what you're working on. If you're building a plating tank that's made out of quarter-inch steel, big pieces, you're going to end up lifting a little heavier.

> I mean, if you're doing - - we do - - we build these collator bowls for bullets. That's all aluminum. It's very light-duty stuff, but it's tedious. It's a lot of helmet up/helmet down type of stuff. So there's - - there's a wide variety in there of whether it's heavy or whether it's - - it usually kind of came in - - you're either working on something heavy, and so you might be involved in that project for a couple weeks. And then you might be involved in lighter duty stuff. It generally seems, if your pieces are lighter, you have more of them, and then you're doing more of a repetitive type.
>
> Q. And when you - - when you - - describe helmet up/helmet down, what's that? What do you mean by that?
>
> A. Well, when you're welding, your helmet has to be down because you're looking through a lens, you know. It's going to burn your eyes. So when you flip your helmet up so that you can see what you need to see and you go to the point where you're going to begin your weld and you flip your helmet down and weld.
>
> Q. Okay. How many times a day do you do that on average?
>
> A. On average, I would - - I would say 100 times probably at - - at least.

(Hearing Transcript, 12/13-14/13).

3. Claimant contends that while performing his usual work activities on February 28, 2012, he suffered an untoward mishap/event which qualifies as an "accident" as defined at Idaho Code § 72-102(18)(b). He described his work activities that day as typical. (Hearing Transcript 20/7-11). Although Claimant contends that an accident occurred on this date, Claimant identified, neither at hearing, nor in his history to medical providers, any particular onset of symptomatology on February 28, 2012 associated with his cervical spine. Instead, Claimant testified that on the morning of February 29, 2012, he awoke with a terrible headache, one so severe that it caused him to vomit. This eventually led him to see Dr. Weiland and other medical providers. The medical records in evidence do not reflect the occurrence of a significant change in symptomatology on February 28, 2012. However, those records uniformly reflect that Claimant has a long-standing history of neck, headache, shoulder and upper extremity complaints similar to those with which he presented subsequent to February 29, 2012. Claimant

was first seen by Dr. Weiland on March 2, 2012. At that time, Dr. Weiland recorded the following history concerning the onset of Claimant's difficulties:

> The patient is a 44-year-old white married male presenting today with his wife, here for orthopedic issues. The patient is a welder. He has a significant problem with both cervical and lumbar back pain, probably most bothersome in the upper area with pain at the base of the skull extending down to about the C7 level. He complains of radicular symptoms into both upper extremities, and also he has some questionable weakness in the hand. He is right-handed.
>
> He has been off work because of the chronic pain and discomfort. He has been going to the VA, seeing Dr. Rice. His medication list is incomplete at this point in time, and needs to be updated before further therapy is prescribed.
>
> The patient also complains of low back, issues without significant radicular symptoms. The patient appears to have hypertension as well as nonspecific arthralgias with two negative workups in the past, both here and the VA for inflammatory arthritis.
>
> . . .
>
> APPRAISAL:
> 1) Cervical radiculopathy. This seems to be progressive and not tied to any specific identifiable acute injury or accident.

(Joint Exhibits at 280).

4. Concerning Dr. Weiland's note of March 2, 2012, Claimant offered the following comments at hearing:

> Q. Okay. Now, I'll represent to you that in his note, he indicated that you were assessed with a cervical radiculopathy that seemed to be progressive and not tied to any specific identifiable acute injury or accident. Is that your understanding of how it went down?
>
> A. I don't recall. I don't recall ever seeing that.
>
> Q. Okay. But you would not have reported to him some kind of specific work activity that you were doing where you could positively identify, at this time, I was doing this activity, and this is when the - - the pain started; is that right?
>
> A. I think I - - I think I probably told him maybe not an exact pinpoint of time, but I do believe that I told him that I believed it was work related, and that

> on really busy days or lots of grinding or production type work with a lot of helmet flipping up and down, that it was worse.

(Hearing Transcript, 31/24-32/16).

Nothing in this testimony describes a specific onset of symptomatology on February 28, 2012 or a work activity of that date to which Claimant attributes his cervical spine injury. If anything, Claimant's testimony is indicative of a history of cumulative insults to his neck.

5. On March 8, 2012 Claimant was seen at a VA medical facility by Matthew Rice, M.D. Dr. Rice recorded the following history from Claimant concerning his complaints:

> Woke up Thursday a week ago with a severe HA and vomiting. This is uncommon. "I don't puke." Next day he was also vomiting. Went to Dr. Weiland who ordered an MRI of the back. His back pain radiates up into his head. Thinks it was his back pain that caused the HA and vomiting.

(Joint Exhibits at 447).

6. On April 10, 2012, Claimant was first seen by Lyndal Stoutin, M.D., who recorded the following history from Claimant:

> **History of Present Illness:** Mr. Hatfield is a 44-year old man who states that over the last couple of years he has developed pain at the base of the neck radiating to the parascapular areas bilaterally and down the arms. He also complains of dense numbness down the arms to the hand, primarily the thumb, index, middle and ring fingers. He also has numbness to the 5th finger, but states when the numbness wears off the 5th finger always comes back first. He was having aching, burning, sharp, tingling, shooting pain down the arms, which he still has, but he was started on Gabapentin and that helped the pain component and reduced it from an 8/10 to 4/10. He also takes Diclofenac daily and Hydrocodone 5/500 mg 1-2 tabs bid. He complains of weakness in the hands as well. He states when he does any prolonged T-welding or anything with fine motor movements it does not go well due to shaking. This does bother his activity on a regular basis and his sleep nearly always.

(Joint Exhibits at 207).

Claimant confirmed that Dr. Stoutin correctly recorded the fact that he had suffered from neck, head, shoulder and bilateral upper extremity complaints for as long as two years prior to

Dr. Stoutin's April 10, 2012 date of exam. (Hearing Transcript at 32/22-33/3). Dr. Stoutin did not record any event, mishap or change of symptomatology reported by Claimant as occurring on February 28, 2012.

7. Claimant was first seen for evaluation by Bret Dirks, M.D., on June 5, 2012. At that time, Dr. Dirks recorded the following history from Claimant:

> On February 29, 2012 he was welding at Howell Machine where he works, there was no inciting event or trauma but he has been working for 10 years welding. He lifts 100-200 pounds on a daily basis and over the course of the last 2-3 years has increasing neck and shoulder pain. On this date, 2-29-2012, he had a lot of pain in his neck and down his arms with more of an electrical sensation with numbness into his thumb and his first 3 fingers.
>
> . . .
>
> He takes HYDROCODONE for the last 2 years for increasing neck and arm symptoms, GABAPENTIN for the last 2 years for increasing neck and arm symptoms, SERTRALINE for depression, PROPRANOLOL for blood pressure, DICLOFENAC for arthritis, ZOLPIDEM for sleep, LORAZEPAM for anxiety, LOSARTAN for hypertension, and LORATADINE for environmental allergies.

(Joint Exhibits at 5).

Therefore, Dr. Dirks specifically noted that there was "no inciting event or trauma" connected with the onset of Claimant's symptomatology, merely that he had worked at a physically demanding job for 10 years.

8. While Dr. Dirks' June 5, 2012 chart note unambiguously reflects a long-standing history of neck pain pre-dating February 29, 2012, Dr. Dirks did not confirm this history during his deposition. Instead, on direct examination by Claimant's counsel, he testified that his opinion on causation was based, in part, on the fact that Claimant was "asymptomatic" prior to February 29, 2012:

> However, he did have some preexisting condition, which I don't think there's too much debate about that. Was he symptomatic from the preexisting disc degeneration bone spur? And the answer is, no. And he was asymptomatic, as near as I can tell. Became symptomatic after his accident at work.

. . .

> I was just going to say, of note, at the time I'm not really thinking about legal aspects. I'm thinking about what I see at the time of surgery, and if it was all primarily bone spurring and not disc herniation and he was asymptomatic prior to the injury. So, yes, he had a preexisting condition. The disc herniation put him over the edge, as I noted in my operative report.

(Dirks Deposition, 10/6-12; 11/8-17).

9. On June 22, 2012, Claimant was seen at the instance of Defendants by William Stump, M.D., of OMAC. Dr. Stump recorded the following history concerning the development of Claimant's cervical spine complaints:

> The examinee relates that over the last two years he has been developing discomfort across his neck, back, shoulders, and down both arms. This has gradually gotten worse over time.
>
> He relates that on February 29, 2012, he woke up with a severe headache associated with vomiting. At this point, he filed a claim. He was off for a week or so and then has returned to work only in a supervisory role.
>
> He reports that over the past two years he has been experiencing increasing discomfort in his neck across his trapezius areas and down both arms. He reports that he had had some headaches prior to February 9, 2012. He reports that he would be waking up almost every morning over the past year with headaches primarily in the posterior aspect of his head, which extend up into his neck. He reports that when he woke up on February 29, 2012, the headache was in the same location but much more intense and associated with vomiting.

(Joint Exhibits at 778).

Claimant was also examined by John McNulty, M.D., at the instance of Claimant's attorney on February 29, 2012. Dr. McNulty took the following history from Claimant concerning the development of his cervical spine problems:

> Mr. Hatfield is a 48-year-old, right-hand-dominant male welder who developed severe neck pain radiating into his upper extremities while working for Howell Machine. He frequently has to lift up to 150 to 200 pounds of iron for a project. The amount of lifting varies according to the project he is working on. Also, at

> times has to work in awkward positions, as well as use a grinder. He developed severe neck pain on 2/29/2012.

(McNulty Deposition, Exhibit 2).

Therefore, Dr. McNulty, unlike the other physicians who evaluated/treated Claimant, does not appear to have taken a history from Claimant that Claimant suffered from cervical spine symptomatology prior to February 29, 2012. However, Dr. McNulty did not take a history of any specific inciting event immediately preceding February 29, 2012. At his deposition, Dr. McNulty agreed that Claimant did not describe a precipitating or inciting event. (McNulty Deposition, 18/15-19).

10. For his part, Claimant offered the following testimony concerning the events of February 28, 2012:

> Q. Describe for the hearing officer, as best you can, your - - your work day and - - and how you felt throughout the course of the day.
>
> A. Uh-huh. Okay. I mean, I - - I don't know that I remember exactly what I was doing that day. But I know that every day was filled up to that point with grinding and fabricating, welding, lifting, because that's what I do every day.
> I do remember that I had a headache. I'd been having some headaches, a lot of pain in my - - I'd say from my upper middle back, neck, down - - radiating down my arms and into my hands, elbows. I mean, it was concerning.

(Hearing Transcript, 20/4-16).

Therefore, Claimant described no particular inciting event or onset of symptomatology on February 28, 2012. He did have a headache, but he had "been having some headaches", presumably before February 28, 2012. There is perhaps some difficulty in understanding whether the quoted testimony also supports the proposition that Claimant admitted to having problems in his middle back, neck, bilateral upper extremities and hands prior to February 28, 2012, but, as developed above, other aspects of Claimant's testimony elicited when he was being questioned about the medical histories discussed above reflect that he is in essential agreement

with the medical histories taken by Dr. Dirks, Dr. Stoutin and Dr. Stump concerning the long-standing nature of his cervical spine and upper extremity complaints.

11. From the evidence discussed above we conclude that Claimant has a well documented history of head, neck, shoulder and bilateral upper extremity complaints which pre-date February 28, 2012 by as long as two years. Further, we conclude that the record fails to establish that there was a sudden change in Claimant's symptoms on February 28, 2012, nor, indeed, on February 27, 2012, February 26, 2012, or any other date in February 2012. Finally, from the evidence we conclude that on the morning of February 29, 2012, Claimant awoke with a headache more severe than any he had experienced in the past, which led him to seek medical treatment/evaluation.

MEDICAL OPINIONS

12. Medical opinions on the question of the cause of Claimant's cervical spine condition, and relatedly, whether that condition is of recent origin and consistent with the claimed accident of February 28, 2012 were developed by three physicians, Dr. Dirks, Dr. Stump and Dr. McNulty.

13. After initially evaluating Claimant on June 5, 2012, and after eliciting from Claimant a history of significant pre-existing cervical spine and upper extremity complaints, Dr. Dirks ordered an MRI which was performed on June 15, 2012. That study was interpreted by radiologist John Whittaker, M.D., as follows:

> Degenerative disc disease at C6-7. There is degenerative disc narrowing. Broad-based disc osteophyte complex and narrowing of the spinal canal to approximately 7 mm in AP dimension. There is mild bilateral C7 foraminal stenosis.
>
> Slight degenerative disc disease at C5-6. No significant spinal canal or foraminal stenosis.

C2-3, C3-4, C4-5, C7-Ti discs are normal.

No acute disc herniation.

(Joint Exhibits at 46).

However, when Claimant was seen by Dr. Dirks on July 3, 2012, Dr. Dirks reported that the cervical spine MRI of June 15, 2012 demonstrated "severe disc herniation" at C6-7. Dr. Dirks' chart note does not reflect whether he reviewed the actual films, or only the radiologist's interpretation. At his deposition Dr. Dirks again confirmed that the June 15, 2012 MRI showed a "disc herniation" at C6-7, but that testimony too fails to reveal whether Dr. Dirks based this conclusion on his independent review of the films. (Dirks Deposition, 8/12-24). Dr. Dirks went on to perform surgery at C5 through C7 on August 22, 2012. Dr. Dirks' pre-operative diagnosis was C5-6 and C6-7 cervical spondylosis with "herniated disc". This was also his post-operative diagnosis. At surgery, he performed discectomies at C5-6 and C6-7 with fusions at those levels. His operative report reflects the following: "There was quite a bit of herniated disc material at C6-7 and also some bone spur development at both levels, on the right particularly." Therefore, prior to surgery, Dr. Dirks believed Claimant had a severe disc herniation, even though the June 15, 2012 MRI, as read by the radiologist, suggested otherwise. However, Dr. Dirks' operative report appears to confirm that Claimant did have what he described as a C6-7 herniated disc. Concerning the cause of Claimant's cervical spine injury, Dr. Dirks stated:

> A. He did well, and I note in my operative note that there was quite a bit of herniated disc material at C6-7. There was also some bone spurring at both levels. So, my point being, that that was something that was more new, as opposed to bone spurs, which is more of a chronic change.
>
> Q. Which leads me to my next question.
>
> A. On a more probable than not basis, I believe the disc herniation occurred at the time of his accident on 2-29-2012. However, he did have some preexisting condition, which I don't think there's too much debate about that. Was he

> symptomatic from the preexisting disc degeneration bone spur? And the answer is, no. And he was asymptomatic, as near as I can tell. Became symptomatic after his accident at work. And I suspect what had gone on - - my conjecture - - my conjecture is that he had the bone spurring, the disc degeneration prior to his injury at work, and as he stated, he had been doing this work for many, many years. But then something put it over the edge to create the symptoms that he was having that prompted him being seen by his family doc and subsequently me, and that was the disc herniation, which then created the compression onto the nerve root and caused the neuro symptoms; i.e., pain, weakness, and sensory findings.
>
> . . .
>
> A. I was just going to say, of note, at the time I'm not really thinking about legal aspects. I'm thinking about what I see at the time of surgery, and if it was all primarily bone spurring and not disc herniation and he was asymptomatic prior to the injury, I still would say the same thing, because he was asymptomatic prior to the injury. So, yes, he had a preexisting condition. The disc herniation put him over the edge, as I noted in my operative report. But the bone spurring did contribute as well.

(Dirks Deposition, 9/22-10/22; 11/8-17).

Dr. Dirks acknowledged that Claimant had long-standing cervical spine abnormalities which predated the onset of symptoms. Claimant's sudden development of cervical spine symptoms demonstrates that Claimant suffered an incident or event which caused additional injury. Supporting this conclusion is the "more new" disc herniation found at surgery. It is also clear that Dr. Dirks' mistaken belief that Claimant was asymptomatic prior to February 29, 2012 was an important factor informing his opinion on the cause of Claimant's injury.

14. Dr. Stump saw Claimant on June 22, 2012, prior to surgery. Dr. Stump had the opportunity to review the films from the June 15, 2012 MRI. He read those films as demonstrating a "significant bulge of the disc" at C6-7 with lesser changes at C5-6. Dr. Stump offered the following opinion on the issue of the cause of Claimant's cervical spine injury:

> 1. Multilevel cervical degenerative disk disease, most marked at C6-7, gradually progressive by history over a number of years, with increasing symptomatology, becoming quite severe on February 29, 2012. On a more-probable-than-not basis, this condition represents a natural progression of a pre-existing condition.

> 2. There is no indication of a specific work-related injury occurring on February 29, 2012. The examinee relates that he would develop increased neck pain and headaches with his work activities but did not have a specific injury.

(Stump Deposition, Exhibit 2).

15. Explaining his report, Dr. Stump testified that Claimant described no work-related event as causing a significant increase in symptomatology, while acknowledging that he had suffered from cervical spine and upper extremity complaints for a number of years. The problems he awoke with on February 29, 2012, were in the same area, and of the same type as his prior complaints, only more intense. He also affirmed that his review of the June 15, 2012 MRI films did not reveal evidence of any acute injury, such as a fracture or disc herniation. This is exactly consistent with the reading of that study by radiologist Whitaker. Dr. Stump's synthesis of this evidence was that Claimant's condition was the result of a normal progression of long-standing degenerative processes. He declined to speculate on the meaning of Dr. Dirks' surgical observation that there was "quite a lot" of herniated disc material found at the time of surgery.

16. Finally, Dr. McNulty evaluated Claimant at the instance of Claimant's counsel following surgery. Like Dr. Stump, Dr. McNulty had the opportunity to review the original films from the June 15, 2012 MRI. He stated that he agreed with the "findings" that Claimant did have a C6-7 disc herniation. However, as developed above, the radiologist did not identify a disc herniation at C6-7. Instead, he identified disc disease at C6-7 without evidence of an acute disc herniation. (*See* Joint Exhibit at 46). Dr. McNulty believed that it was the "disc herniation" that necessitated the surgery, and that the disc herniation was, in turn, the result of a work-related injury. Moreover, Dr. McNulty testified that it is possible to reasonably locate this work-related injury as to a time when it occurred. He explained his thoughts in this way:

> Q. And did you arrive at an opinion as to the causation for his condition which caused the surgery?
>
> A. Yes.
>
> Q. And what was that?
>
> A. So, on a more probable than not basis it was related to his work.
>
> Q. And was that - - would you describe that as an injury, work-related injury?
>
> A. Yes.
>
> Q. And did that injury occur at a reasonably ascertainable time?
>
> A. And that's somewhat difficult to answer. So, I look at this case, that Mr. Hatfield was performing heavy manual labor for many years, and on the 29th of February - - make sure I got the right date - - 2012, that he developed increasing symptoms. So, two possible theories: One, the straw that broke the camel's back type of scenario where many years of repetitive lifting and strain on his disc, it finally gave way. Option No. 2 is that he did have an injury at the time, heavy lifting. He lifts up to 200 pounds, and he just did not feel the effects of the injury. Over time if you prolapse your disks, and you can have a chemical reaction causing pain a few days later, or the prolapse, you just notice the symptoms a few days later.

(Dirks Deposition, 9/7-1-/7).

Therefore, the fact that Claimant did not become immediately symptomatic at the time of the injurious work-related event is not fatal to the assertion that he suffered a work-related injury. An acute disc injury "can" manifest as pain that only arises a few days after the injury has occurred. Therefore, the fact that Claimant did not describe a specific inciting event at work does not mean that his disc herniation did not occur at work, and as the result of a specific event. The fact that Claimant has a documented disc herniation, and the fact that symptom onset from such an injury can be delayed by a period of days lends support to Dr. McNulty's ultimate opinion that an event occurred on February 28, 2012 that either constituted the straw breaking the camel's back or was a more serious event responsible for causing Claimant's herniated disc.

DISCUSSION AND FURTHER FINDINGS

17. Here, it is argued by both Dr. Dirks and Dr. McNulty that Claimant's C6-7 disc injury is the result of an accident occurring in late February of 2012. Dr. Dirks finds support for this conclusion in the following: (1) Claimant was asymptomatic vis-à-vis his cervical spine prior to February 29, 2012, (2) Claimant has a severe disc herniation at C6-7 which is "more new" than the bony and other degenerative changes seen at that level, and (3) the C6-7 disc herniation is consistent with the onset and distribution of Claimant's symptomatology first noted on February 29, 2012.

18. Having carefully reviewed the medical records and testimony relating to the June 15, 2012 MRI, as well as Dr. Dirks' surgical report, we are unable to conclude that it is more probable than not that the documented disc injury at C6-7 is related to an untoward work-related mishap/event of late February 2012. First, from the record it is difficult to understand the specific nature of the disc injury at C6-7, and an accurate description of that condition may be important to establishing whether it is consistent with a recent injury. The C6-7 injury is variously described as a degenerative disc versus a bulged disc versus a severely herniated disc. Possibly, these are but different terms to describe the same condition, but it is also possible that the physicians who reviewed the films each saw something different in those studies. The record leaves us unable to understand whether the differences in nomenclature used by the medical experts in this case reflect a dispute over the nature of the C6-7 disc injury or not. To the eye of the radiologist and Dr. Stump, the June 15, 2012 MRI did not reveal evidence of any recent injury, only longstanding degenerative changes. To Drs. McNulty and Dirks, the MRI demonstrated evidence of a disc herniation that was of recent origin.

19. The strongest evidence in support of Claimant's position is found in the operative report of Dr. Dirks who noted that there was quite a bit of herniated disc material found at C6-7 and that it appeared to be "more new" than the other long-standing degenerative changes in Claimant's cervical spine. This evidence leaves us unable to conclude anything more than that the C6-7 injury may be consistent with an untoward work event of late February 2012. To say that the disc material observed at surgery was of more recent origin than boney and other changes that may have been years in the making, does not tie the disc injury to an event in February 2012.

20. It is also important to recall that Dr. Dirks' opinion concerning the cause of the C6-7 disc injury was also informed by his mistaken belief that Claimant was symptom free prior to February 29, 2012. How might his opinion have changed had he understood the extent and degree of Claimant's history of cervical spine pain, a history which pre-dated February 29, 2012 by a period of years?

21. From the foregoing, Dr. Dirks' testimony does not persuade us that it is more probable than not that Claimant's C6-7 injury is consistent with an untoward mishap/event of February 28, 2012.

22. Setting aside our conclusion that it is impossible for us to say that the C6-7 lesion is consistent with a February 28, 2012 accident, we think it important to address Dr. McNulty's additional reason why Claimant's C6-7 disc herniation is causally related to an accident of February 28, 2012. Dr. McNulty proposes that one can have a delayed reaction to a disc injury. In other words, the onset of symptomatology need not arise immediately following the insulting event. The onset of symptoms "can" be delayed for a period of days. It is axiomatic that Claimant bears the burden of proving causation. Further, he must adduce medical proof in

support of causation, and such medical proof must establish to a reasonable degree of medical probability, i.e., more evidence for than against, that the condition at issue is causally related to the subject accident. First, Dr. McNulty testified only that the phenomena he described "can" happen, not that it did happen on a more probable than not basis in this case. Second, the length of the delay in the onset of symptomatology is vague. A "few days" could mean two, three, five, six, seven, eight or something else. For example, if a "few days" means within five to six days prior to February 29, 2012, then Claimant would be unable to reasonably locate the time when, much less the place where, the accident occurred vis-à-vis his February 29, 2012 onset of symptomatology. For these reasons, we find Dr. McNulty's testimony concerning delayed onset of symptomatology to be unhelpful and unpersuasive.

23. The Commission does not quarrel with Claimant's assertion that an injurious event can occur while Claimant be engaged in the usual, habitual and ordinary aspects of his work, when his body's ability to resist injury is overcome by the demands of that work. Further, we recognize that such event need only be reasonably located as to time when and place where it occurred. However, cases such as *Wynn v. J.R. Simplot Co.*, 105 Idaho 102, 666 P.2d 629 (1983), and *Stevens-McAtee v. Potlatch Corp.*, 145 Idaho 325, 174 P.3d 288 (2008), do nothing to denigrate the requirement that Claimant still identify an actual untoward mishap or event which caused physical injury to his body. In *Wynn*, the injurious event was identified to the minute. While operating a front-end loader at 7:30 p.m. on March 17, 1980, claimant experienced a sharp pain in his left arm and shoulder as though he had been hit with a hammer. A disc injury consistent with his symptoms was subsequently identified at the C3-4 level. Concerning the occurrence of the "event", the Court stated:

> As to the "event" or "mishap," however it might be characterized, there is no question but that it took place at 7:30 p.m., March 17, 1980, on the premises of the employer at the Gay open pit mine approximately 17 miles from Pocatello while Wynn was engaged in his usual work of operating a front end loader.

In *Stevens-McAteee*, the evidence established that on March 9, 2004, McAtee was engaged in his usual work when he experienced an onset of back pain which increased in intensity throughout his shift to the point where he could no longer sit up straight in his forklift. McAtee testified that on March 9, 2004, he felt a "funny feeling" in his lower back when his seat bottomed out after hitting a drain ditch with his hyster. Therefore, in both cases the Court affirmed the necessity of demonstrating the occurrence of an untoward mishap/event reasonably located as to time when and place where it occurred, notwithstanding that such event can happen while claimant is doing the usual and habitual parts of his job.

24. From both *Wynn* and *Stevens-McAtee* it is also clear that the onset of symptoms is central to identifying whether a work-related mishap/event has occurred. In *Stevens-McAtee* , the Court was critical of the Commission's conclusion that except for claimant's questionable testimony, there was no evidence of a specific event or sudden onset of pain that would support a finding of the occurrence of a compensable accident. The Court noted that two physicians involved in the case stated that the acute onset of pain which McAtee experienced on March 9, 2004 was consistent with a finding that his disc herniated at that time. The Court concluded that defendants did not offer any substantial evidence to contradict McAtee's production of medical evidence tending to indicate that his acute onset of pain during his work shift on March 9, 2004 represented an acute change in his condition corresponding with his disc herniation. Therefore, the onset of symptoms at work, while performing a work activity, went a very long ways towards establishing that while performing that activity claimant suffered an event causing injury to the physical structure of his body.

25. In this case, Claimant invites the Commission to go one step further than did the Court in both *Wynn* and *Stevens-McAtee*. Claimant asks the Commission to conclude that an untoward unlooked for mishap/event causing injury to the physical structure of Claimant's body occurred sometime while Claimant was doing his normal work on February 28, 2012, without the benefit of concurrent onset of symptomatology. The lack of a concurrent onset of symptoms makes it very difficult to ascertain whether there was a work-related event which is responsible for causing Claimant's injury. In both *Wynn* and *McAtee*, it was the sudden onset of symptoms which provided the means to reasonably locate, to the workplace, the injurious event that was consistent with the objective medical findings. In this case, had Claimant testified that he felt a sudden sharp pain while lifting something at work on February 28, 2012, it would be a much easier matter to determine that Claimant suffered an untoward mishap/event consistent with his objective physical injury. If the objective medical evidence is consistent with a recent injury, and if Claimant reports a sudden change in symptoms while performing a work activity which could produce that injury, then a physician could reasonably conclude that the event which occurred contemporaneous with the onset of symptoms caused or contributed to the injury. That luxury is not afforded to the Commission in this case, and we decline to accept Dr. McNulty's invitation to allow Claimant to prove the occurrence of a specific injurious event from his usual work even though it produced no symptoms until days later. Were we to head down this path, the next case before us might be supported by medical evidence that the onset of symptoms from an event occurring while claimant does his normal work can be delayed by as much as a month. How would one ever reasonably locate the time and place of a discreet injurious event in such a scenario? In a case where the argument is that Claimant's normal work constituted the injurious event, it will be difficult (but perhaps not impossible) to establish that a work related event is the

cause of claimant's injury absent the contemporaneous onset of symptoms. However, Dr. McNulty's testimony fails to satisfy us in this case. As well, we are unpersuaded that Claimant has proven that his C6-7 disc lesion can be dated to February 28, 2012.

26. For these reasons, we conclude that Claimant has failed to prove the occurrence of an untoward event of February 28, 2012 causing injury to his body.

CONCLUSIONS OF LAW

1. Claimant has failed to prove that he suffered an accident, as defined at Idaho Code § 72-102(18)(b) on or about February 28, 2012 causing violence to the physical structure of his body.

2. All remaining issues are rendered moot by Claimant's failure to establish a causal connection between his cervical spine condition and the claimed accident of February 28, 2012.

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

DATED this 1st day of November, 2016.

INDUSTRIAL COMMISSION

____/s/_____
R.D. Maynard, Chairman

____/s/_____
Thomas E. Limbaugh, Commissioner

____/s/_____
Thomas P. Baskin, Commissioner

ATTEST:

____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of November, 2016, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** was served by regular United States Mail upon each of the following:

SCOTT CHAPMAN
PO BOX 446
LEWISTON ID 83501

MARK MONSON
PO BOX 8456
MOSCOW ID 83843

ka ___/s/_____