

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

FIDEL CARDONA,

Claimant,

v.

MONTY & CAROLENE FUNK
PARTNERSHIP dba COUNTY LINE FARMS,

Employer,

and

STATE INSURANCE FUND,

Surety,
Defendants.

IC 2014-025945

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

Filed August 28, 2017

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 Pocatello on January 31, 2017. Claimant, Fidel Cardona, was present in person and represented by Paul B. Rippel, of Idaho Falls. Defendant Employer, Monty & Carolene Funk Partnership dba County Line Farms, and Defendant Surety, State Insurance Fund, were represented by V. Dean Dalling, Jr., of Rexburg. The parties presented oral and documentary evidence. Post-hearing depositions were taken and briefs were later submitted. The matter came under advisement on June 15, 2017.

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 for different treatment on the issue of personal injury.

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

ISSUES

The issues¹ to be decided presently are:

1. Whether Claimant suffered 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 the industrial accident.
3. Whether Claimant's condition is due in whole or in part to a pre-existing and/or subsequent injury/condition.

CONTENTIONS OF THE PARTIES

Claimant alleges he sustained an industrial accident resulting in a back injury when working for County Line Farms while moving irrigation wheel lines on August 15, 2014. Defendants deny the claim asserting that Claimant's account of his alleged accident is not credible and the medical evidence fails to establish that his back condition was caused by his alleged industrial accident.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. Joint Exhibits 1 through 12, admitted at the hearing;
3. The testimony of Claimant, Agripina Cardona, Beth Curry, Dolores Rangel, Tyson Funk, and Monty Funk, taken at the January 31, 2017 hearing; and

¹ In addition to the noticed issues, Claimant's briefing also makes reference to medical benefits, temporary disability benefits, permanent impairment, and attorney fees. Hearing on these issues was not requested by the parties nor noticed by the Commission. Pursuant to Idaho Code § 72-713 these issues cannot be addressed in this decision.

4. The post-hearing deposition testimony of Lynn J. Stromberg, M.D., taken February 28, 2017 by Defendants.

All pending objections are overruled.

FINDINGS OF FACT

1. Claimant was 62 years old and resided in American Falls at the time of the hearing. He is right-handed. Claimant was raised in Mexico where he attended school through the first grade. He did not complete the second grade and has received no further formal education. He came to the United States when he was between 15 and 20 years old and commenced work moving irrigation sprinkler lines on various farms. He became a permanent U.S. resident in 1986. Claimant speaks very little English. He testified at hearing only through a Spanish interpreter.

2. Claimant worked for approximately five years for the father of Monty Funk who then passed the farm onto his sons, Monty and Lane Funk. Claimant then worked for Monty and Lane Funk for ten years whereupon the brothers divided the farm and Claimant thereafter worked for ten more years for Lane Funk. In 2004, Claimant began working for Monty Funk on County Line Farms, moving irrigation sprinkler lines and driving trucks and tractors. Claimant worked exclusively for Monty Funk at County Line Farms for the next ten years as a seasonal employee. County Line Farms did not provide medical insurance for its seasonal employees.

3. On August 3, 2011, Claimant injured his back at County Line Farms when he alone had to lift and push sections of sprinkler wheel lines and wheel line mover transmissions up and out of a canal. Claimant discussed his back injury with his supervisor, Dolores Rangel, and County Line Farms' secretary Beth Curry. Claimant sought treatment on August 4, 2011 from Robert Lee, D.C., who recorded cervical, thoracic, and lumbar muscle spasms and charted:

“Have you had an accident or injury? Yes—work” and further noted “pain across the low back at the base ... radiating into both legs.” Exhibit 1, p. 2. Claimant was off work and received chiropractic treatment for several weeks. He then discontinued chiropractic care and resumed his usual work duties when Dolores told Claimant that Monty Funk wanted him to go back to work because the sprinkler lines needed to be moved. Claimant filed no workers’ compensation claim. He experienced some ongoing back pain after his 2011 injury, but was able to continue working everyday and perform all of his work duties.

4. In this proceeding Claimant alleges that he injured his back on August 15, 2014, while working for County Line Farms straightening sprinkler wheel lines. He completed his work that day and continued his usual work duties for several days thereafter, albeit with increasing back pain. His last day of work for County Line Farms was August 26, 2014. By August 27, 2014, his back pain rendered him unable to continue working. Claimant has not worked since that time.

5. On September 3, 2014, Claimant presented to Glen Randall, D.C., who provided conservative chiropractic treatment, however Claimant’s back pain persisted. He underwent x-rays and an MRI and received conservative medical treatment from Jedidiah Petersen, P.A., and Steven Nelson, PA-C. Claimant has not sought additional medical care because he cannot afford it.

6. At the time of hearing, Claimant continued to experience low back pain which disrupted his sleep and limited his lifting, walking, long distance driving, and completion of household chores. Claimant has not sought work since his alleged accident because he does not believe he can work with his continuing back pain.

DISCUSSION AND FURTHER FINDINGS

7. 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).

8. **Accident.** The first issue is whether Claimant suffered an injury from an accident arising out of and in the course of employment. Idaho Code § 72-102(18)(b) defines accident as “an unexpected, undesigned, and unlooked for mishap, or untoward event, connected with the industry in which it occurs, and which can be reasonably located as to time when and place where it occurred, causing an injury.” An injury is defined as “a personal injury caused by an accident arising out of and in the course of any employment covered by the worker's compensation law.” Idaho Code § 72-102(17)(a). Thus focus is on the occurrence of an untoward event causing personal injury.

9. Occurrence of an untoward event. Claimant alleges that his usual work activity on August 15, 2014, specifically moving sprinkler wheel lines, constitutes an accident. Such may be sufficient to satisfy the statutory definition of an accident if it causes personal injury. In Wynn v. J.R. Simplot Co., 105 Idaho 102, 666 P.2d 629 (1983), the Idaho Supreme Court declared:

If the claimant be engaged in his ordinary usual work and the strain of such labor becomes sufficient to overcome the resistance of the claimant's body and causes an injury, the injury is compensable. Whipple v. Brundage, 80 Idaho 193, 327 P.2d 383 (1958); Lewis v. Dept. of Law Enforcement, 79 Idaho 40, 311 P.2d 976 (1957).

“To constitute an ‘accident’ it is not necessary that the workman slip or fall or that the machinery fail. An ‘accident’ occurs in doing what the workman habitually does if any unexpected, undesigned, unlooked-for or untoward event or mishap, connected with or growing out of the employment, takes place.”

Wynn, 105 Idaho at 104-105, 666 P.2d at 631-632. An accident was established in Spivey v. Novartis Seed Inc., 137 Idaho 29, 33, 43 P.3d 788, 792 (2002), when an employee felt a pop and burning in her shoulder while performing her normal work duty of reaching across a conveyor belt.

10. In the present case, Defendants dispute the occurrence of an industrial accident on or about August 15, 2014. They question Claimant’s credibility, noting differences in his accounts of the accident and various medical records. Defendants also assert the alleged accident was unwitnessed, Claimant delayed in reporting it, and most significantly, the alleged accident could not have occurred as Claimant described it. Claimant, County Line Farms owner Monty Funk, and Claimant’s supervisor Dolores Rangel all testified regarding the alleged accident.

11. *Claimant.* Claimant testified in his pre-hearing deposition and at hearing that he was injured on August 15, 2014, when attempting to straighten several Thunderbird sprinkler wheel line sections that had separated completely and become stuck in the mud in a potato field.² Using a radio in his truck, Claimant called his supervisor, Dolores, and asked for help to fix the lines. Claimant testified that Dolores said no one was available to help. Dolores testified at hearing that Claimant did not call and ask for help in fixing the lines.

² Each Thunderbird sprinkler wheel line is a 40-foot section of four-inch tubing through which water flows. Each section is equipped with a seven-foot tall wheel at the midpoint of the section. Sections weigh approximately 70 pounds each and are joined end to end to span the field being irrigated. Multiple “movers” weighing 650 pounds each and including transmission assemblies on four symmetrically spaced seven-foot tall wheels are attached among the sections to move the lines across the field.

12. Claimant testified that to straighten the lines he had to move the transmission and some of the wheel lines forward eight to ten feet. Standing upright, he moved the wheel line sections with his arms; however, the 650-pound four-wheeled mover with its transmission assembly was too heavy to move with his arms alone. To realign the mover with its transmission to straighten the lines, Claimant lay down on his back underneath the transmission and with both legs raised in the air used his feet to push up against the underside of the transmission assembly and propel the mover forward a little at a time. In so doing, he felt more intense pain in the center of his back, slightly above his belt line. To fully straighten the lines, Claimant had to repeat this process of lying on his back and pushing upward with both feet against the underside of the transmission several times. He noted increasing pain in the center of his back slightly above his belt line as he did so.

13. Although Claimant's accident was unwitnessed, its occurrence is corroborated to some extent by Monty Funk and Dolores Rangel who both confirmed that one of Claimant's principal work duties was to move sprinkler wheel lines. Monty Funk also confirmed that the sprinkler wheel lines do break on occasion, must then be realigned, and that the movers with their transmission assemblies are heavy—weighing approximately 650 pounds each—and must also be moved and realigned on occasion.

14. Defendants argue that Claimant has given inconsistent accounts of his accident and the date thereof, alleging an accident on August 30, 2014 in his Complaint, but testifying of an August 15, 2014 accident in his deposition and at hearing. In addition to the accounts already described, there are further accounts contained in Surety's adjuster's notes. Her notes from October 22, 2014, state in part:

Clmt last worked on 8/26/14. Clmt went to the doctor a couple of days later after 8/26/14. Delores [sic] Rangel had called in on either 8/26 or 8/27 stating that clmt

reported he was sick and he needed someone else to move clmt's water lines. I asked PH about 8/15. She was not aware of an 8/15 accident. Clmt's had his daughter in to help translate what occurred. What was translated to her via clmt's daughter is that clmt was trying to fix a broken water line and he pushed so hard he put a lot of pressure on his back. Her date is 8/30.

Exhibit 7, p. 75. Later that same date, Surety's adjustor summarized her subsequent conversation with Claimant, which Claimant's daughter had interpreted, as follows:

He is having pain along his waist and in his spine. He is having pain symptoms all along his spine but primarily along his waist and in his neck.
...

A year ago, he hurt himself and went to a chiropractor; he was going about once or twice a week and then he just stopped going to the chiropractor. He stopped going to the chiropractor[.] He does not remember the chiropractor's name. Clmt said he was seen in Pocatello. He kept working but he still was having pain symptoms. It was hurting all the way from the top to the bottom.

Clmt said it was on 8/16/14 that he noticed his pain symptoms were back. He was fixing a line. To adjust the waterlines, he needs to pick up the lines. The waterlines are heavy and he was by himself when he made the adjustments. He had to adjust the water line and while fixing the water line, he noticed he was not okay and that his back pain was worse. Clmt said the water lines are heavy. Clmt said he told his supervisor, He told his supervisor, Delores [sic] Rangel. Clmt said he told Delores [sic] Rangel. Clmt said that Mr. Rangel told him on 8/15 that he needed to see a doctor to find out what was wrong with him. Clmt said he kept working and it was not until his pain levels got really bad that he stopped working and then went to the chiropractor. He stopped working on or about 8/27/14. It was after 8/27/14 that he went to the doctor.

Exhibit 7, p. 83.

15. *Monty Funk.* County Lines Farm owner Monty Funk challenged Claimant's account of the alleged accident, asserting it could not have occurred as Claimant described. Mr. Funk testified the height of the Thunderbird sprinkler line wheel is seven feet, thus the midpoint of the four-inch pipe passing through the seven foot tall wheel is 42 inches above the ground, and the bottom of the pipe is 40 inches above the ground. These measurements appear accurate. Mr. Funk then reasoned as follows:

And here's why I don't believe he was hurt here.

I, myself, have moved hundreds of these wheel lines. I do not get on my back—

And, yes, they will get out of line. Yes, they have broke [sic].

You cannot get on your back—at least I don't—I cannot. My legs are 34 inches here and I'm a 6-foot male.

34 inches from my beltline to these pants are 34 inches long.

So, if I'm on my back in mud—is what he's stated—he's wet in mud, I'm going to push that straddle from this point to this point, which is roughly three feet.

So you're going to have to straddle and push a 650-pound mover, as he indicated several—I think it was 8 to 10 times out of the mud to get it lined up.

The way I move it, and the way he was instructed to move it, and the way it's supposed to be moved, is you push up with your legs—which is this part; not your back—the pipe and move one side, go around to the other side and move it until it's straightened.

And I don't physically see how. I don't think he's taller than I am and I couldn't bench press with my back 650 pounds in mud.

Therefore I find it impossible that he was injured in that fashion as he has stated today.

Transcript, p. 119, l. 15 through p. 120, l. 18 (emphasis supplied).

16. An omission in Mr. Funk's calculations is readily apparent. He mistakenly assumes the length of his pants—which he describes as 34 inches—is the distance from the beltline to the pant cuff. However, the 34 inches is only the length of the inseam of the pant leg—that is from the crotch of the trousers to the cuff of the pant leg. It does not include the distance from the crotch to the waistband of the trousers.³ Anatomically, the 34 inch measurement Mr. Funk relies on entirely omits the span corresponding to the pelvis.

³ At hearing the referee observed that Mr. Funk is a muscular gentleman and corroborated Mr. Funk's testimony that he is six feet tall. Dr. Stromberg reported Claimant is five feet eight inches tall. The assigned referee was five feet nine inches tall. The length of the inseam of his pant leg is 32 inches. The length from the belt-line to the cuff of his trousers is 42 inches.

17. Another erroneous assumption is also apparent. Mr. Funk speculated that Claimant would have to straddle three feet to place his feet on either side of the transmission on the four-inch pipe to push the 650-pound mover. However, there is no indication that Claimant straddled the transmission to push the mover with his feet. To the contrary, Claimant's testimony both at hearing and even more clearly at his pre-hearing deposition detailed his approach thus:

Q. Explain what you mean when you say move it with your feet.

A. So because it was so wet, I need to move the line and the pipes and the transmission to a dry area. And, well, the pipes, I, it was possible for me to move it with my hands, but the transmissions are very heavy, so I needed to get under and move it with my feet.

....

Q. Are you talking about laying on your back and putting your feet up?

A. Yes. Yes, my back on the ground and had to push it with my feet.

Q. And the pipe you're pushing on, is that the pipe that the water runs through or are you pushing on some other part?

A. The one that I needed to move with my feet was the one that had the transmission on, so I need to get, lay down on my back and push it with my feet, and the other ones I was able to move with my hands.

Q. Okay, but your feet, what were they pushing against? Were they pushing against the transmission box or against the round pipe that the water runs through?

A. Well, when you are there, you're pushing everything. You're just pushing everything—the pipes the transmission everything.

Q. But where are your feet placed? Are your feet placed directly against the irrigation pipe or something else?

A. Underneath of the transmission, pushing it.

Q. Okay, so your feet are against the transmission itself or against the pipe that runs through the line, that the water runs through?

A. No, on the transmission box.

Exhibit 9, p. 161 (Claimant's Deposition, p. 47, l. 3 through p. 48, l. 19) (emphasis supplied). At least part of the mover transmission assembly is beneath the four-inch pipe.

18. Mr. Funk's testimony expressed his honestly held beliefs; however his conclusions and reasons for challenging Claimant's testimony of the accident are based upon mistaken assumptions and are unpersuasive.

19. *Dolores Rangel*. Dolores Rangel was Claimant's direct supervisor at County Line Farms. Dolores' first language is Spanish. He also speaks English and often acts as an interpreter between County Line Farms management and its Spanish speaking employees. Dolores testified at hearing through a Spanish interpreter.

20. Claimant testified he told Dolores on or about August 15, 2014 that he was hurt or did not feel well and Dolores encouraged him to go see someone and get some medication. At hearing on direct examination Dolores testified that Claimant did not tell him Claimant was hurt either before or after August 27, 2014—the date Claimant stopped working. Nevertheless Dolores testified that when he encountered Claimant in town after he stopped working, that Claimant told Dolores his back was bothering him. However, on cross-examination when questioned if he asked why Claimant's back was hurting, Dolores testified when he saw Claimant later in town, he "never told me that his back was hurting." Transcript, p. 92, l. 16. Dolores further denied ever asking Claimant why he was no longer working at County Line Farms and denied that Claimant ever indicated why he was no longer working. At hearing, Dolores would only admit that when Claimant was absent from work, Dolores called Claimant's daughter on August 27, 2014, to inquire about Claimant and she told him Claimant was sick.

21. On January 5, 2015, Surety's adjustor summarized a discussion with Dolores as follows:

Mr. Rangel said he was not aware of any prior spine problems, clmt may have had. Mr. Rangel said 8/30/14 sounded right when clmt reported symptoms to him. Mr. Rangel indicated that clmt reported to him that his back was sore from moving pipe I asked Mr. Rangel if the back was sore from doing his regular job duties of moving the pipe versus a specific accident, such as did clmt inform him of a specific onset of back pain after moving the pipe. Mr. Rangel said he did not think clmt had a specific accident; he thought is was more like that clmt was reporting his back was sore from moving lines and clmt needed to see a doctor.

Exhibit 7, p. 85.

22. Dolores testified he has known Claimant for 40 years. Claimant has worked for Monty Funk or Monty's father or brother for a total of 35 years. Dolores' equivocating testimony and professed ignorance of Claimant's condition is suspect. Dolores is the one Claimant formally relied upon to interpret and communicate Claimant's accident, condition, activities, and needs to Mr. Funk and County Line Farms administrators.

23. Having observed Claimant and Dolores at hearing, and compared their testimony with other evidence of record, the Referee found that Claimant is a more credible witness than Dolores to the extent their testimony is at odds. The Commission finds no reason to disturb the Referee's findings and observations on the witness's respective presentation or credibility.

24. Claimant worked at County Line Farms for over 10 years and never previously filed a workers' compensation claim. The record contains no indication that he filed any workers' compensation claim during the previous 25 years that he worked for Monty Funk's father or brother. While there is some variation in the description of the untoward event and the initially alleged accident date of August 30, 2014—when Claimant was no longer working—there is a reasonably consistent account of the onset of low back pain while moving a sprinkler wheel line transmission on August 15, 2014. There is also some variation in Claimant's medical

records in the description of his accident with Dr. Randall's records indicating a back injury from pulling whereas the records of Jedidiah Petersen, P.A., indicating a back injury from lifting. However, Claimant has a first grade education in Mexico. He is uneducated and unsophisticated. He is an imprecise communicator—not articulate—and even with the aid of capable Spanish interpreters at his deposition and at hearing struggled to express himself clearly in responding to a number of questions, including regarding matters that are inconsequential and undisputed. It is thus not surprising that Claimant's medical records, some of which were created through various interpreters, contain apparent inconsistencies and/or omissions.

25. Having observed Claimant and all of the other witnesses at hearing, and compared the testimony of each with other evidence in the record, the Referee found that Claimant is generally a credible witness and that the untoward event he alleges while straightening sprinkler wheel lines and a wheel line mover transmission at work on August 15, 2014, and experiencing back pain actually occurred. Again, the Commission finds no reason to disturb the Referee's observations on Claimant's credibility. Whether this untoward event caused personal injury must next be determined.

26. Causing injury. As previously noted an accident is an untoward event causing personal injury. 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, 785, 890 P.2d 732, 736 (1995). A preexisting disease or infirmity does not preclude a workers' compensation claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. Wynn v. J.R. Simplot Co., 105 Idaho 102, 666 P.2d 629 (1983).

27. In the present case, Defendants assert that no objective medical evidence substantiates Claimant's alleged back pain from an industrial cause. They rely principally upon the opinion of Lynn Stromberg, M.D., a board certified orthopedic surgeon who examined Claimant on February 25, 2016, at Defendants' request. Dr. Stromberg recorded Claimant's numerous complaints and upon testing found symptom magnification. He did not consider Claimant's complaints credible. Dr. Stromberg found no evidence of acute injury on Claimant's diagnostic studies and was unable to correlate objective findings on Claimant's MRI studies with his subjective symptoms. Dr. Stromberg could find no objective evidence of injury or impairment when he evaluated Claimant 18 months after the accident. However, Dr. Stromberg acknowledged that the diagnostic testing Claimant received after August 2014 was related to Claimant's report of an incident.

28. Multiple medical records documenting treatment nearer in time to Claimant's August 2014 accident relate his back pain to the industrial accident.

29. On September 3, 2014, Claimant presented to Glen Randall, D.C., with back pain complaints and completed a health information form wherein he indicated his condition was due to an accident at work. Dr. Randall's notes from that office visit also indicate that Claimant had similar symptoms three years earlier and that the condition was related to the patient's work. The note specifies thoracic and sacral symptoms with onset eight days earlier from pulling. Dr. Randall's September 3, 2014 notes further document palpatory tenderness and muscle spasm throughout Claimant's thoracic and lumbar spine. X-rays documented osteoarthritis, anterior spurring, and narrowed L5-S1 disc space.⁴

⁴ It is noteworthy that Tyson Funk admitted receiving a call from Dr. Randall during this time wherein Dr. Randall indicated Claimant needed multiple treatments for his worn out back, but, according to Tyson, did not indicate whether this was due to Claimant's work or not. Claimant had no medical insurance coverage through County Line

30. On November 21, 2014, Claimant presented to Jedidiah Petersen, P.A., at Health West American Falls Clinic who recorded:

Pt states works with County line and about mid August Pt reported to his manager Dolores Rangel that his back was hurting due to a pipe was stuck in mud and broken pt reports being by himself and he fixed it. Pt states that's when he started with back pain. Pt states reported it to his manager that same day. Pt did not feel good but still was working and states he suggest for pt to see Doctor. Pt states he couldn't stand pain and went to Chiropractor in Pocatello 09/02/14.

Exhibit 3, p. 35. In March 2015, Mr. Petersen ordered a lumbar spine MRI and commented: "Patietn [sic] injured back while working several months ago and c/o low back ever since. Patient was lifting some pipes and felt pain. He has been treated for muscle spasm and has had little relief from meds." Exhibit 3, p. 39. In April 2014, Mr. Petersen requested consultation by orthopedic surgeon Christopher Johnson, D.O., commenting: "Patient suffered injury to lower back several months ago while trying to lift farm implements that were too heavy for him and c/o of worsening pain every since then." Exhibit 3, p. 51.

31. The records of Chiropractor Randall and Mr. Petersen relate Claimant's back pain and muscle spasms to his August 2014 industrial accident at County Line Farms. The more contemporaneous medical records relate Claimant's accident to his back pain, lumbar sprain, and muscle spasms and are reasonably consistent and persuasively establish that Claimant's accident on August 15, 2014 caused personal injury. The occurrence of an accident causing injury is not assumed merely with the onset of pain at work. However, the onset of back pain when Claimant used his feet to move a sprinkler wheel line transmission at work on August 15, 2014, constitutes an accident causing personal injury. Claimant has proven he suffered an accident causing personal injury at work on August 15, 2015. The nature and extent of

Farms. Dr. Randall would have no apparent reason for calling County Line Farms except that he recognized Claimant's back condition was work-related, or at least work-aggravated, as his notes suggest.

Claimant's personal injury was not noticed for hearing, and as such, is not decided herein. For purposes of the noticed issues, it is sufficient for us to conclude that Claimant suffered an injury to his low back, temporary or permanent, as yet un-quantified.

32. **Causation.** The next issue is whether the condition for which Claimant seeks benefits was caused by the industrial accident. Inasmuch as Claimant's entitlement to any specific workers' compensation benefit was not an issue noticed for hearing, the question of whether his need for any such benefit is caused by his industrial accident is not presently ripe and must await future determination.

33. **Pre-existing condition.** The final issue is whether Claimant's condition is due in whole or in part to a pre-existing and/or subsequent injury/condition. Based upon the present state of the case, this issue can only be addressed in the abstract, there being no noticed issues of entitlement to medical, disability, or other benefits. The present record readily establishes that Claimant had pre-existing conditions before his August 2014 accident. His lumbar x-rays and lumbar MRI showed pre-existing spinal conditions, including osteoarthritis and degenerative disc disease. Dr. Stromberg testified extensively regarding Claimant's pre-existing conditions. Presently, it is only possible to determine that Claimant indeed had pre-existing back conditions, but not to determine the extent to which his pre-existing conditions may impact his entitlement to medical, disability, or other benefits.

34. Defendants have proven Claimant suffered back conditions that pre-existed his industrial accident; however, the extent to which his pre-existing conditions may impact his entitlement to workers' compensation benefits is not presently ripe and must await future determination.

CONCLUSIONS OF LAW AND ORDER

1. Claimant has proven he suffered an accident causing personal injury at work on August 15, 2014.

2. Inasmuch as Claimant's entitlement to any specific workers' compensation benefit was not an issue noticed for hearing, the question of whether his need for any such benefit is caused by his industrial accident is not presently ripe and must await future determination.

3. Defendants have proven Claimant suffered back conditions that pre-existed his industrial accident; however, the extent to which his pre-existing conditions may impact his entitlement to workers' compensation benefits is not presently ripe and must await future determination.

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

DATED this 28th day of August, 2017.

INDUSTRIAL COMMISSION

_____/s/_____
Thomas E. Limbaugh, Chairman

_____/s/_____
Thomas P. Baskin, Commissioner

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

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of August, 2017, 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:

PAUL B RIPPEL
428 PARK AVE
IDAHO FALLS ID 83402

DEAN DALLING
859 S YELLOWSTONE HWY STE 306
REXBURG ID 83440

_____/s/_____