

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

LESLIE BEEMAN,

Claimant,

v.

EDGAR & LAURIE COOK dba
ELMIRA STORE & BAKERY,

Employer,
Defendant.

IC 2014-026697

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

FILED JUNE 11 2015

INTRODUCTION

The Idaho Industrial Commission assigned this matter to Referee Douglas A. Donohue. Claimant appeared *pro se*. Employer (“Edgar & Laurie Cook dba Elmira Store & Bakery”) failed to answer Claimant’s Complaint which was filed November 10, 2014. Default was entered March 9, 2015. Claimant presented her *prima facie* case via testimony at a hearing conducted on May 15, 2015 in Sandpoint. The case is ready for decision.

CLAIMANT’S CONTENTIONS

Claimant contends that, as a result of an industrial injury she suffered on September 29, 2014 while working for Employer, she is entitled to medical care benefits, including hip surgery, caused by the compensable accident.

EVIDENCE CONSIDERED

The record in this matter consists of:

1. The testimony of Claimant presented at the hearing; and
2. Claimant’s Exhibit A admitted at the hearing.

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

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

FINDINGS OF FACT

1. On September 29, 2014 Claimant fell and injured her hip at work in a compensable accident. Employer, Mr. Cook, arrived after she telephoned to notify him of the accident.

2. Claimant also injured her shoulder, but this was opined by her physician to be a soft tissue injury which healed quickly without additional treatment or persisting impairment. Claimant was hospitalized as a result of the accident. John Faggard, M.D., performed hip surgery the next morning. A preexisting condition involving Claimant's long bones made the surgery more difficult.

3. During recovery, Dr. Faggard recommended physical therapy. Claimant declined because she could not afford it.

4. Dr. Faggard opined Claimant's subsequent surgery to fix her hip fracture was caused by the accident. On December 16, 2014, he opined she had healed and was "dismissed from treatment." He noted Claimant showed reduced hip motion due to her preexisting condition. Contrary to Claimant's subjective sense, Dr. Faggard did not opine the accident and surgery caused an aggravation of her preexisting condition. He did not opine she suffered permanent impairment from the compensable fracture and did not rate her. Claimant reports a subjective reduction in her ability to stand for lengthy periods and to pivot, as well as a reduction in balance.

5. Evidence of record shows Claimant incurred compensable medical care charged at \$31,937.54.

6. Although less than perfectly prompt, Employer did pay Claimant her lost wages during the period of recovery. She does not claim temporary disability benefits are due her.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 2

DISCUSSION AND FURTHER FINDINGS

7. The provisions of the Worker's Compensation law are to be liberally construed in favor of the employee. *Sprague v. Caldwell Transportation, Inc.*, 116 Idaho 720, 779 P.2d 395 (1989). The humane purposes which it serves leave no room for narrow, technical construction. *Ogden v. Thompson*, 128 Idaho 87, 910 P.2d 759 (1996).

8. An "accident" is 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. Idaho Code § 72-102(18)(b). An "injury" is construed to include only an injury caused by an accident, which results in violence to the physical structure of the body. Idaho Code § 72-102(18)(c).

9. A claimant must prove not only that he or she was injured, but also that the injury was the result of an accident arising out of and in the course of employment. *Seamans v. Maaco Auto Painting*, 128 Idaho 747, 918 P.2d 1192 (1996). Proof of a possible causal link is not sufficient to satisfy this burden. *Beardsley v. Idaho Forest Industries*, 127 Idaho 404, 901 P.2d 511 (1995). 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).

10. A claimant's burden of establishing a *prima facie* case by probable, not merely possible evidence should not be disregarded simply because the uninsured employer was defaulted by order of the Commission. *See, State v. Adams*, 22 Idaho 485, 126 P. 401 (1912).

11. Claimant's testimony, her medical records relating to this accident, Dr. Faggard's written opinions as to the etiology of her hip condition are unrefuted and credible.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 3

12. Claimant has met her burden of proving she suffered injury as a result of an accident arising out of and in the course of her employment.

13. 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.

14. Claimant has met her burden of proving, pursuant to Idaho Code § 72-432, that the medical care she received was reasonable and necessary to treat her injury.

15. Claimant incurred compensable medical care invoiced at \$31,937.54. *Neel v. Western Construction*, 147 Idaho 146, 206 P.3d 852 (2009), provides that a claimant is entitled to reimbursement of the full invoiced amount for reasonable medical costs incurred following a denial of further treatment. *Neel* is premised on the assumption that an injured worker who contracts for medical care outside the worker's compensation system has, or may have, exposure to pay the full invoiced amount of medical bills incurred with connection with her treatment.

16. Consistent with *Neel*, Claimant is entitled to payment of the full invoiced amount of her unpaid reasonable medical expenses related to treatment of her September 29, 2014 industrial injury. Employer is entitled to credit for an amount already paid which, at hearing, was suggested might amount to \$500.00 or \$800.00.

17. Despite subjective testimony of permanent limitations, Dr. Faggard did not impose restrictions or rate Claimant for permanent impairment. Claimant failed to show she is entitled to these additional benefits.

18. On the date of the accident, and for a period between about February 2014 and January 2015, Employer's workers' compensation insurance coverage had lapsed. The

penalty provisions of Idaho Code § 72-210 are applicable.

19. Employer's daughter, Holly Foderaro, and her husband Frank, were present at hearing. Mrs. Foderaro had previously sent correspondence and a copy of a durable power of attorney to the Commission. In it Mr. Cook designated Mrs. Foderaro as his agent. The correspondence was dated February 6, 2015; the power of attorney is dated January 23, 2015. These were received by the Commission on May 4, 2015. Upon receipt of these documents a courtesy call was placed by Commission adjudication staff to Mrs. Foderaro informing her that she could not appear as an attorney on her father's behalf and that an Idaho-licensed attorney was required if her father wished to try to set aside the default. These documents do not substitute for an Answer to the Complaint nor qualify Mrs. Foderaro to appear as attorney for her father in this litigation. They are not admitted as evidence.

CONCLUSIONS OF LAW

1. Claimant has established a *prima facie* case to support her application for a default judgment;
2. Claimant has proven her hip injury was caused by the industrial accident of September 29, 2014;
3. Claimant has proven that her medical treatment related to her industrial injury constituted reasonable and necessary medical care amounting to an award of \$31,937.54 for medical care benefits;
4. Claimant is entitled to the 10% penalty set forth in Idaho Code § 72-210 in an amount of \$3,193.75; and
5. Claimant failed to show entitlement to other or additional benefits.

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

RECOMMENDATION

The Referee recommends that the Commission adopt the foregoing Findings of Fact and Conclusions of Law as its own and issue an appropriate final order.

DATED this 5TH day of JUNE, 2015.

INDUSTRIAL COMMISSION

/S/ _____
Douglas A. Donohue, Referee

ATTEST:

/S/ _____
Assistant Commission Secretary dkb

CERTIFICATE OF SERVICE

I hereby certify that on the 11TH day of JUNE, 2015, a true and correct copy of **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** were served by regular United States Mail upon each of the following:

LESLIE BEEMAN
1006 SITTING BULL RD
SANDPOINT, ID 83864

ELMIRA STORE & BAKERY
EDGAR & LAURIE COOK
490870 HWY 95 N
SANDPOINT, ID 83864

dkb

/S/ _____

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

LESLIE BEEMAN,

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EDGAR & LAURIE COOK dba
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ORDER

FILED JUNE 11 2015

Pursuant to Idaho Code § 72-717, Referee Douglas A. Donohue submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusions of law to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant has established a *prima facie* case to support her application for a default judgment.
2. Claimant has proven her hip injury was caused by the industrial accident of September 29, 2014.
3. Claimant has proven that her medical treatment related to her industrial injury constituted reasonable and necessary medical care amounting to an award of \$31,937.54 for medical care benefits.
4. Claimant is entitled to the 10% penalty set forth in Idaho Code § 72-210 in an amount of \$3,193.75.

ORDER - 1

5. Claimant failed to show entitlement to other or additional benefits.

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

DATED this 11TH day of JUNE, 2015.

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 11TH day of JUNE, 2015, a true and correct copy of the **ORDER** was served by regular United States Mail upon each of the following:

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SANDPOINT, ID 83864

ELMIRA STORE & BAKERY
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/S/ _____