

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

LINDA DOORES,

Claimant,

v.

EARLY BIRDS TRANSPORTATION  
SERVICES, LLC,

Employer,

and

STATE INSURANCE FUND,

Surety,  
Defendants.

**IC 2012-017689**

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

Filed November 18, 2016

**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 Boise on February 17, 2016. Claimant, Linda Doores, was present in person and represented by Clinton E. Miner, of Middleton. Defendant Employer, Early Birds Transportation Services, LLC (Early Birds Transportation), and Defendant Surety, State Insurance Fund, were represented by Paul J. Augustine, of Boise. The parties presented oral and documentary evidence. Post-hearing depositions were taken and briefs were later submitted. The matter came under advisement on September 8, 2016.

**ISSUES**

The issues to be decided are:

1. Whether Claimant is entitled to medical benefits for her alleged hip injury/condition.

2. Whether Claimant is entitled to temporary disability benefits for her alleged hip injury/condition.

### **CONTENTIONS OF THE PARTIES**

All parties acknowledge that Claimant sustained an industrial motor vehicle accident while working for Early Birds Transportation on July 18, 2012, resulting in back and cervical injuries for which Defendants have provided medical treatment. Claimant alleges she also suffered a left hip injury in the accident or, alternatively, during subsequent medical treatment of her industrial back injury. She now seeks medical and time loss benefits for her left hip injury. Defendants assert that the expert medical evidence does not relate Claimant's left hip injury to her industrial motor vehicle accident or to her subsequent treatment and deny responsibility for further benefits.

### **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. The pre-hearing deposition testimony of Linda Doores taken by Defendants on January 19, 2016;
3. The testimony of Claimant taken at hearing;
4. Claimant's Exhibits 1 through 24 and Defendants' Exhibits 1 through 3, admitted at the hearing; and
5. The post-hearing deposition of Richard Radnovich, D.O., taken by Claimant on April 14, 2016.

All pending objections are overruled. After having considered the above evidence and the arguments of the parties, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

### **FINDINGS OF FACT**

1. Claimant was born in 1972. She was 43 years old and resided in Caldwell at the time of the hearing. She graduated from Caldwell High School. Commencing in 1999, she had back pain from time to time for which she received chiropractic treatment. In 2010, Claimant was thrown from a horse and sustained a dislocated right shoulder, cracked ribs, and a bruised right hip. She received conservative medical treatment and her symptoms resolved. She had no motor vehicle accidents or left hip symptoms prior to July 2012.

2. On July 18, 2012, Claimant was working for Early Birds Transportation driving a vehicle transporting the disabled. As she approached an intersection, the driver of the car in front of her braked suddenly. Claimant was unable to stop and rear-ended the car in front of her at approximately 5-15 miles per hour. She was wearing her seatbelt and the airbag of the vehicle she was driving did not deploy. Claimant noted immediate neck, shoulder, and back pain. She was cited for the accident and discharged from her employment shortly thereafter. She received medical treatment and came under the care of Stephen Martinez, M.D., who diagnosed cervical and thoracolumbar strains. Dr. Martinez's records make no mention of left hip symptoms. Claimant attended multiple physical therapy sessions. Her neck and shoulder symptoms improved with conservative treatment; however her lower back and leg symptoms persisted.

3. On September 23, 2012, Claimant underwent a lumbar MRI that disclosed L4-5 central disc bulge with inferior extension deforming the thecal sac with modest narrowing in the

neural foramen and lateral recess bilaterally, and L5-S1 moderate disc bulging in the central and right lateral recess contacting the right S1 nerve root.

4. On September 28, 2012, Claimant was returning to her home after lunch with her husband when her car was rear-ended by another car. She was transported to the hospital by EMS with cervical and back immobilization. At the hospital Murry Sturkie, D.O., examined Claimant and recorded: “Restrained driver in low speed MVC. Pt car struck from behind. EMS reports no damage to either vehicle. C/O neck, back, bilat hip pain and left shoulder pain.” Claimant’s Exhibit 2, p. 73. Dr. Sturkie further recorded: “pelvis is stable to pressure but there is bilateral hip pain with left side worse than the right side.” Claimant’s Exhibit 2, p. 75. X-rays and CT scans were obtained.

5. On October 15, 2012, Claimant was seen by Timothy Johans, M.D., reporting low back pain radiating to her toes, bilaterally. Dr. Johans opined that the lumbar CT scan taken after her September 28, 2012 non-industrial motor vehicle accident was not significantly different from her August 2012 lumbar MRI taken after her industrial accident. Dr. Johans referred Claimant to James Morland, M.D., for lumbar epidural steroid injections.

6. On January 2, 2013, Claimant completed a Back/Neck Form for the Spine Institute of Idaho in which she listed hip pain among her current complaints. Shannon Gardiner, PA-C, then examined Claimant and noted she did not have an antalgic gait and did “not have pain with passive internal or external rotation of her hips bilaterally.” Claimant’s Exhibit 9, pp. 247, 255.

7. On January 24, 2013, Dr. Morland administered right L5-S1 and left S1 transforaminal epidural steroid injections. Claimant’s legs went numb, as if they had fallen asleep. She reported her leg numbness to the attending nurses who advised her it would only last

about 15 minutes; however, her leg numbness persisted for more than an hour. After a lengthy period, a male nurse encouraged Claimant to stand and try walking. She testified:

He's standing beside me. He gets me up. He goes, okay, try to take a step. I went to lead off with my left leg, it went to the left, I went to the right and back and literally felt and heard a pop in my hip and he goes you can't walk yet. I said, no, I kept telling you my legs are numb. I can't feel them.

Transcript p. 28, ll. 14-19. Claimant testified she noted immediate left hip pain. She testified that after the steroid injection and fall, she was unable to lie on her left side for four days and noted pain with walking and sitting. She testified she also noted a visible bruise on her left hip extending halfway down the hip.

8. Dr. Morland's records of the January 24, 2013 epidural steroid injection state: "The patient was taken to the postop recovery area and observed for allergic, hypotensive and other adverse reactions. None were observed. The patient was discharged home in good condition and asked to follow up at the appropriate time." Claimant's Exhibit 6, p. 165. There is no mention of any fall, report of left hip pain, or other irregularity.

9. After the steroid injection, Claimant noted a reduction of back pain for three or four days and then her back pain returned. On February 3, 2013, Dr. Morland saw Claimant in follow up. Dr. Morland recorded: "We did try epidural steroid injections. She reports if anything it made her worse." Claimant's Exhibit 6, p. 166. There is no mention of a reported fall after the injection, a hip bruise, or multiple days unable to lie on her left side. Claimant testified that when she saw Dr. Morland and told him what had happened: "He blew it off." Transcript, p. 29, l. 25. Dr. Morland referred Claimant back to Dr. Johans for her continuing low back pain.

10. On February 28, 2013, Claimant presented to Timothy Doerr, M.D., for an IME at Defendants' request. Dr. Doerr found Claimant's cervical and thoracic strains due to her industrial accident had resolved. However, he diagnosed persisting low back pain with bilateral

lower extremity radiculopathy and recommended lumbar surgery which Defendants authorized. Claimant testified she reported to Dr. Doerr her left hip symptoms; however, his notes contain no mention of left hip pain. He recorded: “The patient walks without a gait disturbance.” Claimant’s Exhibit 7, p. 188.

11. Dr. Doerr became Claimant’s treating physician and on April 22, 2013, Dr. Doerr performed L4-S1 decompression, discectomy, and fusion with instrumentation. After recuperating from lumbar surgery, Claimant’s back pain was significantly reduced. Her radiating leg pain and much of her low back pain resolved gradually and her functionality improved. She attended physical therapy from July through October 2013. The Referee is unable to locate any express mention of left hip pain in the physical therapy records, although there is reference to a fall the day prior to September 23, 2013, in which Claimant skinned her left knee.

12. Claimant testified that as her back and bilateral leg pain resolved, she noticed persisting left hip pain.

13. In October 2013, upon the recommendation of her attorney, Claimant began treating with Richard Radnovich, D.O., for management of her ongoing back and leg pain. On December 23, 2013, Claimant reported her low back and left hip were made worse by housework. Claimant’s Exhibit 18, p. 533.

14. Claimant received regular chiropractic treatment for her neck, back, and hip symptoms from Kenneth Jensen, D.C., from at least February through May 2014. On March 14, 2014, Dr. Jensen recorded that Claimant’s “left hip is painful and was very painful last night and this morning.” Claimant’s Exhibit 20, p. 632. Her hip pain rating decreased

thereafter and Dr. Jensen's records contain no other specific reference to left hip pain. Dr. Jensen's records express no opinion as to the causation of Claimant's left hip symptoms.

15. After examining Claimant on December 17, 2014, Dr. Radnovich recorded "Has left hip/groin pain since the surgery. Has to go to the DC for CMT. That seems to help." Claimant's Exhibit 18, p. 543. Dr. Radnovich ordered an MRI. On February 20, 2015, Claimant underwent a left hip MRI which showed a superior anterior posterior (SLAP) tear of the acetabular labrum. Dr. Radnovich referred Claimant to Keith Holley, M.D.

16. On April 21, 2015, Claimant presented to Dr. Holley reporting hip pain dating back two years:

[T]o an incident in January 2013. She states that she was involved in a car accident 2012, is [sic] result had a back injury and going through treatment for it, with a steroid injection for her back when she injured her left hip. She reports falling and having a sudden sharp pain in the left hip.

Claimant's Exhibit 10, p. 263. Dr. Holley recorded her account without expressing his medical opinion as to causation of her hip condition. He recommended left hip surgery. Defendants refused to authorize hip surgery.

17. **Condition at the time of hearing.** At the time of hearing, Claimant was not working and had not worked since her July 2012 industrial accident. She continued to complain of left hip pain, catching, and popping. She desires left hip surgery.

18. **Credibility.** Having observed Claimant at hearing, and carefully compared her testimony with other evidence in the record, the Referee finds that Claimant is generally a credible witness.

#### **DISCUSSION AND FURTHER FINDINGS**

19. 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).

20. **Medical care.** The first issue is whether Claimant is entitled to medical benefits for her left hip condition. Idaho Code § 72-432(1) requires an employer to provide an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital service, medicines, crutches and apparatus, as may be reasonably required by the employee's physician or needed immediately after an injury or manifestation of an occupational disease, and for a reasonable time thereafter. If the employer fails to provide the same, the injured employee may do so at the expense of the employer. Of course an “employer cannot be held liable for medical expenses unrelated to any on-the-job accident or occupational disease.” Henderson v. McCain Foods, Inc., 142 Idaho 559, 563, 130 P.3d 1097, 1102 (2006). Thus claims for medical benefits must be supported by medical evidence establishing causation. 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). “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).

21. In the present case, there is no evidence Claimant had a left hip injury of any kind prior to July 2012. Claimant alleges that either her July 18, 2012, industrial accident directly caused her left hip injury, or she suffered a left hip injury when she fell on January 24, 2013, after receiving an epidural steroid injection as treatment for her industrially related back injury.



Two physicians have opined regarding the causation of Claimant's left hip symptoms. Their opinions are examined below.

22. Dr. Doerr. Dr. Doerr performed Claimant's L4-S1 fusion in 2013. He reexamined Claimant at Defendants' request on May 14, 2015, reviewed her medical records, and opined:

I do not find any medical evidence to support that the patient sustained a left hip injury as a result of her 07/18/12 industrial related motor vehicle accident. Based off a detailed history taken from the patient, as well as a detailed review of medical records performed at the time of my independent medical examination on 02/28/13, there is no documentation to support the occurrence of a left hip injury as a direct result of the patient's 07/18/12 industrial related motor vehicle accident.

2) AFTER REVIEWING THE ENCLOSED RECORDS, PLEASE PROVIDE US WITH YOUR OPINION, ON A MORE PROBABLE THAN NOT BASIS, AS TO WHETHER THE PATIENT'S LEFT HIP INJURY WAS CAUSED BY HER EPIDURAL STEROID INJECTION ON OR AROUND 01/23/13. I have not been provided with any medical records documenting that a left hip injury occurred after an epidural injection on or around 01/23/13. Although in my treatment of Ms. Doores I found her to be a very compliant and reliable patient, in order to assign causation of the patient's left hip labral tear to an epidural injection performed on or around 01/23/13, this would require clear documentation or testimony by Dr. Morland (or any other medical provider present at the time of the patient's epidural injection on around 01/23/13) confirming that such an injury to the left hip occurred.

Defendants' Exhibit 2, p. 30.

23. Dr. Radnovich. Dr. Radnovich had treated Claimant for pain management. His deposition was taken by Claimant after hearing. Dr. Radnovich testified that patients with an acetabular SLAP tear like Claimant has often complain of "deep groin and lower back gluteal, a very low-back kind of pain." Radnovich Deposition, p. 16, ll. 1-2. Noting Claimant's lumbar and bilateral lower extremity symptoms which gradually improved after her lumbar fusion, he characterized her consciousness of left hip pain as "the sense of the water receding so you can see the island." Radnovich Deposition, p. 9, ll. 7-8. Dr. Radnovich initially testified that

whether Claimant's SLAP tear was caused by the fall after Dr. Morland's epidural steroid injections or by the July 18, 2012 accident itself he could not tell from his examination notes.

24. Dr. Radnovich ultimately opined the July 18, 2012 motor vehicle accident caused Claimant's hip injury and described the mechanism of injury thus: "What happens is, is that as you're slamming on the brake you get a pistoning action of the force—an axillary load on the femur that pushes the head of the femur into the pelvis and can cause damage." Radnovich Deposition, p. 13, ll. 5-8. He testified in response to Claimant's counsel's questions as follows:

Q. Doctor, do you have an opinion as to what actually caused the labral tear of her left femoral hip?

A. Just based on what I have in my records and recollection from talking to the patient and assuming what she said was correct as far as not having any hip problems before the accident, I would—on what I know, the choices that I have available to me, the auto accident is the mostly [sic] likely cause.

Q. And do you believe that to a reasonable degree of medical probability?

A. Yes.

Q. And if it wasn't the auto accident, would it be possible that the injection therapy, numbness, and fall, could have caused this injury?

A. Yes. Again, depending on the manner in which she fell.

Radnovich Deposition, p. 18, ll. 1-16.

25. Weighing the medical opinions. Regarding Claimant's assertion she injured her left hip as a direct result of her July 18, 2012 auto accident, Dr. Doerr's and Dr. Radnovich's opinions are directly conflicting. Defendants argue that Dr. Radnovich's opinion that Claimant injured her left hip in her auto accident is unpersuasive. They reason that she would have operated the brake with her right foot—not her left. Thus, Defendants maintain, Dr. Radnovich's opinion of the mechanism of Claimant's left hip injury is erroneous.

26. The record contains no evidence Claimant operated the brake with her left foot at the time of her July 18, 2012 auto accident. Common experience indicates it is inherently improbable that she operated the brake with her left foot. Dr. Radnovich's assumed mechanism of Claimant's left hip injury is not supported by the record or common experience and thus his opinion that Claimant's July 18, 2012 auto accident directly caused her left hip injury when she slammed on the brakes is not persuasive.

27. The Idaho Supreme Court has pointedly admonished Commission referees not to exceed their roles as finders of fact and engage in medical diagnosis: "we take this moment to reaffirm that the role of the Commission's referee is that of a finder of fact and not a medical expert." Mazzone v. Texas Roadhouse, Inc., 154 Idaho 750, 760, 302 P.3d 718, 728 (2013). Thus a referee's evaluation of medical evidence may not alter the conclusions of a medical professional "based on the referee's own lay understanding of what the referee believes would change a qualified medical professional's diagnosis and professional opinion." Mazzone, 154 Idaho at 759, 302 P.3d at 727. The Referee will not speculate whether Dr. Radnovich's professional medical opinion of the mechanism of Claimant's left hip injury might change had he been advised that there is no evidence Claimant slammed on the brakes with her left foot.

28. Dr. Doerr's opinion that there is no documentation to support occurrence of Claimant's left hip injury as a direct result of her July 18, 2012 industrial motor vehicle accident is consistent with the contemporaneous medical evidence and Claimant's own testimony, and is persuasive.

29. Claimant has not proven that her July 18, 2012 automobile accident directly caused her left hip injury.

30. Regarding Claimant's assertion that her left hip injury was caused by her fall after receiving a lumbar epidural steroid injection on January 23, 2013, again, neither physician's opinion adequately establishes medical causation. Dr. Doerr opined that Claimant's account alone without documentation from Dr. Morland was inadequate to assign causation for her left hip injury to her alleged fall after receiving a lumbar epidural steroid injection. Although the Idaho Supreme Court has held that a referee "must accept as true the positive, uncontradicted testimony of a credible witness, unless this testimony is inherently improbable, or rendered so by facts and circumstances disclosed at the hearing or trial," Pierstorff v. Gray's Auto Shop, 58 Idaho 438, 447, 74 P.2d 171, 175 (1937), Claimant's account is undermined by the absence of any mention of a fall or similar irregularity in the records of Dr. Morland and his staff, and by the absence of any mention of a fall or left hip pain in the 2013 IME performed by Dr. Doerr.

31. Even assuming the validity of Claimant's representation that she fell and noted sharp left hip pain after her epidural steroid injection on January 23, 2013, Defendants assert that Dr. Radnovich did not opine Claimant's left hip condition was caused by her post-lumbar epidural steroid injection and fall to a reasonable degree of medical probability. They maintain that without an opinion to this standard, medical causation is lacking.

32. It is well established that:

The claimant carries the burden of proof that to a reasonable degree of medical probability the injury for which benefits are claimed is causally related to an accident occurring in the course of employment. Proof of a possible causal link is insufficient to satisfy the burden. The issue of causation must be proved by expert medical testimony. Hart v. Kaman Bearing & Supply, 130 Idaho 296, 299, 939 P.2d 1375, 1378 (1997) (internal citations omitted). "In this regard, 'probable' is defined as 'having more evidence for than against.'" Soto v. Simplot, 126 Idaho 536, 540, 887 P.2d 1043, 1047 (1994).

Jensen v. City of Pocatello, 135 Idaho 406, 412, 18 P.3d 211, 217 (2000)

33. In the present case, Dr. Radnovich affirmed his causation opinion regarding Claimant's fall after her epidural steroid injection, in terms of a possible causal link:

Q. And if it wasn't the auto accident, would it be possible that the injection therapy, numbness, and fall, could have caused this injury?

A. Yes. Again, depending on the manner in which she fell.

Q. Sure. She described the fall as stepping out on the left leg and her body falling away and a popping sensation that was actually audible.

A. It's hard to –

Q. Without having seen it?

A. Um-hmm.

Q. That fall, do you believe that that could have caused this kind of a labral tear?

A. It's certainly a possible mechanism.

Q. But it's your opinion that you believe it probably was from the accident itself?

A. Yes.

Radnovich Deposition, p. 18, ll. 12-25 (emphasis supplied).

34. In Jensen v. City of Pocatello, 135 Idaho 406, 412–13, 18 P.3d 211, 217-18 (2000), the Supreme Court reaffirmed that “No special verbal formula is necessary when, as here, a doctor's testimony plainly and unequivocally conveys his conviction that events are causally related.” Citing Paulson v. Idaho Forest Indus., Inc., 99 Idaho 896, 901, 591 P.2d 143, 148 (1979), overruled on other grounds by Jones v. Emmett Manor, 134 Idaho 160, 165, 997 P.2d 621, 625 (2000). The Jensen Court noted that while an expert medical witness:

expressly refused to say the words ‘reasonable degree of medical probability,’ it is clear from his testimony that he considered that Jensen's renal failure to be more likely than not caused by his ingestion of Pain-Off. .... Therefore, we hold that Dr. Hearn's testimony, coupled with the

facts, adequately established a causal connection between Jensen's Pain-Off ingestion and his renal failure, when Dr. Hearn indicated that he did “not know of anything that would be higher” on his list of speculation.

Jensen v. City of Pocatello, 135 Idaho at 412–413, 18 P.3d at 217–218.

35. In the present case, Dr. Radnovich’s opinion that Claimant’s hip condition was directly caused by her industrial auto accident is unpersuasive because the mechanism of injury upon which he based his opinion is unsupported by the record. His opinion that it was possible Claimant’s left hip injury could have been caused by her fall after her steroid injection is offered only as a possible alternative explanation. Dr. Radnovich did not identify it as the most likely of all causes, as did the medical expert in Jensen.

36. Dr. Radnovich did not opine that Claimant’s left hip injury was indeed causally related to her fall after the epidural steroid injection.

37. Claimant has not proven that due to her industrial accident, she is entitled to medical benefits for her left hip injury.

38. **Temporary disability benefits.** Inasmuch as Claimant has not proven her entitlement to medical benefits for her left hip injury, the issue of her entitlement to temporary disability benefits for her left hip injury is moot.

#### CONCLUSIONS OF LAW

1. Claimant has not proven that due to her industrial accident, she is entitled to medical benefits for her left hip injury.

2. The issue of Claimant’s entitlement to temporary disability benefits for her left hip injury is moot.

**RECOMMENDATION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the Referee recommends that the Commission adopt such findings and conclusions as its own and issue an appropriate final order.

DATED this 9<sup>th</sup> day of November, 2016.

INDUSTRIAL COMMISSION

\_\_\_\_\_/s/\_\_\_\_\_  
Alan Reed Taylor, Referee

ATTEST:

\_\_\_\_\_/s/\_\_\_\_\_  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the 18<sup>th</sup> day of November, 2016, 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:

CLINTON E MINER  
412 S KINGS AVE STE 105  
MIDDLETON ID 83644

PAUL J AUGUSTINE  
PO BOX 1521  
BOISE ID 83701

\_\_\_\_\_/s/\_\_\_\_\_

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

LINDA DOORES,

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EARLY BIRD TRANSPORTATION  
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**IC 2012-017689**

**ORDER**

Filed November 18, 2016

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Pursuant to Idaho Code § 72-717, Referee Alan Taylor 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 not proven that due to her industrial accident, she is entitled to medical benefits for her left hip injury.
2. The issue of Claimant's entitlement to temporary disability benefits for her left hip injury is moot.



