

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

ROLANDO FUENTES,

Claimant,

v.

VAN S. INVESTMENTS, LLC,

Employer,

and

STATE INSURANCE FUND,

Surety,
Defendants.

IC 2011-022186

IC 2011-028649

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

1/7/2014

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 Idaho Falls, Idaho on April 2, 2013. Claimant, Rolando Fuentes, was present in person and represented by Robert Beck, of Idaho Falls. Defendant Employer, Van S. Investments, LLC (Van S. Investments), and Defendant Surety, State Insurance Fund, were represented by Paul Augustine, of Boise. The parties presented oral and documentary evidence. Post-hearing briefs were later submitted. The matter came under advisement on September 11, 2013.

ISSUES

The noticed issue to be decided is two-fold and includes:

1. Whether Claimant suffered an industrial accident on August 19, 2011; and
2. Whether Claimant suffered an industrial accident on September 6, 2011.

All other issues are reserved.

CONTENTIONS OF THE PARTIES

Claimant alleges he injured his back in two industrial accidents: the first on August 19, 2011, while attempting to lift the tongue of a trailer; the second on September 6, 2011, when he allegedly fell while cleaning a restroom. Defendants assert that Claimant had pre-existing lumbar pathology and knew by August 22, 2011, that he needed surgery for a herniated lumbar disc. Defendants maintain that Claimant's accounts of his work accidents are fabricated.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. The pre-hearing deposition testimony of Claimant, taken October 3, 2012, and admitted at hearing as Defendants' Exhibit 7;
3. Claimant's Exhibits A-H and Defendants' Exhibits 1-4, and 7, admitted at the hearing; and
4. The testimony of Claimant, Alvin Yelman, Debbie Yelman, Ronald Olsen, Greg Vansteenkiste, and Robert Woolsey taken at the April 2, 2013 hearing.

All objections posed during Claimant's pre-hearing deposition 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 1963. He was 49 years old and resided in Idaho Falls at the time of the hearing.
2. Greg and Joan Vansteenkiste own Van S. Investments, an enterprise that owns a ten-acre RV park in Idaho Falls. The RV Park contains approximately 200 RV sites and ten

cabins. The park uses a honey bucket to collect wastewater and sewage from the RVs. The honey bucket is a 500-gallon poly tank mounted on a tandem axle trailer. The trailer is approximately ten feet long and five feet wide and features a large pump and siphon hoses attached to the tongue. The trailer and empty wastewater tank weigh at least 1,000 pounds.

3. **Background.** Claimant has a longstanding history of low back pain. At hearing he acknowledged pre-existing pain in his lower back, sometimes shooting up to his mid-back, and numbness in his left leg and foot. However, he testified that his low back problems never prevented him from doing his job.

4. In 2002, Claimant began work maintaining the RV Park for the previous owners. In 2005, Claimant injured his left knee and was diagnosed with meniscus and ACL tears. He could not afford extensive medical treatment and has never had surgery for these conditions. At hearing, Claimant wore a left knee brace.

5. In 2006, the RV Park was purchased by Van S. Investments and Claimant was hired by Greg Vansteenkiste to continue his prior duties of maintaining the park. His duties included cleaning up around the park, mowing the lawn, dumping the garbage, and cleaning the restrooms. During the busy camping season Claimant often worked 40 hours per week earning \$8.00 per hour. During non-peak times he often worked only three hours per day. In the winter months, he occasionally plowed snow, but otherwise did not work much.

6. Greg gave Claimant half-price cabin rental during the summer, free cabin rental during the winter, and a fridge, blankets, pillows, a coat, warm boots, and pocket money. Greg also loaned Claimant money to buy food and a car. Greg helped Claimant obtain work at Lucy's Pizza during the winter season. However, Claimant only worked there a few days and then quit.

7. Claimant testified he never had to take time off work before August 19, 2011, for low back pain. However, Claimant's January 2007 time card documents that he missed three days of work due to back pain. Defendants' Exhibit 1, p. 5.

8. In June 2011, Greg told Claimant that he would not be hiring him during the coming winter. Greg was concerned about Claimant's stability on the ice given his injured left knee. After approximately July 4, Claimant's hours were usually reduced to three hours per day.

9. On August 4, 2011, Claimant presented to Todd Reese, D.C., reporting back and left leg pain with an intensity of 9 out of 10 and present 100% of the time for the previous several months.

DISCUSSION AND FURTHER FINDINGS

10. 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).

11. **Occurrence of an accident on August 19, 2011.** The first issue is whether Claimant suffered an accident at work on August 19, 2011. 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." In the present case, Defendants argue that Claimant's hearing testimony of an accident at work—lifting the tongue of the honey bucket on August 19, 2011—is fabricated. Claimant and several witnesses have testified regarding the

circumstances surrounding Claimant's alleged industrial accident. Their testimony is examined below.

12. Claimant's testimony. Claimant testified that on August 19, 2011, he reported for work and it was sewer day. He drove the tractor over to hitch up the honey bucket which he estimated had 150 gallons of wastewater already in the tank. The tongue of the honey bucket trailer was then resting on a cinder block. Claimant testified that as he backed up the tractor, he unintentionally knocked the tongue of the honey bucket trailer off the cinder block. The tongue then sagged too low to be hitched to the tractor. Attached to the tongue was a hand crank trailer tongue jack. The jack partially disassembled when Claimant tried to operate it. Claimant testified that on a prior occasion he had lifted the tongue of the honey bucket trailer by hand, so he attempted to lift the tongue to place it back on the cinder block. However, he testified that after lifting the tongue about one-fourth of the way up, he felt a pop and unbearable pain and numbness through his lower back.

13. Claimant testified that he went over to the trailer of Robert Woolsey, a long term RV Park resident, and told Woolsey that he had hurt his back and that Woolsey told him to report it to Greg. Woolsey's trailer was 30 feet from the honey bucket. Claimant did not go to Ronald Olsen's trailer which was approximately six feet from the honey bucket. Olsen was then the part-time manager of the RV Park.

14. Claimant testified that he continued to do his work after the August 19, 2011, accident and that Olsen and Woolsey helped him raise the tongue of the honey bucket trailer with the hand crank jack and hitch it to the tractor. Claimant asserted by that evening he had sharp stabbing pain in his back and numbness in his leg.

15. Claimant continued to perform his usual work duties at the RV Park for the next two weeks. At hearing, Claimant admitted he was drunk on the job about a dozen times over the years, but asserted that he was not drunk on August 19 or September 6, 2011.

16. Olsen's testimony. Ron Olsen lives at the RV Park in a fifth wheel trailer approximately 50 yards from the office. He was the general manager for the RV Park for several years and part-time manager in 2011. Olsen has operated the honey bucket on the property. The honey bucket was usually parked within approximately six feet of Olsen's trailer. He saw Claimant almost daily in the summer of 2011. Olsen noted that on July 4, 2011, Claimant was drinking.

17. Olsen testified that sometime in August 2011, Claimant or Woolsey told Olsen that a part had fallen off the hand crank trailer tongue jack on the honey bucket. Olsen then reassembled the jack. Olsen subsequently observed that the honey bucket trailer was hitched up to the tractor. Olsen testified that Claimant said nothing about hurting his back; only later did Olsen become aware Claimant alleged he hurt his back lifting the honey bucket trailer tongue. Olsen testified that he would not even try to lift the honey bucket trailer tongue by hand because it would have been like trying to lift a car by its bumper.

18. Woolsey's testimony. Robert Woolsey lived at the RV Park for two or three years, including in August and September 2011. Woolsey is disabled from working due to a prior back surgery and seizures. He watered the RV Park and received a reduction in his rent. He knew that Claimant was working at the park.

19. Woolsey confirmed he was once asked to help get the honey bucket trailer tongue off the ground and hitch it to the tractor. He testified that in late August he went to find Claimant to ask for a cigarette and Claimant then asked for his help, explaining that the tongue of

the honey bucket trailer had fallen off its cinder block rest. Woolsey testified that the honey bucket trailer tongue always rested atop a cinder block so the tongue could be hitched to the tractor. He affirmed there was no way an individual could lift up the tongue of the honey bucket trailer by hand—it would be like trying to pick up a car. Woolsey found Olsen who then reassembled the hand crank trailer tongue jack and thus helped Claimant and Woolsey raise the tongue of the honey bucket trailer enough to hitch it to the tractor. Woolsey further testified that Claimant never told Woolsey that Claimant had hurt his back.

20. Vansteenkiste's testimony. Greg Vansteenkiste testified that he liked Claimant, but cautioned him not to come to work drunk or high on pain medication. Claimant often worked with a knee brace and complained of knee pain. Greg ultimately told Claimant he did not want Claimant to work during the winter because he did not want Claimant slipping on the ice with his bad knee. Greg relied on Olsen to manage the RV Park when Greg was away.

21. Greg testified that he received no communication on August 19, 2011, that Claimant hurt himself lifting or attempting to lift the tongue of the honey bucket trailer. Greg recalled that Claimant had called Greg and said he hurt his knee and could not come in; however, Greg believed that Claimant sounded as if he were drunk or high on pain medications. Greg acknowledged that Claimant had asked for more work hours, but Greg said he could not give Claimant more hours. Claimant also asked Greg for pain medications for his knee, but Greg gave him only ibuprofen, not prescription pain medications.

22. Yelman's testimony. Alvin Yelman worked at the RV Park in 2007-2009 full-time in maintenance. Debbie Yelman worked at the RV Park in customer service. She testified at hearing that Claimant turned in to the office several valuable items he found, including a wallet with money and credit cards and a diamond ring. She testified that Claimant could have

kept these items and no one would have known, but he brought them in to the office within a few minutes of finding them.

23. Credibility. Claimant's alleged August 19, 2011 accident was not witnessed and his credibility is critical to the determination herein. Several aspects of the record undermine the credibility of his account.

24. Claimant had a well documented history of significant back and leg pain well prior to August 19, 2011. On August 4, 2011, just two weeks prior to his first alleged accident, he reported to Dr. Reese back and leg pain at 9 out of 10 in severity, constantly present for the previous several months. At hearing, Claimant testified that his pain was more excruciating after the alleged August 19, 2011 accident and acknowledged that he may have exaggerated his pain rating to Dr. Reese before the alleged accident.

25. The record establishes that the honey bucket trailer would be virtually impossible for an individual to lift by hand. The ten-foot trailer weighed at least 1,000 pounds. Attached to the trailer tongue was a 100-pound siphon pump. Claimant testified that the 500 gallon poly tank was filled with approximately 150 gallons of wastewater. Assuming the standard 128 ounces per gallon, the wastewater itself would weigh 1,200 pounds. The total weight and load on the tandem axle trailer would be at least 2,200 pounds. As Olsen and Woolsey testified, lifting such an object by hand would have been like trying to lift a car. However, Claimant testified that he did in fact lift the honey bucket trailer tongue on a prior occasion and that at the time of his alleged August 19, 2011 accident he lifted the trailer tongue up approximately one-fourth of the way before he hurt his back.

26. Claimant testified he told both Olsen and Woolsey on August 19, 2011, that he hurt his back attempting to lift the trailer tongue. However, both testified they did not recall

Claimant mentioning any such thing. They testified they helped repair the hand crank trailer tongue jack and used it and the tractor to lift the tongue.

27. Claimant also testified that he reported his back injury on August 19, 2011, to Greg, but that Greg did not tell Claimant to fill out a report of injury. Greg testified that Claimant did not tell him on August 19, 2011, that he had hurt his back.

28. The First Report of Injury filed September 12, 2011, and which Claimant acknowledged at hearing was completed in his own handwriting, describes his alleged August 19, 2011 accident thus: “While moving a cinder block somehow I pulled on the brick and my back turned wrong way.” Claimant’s Exhibit H. This same report, in Claimant’s handwriting, indicates the date the employer was notified of the accident and the date Claimant last worked was September 6, 2011. Claimant’s signature on the report is dated September 9, 2011. When questioned at hearing about these inconsistencies, Claimant could not remember how the report came about or any discussion about the form he had completed, dated, and signed.

29. Finally, the medical records reasonably contemporaneous with Claimant’s alleged August 19, 2011 accident do not mention any report of a work accident. On August 22, 2011, Claimant presented to the emergency room at 7:52 a.m. reporting low back pain. At hearing, Claimant testified that he told emergency room personnel that he had been lifting a honey bucket trailer at work and injured his back. The emergency room notes make no reference to any work injury, rather the notes indicate: “No history of recent trauma.” Exhibit 4, p. 331. A lumbar MRI was taken that very day which revealed lumbar disc pathology. Claimant was given pain medications and directed to follow-up with neurosurgeon Clark Allen, M.D.

30. Also on August 22, 2011, after his emergency room visit, Claimant presented to Dr. Reese, seeking more pain medications. Exhibit 2, p. 7. Claimant told Dr. Reese that his

back pain was 9 out of 10—precisely the same intensity as the pain level Claimant reported just two weeks prior to his alleged accident. Dr. Reese’s August 22, 2011 records make no mention of any accident or work injury.

31. Considering the above evidence inconsistent with Claimant’s hearing testimony, the Referee finds Claimant’s account of the August 19, 2011 trailer lifting accident highly suspect.

32. **Occurrence of an accident on September 6, 2011.** The next issue is whether Claimant suffered an industrial accident on September 6, 2011. Again, Claimant’s testimony and the testimony of several witnesses regarding the circumstances surrounding the alleged accident will be examined.

33. Claimant’s testimony. Claimant testified that on September 6, 2011, he was cleaning the men’s restroom at the RV Park. Claimant’s usual procedure was to clean the sinks and mirrors first, and then the toilets and urinals. Finally he swept the floor and washed down the floors and showers with a hose. Claimant testified that he had the cleaning supplies set out, that he turned around and suddenly fell backwards, landing on his back and buttocks. He testified that he experienced severe low back pain shooting up through the middle of his back. Claimant testified that he fell with the hose still on, gushing water. Claimant yelled for help because the office was nearby. Claimant testified that Greg’s wife, Joan came in first, then Greg arrived and wanted to help Claimant get up, but Claimant adamantly refused saying he did not want to get up. Greg summoned paramedics who upon arriving asked Claimant if he could move. The paramedics then lifted Claimant up and walked him out to a chair where he sat down. Claimant did not go to the hospital in the ambulance, although an ambulance had been called and was present. Instead, Greg took Claimant to the hospital in Greg’s pickup.

34. Claimant told Greg to call his fiancée to meet them at hospital. Claimant testified that on the drive to the hospital, Greg told Claimant to tell the doctors that he got hurt at home, and not tell them he fell at the RV Park. Claimant's fiancée met them at the hospital and wheeled Claimant into the hospital in a wheelchair. Greg then left.

35. Claimant testified that at the hospital, he told medical personnel that he had slipped at work while cleaning some restrooms, but that his boss dropped him off and told Claimant to tell the doctors that he fell at home. Claimant received pain medication and was instructed to ice his lower back.

36. Claimant testified that he told his treating surgeon, Lynn Stromberg, M.D., that he had gotten hurt at work lifting a honey bucket, and that he also fell on water at work and got hurt. On September 26, 2011, Dr. Stromberg performed L4-5 laminotomy and discectomy.

37. Olsen's testimony. Ron Olsen testified that Greg's wife knocked on his door and said Claimant was lying on the floor in the men's restroom. Olsen approached the restroom and saw Claimant flat on his back on the restroom floor with his arms out to his sides. Olsen testified that he thought Claimant had his hat on his head. Woolsey and Greg's wife were in the restroom when Olsen arrived. Olsen testified that the hose was not running when he arrived.

38. Woolsey's testimony. Woolsey testified that he walked into the restroom and found Claimant lying on his back with his arms right beside him. Woolsey noted that the floor was wet, the hose was turned off, and the restroom cleaning supplies were all in one place—not scattered. Woolsey testified that Claimant's glasses were still on the brim of his hat which was laying just an arm's length away. Woolsey testified that he did not think Claimant's hat, glasses, and cleaning supplies would have been so neatly positioned if he really had fallen.

39. VanSteenkiste's testimony. Greg testified that he was on the patio right outside the office and adjacent to the men's restroom when his wife, Joan, approached him saying that Claimant had fallen in the men's restroom. Greg testified that he went to help Claimant and observed that the restroom floor was wet, but the hose was not running and the cleaning supplies were not scattered. Greg testified that he saw Claimant's hat on the floor with Claimant's glasses on the brim of the hat. Greg touched Claimant's knee and Claimant screamed for Greg to not touch or move him. Greg summoned the paramedics.

40. Greg testified that after the paramedics arrived and examined Claimant they helped Claimant stand up and he then refused to ride in the waiting ambulance. Claimant asked Greg to drive him to the hospital. Greg testified that he went to get his pickup and watched Claimant walk unassisted to clock himself out and then sit on a bench while Greg drove the pickup to him. Greg testified that when they arrived at the emergency room, Claimant asked Greg to get him a wheel chair which Greg did. Greg testified he never told Claimant to tell the doctors that his fall did not happen at work.

41. Credibility. The record contains significant repeated testimony about the seemingly staged elements of Claimant's alleged September 6, 2011 fall in the men's restroom. Greg, Woolsey, and Olsen all testified that Claimant had his hat at arm's length with his sunglasses on the brim of his hat, laid neatly on the floor beside him. His arms were down to his side and his cleaning supplies were not scattered. Woolsey testified that Claimant told paramedics he could not move his arms. This is more consistent with deliberate placement of his hat and cleaning supplies, than with the scattering likely from an unexpected fall.

42. Also concerning is Greg's testimony that Claimant put on a performance by yelling when Greg just touched his knee and yet Claimant got up with help from the paramedics,

declined a ride in the ambulance, walked unassisted to clock himself out, and climbed into Greg's three-quarter ton pickup without apparent difficulty. Nevertheless, when arriving at the hospital, Claimant asked Greg to get him a wheelchair to wheel him into the emergency room.

43. Additionally, of some concern are repeated references to Claimant's pain medication seeking behavior. Both Woolsey and Greg testified that Claimant specifically asked the paramedics for pain medication when they responded to his apparent fall on September 6, 2011. Similar requests for pain medication are seen in several of Claimant's pre and post-alleged accident medical records.

44. Finally, notes from Claimant's treating surgeon, Dr. Stromberg, warrant consideration. Following surgery on September 26, 2011, Claimant reported various complaints which prompted Dr. Stromberg to examine him on October 6, 2011. Of that examination, Dr. Stromberg recorded:

Rolando came in for a postoperative recheck. His wound looks fine. He has a lot of strange complaints with pain going all the way across his back and up his back. He said he had pain and numbness in both legs. The right leg has gotten better. He now reports a tingling sensation from his upper left thigh, which encompasses the entire leg.

I repeated a motor examination and he was visibly being deceptive. When asked to do plantar flexion he would give minimal effort but with encouragement he would increase it significantly. When I asked him to dorsiflex his ankles he would start to lift them back down before I would touch his toes. With stern encouragement he would keep them up.

Roland also now has modified his story to try to relate it to his left knee. He said his knee popped, which was related to his current back injury. He is giving quite a show with his ambulation and hanging onto his girlfriend and his cane.

Claimant's Exhibit B, p. 68.

45. Having observed Woolsey, Olsen, and Greg at hearing, and compared their testimony to other evidence of record, the Referee finds that they are generally credible

witnesses. Having observed Claimant at hearing and compared his testimony to all other evidence of record, the Referee finds Claimant's credibility and his accounts of his alleged accidents subject to serious question. The Referee finds that Claimant is not a credible witness. Absent credible evidence of both alleged industrial accidents, Claimant has failed to bear his burden of proof.

46. Claimant has not proven he suffered an industrial accident on August 19 or September 6, 2011, while working for Van S. Investments.

CONCLUSIONS OF LAW

1. Claimant has not proven he suffered an industrial accident on August 19, 2011, while working for Van S. Investments.
2. Claimant has not proven he suffered an industrial accident on September 6, 2011, while working for Van S. Investments.
3. Claimant's consolidated Complaints herein should be dismissed.

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 __30th__ day of December, 2013.

INDUSTRIAL COMMISSION

/s/
Alan Reed Taylor, Referee

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of January, 2014, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

ROBERT K BECK
3456 E 17TH ST STE 215
IDAHO FALLS ID 83406

PAUL AUGUSTINE
PO BOX 1521
BOISE, ID 83701

mg

_____/s/_____

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

ROLANDO FUENTES ,

Claimant,

v.

VAN S. INVESTMENTS, LLC,

Employer,

and

STATE INSURANCE FUND,

Surety,
Defendants.

IC 2011-022186

IC 2011-028649

ORDER

1/7/2014

Pursuant to Idaho Code § 72-717, Referee Alan R. 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 he suffered an industrial accident on August 19, 2011, while working for Van S. Investments.
2. Claimant has not proven he suffered an industrial accident on September 6, 2011, while working for Van S. Investments.
3. Claimant's consolidated Complaints herein should be dismissed.

DATED this 7th day of January, 2014.

INDUSTRIAL COMMISSION

/s/
Thomas P. Baskin, Chairman

/s/
R.D. Maynard, Commissioner

/s/
Thomas E. Limbaugh, Commissioner

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of January, 2014, a true and correct copy of the foregoing **ORDER** was served by regular United States mail upon each of the following:

ROBERT K BECK
3456 E 17TH ST STE 215
IDAHO FALLS ID 83406

PAUL AUGUSTINE
PO BOX 1521
BOISE, ID 83701

mg

/s/