BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

FAY JAMISON, Claimant, v. TWIN FALLS TAXI TRANSPORTATION, LLC, Employer, and IDAHO STATE INSURANCE FUND, Surety, Defendants.	**IC 2013-023670** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** June 9, 2015

INTRODUCTION

Pursuant to Idaho Code § 72-506, the above-entitled matter was assigned to Referee LaDawn Marsters, who conducted a hearing on December 5, 2014 in Twin Falls, Idaho. Claimant was present in person and represented by J. Scott Andrew of Twin Falls. Employer (Twin Falls Taxi) and Surety (collectively referred to as Defendants) were represented by Neil D. McFeeley of Boise.

Oral and documentary evidence was admitted. No post-hearing depositions were taken. The matter was briefed, and the case came under advisement on May 12, 2015. It is now ready for decision.

ISSUES

The parties seek adjudication of the following issues:

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

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

3. Whether and to what extent Claimant is entitled to benefits for medical care.

Whether Claimant is entitled to attorney fees pursuant to Idaho Code § 72-804 was also a noticed issue, confirmed at the hearing. However, Claimant waived this issue in her reply brief, so it will not be addressed.

CONTENTIONS OF THE PARTIES

Claimant, a taxi driver, contends she suffered onset of persistent low back pain with radiculopathy down her left leg when she attempted to assist in pulling a wheelchair-bound customer up some stairs on August 13, 2013. As a result, she asserts entitlement to medical benefits to treat her ongoing back and leg symptoms, including but not limited to a surgical consultation. She relies upon eyewitness testimony from John Magee, a coworker, and Rose Cook, her daughter, as well as her medical treatment records.

Defendants counter that Claimant did not suffer the injury she describes at work, and even if she did suffer a pain flare at work, she suffered no permanent injury, so whatever back pain Claimant now experiences is entirely related to her preexisting low back degenerative condition. Therefore, Claimant is not entitled to additional medical care and, should the Commission determine that no industrial accident occurred, Defendants seek reimbursement for the medical bills they have already paid. They primarily rely upon eyewitness testimony from Barbara Jones, who was present when Claimant says she injured her back, and medical expert testimony from Richard Knoebel, M.D.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The prehearing deposition of Claimant taken April 21, 2014;

2. The testimony of Claimant, John Magee[1], Rose Cook, and Barbara Jones taken at the hearing;

3. Claimant's Exhibits (CE) lettered A through I; and

4. Defendants' Exhibits (DE) numbered 2 and 3.

After considering the above evidence and the arguments of the parties, the Referee submits the following findings of fact and conclusions of law for consideration by the Commission.

FINDINGS OF FACT

1. **Medical and vocational background.** Claimant was 48 years of age at the time of the hearing and resided in Twin Falls, where she was born. In the past, she has lived in Pocatello, Eden, Idaho Falls, and Blackfoot.

2. Claimant has worked in physically demanding jobs all of her life. She began working as a nurse's aide in nursing homes when she was 18. At these jobs she performed different combinations of the following tasks: transferring patients to and from wheelchairs and beds, showering patients, making beds, cooking meals, and doing laundry (including pushing big barrels and racks of laundry and loading/unloading the washer and dryer), and housekeeping (sweeping, mopping, scrubbing, sanitizing).

3. In 2002, Claimant worked for two employers, providing in-home care for one and detailing cars for the other. Her in-home assistant work was similar to her prior nursing home

[1] The witness did not spell his name for the record. The court reporter spelled his name ("McGee") differently than Claimant spelled it ("Magee") in her Rule 10 disclosures. The Claimant's spelling is adopted for reference herein.

work. As a car detailer, Claimant would clean trade-ins, inside-out, including scrubbing the carpets and upholstery. Claimant never had any back problems through this time.

4. In 2003, Claimant was involved in an ATV rollover accident. "[W]e were playing in the mud on the four wheeler and I flipped the - - I flipped the ATV on top of me." TR-34. Claimant landed on her shoulders under the ATV. Claimant suffered two broken ribs, which were not immediately apparent because she was obese at the time, plus significant bruising from her shoulders to the middle of her back.

5. A little over a week after her ATV accident, Claimant began a new job as a taxi driver. She was on call all day and all night, spending ten hours per day in the car on a busy day and about five hours on slow days. This job, which Claimant held for about a year, did not require any heavy lifting. She did not have any low back problems during this time, and even her upper back ATV injury did not bother her.

6. Next, Claimant took another home health care job. She had just one client, who she assisted to shower, eat, shop and clean house. She recalled she had to carry groceries up two flights of stairs and down a hallway for him. She did not recall any back problems during this time.

7. Claimant then took a job in an assisted living facility on the night shift. She got patients up and toileted; dusted, swept, and mopped; and prepared meals. There was a lot of heavy lifting with that job, as the patient population consisted of five men and one woman. Still, Claimant recalled no back problems. Claimant had a few subsequent jobs similar to this and her home health care positions until 2011. She recalled no back problems with any of them.

8. In January 2011, Claimant was a passenger in an automobile accident. Her daughter, Rose Cook, was driving. Claimant sustained a right knee injury, two broken ribs, and

bruising on her back. At the time of the car accident through June 2011, Claimant resided with Ms. Cook. Ms. Cook observed that Claimant had difficulties after the accident with getting down on her knees, lifting and having to lift with her legs, which she related to Claimant's knee injury.

9. In March 2011, Claimant took a part-time job as a driver for Medicaid clients. The job did not require her to assist individuals in wheelchairs. There was not much lifting involved, but Claimant was required to spend 12 to 14 hours in the car two or three days per week. Claimant's knee bothered her at this job, but her back did not.

10. Claimant underwent surgery in summer 2011 to repair her January 2011 knee injury from the car accident. After a recovery period of six weeks or so, she returned to her driving job, working about one day per week.

11. Prior to the car accident, Claimant was extremely obese. Following her knee surgery, however, Claimant lost more than 100 pounds. According to Ms. Cook, Claimant "…decided that she was tired of being overweight…and started seeing a personal trainer, changed her eating habits, started exercising daily and she just decided it was time." TR-18. "She was, obviously, down for a few weeks after the surgery. However, I would say after probably two or three months she would - - once she started with the exercise and the diet change she looked full of life. She - - there was nothing she wouldn't and couldn't do. She was outdoing me at everything." TR-21. A year later, "…She would go the minute she would wake up in the morning bright and early and would go until late at night gardening if she was off work. Running around with the grandkids, letting them tackle her on the floor." *Id.*

12. Since Claimant moved out of Ms. Cook's residence in June 2011, Ms. Cook has seen her three or four times per week, for an hour to a few hours per visit. Following Claimant's

recovery from knee surgery, Ms. Cook never observed any sign that it was a bother for Claimant to lift, push, or pull before August 2013. She was aware that Claimant had problems with anxiety and depression before August 2013.

13. The company for which Claimant began working in March 2011 closed business in December 2011, and Claimant did not obtain alternate employment until May 2012, when she began working for Twin Falls Taxi (see below).

14. In addition, Claimant occasionally worked at gas stations to give her a break from caretaking. "Somebody would die or I just - - I don't know. I would just - - I got burned out. I would get burned out and I just - - I couldn't emotionally take it." TR-43.

15. **Employment at Twin Falls Taxi, industrial accident and injury.** Claimant, Barbara Jones, John Magee, and Rose Cook all testified to facts related to Claimant's industrial accident and injury. Claimant's medical records also offer insight.

16. *Claimant.* Claimant began working for Twin Falls Taxi in May 2012. Her job required her to drive Medicaid patients and simultaneously dispatch taxis via a cell phone. She took turns driving the wheelchair van with the other drivers, leaving her to drive it about one day per week.

17. On August 13, 2013, Claimant was dispatched in the wheelchair van to pick up Donald Mason, a wheelchair-bound patient with multiple sclerosis, and take him to his assisted living facility in Jerome. Mr. Mason advised Claimant that there was no wheelchair ramp at their destination, and that he had requested a male driver. Since Claimant was the only driver assigned to the wheelchair van that day, she continued on to Jerome. On arrival, Claimant recalled, "He did not have a ramp, even though it was obvious he had been in a wheelchair for awhile and he had a little bitty aide." TR-47.

18. According to Claimant, she got Mr. Mason out of the van and found Barbara Jones, his aide. Ms. Jones asked Claimant to help get Mr. Mason up the three or four entryway steps into the residence, so Claimant tried pushing the chair while Ms. Jones pulled. When that did not work, Claimant tried pulling while Ms. Jones pushed. This time, while Claimant was standing on one of the steps, leaning over gripping both wheelchair handles, something snapped in her back, below her waistline, and she felt pain. At that point, Claimant stopped assisting Ms. Jones and called Paul Rodriquez, a coworker who was dispatching, and let him know she got hurt. She also called John Magee, who agreed to do her last run for her. Claimant tried to call Scott Oler, her supervisor. When she was unable to get him on the telephone, she sent a text message notifying him of her accident and injury and her intention to go home for the day. Mr. Oler called her back and they discussed her plans. Claimant returned to the shop, parked the van, and turned in the keys. Walking was difficult, so she had Grady, a coworker, get her car for her. When Claimant arrived home, her neighbor assisted her into her house.

19. Claimant had the following day off from work, so she rested. The next day, she returned to work, but she could barely move or walk, so she texted Mr. Oler requesting medical treatment for her back. Claimant finished her current run, while Mr. Oler got her an appointment with Dr. Johns.

20. *Barbara Jones.* Claimant's testimony was interrupted, by agreement of the parties, by Ms. Jones' testimony, which is directly contradictory to Claimant's. Ms. Jones said that Claimant rolled Mr. Mason out of the van, but declined Ms. Jones' request to help get him into the house because she said she had to go pick up her kids or grandkids. When asked again, Ms. Jones testified that Claimant said she could not assist because she had back trouble. So,

Claimant left and Ms. Jones rolled Mr. Mason under a shade tree and brought him a cold drink until someone else (unrelated to the taxi company) came to help.

21. Also, Ms. Jones recalled that before Mr. Mason could be removed from the van, she had to retrieve scissors to cut his seatbelt off of him. The van interior, which lacked air conditioning, was extremely hot, and Mr. Mason was suffering. According to Ms. Jones:

> It was choking him. He couldn't breathe. He was turning like white. I saw a little blue going on there in his face. He was not real coherent, just kind of like dazy - - uh. … So, I went in the house, I got the scissors, because I could see Don going fast and I cut the seatbelt and I do believe by me cutting the seatbelt that I saved myself - - I'm not sure what would have happened to Don. He was already going out for the count.

TR-70, 71. The episode frightened her.

22. When Claimant retook the witness stand, she agreed with Ms. Jones' account of the events leading to the need to cut the seatbelt off of Mr. Mason. She candidly described herself as "pissed…upset" that day. TR-80. "I didn't want him to be - - he had just gotten out of the hospital. I didn't want him to be in pain." *Id.* Claimant did not quibble with Ms. Jones' contradictory recollections, but confirmed her own earlier testimony regarding the onset of her low back pain.

23. *John Magee.* John Magee, who testified first, worked with Claimant. He saw her for about an hour (total) each workday during pre-trip vehicle inspections and in the shop after work. He recalled that Claimant suffered an injury a couple of months before he was discharged in October 2013 for a license suspension, and that he got a call to finish her last run of the day. Prior to that day, he did not recall Claimant ever complaining about back pain. Afterward, he saw her on approximately ten different occasions. "…every now and again I'd run into her at the store or something and I could tell she was in pain." TR-14. He was aware during that period that Claimant was having trouble getting her treatment covered.

24. *Rose Cook.* In August 2013, Claimant called Ms. Cook and told her that she hurt her back trying to lift a wheelchair at work. Afterward, Ms. Cook observed that Claimant had trouble standing up from a sitting position, bending over, and kneeling down. She had a lot of trouble lifting. For example, she could only lift her two-and-a-half year old grandson a couple of inches off the floor before she had to stop and put him down.

25. As time passed, Claimant's symptoms persisted. After a month, "…she couldn't do anything anymore. She sat around and that would start to hurt her back and start to make her worry she was going to gain weight back again, so she would try - - she would really try to get up and do stuff and couldn't." TR-24. Ms. Cook's observations were based on seeing Claimant try to do dishes, vacuum, weed her garden, mow the lawn, and play with the grandkids. After a year, "It's pretty much the same. She does attempt to try and push herself. She was going through some physical therapy and learning some exercises. She does attempt to really push herself as far as she can go, but it's not very far and she - - within minutes of doing anything strenuous she gets extremely sore and has to take a break and if she sits for too long after a break she's too sore to get back up and continue." TR-24, 25.

26. Ms. Cook has also observed, both before and after the accident, that Claimant sometimes has trouble with her hip. "Here and there in past years she would get sore after any sort of long, strenuous activity [*sic*] her hip would start to bother her. I assumed it was a weight issue myself." TR-20. Claimant confirmed that she has had trouble with her left hip unrelated to her industrial accident.

27. **Initial treatment and diagnosis.** At her employer's direction, Claimant obtained medical treatment for her low back pain from Dr. Johns on August 15, 2013. Dr. Johns recorded, in the history section of his chart note, that Claimant had injured herself while she and

Mr. Mason's aide tried to push/pull his wheelchair up the stairs. "…I injured my low back and the pain is working its way up to the left shoulder." CE-3. Dr. Johns also noted she was a pack-a-day smoker for the past 30 years, had a history of ulcer and depression, and had a BMI of 28.77 based on weight of 183 pounds and height of 67 inches.[2]

28. Claimant rated her pain at 9/10, on an escalating scale from one to ten. Pushing, standing still, walking, and sitting for more than a few minutes all worsened her low back pain. She reported taking a muscle relaxer, but it did not help. On exam, Claimant had reduced lumbar spine range of motion, and her pain was mainly left-sided.

29. Dr. Johns diagnosed low back strain and recommended alternate ice and heat, along with stretching exercises. He also prescribed a muscle relaxer and pain medication, and placed her on modified work restrictions.

30. Claimant followed up on August 19, 2013 reporting pain from her left hip, to her left thigh, down to her left medial ankle. On exam, Claimant's left-sided pain was not as apparent as before, according to the chart note, but her lumbar spine range of motion was still painful, and she had diffuse tenderness throughout the lumbar spine and paraspinals including the left sacral notch. Dr. Johns altered her medication prescription, maintained modified work restrictions, and continued to recommend ice, heat, and stretching exercises.

31. On August 23, 2013, Claimant again followed up with Dr. Johns, who noted her pain seemed to be worsening and that she still was not working. He added physical therapy to Claimant's treatment regimen.

32. Claimant initiated physical therapy on August 26, 2013. She reported her industrial injury, as well as her ATV accident and injuries. "She does state that she has had a

[2] According to the National Institutes of Health website (and many others), body mass index (BMI) is a measure of body fat based on height and weight that applies to adult men and women. BMI Categories: Underweight = <18.5; Normal weight = 18.5–24.9; Overweight = 25–29.9; and Obese = BMI of 30 or greater.

history of back problems, which dates back approximately 11 years ago to an ATV rollover accident, stating that she has had some on and off problems over the years but never had any radicular symptoms and usually she has not had to seek any medical attention." CE-11.

33. The therapist noted that Claimant's pain was primarily in her left low back, radiating down the posterior aspect of the upper thigh and lower leg to her ankle. On palpation, Claimant seemed moderately tender at the left side of L4-5 and distally into the sacroiliac area with mild trigger points in the gluteal regions. Claimant was very apprehensive even with light palpitation. Claimant's range of motion exam demonstrated left greater than right pain on side bending (but only slight improvement in range of motion on the right as compared to the left), and fairly normal segmental motion with slow movement and pain complaints. Also, among other things, Claimant demonstrated at least 80 degrees of forward trunk flexion with fairly normal descent, but significant discomfort on ascent. As in prior exams with Dr. Johns, she used her upper extremities to assist in rising from the flexed position. Claimant's strength testing was limited by pain, which she rated at 8/10. "This individual seems to have significant muscle guarding at this point in time. We will attempt to work on range of motion abilities in an effort to help reduce muscular tension and reassurance to regain mobility." CE-12.

34. Following her initial physical therapy session, the therapist recorded that Claimant stated the tension in her body had decreased. Her improvement was again recorded the next day, when she followed up with Dr. Johns. Although Claimant was still in pain, she had no lower extremity pain, paresthesias, or weakness, and she was sleeping better. She was not shifting as much in the exam room, and she had full lumbar forward flexion. Her straight leg raises were negative bilaterally, and her lower extremity deep tendon reflexes were symmetric,

although the right knee could not be tested due to pain. Dr. Johns anticipated Claimant would be at or near medical stability by her next follow-up appointment.

35. At her next physical therapy session, on September 3, 2013, Claimant again reported significant improvement. Her pain was 0-1/10, and she had been cleaning the house for most of the morning. However, after therapy, her pain had increased to 3-4/10. The therapist noted:

> ASSESSMENT: Fay continues to demonstrate significant tenderness and pain throughout the left SI and low back area. This pain is exacerbated with therapeutic exercise involving activation of the pelvic and lumbar musculature. She is fairly emotional throughout treatment and appears to be having more symptoms than she is reporting.
>
> PLAN: She has a followup with her occupational health physician tomorrow. Given the fact that therapy made her pain significantly worse today it should be questioned whether she has more of an active process going on. …

CE-18.

36. On September 4, 2013, Claimant followed up with Dr. Johns, reporting her pain level at 6/10 and relating how it had worsened at physical therapy the day before. She thought her pain was as bad as it was before treatment. Claimant also reported that she was really stressed out.

37. In addition, Dr. Johns' chart note states Claimant related occasional back pain since her ATV accident, when a chiropractor in Pocatello had x-rayed her back, told her that her spine was curved at the bottom, and recommended placing a rod in her spine. At the hearing, Claimant did not recall either being told this by a chiropractor or relating it to Dr. Johns. Claimant did recall going to a chiropractor in Pocatello, after her daughters prompted her, after her ATV accident. Claimant could generally remember how to drive to the office, but she could not remember the chiropractor's name, and no records related to that treatment are in evidence.

Claimant remembered that this chiropractor told her that one of her legs is up higher than the other and gave her an inch-high wedge to put in her right shoe to even out her walk, but she remembered nothing about a curved spine or a rod. Dr. Knoebel (see below) is the only physician, she testified, who has ever told her she has scoliosis.

38. Claimant's exam on September 4 revealed full lumbar forward flexion, negative straight leg raise bilaterally, and normal sensation and strength in the lower extremities, among other things. Dr. Johns opined that Claimant's frustration, stress, and perhaps her depression, were interfering with her recovery, and Claimant agreed. He recommended chiropractic care for one week.

39. Around this time, Claimant left her employment at Twin Falls Taxi for reasons unrelated to her industrial injury. She then took a job in which she helped a woman learn how to care for her house and her child. That job was not very physically demanding, except when she walked at the mall with her client.

40. H. Rusty Arrington, D.C., chiropractor, diagnosed moderate sacroiliac joint dysfunction with resultant inflammation and deep referred sclerotogenous pain, associated lumbar intersegmental joint dysfunction and myofascial pain syndrome. Dr. Arrington's chart notes and letters generally indicate that he believed Claimant was improving with his treatment. However, Claimant testified that she experienced no lasting improvement.

41. When Claimant did not respond to chiropractic care, Dr. Johns noted, "I am concerned there may be some nonorganic factors interfering with recovery." CE-24. He ordered an MRI to better assess Claimant's organic factors.

42. Claimant underwent MRI of her lumbar spine on September 19, 2013. The imaging showed mild disc bulges without canal narrowing or apparent foraminal narrowing from

T12 through L3. At L3-4, there was a mild annular disc bulge with unremarkable L3 nerve root exit. At L4-5, there was a mild annular disc bulge with unremarkable L4 nerve root exit. There was also facet arthrosis contributing to overall mild canal narrowing. At L5-S1, there was an annular disc bulge with right paracentral prominence impinging fat adjacent to the exited right L5 root. There was also effacement of the anterior canal, no definite pars defects, narrow lateral recesses, fluid at facet joints, and facet arthrosis.

43. The radiologist's summary impression regarding Claimant's lumbar spine stated:

> Degenerative anterior listhesis of L5 on S1 measuring 5 millimeters with associated facet arthrosis and disc bulge producing moderate canal narrowing.
>
> Far lateral L5-S1 disc protrusion appearing to impinge the exited L5 root.
>
> Mild disc degenerative changes at L3-4 and L4-5 due to mild overall canal narrowing, in concert with facet arthrosis.

CE-29.

44. On review of the MRI findings, Dr. Johns referred Claimant to David Jensen, DO, a physiatrist, who examined her on October 2, 2013. On exam, among other things, Dr. Jensen noted back pain with straight leg raise on both sides, multiple pain complaints, and difficulty with motor testing because Claimant "seems to give poor efforts." CE-73. After reviewing her MRI images, Dr. Jensen ordered lumbar spine x-rays. "She shows a more significant spondylolisthesis with standing, which increases upon flexion and reduces some upon extension." *Id.*

45. Dr. Jensen diagnosed degenerative spondylolisthesis aggravated by her industrial injury. His causal analysis is based upon Claimant's report that she had no prior back pain. Dr. Jensen recommended a pain injection, which he administered on October 18. On October 24, Claimant followed up, reporting improvement in her pain as a result of the injection. She

also reported improvement in her pain and radiculopathy symptoms to her physical therapist, along with significant tenderness at the injection site. However, following a second injection, and continued physical therapy sessions, on November 14, 2013 she reported no lasting improvement.

46. Because Claimant did not improve with conservative care, Dr. Jensen discharged Claimant from further treatment and recommended a surgical consult with Justin Dazley, M.D., an orthopedic surgeon. Claimant's pain at this time was still averaging 3/10 or worse, though she had a combination of "good days and bad days." Dr. Jensen maintained restrictions of no lifting, pushing, or pulling over 25 pounds and no repetitive bending, stooping, or twisting.

INDEPENDENT MEDICAL EVALUATION

47. Rather than approve Dr. Jensen's recommendation for a surgical consultation outright, Surety sent Claimant to Richard Knoebel, M.D., for an independent medical evaluation (IME), on December 5, 2013. Prior to preparing his report, Dr. Knoebel reviewed Claimant's medical records, discussed her medical history with her, and performed an examination.

48. Dr. Knoebel concluded, among other things, that Claimant's industrial injury only temporarily exacerbated her preexisting low back pain from degenerative lumbar spondylolisthesis and scoliosis, and that she had returned to her original pain baseline, such that her industrial injury was fully healed. He assessed no permanent partial impairment (PPI) as a result of her industrial injury. He identified her "preexisting obesity" (180 pounds on the day of the exam and a height of 66 inches, for a BMI of 30) and smoking habit as contributors to her back pain. He also identified Claimant's history of depression, anxiety, and "chronic hypnotic habituation." DE-7. Dr. Knoebel also opined, based in part on four out of five Waddell's signs,

that Claimant was exaggerating her symptoms during his examination, but perhaps not consciously.

CURRENT EMPLOYMENT AND CONDITION

49. Claimant began working for another taxi/transport company in August or September 2014, a couple of months after her prior employment (assisting a new mom) ended. Although she was concerned about taking this type of job again, she needed to earn an income. Among her expenses are those associated with the guardianship of one of her grandchildren, which she undertook in March 2013, and for which she receives a stipend of $309 per month. She does not believe she can go back to any of her prior jobs (for example, in gas stations or providing personal care services) because she cannot stand for long periods, repeatedly bend to reach low and high levels, or lift heavy weights.

50. Claimant is not required to drive a wheelchair van or simultaneously dispatch in her current position. She earns more money than she did at Twin Falls Taxi, and she works 10-12 hours, five days per week. Claimant's pain has increased because she is more active.

> Since I started driving I - - my left - - when I get home my left foot is numb sometimes. My left leg has pain in it most of the time. I can't hardly walk by the time I get home. The sitting kills me. It kills my back. It's just - - I don't know how much longer I'm going to be able to do this.

TR-86.

51. Claimant takes up to one-and-a-half hydrocodone pills per day to help with her low back pain.

DISCUSSION AND FURTHER FINDINGS

52. 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).

CLAIMANT'S CREDIBILITY

53. Claimant was articulate and, by all appearances, sincere, in her testimony at the hearing. In addition, the histories recorded in her medical records are consistent with her description of her industrial accident and injury. As well, the testimony of Mr. Magee and Ms. Cook support Claimant's allegations. However, Ms. Jones challenged Claimant's claim that she tried to pull Mr. Mason up the steps, Dr. Johns questioned whether some nonorganic cause may be responsible for some of Claimant's symptoms, Claimant's physical therapist sometimes noted inconsistencies between her pain reports and her fairly normal ability to function, and Dr. Knoebel opined that Claimant's behavior on exam indicated she was likely exaggerating her pain and dysfunction. Further, Claimant agreed with Dr. Johns when he suggested in September 2013 that her psychological state may be hindering her recovery. These facts place Claimant's credibility – that is, the degree to which her testimony may be trusted – into question. The credibility determination determines the weight to be assessed to her testimony. Defendants go so far as to seek a finding that Claimant has intentionally misled the tribunal such that they are entitled to reimbursement of the medical benefits they have already paid.

54. *Claimant v. admissions of preexisting "low back pain."* Defendants assert that Claimant cannot credibly refute her prior reports of low back pain to Barbara Jones, Dr. Knoebel, and others. The Referee disagrees. Claimant's explanation – that she never reported *low* back pain, but only occasional back pain – is persuasive. None of Claimant's medical records state that she ever reported "low back pain," and her description of her ATV accident and occasional

subsequent upper back pain is a reasonable alternative explanation for why back pain is mentioned, at all. Dr. Knoebel's report does not allege that Claimant reported preexisting low back pain, and Claimant testified that she told him she only had prior upper back pain. Further, Dr. Jensen noted in October 2013 that Claimant denied any low back pain before her industrial accident. This is the only note in the record that clearly and directly addresses preexisting low back pain. Also, Claimant performed work that required heavy lifting after her ATV accident, without requiring treatment for low back pain.

55. Claimant did not recall telling Dr. Johns that a chiropractor in Pocatello told her that her spine was curved at the bottom and she needed a rod placed, and her testimony regarding her recollection of what that chiropractor did tell her – that she needed a wedge in her right shoe, which he provided – as well as that she had never been told she has scoliosis before Dr. Knoebel, was persuasive in light of the absence of such diagnosis from the evidence in the hearing record. Physician chart notes are not infallible. The Referee finds the weight of evidence in the record fails to support a finding that Claimant made the comment. Even if it did, this would not necessarily beg a finding that Claimant had, or ever admitted to, preexisting low back pain.

56. Claimant's testimony that she did not experience low back pain before August 13, 2013 is credible.

57. *Claimant v. Barbara Jones.* Ms. Jones testified that Claimant did not try to pull or push Mr. Mason's wheelchair up any stairs. Given Claimant's testimony that she and Ms. Jones were working together to accomplish this when she suffered her low back injury, one of these women is either mistaken or untruthful.

58. Defendants argue that Ms. Jones has no economic stake in the matter, so her testimony should be deemed more credible. However, Ms. Jones had more reason to focus on

the problems with Mr. Mason's seatbelt and his well-being, as he was a good friend, than anything having to do with Claimant. It is possible that by the time of the hearing, almost 16 months later, she simply did not remember Claimant trying to help get him up the stairs on that day.

59. Consistent with this possibility is the fact that Ms. Jones' testimony drifted at times. For instance, when she was asked what she did when she saw Claimant drive up with Mr. Mason in the van, she responded that she was in the kitchen, and:

> A. I stood there for a few minutes. I was cleaning up the kitchen and I thought I would wait to see, you know, what was going to transpire when Don got home and so I had other obligations, so I just stopped that and I thought, well, I better wait around just to be safe; right? So, I looked out the window, I didn't see any movement coming out of the van and I went outside. The seatbelt that was on Mr. Mason was choking him out.

TR-70. Also, when Ms. Jones was questioned about how Mr. Mason was generally dropped off and transported up the stairs, her answer drifted from the August 2013 timeframe into a later timeframe:

> Q. Okay. Now who normally helps get him up the stairs?
>
> A. Well, all the family was at work. Usually there is guys - - just whoever is available. Usually I can - - if somebody is not at work and one of the boys - - cousins, nephews, something of that nature, are available, they will help.
>
> Q. Is it usually a male driver that comes?
>
> A. Yes.
>
> Q. And do the male drivers help get him up - - up the stairs?
>
> A. We have - - they pull around – we have this little circle around our drive and they usually - - this is what they did. They would back up - - we have a ramp on our deck, a small one that cover [*sic*] the stairs where you can get up and go in the back door of the house.
>
> Q. Okay.

A. Because our house is pretty good size. There is a front entrance, there is an entrance over here. There is one back here.

Q. When did that get put in?

A. I want to say probably before summer. This last summer.

Q. This last summer it got put in?

A. Uh-huh. And that's give or take a little bit. I'm not going to - -

Q. Okay. So, in 2014 it got put in?

A. Right.

TR-75-76.

60. Defendants also assert that Claimant confirmed Ms. Jones' recollection that Claimant said she could not help because she had to pick up kids or grandkids, demonstrating that Ms. Jones had a clear memory of the events of that day. But Claimant's testimony does not entirely confirm Ms. Jones' on this point. Claimant said her next pickup (fare) was a child, and that she had a coworker do this for her because her back hurt too bad to do it herself.

61. Claimant's testimony that she immediately reported her industrial injury to both the dispatcher and her supervisor, and handed off her last pickup of the day due to back pain, is undisputed.

62. Claimant's demeanor at the hearing, as compared to Ms. Jones', was more credible. Claimant's answers to questions were clearer and more direct, even after hearing Ms. Jones' potentially upsetting contrary statements. Claimant answered the subsequent questions put to her in an appropriate, undefensive manner. For example, she did not try to downplay the seatbelt problem after Ms. Jones raised that issue. She acknowledged it was very upsetting and communicated concern for Mr. Mason. This event was not directly related to

Claimant's injury, though, so it is reasonable that Claimant did not offer this information during her earlier testimony.

63. Medical chart notes recording Claimant's statements telling how she injured her low back are consistent with her claims at the hearing. Similarly, no physician asserted that a low back injury is inconsistent with Claimant's description of her accident. On the contrary, Dr. Jensen opined that onset of persistent low back pain, given Claimant's preexisting low back degenerative condition, was an adequate medical basis for seeking a surgical consultation.

64. Understandably, Ms. Jones' recollections of the relevant events focused upon Mr. Mason, and Claimant's focused upon her own condition. Given the evidence of record, it is more likely that Ms. Jones' memory is inaccurate than that Claimant is either in error or lying. Claimant's testimony is more credible and, thus, more persuasive, than Ms. Jones'. Claimant has proven she suffered an unexpected, undesigned, and unlooked for mishap, or untoward event, connected with the industry in which it occurred, and which can be reasonable located as to time when and place where it occurred, causing an injury.

65. *Claimant vs. her psychological state.* Claimant admitted in September 2013 that her frustration, stress, and trouble with depression were probably delaying her recovery. However, there is inadequate evidence in the record from which to determine the extent of such delay. The evidence is also inadequate to support a finding that Claimant's preexisting psychological condition actually caused her back pain, or that she did not wish to improve. Along those lines, Claimant's concern about regaining the substantial weight she had recently lost, confirmed by Ms. Cook, tends to support her claims that she was unable to fully function even though she wanted to be more active. It also appears that Claimant's early-on desire to

improve may have been related to her masking her symptoms, either consciously or unconsciously. (See September 3, 2013 physical therapy note at CE-18 and above.)

66. Claimant's frame of mind, on any given day, likely influenced her motivation level. Her medical records establish that she had good and bad pain days and that she was sometimes more motivated to participate in physical therapy and examinations than at other times. This behavior could be consistent with either malingering or pain. Even if Claimant could fully function in treatment, it is reasonable that she would hold back if her efforts were met with pain.

67. It is well settled that an employer takes a claimant as she is. Here, Claimant's pain reports may be affected on any given day by psychological factors. She does not deny this. But her testimony that she has real, persistent pain, new since her August 13, 2013 industrial accident, is persuasive.

68. Claimant is a credible witness with respect to the circumstances surrounding the onset of her low back pain and its persistence. Her reports of the severity of her pain on any given day may require further investigation to determine the nature of the factors are contributing to her perception.

CAUSATION

69. The Idaho Workers' Compensation Act places an emphasis on the element of causation in determining whether a worker is entitled to compensation. In order to obtain workers' compensation benefits, a claimant's disability must result from an injury, which was caused by an accident arising out of and in the course of employment. *Green v. Columbia Foods, Inc.*, 104 Idaho 204, 657 P.2d 1072 (1983); *Tipton v. Jannson*, 91 Idaho 904, 435 P.2d 244 (1967).

70. The claimant has the burden of proving the condition for which compensation is sought is causally related to an industrial accident. *Callantine v. Blue Ribbon Supply*, 103 Idaho 734, 653 P.2d 455 (1982). Further, there must be medical testimony supporting the claim for compensation to a reasonable degree of medical probability. A claimant is required to establish a probable, not merely a possible, connection between cause and effect to support his or her contention. *Dean v. Dravo Corporation*, 95 Idaho 958, 560-61, 511 P.2d 1334, 1336-37 (1973). See also *Callantine*, *Id*.

71. The Idaho Supreme Court has held that no special formula is necessary when medical opinion evidence plainly and unequivocally conveys a doctor's conviction that the events of an industrial accident and injury are causally related. *Paulson v. Idaho Forest Industries, Inc.*, 99 Idaho 896, 591 P.2d 143 (1979); *Roberts v. Kit Manufacturing Company, Inc.*, 124 Idaho 946, 866 P.2d 969 (1993).

72. The Industrial Commission, as the fact finder, is free to determine the weight to be given to the testimony of a medical expert. *Rivas v. K.C. Loggin*g, 134 Idaho 603, 7 P.3d 212 (2000). The Commission can accept or reject the opinion of a physician regarding impairment. *Clark v. City of Lewisto*n, 133 Idaho 723, 992 P.2d 172 (1999). The Commission's conclusions as to the weight and credibility of expert testimony will not be disturbed unless such conclusions are clearly erroneous. *Reiher v. American Fine Food*s, 126 Idaho 58, 878 P.2d 757 (1994). "When deciding the weight to be given an expert opinion, the Commission can certainly consider whether the expert's reasoning and methodology has been sufficiently disclosed and whether or not the opinion takes into consideration all relevant facts." *Eacret v. Clearwater Forest Industries,* 136 Idaho 733, 40 P.3d 91 (2002). Unless a decision to render no weight to a medical expert opinion was clearly erroneous, it will be affirmed. *Id.*

73. Defendants dispute that Claimant injured her low back while trying to pull Mr. Mason's wheelchair up some steps. However, as determined, above, Claimant's testimony on this point is more persuasive than Ms. Jones,' and it is consistent with the weight of the remaining evidence, including the medical evidence, in the record. The Referee finds Claimant has proven by a preponderance of evidence that she suffered an industrial low back injury on August 13, 2013.

MEDICAL CARE

74. 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. It is for the physician, not the Commission, to decide whether the treatment is required. The only review the Commission is entitled to make is whether the treatment was reasonable. *See Sprague v. Caldwell Transportation, Inc.*, 116 Idaho 720, 779 P.2d 395 (1989). 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). "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).

75. In *Sprague*, the following factors were found relevant to the determination of whether the particular care at issue in that case was reasonable: (1) the claimant should benefit from gradual improvement from the treatment rendered; (2) the treatment was required by a claimant's treating physician; (3) the treatment was within the physician's standard of practice and the charges were fair and reasonable.

76. Where, as here, the desired treatment has not yet been rendered, the Commission should determine what is reasonable based on the totality of circumstances. Claimant seeks authorization for a surgical consultation. Dr. Jensen opines that Claimant developed a persistent pain condition as a result of aggravation of her preexisting degenerative condition by her industrial injury. He did not opine that Claimant reached medical stability; instead, he recommended a surgical consultation to further identify Claimant's condition and treatment options, if any. This is sufficient to establish that Claimant's treating physician recommended a surgical consultation because, based upon Claimant's report that she had no history of low back pain, he believed her industrial accident was the most likely cause of her low back symptoms.

77. Dr. Knoebel, on the other hand, opined Claimant was medically stable as of December 2013, that her industrial injury only temporarily exacerbated her preexisting condition, and that she had returned to her pre-injury low back pain baseline by then.

78. It was determined, above, that Claimant credibly reported persistent pain, which began with her industrial injury. Along those lines, Claimant's strong objection to Dr. Knoebel's assumption that she suffered low back pain before her industrial injury is persuasive. Since Claimant did not suffer low back pain before her industrial injury, and she still had low back pain at the time of Dr. Knoebel's evaluation, his opinion that she had returned to a baseline level of pain is unfounded.

79. Dr. Knoebel's report is also questionable in other respects. He placed substantial weight on his diagnosis of pre-existing obesity, when Claimant's BMI was barely at the threshold for obesity on his examination, and below that threshold previously, as per her medical records[3]. He did not address her monumental recent weight loss. Also, Dr. Knoebel diagnosed

[3] Dr. Knoebel recorded Claimant's height at 66 inches; whereas, Dr. Johns previously recorded it at 67 inches. This difference accounts for Dr. Knoebel's higher BMI assessment.

chronic hypnotic medication use, nonindustrial, when the record demonstrates that Claimant only took Aleve prior to her industrial injury. If Dr. Knoebel was concerned about Claimant's regular use of an over-the-counter analgesic, he needed to specify the nature of those concerns before they could be considered herein. Likewise, if he believed Claimant's use of Aleve and up to one-and-a-half hydrocodone pills following her industrial injury was problematic, he should have explained this. Finally, it appears Dr. Knoebel may have been referring to another patient altogether when he wrote, "His psychological condition, however, is noted to be associated with chronic pain syndrome as noted in this claimant on her presentation today. This pre-existing psychological condition is contributing to her current chronic pain behavior." DE-14. Claimant (a woman) has never been diagnosed with chronic pain syndrome, as far as the record shows, even by Dr. Knoebel. So these comments carry no weight for purposes of reaching the instant determination.

80. The Referee finds Dr. Jensen's recommendation for further evaluation and treatment related to Claimant's industrial injury was reasonable when rendered, on November 14, 2013. Claimant did not receive that treatment, so she was not medically stable in December 2013, as Dr. Knoebel opined. She is entitled to additional reasonable medical treatment, as prescribed by Dr. Jensen. If Dr. Jensen continues to recommend a surgical consultation, Defendants are liable for the allowed costs associated with that evaluation. Similarly, given the passage of time, if Dr. Jensen seeks another evaluation of Claimant and/or recommends other reasonable medical treatment, Defendants are liable for those associated costs.

CONCLUSIONS OF LAW

1. Claimant has proven that she sustained a low back injury as a result of an industrial accident on August 13, 2013.

2. Claimant has proven entitlement to additional reasonable and necessary medical treatment for her industrial injury, as recommended by Dr. Jensen.

3. Defendants are not entitled to reimbursement for any past medical treatment related to Claimant's industrial injury.

RECOMMENDATION

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

DATED this _2nd___ day of June, 2015.

INDUSTRIAL COMMISSION

_/s/_____
LaDawn Marsters, Referee

ATTEST:

_/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __9th_____ day of ____June_____, 2015, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

J SCOTT ANDREW
SCOTT ANDREW LAW OFFICE
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NEIL D MCFEELEY
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PO BOX 1368
BOISE ID 83701-1368

_/s_____

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

FAY JAMISON, Claimant, v. TWIN FALLS TAXI TRANSPORTATION, LLC, Employer, and IDAHO STATE INSURANCE FUND, Surety, Defendants.	**IC 2013-023670** **ORDER** June 9, 2015

Pursuant to Idaho Code § 72-717, Referee LaDawn Marsters submitted the record in the above-entitled matter, together with her 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 proven that she sustained a low back injury as a result of an industrial accident on August 13, 2013.

2. Claimant has proven entitlement to additional reasonable and necessary medical treatment for her industrial injury, as recommended by Dr. Jensen.

3. Defendants are not entitled to reimbursement for any past medical treatment related to Claimant's industrial injury.

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

DATED this __9th____ 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 __9th____ day of ____June_____, 2015, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

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sjw __/s/_____