

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

SABRENA KIRCHNER,

Claimant,

v.

IDAHO FALLS SCHOOL DISTRICT 091,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,
Defendants.

IC 2006-501685

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

Filed April 2, 2015

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Industrial Commission assigned the above-entitled matter to Referee Douglas A. Donohue. He conducted a hearing in Idaho Falls on April 23, 2014. Dennis Petersen represented Claimant. Paul Augustine represented Defendants Employer and Surety. The parties presented oral and documentary evidence. The parties took post-hearing depositions and later submitted briefs. The case came under advisement on December 22, 2014. This matter is now ready for decision.

ISSUES

The following issues are to be decided at this time:

1. Whether the condition (her neck) for which Claimant seeks benefits was caused by the industrial accident;
2. Whether and to what extent Claimant is entitled to benefits for:
 - a) Temporary disability (TTD/TPD) (related to neck surgery if compensable), and
 - b) Medical care (for neck surgery).

All other issues are reserved.

CONTENTIONS OF THE PARTIES

Claimant contends she is entitled to neck surgery. Two failed shoulder surgeries and other treatment show she suffers from a cervical radiculopathy. Dr. Weight has offered a C6-7 decompression and fusion. Dr. Weight is her treating physician. The medical care he has recommended is reasonable. *Sprague* analysis applies. If such surgery is ordered by the Commission, Claimant is entitled to TTD benefits while in recovery.

Defendants contend Claimant suffered from a preexisting condition—cervical spondylosis. The compensable accident did not aggravate this condition. IME physicians, Dr. Knoebel in 2010 and Dr. Doerr in 2013, opined that Claimant’s preexisting condition, for which surgery has been recommended, was not caused or aggravated by the accident. Dr. Weight’s opinion to the contrary relied upon Claimant’s oral history rather than medical records. These medical records show such symptoms arose or worsened unrelated to the accident. Defendants have paid all medical care and TTDs due Claimant.

EVIDENCE CONSIDERED

The record in the instant case included the following:

1. Claimant’s oral testimony at hearing;
2. Joint exhibits A through U, admitted at hearing; and
3. Posthearing deposition transcripts of Mark Weight, M.D., and Timothy Doerr, M.D.

All objections posed during the depositions are overruled. The undersigned Commissioners have chosen not to adopt the Referee’s recommendation and hereby issue their own findings of fact, conclusions of law and order.

FINDINGS OF FACT

As the issues in this matter were bifurcated, no findings herein are intended to apply beyond the noticed issues.

1. Claimant drove a school bus for Employer. On January 17, 2006, she pushed and pulled on the knob which opens and closes the school bus door. She felt right shoulder pain.

2. Claimant first sought medical treatment on January 25, 2006. Community Care notes mention “repetitive motion” and “no acute injury.” A right shoulder X-ray was negative. The condition was diagnosed as a trapezius sprain with bicipital tendonitis and subacromial bursitis. In the course of subsequent medical treatment, the diagnosis identified a more serious shoulder injury. The claim was accepted.

3. On an October 11, 2006 visit to treating physician John Andary, M.D., Claimant denied neck pain. Upon examination he noted shoulder problems, but reported no objective basis which indicated cervical radiculopathy.

4. Significant medical treatments, including injections and multiple shoulder surgeries, were performed. Scar tissue formed and required removal. These treatments provided only moderate, temporary relief. Nevertheless, Claimant returned to work. She has worked intermittently with a push-button door opener since.

5. On September 11, 2008, treating physician Gregory West, M.D., noted, “Her neurologic exam is negative. However, she remains tender in the area which would be innervated by C4 and some C5.” He ordered an MRI.

6. On September 26, 2008, a C-spine MRI showed intervertebral disc narrowing, including degenerative bulges at C4-5, C5-6 and C6-7, none of which impacted the spinal canal or nerve roots. Upon review of the MRI, Dr. West opined her periscapular pain was probably not related to any disc disease; “the neck looks fine.”

7. In January 2009, Dr. West referred Claimant to Gary Walker, M.D., for a possible cervical epidural injection.

8. On March 16, 2009, Dr. Walker reviewed the September 2008 MRI and examined Claimant. Upon subjective signs, he recommended a C6-7 epidural steroid injection. This was performed on March 19. On April 6, Claimant reported a 50% improvement. Dr. Walker opined that the response to the injection suggested her symptoms originate in her neck rather than her shoulder. After second and third injections, Dr. Walker was more equivocal in his opinion. He ordered an EMG. A May 12 EMG showed no evidence of cervical radiculopathy or other cervical neurological abnormality.

9. On May 19, 2009, Dr. West noted Claimant's neck, base-of-neck, and periscapular pain was gone. She still had some shoulder pain.

10. On April 27, 2010, Dr. West opined Claimant to be medically stable. Of course, with subsequent surgeries, additional periods of recovery ensued.

11. On June 10, 2010, Dr. West noted symptoms consistent with cervical radiculopathy. He opined, "I think this is all part of the same work related complex of pain which we have seen from the beginning." He reiterated this causation opinion in a July 15, 2010 note.

12. On July 2, 2010, a C-spine MRI was reported as showing degenerative bulges only at C5-6 and C6-7, unchanged from the September 2008 MRI.

13. On August 8, 2010, Richard Knoebel, M.D., evaluated Claimant at Defendants' request. He opined that cervical-spine facet arthritis was not caused or aggravated by Claimant's industrial accident and shoulder injury. Dr. Walker's treatment was similarly nonindustrially related.

14. At a September 15, 2011 visit, Dr. West noted continuing periscapular pain despite a negative neurologic exam. Claimant reported that a chiropractic visit had helped her neck.

15. On April 9, 2012, Dr. West opined that “postural issues and positioning . . . contribute significantly to her parascapular symptoms.”

16. Additional treatment by Dr. Andary in October 2012 revealed findings inconsistent with cervical radiculopathy, but consistent with possible residual shoulder impingement.

17. On July 1, 2013, a C-spine MRI was reported as showing degeneration at C3 through C7. It showed a “small posterior disc osteophyte complex causing effacement of the ventral thecal sac” at C4-5; the radiologist deemed this finding as “unchanged” from the previous MRI. Other levels showed no change. An X-ray report that day was consistent.

18. Claimant was first seen by Mark A. Weight, M.D., on July 2, 2013. At the time of his initial evaluation Dr. Weight took from Claimant the following history of the onset and nature of Claimant’s cervical spine complaints:

Sabrenea is a 55-year-old female who presents with a complaint of pain extending from her neck down into the shoulder and interscapular region and then on down her arm into the medial aspect of her forearm to the small finger and ring finger. She notes that she has had these shoulder symptoms and similar symptoms with neck pain. Most bothersome for her is the pain extending from her neck into the shoulder region and scapular region. She notes that this began on January 17, 2006, when she was pulling on a handle to shut a door and felt a pop in her neck and shoulder region and since then she has had these symptoms.

Claimant’s Exhibit L, p. 264.

On exam Claimant was noted to have neck pain and paresthesia extending into the right upper extremity into the right ring and small finger, suggestive to Dr. Weight of a C7 nerve root problem. Claimant had a negative Hoffman’s test suggesting that she did not suffer from spinal

cord compromise. However, Claimant's Spurling test was positive on the right, suggesting impingement of the C7 nerve root. Dr. Weight had the opportunity to review the 2010 and 2013 MRIs. On his review of these studies, he believed that they demonstrated a possible C6-7 disc herniation that might be compressing the C7 nerve root. Dr. Weight diagnosed Claimant as suffering from cervical spondylosis, cervical degenerative disc disease and cervical radiculopathy. He discussed treatment recommendations for Claimant which included C6-7 surgery.

19. At the time of his post-hearing deposition, Dr. Weight testified that Claimant has clear evidence of pre-existing degenerative disease of the cervical spine. However, based on Claimant's verbal history to him of the manner in which her neck and right upper extremity symptoms developed following the subject accident, it was his opinion that the subject accident is responsible for permanently aggravating Claimant's underlying degenerative condition. It is notable that Dr. Weight's opinion on causation is premised on his acceptance of Claimant's history of how her neck and right upper extremity complaints developed. Dr. Weight acknowledged that in formulating his opinion, he did not have access to any of the medical records generated in connection with Claimant's treatment following the occurrence of the subject accident. However, as demonstrated by Dr. Weight's testimony on cross-examination, he implicitly acknowledged that these records are important to informing an opinion on the issue of causation. In this regard, Dr. Weight testified:

Q. Dr. Weight, my name is Paul Augustine. I represent the school district and the Idaho State Insurance Fund in this case. As I understand your opinion, based upon her history that she gave you, her verbal history, and the symptoms that she described to you, you believe that her current symptoms were -- are due to an aggravation of a preexisting condition, thus necessitating fusion surgery?

A. Yes.

Q. Okay. Did you review any of her prior medical records, meaning prior to your first appointment with her, which was on July 2, 2013?

A. No.

Q. Okay. The symptoms that you described, or that she described to you that you based your opinions on were neck pain; is that correct?

A. She described neck pain --

Q. And then paresthesia -- Ill just go through them. Paresthesia.

A. Yes.

Q. And then decreased range of motion, cervical range of motion?

A. Yes.

Q. A positive Spurling's test?

A. Yes.

Q. Was there any other that I missed?

A. I don't think so.

Q. Okay. Now, you say that this was an onset of symptoms after her 2006 accident. Is there a time frame, following an accident, within which you would expect these symptoms to appear in order to correlate it to an aggravation of a preexisting condition?

A. I'd expect them to be in a reasonable time frame.

Q. Is two months reasonable?

A. I think within a period of a week to a couple of months is reasonable.

Q. Is 11 months reasonable?

A. Not really.

...

Q. Would you expect Ms. -- I'll call her Sabrena -- would you expect Sabrena to have a positive Spurling's test within a few weeks or months of her industrial accident?

A. That would be reasonable.

Q. Okay. And if she had a negative Spurling's test, let's say 11 months after her accident, would that indicate to you that the industrial accident did not aggravate her preexisting condition.

A. More likely than not.

Mark Weight Depo. p. 21, l. 6 – p. 22, l. 23; p. 23, ll. 14 – 24.

When provided with an accurate recitation of the development of Claimant's neck and right upper extremity symptomatology, Dr. Weight candidly acknowledged that the history reflected in the medical records does not support the proposition that the subject accident is responsible for causing/contributing to Claimant's cervical spine problem. When faced with the same history considered by Dr. Doerr, Dr. Weight essentially agreed with the conclusions reached by Dr. Doerr concerning the etiology of Claimant's cervical spine complaints.

20. An August 8, 2013 exam by Dr. Andary included a discussion about possible neck surgery. On exam, a Spurling's test was "inconclusive" with rhomboid pain but no radicular pain. Shoulder arthroscopy was performed on that date. In the months afterward, Claimant reported more symptoms suggestive of cervical radiculopathy which were not confirmed upon examination and testing. On January 15, 2014, Dr. Andary deferred an opinion upon causation of a neck condition to Dr. Weight.

21. On October 29, 2013, Timothy Doerr, M.D., reviewed records and evaluated Claimant at Defendants' request. On exam he noted a negative Spurling's test. Based upon the examination, medical records noting C-spine symptoms, successive MRIs, and an EMG, he opined Claimant's neck condition was preexisting, degenerative, and unrelated to the industrial accident. Based upon the most recent MRI he opined surgery on her neck was not indicated. In deposition, Dr. Doerr opined he would expect such neck symptoms, if

industrially related, to have arisen one week to two months after the accident. He opined that Claimant's medical records show no neck symptoms between the January accident and December surgery.

DISCUSSION AND FURTHER FINDINGS OF FACT

22. 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). However, a claimant must prove not only that she was injured, but also that the injury was the result of an accident arising out of and in the course of employment. *Seamans v. Maaco Auto Painting*, 128 Idaho 747, 751, 918 P.2d 1192, 1196 (1996). Proof of a possible causal link is not sufficient to satisfy this burden. *Beardsley v. Idaho Forest Industries*, 127 Idaho 404, 406, 901 P.2d 511, 513 (1995). A claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability. *Langley v. State, Industrial Special Indemnity Fund*, 126 Idaho 781, 785, 890 P.2d 732, 736 (1995). Magic words are not necessary to show a doctor's opinion is held to a reasonable degree of medical probability; only their plain and unequivocal testimony conveying a conviction that events are causally related. *Jensen v. City of Pocatello*, 135 Idaho 406, 412-13, 18 P.3d 211, 217-18 (2001).

23. Claimant is reported in medical records dated between the accident and December 2006 as denying neck or radicular symptoms. Such symptoms are first noted in December 2006.

24. Dr. West opined for causal link between her neck symptoms and the accident based upon his recollection as a treator that the neck symptoms had been present since the accident. The medical records are inconsistent with this recollection. Dr. West's first written

mention of potential neck symptoms is dated September 2008, two and one-half years after the accident.

25. Dr. Weight relied upon Claimant's memory of the onset of symptoms. Her memory is inconsistent with the medical records.

26. Both Dr. Weight and Dr. Doerr agree that if aggravated or exacerbated by the industrial accident, symptoms for this preexisting degenerative condition should have arisen no more than two months after the accident. With an 11-month latency of onset, Dr. Doerr's opinion carries greater weight.

CONCLUSIONS OF LAW AND ORDER

1. Claimant failed to show her neck symptoms and possible need for C-spine surgery are related to the compensable industrial accident; this conclusion does not address any aspect of her shoulder injury;

2. Analysis of the reasonableness of neck surgery is moot; and

3. The issue of TTDs for future neck surgery is also moot.

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

DATED this 2nd day of April, 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 2nd day of April, 2015, a true and correct copy of FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER were served by regular United States Mail upon each of the following:

DENNIS R. PETERSEN
P.O. BOX 1645
IDAHO FALLS, ID 83403-1645

PAUL J. AUGUSTINE
P.O. BOX 1521
BOISE, ID 83701

/s/ _____