

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

WILLIAM A. POWELL,

Claimant,

v.

NORTHWEST CASCADE, INC.,

Employer,

and

EMPLOYERS INSURANCE OF WAUSAU,

Surety,

Defendants.

IC 2007-001470

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

Filed April 7, 2014

A prior decision was issued in this matter on January 18, 2013. In that decision the Commission concluded that Claimant carried his burden of proving he suffered low back and groin injuries as a result of his December 28, 2006 industrial accident, and that Claimant was still in a period of recovery as of March 2, 2007. The Commission further ordered that Defendants arrange for Claimant to undergo a diagnostic examination to determine the current status of his industrial injuries and his need for additional medical care.

The matter was assigned to the Commissioners, and Commissioners Limbaugh and Maynard conducted a hearing in Coeur d'Alene on June 25, 2013. Claimant appeared *pro se*. Defendants were represented by E. Scott Harmon. The parties presented oral and documentary evidence. Post hearing briefing was submitted by the parties and the case is now ready for decision.

ISSUES

The issues to be decided by the Commission are:

1. Whether Claimant has reached medical stability; and
2. Whether Claimant is entitled to medical care related to the accident.

Other issues are reserved.

CONTENTIONS OF THE PARTIES

It is undisputed that Claimant suffered back and groin injuries in a work-related motor vehicle accident on December 28, 2006. Claimant contends that he has not yet reached medical stability and that he is entitled to additional medical care. Defendants contend that they have paid all benefits to which Claimant is entitled. Defendants based their decision to discontinue benefits on the March 2, 2007 opinion of Dr. Spencer Greendyke, as well as the most recent opinions of Dr. Jeffrey Larson and Dr. J. Craig Stevens. All three doctors opined that Claimant was stable on March 2, 2007 or earlier.

EVIDENCE CONSIDERED

The record in the instant case includes the following:

1. The hearing testimony by Claimant on June 25, 2013;
2. Claimant's Exhibits A-K¹, admitted at the June 25, 2013 hearing;
3. Defendants' Exhibits L and M, admitted at the June 25, 2013 hearing;
4. The hearing testimony of Claimant, Claimant's wife, and David Overman from the prior hearing on June 22, 2012;
5. Claimant's Exhibits A-E, admitted at the June 22, 2012 hearing;
6. Defendants' Exhibits A-K, admitted at the June 22, 2012 hearing; and

¹ As discussed at hearing, any handwritten notes, that are not medical records, on the exhibits will not be considered to be part of the exhibit.

7. The Industrial Commission legal file pertaining to this claim.

Although Claimant requested the exhibits he admitted at the 2012 hearing be withdrawn in place of the 2013 exhibits, the Commission cannot remove exhibits upon which a prior decision was based. Claimant's 2012 exhibits will remain in the file and his 2013 exhibits will be added to the record. Because of the duplication in the identification of Claimant's exhibits from the two hearings, Claimant's exhibits from the 2013 hearing will be referred to as C. 2013 Exhibits A-K.

After having considered the above evidence and the arguments of the parties, the Commissioners issue the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Claimant was born on November 28, 1963 and was 50 years old at the time of the June 25, 2013 hearing. He suffered work-related back injuries around 1992 and 2003 and has a history of chronic back pain. However, his back was asymptomatic for two years prior to the industrial accident at issue in this case.

2. Claimant worked as a route driver for Employer, a sanitation company. On December 28, 2006, he was traveling approximately 20 miles per hour on an icy road when he lost control of his truck and struck a tree. Claimant was wearing his seatbelt but was transported to Kootenai Medical Center as a precautionary measure.

3. At the emergency room, Claimant was examined by Anthony L. Russo, M.D. Claimant complained of low back pain, right hip pain, and dizziness. Films of Claimant's lumbar spine and right hip were taken but were negative for fracture. Dr. Russo diagnosed Claimant with an acute lumbosacral strain. Claimant was prescribed medication and placed on modified duty.

4. Claimant presented to Kootenai Medical Center's Occupational Medicine Clinic

on January 4, 2007, where he was seen by Michael A. Ludwig, M.D. Claimant complained of “throbbing, sharp, stabbing pain” in his low back. D.Exhibit G, p. 39. Dr. Ludwig diagnosed acute low back strain, with no evidence of radicular pattern or neurologic compromise. He prescribed prednisone and Lortab and imposed temporary work restrictions, including no bending and no lifting over 25 pounds. Shortly after these restrictions were imposed, Claimant was terminated by Employer.

5. Claimant returned to Dr. Ludwig on January 11, 2007. Claimant reported that he continued to experience back pain, which became worse with any kind of motion. He described the pain as similar to the back pain he had experienced in the past, but “significantly more severe.” D.Exhibit G, p. 42. Dr. Ludwig continued Claimant on modified duty and recommended physical therapy.

6. On January 16, 2007, Claimant presented to Katharine Holmes, P.T., for physical therapy. Claimant reported sharp stabbing pain in his low back and groin. Ms. Holmes noted under her objective findings that Claimant was “very tender” at his left SI joint and along the right anterior groin. D.Exhibit I, p. 184.

7. On January 19, 2007, Claimant underwent an MRI of his lumbar spine. Slight degenerative changes were observed at various levels, as well as a slight posterior disc bulge at L5-S1.

8. At his physical therapy sessions on January 23 and January 26, 2007, Claimant reported to Ms. Holmes that he continued to suffer from muscle spasms, and Ms. Holmes noted that Claimant’s spasms increased when he attempted certain exercises. On January 30, 2007, when Claimant’s exercises again provoked muscle spasms, Ms. Holmes became concerned that Claimant suffered from lumbar instability.

9. Claimant underwent a bone scan on February 16, 2007, by Keith C. Hewel, M.D. Dr. Hewel found a “small focus of increased uptake in the region of the right L4-L5 facet.” D.Exhibit E, p. 26. Otherwise, Claimant’s lumbosacral spine was normal.

10. On February 21, 2007, Dr. Ludwig examined Claimant and reviewed the bone scan. Claimant continued to have localized pain at around the L4-L5 level, as well as right groin pain. A hernia exam was negative. Dr. Ludwig recorded his assessment as follows:

1. History of low back problems with no focal disc herniations or nerve root impingement.
2. Right L4-5 facet uptake on bone scan, which correlates with his area of the axial back pain.
3. Right groin/hip pain. No evidence of hernia. It is possible this could be some referred pain from the distribution [of] the L4-5 facet. I have recommended a diagnostic and hopefully therapeutic right L4-5 facet injection.

I would like to see him back following his IME to discuss further treatment. In the meantime, he will restart physical therapy. I have also given him an unlimited supply of Trazodone for sleep assistance. He will discontinue it if he notices any adverse side effects or seek medical attention.

D.Exhibit G, p. 47.

11. On March 1, 2007, Claimant resumed his physical therapy with Ms. Holmes. She noted that Claimant was “very tender” at L4-5 and L5-S1. D.Exhibit I, p. 191. She sent copies of her records to Spencer Greendyke, M.D., who would be performing an independent medical examination (IME) of Claimant the following day. In her progress report, Ms. Holmes stated that Claimant’s severe muscle spasms and back pain were limiting all of his activities and that his physical therapy was not yet complete.

Dr. Greendyke's IME – March 2, 2007

12. On March 2, 2007, at Defendants' request, Claimant underwent an IME with Dr. Greendyke, who recorded that Claimant's current complaints were "low back pain, mid-portion, at L5-S1 area without radicular symptoms" and "low-grade right-sided anterior groin pain, intermittent." D.Exhibit K, p. 217. He reviewed Claimant's medical records, noting that Claimant's MRI demonstrated "multi-leveled dessication of the lumbar disc consistent with age" with "no significant disc bulging or herniated nucleus pulposus." *Id.* at 218. Dr. Greendyke diagnosed Claimant with a mechanical strain of the lumbar spine and a right groin strain, both of which, he opined, were "directly and causally related" to Claimant's motor vehicle accident. *Id.* However, despite Claimant's complaints of ongoing pain, and despite Dr. Ludwig and Ms. Holmes's recommendations for further treatment, Dr. Greendyke opined that "no further formal intervention" was required for Claimant's injuries. *Id.* He stated that:

[Claimant] sustained an exacerbation of his preexisting mechanical back problem during this incident and that this should have been healed as much as it is going to heal within 6 to 8 weeks after the injury. He was appropriately treated conservatively with anti-inflammatory medications, pain medication, muscle relaxants and [physical] therapy....In the opinion of this examiner, [Claimant's] 12/28/06 work incident was a major contributing cause [of] his need for treatment between 12/28/06 and 3/2/07. At this point, however, I think he is at MMI and does not require any further intervention.

D.Exhibit K, p. 218.

13. Under the criteria in the AMA *Guides to the Evaluation of Permanent Impairment*, 5th Edition, Dr. Greendyke found that Claimant's back condition corresponded to lumbar category 1, yielding 0% permanent impairment. Dr. Greendyke noted:

This category recognizes no significant clinical findings, no observed muscle guarding or spasm, no documentable neurologic impairment, no documented alteration in structural integrity and no

other indication of impairment related to injury or illness, no fractures. This particular category seems to fit Mr. Powell's condition the best and I believe it is the most appropriate for him.

D.Exhibit K, p. 219. Curiously, however, Dr. Greendyke imposed permanent restrictions of no lifting greater than 10 pounds, no bending, stooping, or leaning, and no climbing ladders. It is not clear from Dr. Greendyke's report whether he related Claimant's restrictions to the industrial injury or to a preexisting degenerative back condition.

14. After receiving Dr. Greendyke's report, Surety discontinued Claimant's workers' compensation benefits in March 2007. Since that time, Claimant has experienced back pain, which Claimant believes is related to his industrial accident. At the June 25, 2013 hearing, Claimant testified that he suffers from pain and that certain activities increase the pain level and inflame his lower back on the left lumbar region. Claimant reports that his mobility is limited, at times he walks with a cane, and he is no longer able to work.

Dr. Larson's IME – February 6, 2013

15. Following the Commission's January 18, 2013 decision, Defendants scheduled an independent medical examination for Claimant with Dr. Larson. On February 6, 2013, Dr. Larson examined Claimant and diagnosed chronic low back pain which was temporarily aggravated by the industrial injury (lumbar strain) of December 28, 2006. An MRI, also done on February 6, 2013, showed no significant disc bulges or herniations, no neural compression, and the facet joints and the SI joints appeared normal. D.Exhibit L.

16. Dr. Larson opined that based on a reasonable degree of medical certainty Claimant was at MMI as of March 2, 2007, at the time of his IME by Dr. Greendyke. Dr. Larson explained that Claimant has had additional MRIs of the lumbar spine since then, including on the day of Dr. Larson's examination, each showing no sign of injury or any neural compression to

explain his subjective complaints. Dr. Larson stated that there is no permanent partial impairment for a lumbar sprain/strain injury, as did Dr. Greendyke. Yet, inconsistent with Dr. Greendyke's opinion, Dr. Larson gave Claimant no physical restrictions due to his low back injury. No further treatment was recommended. Specifically, Dr. Larson noted that Dr. Ludwig had previously suggested an epidural steroid injection but found that such treatment is no longer a recommendation based on a current evaluation.

Dr. Stevens' IME – April 3, 2013

17. Defendants also referred Claimant to Dr. J. Craig Stevens, M.D. He performed an independent medical examination of Claimant on April 3, 2013. Dr. Stevens gave a detailed summary of the medical records he reviewed, but there is no mention of Claimant's physical therapy appointment on March 1, 2007 just one day before the IME with Dr. Greendyke.

18. During the examination, Claimant reported pain at level 6 on a scale of 1 to 10 in his left SI area. He also informed Dr. Stevens that at times he has pain extending into the left leg and numbness of the plantar aspect of the left foot. Dr. Stevens noted that Claimant's current medications consist of oxycodone twice a day.

19. On physical examination, Claimant exhibited brisk and symmetrical knee and ankle reflexes, and no atrophy of the left leg relative to the right. In a standing position Claimant allowed lumbar flexion to only 45°, telling Dr. Stevens that his pain increased too much beyond that point. Claimant allowed lumbar lateral flexion to 15° right and 20° left, describing pain with both maneuvers. Claimant described tenderness to palpation in the left SI area, but exhibited no palpable spasm.

20. Dr. Stevens stated that Claimant's features on MRI imaging and x-rays show mild age appropriate lumbar degenerative disk change with subtle disk bulges and disk desiccation.

Mr. Powel (sic) exhibits features on MRI imaging and x-rays of mild age-appropriate lumbar degenerative disk change with subtle disk bulges and disk desiccation. He exhibits minor osteoarthritic change. These are essentially age-appropriate normal features on imaging. His treatment from the date of injury in 2006 to the present has been determined entirely by his subjective presentation pertinent to his lumbar complaints. Physical findings consist either of statements of tenderness to palpation by the claimant or statements of pain with various provocative maneuvers. Certainly he may have sustained a lumbar strain within the timeframe of the injury, but that would have resolved as of 6 weeks following the injury. No permanent change of his lumbar degenerative condition occurred as a result of the injury; rather he sustained a superimposed lumbar strain, which has now resolved to pre-injury status by objective determination.

At this time there is no persisting condition of his lumbar spine or right hip area brought about as a result of the described industrial event of December 28, 2006. I further note that he has undergone more recent bone scan imaging, which reveals no persisting SI derangement. He does exhibit subtle arthritic changes of the hips, but again this is related more to his weight stressing the hips rather than the specific auto accident of December 28, 2006. I render all these determinations on a more probable than not basis.

D.Exhibit M.

Dr. Stevens opined that Claimant suffered no permanent impairment and incurred no permanent restrictions due to the December 28, 2006 accident.

DISCUSSION AND FURTHER FINDINGS

21. The provisions of the Idaho workers' compensation law are to be liberally construed in favor the employee. *Haldiman v. American Fine Foods*, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990). The humane purposes which the law 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).

22. One of the principal requirements of the workers' compensation law is that the "injured employee must be rehabilitated by reasonable and proper treatment and as far as possible [restored to] his health." *Burch v. Potlatch Forests*, 82 Idaho 323, 327, 353 P.2d 1076, 1078 (1960). The injured employee is "entitled to such medical, surgical, or other treatment as

may be reasonably required to relieve him from the effects of his injury and arrest and stay further damage which would naturally flow from the injury.” *Id.* Thus, the employer/surety shall provide such reasonable medical treatment as may be reasonably required by the employee’s physician. Idaho Code § 72-432(1).

23. Medical stability, or maximum medical improvement (MMI), “essentially means that a worker has achieved the fullest reasonably expected recovery with respect to a work-related injury.” *Perkins v. Jayco*, 905 N.E.2d 1085, 1088-1089 (Ind. App. 2009). A claimant attains MMI on the “date after which further recovery from, or lasting improvement to, an injury can no longer reasonably be anticipated, based upon reasonable medical probability.” *Lemmer v. Urban Electrical, Inc.*, 947 So.2d 1196, 1198 (Fla. App. 2007).

24. The previously established law of the case is that Claimant was still in a period of recovery as of March 2, 2007. The January 18, 2013 decision of the Commission is final and conclusive as to the fact that Claimant was not medically stable on that date. No motion for reconsideration was filed and there is no allegation that the decision was procured fraudulently. See Idaho Code § 72-718. Nor can the January 18, 2013 decision be revisited under Idaho Code § 72-719 since more than five years have passed since the date of injury. The Commission is bound by the conclusion that Claimant was not medically stable as of March 2, 2007. The discussion in this case must begin with that foundation. Yet, with that foundation it is challenging to assess the evidence presented at the June 25, 2013 hearing. The two new medical opinions conclude that Claimant was stable on either March 2, 2007, or approximately February 8, 2007.

25. Drs. Larson and Stevens opined that Claimant is stable and that he is in no need of medical treatment related to his December 2006 industrial accident. At these recent

appointments Claimant underwent an MRI to assist in determining the condition of his back. The February 2013 MRI showed no significant disc bulges or herniations, no neural compression, and the facet joints and the SI joints appeared normal.

26. Dr. Larson examined Claimant and diagnosed chronic low back pain which was temporarily aggravated by the industrial injury of December 28, 2006. Dr. Larson opined that based on a reasonable degree of medical certainty Claimant was at MMI with regards to his industrial injury as of March 2, 2007, at the time of his IME by Dr. Greendyke. Dr. Larson explained that Claimant has had additional MRIs of the lumbar spine since then, including on the day of Dr. Larson's examination, each showing no sign of injury or any neural compression to explain his subjective complaints.

27. Dr. Stevens found that Claimant exhibits minor osteoarthritic changes that are essentially age-appropriate as viewed on imaging. He further opined that the injury caused no permanent change of his lumbar degenerative condition. Rather, Claimant sustained a superimposed lumbar strain, which has resolved to pre-injury status as determined by objective determination. Dr. Stevens reported no spasms upon palpitation which is contrasted with the spasm reported in the January 2007 evaluations of Claimant.

28. Claimant testified as to his on-going pain and the doctors have reported his subjective complaints, but no objective evidence supports a finding that Claimant remains in a period of recovery. Medical records from Claimant's treatment at the Veterans Affairs Medical Center from the 2007 through 2013 show periods of time where Claimant received no treatment, periods of time which Claimant was successfully involved in pain management classes and physical therapy, and a time when he was back working and reported feeling better. The medical records repeatedly note that Claimant has suffered from chronic back pain for 20 years, and none

of those records relate Claimant's fluctuating back pain with his 2006 industrial accident.

29. The medical history taken by Dr. Stevens states that Claimant's onset of back pain began while he was in the military from age 18 to 25. Claimant has recently been awarded 20% service-connected disability due to his a chronic strain of the lumbar spine, as well as dorsal and lumbar pain. C. 2013 Exhibit A5. This history supports the conclusion by Dr. Larson that Claimant suffers from chronic low back pain which was temporarily aggravated by the industrial injury of December 28, 2006.

30. The reports from Drs. Larson and Stevens both detail a variety of pain complaints. While Claimant is still reporting subjective pain complaints, all the current medical evidence supports a finding that Claimant is stable as regards his December 28, 2006 industrial accident.

31. Claimant argues that Drs. Larson and Stevens reached incorrect conclusions because they were not provided with complete medical records of Claimant's treatment. Dr. Stevens' report discusses the documents he was provided, while Dr. Larson's report does not provide such a discussion. Additionally, as pointed out above, Dr. Stevens report does not make mention of Claimant's physical therapy appointment on March 1, 2007. Claimant is correct in stating that it would be best to know that Drs. Larson and Stevens had all the pertinent records when making their assessment, but such a fault is not fatal to their opinions. The reports from Drs. Larson and Stevens are the only current medical records focused on Claimant's industrial injury. Without conflicting opinions, the Commission finds the opinions of Drs. Larson and Stevens persuasive. The evidence supports a conclusion that Claimant is stable from his 2006 industrial accident.

32. The evidence supports a finding that Claimant was stable as of the date of his evaluations with Drs. Larson and Stevens. While it can be suspected that Claimant may have

been at maximum medical improvement prior to the evaluation in 2013, there is no substantial medical evidence to support a conclusion of a prior stability date, other than March 2, 2007 or earlier. Of course, as discussed above, because of the Commission's prior decision in this case the above mentioned stability dates proffered by Drs. Stevens and Larson are not acceptable.

33. It would be preferable to have an acceptable date for stability given by a medical professional but it is not without support to find the date of a claimant's examination as a suitable stability date. In *Hernandez v. Phillips*, 141 Idaho 779, 118 P.3d 111 (2005), the Idaho Supreme Court affirmed a Commission decision finding the date of a doctor's examination, March 9, 1999, as the date claimant reached stability, even though that doctor opined an earlier stability date. "No expert or physician wrote or testified or otherwise opined that March 9, 1999 was the date on which Hernandez reached MMI. While the referee did not explain why she chose March 9, it appears that it was taken from the report of Dr. Jones, who examined Hernandez on March 9, 1999. Dr. Jones wrote in his report that Hernandez reached MMI on July 7, 1998, but Dr. Jones also noted in his report that Hernandez was capable of returning to work 'Immediately.'" Although the doctor opined an earlier date, the Court found the date of the examination as an appropriate date of stability.

34. The Commission finds that a similar solution is applicable in the present case. Dr. Larson opined that Claimant was stable on March 2, 2007, and Dr. Stevens opined that Claimant should have been stable 6 weeks after the injury, approximately February 8, 2007, but for the reasons discussed above the Commission finds that those dates are not acceptable. Without any interim dates set forth by a medical provider, the Commission finds the date of Dr. Larson's examination as the date of stability. Dr. Larson was the first of the two most recent IME doctors to examine Claimant and report specifically about his industrial injury. Further the MRI, which

both doctors reviewed utilized in their opinions was also taken on February 6, 2013. Thus, the Commission finds that date of Claimant's evaluation with Dr. Larson, February 6, 2013, as the date which Claimant reached his fullest reasonably expected recovery with respect to his work related injury.

35. We do not reach the issue of Claimant's entitlement to temporary total disability since it was not a noticed issue.

CONCLUSIONS OF LAW AND ORDER

1. Claimant was stable from his December 28, 2006 industrial accident on February 6, 2013.
2. Claimant has not proven his entitlement for additional medical benefits.
3. Other issues are reserved.

IT IS SO ORDERED.

DATED this 7th day of April, 2014.

INDUSTRIAL COMMISSION

/s/
Thomas P. Baskin, Chairman

/s/
R.D. Maynard, Commissioner

PARTICIPATED BUT DID NOT SIGN

Thomas E. Limbaugh, Commissioner

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

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

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