BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

IVAN RAY RAGSDALE, Claimant, v. RODNEY WINMILL dba WINMILL CONSTRUCTION, Employer, and IDAHO STATE INSURANCE FUND, Surety, Defendants.	**IC 2011-029548** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** **Filed January 29, 2014**

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 Twin Falls on August 28, 2013. Kent D. Jensen represented Claimant. M. Jay Meyers represented Defendants Employer and Surety. The parties presented oral and documentary evidence and later submitted briefs. The case came under advisement on December 5, 2013. This matter is now ready for decision.

ISSUES

The issues to be decided according to the Notice of Hearing and as agreed to by the parties at hearing are:

1. Whether Claimant has complied with the notice and limitations requirements set forth in Idaho Code § 72-701 through Idaho Code § 72-706, and whether these limitations are tolled pursuant to Idaho Code § 72-604;
2. Whether the Claimant suffered an injury caused by an accident arising out of and in the course of employment;
3. Whether the condition for which Claimant seeks benefits was caused by the alleged industrial accident;
4. Whether and to what extent Claimant is entitled to benefits for:
    a) Temporary disability (TTD/TPD),
    b) Permanent partial impairment (PPI), and
    c) Medical care.

CONTENTIONS OF THE PARTIES

Claimant contends that he injured his left knee in October 2011. He bumped it while Employer was towing a portable welder. He worked with pain for a few weeks, hoping it would go away. On December 4, 2011, he first sought medical attention. He suffered a patellar injury which required surgical removal of a patellar bone chip. He is entitled to medical care and temporary disability benefits through March 22, 2012 when Gilbert Crane, M.D., declared him medically stable. Upon Dr. Crane's opinion, Claimant suffered a 6% PPI. Although Employer fired him, Claimant has obtained other employment at a better wage.

Defendants contend that Claimant did not suffer an accident and injury as defined by Idaho Workers' Compensation Law. His failure to seek prompt treatment and certain statements of Claimant and other circumstances call into question his belated attempt to pin a preexisting knee condition upon the claimed event. Employer did see Claimant hobble around immediately after the claimed event, but Claimant did not limp the next day, made no claim of continuing pain or difficulty, and worked without apparent problem for about two months. Depending upon the date of the claimed event Claimant may not have given timely notice of accident and injury. Claimant's knee shows an anatomical variant or historical trauma—a bipartite patella. The smooth edges of the pieces show no recent fracture or other injury. Claimant failed to tell his doctors about other incidents which could have caused the pain he claimed. Claimant's injury was not caused by the bump against the welder. Credibility is an issue.

EVIDENCE CONSIDERED

The record in the instant case included the following:

1. Oral testimony at hearing of Claimant, his wife Sandra Ragsdale, Employer Rodney Winmill, his son Joshua Brock Winmill, and Joshua's wife Esther Kay Winmill;
2. Claimant's exhibits A through C admitted at hearing; and
3. Defendants' exhibits 1 through 11, admitted at hearing.

Having analyzed all evidence of record, the Referee submits the following findings of fact and conclusions of law for the approval of the Commission and recommends it approve and adopt the same.

FINDINGS OF FACT

1. Claimant worked for Employer beginning in September 2011.

2. In October 2011, Claimant bumped his knee against a portable welder which was being towed around a job site. Employer was driving the skid steer which was towing the welder. Employer saw Claimant hop off the welder and limp and hobble around briefly.

3. On December 4, 2011, Claimant notified Employer that he had injured his left knee in the October accident. Although Employer and Claimant dispute the date on which this accident occurred, both dates are less than 60 days before the date of notice.

Medical Care

4. Claimant and his wife testified that he had continual swelling and pain in his knee, to varying degrees from day to day, from the accident to the date he first sought medical care. Employer testified that after the day of the initial event, Claimant neither complained nor showed any lingering effect of having bumped his knee for the rest of October and the entire month of November. Employer's witnesses testified that after Claimant made his claim, he showed an exaggerated limp when he knew he was being observed, but no limp when he was unaware of being observed.

5. On December 4, 2011, Claimant first sought medical treatment. He visited Minidoka Memorial ER in Rupert. By history, the physicians recorded that Claimant alternately denied any injury, and also said he fell six weeks to two months ago, causing knee pain which resolved after one day. He reported the pain arose 6 days earlier and swelling started "yesterday." The examining physician saw no obvious swelling. X-ray showed a tripartite

patella, considered a normal variant, but could not rule out an old injury. Upon review of a CT scan Dr. Crane could not rule out a fracture which may have split a piece of bipartite patella into a tripartite patella. However, smooth edges suggested no recent trauma.

6. Dr. Crane oversaw follow-up visits. On Claimant's first follow-up visit, December 6, 2011, he specifically described the bump against the welder. Claimant also reported climbing in and out of holes and jumping down off a wall over the last week as initiating an exacerbation of the knee symptoms.

7. On more than one visit, Dr. Crane records having questioned Claimant closely about the history of arising symptoms. After conservative measures were unsuccessful, Dr. Crane recommended surgery.

8. On December 31, 2011, radiologist Steven Larsen, M.D., reviewed diagnostic imaging and based upon that and additional information provided by Defendants' counsel, opined that the radiological findings did not represent an injury sustained in October 2011. If of traumatic origin, the trauma could not have occurred more recently than several months, more likely a year prior. On January 11, 2013, radiologist Matthew Williamson, D.O., reviewed the same data as Dr. Larsen and reported the same opinion.

9. On February 13, 2012, Dr. Crane arthroscopically removed a loose fragment of patella.

10. On July 27, 2012, Claimant injured his left foot at work when a piece of metal fell on it. Examined and treated, he was released to full duty the same day.

11. On July 31, 2012, Dr. Crane opined Claimant's left knee was medically stable. Without making a specific restriction, Dr. Crane warned Claimant that kneeling would be problematic.

12. On February 5, 2013, Dr. Crane disagreed with the opinion of radiologist

Matthew Williamson, D.O. Dr. Crane opined clinical evaluation was required beyond mere interpretation of diagnostic imaging in order to correctly assess causation in this instance.

13. On May 7, 2013, Dr. Crane rated Claimant's PPI at 6% of the lower extremity, attributable to the work accident, without apportionment to his preexisting bipartite patellar condition.

Prior Medical Care

14. On May 7, 2004, Claimant visited St. John's ER in Longview, Washington. He had been punched in the face and suffered a laceration, but needed no stitches.

15. On July 18, 2005, Claimant visited St. John's ER for abdominal pain. After a diagnostic workup, no treatment was deemed necessary.

16. On October 3, 2005, claimant visited St. John's ER for suicidal ideation without untoward action.

17. On November 5, 2008, Claimant visited St. John's ER for an exacerbation of chronic back pain. After examination, X-rays, and lab data were taken, the ER doctor sent him home for outpatient follow-up.

18. On February 11, 2009, Claimant visited St. John's ER for a headache. The ER physician administered mild analgesics and sent him home.

19. On April 28, 2011, Claimant visited Cassia Regional ER in Burley after a car accident. X-rays suggested a fractured tailbone, but later ones did not confirm it. Claimant made no knee or leg complaints.

20. On September 30, 2011, Claimant visited Minidoka Memorial ER. He reported left foot pain. His description of the causal event was vague. He mentioned jumping in and out of ditches at work. The ER doctor diagnosed a sprain. There was no mention of knee involvement.

DISCUSSION AND FURTHER FINDINGS OF FACT

21. 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).

Accident and Causation

22. An accident is "an unexpected, undesigned, and unlooked for mishap, or untoward event, connected with the industry in which it occurs, and which can be reasonably located as to time when and place where it occurred, causing an injury." Idaho Code § 72-102(18)(b).

23. The event which Claimant described and of which Employer witnessed the immediate result constitutes an accident if it was accompanied by an injury.

24. A 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 evidence of medical opinion—by way of physician's testimony or written medical record—supporting the claim for compensation to a reasonable degree of medical probability. 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). 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 558, 560-61, 511 P.2d 1334, 1336-37 (1973).

25. Here, Claimant delayed seeking medical treatment. The record shows Claimant

is accustomed to seeking emergency medical treatment for relatively minor complaints or conditions in the past. Nevertheless, his explanation for the delay is not inherently improbable.

26. Claimant was observed in Wal-Mart moving well without a limp in December 2011.

27. Claimant's first description to ER physicians and later to Dr. Crane of the onset of his condition is ambiguously consistent with his more specific description of the accident which he later gave Dr. Crane. On subsequent visits, Dr. Crane questioned Claimant pointedly in an attempt to correlate the symptoms to a cause.

28. Dr. Crane was in the best position to opine about causation. He examined and treated Claimant. Drs. Larsen and Williamson did not. Dr. Crane opined that the accident caused some destabilization to the patella, whether or not there was an actual fracture. The preponderance of the evidence supports that the accident caused injury for which Claimant received arthroscopic surgery.

Notice

29. Notice of an accident shall be given "as soon as practicable but not later than sixty (60) days after the happening." Idaho Code § 72-701.

30. Regardless of which party's accident date is accepted, Claimant gave timely notice.

Medical Care

31. An employer is required to provide reasonable medical care for a reasonable time as recommended by an injured worker's treating physician. Idaho Code § 72-432(1).

32. The medical record establishes that Claimant was injured and received medical care from December 4, 2011 through July 31, 2012. He is entitled to all related medical care benefits.

Temporary Disability

33. Eligibility for and computation of temporary disability benefits are provided by statute. Idaho Code §72-408, *et. seq*. Upon medical stability, eligibility for temporary disability benefits does not continue. *Jarvis v. Rexburg Nursing*, 136 Idaho 579, 38 P.3d 617 (2001). An injured worker who is unable to work while in a period of recovery is entitled to temporary disability benefits under the statutes until he has been medically released for work and Employer offers reasonable work within the terms of the medical release. *Malueg v. Pierson Enterprises*, 111 Idaho 789, 727 P.2d 1217, (1986).

34. Here, Claimant was in a period of recovery until July 31, 2012. He is entitled to temporary disability benefits for hours of missed work from December 4, 2011 through July 31, 2012. Employer is entitled to credit for wages paid relating to that period.

Permanent Partial Impairment

35. Permanent impairment is defined and evaluated by statute. Idaho Code §§ 72-422 and 72-424. When determining impairment, the opinions of physicians are advisory only. The Commission is the ultimate evaluator of impairment. *Urry v. Walker & Fox Masonry*, 115 Idaho 750, 769 P.2d 1122 (1989); *Thom v. Callahan*, 97 Idaho 151, 540 P.2d 1330 (1975).

36. The express medical opinion of record is that Claimant suffered PPI rated at 6% of the left lower extremity. This claim having been found compensable, there is no dispute about the extent of the PPI rating. Claimant has obtained employment at a wage greater than his time-of-injury wage.

CONCLUSIONS

1. Claimant suffered an accident causing a left knee injury in October 2011;

2. Claimant is entitled to medical care and temporary disability benefits for the period December 4, 2011 through July 31, 2012; and

3. Claimant is entitled to PPI rated at 6% of the lower extremity as a result of this accident.

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 __22nd_____ day of January, 2014.

INDUSTRIAL COMMISSION

_/s/_____
Douglas A. Donohue, Referee

ATTEST:

_/s/_____
Assistant Commission Secretary dkb

CERTIFICATE OF SERVICE

I hereby certify that on the ____29th_____ day of __January_____, 2014, a true and correct copy of **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** were served by regular United States Mail upon each of the following:

KENT D. JENSEN
P.O. BOX 276
BURLEY, ID 83318

M. JAY MEYERS
P.O. BOX 4747
POCATELLO, ID 83205

dkb

_/s/_____

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

IVAN RAY RAGSDALE, Claimant, v. RODNEY WINMILL dba WINMILL CONSTRUCTION, Employer, and IDAHO STATE INSURANCE FUND, Surety, Defendants.	**IC 2011-029548** **ORDER** **Filed January 29, 2014**

Pursuant to Idaho Code § 72-717, Referee Douglas A. Donohue submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusions of law to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant suffered an accident causing a left knee injury in October 2011.

2. Claimant is entitled to medical care and temporary disability benefits for the period December 4, 2011 through July 31, 2012.

3. Claimant is entitled to PPI rated at 6% of the lower extremity as a result of this accident.

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

DATED this _29th_____ day of _January_____, 2014.

INDUSTRIAL COMMISSION

_/s/_____
Thomas P. Baskin, Chairman

_/s/_____
R. D. Maynard, Commissioner

_/s/_____
Thomas E. Limbaugh, Commissioner

ATTEST:

_/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the _29th_____ day of ___January_____, 2014, a true and correct copy of **ORDER** were served by regular United States Mail upon each of the following:

KENT D. JENSEN
P.O. BOX 276
BURLEY, ID 83318

M. JAY MEYERS
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dkb

_/s/_____