BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

GREGORY WEGNER,

Claimant,

v.

COEUR D'ALENE POWER TOOLS,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,

Defendants.

IC 2012-031071

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION

Filed May 19, 2015

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Brian Harper, who conducted a hearing in Coeur d'Alene, Idaho, on July 18, 2014, and October 10, 2014. Claimant was represented by Starr Kelso, of Coeur d'Alene. H. James Magnuson, also of Coeur d'Alene, represented Employer and Surety. Oral and documentary evidence was admitted. Post-hearing depositions were taken and the parties submitted post-hearing briefs. The matter came under advisement on April 14, 2015.

ISSUES

By agreement of the parties, the issue to be decided is which, if any, of Claimant's ongoing complaints involving his:

a. cervical spine;

b. lumbar spine and hip;

c. headaches;

d. dizziness;

e. vision changes;

are causally connected to his December 7, 2012 industrial accident.

Claimant's issues other than causation of these complaints are reserved.

CONTENTIONS OF THE PARTIES

Claimant asserts that when he fell down a flight of stairs on December 7, 2012, while working for Employer, he injured his right shoulder, neck, low back and right hip, and head. The most immediately obvious and painful injury was to his shoulder, which suffered a dislocation and fracture. The severity of that claim masked and distracted from his other injuries.

Claimant was treated for his shoulder injury at the emergency room on the day of the accident. Subsequently he was referred to Spencer Greendyke, M.D., who only treated Claimant's shoulder injury, in spite of repeated complaints of other symptoms.

Claimant has a cervical disc herniation, low back and hip complaints, recurring headaches, vision changes, and dizziness from his industrial accident of December 7, 2012.

Defendants argue Claimant injured his right shoulder when he fell down stairs while at work. Claimant's other complaints did not surface until well after the accident, and are not related to that accident.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. Claimant's testimony, taken at hearing;

2. The hearing testimony of witnesses Ryan Potts, Randy Johnson, Lillian Jones, Ashley Batchelder, Deborah Jo Wegner, Karen Taylor, and Damaris Amanda Anderson;

3. Claimant's Exhibits (CE) A through J and L through X, admitted at hearing[1];

4. Defendants' Exhibits (DE) 1through 23, admitted at hearing[2];

5. The post-hearing deposition transcript of Bret Dirks, M.D., taken on October 23, 2014;

6. The post-hearing deposition transcript of Spencer Greendyke, M.D., taken on October 27, 2014;

7. The post-hearing deposition transcript of Anthony Russo, M.D., taken on October 28, 2014; and

8. The post-hearing deposition transcript of Joshua Moss, M.D., taken on January 6, 2015.

All pending objections preserved during post-hearing depositions are overruled.

Having considered the evidence and briefs of the parties, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

FINDINGS OF FACT

1. On December 7, 2012, Claimant fell head first down a flight of stairs while at work. As he was falling, he put out his right arm to break his fall. He tried to twist to

---

[1]Defendants objected to Claimant's proposed exhibit K, which consists of written statements of the Claimant, his wife, and a family friend, all of whom testified live at hearing. Defendants' objection was sustained, and exhibit K was not admitted.

[2] Claimant objected to page 225 of Defendants' exhibit 6, and pages 508 and 510 of Defendants' exhibit 13. The objection was taken under consideration. Having reviewed the documents in question in light of the briefing and testimony in this matter, the objection is overruled.

his right to avoid landing on his face. After the fall, Claimant's right arm was contorted, and he was in extreme pain in his back and right shoulder. His head ached and he was pale. It appeared he might pass out. He refused to sit due to back pain.

2. A co-worker, Paden Severs, took Claimant to the emergency room at Kootenai Medical Center. Due to his back pain, Claimant had great difficulty getting into the car for the trip to the hospital, and remembers nothing about the drive there. He also had trouble exiting the car.

3. Claimant and Severs both testified they told the ER staff that in addition to the obvious shoulder injury, Claimant's back was also hurting.

4. Anthony Russo, M.D., an emergency room physician, treated Claimant at the hospital. He conducted an examination, the details of which are discussed hereinafter. Ultimately, Claimant's dislocated shoulder was reduced and he was released from the ER. He was referred to Spencer Greendyke, M.D., a board certified orthopedic surgeon, for follow up care.

Brief Synopsis of Shoulder Care[3]

5. Dr. Greendyke treated Claimant's shoulder injury from December 10, 2012 through at least July 24, 2013, at which time the doctor gave Claimant a light-duty work release. During this time frame, Claimant's care consisted primarily of a right shoulder open reduction and internal fixation of the right greater tuberosity fracture, rotator cuff repair, acromioplasty, and distal clavicle resection of the right shoulder, with associated follow up care and monitoring.[4] He also attended over fifty physical therapy sessions.

---

[3] Since Claimant's shoulder injury is not in dispute, a detailed chronology of its course of treatment is not needed.

[4] There is a major dispute over the extent of Claimant's other complaints to Dr. Greendyke, and when they were brought up. Those issues will be discussed subsequently.

6. Due to Claimant's ongoing shoulder symptoms, he requested and obtained a change of physician to orthopedic surgeon Alan Olscamp, M.D., who initially examined Claimant on November 11, 2013 for right shoulder complaints. Dr. Olscamp performed Claimant's second shoulder surgery on February 12, 2014. On July 17, 2014, Dr. Olscamp declared Claimant fixed and stable.

Relevant Medical Records

Emergency Room

7. As it relates to the issues at hand, the intake records for the Emergency Department of the Kootenai Medical Center dated December 7, 2012 (the date of the accident) list the chief complaint as "shoulder injury." Under the history of present illness section it states Claimant "fell down several stairs at work, onto his outstretched right arm. He is complaining of shoulder pain. Denies striking his head or losing consciousness. Complaining of severe shoulder pain." DE 1, p. 56. Claimant was cognitively able to provide his list of eight current medications, the fact he was allergic to penicillin, his social history, and the fact he had a cup of coffee one hour prior to admission.

8. The ER records further show that Dr. Russo conducted a physical examination. Of relevance is the notation that Claimant's neck was "supple." Also, his lungs were clear, his heart was regular without murmur, his abdomen soft and nontender. Claimant was understandably tender at the proximal right humerus.

9. Initial X-rays were taken. Claimant was administered Dilaudid (opioid) and Zofran (to combat nausea occasioned by Dilaudid) by IV. He was sedated with Propofol prior to reducing his dislocated shoulder. After the reduction and post-reduction x-rays,

Claimant was placed in a shoulder immobilizer, given pain medication prescription, and discharged with a referral to Dr. Greendyke.

Dr. Greendyke

10. The central issue with Dr. Greendyke's medical record keeping system is that fact that information can be entered, and perpetuated, with little regard for its accuracy. It is not necessary to discuss at length the accuracy concerns contained therein,[5] but a few illustrations are useful for highlighting the defects. For example, for every office visit, the records listed Claimant's weight as 230.0 pounds, his blood pressure at 124/80, his body temperature at 98.6 F, his pulse at 60bpm, and his respiratory rate at 12 rpm. More disconcerting is the information listed under the heading "Review of Systems." It is unclear who entered the information contained therein, but Dr. Greendyke testified he did not do so. The bodily system information is identical, but not entirely accurate, for each visit. Examples of inaccuracies involve such entries as listing no joint pain, when the very reason Claimant was at Dr. Greendyke's office was due to joint pain. On the May 31, 2013 visit, Claimant presented to discuss his back pain. The system review notes "no backache".

11. The same problems are evident under the "Physical Exam" heading, where it consistently noted 5/5 muscle strength in all major muscle groups, and normal range of motion. Just below this assessment, Dr. Greendyke recorded Claimant's lack of right-sided upper extremity muscle strength with limited range of motion.

12. While it appears much of Dr. Greendyke's medical record entries are "canned" and may not have accurately stated Claimant's true condition, there are places within those records where Dr. Greendyke inputted actual information from the

[5] Claimant devotes approximately nine pages of his post-hearing brief to a detailed analysis of the flaws in Dr. Greendyke's records and treatment regime. Many of those arguments are meritorious, but it is not necessary to first dissect those records prior to discounting their relevance to the proceedings.

corresponding examination. The first location is at the end of the "History of Present Illness" section, where contemporaneous complaints were sometimes listed. Likewise under "Physical Exam" Dr. Greendyke often preserved his observations from that visit. On occasion, the doctor commented on findings in the "Assessment" category of his records, and consistently updated Claimant's forward-looking instructions under the "Plan" heading.

13. Claimant has done a thorough job of attempting to discredit Dr. Greendyke's medical record keeping system. Claimant also argues Dr. Greendyke was so focused on treating Claimant's shoulder injury, he simply dismissed Claimant's other complaints, which were ongoing since his first visit with Dr. Greendyke. However, Dr. Greendyke listed contemporaneous complaints and information for each visit.

14. Of interest, Dr. Greendyke's contemporaneous notes of his April 11, 2013 visit with Claimant notes the Claimant wanted to discuss "the new pain he is having in his right hip." Dr. Greendyke had no recollection of Claimant ever making such a complaint previously. As stated in the notes, Claimant "began to notice some right hip joint tenderness in December, but it did not really become a problem until about 1 month ago, when he began having intermittent severe, sharp, stabbing pain in the right hip joint. [Claimant] denies any numbness or tingling in the lower extremity, weakness, nor the inability to walk or stand. He does not notice any limitation in how far he can walk." DE 6, p. 242. Hip X-rays were taken and disclosed no evidence of fracture, dislocation, arthritis, joint space narrowing, or other bony or soft tissue pathology. Dr. Greendyke prescribed physical therapy for hip range of motion and strengthening.

15. On Claimant's May 31, 2013 visit with Dr. Greendyke, the office notes state Claimant complained of "new pain he is having with his back." The notes reveal Claimant's belief that he mentioned back issues to Dr. Greendyke on the first office visit, and further thinks Amanda, an employee of Dr. Greendyke, took documenting pictures. Dr. Greendyke denied recalling such conversation and no such pictures were in the file. Claimant apparently went on to recount how in physical therapy recently, the therapist did a maneuver which hurt Claimant's rib. Unfortunately, the remainder of the note is a verbatim copy of the previous record detailing Claimant's hip issue; no further mention of back pain is even noted in passing. DE 6, p. 250.

16. On Claimant's July 24, 2013 visit with Dr. Greendyke, Claimant complained of bilateral arm and finger numbness, dizziness upon bending over, trouble sleeping, memory problems, and "fuzzy" vision, in addition to continuing right shoulder pain. In addition to reporting what Dr. Greendyke described as "multiple somatic complaints", Claimant sought a refill of hydrocodone, and informed the doctor that the therapist to whom Claimant had been referred told Claimant they had nothing to offer him in the way of further therapy. Dr. Greendyke requested an IME for Claimant.

17. The frustration with Dr. Greendyke's medical records comes from trying to deduce which entries relate to a current observation, and which entries were boilerplate, or a past-perpetuated entry. The records are sloppy, often at least partially inaccurate, or at best misleading. While Dr. Greendyke's records are not useless in helping to decide the issues herein, the weight given to them in the subsequent analysis is significantly limited.

Medical Treater Testimony

<u>*Dr. Russo*</u>

18. Dr. Russo, an emergency medicine physician who has examined between fifty and sixty thousand patients over his twenty year career, testified as to his examination procedure. He acknowledged he has no specific recollection of Claimant, but his procedure does not vary materially from patient to patient. He described his routine as observing the patient initially as he walks toward them to see if there is anything obviously wrong. He gauges their mental status. When necessary, he addresses any life threats, such as inability to breathe. Assuming no such immediate threats, he then finds out what the problem is and how it occurred. Thereafter, the doctor begins a head-to-toe examination.

19. Relying on his recorded dictation, Dr. Russo testified that Claimant's only complaint at the time of examination was right shoulder injury sustained in a fall. Dr. Russo interviewed Claimant to find out if there were issues other than his right shoulder which needed addressing. Claimant denied that he had struck his head or lost consciousness during the accident. Dr. Russo then began his physical examination. His standard procedure is to begin at the patient's head and proceed down the body. He touches the patient's head, neck, chest and extremities, looking for tenderness or deformities. He described his process as "methodical". Dr. Russo is certain he directly palpated Claimant's neck, even though there is no notation in the record of a direct palpation.

20. Dr. Russo understood Claimant's dislocated and fractured shoulder could be a "distracting injury"; that is one that is so severe, it distracts the patient from other, less painful injuries, so that patient might not immediately realize the less painful injuries

even exist. Dr. Russo stated that when a patient has an altered mental state, he is far more likely to order images of the cervical spine than if the patient, even with a distracting injury, is alert and without neck tenderness. Dr. Russo felt Claimant, by examination and his complaints, did not suffer a cervical injury in the fall. Claimant's neck was supple and he did not complain of pain in his neck. Furthermore, Claimant denied striking his head or losing consciousness during the fall. Dr. Russo saw no sign of head trauma; he did not order cervical x-rays.

21. Dr. Russo believes, based upon his habit over twenty years, that he also palpated Claimant's spine and noted no tenderness, although he admits the documentation is focused on Claimant's shoulder injury.

22. Dr. Russo agreed with Claimant that the hallmark of a cervical spine injury is cervical pain. Dr. Russo disagreed that always, with blunt trauma, in order to rule out cervical spine injury there must be radiographic testing in addition to clinical examination. Dr. Russo also would not unequivocally agree that patients with distracting injuries should not be cleared of cervical spine issues solely by examination; instead he felt clinical judgment factors into that decision. Dr. Russo also acknowledged injuries and fractures are missed in the emergency room on some percentage basis.

Dr.Greendyke

23. Dr. Greendyke testified his "nurse"[6] Amanda initially met with Claimant and gathered the information under the medical record headings Chief Complaint, History of Present Illness, Medical/Family/Social History, Medications and Allergies, and

[6] The individual is neither a nurse nor a certified medical assistant.

Review of Systems.[7] Dr. Greendyke's physical examinations focused on Claimant's right shoulder. He could find nothing in his office records suggesting Claimant complained of cervical or lower back complaints on his initial few visits.

24. Claimant did complain of hip pain during the April 11, 2013 visit, and Dr. Greendyke ordered hip and pelvis X-rays, which the doctor felt looked "pretty normal." Claimant denied any radicular pain, bladder dysfunction, numbness or tingling into his legs. Dr. Greendyke could not come up with a specific diagnosis for Claimant's hip pain.

25. Dr. Greendyke recalled on Claimant's May 31, 2013 visit, he was complaining of back pain which the doctor associated with therapy treatment for an out-of-position rib which the therapist tried to treat. Claimant had no radicular symptoms, and the doctor felt Claimant's pain was thoracic in location and related to the rib issue.

26. When Claimant complained of bilateral finger numbness, dizziness upon bending, trouble sleeping, blurred vision, and memory problems at his July 24, 2013 visit, Dr. Greendyke noted the complaints but took no steps to address them, since they were not orthopedic in nature. He conducted his standard orthopedic exam on Claimant's right shoulder.

27. Dr. Greendyke testified he does not treat people for back and neck problems; at most he might order an MRI and refer them to a neurologist if the findings warranted. Had Claimant complained of neck or back injury at the ER, Dr. Greendyke stated the ER staff would not have referred Claimant to him, since they are aware he does not treat back or neck injuries.

---

[7] Amanda testified she did not input data under Review of Systems, lending support to the proposition that information may be "canned" and not necessarily representative of the Claimant's condition or status at the time of examination. Dr. Greendyke believes Amanda inputs this information based upon a patient's response to questions, not as the result of a physical examination. In any event, the information contained therein can be misleading, and should not be given much weight in evaluating the claims at issue.

28. Dr. Greendyke stated he last saw Claimant on September 4, 2013, at which time Claimant asked the doctor to go over the results of a cervical spine MRI ordered by John McNulty, M.D. Dr. Greendyke thought the request was unusual, and can not recall if he went over the MRI results with Claimant, but claims he did examine Claimant's shoulder.

29. When asked about the time frame over which one with an acutely ruptured disc would become symptomatic, Dr. Greendyke opined a "few weeks" would be the outer limit. As he put it, "for ruptured discs, 50 percent of them heal within two weeks and become asymptomatic; 90 percent of them heal within 90 days and become asymptomatic; and the last 10 percent that still have leg pain, I send those people to back surgeons." Greendyke depo. p. 65. He confirmed the numbers and percentages would apply equally to cervical disc ruptures. He acknowledged he is not a back surgeon or "spine expert", and has had no spinal training since 1991.

Non-Treating Physicians

Dr. McNulty

30. At the request of his attorney, Claimant saw Dr. McNulty, a board-certified orthopedic surgeon, on July 17, 2013 to evaluate his status regarding his right shoulder, neck, and low back pain. Dr. McNulty ordered a cervical MRI.

31. The cervical MRI was interpreted by radiologist Keith Hewel, M.D., as:

- C5-C6 advanced degenerative disc changes resulting in mild spinal stenosis. Right lateral disc extrusion severely compromising right foramen and likely impinging C6 nerve root. Appears to displace exiting left C6 nerve root;
- C3-C4 mild right foramen narrowing;
- C6-C7 mild bilateral foramen narrowing.

CE D, p. 714. Dr. McNulty offered no causality opinions to a reasonable degree of medical probability on any of Claimant's complaints.

Dr. Moss

32. On September 21, 2013, Claimant saw Joshua Moss, M.D., at Surety's request. Dr. Moss is a board-certified orthopedic surgeon who sees patients in association with Objective Medical Assessments Corporation (OMAC). Dr. Moss reviewed a synopsis of the claim and medical records provided by Surety, interviewed and examined Claimant, and reviewed several films. He was unable to get a CD containing Claimant's cervical MRI of August 25, 2013 to open, so he relied upon the radiologist report of this study in reaching his conclusions.[8]

33. Dr. Moss observed that Claimant, when asked, indicated he was not having hip, lumbar spine, or lower extremity pain at the time of the examination. Claimant's area of concern that day was his neck and upper extremities. As such, Dr. Moss' evaluation was silent on the issue of causality regarding Claimant's low back.

34. Dr. Moss diagnosed pre-existing degenerative cervical spondylosis and degenerative disc disease with possible radiculopathy, unrelated to Claimant's industrial accident of December 7, 2012. His determination on causality was based on the lack of recorded cervical, headache, or upper extremity radicular complaints during the first four months of Claimant's course of treatment. Dr. Moss specifically noted the ER records on the date of injury state Claimant denied any head injury or loss of consciousness.

35. Dr. Moss determined Claimant's right shoulder was not medically stable, and required further treatment.

---

[8] After his report was submitted, he was eventually able to obtain a working CD of the MRI in question. His opinions were not changed or modified by his review of the MRI, as discussed below.

36. On December 19, 2013, Dr. Moss prepared a follow up letter to Surety after reviewing Dr. Dirks' report on Claimant's cervical spine. Dr. Dirks' report did not cause Dr. Moss' opinions to change.

37. When Dr. Moss reviewed the MRI, he interpreted it as showing advanced multilevel degenerative disc disease most substantially at C5-6, and also at C3-4 and C6-7, with no acute findings, which was consistent with his interpretation of the radiologist's report he had previously relied upon.

38. When pressed in deposition cross examination, Dr. Moss summarized the basis for his conclusion regarding causation as it pertains to Claimant's neck as follows;

> A. Okay. I will review.
>
> The injury was December of 2012. At the emergency department evaluation, the patient, quote, denied striking head or losing consciousness, end quote. There was no complaint of neck pain at the time.
>
> Indeed, there was no subjective complaint of neck pain at any time in the first eight months of treatment until he was evaluated in July of the following year. That, in combination with an MRI which shows multilevel degenerative spondylosis of the cervical spine, including disk osteophyte complexes, which are, by definition, chronic changes, all of those objective findings combined suggest very strongly to me that, on a more-probable-than-not basis, the cervical spine condition was degenerative, pre-existing, and unrelated to his industrial injury of 12/7/12.

Moss depo. pp. 68, 69.

Dr. Dirks

39. Dr. Dirks, a board-certified neurosurgeon specializing in spine surgery, saw Claimant once on November 21, 2013. He took Claimant's history and reviewed his cervical MRI films. Based on Claimant's description of the accident and his current complaints, Dr. Dirk's physical examination, and the film review, Dr. Dirks opined to a reasonable medical probability that the herniated disc shown on the films at C5-C6 was

related to Claimant's industrial accident. Dr. Dirks gave an identical opinion for Claimant's low back based on Claimant's provided oral history.

40. Dr. Dirks was shown additional information and medical documentation during his deposition, none of which changed his opinion. His confidence in his opinions was bolstered by letters authored by Claimant's two co-workers (Randy Johnson and Ryan Potts) regarding Claimant's accident.

Cliff Kiracofe, PT

41. Claimant's physical therapist, Cliff Kiracofe, did not testify at hearing or during a deposition.[9] Instead, Defendants submitted a letter allegedly authored, but not signed by, Mr. Kiracofe. In response, Claimant submitted a letter authored by his attorney to Mr. Kiracofe allegedly memorializing a telephone conversation he had with Claimant and his attorney in which certain affirmations were supposedly made. The letter was designed to be signed by Mr. Kiracofe attesting to the accuracy of the statements contained therein. It was unsigned. Claimant also submitted a self-serving follow up letter from his counsel which again purported to set forth statements allegedly made by Mr. Kiracofe.

42. Given the contradictory nature of the "evidence" submitted by the parties, the low probative value of such evidence, the fact there was no chance for the witness to elaborate or defend his various alleged statements, and no chance for either party to cross examine the witness, in addition to the nature of Claimant's follow up letter, which is nothing more than counsel testimony, the Referee assigns no weight to Mr. Kiracofe's "testimony". Without clarification and further explanation, Mr. Kiracofe's cryptic

[9] The witness was originally subpoenaed for the Friday, August 29, 2014 hearing. This subpoena was quashed by the Referee on the basis that by the time Claimant served the subpoena, just a few days prior to the hearing, the witness had already made plans to be out of town with his family on vacation that day, which was the start of the Memorial Day weekend. He was re-subpoenaed by Claimant for the October hearing, but demanded a $500 expert witness fee to attend the hearing, and that subpoena was withdrawn.

physical therapy notes can only be interpreted with speculation; as such, no weight is placed on them in analyzing the various claims at issue herein.

NON-MEDICAL WITNESSES[10]

Co-Employees Ryan Potts, Randy Johnson, and Paden Severs

43. Ryan Potts, Randy Johnson, and Paden Severs worked with Claimant and interacted with him immediately after his industrial accident. None of them saw Claimant fall, but talked with him shortly thereafter, and observed the obvious nature of his shoulder injury. Of significance to the issue at hand is the fact all of these individuals recalled the fact that Claimant would not sit down because his back and side was hurting too badly to allow him to comfortably do so.

44. Ryan Potts testified at hearing he heard Claimant fall. He then heard someone "holler", so he went to the stairwell. He arrived about 30 to 40 seconds after he first heard the commotion. Claimant was coming up the stairs and two people who may have been customers were standing at the top of the stairway.

45. Randy Johnson testified at hearing. He believed he was the first employee to talk with Claimant after the accident. He encountered Claimant after he had exited the stairwell and was trying to get back to his work bench. No other people were with Claimant at that time. Mr. Johnson stated he thought Claimant might pass out after the accident, and tried to get him to sit or at least hold on to something. Mr. Johnson recalled Claimant stating his head hurt. Claimant was pale. Mr. Johnson instructed Paden Severs to drive Claimant to the emergency room. When Mr. Johnson saw Claimant upon his return

[10] The Referee finds the witnesses not discussed herein offered no evidence which had probative value on any issue under consideration herein; therefore a discussion of their testimony is unnecessary.

from the hospital, Claimant was walking abnormally. Claimant stated the ER staff did not examine or treat his back. Claimant's head was still hurting.

46. Paden Severs testified via deposition. He heard Claimant fall. "Probably a minute later," he went to see what had happened. He saw Claimant lying on the landing, trying to get back to his feet. Claimant recounted he had tripped and fallen down the stairs. Mr. Severs helped Claimant to his feet. Ryan Potts arrived shortly afterwards. By that time Claimant had reached the top of the stairs. Claimant was pale. He complained of his right arm and back hurting.

47. Mr. Severs took Claimant to the hospital. Claimant had difficulty getting into the car because of back pain. At the hospital, Claimant had difficulty exiting Mr. Severs' vehicle, because Claimant did not want to bend his back. Mr. Severs helped Claimant check in at the Emergency Department of the hospital. He helped Claimant remove his shirt. Mr. Severs recalled Claimant telling the intake person that his back and shoulder hurt. Mr. Severs talked briefly with Claimant after he was discharged from the ER. Claimant mentioned the ER staff did not look at his back, only his shoulder.

Deborah Jo Wegner

48. Claimant's wife, Deborah Jo Wegner, testified at hearing. She recalled going with Claimant to see Dr. Greendyke. On the first visit, she asked Dr. Greendyke's assistant Amanda to take a picture of Claimant's right hip and buttock, which was apparently quite bruised. Amanda declined to do so. Dr. Greendyke later came into the room with a model of the shoulder and began explaining Claimant's shoulder injury. Mrs. Wegner testified she asked Dr. Greendyke about Claimant's hip, but was told for now they would concentrate on Claimant's shoulder.

49. Mrs. Wegner also testified that at some point Claimant told Dr. Greendyke about his middle and ring finger hurting. Supposedly either she or Claimant also mentioned his hip pain on every visit with the doctor.

Nancy Ostrum

50. Nancy Ostrum works for Surety as a Claims Examiner assigned to this case. Her testimony, given in a post-hearing deposition, is important in two regards. First, she had multiple contacts with Claimant, and can speak to those conversations. Second, there is a notation in the file concerning Dr. Greendyke which warrants further analysis.

51. Ms. Ostrum testified, and records confirm, she spoke with Claimant six times between December 17, 2012, her first contact, and March 27, 2013, without Claimant mentioning any injury other than his shoulder. Then on March 27, for the first time since the accident, Claimant complained of increasing hip pain.

52. Surety's file contains a phone log entry prepared by Dana Grigg dated July 16, 2013 which states, "[Claimant] has appt with Dr. Greendyke on 07/24/2013. He would like him to evaluate his neck because he has been hurting since the time of his accident. I advised him that in my brief review of his file I cannot locate where [Surety] has ever auth[orized] any treatment to his neck. I deferred him to speak to the assigned CE (Nancy Ostrum) because in my review I would not auth[orize] evaluation of his neck. He agreed to wait to discuss this with Nancy. CE A p. 5. (Parenthetical information added.)

53. Surety's file also contains a file memorandum prepared by Nancy Ostrum dated July 22, 2013 which states in part, "[Dr.] Greendyke has contacted our office asking if he could evaluate the neck because he has been hurting since the time of his accident.

With this new information should I write a letter to Greendyke about the additional body parts now or should I get an IME?" CE A p. 673.

DISCUSSION AND FURTHER FINDINGS

54. 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).

55. Claimant has the burden of proving, by a preponderance of the evidence, all facts essential to recovery. *Evans v. Hara's, Inc.,* 123 Idaho 473, 849 P.2d 934, (1993). Claimant must provide medical testimony, by way of physician's testimony or written medical record, which 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). However, 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). Employer and its surety are only liable for medical expenses incurred as a result of an employment-related injury. I.C. § 72– 432(1). An employer can not be held liable for medical expenses unrelated to an on-the-job accident. *Sweeney v. Great West Transp.,* 110 Idaho 67, 714 P.2d 36 (1986).

56. Claimant and his wife are fair historians as to events surrounding this claim. However, where contemporaneously-generated records conflict with their memories on

issues of timing, sequencing, and content, the records will be afforded greater persuasive weight.

Cervical Spine Causality

57. The first issue is whether Claimant's neck/cervical spine ongoing complaints were caused by his industrial accident in question. Dr. Dirks opined they were, Dr. Moss and Dr. Greendyke opined conversely.

58. Dr. Dirks saw Claimant one time. He reviewed no medical records prior to rendering an opinion on causality. He relied on Claimant's version of the accident, course of complaints, and treatment to date; he undertook no independent investigation to verify the accuracy of the information provided by Claimant. Dr. Dirks conducted a physical examination, and reviewed an MRI of Claimant's neck, which all parties agree shows a herniated[11] disc at C5-C6. He reached his conclusion on causation using the oft-cited logic that Claimant was not hurting before the accident, was hurting after the accident, and has a herniated disc which correlates to Claimant's complaints; therefore the accident caused Claimant's herniated disc. Dr. Dirks feels the herniation was caused by trauma and is an acute finding.

59. Dr. Dirk's simplistic analysis, sometimes known as the "*post hoc* fallacy", discounts or ignores factors which could dilute the weight of the opinion. For example, when assigning evidentiary weight to Dr. Dirk's opinion, it is important to determine *when* Claimant first noticed symptoms related to his herniated disc. The further removed from the date of the accident, the less persuasive is his opinion that the disc herniation was caused by the accident.

[11] The radiologist report used the term "extrusion"; Dr. Dirks noted the terms "herniation, slipped disc, ruptured disc, protruded disc, extruded disc" are often used interchangeably, and mean the same thing to him. The term "herniation" as used herein means disc "extrusion" as used by the radiologist, and "herniation" as used by Dr. Dirks. As applied to Claimant, it means the inner part of the disc has ruptured through the outer harder part and caused compression on to the nerve root. Dirks depo. p. 27.

60. Dr. Dirks admitted a herniated disc does not take a set minimum amount of force to produce. He testified a person can simply wake in the morning with a herniated disc, or any daily activity can cause a herniation, and the person may not even know what caused it. While the weight of the evidence supports the fact Claimant was not rendered unconscious during his accident, determination of such fact is not necessary when deciding whether Claimant's neck condition is causally related to his fall. Regardless of whether Claimant was knocked unconscious or not, the forces in the fall, which were sufficient to dislocate and fracture Claimant's shoulder, were ample, as noted by Dr. Dirks, to herniate a disc. On the other hand, there is no medical evidence in the record that the forces involved in this fall *mandated* a ruptured cervical disc. The violence of the fall is not determinative to resolution of this issue.

61. All the physicians who testified in this matter, including Dr. Dirks, acknowledged an individual suffering a traumatic disc herniation should experience some symptoms at, or shortly after, the time of the event. Dr. Dirks listed the range of symptoms a person could encounter with a herniated disc such as Claimant's to include, singly, or in any combination, neck pain, arm weakness, arm pain, numbness, or tingling. Dr. Dirks felt it was not unusual for Claimant to first experience numbness and tingling in his fingers six months after the disc herniation. Regarding other symptoms of disc herniation, Dr. Dirks felt Claimant's shoulder injury could well have masked Claimant's neck pain and/or arm weakness, so that the symptoms could have been there, but not noticeable due to the nature and severity of the shoulder injury.

62. While it is true that Claimant's acute shoulder injury *could* mask a neck injury, that truth provides no proof that it actually did. Claimant can not prove a neck injury by simply pointing out there is a reason why, if he had a neck injury, he had no noticeable symptoms until months after the injury occurred. The "masking" theory may be used as a "shield" to block

Defendants' arguments regarding lack of pain, but it can not be used as a "sword" to affirmatively prove the claim. Providing a reasonable explanation for a lack of corroborating evidence is not a sufficient substitute for affirmative evidence.

63. There is no evidence in the provided record of Claimant making neck injury complaints prior to mid-summer 2013. The ER records from the accident date note Claimant's neck as "supple." Dr. Greendyke lists no neck complaint until July, 2013, although his record keeping is suspect. The fact he first noted neck pain in July is not dispositive; in fact it carries minimal weight. More interesting are Claimant's VA medical records. Therein, Claimant complained of hip and back pain well before he first mentioned neck pain on July 12, 2013. Likewise, in discussing his medical issues with the Idaho Industrial Commission Rehabilitation Division, Claimant mentions his low back pain months prior to any reference to neck issues.

64. Claimant had an open line with Surety to call and discuss his symptoms, complaints, and issues regarding his industrial accident as they arose. Surety's records do not list neck pain complaints until July 2013.

65. Claimant places great importance on the file memorandum prepared by Nancy Ostrum dated July 22, 2013, which states in part, "[Dr.] Greendyke has contacted our office asking if he could evaluate the neck because he has been hurting since the time of his accident." He claims it proves Dr. Greendyke was aware of Claimant's neck issues since his first visit.[12] Surety pointed out there is no corresponding telephone log for such conversation, which would be highly unusual. As of the date of her deposition,

[12] This argument also eliminates the need for the "masking" argument Claimant relies upon. If Claimant experienced neck pain since at least December 17, 2012, his shoulder injury did not "mask" his neck injury. If he did not notice his neck pain for months due to masking, Claimant's interpretation of Surety's file memo has to be incorrect. It is curious that Claimant does not pick one argument based upon his recollection of his neck symptoms, and abandon the other, mutually-exclusive theory.

Nancy Ostrum had no recollection of any such conversation with Dr. Greendyke, and felt the entry could possibly be a mistake.

66. There are at least four explanations for this entry. The first is that Dr. Greendyke called and left that message, indicating he knew Claimant had neck complaints since day one. That is Claimant's view. The second explanation, as argued by Defendants, is that based on the lack of a corresponding telephone log and memory of the conversation, the entry was simply a mistake.

67. The third option arises from a very similar telephone entry made on July 16, 2013, about a week prior to the file memorandum. Claimant called Surety, and the call was taken by Dana Grigg. She authored a note memorializing the call which reads as follows:

> 208-683-7020- clmt has appt with Dr. Greendyke on 07/24/2013. He would like him to evaluate his neck because he has been hurting since the time of his accident. I advised him that in my brief review of his file I cannot locate where SIF has ever auth any treatment to his neck. I deferred him to speak to the assigned CE because in my review I would not auth evaluation of his neck. He agreed to wait and discuss this with Nancy.
>
> CE A p. 5. (Emphasis supplied.)

It is easy to confuse which masculine pronoun applies to which party, and if read casually, can be interpreted as Dr. Greendyke wants to evaluate Claimant because Claimant has been hurting since the time of Claimant's accident.[13] If Ms. Ostrum quickly glanced at the phone log prior to preparing her file memorandum, the mistake could have been carried forward. After all, she did not take the call in question, and would have no first hand memory of Claimant's conversation. Supporting this theory is the fact the

---

[13] The Referee sheepishly admits at first glance, he interpreted the phone log in that way. Upon closer inspection, it is apparent the Claimant wants to have the doctor evaluate Claimant's neck, not vice versa, but it took a second, more careful look to reach that conclusion.

language used in the telephone log, "evaluate his neck because he has been hurting since the time of his accident" is nearly identical to "evaluate the neck because he has been hurting since the time of his accident" – the language Ms. Ostrum used when preparing her subsequent file memo.

68. A fourth explanation, supplied by Dr. Greendyke, is that he may have (although he had no memory of doing so at the time of his deposition) requested an MRI of Claimant's cervical spine after his July 24, 2013 visit, due to the fact Claimant had been complaining of shoulder pain since the original visit. Dr. Greendyke testified it would not have been unreasonable to request a cervical study to rule out the possibility Claimant's continued shoulder pain was in reality due to a neck condition, since, as all the physicians in this case have opined, neck pain can mimic shoulder pain. According to Dr. Greendyke, the phrase "he has been hurting since the time of his accident" would not refer to Claimant's neck, but his shoulder, which had been so hurting.

69. On a more probable than not basis, the file memorandum of July 22, 2013 in and of itself does not support a claim that Claimant had been experiencing neck pain since his accident. While it appears true that Claimant called Dana Grigg on July 16, 2013, relating that he had been having neck pain ever since the accident, this after-the-fact assertion does little to prove that Claimant actually had been suffering neck pain ever since the accident, particularly in light of other contemporaneous evidence. However, if this is Claimant's insistence, it does denigrate his argument that his other injuries masked his cervical spine complaints.

70. In October, 2013, Claimant and his wife sent Dr. Greendyke a two-page-single-spaced letter complaining about the state of the doctor's medical records and how those inaccuracies were causing Surety to deny various treatments. The letter was quite detailed

regarding Claimant's back and hip complaints, but nearly silent regarding his neck issues. In fact, Claimant only mentioned his neck while criticizing the OMAC IME report. At no other place in this long letter did Claimant attempt to establish his neck pain had been ongoing for a considerable time. In contrast, several examples were given to establish Claimant's long-standing back complaints.

71. Dr. Moss's opinions were set out previously. As noted, he denies a correlation between Claimant's neck issue and the accident, in large part due to the lack of complaints for seven months post-accident. He also believes the herniation at C5-C6 is degenerative in nature.

72. While Claimant argues Dr. Moss was given incomplete and inaccurate information upon which he based his report, misunderstood the radiologist report, and misread the MRI films, the validity of that argument is dependent on several invalid arguments. There is no evidence Claimant was complaining of neck issues from the outset of treatment. There is no evidence Dr. Moss misunderstood or misread MRI reports or films. It is of little consequence whether the herniated disc is trauma-induced or degenerative, given the minimal level of trauma needed to produce the herniation. Dr. Greendyke's sloppy records do not prove Claimant actually had additional complaints; they simply carry little weight to prove he did not. However, the remaining record as a whole supports the conclusion that Claimant did not have neck issues until July, 2013, some seven months post-accident.

73. As the factfinder, the Industrial Commission's role is to determine the weight to be given to the testimony of medical experts. *Eacret v. Clearwater Forest Indus.,* 136 Idaho 733, 737, 40 P.3d 91, 95 (2002). Whether the herniation is traumatic or degenerative, the record as a whole supports Dr. Moss on the issue of Claimant's herniated cervical disc. Dr. Moss's opinion on this issue is given more weight than that of Dr. Dirks.

74. Claimant has failed to prove by a preponderance of the evidence his cervical spine condition is causally related to his December 7, 2012 industrial accident.

Lumbar Spine/ Hip Causality

75. Claimant seeks a determination that his hip and lower back complaints are related to the industrial accident in question. Claimant previously had his hip X-rayed, and no trauma-related findings were noted by Dr. Greendyke. No doctor has opined specifically as to the causal correlation between the accident and Claimant's current hip condition.

76. To the extent Claimant is complaining of pain in his hip not associated with his low back complaints, he has failed to establish such condition is causally related to his industrial accident.

77. Dr. Dirks addressed a single condition he described as Claimant's low back area in his report and subsequent deposition. This area of injury (low back/hip) is also treated as a single issue in Claimant's reply brief. To the extent the phrase "hip pain" refers to the belt line area of Claimant's low back and is used in association with his low back complaints, it will be addressed below in greater detail. As decided above, to the extent "hip pain" is meant to describe an area removed from Claimant's lower back, such as his hip joint, there is no medical opinion in the record supporting a causal link between such a complaint and the accident in question.

78. The record as a whole is well-supplied with references to Claimant complaining of low back/hip area issues since the moments after his fall. He complained to his co-workers at the shop. He would not sit down due to extreme back pain; he had trouble entering and exiting Mr. Severs' automobile. Claimant's wife wanted Dr. Greendyke's staff to photograph the bruising on Claimant's right hip/low back area. Dr. Greendyke's notes indicate Claimant mentioned his low back/hip area hurt soon after the fall, temporarily subsided, and was returning by April, 2013.

Claimant mentioned his low back issues to his VA doctor, vocational rehabilitation specialist, wife, and acquaintances.

79. Dr. Dirks opined to a reasonable medical probability the industrial accident caused an exacerbation of a pre-existing condition in Claimant's lumbar spine, accounting for his current complaints. Dr. Dirks suggested an MRI of Claimant's lumbar spine to assist in fashioning a reasonable course of treatment, and determining to what extent, if any, Claimant's current low back complaints are related to his industrial accident.

80. To the extent Dr. Greendyke's medical records fail to mention Claimant's back issues, they are given little weight. Claimant's wife asked the doctor's staff to photograph Claimant's hip and buttock bruising. Dr. Greendyke should have noted those concerns, but did not. Instead, he was admittedly focused on Claimant's shoulder injury. Dr. Greendyke's lack of medical records concerning Claimant's low back/hip complaints are afforded less weight than the contrary contemporaneous evidence as detailed above.

81. Dr. Moss did not opine on causation between Claimant's low back/hip condition and the industrial accident. His failure to do so was based on Claimant's affirmation to him at the examination that Claimant's low back and hip were asymptomatic. Nevertheless, Dr. Moss was specifically asked by Surety to comment on the causal connection between Claimant's low back/hip complaints and the accident of December 7, 2012. He rendered no opinion. As such, the only opinion in the record is that of Dr. Dirks, which creates a causal connection between the accident and Claimant's current low back/hip area complaints.

82. Claimant has proven a causally-connected exacerbation of his pre-existing low back condition as a result of his December 7, 2012 industrial accident. Determination of the percentage of apportionment between the pre-existing back condition and the industrial accident is reserved.

83. Claimant is entitled to reasonable medical treatment for his low back/hip area complaints, to include at a minimum a lumbar MRI as prescribed by Dr. Dirks.

84. Claimant is not entitled to additional medical treatment, including but not limited to diagnostic studies, specifically related to hip complaints separate and apart from his low back complaints.

Headaches/Vision Changes and Dizziness Causality

85. Claimant's assertion he has proven a causal link between his occasional headaches, vision changes, and dizziness when bending over and his industrial accident can be dispatched with little elaboration. Dr. Greendyke's opinion that a fall down eight stairs is capable of causing a head injury is hardly proof such injury actually happened. No physician has opined that Claimant's headaches, vision changes, which were, by Claimant's admission, largely corrected with new eyeglasses, or dizziness, were caused by his industrial accident. Without medical proof on causation, Claimant has failed to prove by a preponderance of the evidence that his complaints of headaches, vision changes and/or dizziness are accident-related.

CONCLUSIONS OF LAW

1. Claimant has failed to prove his cervical spine condition, headaches, vision changes, and dizziness are causally related to his industrial accident of December 7, 2012.

2. Claimant has proven a causally-connected exacerbation of his pre-existing low back condition as a result of his December 7, 2012 industrial accident; he is entitled to reasonable medical treatment for his low back/right hip area, to include at a minimum a lumbar spine MRI.

3. Claimant has failed to prove any condition in his right hip not associated with his low back complaints are causally connected to his industrial accident of December 7, 2012.

As such, Claimant is not entitled to additional medical treatment specifically related to right hip complaints separate and apart from his low back complaints, including but not limited to diagnostic studies not associated with Claimant's lumbar spinal condition.

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 18th day of May, 2015.

INDUSTRIAL COMMISSION

/s/
Brian Harper, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of May, 2015, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

STARR KELSO
PO BOX 1312
COEUR D ALENE ID 83816

H. JAMES MAGNUSON
PO BOX 2288
COEUR D ALENE ID 83816

/s/

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

GREGORY WEGNER, Claimant, v. COEUR D'ALENE POWER TOOLS, Employer, and IDAHO STATE INSURANCE FUND, Surety, Defendants.	**IC 2012-031071** **ORDER** **Filed May 19, 2015**

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

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

1. Claimant has failed to prove his cervical spine condition, headaches, vision changes, and dizziness are causally related to his industrial accident of December 7, 2012.

2. Claimant has proven a causally-connected exacerbation of his pre-existing low back condition as a result of his December 7, 2012 industrial accident; he is entitled to reasonable medical treatment for his low back/right hip area, to include at a minimum a lumbar spine MRI.

3. Claimant has failed to prove any condition in his right hip not associated with his low back complaints are causally connected to his industrial accident of December 7, 2012. As such, Claimant is not entitled to additional medical treatment specifically related to right hip complaints separate and apart from his low back complaints, including but not limited to diagnostic studies not associated with Claimant's lumbar spinal condition.

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

DATED this 19th day of May, 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 19th day of May, 2015, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

STARR KELSO
PO BOX 1312
COEUR D ALENE ID 83816

JAMES MAGNUSON
PO BOX 2288
COEUR D ALENE ID 83816

/s/

jsk