BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

AMANDA WILSON, Claimant, v. CONAGRA FOODS LAMB WESTON, Employer, and OLD REPUBLIC INSURANCE COMPANY, Surety, Defendants.	**IC 2011-009875** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** Filed February 20, 2015

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Industrial Commission assigned the above-entitled matter to Referee Douglas A. Donohue who conducted a hearing in Boise on February 22, 2013. Justin Aylsworth represented Claimant. Nathan Gamel represented Defendants. The parties presented oral and documentary evidence. Post-hearing depositions were taken. A briefing schedule was stayed to allow the taking of a physician's deposition which, ultimately, was never taken. The parties submitted briefs. The case came under advisement on November 3, 2014 and is now ready for decision. The undersigned Commissioners have chosen not to adopt the Referee's recommendation and hereby issue their own findings of fact, conclusions of law and order.

ISSUES

According to the Notice of Hearing, the issues are as follows:

1. Whether Claimant suffered an injury caused by an accident arising out of and in the course of employment;
2. Whether the condition for which Claimant seeks benefits was caused by the alleged industrial accident;

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

a) Temporary disability;
b) Permanent partial impairment (PPI);
c) Permanent disability in excess of impairment;
d) Retraining;
e) Medical care; and
f) Attorney fees.

At hearing the parties stipulated that the permanent disability issue includes consideration of total and permanent disability, including 100%, odd lot, or both.

Further, at hearing, Claimant raised issues of estoppel and quasi-estoppel. Defendants objected to the inclusion of these issues as being untimely raised. As set forth below, it is Claimant, not Defendants, who has alleged an inconsistent position.

CONTENTIONS OF THE PARTIES

Claimant contends Defendants admitted Claimant suffered an accident and injury when they denied a claim for unemployment insurance benefits made by Claimant. They should not be heard to allege she did not so suffer now. Claimant suffered an injury or aggravation to a preexisting condition while shoveling potatoes on or about March 16, 2011. She is entitled to all benefits available. She has been unable to obtain suitable work and meets the qualifications as an odd-lot worker. She is entitled to an award of attorney fees as a result of Defendants' unreasonable denial of benefits; Defendants' investigation of Claimant's claim was insufficient when made; subsequent attempts to manufacture a proper basis for denial do not cure the original unreasonableness.

Defendants contend Claimant raised the issues of estoppel and quasi-estoppel untimely; Claimant's first such mention of these arose at hearing and should not be considered. Moreover, Defendants have not alleged inconsistently; Claimant was fired for violating company policy by failing to report timely *that she alleged* a work accident and injury; they did not take

a position before the Department of Labor about whether Claimant actually suffered a work accident and injury. Claimant has alleged several exclusive dates of accident relating to her claim for benefits. She is not credible in her story of onset of pain. She did not suffer an "accident" as defined by statute. Claimant failed to give notice as required by statute. Her condition was not caused or exacerbated by an accident on March 16, 2011. She is not entitled to any benefits. Alternately, she is not entitled to the extent of benefits she claims. Defendants acted reasonably at all times; attorney fees are not awardable under the facts of record.

EVIDENCE CONSIDERED

The record in the instant case included the following:

1. Oral testimony at hearing of Claimant, her fiancé and coworker Chris Lehmann, and Employer's occupational health nurse Helen Wagner;
2. Claimant's exhibits A through W admitted at hearing;
3. Defendants' exhibits 1 through 15 and 17 through 24 admitted at hearing; and
4. Depositions of orthopedic surgeon Joseph Verska, M.D., and vocational experts Douglas Crum and Nancy Collins, Ph.D.

Objections made in Dr. Verska's deposition regarding admission of documents are OVERRULED. Claimant failed to provide these discoverable documents—notes of the IME physician she hired—in discovery. Her objection to their untimely production is not well taken. Other objections in depositions are OVERRULED.

FINDINGS OF FACT

Prior Medical Care

1. On February 15, 2008, Claimant visited an Arizona ER complaining of one year of back pain and right leg radiculopathy with a recent flare-up. She reported the initial onset

of pain arose after she tried to move a mattress while holding a baby. A lumbar CT showed a possible herniated disc at L4-5 but needed an MRI for confirmation. Generalized lumbar degeneration was seen.

2. On February 29, 2008, a lumbar MRI showed a herniated disc at L4-5 and some disc degeneration at L5-S1.

3. From March to May 2008, Claimant began treatment with a pain management specialist Henry Sanel, M.D., in Arizona for lumbar pain and radiculopathy.

4. On October 4, 2010, Claimant had additional treatment for low back pain. She reported, "Hurt Back, reinjured back 9 days ago at work shoveling potatoes." She provided a history of a "ruptured disk" at L4-5. Dean Nelson, D.O., diagnosed her condition as right lower extremity sciatica, recommended she visit a back specialist and referred her to orthopedic spine surgeon David Christensen, M.D. She did not follow-up with Dr. Christensen until April 2011.

5. On October 6, 2010, Dr. Nelson's office recorded a telephone contact from the office of spine surgeon Joseph Verska, M.D., in which Dr. Verska expressed a willingness to treat Clamant if Dr. Nelson would first order an MRI.

6. On October 14, 2010, Dr. Nelson's office contacted Claimant. Claimant deferred an MRI. Despite repeated call-backs by Dr. Nelson's office, Claimant had no further contact with Dr. Nelson.

7. Claimant has longstanding issues with depression, sometimes diagnosed as bipolar disorder, and a history of intermittent compliance taking prescribed medications for it.

The Alleged Accident

8. Claimant began full-time work for Employer about February 7, 2011. She had previously worked as a temporary employee at Employer's premises, doing the same job,

for about one year. She was still in probationary status when fired on April 18, 2011.

9. All new employees initially work general labor in sanitation for Employer as part of a four-week training. The alleged accident occurred on her last day in sanitation.

10. Claimant testified she was shoveling potatoes; about two hours into the task she began to feel a gradual onset of back pain; she continued working and asked for help; she finished her eight-hour shift without help; pain gradually increased through the shift and for weeks afterward.

11. Claimant testified that the next day Claimant began working in packaging. She continued working through April 6, 2011. Then she sought medical care.

12. Employer first learned that a possible work accident had occurred when Employer received the April 6 doctors' notes. On April 13, Employer initiated contact with Claimant to learn about the allegation. Claimant denied telling her doctor her symptoms were work related. Employer contacted the doctor who "adamant[ly]" asserted Claimant did say she was injured at work.

13. In her May 4, 2011, telephone hearing for unemployment insurance benefits, Claimant first alleged March 16, 2011 as the date when the pain arose while shoveling potatoes. Her position at that time was that she did not suffer a work injury, but rather had a "medical issue."

14. According to a Form 1, she reported neck and/or back pain and cited a date of injury as April 6, 2011, without specifying an event as the source of her alleged injury. The reference to her neck may be an error; the medical records do not mention neck symptoms.

15. Claimant was fired for failure to report an alleged work accident according to company policy. She was denied unemployment insurance benefits for misconduct relating to

that violation of company policy. The Eligibility Determination by the Department of Labor stated that Claimant denied reporting a work accident or injury to any doctor. It also stated that Claimant alleged she "had been working there for over 10 months and did not have any problems" related to her old back injury. Medical records dated October 2010 establish the falsity of that allegation.

Initial Medical Care: 2011

16. On April 5, 2011, Claimant visited nurse practitioner Lacie Asher for back pain. Claimant reported she had "ruptured her disks, L4 to L5" four years ago. Claimant described right sciatic pain radiating to her heel, beginning six months prior, which improved after treatment until one or two "days ago." She reported she had been shoveling potatoes at work. At this visit she described pain bilaterally. Claimant was referred to David Christensen, M.D.

17. On April 6, 2011, Claimant visited the emergency room of Intermountain Spine and Orthopaedics ("Intermountain"). She reported increasing back pain for three weeks, the onset of which she associated the first "twinge" with shoveling at work; pain had steadily increased, becoming severe in the last two days.

18. On April 13, 2011, Claimant visited Douglas Stagg, M.D. She denied her back pain was work related despite her fiancée's report that she had been shoveling at work. Claimant reported her pain was consistent with four years of back pain. Upon examination Dr. Stagg agreed her condition was not work related and he cleared her for "normal work."

19. A lumbar MRI on April 22, 2011 showed disc bulges at L4-5 and L5-S1. This was diagnosed as "severe degenerative disk disease." A 2008 MRI had also diagnosed lumbar disc disease at these levels with a significant disc bulge at L4-5.

20. At an April 26, 2011 follow-up visit to Intermountain Claimant reported a work injury shoveling potatoes which occurred three weeks before the April 6, 2011 ER visit. The L4-5 disc was deemed the source of her pain and radiculopathy. On visits hereafter, Claimant consistently alleged her pain began when shoveling potatoes at work in March.

21. On May 9, 2011, Intermountain surgeon David Christensen, M.D., performed an L4-5 diskectomy with decompressions at both L4-5 and L5-S1. Dr. Christensen found disc fragments; he also noted scar tissue was encountered during surgery. When she awoke from anesthesia she reported symptoms which caused Dr. Christensen to perform a second surgery that day. In a separate operative report he described an L5-S1 discectomy and decompression. He reduced that disc bulge and found no free fragments.

22. On May 24, 2011, she reported continuing pain and radiculopathy but less than before surgery. Dr. Christensen's PA found her motor function and sensation to be essentially normal at all levels; the right L5 EHL was possibly a little weak. By July 14, 2011, she reported her sensation in the right S1 dermatome was possibly diminished.

23. By August 9, 2011, she reported her symptoms on the left had eclipsed those on the right; Dr. Christensen's PA considered this a new development; he also noted normal right L5 EHL strength and right S1 dermatome sensation, but diminished left L5 EHL strength and left L5 dermatome sensation. A new MRI taken August 8, 2011, showed recurrent right side degenerative disc bulges. He noted the inconsistency between the right-sided disc bulges and her reports of left radiculopathy. He recommended an epidural injection for relief and diagnostic purposes. On September 30, 2011, Dr. Christensen administered the epidural injection.

24. On November 17, 2011, Richard Knoebel, M.D., reviewed records and evaluated Claimant at Defendants' request. He did not treat Claimant. Upon examination, he found

her presentation credible. He diagnosed:

> 1) Status post L4/5 and L5/S1 diskectomies with recurrent symptoms beginning 2 months postop and with current symptoms of bilateral L5 and S1 radiculopathies, non-industrial.
> 2) Non-industrial obesity, chronic smoking and lumbar DJD reasonably and adversely affecting her current condition.

25. Dr. Knoebel cited her prior history of back problems and medical treatment. He opined that her current symptoms were likely unrelated to an industrial injury, that Claimant was not medically stable at that time, but that deferred permanent impairment would not be related to an industrial injury. He opined she suffered neither temporary disability nor permanent impairment secondary to an industrial injury.

Medical Care: 2012

26. On January 3, 2012, Clamant was evaluated for mental health issues including hallucinations. Claimant reported that treatment for mental health issues began as early as age 12. Claimant defined her only vocational goal by expressing a desire to return to school.

27. On January 11, 2012, yet another MRI was taken. It showed scar tissue and progressive degeneration with disc bulges at L3-4, L4-5, and L5-S1. The L4-5 bulge was consistent with her right sided symptoms. No condition seen was likely consistent with her left sided symptoms.

28. On February 21, 2012, Dr. Christensen performed an additional right L4-5 diskectomy and decompression. He found a calcified disc fragment.

29. On April 19, 2012, Claimant sought out Joseph Verska, M.D., for evaluation and opinion. He did not treat. She reported a history with a specific date—March 16, 2011—of shoveling potatoes and feeling a "sudden onset" of pain. This represents Claimant's first report of a "sudden onset." Upon examination and review of the MRIs Dr. Verska opined her

symptoms and treatment "are compensable under the work-related injury." He elaborated that although the disc herniation at L4-5 was preexisting, it was aggravated by the work injury making the February surgery necessary. He opined she was not at MMI but anticipated permanent restrictions of lifting 40 pounds maximum, 30 pounds repetitively.

30. On July 12, 2012, Dr. Verska opined Claimant was at MMI and rated her at 12% whole person PPI. The July 12, 2012, note indicates he deemed her at MMI as of her visit in May with Dr. Christensen.

31. On July 27, 2012, Dr. Verska added a recommendation against repetitive bending, lifting, and twisting.

32. On October 3, 2012, Dr. Knoebel reviewed additional records and opined at Defendants' request. He opined that the medium work she was performing, shoveling potatoes, "is not extraordinary." He opined that further review demonstrated it likely that "claimant still has no reasonable evidence of an industrial injury or aggravation to her pre-existing back condition." He disagreed with Dr. Verska's causation opinion, but agreed that Dr. Verska's work restrictions were reasonable.

DISCUSSION AND FURTHER FINDINGS OF FACT

33. 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).

Quasi Estoppel

34. Claimant insists that the doctrine of quasi estoppel is applicable to bar Defendants from asserting that the claimed accident/injury did not occur as alleged. Claimant argues that in connection with Claimant's claim for unemployment benefits, Employer contended that

Claimant was appropriately discharged for misconduct since she did not immediately notify Employer per company policy of the occurrence of the accident. The argument seems to be that since Employer took the position that notification of the accident per company policy was not provided, it necessarily conceded that the accident occurred. Therefore, Defendants' current position that the claimed mishap/event did not occur is inconsistent with a position previously taken.

35. Cited in support of this proposition is the recent Commission case of *Vawter v. United Parcel Service*, 2012 IIC 0083 (2012), and the Supreme Court Decision sustaining the Commission's treatment of the doctrine of quasi estoppel at 155 Idaho 903, 318 P.3d 893 (2014).

36. Defendants argue that Claimant's reliance on the doctrine of quasi estoppel was not noticed as an issue for hearing, and that in any event, Claimant has misapplied the doctrine to these facts.

37. Turning first to Defendants' assertion that it did not have notice of Claimant's intention to assert the doctrine of quasi estoppel, we find that this case does bear some similarity to the manner in which the issue was raised in *Vawter, supra*. In *Vawter*, the employer argued that because the issue of quasi estoppel was not a noticed issue, it was improperly raised by the claimant for the first time in post-hearing briefing. However, the Court found that since the issue of apportionment between employer and the ISIF was before the Commission, inherent in that issue was the question of whether or not employer should be estopped from taking a position on the nature and extent of claimant's pre-existing impairment different than the position it had taken years previously. Here, the threshold issue is whether Claimant suffered an injury caused by an accident arising out of and in the course of her employment. Inherent in that issue is whether Employer should be estopped from arguing that the subject mishap/event did not occur,

when it allegedly argued that such a mishap/event did occur in an earlier proceeding for unemployment compensation benefits. We find that the issue of quasi estoppel is subsumed within the noticed issues. In this regard, we also note that in his letter of January 22, 2013, Claimant's counsel put Defendants on notice of Claimant's position that Defendants were estopped from denying the occurrence of the claimed accident.

38. Turning to the facts of this case, however, we find that the doctrine of quasi estoppel is inapplicable. In defending the claim for unemployment compensation, Employer was not required to commit itself to the proposition that the claimed accident actually occurred as now alleged by Claimant, nor was a decision that the accident actually did occur necessary to the determination of whether Claimant was entitled to unemployment compensation benefits. As is made clear in Defendants' Exhibit 18, Employer first learned of the possibility that Claimant had suffered a work accident in mid March of 2011 when it received medical records generated in connection with Claimant's April 6, 2011 hospital visit. Employer contacted Claimant to inquire, and Claimant denied suffering a work accident. Employer contacted the provider who was adamant in asserting that Claimant had, in fact, given a history of a work mishap occurring in mid March of 2011. During the Department of Labor investigation, Claimant eventually conceded that something did happen in mid March, and that she should have made a report of it to Employer, as required by company policy. With Claimant's acknowledgment that a mishap/event of some type did occur in mid March of 2011, the only issue for the Industrial Commission was whether Claimant immediately notified employer of the occurrence of the work accident. In defending the claim for unemployment compensation, Employer did not need to demonstrate that the claimed accident occurred as alleged in mid March of 2011. Rather, all it needed to do, and all it did, was assert that <u>if</u> the claimed accident occurred as eventually

acknowledged by Claimant, Claimant failed to immediately notify Employer as required by company policy. Therefore, in taking the position in this matter that the claimed accident did not occur, Employer is not taking a position inconsistent with any position it took in the proceeding to secure unemployment compensation. We find the doctrine of quasi estoppel inapplicable to these facts.

Notice

39. An injured worker is required to notify an employer "as soon as practicable but not later than sixty (60) days" of the accident. Idaho Code § 72-701. The notice required by Idaho Code § 72-701 must be in writing. Idaho Code § 72-702.

40. Here, it does not appear to be disputed that in early April of 2011, Employer learned of the contention, whether made by Claimant, or one of her providers, that Claimant suffered a work-related injury to her low back sometime in mid March of 2011. Employer acknowledged this in the course of the investigation conducted by the Department of Labor in connection with Claimant's claim for unemployment benefits. That investigation reveals that Tim Albrecht was aware in early April of 2011 that Claimant gave a history to one of her treating physicians of having injured her back at work approximately three weeks prior to April 6, 2011. (*See* Defendants' Exhibit 18.)

41. From this it is clear that Employer had knowledge, in early April of 2011, of an accident alleged to have occurred in mid March of 2011. Therefore, even if the written notice required by Idaho Code § 72-701 and Idaho Code § 72-702 was not given in timely fashion, Employer had actual knowledge of the alleged accident under Idaho Code § 72-704. Therefore, we conclude that, at the very least, Employer had actual knowledge of the alleged accident within 60 days of the occurrence thereof, sufficient to excuse timely written notice.

Accident/Injury

42. Pursuant to Idaho Code § 72-102(18)(b) an accident means an unexpected, undersigned, and unlooked for mishap, or untoward event, connected with the injury in which it occurs, and which can be reasonably located as to time when and place where it occurred, causing an injury. Here, it must initially be determined whether Claimant has satisfied her burden of establishing the occurrence of such an untoward mishap/event. For the reasons set forth below, we conclude that Claimant has failed in this regard. On April 5, 2011, Claimant was seen at Family Health Services at which time she gave the following history of onset of low back symptoms:

> Patient presents with complaints that approximately 4 years ago, she ruptured her disks, L4 to L5. She was at that time moving her son's bed, had her newborn in her arms, was moving the mattress, and got this pain. She had 1 year of pain control using a pain clinic. This was all in Gilbert, Arizona. She has been fine and had no imaging or anything since 2008. She states that now on her right side, approximately 6 months ago, she had this right sciatic nerve pain which went down to her heel. She was treated for this and did feel quite a bit better until just 1 to 2 days ago when she started to feel this pain, a 5 constant with an 8 intermittent. She states that she was shoveling at work and this happened. She states that she feels like this is both right and left sciatic nerve. It goes all the way down through her ankles to the bottom of her foot. She also states that on the top of her right foot from her ankle down and the 2nd through 5th toes are numb and tingly. They just feel like they have been in really cold water. No loss of sensation there. She has no numbness or tingling of her left leg of foot. She has had no loss of bowel or bladder habits. She states that she has tried ibuprofen with some relief. Aleve has not really helped very much at all. She states that she does have some positions which do make it feel better. She states when she is laying on 1 side with her legs propped on pillows, lying on her stomach in the commando position. She has not had any imaging done since 2008. She states that she has just been working quite hard and there is a lot of manual labor, and this happened just recently again. Patient does state that she is slightly weak in her right leg. ALLERGIES: She is allergic to penicillin. MEDICATIONS: Include Aleve and ibuprofen.
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> C. Exh. J, p. 104.

Therefore, to Nurse Practitioner Asher, Claimant gave a history of having first developed low back difficulty approximately four years prior to April 5, 2011 while living in Arizona. She also described to Nurse Practitioner Asher the onset of low back and right lower extremity pain beginning in approximately October of 2010 but having recovered from this until one to two days prior to April 5, 2011 when she developed discomfort while shoveling at work.

43. On April 6, 2011, Claimant gave a different history of onset to Scott Holliday, M.D., when seen at St. Luke's Magic Valley Regional Medical Center. Dr. Holliday recorded the following history of onset:

> HISTORY OF PRESENT ILLNESS: This is a 31-year-old female who presents to the emergency department with complaint of increasing back pain over the last 3 weeks. It initially started when she was shoveling at Lamb-Weston. It was just a twinge at first and then got progressively worse with increasing pain and spasm. Over the last 2 days, however, it has gotten severe. She rates the pain at 10 out of 10, sometimes. It is currently a 6 out of 10 and radiates down her left leg. Initially she felt tingling down her left leg and now she feels pretty much from her calf down that she is numb. She denies any bowel or bladder dysfunction. She has had a history of a back injury that is very similar 4 years ago in this time period. It is noted that gabapentin was effective in relieving somewhat her neuropathy-type symptoms.
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> C. Exh. K., p. 122.

Therefore, on the occasion of this evaluation, Claimant gave a history that is at least consistent with an aggravating shoveling incident occurring in mid March of 2011.

44. On April 13, 2011, Claimant was seen for the first time by Dr. Stagg, at St. Luke's Magic Valley Regional Medical Center. On the occasion of that visit, Dr. Stagg took the following history from Claimant concerning the manner in which her difficulties arose:

> HISTORY OF PRESENT ILLNESS: The patient works as a packaging operator at ConAgra. She has been with them 2 months full time and with them nearly a year initially as a temp. She has some chronic back issues for the last 4 years and ended up in the emergency department with some back pain on 4/06/2011. Apparently her fiancée said something to the emergency room physician about this being related to shoveling at work. But she said this is not work related. She

> is not claiming this is work related but this is just something that she has dealt with for the part several years and she has had a recent flare. She has had no recent injuries. But approximately the first of April, she started having more low back pain than usual. She was seen in Physicians Immediate Care Center on 4/05/2011 and then seen in the emergency department at St. Luke's Magic Valley Regional Medical Center on 4/06/2011. She, I do not believe, has missed any work due to this. She wants to get back to work and again says this has nothing to do with her work.
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> C. Exh. K, p. 129.

Therefore, to Dr. Stagg, Claimant gave no history of an untoward mishap/event occurring in mid March of 2011. Rather, she reverted to a "flare" occurring approximately the first of April of 2011.

45. On or about April 26, 2011, Claimant was seen at Intermountain Spine and Orthopedics, at which time she described an incident occurring in mid March of 2011 when she developed low back and bilateral leg pain while shoveling potatoes. This history firmed up to the point that when seen by Dr. Verska on April 19, 2012, she gave the following history of the occurrence of an accident on March 16, 2011:

> ONSET: Her current symptoms started 03/16/11. At that time, she was shovelling potatoes at work with the large shovel dumping on an incline about 5 ½ to 6 to above ground level, which involved repetitive bending, lifting, twisting, and lifting and she developed sudden onset of back pain that progressively got worse over the next three weeks and eventually started to go into her legs. She went to the emergency room and was eventually seen by Dr. Christensen.
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> C. Exh. E, p. 65.

46. The initial records generated in the spring of 2011 are difficult to square with Claimant's current insistence that she suffered an untoward mishap/event on March 16, 2011. We are also mindful that to Dr. Stagg, Claimant denied that her injuries bore any relation to her employment. On the whole, we find that Claimant lacks substantive credibility, and conclude

that she has failed to prove the occurrence of the claimed untoward mishap/event of March 16, 2011. See *Clark v. Shari's Management Corp.*, 155 Idaho 576 (2013).

47. In addition to proving the occurrence of an untoward mishap/event, Claimant must also demonstrate that such event caused damage to the physical structure of her body, i.e. an injury. See Idaho Code § 72-102(18) (b) and (c).

48. A claimant has the burden of proving the condition for which compensation is sought is causally related to an untoward mishap/event occurring at the work place. *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. Drapo Corporation*, 95 Idaho 558, 560-61, 511 P.2d 1334, 1336-37 (1973), *overruled on other grounds by Jones v. Emmett Manor,* 134 Idaho 160, 997 P.2d 621 (2000). *See* also *Callantine, Id.*

49. The evidence fails to demonstrate that any physician treating Claimant subsequent to April 1, 2011 has expressed the opinion that Claimant's low back condition is related to her claimed accident.

50. When seen by Nurse Practitioner Asher on April 5, 2011, Claimant described treatment for low back pain in 2008, in approximately October of 2010, with recent onset in

early April of 2011. Nurse Practitioner Asher's notes do not reflect that she hazarded an opinion as to the cause of Claimant's recurrent difficulty.

51. Claimant was seen by Dr. Scott Holliday on April 6, 2011. Claimant gave Dr. Holliday a history of having had a similar low back injury four years prior, but did not give Dr. Holliday a history of the low back discomfort from which she sought treatment by Dean Nelson, D.O., in October 2010. Regardless, Dr. Holliday's notes do not reflect that he rendered an opinion on the cause of Claimant's low back complaints.

52. Claimant was seen by Doug Stagg, M.D., on April 13, 2011. In addition to describing an onset of discomfort around the first of April of 2011, Claimant also specifically denied any work connection to her low back condition. Not surprisingly, Dr. Stagg has never rendered an opinion that Claimant's condition is, in fact, related to a work accident.

53. When Claimant presented to Dr. Christensen's office on April 26, 2011, she did describe a work accident occurring in approximately mid March of 2011. Dr. Christensen's operative report of May 9, 2011 contains the only statement from a treater that arguably constitutes an opinion on the cause of Claimant's low back problem. In that note, Dr. Christensen stated:

> The patient is a 31-year old female who injured her back on February 17 shoveling potatoes at work.

Even if Dr. Christensen had gotten the date right in his operative report, we are disinclined to believe that the statement quoted above represents anything but Dr. Christensen's repetition of the history given to him by Claimant at the time of the initial April 26, 2011 evaluation. Without more elaboration from Dr. Christensen, we are unwilling to accept that the quoted statement amounts to his medical opinion that Claimant's low back condition is causally related to an accident of mid March 2011.

54. Turning to non-treaters, Dr. Knoebel evaluated Claimant at the request of surety on November 17, 2011. Although Dr. Knoebel apparently received medical records referencing both Claimant's 2008 and 2010 low back treatment, his report does not reflect that he considered Claimant's October 2010 low back treatment in rendering his opinion. At any rate, Dr. Knoebel ultimately rendered an opinion that Claimant's low back condition was not causally related to shoveling work performed by Claimant in the Spring of 2011.

55. The only physician who has rendered an opinion that Claimant's low back condition is, in some respect, referable to the claimed accident is Joseph Verska, M.D., who Claimant saw on or about April 19, 2012. As noted above, to Dr. Verska, Claimant gave a specific history of having developed the sudden onset of low back pain on March 16, 2011 while shoveling potatoes in a particular repetitive fashion. Dr. Verska's report reflects that he was aware of Claimant's treatment for low back and right lower extremity discomfort in Arizona in 2008. It does not reflect that he was aware of Claimant's treatment for low back and right lower extremity discomfort in October of 2010. However, in his deposition of May 15, 2013, Dr. Verska testified that he did have the opportunity to review the October 2010 chart notes in formulating his opinions. Essentially, Dr. Verska testified that he believed that Claimant suffered from a pre-existing right sided L4-L5 disc lesion which explained both her 2008 and 2010 symptoms. In his opinion, the March 16, 2011 accident as described by Claimant caused or contributed to a left-sided lesion at L4-L5 and a right-sided lesion at L5-S1. Dr. Verska testified that these lesions were new lesions as compared to the radiological studies performed in 2008, and based on Claimant's history, were causally related to the March 16, 2011 accident.

56. Dr. Verska's opinion rests on a particularized mechanism of injury of March 16, 2011 which is nowhere described in the medical records generated immediately following the

alleged accident, and which is inconsistent with Claimant's insistence to Dr. Stagg on April 13, 2011 that no such mishap/event had occurred.

57. For these reasons, we find Dr. Verska's testimony to be unpersuasive. We conclude that Claimant has failed to adduce medical proof sufficient to support a conclusion that her injuries are the result of a specific accident occurring on March 16, 2011.

CONCLUSIONS OF LAW AND ORDER

1. Claimant failed to show she suffered an accident causing injury in September/October 2010 or March/April 2011.

2. All other issues are moot.

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

DATED this _20th__ day of __February _____, 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 __20th_ day of _February _____, 2015, a true and correct copy of FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER were served by regular United States Mail upon each of the following:

JUSTIN AYLSWORTH
PO BOX 6190
BOISE ID 83707-6190

NATHAN GAMEL
PO BOX 1007
BOISE ID 83701

ka _/s/_____