

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JOSE YEPEZ,

Claimant,

v.

DRISCOLL BROTHERS,

Employer,

and

LIBERTY NORTHWEST INSURANCE CORP.,

Surety,
Defendants.

IC 2011-016953

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

Filed August 19, 2016

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 Pocatello, Idaho, on July 22, 2015. Claimant was represented by Paul Curtis, of Idaho Falls. Lea Kear, of Boise, represented Driscoll Brothers (“Employer”), and Liberty Northwest Insurance Corp., (“Surety”), Defendants.¹ Ester Torres served as an interpreter for Claimant. Oral and documentary evidence was admitted. Two post-hearing depositions were taken and the parties submitted post-hearing briefs. The matter came under advisement on July 21, 2016.

¹ Subsequent to the hearing and post-hearing deposition, but before briefing, Ms. Kear changed employment; thereafter Matthew Vook substituted in as counsel for Defendants.

ISSUES

The issues to be decided are:

1. Whether the condition for which Claimant seeks benefits was caused by the industrial accident; and
2. Whether and to what extent Claimant is entitled to the following benefits:
 - a. Medical care; and
 - b. Temporary disability benefits.

Reserved issues include PPI, PPD, retraining, and attorney fees.

CONTENTIONS OF THE PARTIES

Claimant argues that as a result of being sprayed by herbicides on May 31, 2011, while working for Employer, he suffered renal and pulmonary injuries. He is entitled to appropriate benefits for this accident.

Defendants argue Claimant suffered no compensable injuries when he was exposed to agricultural chemicals on May 31, 2011. Claimant is not entitled to any benefits.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. Testimony of Claimant and his wife, Bonnie Yopez, taken at hearing;
2. Claimant's Exhibits (CE) 1 through 28, admitted at hearing;
3. Defendants' Exhibits (DE) 1 through 11², admitted at hearing;
4. The post-hearing deposition transcript of Stewart Curtis, D.O., taken on October 30, 2015; and

² Most of Defendants' exhibits were duplicates of those records submitted by Claimant. It may well be that Defendants prepared their exhibits first, but regardless, the parties are not to submit duplicate exhibits when it can be avoided. There was no reason why Defendants could not have withdrawn most of their proposed exhibits when they determined Claimant was submitting the same records. Obviously, Claimant could have done the same. In the future, the parties are requested to work together to insure only one set of relevant exhibits is submitted.

5. The post-hearing deposition transcript of Lawrence Klock, Jr., M.D., taken on January 26, 2016.

Any objections preserved during the depositions are overruled.

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

FINDINGS OF FACT

1. At the time of hearing, Claimant was a 29 year old agricultural worker, living in Aberdeen.

2. Mid-morning on May 31, 2011, Claimant was working on irrigation wheel lines in a potato field at Employer's farming operations. Claimant noticed a chemical spraying truck enter the field where he was working. The truck began spraying chemicals as it proceeded toward him. Claimant finished his task and began walking out of the field. His course of egress took him directly toward the approaching chemical truck. The truck was spraying just two rows over from where Claimant was walking out of the field. As the sprayer went by Claimant, he turned his head away from the nozzle in an effort to shield his face from the chemicals.

3. As the sprayer passed by Claimant, chemical mist coated him from head to foot. Claimant's clothing was dampened by the chemical spray, more so on his right side. Because Claimant was walking in the direction opposite the sprayer's line of travel, Claimant had to walk through the residual chemical vapors and mist from the spraying operation all the way out of the field. Claimant estimates he was exposed to the chemical fumes for about two minutes.

4. Immediately after this exposure, Claimant felt nauseated and dizzy. His co-workers had seen what happened, and when Claimant told them how he felt, they suggested he drink lots of water. Claimant did as instructed, but continued to feel nauseated throughout the remainder of his work day, which lasted until after 7:00 p.m. Claimant did not change his clothing or shower until he got home after work.

5. Claimant developed a sore throat and cough by that evening. He also began to experience recurring bloody noses.³ These symptoms continued over the next few weeks, but eventually resolved without medical intervention. Although he testified he continued to feel poorly, Claimant missed no work throughout this time frame.

Claimant's Kidney Issue

6. On the afternoon of July 10, 2011, Claimant went to the Portneuf Medical Center emergency room complaining of left-sided flank pain. There he saw Kurtis Holt, M.D. Claimant indicated his pain began that morning, and intensified to the point where he sought medical treatment. Claimant's flank pain was accompanied by nausea.

7. Dr. Holt ordered a CT scan of Claimant's abdomen and pelvis, which uncovered a tiny punctate non-obstructing stone in Claimant's left kidney. The kidney scan also revealed minor bilateral perinephric stranding, but no hydronephrosis.⁴

³ Claimant also presented testimony that he coughed up blood and had blood in his stools, but it is not clear if this was due to swallowing blood from his bloody nose, or constituted separate symptoms. In any event, the bloody coughing and blood in his stools apparently resolved over the same time frame as his bloody nose episodes.

⁴ These two findings, and any significance they may or may not have had to the issue at hand, were never discussed by any medical expert.

8. Dr. Holt also ordered blood and urine lab tests. The urine tests came back normal. However, the blood work came back with a creatinine reading of 2.1, and BUN (blood urea nitrogen) of 22 – both indicative of impaired kidney function. The blood testing also showed an elevated white blood cell count.

9. Claimant was given an antibiotic IV at the hospital, and prescribed Cipro antibacterial tablets to treat his presumed renal colic. Prior to discharging Claimant, Dr. Holt also scheduled him for an appointment with a nephrologist.

10. Claimant presented at Idaho Physicians Clinic Nephrology in Blackfoot on July 14, 2011, and was initially seen by Michael Haderlie, M.D., a nephrologist. Claimant continued to complain of back pain, with tenderness radiating into his testicles bilaterally.

11. Dr. Haderlie's office notes include in Claimant's history a recitation of the chemical spraying incident, but the doctor was under the impression the event took place two weeks prior to Claimant's office visit. In reality, it had been about six weeks since the accident. Nevertheless, Claimant indicated that since then, he had not been feeling well, experiencing nausea and vomiting. Dr. Holt's notes recorded that Claimant began having significant back pain on Sunday, July 10, 2011, severe enough to prompt a trip to the emergency room on that date. The back pain was continuing.

12. Dr. Haderlie ordered lab work. The urinalysis was "completely unremarkable." However, Claimant's blood work showed an elevated creatinine level of 2. Claimant's white blood cell count was down from 11 to 7.4.

13. Dr. Haderlie diagnosed severe acute kidney injury. The doctor felt the injury was most likely from an infectious source, causing bilateral kidney inflammation.

Dr. Haderlie prescribed another antibiotic, azithromycin, in addition to Claimant's previously-prescribed Cipro.

14. Dr. Haderlie could not rule out chemical exposure as the source of Claimant's problem, and asked him to find out exactly what chemicals he had been exposed to when he was sprayed. Dr. Haderlie also considered several other potential explanations for Claimant's condition, but felt he would wait to see if Claimant's condition improved. If it did not, the doctor would perform a kidney biopsy. Dr. Haderlie took Claimant off work and scheduled a followup appointment for one week hence.

15. When Claimant presented to the Idaho Physicians Clinic one week later, he was seen by Dr. Haderlie's partner, nephrologist Naeem Rahim, M.D. Dr. Rahim noted Claimant was being seen in followup for an acute kidney injury with elevated creatinine.

16. On this visit, (July 21, 2011), Claimant's creatinine level had fallen to 1.6, which was still elevated, but lower than the previous week. Claimant denied nausea, vomiting, diarrhea or constipation. His bilateral back pain was improving, but still present.

17. Dr. Rahim felt Claimant's condition was most likely due to a urinary tract infection (UTI) and recent kidney stone, although Dr. Rahim could not rule out at least some of Claimant's pain complaints as being musculoskeletal. Dr. Rahim was concerned over Claimant's elevated blood pressure.

18. Claimant provided the doctor a list of the chemicals to which he had been exposed, as he had been asked to do. Dr. Rahim discussed the chemicals involved, but did not attribute any of Claimant's complaints to the exposure. Dr. Rahim released Claimant to work as tolerated, but with a lifting restriction of twenty pounds. Claimant was asked to follow up with Dr. Haderlie in two weeks.

19. On August 4, 2011, Claimant was again seen by Dr. Haderlie. Interestingly, under the heading “Chief Complaint” Dr. Haderlie states that Claimant “is here for a severe acute kidney injury related to chemical exposure.” In the next sentence, Dr. Haderlie notes that Claimant was being seen in followup for “a severe acute kidney injury and possible UTI/stone passage as well at this time.” CE7, p. 5. This apparent contradiction was elaborated on in Dr. Haderlie’s assessment, wherein he opined that Claimant’s condition was “likely secondary to possible UTI/stone passage with remnant back pain, although I certainly cannot rule out the fact that he had onset of all of his issues at the time of a significant chemical exposure at work.” CE7, p. 6.

20. At this visit, Claimant’s creatinine level was down to 1.4, his urinalysis was still completely normal, all of his electrolytes were within normal limits, and his blood count was normal. Claimant’s flank pain was minimal. Dr. Haderlie felt a biopsy was not warranted. Claimant’s condition, whatever it was from, was resolving, and Claimant was released to return to work full time with no restrictions.

21. Lab work done on September 15, 2011 showed Claimant’s creatinine level had returned to his pre-accident baseline⁵ reading of .8, with BUN level of 8.0. No further testing for kidney function is noted in the record.

Claimant’s Asthma Issue

22. On September 21, 2012, Claimant presented at Health West, Inc., in Pocatello, with a host of stated issues including left lower quadrant pain, low blood pressure, spitting up blood on that date, dysuria (painful urination), polyuria (excessive amounts of urine), vertigo, dry heaves, a rash on his right wrist,

⁵ Claimant had previously had blood work done in April 2009 which showed his creatinine level at .8, and BUN at 10.

pruritus (itchy skin), and headaches for the past two weeks. He was seen by Heather Schaper, PA-C. Claimant related a history which included a claim that he had aspirated chemicals during harvesting work the previous summer, which led to bronchitis, abdominal pain, and acute kidney and liver failure. Claimant told PA-C Schaper his lab work as of February 2012 showed normal kidney function, but continued elevated liver function test readings.⁶ Claimant stated he had developed shortness of breath over the past year, with severe cough in the mornings. He had recently become nauseous and started having dry heaves. He also complained of left-sided chest pains which came and went, and were often accompanied by palpitations. Claimant's wife thought Claimant looked more yellow than usual, especially on Claimant's palms. Claimant indicated he was often fatigued, with malaise and general weakness. He suffered from anxiety. Claimant also related eye pain on some days.

23. PA-C Schaper diagnosed atypical chest pain, cardiomegaly, reactive airway disease, esophageal reflux, viral arthritis, resolved, and external chemical burns. She also mistakenly diagnosed a uterine scar from previous cesarean delivery.⁷

24. Chest X-rays were obtained. They showed Claimant's heart size at the upper end of normal, and low lung volume. PA-C Schaper ordered overnight monitoring oximetry. She also requested a cardiac volume, function, and valves evaluation. Claimant's oxygen saturation was 97%. Claimant was given an inhaler to help with his shortness of breath episodes.

⁶ No such lab records were produced.

⁷ Given the inclusion of a C-section scar, it is difficult to determine with certainty which other of her diagnosed conditions actually applied to Claimant. In light of the totality of the record and analysis below, it is not that critical to correctly ascertain the extent of Claimant's true diagnosis that day.

25. Claimant continued to treat with PA-C Schaper for his pulmonary complaints and the other above-identified issues. All tests related to the latter came back negative. Claimant also continued to complain of anxiety. At some point in the treatment, PA-C Schaper came to believe Claimant's wrist rash was due to his previous chemical exposure. She also felt Claimant's continuing anxiety could be due to his worrying over the exposure. Claimant expressed a belief that all his issues stemmed from that accident.

26. The records show that at least as of November 2013, Claimant was still treating with PA-C Schaper for a variety of problems. In response to a letter from Claimant's attorney in March 2014, PA-C Schaper attributed only the "COPD, asthma, low lung volume, and hypoxia" to the May 31, 2011 industrial accident. CE 18 p.2.

27. Claimant was also tested/evaluated at the Portneuf Pocatello Lung Clinic, but those notes are not helpful in evaluating Claimant's causation issue. Likewise, Claimant was seen one or more times, perhaps for testing, by Allen Salem, M.D., of Idaho Falls Pulmonary/Sleep and Critical Care Specialists, but the notes are not decipherable without explanation, which is lacking. In those records is a handwritten note which states "Methachor suggests asthma," but without any explanation clarifying the cryptic jotting, the note is immaterial to the analysis.

DISCUSSION AND FURTHER FINDINGS

28. The first issue for resolution is whether the conditions for which Claimant seeks benefits were caused by the industrial accident of May 31, 2011. Without this threshold causal link, Claimant's other claims need not be considered.

29. Claimant has the burden of proving, by a preponderance of the evidence, all facts essential to recovery on his claim. *Evans v. Hara's, Inc.*, 123 Idaho 473, 849 P.2d

934, (1993). Proof of a possible causal link is not sufficient to satisfy this burden. *Beardsley v. Idaho Forest Industries*, 127 Idaho 404, 406, 901 P.2d 511, 513 (1995). Claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability. *Langley v. State Industrial Special Indemnity Fund*, 126 Idaho 781, 785, 890 P.2d 732, 736 (1995). To prove that a causal relationship is medically probable requires Claimant to demonstrate that there is more medical evidence for the proposition than against it. *Jensen v. City of Pocatello*, 135 Idaho 406, 18 P.3d 211 (2000). In determining causation, it is the role of the Commission to determine the weight and credibility of testimony.

30. Claimant was exposed to a cocktail of three different herbicides; Dimetric DF75%, Boundary 6.5EC, and Prowl H2O. The Material Safety Data Sheets (MSDS) for each herbicide lists the active ingredients. One such chemical, Metribuzin, found in Boundary 6.5EC and Dimetric DF75%, is, at chronic level exposures, known to target organs including the kidneys, liver, thyroid and testes in rats and dogs. Chronic exposure is defined as repeated exposure over three months or greater. For subchronic exposure, the effects of Metribuzin are not seen in kidneys, although it can affect the liver.

31. None of the other active ingredients found in the above-listed chemicals have been shown to damage kidneys, although at least one, S-metolachlor, can cause eye, skin, and mucous membrane irritation. All of the herbicides contain ingredients which, at least after chronic exposure, could damage the liver.

32. All of the opining doctors have reviewed the MSDS for each product in question. Dr. Haderlie, one of the doctors who treated Claimant's kidney issue, and Stewart Curtis, D.O., who conducted an independent medical evaluation

at Claimant's request, rendered opinions linking Claimant's chemical exposure to his subsequent kidney and pulmonary conditions. PA-C Schaper opined that Claimant's pulmonary issues were causally connected to his industrial accident. Lawrence Klock, Jr., M.D., who saw Claimant on behalf of Defendants, felt none of Claimant's asserted maladies were related to his industrial accident of May 31, 2011. Dr. Rahim, although never specifically opining on the causation issue, also treated Claimant for kidney issues and his notes are worth considering.

Dr. Rahim

33. As noted previously, although his primary treater at the Idaho Physicians Clinic was Dr. Haderlie, Claimant saw Dr. Rahim on one occasion. At the time Dr. Rahim examined Claimant, the doctor was aware of Claimant's chemical exposure incident. Dr. Rahim reviewed the active ingredients of the herbicides with Claimant. Dr. Rahim noted Claimant had not swallowed the chemicals. Dr. Rahim made no mention of a possible connection between the chemical exposure and Claimant's kidney inflammation. Instead, the doctor felt Claimant was most likely recovering from a urinary tract infection and recent kidney stone with remnant back pain. Dr. Rahim also found some likely mid-spine tenderness on examination, and could not rule out musculoskeletal pain as contributing to Claimant's low back complaints.

34. It is noteworthy that Dr. Rahim specifically considered a chemical component to Claimant's kidney condition and dismissed it without comment. He felt the most likely explanation for Claimant's elevated, but falling, creatinine level was an improving UTI and passed kidney stone.

Dr. Haderlie

35. Dr. Haderlie was the first nephrologist to examine Claimant. His history included the fact that Claimant had been “soaked” by agricultural chemicals “two weeks ago.” CE 7 p.1. Claimant complained of mild nausea. Dr. Haderlie’s first assessment was a severe acute kidney injury most likely due to an infectious source causing bilateral inflammation. Dr. Haderlie could not rule out a sexually transmitted disease. He also felt Claimant’s chemical exposure could be responsible for Claimant’s complaints. The doctor also listed several other potential causes, warranting further lab work. Finally, the doctor felt it was possible, but unlikely, Claimant had passed a kidney stone prior to the CT scan, and his condition was residual from that event.

36. By the time Dr. Haderlie next saw Claimant in August, Claimant’s creatinine level had subsided to 1.4, and his other labs were all normal. Dr. Haderlie’s assessment at that time was a resolving severe acute kidney injury, likely secondary to UTI or passage of kidney stone with remnant back pain. Dr. Haderlie noted he could not rule out the fact Claimant’s symptoms had begun, to Dr. Haderlie’s understanding, “at the time of a significant chemical exposure at work.” CE 7 p. 6.

37. On August 2, 2011, Surety sent a letter with a series of written questions to Dr. Rahim, together with the MSDS and a review of health effects for each of the herbicides in question. The questions were instead answered by Dr. Haderlie. When asked for the diagnosis and opinion on chemical involvement, Dr. Haderlie wrote, “Acute kidney injury, appears associated with chemical exposure”. CE 9 p. 2.

38. On April 9, 2012, in response to information and probably a letter (not in the record) from Claimant's counsel, Dr. Haderlie, among other observations, summarized his conclusions and opinions regarding Claimant's complaints. Dr. Haderlie's summary stated;

[Claimant] was apparently in good health prior to the chemical exposure. Following this, he has had a myriad of documented complaints. He also has had certain documented objective abnormalities, the predominant one being his grossly abnormal renal function, which fortunately has completely resolved. Unfortunately, other symptoms have persisted. I ruled out obvious infection, autoimmune disease and rapidly progressive glomerular nephritis. I doubt a viral pulmonary renal syndrome that was spontaneous is a possibility. Most pulmonary renal syndromes are severe and do not improve with conservative therapy. Infection is a possibility, kidney stone with passage was also a significant possibility, however, I cannot rule out, given the timing, that the exposure to chemicals at work is not a possible contributor as well. If infection or simple passage of a renal stone were the main issues, all of these symptoms should have resolved readily, in a time period that would have been surpassed well before he saw me. Unfortunately they have persisted. Given the fact that the exposure to the chemicals in questions were directly timed with the onset of his [symptoms], and lab abnormalities, even if there were other potential factors as outlined, I believe there is at least a 60% possibility that the chemical exposure was directly responsible for his complaints, if not more.

CE 10, p.2.

39. Unfortunately, Dr. Haderlie did not always isolate Claimant's kidney symptoms from what he called "a myriad" of complaints. As a result, it is not clear what he meant when he wrote that Claimant's symptoms have persisted. Clearly, the kidney function returned to baseline at the latest by mid-September 2011. Perhaps Dr. Haderlie meant some of Claimant's other "myriad" of complaints, which he listed as weakness, nausea, urine color change, and at some point in time (although not documented

in any medical records in 2011) respiratory complaints, vertigo, loss of libido, chest pain, pleurisy, reflux, chemical burn, anxiety and depression.

40. Claimant's specific complaint of weakness did not surface in medical records as a continuing symptom until 2012, although the first time he saw Dr. Haderlie, he was complaining of a general sense of feeling unwell. Perhaps this constitutes the weakness. That complaint is not in the remaining records from 2011, although at hearing Claimant and his wife testified Claimant has been weak and tires easily since the chemical exposure.

41. Claimant's nausea is well documented early on in his treatment, and supported by his hearing testimony. However, by the time he saw Dr. Rahim on July 21, 2011, Claimant was reporting no nausea.

42. Only at his initial lab test did Claimant present with colorless urine; the remainder of the tests listed yellow, or what was considered normal colored, urine. It was likewise always clear, not cloudy. Never was Claimant's urine discussed as being indicative of any medical issue. Certainly it was not a continuing symptom. All other purported symptoms listed above first appeared in 2012 medical records.

43. Claimant's medical records do not support a finding of ongoing respiratory difficulties since the time of the chemical exposure. In fact, Claimant's examinations at Idaho Physicians Clinic consistently listed no respiratory issues. Claimant's lungs were clear to auscultation bilaterally with symmetric expansion and oximetry of 96 to 98%. Likewise, at the ER, Claimant's lungs were clear and respiratory function was normal. It is not clear when Claimant began complaining of respiratory issues, or to whom. Perhaps it was included in the letter to Dr. Haderlie from Claimant's attorney. Perhaps "respiratory complaints" was meant to include Claimant's bout of bloody noses, and "coughing up blood" as he described at hearing,

which lasted for approximately four weeks after the initial exposure, and was described as “bronchitis” by Dr. Klock. In any event, Claimant did not mention any respiratory complaints in 2011 in the medical records provided in this case.

44. When Dr. Haderlie stated his opinion that he felt there was “at least a 60% possibility that the chemical exposure was directly responsible for his complaints, if not more,” it is confusing as to what complaints he is referencing. It is reasonable to assume he meant Claimant’s kidney complaints, since he is a nephrologist, and the majority of his summary focused on why he did not believe the kidney issue was related to other potential causes. But when he said Claimant’s symptoms have persisted, he could not have meant kidney symptoms, since those had long ago resolved and Claimant’s creatinine levels had returned to baseline. Interestingly, Dr. Haderlie still listed passing a kidney stone as the only possibility he called “significant,” which is consistent with his working diagnosis from the first time he saw Claimant.

45. Dr. Haderlie was not deposed. His ambiguous opinions were never clarified.

Dr. Curtis

46. Claimant sought out an independent medical exam with Stewart Curtis, D.O., an Idaho Falls board-certified occupational medicine physician. After examining Claimant on April 24, 2015 and reviewing medical and legal records provided by Claimant’s attorney, Dr. Curtis answered a series of questions set forth by the attorney. Dr. Curtis was also deposed.

47. Both in his report and deposition, Dr. Curtis opined that Claimant’s acute renal failure and respiratory ailments were caused by his exposure to herbicides

on May 31, 2011. He testified that he did examine Claimant, and the examination was unremarkable. Dr. Curtis also performed a pulmonary function test on Claimant, which was normal.

48. With regard to Claimant's kidney failure, Dr. Curtis noted Claimant had elevated creatinine levels after the chemical incident, and those levels subsided to normal over time. Dr. Curtis noted the elevated creatinine levels occurred near in time to the accident, and resolved rather shortly; he felt it "made sense" that the accident caused the kidney failure even though he acknowledged that exposure does not always mean disease.

49. Elaborating further, Dr. Curtis looked at some other likely causes for increased creatinine levels, such as an obstructed ureter, or diabetes, neither of which afflicted Claimant.⁸ He came back to the idea that the timing of events was the critical factor driving his opinion; Claimant had not had kidney problems prior to the exposure, and then had problems six weeks after the exposure. Dr. Curtis also noted that sometimes the body's response to chemical exposure does not occur immediately, but can be delayed.

50. Dr. Curtis likewise related Claimant's pulmonary complaints to the chemical exposure on the theory that Claimant did not have "asthma" before the exposure, but did thereafter.

Dr. Klock

51. Defendants hired Lawrence Klock, Jr., M.D., a physician with board certifications in internal medicine and pulmonary medicine. He is self-employed in Spokane, primarily doing occupational pulmonary disease independent consultations

⁸ However, both Drs. Haderlie and Rahim felt there was a possibility that Claimant had a kidney stone-obstructed ureter which stone cleared the ureter immediately prior to Claimant presenting at the ER. This theory could account for Claimant's high but improving creatinine levels in the days and weeks following July 10, 2011.

for Washington Labor & Industry (worker's compensation) cases through O-M-A-C (Objective Medical Assessments Corporation).

52. Dr. Klock examined Claimant on August 26, 2011. He prepared a report and was subsequently deposed.

53. Dr. Klock's report and his deposition testimony exhibit bias in numerous instances. Dr. Klock reported a history significantly at odds to the history Claimant provided his medical treaters, and his testimony at hearing. The doctor consistently minimized Claimant's exposure, his symptoms, and the extent of his kidney failure. Amazingly, he even added minimizing language to a supposedly direct quote.

54. While tempted to simply dismiss Dr. Klock's entire reporting and testimony due to his apparent bias, even an extremely partisan medical expert is still capable of accurately stating medical facts and opinions. However, no weight is assigned to the doctor's version of Claimant's history, or any opinions which were directly influenced by, or dependent upon, such inaccurate history.

55. Dr. Klock felt that Claimant had minimal symptoms from the chemical exposure, which resolved prior to the IME. Instead, the doctor's hypothesis was that Claimant's back pain was musculoskeletal in nature. Dr. Klock noted that kidney failure does not produce unrelenting pain. While kidney stones and their passage may be quite painful, most often that pain does not continue indefinitely.

56. Dr. Klock felt that Claimant's kidney failure could be attributable to a viral respiratory infection which Claimant contracted at some point in June 2011. The infection led to bronchitis, malaise, weight loss, and weakness, which had resolved by the time of the IME. Also, the virus may have infiltrated Claimant's kidneys (a condition known

as viremia), causing the kidney dysfunction. In part, Dr. Klock based his opinion on the history he recorded during the IME, as well as the MSDS for the chemicals in question, which he believed did not list kidney failure as a possibility.⁹ Finally, Dr. Klock felt that any symptoms of chemically-induced kidney failure and/or asthma would have manifested before July 2011.

57. Dr. Klock testified at deposition that even if his understanding of Claimant's history was inaccurate and Claimant had suffered a more significant exposure with more pronounced immediate effects of nose bleeding, malaise, and bronchitis-like symptoms, all of which lasted for approximately four weeks post-exposure, it would not change his opinions.

58. After Claimant raised a claim for respiratory ailments, Dr. Klock was asked to provide additional opinions regarding this condition. Dr. Klock prepared an addendum report dated April 5, 2014. Therein, Dr. Klock noted Claimant had no respiratory deficits or complaints when the original IME was performed in August 2011.

59. Because Dr. Klock's opinions in his addendum do not rely on his version of Claimant's history but rather on the medical records and the doctor's own examination, his opinions on Claimant's respiratory condition will be considered.

60. Upon review of PA-C Schaper's medical records and report, Dr. Klock noted his complete disagreement with her findings. He broke out her diagnoses individually and commented on each.

61. Dr. Klock disputed the diagnosis of asthma since Claimant's pulmonary examinations had been consistently normal. Claimant had never demonstrated wheezing on

⁹ During his deposition, Dr. Klock acknowledged he had not seen the statement on the MSDS that Metribuzin is known to be nephrotoxic at high levels.

auscultation in any examination. Dr. Klock read the medical records as demonstrating that Claimant had no significant improvement with the multiple inhalers he had been provided during the course of his treatment with PA-C Schaper.¹⁰

62. On the diagnosis of chronic obstructive pulmonary disease, or COPD, Dr. Klock pointed out that PA-C Schaper never performed a pulmonary function study, and that on every visit, Claimant's oxygen saturation test and pulmonary examination was normal. Claimant was not a smoker and had no history of asthma.

63. Dr. Klock observed that in the medical records there were close to a dozen oxygen saturation level recordings all within normal limits. PA-C Schaper's physician reviewed a nighttime oxygen saturation study which he interpreted as being normal. As such, there is absolutely no evidence to support a diagnosis of hypoxemia, or oxygen deprivation.

64. With regard to the findings of an enlarged heart with low lung volumes as interpreted from x-rays, Dr. Klock pointed out that such findings are typical of a patient who does not take a full and deep breath during the x-ray. In contrast, a subsequent echocardiogram demonstrated normal values and no evidence of an enlarged heart.

65. Finally, while Claimant complained of various chest pains, no medical records demonstrate evidence of pleurisy.

66. Dr. Klock noted that PA-C Schaper's notes regarding Claimant's history included several mistakes. First, Dr. Klock asserted that Claimant was never "hospitalized" for his chemical exposure, although he was given an antibiotic IV in the hospital. He had not "aspirated" chemicals at work, which occurs when a person

¹⁰ The extent of relief provided by the inhalers is open to interpretation in the records, but they did provide some relief.

has a liquid go into the trachea instead of going into the stomach. Claimant never had abnormal liver tests or elevated liver function studies. Every blood test showed normal liver enzyme readings.

PA-C Schaper

67. As noted above, in September 2012, Claimant began treating for a host of ailments related to anxiety, depression, and respiratory complaints with PA-C Heather Schaper. Claimant had developed shortness of breath with a morning cough. This condition has been described as various respiratory ailments, from asthma to COPD, to chronic reactive airways dysfunction (by Dr. Curtis). PA-C Schaper, on March 3, 2014, answered Claimant's attorney's questions by noting Claimant's asthma was under control, his anxiety and depression were still an issue due to Claimant failing to comply with recommendations for treatment, and his "enlarged heart" was "asymptomatic." PA-C Schaper thought it would be helpful for Claimant to treat his anxiety and depression since those conditions may have a bearing on his pulmonary condition.

Kidney Analysis

68. The analysis of Claimant's kidney failure is made difficult by a paucity of meaningful and reliable medical expert testimony. While Claimant does have medical testimony causally linking his temporary kidney dysfunction with the industrial accident of May 31, 2011, the science behind such testimony is lacking. On the other hand, Defendants' medical expert skewed his report to such an extent it becomes difficult to ascertain if he would have found no causal connection no matter what facts were presented to him. He appears to have worked backward from the foregone

conclusion of no causation, and presented a scenario which supported the conclusion, even though it did not always line up with the record.

69. Prior to delving into the competing testimony of medical experts, Claimant's and his wife's credibility must be considered. While they were fair historians at hearing, it is clear from examining all the record that, like most of us, their recollection of exact timing and severity of symptoms, and perhaps even the details of certain events, are dulled by the passage of time and blurred by the fact they have been dealing with various issues, visiting with a number of doctors, and describing the events in question over a period of years in response to numerous inquiries. When medical records, prior history,¹¹ and test results contradict their oral testimony, the written materials are given more weight.

70. Claimant relies on Drs. Haderlie and Curtis to prove causation of Claimant's kidney failure. Basically, both doctors lean heavily on the idea that Claimant had no kidney symptoms prior to May 31, 2011, but developed symptoms thereafter. However, neither of the doctors use the spatial timing as their sole basis for opining on causation. The arguments in favor of causation, as relied upon by both physicians, are listed below.

71. In support of causation:

- Claimant was healthy prior to the chemical exposure, and had symptoms thereafter;
- The chemical Metribuzin is known to be nephrotoxic at high levels;
- Claimant had symptoms including nausea, bloody nose, sore throat, cough (at times bloody), bloody stools, and overall weakness or malaise immediately after exposure;

¹¹ Other than Dr. Klock's rendition of Claimant's history, for reasons discussed herein.

- Other likely causes, including viremia, were ruled out.

72. Contrasting facts which tend to blunt the Claimant's causation theory include the following:

- Association (in time) does not prove causation;
- The chemical Metribuzin is not known to be nephrotoxic at subchronic dosing, such as a singular exposure;
- There is no evidence that kidney failure is even *possible*, much less plausible, after a single-dose exposure to Metribuzin;
- There is no evidence that even if possible, a single-dose exposure to Metribuzin will cause kidney failure *six weeks* after exposure;
- Claimant's initial reaction of bloody nose and sore throat resolved prior to his kidney dysfunction, and his general malaise had resolved by the time he saw Dr. Rahim;
- Dr. Haderlie mistakenly believed Claimant's exposure was two weeks prior to his kidney failure, and when informed of his mistake, made no explanation as to how his misunderstanding would affect his opinion;
- Dr. Curtis assumed, admittedly without any direct evidence, that Claimant had aspirated the chemicals, which assumption impacted his opinion;
- Dr. Curtis relied on Claimant's supposed statement that Claimant was soaked with chemicals to the point of dripping, when at hearing Claimant admitted his clothes were merely "dampened" by the chemicals.
- Metribuzin is not readily absorbed through the skin;

- Dr. Klock noted Claimant's elevated WBC and bronchitis-type symptoms suggest that perhaps Claimant suffered an unrelated respiratory viral infection with viremia causing renal toxicity.¹²

73. While a temporal relationship is always required to support a finding of causation between an accident and the injury, the existence of a temporal relationship alone, in the absence of substantive medical evidence establishing causation, is insufficient to satisfy Claimant's burden of proof. *Swain v. Data Dispatch, Inc.* IIC 2005-528388 (February 24, 2102). Here, both parties rely upon the timing of events to support their respective positions. Claimant's experts argue his kidney dysfunction occurred in close proximity to the accident in question. Perhaps this is due to a misunderstanding on Dr. Haderlie's part, although Dr. Curtis was well aware of the actual time frames when he prepared his report. Defendants argue the timing was not sufficiently close to infer a causative link – Claimant should have had symptoms sooner than six weeks post-accident.

74. The reality is that it is unknown if six weeks was too long after the accident to expect kidney failure (if it was going to happen), or too soon, or appropriate. No evidence on this point was adduced, although two doctors gave unsupported opinions on the subject. Dr. Curtis said it was within the expected time frame; Dr. Klock said it was not.

75. Both Drs. Curtis and Klock noted that kidney failure is not usually a painful condition and is typically diagnosed with blood work, not low back pain. It may be that Claimant had the kidney failure for longer than believed, and a coincidental kidney stone brought the condition to light. Or it may be, as suggested by Dr. Rahim,

¹² Because this opinion does not depend on a version of Claimant's history which is at odds to the remainder of the record, it will be considered.

that Claimant suffered from a urinary tract infection, which would account for the elevated white blood cell count and the temporary renal impairment.

76. Importantly, neither Dr. Rahim nor Dr. Haderlie initially listed chemical exposure as the primary potential diagnosis. Rather they each felt Claimant was suffering from a resolving UTI, for which additional antibiotics were prescribed. Dr. Haderlie “could not rule out” chemical exposure, but it was not his “most likely” diagnosis. It was only after the doctor was asked to opine on causation in the context of litigation that he concluded chemical exposure was the “most likely” cause of Claimant’s kidney condition. Dr. Rahim never listed chemical exposure as even a potential cause, in spite of the fact he was familiar with Claimant’s accident and the chemicals involved.

77. While Drs. Haderlie and Curtis opine in favor of causation, and Claimant most certainly had some transient upper respiratory manifestations lasting approximately four weeks, there is sound evidence against causation. Dr. Rahim, a treater, did not find a chemical exposure link to Claimant’s kidney failure. Dr. Haderlie did not initially link the two causally; rather he merely recognized a possibility that chemical exposure could be responsible, at least in part, for Claimant’s condition. The initial diagnosis of urinary tract infection by Dr. Rahim and Dr. Haderlie is assigned significant weight. These medically-sound diagnoses were made prior to the influences of litigation.

78. While Dr. Klock’s hypothesis of a viral infection is also a possibility, given the fact that two treating physicians first diagnosed a bacterial infection and treated Claimant with antibiotics after which his kidney dysfunction resolved, it is less likely a viremia is the culprit.

79. The case for causation is not strong. No expert has suggested how the chemicals in question were responsible for the Claimant's kidney failure when the only potential chemical culprit is not nephrotoxic at subchronic dosing. No expert has shown any evidence that the kidney failure from the chemical exposure would be expected to manifest six weeks post-exposure. No expert has produced evidence that the toxic effect on kidneys is transient. In reality, when stripped down, the Claimant's experts have done little more than rely on the classic *post hoc ergo propter hoc* fallacy for reaching their opinions on causation.

80. When the totality of the record is considered, and the competing expert medical evidence, including Dr. Rahim and Dr. Haderlie's initial diagnoses as treating physicians, is analyzed, the weight of the evidence does not support Claimant's position on causation.

81. Claimant has failed to prove his acute kidney failure was causally connected to his industrial chemical exposure of May 31, 2011.

Pulmonary Analysis

82. As noted, Claimant's pulmonary examinations prior to 2012 were consistently normal. In 2012, he began having anxiety, depression, and shortness of breath issues, (together with several other symptoms), particularly at night and in the mornings.

83. By the time Claimant sought medical treatment for these issues, he was convinced they were related to his industrial accident. He also felt other medical conditions associated therewith might exist. He requested further testing, which came back negative. He told his treater in 2012 that he had been treated for

liver abnormalities in 2011, although the record is devoid of any such findings. In fact, all blood testing for liver issues in 2011 was normal.

84. Claimant's testimony that his pulmonary complaints existed unabated since the time of the chemical exposure is inherently improbable. All pulmonary examinations were unremarkable through 2011. Given Claimant's fixation with the chemical exposure as the root of his various ailments, it is nearly beyond consideration that he would not have mentioned the same to his treating doctors, or sought additional treatment in 2011 had the symptoms existed. Furthermore, it is most unlikely he would have had complaints but no recognizable symptoms when examined by treating physicians and/or Dr. Klock in 2011.

85. Dr. Curtis again applied the same *post hoc ergo propter hoc* rationale to try and make a causal link between Claimant's pulmonary maladies and the chemical exposure. He made no attempt to explain away the significant time gap between the two events.

86. PA-C Schaper's opinion was nothing more than a conclusion with no supporting rationale whatsoever. It is not an opinion of substance and is afforded minimal weight. Her understanding of the events is flawed so that even if her opinion was considered, it would be discounted due to her inaccurate understanding of Claimant's history.

87. When reviewing the totality of the evidence, it is clear that Claimant did not have pulmonary complaints which went unabated from the time of his chemical exposure. Rather the greater weight of the evidence supports the position that Claimant did not have clinically-identifiable issues with his pulmonary system during 2011. The onset of his

symptoms is too remote in time to be readily associated with his single chemical exposure in late May 2011. Without competent medically-based expert testimony explaining how and why Claimant's shortness of breath symptoms, first observed in 2012, would be causally connected to the industrial accident, Claimant has failed to establish such a connection.

88. PA-C Schaper's implied suggestion that Claimant's pulmonary issues may be related to his anxiety and depression is reasonable, especially in light of Dr. Klock's well-supported opinion, based on his expertise as a pulmonary doctor reviewing medical records and test findings, that Claimant is not suffering from asthma, COPD, or hypoxia. On this subject, Dr. Klock's opinion carries more weight than that of PA-C Schaper or Dr. Curtis.

89. When considering the record as a whole, Claimant has failed to prove that his pulmonary symptoms in 2012 are causally related to his industrial accident of May 31, 2011.

90. Because Claimant has failed to prove the conditions for which he sought benefits were caused by a compensable industrial accident, he has not proven a right to medical care, past or future.

91. Claimant missed approximately one month's work while under the care of Dr. Haderlie for kidney issues. He seeks temporary disability benefits for this time missed from work.

92. Because Claimant did not prove a causal connection between his acute kidney failure and the industrial accident in question, he has failed to prove his entitlement to temporary disability benefits.

CONCLUSIONS OF LAW

- 1. Claimant has failed to prove his acute transient kidney failure and pulmonary complaints were caused in whole or in part by the industrial accident of May 31, 2011.
- 2. Claimant has failed to prove the right to medical care benefits, past or future.
- 3. Claimant has failed to prove he is entitled to temporary disability benefits.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Referee recommends that the Commission adopt such findings and conclusions as its own and issue an appropriate final order.

DATED this 1st day of August, 2016.

INDUSTRIAL COMMISSION

_____/s/_____
Brian Harper, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of August, 2016, 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:

PAUL CURTIS
598 N CAPITAL AVE
IDAHO FALLS ID 83402

MATTHEW VOOK
PO BOX 6358
BOISE ID 83707

jsk

_____/s/_____

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JOSE YEPEZ,

Claimant,

v.

DRISCOLL BROTHERS,

Employer,

and

LIBERTY NORTHWEST INSURANCE CORP.,

Surety,
Defendants.

IC 2011-016953

ORDER

Filed August 19, 2016

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 acute transient kidney failure and pulmonary complaints were caused in whole or in part by the industrial accident of May 31, 2011.
2. Claimant has failed to prove the right to medical care benefits, past or future.
3. Claimant has failed to prove he is entitled to temporary disability benefits.

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

DATED this 19th day of August, 2016.

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 August, 2016, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

PAUL CURTIS
598 N CAPITAL AVE
IDAHO FALLS ID 83402

MATTHEW VOOK
PO BOX 6358
BOISE ID 83707

jsk

_____/s/_____