BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

PAULA BALLARD, Claimant, v. WAL-MART ASSOCIATES, INC., Employer, and NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH PA, Surety, Defendants.	**IC 2011-026966** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** Filed July 3, 2014

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 Coeur d'Alene on September 27, 2013. Stephen Nemec represented Claimant. Mark Peterson represented Defendants. The parties presented oral and documentary evidence. Post-hearing depositions were taken. The parties submitted briefs. The case came under advisement on March 12, 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 the condition for which Claimant seeks benefits was caused by the alleged industrial accident;

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

    a) Temporary disability; and

b) Medical care;

3. Whether and to what extent Defendants are liable for medical care provided outside the chain of referral.

All other issues are reserved.

CONTENTIONS OF THE PARTIES

The parties agree Claimant was injured when a four foot piece of angle iron fell from exposed trusses and struck her on and about her head. The claim was accepted. She received treatment including a cervical fusion surgery. Defendants denied and refused her further treatment upon the opinion of Jeffrey Larson, M.D. Claimant sought additional medical treatment. About 10 days before the hearing Defendants reversed their position with respect to allowing Claimant to seek psychological treatment but continued to deny other treatment, past and future.

Claimant contends that she is entitled to medical care benefits for all treatment related to the accident by application of Idaho Code § 72-432(1) and *Reese v. V-1 Oil Co.*, 141 Idaho 630, 115 P.3d 721 (2005). Such treatment, amounting to a claim of $16,258.00, was reasonable as defined by the factors set forth in *Sprague v. Caldwell Transportation, Inc.*, 116 Idaho 720, 779 P.2d 395 (1989). She is entitled to medical care benefits for an unpaid prescription in the amount of $3,611.46. Claimant is not yet medically stable. She is entitled to future medical care, including palliative care. Claimant's medical benefits should be awarded in full, applying the holding of *Neel v. Western Const. Inc.*, 147 Idaho 146, 206 P.3d 852 (2009). Also, an award of temporary disability benefits should continue until she becomes medically stable.

Defendants contend that after Dr. Larson opined Claimant was stable and needed no

more medical care, Claimant sought medical treatment outside the chain of referral. She did not request a change of physician. Such care was properly denied. These doctors did not provide reasonable treatment. They misdiagnosed her condition. They treated her for conditions unrelated to the accident. Claimant is not entitled to any medical treatment beyond psychological treatment which Defendants have authorized. Claimant is not entitled to temporary disability benefits after Dr. Larson opined she was medically stable. Employer offered her suitable employment.

EVIDENCE CONSIDERED

The record in the instant case included the following:

1. Oral testimony at hearing of Claimant, husband Larry Ballard, daughters Christina Hoefling and Kaylene Wheeler, friends and former coworkers Linda Wilson and Stephanie Gargano, former supervisor Dovie Colleen Howerton, and Employer's HR secretary for workers' compensation Debora "Dani" Davis;

2. Claimant's exhibits 1 through 25 admitted at hearing and exhibits 26 and 27 admitted post-hearing by stipulation;

3. Defendants' exhibits 1 through 31 admitted at hearing; and

4. Depositions of pain management specialist Katrina Lewis, M.D., and of neurosurgeon Jeffrey Larson, M.D.

Defendants moved to strike portions of Dr. Lewis' testimony. Motion DENIED. Objections made in Dr. Lewis deposition regarding testimony at pp. 29:22 – 32:2 and 32:10 – 33:13 are SUSTAINED. Other objections are OVERRULED.

FINDINGS OF FACT

The Accident

1. Claimant had worked for Employer for 10 years. She was working as an inventory management specialist in Employer's garden department on November 3, 2011 when she suffered an industrial accident. A piece of angle iron, about four feet in length and

weighing about 20 pounds, fell from the overhead trusses a distance about 20 feet and struck Claimant on and about the head. It knocked her down and probably left her briefly unconscious.

2. Some medical records refer to a "four-inch" piece of angle iron. From the record it is unclear whether this represents an error in describing length or whether the width of the angle iron was four inches. Fortunately for analysis, this ambiguity does not appear to factor into any opinion of any physician.

Initial Medical Care

3. Claimant was initially seen by Steve Malek, M.D., at Kootenai Medical Center ER ("Kootenai ER"). The history recorded in the November 3 note is manifestly inaccurate at least to the extent it records she was "shopping." It records no loss of consciousness. Dr. Malek examined her and noted a contusion or abrasion on her scalp at her left upper occipital region as well as marked neck tenderness. CT scans were reported negative but for a mild swollen spot at the point of impact. Dr. Malek diagnosed a head contusion and neck strain. He cleared her to return to work as of November 6, 2011, but that opinion was countermanded at a November 6 doctor's visit.

4. Claimant returned to Kootenai ER the next day, November 4. She reported more neck and shoulder pain with some dizziness. Eric Chun, M.D., diagnosed concussion and strains.

5. A November 28 C-spine MRI showed abnormalities at C5-6 and C6-7. A left shoulder MRI showed some tendinopathy, a probable SLAP tear, and some edema in the humeral head.

6. Claimant returned to Kootenai ER on November 6 with worsening symptoms including nausea and photophobia. Anthony Russo, M.D., ordered a second head CT which

showed no traumatic abnormalities. He diagnosed "post concussive symptoms/syndrome." He ordered her to remain off work.

7. Claimant first visited Michael Ludwig, M.D., on November 7. Claimant was uncertain about whether she suffered a transient loss of consciousness in the accident. He recorded that Claimant suffered a brief loss of memory beginning with the point of impact but did recall calling for help afterward. Upon examination Claimant reported pain, emotional lability, somnolence, and photophobia, with a reduction in nausea after medication. Dr. Ludwig did not see any laceration, swelling, or bruise. She showed no additional memory deficits or signs of brain injury. He diagnosed a probable concussion. At a follow-up visit on November 14 he noted improvement in her symptoms of closed head injury. He noted some "mental slowness" which he related to the narcotic pain medications and which he discontinued. He referred her to physical therapy for her neck and shoulder. Later that day, Claimant telephoned to report the medication change left her with a headache. Dr. Ludwig noted that Claimant's daughter reported that Claimant acted "slightly drugged." He increased her dosage of the new medication, Tramadol.

8. Claimant began extensive physical therapy on November 17. It records gradual but slow improvement of her complaints of pressure, tightness, and pain about her head.

9. On November 21, Dr. Ludwig noted that signs of closed head injury were subsiding, and he began giving more focus to her neck and shoulder.

10. On November 30, Claimant reported to Dr. Ludwig that she had persistent occipital headaches along with her neck and shoulder symptoms. Dr. Ludwig began to consider the possibility of neck surgery.

11. Jeffrey Larson, M.D., first saw Claimant on December 13. He recommended a

C5-6 and C6-7 fusion.

12. Dr. Ludwig provided follow-up visits in late December and did not see Claimant again until April, after a recovery period following surgery.

2012 Medical Care

13. On January 9, 2012, Dr. Larson performed a discectomy and fusion at C5-6 and C6-7. She showed immediate improvement in her neck condition. Thereafter, her surgical recovery progressed slowly but uneventfully. Dr. Larson opined that his treatment including surgery was causally required by the industrial accident. He provided several follow-up visits.

14. After surgery ameliorated her neck pain, Dr. Larson treated her post-concussive syndrome. Her symptoms were somewhat vague, reportedly a common occurrence with post-concussive patients. Dr. Larson ordered conservative measures including physical therapy to inure her to non-injurious but irritating stimuli. He found no objective brain injury or neurologic deficit. He monitored her attempt to return to work and her efforts at part-time, light-duty work in gradually increasing amounts.

15. Orthopedist Jonathan King, M.D., examined Claimant on January 17 to evaluate her shoulder. He recommended an injection and conservative treatment. By an April 5 visit, he noted her shoulder condition was complicated by her post-concussive symptoms about her head. He opined Claimant was not a good candidate for shoulder surgery and recommended continued conservative treatment for her head.

16. Claimant resumed physical therapy on January 25. A February 10th note first records "hard to talk" as a complaint of speech dysfunction. Subsequent notes by other physicians record Claimant as linking her speech dysfunction to a physical therapy session and muscle spasms. The physical therapy notes on or just before this date do not record

muscle spasms beyond a generalized "tightness" noted frequently throughout her physical therapy. On February 13 Claimant reported that her "eyes started to spasm" at home.

17. A March 5, 2012 MRI of Claimant's brain showed no objective traumatic injury.

18. On March 27, 2012, Claimant visited neurologist James Lea, M.D. He examined Claimant and opined her speech issues were "completely functional and not related to a neurological injury." He opined her headaches were related to the brief concussion and neck injury. He speculated about left occipital nerve inflammation and suggested a possible nerve block. The nerve block was performed April 10. On May 22, 2012, Dr. Lea reported the nerve block as having been "quite effective for quite some time." He worked under a presumptive diagnosis of occipital neuralgia. Claimant also reported some vision changes. She received another nerve block in July.

19. In a note for an April 12, 2012 follow-up, Dr. Larson recorded, "Ms. Ballard has a multitude of complaints, none of which are substantiated by anatomic or objective findings. Many of them do not even fit the postconcussive pattern." In this and subsequent visits, Dr. Larson noted Waddell's signs, functional inconsistencies when distracted, and other inconsistencies.

20. Claimant returned to Dr. Ludwig on April 12, 2012. A new symptom, speech dysfunction, she attributed to physical therapy. Her neck and shoulder pain, although improved, was still present. Headaches persisted. Dr. Ludwig noted the absence of objective findings to support a cause for her headaches and speech disturbance. He speculated about psychological conditions, somatization and "augmented disability conviction."

21. On May 2, 2012, Dr. Ludwig noted inconsistent reporting by Claimant about whether a shoulder injection had helped. He noted her speech disorder had subsided. He

recommended she try some part-time, light-duty work.

22. Claimant returned to Kootenai ER on May 5 for a recurrent headache. Benjamin Perschau, M.D., examined her and diagnosed "Acute on chronic headache, occipital neuralgia."

23. On May 9, Claimant visited Prairie Family Medicine and saw Doug Duncan, PA-C. His notes focus on high blood pressure and shortness of breath. The industrial accident is mentioned, but not expressly related to these conditions. A May 22 follow-up reported symptoms of a cough and exposure to strep throat. Again, this note does not indicate a relationship to the industrial accident.

24. On August 21, 2012 Claimant visited PA-C Duncan. She reported that she had been deemed at MMI and wanted a second opinion for her chronic headaches. She requested a referral to St. Luke's brain injury clinic in Spokane, WA. PA-C Duncan opined her request "reasonable." In his next note dated November 29 PA-C Duncan recorded, "workman comp denied referral." He addressed her headaches and high blood pressure. He and Claimant discussed her ability to work.

25. Dr. Larson's notes record a September 5, 2012 follow-up visit with Claimant in which Claimant's husband and daughter provided significant, sometimes inconsistent, input. Upon examination, Dr. Larson found no "isolated anatomic basis" to objectively support Claimant's varied complaints of symptoms. He recommended no further medical treatment. He released her to work daily, 4-hour shifts.

26. Dr. Larson recalled in deposition that on that September 5 visit, at Claimant's request, he released her to work without restrictions in order to allow her to qualify for a job she thought she could do. He also opined her to be medically stable on that date. Claimant's family expressed dismay that Claimant made this request.

27. On September 20, 2012, Claimant underwent a functional capacity evaluation ("FCE"). It reported a "fair effort" and valid results although some tests were deemed invalid with some disability exaggeration. The therapist recommended no sitting restrictions, but acknowledged Claimant's reports of difficulty sitting more than 30 minutes in a moving car. He recommended some overhead lifting restrictions and suggested a light-medium level of full-time work would be appropriate.

28. A discharge report from physical therapy is dated August 10, 2012. It notes increasing symptoms and decreasing range of motion as the basis for discharge.

29. On December 4 and 5, 2012, Claimant underwent another FCE using different protocols. The testing was considered to be representative of a valid effort by Claimant. Although she could perform all tasks, she did so slowly to the extent that the physical therapist felt she would be unemployable as an inventory management specialist. He opined she was unsafe to return to such work due to a risk of falls from balance and dizziness issues.

2013 Medical Care

30. On January 4, 2013, Claimant sought a second opinion through PA-C Duncan. They reviewed her treatment history to some extent. PA-C Duncan noted, "concur with functional assessment that she is unable to work full time."

31. On January 22, 2013, Claimant visited PA-C Duncan for kidney symptoms. Whether these were related to a medication change or entirely unrelated to the industrial accident is not indicated in PA-C Duncan's note.

32. On three days within a two-week period beginning February 20, 2013, Duane Green, Ph.D., performed an IME neuropsychological examination of Claimant at her request. He interviewed Claimant, reviewed records, and performed several standardized psychological tests.

He diagnosed: cognitive disorder NOS, secondary to her pain disorder and her adjustment disorder; pain disorder associated with both psychological factors and a general medical condition, chronic; adjustment disorder with mixed anxiety and depressed mood. He opined she retained only "minimal" residual neurocognitive problems related to the industrial accident, that she suffers significant psychological difficulties, which are of mixed cause both industrial and non-industrial, that according to the *AMA Guides, 6th ed.*, she suffers permanent mental and behavioral impairment of 20% that is more than 60% due to the industrial accident. He recommended psychiatric evaluation, intensive outpatient psychotherapy, and a three-month outpatient cognitive rehabilitation. He opined she would be unlikely to be able to engage in competitive employment without these treatments.

33. In February, 2013, nurse practitioner Sharon Healy examined Claimant through South Hill Family Practice and Columbia Medical Center. On a February 12 visit Claimant's primary complaint was bilateral T-spine pain radiating into her right buttocks. Abdominal pain was also evaluated. Claimant's industrial accident and other related treatment was mentioned in these medical records. Although an intake form suggests Claimant reported a relationship between these complaints and the accident, a physician's opinion supporting a likely causal relationship between NP Healy's specific treatment and the accident is not found in the record. The intake note included "head trauma" along with other diagnoses without providing a basis for establishing a causal relationship between the primary complaints and the accident.

34. On March 18, 2013, ophthalmologist Roderick Kent, M.D., examined Claimant and opined her headaches were "probably post-traumatic."

35. On February 21, 2013, gastroenterologist James Doyle, M.D., evaluated Claimant and performed an endoscopy. Her nausea and vomiting was likely caused by mild gastritis.

36. On April 3, 2013, S. Wade Steeves, M.D., examined Claimant at the request of NP Healy. He performed an occipital nerve block. Claimant reported 80% relief. His note contains manifest, probably typographical, error in stating the accident occurred in 2000. It contains a lengthy and varied list of symptoms. He diagnosed "headache" and "occipital neuralgia." He opined, "She likely has a post concussion syndrome that simply has not improved over time." He referred Claimant to a pain management specialist.

37. On May 8, 2013, Claimant first visited pain management specialist Katrina Lewis, M.D. Dr. Lewis examined Claimant. She opined Claimant's symptoms were "very classic" and "absolutely classic" for occipital neuralgia. She recommended a C2 dorsal root ganglion block which, if successful, would support a rhizotomy which would entail a temporary radiofrequency ablation of the occipital nerve, expected to last three to four months. Dr. Lewis administered the nerve block injection the following day. Claimant reported almost immediate amelioration of pain.

38. The amelioration of pain was brief. On May 15, 2013, Claimant reported to Dr. Lewis that the injection did not help. Dr. Lewis recommended pain clinic treatment, physical therapy, injections, medication, and psychological care. She also recommended some naturopathic remedies.

39. On subsequent visits, Dr. Lewis performed additional nerve block injections. Claimant reported immediate relief in ranges of 60% to 80% after each injection. This relief seldom lasted more than one week.

40. A July 31, 2013, visit to Columbia Medical Associates notes the reason for the visit was "paperwork." A disability note was provided. The physician, NP Healy, opined Claimant was unable to work because Claimant had difficulty concentrating and severe vertigo.

41. On July 25, 2013, Dr. Lewis performed the rhizotomy. Occipital pain, other headache and left eye symptoms almost completely resolved. Claimant reported that neck pain with radiating pain remained.

42. After an August 12, 2013 follow-up visit and despite its positive improvement in Claimant's neck symptoms, Dr. Lewis ordered a stop to physical therapy upon Claimant's reports that it caused nausea. The relief after the rhizotomy was still appreciated. Sleep had improved; function increased. Dr. Lewis referred Claimant to a chiropractor, Ryan Yates, D.C.

43. On August 14, 2013, Dr. Yates first visited Claimant. He found subluxations throughout her C-spine, T-spine, L-spine, and sacroiliac regions. He recommended chiropractic adjustments and massage therapy. After various visits, Claimant reported no relief, minimal relief, or some relief which dissipated upon movement. He treated her through September 26.

Vocational

44. Upon Dr. Ludwig's recommendation on May 3, 2012, Employer offered Claimant a 4-hour shift, five days per week, as a garden center greeter where she watered plants. She actually worked 2 to 2½ hours on two days before increasing headaches caused her to seek medical attention. As a cautionary measure, Dr. Ludwig reduced her to 2-hour shifts.

45. On May 10, 2012, Employer offered Claimant a 2-hour shift, three days per week, as a garden center greeter.

46. Claimant attempted to return to work. She was terminated in November 2012.

Medical Opinions

47. Over the course of two evaluative sessions beginning April 2, 2012, John Wolfe, Ph.D., evaluated Claimant's psychological and neurocognitive condition upon referral by Dr. Larson. Although Dr. Wolfe found her affect generally appropriate, albeit with a possibly

depressed mood, he observed emotional lability with moments of tearfulness or laughing unconnected to apparent mental stimuli. He noted "odd" and "somewhat non-neurologic" speech patterns which resolved between the first and second evaluative sessions. Despite some complaints and Dr. Wolfe's observations of attention and concentration issues, Claimant scored in the average or low average range during testing. Testing indicated Claimant attempted to present herself in a positive way. Dr. Wolfe diagnosed a "cognitive disorder, improving" and "adjustment disorder with mixed emotional features." He recommended a gradual resumption of work duties.

48. On August 13, 2013, Dr. Wolfe again evaluated Claimant's psychological condition, this time at Defendants' request. He diagnosed "cognitive disorder, NOS, largely stable resolved" and depressive disorder, NOS." He opined that her "underlying personality features existed prior to the injury. The mood disorder appears to be related to a combination of the effects of her personality as well as the injury and subsequent life changes." He opined she was not psychologically at MMI and recommended treatment.

49. Dr. Larson reviewed Dr. Lewis' examination notes. He opined Claimant's symptoms were inconsistent with occipital neuralgia.

50. Dr. Lewis opined that the condition she treated was caused by the industrial accident. She opined Claimant needed additional treatment for pain management, perhaps eight to 20 visits. If these proved unsuccessful, surgery might be required to place an occipital stimulator.

51. On a check-the-box basis, Dr. Larsen opined that he agreed with Surety's position that Claimant was at MMI related to the accident on September 5, 2012, that she suffered a 6% whole person impairment, and that she could be released to her preinjury, full-time work.

This was merely confirmatory of his prior written opinions to that effect.

52. Dr. Larson opined that Claimant suffered superficial head injury, a neck injury, and mild neurocognitive problems which were causally related to the industrial accident, that these had resolved as of the date of medical stability, and that Claimant's current psychological symptoms are related to nonindustrial stressors and not to the industrial accident. In deposition, he reversed his written opinion that Claimant suffered a preexisting anxiety disorder when he was unable to find a documentary basis of such preexisting condition.

53. Dr. Larson opined that psychological treatment would likely help ameliorate Claimant's post-concussive symptoms but reiterated that the underlying psychological stressors were related to the family dynamic and not to the accident. He opined that post-concussive symptoms lacked the support of documented intracranial pathology and therefore no ratable impairment, beyond pain, was appropriate.

54. Dr. Larson opined that Dr. Lewis' treatment in administering a C2 dorsal block was a reasonable attempt at diagnosis for subjective symptoms of questionable relationship to the accident. The rest of Dr. Lewis' treatment was neither related to the accident nor medically reasonable. He opined that Dr. Lewis misdiagnosed Claimant as having occipital neuralgia; Claimant does not. He opined that Dr. Lewis' treatment in performing rhizotomies was outside the local standard of care. Further, he opined that Dr. Lewis' treatment may have caused an occipital neuralgia that was not previously present and would not have developed but for the misdiagnosis and inappropriate treatment.

55. Dr. Larson opined that Dr. Yates' treatment was unrelated to the accident. He opined that following neck fusion, Claimant had no injury or symptoms that could be helped by chiropractic treatment.

56. In deposition, Dr. Lewis would not opine about Claimant's vocational capacity or related issues.

DISCUSSION AND FURTHER FINDINGS OF FACT

57. 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).

58. Claimant appeared credible at hearing. Dr. Larson provided testimony that recently Claimant's demeanor appeared to him to change before and after she became aware of his presence at a social function. Without more, this observation does not undercut Claimant's consistent demeanor at hearing nor testimony by others who knew her well. The Commission finds no reason to disturb the Referee's findings and observations on Claimant's presentation or credibility.

Causation

59. A claimant has the burden of proving the condition for which compensation is sought is causally related to an industrial accident. *Callantine v Blue Ribbon Supply*, 103 Idaho 734, 653 P.2d 455 (1982). Further, there must be evidence of medical opinion—by way of physician's testimony or written medical record—supporting the claim for compensation to a reasonable degree of medical probability. No special formula is necessary when medical opinion evidence plainly and unequivocally conveys a doctor's conviction that the events of an industrial accident and injury are causally related. *Paulson v. Idaho Forest Industries, Inc.*, 99 Idaho 896, 591 P.2d 143 (1979); *Roberts v. Kit Manufacturing Company, Inc.*, 124 Idaho 946, 866 P.2d 969 (1993). A claimant is required to establish a probable, not merely a possible,

connection between cause and effect to support his or her contention. *Dean v. Dravo Corporation*, 95 Idaho 558, 560-61, 511 P.2d 1334, 1336-37 (1973).

60. There is no dispute that Claimant suffered a closed-head injury as a consequence of the subject accident. Claimant continues to suffer from mild neurocognitive deficits directly attributable to the closed-head injury. There is no dispute that Claimant suffered a cervical spine injury as a consequence of the accident for which she required surgical treatment by Dr. Larson. Further, there is no dispute that Claimant suffered a left shoulder injury as a result of the accident. Finally, both Dr. Green and Dr. Wolfe concur that while Claimant has an underlying predisposition to psychological problems, the subject accident has caused those problems to become symptomatic. Defendants have agreed to provide psychological treatment as recommended by Drs. Green and Wolfe.

61. The parties dispute whether Claimant carries any other diagnoses and, if so, whether such diagnoses are causally related to the subject accident. Specifically, Claimant testified that she continues to suffer from migraines, light sensitivity, neck pain, ringing in the ears, left-sided head pain, head pressure, pain with eye movement, mid-back pain, and low-back pain. Defendants contend that Claimant's manifold pain complaints are mediated by the psychological problems diagnosed by Drs. Green and Wolfe. Defendants essentially contend that Claimant's pain complaints do not have an organic basis. Claimant, on the other hand, contends that her pain complaints are real, and are the result of physical injuries she sustained as a result of the subject accident. Claimant contends that her head pain, hearing and light sensitivity problems are significantly caused by damage to her occipital nerve, resulting in occipital neuralgia. Dr. Larson, on the other hand, does not believe that Claimant suffers from an injury to the occipital nerve, and that her pain complaints are better explained either by her

documented psychological condition, or post-concussive syndrome. Dr. Larson initially proposed that Claimant's psychological problems are pre-existing, and were neither caused nor aggravated by the subject accident. Dr. Larson's opinion in this regard was partly informed by his belief that Claimant suffers from a pre-existing anxiety disorder. However, he acknowledged that he does not recall where he obtained this history, and seemed willing to defer to Drs. Green and Wolfe concerning the etiology of Claimant's psychological problems, and specifically whether or not the subject accident contributed to the development of those problems. (Larson deposition 82/9-85/14).

62. If Dr. Larson is correct in concluding that Claimant's manifold pain complaints are psychological in origin or related to post-concussive syndrome, then these complaints, per Drs. Green and Wolfe, are a compensable consequence of the subject accident. If Dr. Lewis is correct, then Claimant's pain and associated complaints are referable to a compensable injury to Claimant's occipital nerve. In either case, Claimant's ongoing pain complaints would be treated as a compensable consequence of the work accident. Accordingly, we find that Claimant's pain complaints, however caused, are causally related to the subject accident and deserving of further treatment. We also find that Claimant's closed head injury, neck injury, and left shoulder injury are causally related to the subject accident. We make no such finding with respect to the thoracic and lumbar spine problems referenced in Dr. Yates' notes.

Entitlement to Medical Care

63. Based on Dr. Larson's reports of September 5, 2012 and October 22, 2012 Defendants declined to authorize further medical treatment for Claimant, at least until they recently agreed to provide psychological treatment as proposed by Drs. Green and Wolfe. In the interim, Claimant sought out treatment on her own from several physicians, culminating in her

referral to Drs. Lewis and Yates. Claimant seeks to hold Defendants responsible for the care she sought and received following Surety's denial of responsibility for further treatment.

64. Under Idaho Code § 72-432, where an employer fails to provide an injured worker with reasonable medical care to which Claimant is entitled as a consequence of an industrial accident, the injured employee may do so at the expense of the employer. (*See* Idaho Code § 72-432(1); *Reese v. V-1 Oil Co.*, 141 Idaho 630, 115 P.3d 721 (2005)). Where Defendants deny responsibility for further medical treatment, Claimant is not required to petition the Commission for a change of physician before seeking further treatment. *Reese*, *supra*.

65. For care that has been rendered, the case of *Sprague v. City of Caldwell Transportation, Inc.*, 116 Idaho 720, 779 P.2d 395 (1989) provides guidance as to factors the Commission should consider when determining whether or not such care is compensable. First, the Commission should consider whether the care in question improved Claimant's condition. Second, the Commission should consider whether the care that was provided was "required" by the Claimant's physician. Third, the Commission should consider whether the care at issue was within the standard of practice of the particular medical discipline, and whether the charges were fair, reasonable and similar to charges of others in the same profession.

66. Whether or not the care at issue, in particular the care provided by Dr. Lewis, should be provided by Defendants turns, in large part, on whether Claimant does, in fact, suffer from occipital neuralgia caused by an injury to her occipital nerve. Dr. Lewis provided treatment to Claimant tailored to address an occipital nerve injury. As noted, Dr. Larson is severely critical of Dr. Lewis' diagnosis and course of treatment. He believes that Claimant's complaints are referable to either post-concussive syndrome or underlying psychological problems. In order to determine whether Claimant is entitled to the treatment provided by Dr. Lewis, we must come to

some conclusion as to whether Claimant actually does suffer from occipital neuralgia. According to Dr. Larson, the left occipital nerve enervates an area at the back of the head, and behind the left ear. He testified that the numerous occipital nerve blocks given to Claimant by Dr. Lewis and other physicians are not diagnostic for an occipital nerve injury. Those injections contain steroid preparations which are systemic, and non-specific for an occipital nerve injury. Per Dr. Larson, the only type of injection that is diagnostic for an occipital nerve injury is a C2 dorsal root ganglion block. Dr. Larson does not believe that Claimant suffers from occipital neuralgia for the simple reason that she did not have a diagnostic response to the dorsal root injection performed by Dr. Lewis. For her part, although Dr. Lewis acknowledges that Claimant did not have a diagnostic response to the dorsal root injection, she nevertheless endorses the diagnosis of occipital neuralgia because of Claimant's response to the occipital nerve injections, a series of steroid injections performed at a different location than the dorsal root block. Dr. Lewis believes that Claimant's response to occipital nerve injections is diagnostic for occipital neuralgia, whereas Dr. Larson is emphatic that such injections are useless in diagnosing occipital neuralgia.

67. Based on Claimant's response to occipital nerve injections, Dr. Lewis performed a nerve ablation procedure intended to provide long-term relief from Claimant's suspected occipital neuralgia. Dr. Lewis testified that Claimant enjoyed dramatic relief from her symptoms following this procedure. Claimant, too, testified that the nerve ablation procedure significantly reduced her pain, although not so much that she considers herself capable of returning to gainful activity at this time. Prior to the nerve ablation procedure, Claimant's pain complaints were severe, unrelenting and debilitating. Following the injection, her pain complaints are manageable.

68. Dr. Larson believes that the nerve ablation procedure performed by Dr. Lewis was unneeded because Claimant does not suffer from occipital neuralgia. In fact, absent a diagnostic response to the dorsal root injection, Dr. Larson proposes that the nerve ablation procedure performed by Dr. Lewis was outside the local standard of care. However, Dr. Larson was not asked to explain why, if the procedure was inappropriate, both Claimant and Dr. Lewis endorse a significant improvement in Claimant's symptoms following the procedure. While Dr. Lewis is emphatic that Claimant's symptoms are classic for occipital neuralgia, and while Dr. Larson is equally emphatic that Claimant does not meet the diagnostic criteria for occipital neuralgia, the fact that Claimant did enjoy relief from her symptoms as a result of the nerve ablation procedure performed by Dr. Lewis is persuasive evidence that the care was efficacious, and needed to treat an injury to the occipital nerve. As to Dr. Larson's assertion that the nerve ablation procedure was outside the local standard of care, this appears to be based on his conviction that Claimant could not experience an improvement of symptoms, because she does not have an injury to her occipital nerve. Because Claimant did improve, we are unpersuaded by Dr. Larson's critique of Dr. Lewis' practice.

69. From the foregoing, we conclude that Claimant's pain complaints are multifactorial. All physicians agree that Claimant suffered a closed-head injury at the time of the accident, and that she still suffers from mild post-concussive syndrome. The evidence further establishes that Claimant suffers from psychological problems which were either caused or aggravated by the subject accident, and that Claimant's pain complaints are in some respect mediated by her psychological problems. Finally, because we have found Dr. Lewis' testimony to be persuasive, particularly in light of Claimant's improvement following treatment, we believe

the evidence establishes that Claimant's pain complaints are, in some respect, mediated by an occipital nerve injury.

70. Claimant has therefore demonstrated entitlement to the medical care provided by Dr. Lewis following the October 2012 denial of further medical treatment.

71. At the time of her deposition, Dr. Lewis was also asked to comment on the reasonableness and necessity of other medical care rendered to Claimant between October of 2012 and the earliest of Dr. Lewis' treatment notes. Dr. Lewis explained that she thought the bills and care were reasonable. However, she acknowledged that she had not reviewed any of the medical records in question. Accordingly, we deem her testimony insufficient to meet Claimant's burden of demonstrating reasonableness under *Sprague*.

72. Dr. Lewis also referred Claimant to Chiropractor Yates, reasoning that because of the nature of the precipitating injury, Claimant might have suffered other "subtle subluxations, such as atlanto-occipital subluxations" which would benefit from chiropractic modalities. Dr. Yates treated Claimant's neck, but also treated Claimant's thoracic and lumbar spine. The medical record is insufficient to support the conclusion that Claimant suffered thoracic and lumbar spine injuries as a consequence of the accident. Nor do Dr. Yates' chart notes reflect that Claimant's symptoms have noticeably improved during the course of Dr. Yates' treatment. Dr. Yates did not testify in these proceedings. Further, Dr. Larson testified that the treatment provided by Dr. Yates is not reasonably related to the subject accident. We are unable to conclude that the evidence of record supports the conclusion that the care provided by Dr. Yates is causally related to the subject accident or reasonable.

73. To summarize, subsequent to the date of Surety's denial of responsibility for further care, Claimant is entitled to recover the cost of care rendered or recommended by Dr.

Lewis, with the exception of chiropractic care rendered by Dr. Yates. Claimant is likewise entitled to ongoing treatment by Dr. Lewis, as well as for psychological treatment recommended by Drs. Green and Wolfe. Claimant is entitled to such other palliative and other treatment as may be necessary to treat her persistent pain complaints.

Medical Stability

74. Dr. Larson pronounced Claimant medically stable in September of 2012. He reached this conclusion after considering Claimant's recovery from the cervical spine surgery he performed as well as Claimant's other subjective complaints. Although Claimant continued to complain about unrelenting pain/discomfort, Dr. Larson nevertheless found her medically stable. We believe that Dr. Larson correctly concluded that Claimant was at a point of medical stability in September of 2012 vis-à-vis her cervical spine fusion. However, because we have found that Claimant continues to suffer from unrelenting pain/discomfort related to the accident, and because further treatment has been recommended for these symptoms, we necessarily conclude that Claimant is not yet at a point of medical stability for the effects of the subject accident. Indeed, Defendants appear to acknowledge that Claimant is still in a period of recovery since they have authorized the care recommended by Drs. Green and Wolfe. Both neuropsychologists believe that Claimant requires further treatment for her psychological condition before she can be deemed stable. It is also notable that Dr. Lewis believes that Claimant may require further care, including additional nerve ablation treatments, before she may be pronounced medically stable. For these reasons, we find that Claimant was not at a point of medical stability as of the date of hearing.

Temporary Disability

75. Because Claimant is still in a period of recovery, a period which coincides with restrictions on her ability to engage in gainful activity, we find that Claimant is entitled to time-loss benefits. Accordingly, Claimant is entitled to TTD/TPD benefits from the date of injury, through the date of hearing, with credit for wages paid. Claimant's entitlement to time-loss benefits will continue until Claimant reaches a point of medical stability or Defendants otherwise meet their burden of establishing that time-loss benefits should cease under *Malueg v. Pierson Enterprises*, 111 Idaho 789, 727 P.2d 1217 (1986).

CONCLUSIONS OF LAW

1. As a result of the subject accident, Claimant suffered a compensable closed-head injury with residual post-concussive and neurocognitive symptoms. Claimant also suffered a psychological injury as a consequence of the subject accident. Claimant has also shown it likely that she suffered injury to her occipital nerve as a consequence of the accident. Finally, Claimant suffered injury to her cervical spine, as well as her left shoulder as a result of the accident.

2. Defendants denied responsibility for further medical care in October of 2012. Since then, Claimant has obtained care from numerous providers. Claimant has demonstrated that she is entitled to recover expenses incurred in connection with treatment provided by Dr. Lewis. Claimant is entitled to recover 100% of the full invoiced amount of the medical bills that she incurred in connection with the treatment/evaluation rendered by Dr. Lewis. Further, she is entitled to further reasonable evaluation and treatment of the sequelae from her neck and closed-head injury, including psychological treatment. Claimant is entitled to such other palliative or other care necessary to treat her persistent pain complaints.

3. Claimant was not at a point of medical stability as of the date of hearing.

4. Claimant is entitled to the payment of time-loss benefits until she reaches a point of medical stability or until Defendants otherwise meet their burden of establishing that time-loss benefits should be curtailed. Defendants are entitled to credit for wages paid during the period of temporary disability.

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

DATED this __3rd_ day of _____July _____, 2014.

INDUSTRIAL COMMISSION

_/s/_____
Thomas P. Baskin, Chairman

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

_/s/_____
Thomas E. Limbaugh, Commissioner

ATTEST:

_/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __3rd_____ day of ____July_____, 2014, 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:

STEPHEN J. NEMEC
1626 LINCOLN WAY
COEUR D'ALENE, ID 83814

MARK C. PETERSON
P.O. BOX 829
BOISE, ID 83701

_/s/_____