

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

PAUL M. JOHNSON,
Claimant,

v.

GREENBRIAR INN,
Employer,

and

STATE INSURANCE FUND,
Surety,
Defendants.

IC 2012-008511

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

August 14, 2014

Pursuant to Idaho Code § 72-506, the above-entitled matter was assigned to Referee LaDawn Marsters, who conducted a hearing on February 21, 2014 in Coeur d'Alene, Idaho. Claimant was present in person and represented by Richard P. Wallace of Coeur d'Alene. Employer ("Greenbriar") and Surety (collectively, "Defendants") were represented by H. James Magnuson, also of Coeur d'Alene. Oral and documentary evidence was admitted at the hearing, then one post-hearing deposition was taken. The matter was briefed and came under advisement on August 1, 2014.

ISSUES

Pursuant to the parties' stipulation at the hearing, the issues to be decided as a result of the hearing are:

1. Whether Claimant sustained an injury from an accident arising out of and in the course of employment;

2. Whether the condition for which Claimant seeks benefits was caused by the industrial accident;

3. Whether Claimant's condition is due in whole or in part to a preexisting injury/condition;

4. Whether and to what extent Claimant is entitled to the following benefits:

a. Medical care;

b. Permanent partial impairment (PPI); and

c. Disability in excess of impairment (PPD); and

5. Whether apportionment for a preexisting condition pursuant to Idaho Code § 72-406 is appropriate.

Disability in excess of impairment is not addressed by either party. Therefore, it will not be addressed in this Recommendation.

CONTENTIONS OF THE PARTIES

It is undisputed that Claimant worked as a prep cook at the Greenbriar Inn when he suffered an industrial low back injury on February 1, 2012. He slipped on a wet floor, hit his left hip against a wall, and fell to the ground.

Claimant contends that he still suffers significant persistent low back symptoms, caused by the February 2012 industrial injury, at the time of the hearing. As such, he is entitled to medical benefits for medications related to that injury, including prescription pain medication and associated physician visits. Claimant primarily relies upon the earlier opinion of William Ganz, M.D., which Dr. Ganz later modified in a check-box letter provided by Surety.

Defendants counter that Claimant's current low back symptoms are not related to his February 2012 industrial injury, from which he reached medical stability in July 2012, with no PPI and no restrictions. Therefore, he is entitled to no additional medical benefits. Further, no physician has assessed any PPI. Defendants primarily rely upon the opinion of J. Craig Stevens, M.D.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The prehearing deposition of Claimant taken August 27, 2013;
2. Joint Exhibits (JE) "1" through "13" admitted at the hearing;
3. The testimony of Claimant, Chad Lane, Daniel Johnson, and Brandon James Mitchell taken at the hearing; and
4. The post-hearing deposition of J. Craig Stevens, M.D., taken April 9, 2014.

Claimant attached copies of medical records to his opening brief. Only those medical records admitted at the hearing have been considered as evidence in this case. To the extent the records Claimant attached to his brief were not admitted at the hearing, they were disregarded.

OBJECTIONS

Any pending objections posed in the depositions are overruled.

FINDINGS OF FACT

After considering the above evidence and the arguments of the parties, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

BACKGROUND

1. Claimant was 36 years of age at the time of the hearing and residing in Coeur d'Alene. He had no history of treatment for low back problems prior to February 2012. However, he has a significant history of treatment for cervical spine injuries, including an emergent bilevel fusion surgery from C5 through C7 in August 2011 following a bicycle accident.

INDUSTRIAL ACCIDENT

2. On February 21, 2012, Claimant slipped on a wet floor while working as a prep cook at Greenbriar. He hit his left hip against a wall, and fell to the floor. At the time of hearing, Claimant reported his symptoms were worse than ever.

I have a harder time getting around. My mid back, low back is all aggravated constantly. Pain medications help dull the pain. Muscle relaxers help release the tension so I can do my stretches in the morning. Getting around, I'll walk around for say if I was to walk from here home, which I've done from your office, I'll have to lay down as soon as I get home. I'm in pain. I'm not able to move around for a little bit. And a lot of times I'll just pass out from straight exhaustion because I'm not sleeping at night. I'll toss and turn. If I'm lucky, I'll get like two to three hours of sleep a night, and that's including with sleeping medications that they've put me on.

TR-39.

TREATMENT AND CLAIM ADJUSTMENT THROUGH ACCEPTANCE OF CLAIM

3. Claimant continued to work following his industrial injury. In March 2012, he talked to Chad Lane, his friend and roommate at the time of the hearing, who is also a massage therapist, about persistent low back and left hip pain he associated with his industrial fall. Mr. Lane recommended Claimant see a chiropractor about his left hip and declined to treat him without a physician's release for massage therapy. Nevertheless, Mr. Lane wrote an undated note to Greenbriar stating that Claimant should not stand for

long periods at work for a week or two “after receiving care from myself and a Chiropractor.” JE-95.

4. Also in March, Claimant notified his employer that he wanted medical treatment. Claimant led Kris McIlvenna, owner of Greenbriar, to believe that he had been receiving regular massages and he “doubted he could afford to continue to see the masseuse.” JE-88. Ms. McIlvenna wrote on April 2, 2012, “Paul has not seen a doctor subsequent to that fall, six weeks ago. He did not complain of any injury at the TIME of the fall, and I remember asking him several times if he felt he was alright.” (Emphasis in original.) *Id.*

5. Greenbriar did not immediately file a First Report of Injury. Even after Claimant asked for medical care in March, Greenbriar did not file. When Claimant learned his claim had not been filed, he personally completed and filed a First Report of Injury, on March 30, 2012. This was also the date on which Claimant was discharged from Greenbriar. Brandon Mitchell, Claimant’s former supervisor, testified that Claimant’s job performance was not up to par. This position is consistent with an unsigned list of problems with Claimant’s work in Claimant’s employee file.¹ In her discharge letter to Claimant dated March 30, Ms. McIlvenna cited both Claimant’s difficulty remembering the menu and his physical disability due to his 2011 neck injury as reasons for his dismissal. She also offered him part-time work supporting the catering department, advising that there was some work coming up in the next week. Another note indicates Claimant was called in

¹ “1. Does not remember plate sets or sauces. 2. Does not remember basic procedures [*sic*] ex. After being told several times by Derek and I, continues to chop the cucumbers for Tzaki when they need to be pureed. 3. Has not shown any creativity or a real passion for food. 4. He cannot be left alone to close, does not know [*sic*] cook most tapas. 5. I am just plain tired of training the same person on the same things over and over.” JE-103.

for work on April 6 and 7, but he declined. Claimant disputes that he was ever called. In any event, Claimant never returned to work at Greenbriar.

6. On May 7, 2012, Surety sent Claimant a Notification of Claim Assignment. The claim was still pending as of May 17, 2012. It had apparently been accepted by June 14, 2012, when Claimant was first examined in relation to his industrial injury complaints by a physician.

7. In June or July 2014, Claimant obtained work as a dishwasher at the Coeur d'Alene Resort. This only lasted a few weeks, however. According to Claimant, he was fired when his supervisor learned of his physical disability and related "no work" restriction from Dr. Ganz (see below).

TREATMENT FOLLOWING ACCEPTANCE OF CLAIM

8. **Kootenai Urgent Care.** On June 14, 2012, Claimant was evaluated by Leonard Guth, M.D., who Claimant believed to be a family physician. Claimant reported a number of symptoms, including fluid retention for three months, fatigue, vision changes, shortness of breath, bowel activity changes, arthralgia, myalgia, back pain, swelling, stiffness, anxiety, loss of appetite, headache, and sweating. He did not attribute all of these symptoms to the industrial accident. Claimant was not taking any medications at the time.

9. Dr. Guth noted Claimant had poor personal hygiene, with an abnormal personal appearance. On exam, he found Claimant's various physiological systems to be mostly normal, including normal range of motion and no spasm in his neck. X-rays of Claimant's right hip, lower spine and pelvis were normal. According to the report, a left hip exam was performed, but the right hip was imaged. All physicians apparently treat the

x-rays as left hip images, so it is likely that the radiology report contains a typographical error.

10. Dr. Guth diagnosed sprain/strains related to Claimant's lumbar spine, sacroiliac ligament, and hip/thigh and prescribed medications for muscle spasm and pain.

11. On June 19, 2012, Claimant's symptoms persisted, and Dr. Guth observed that Claimant appeared to be in moderate pain and walked with an antalgic gait. Claimant had low back tenderness on exam. Dr. Guth recorded that Claimant's low back symptoms were unchanged, but his hip symptoms had improved. He released Claimant with low back restrictions and checked a box on a form indicating they were more likely than not related to his industrial accident.

12. On June 25, 2012, Claimant underwent MRI imaging of his lumbar spine area, which Dr. Guth later noted "fits his symptoms." JE-193. The reporting radiologist opined:

1. Small to moderate, focal, left paramedian disc protrusion at the L4-5 level. The protruding disc abuts and mildly dorsally displaces the left L5 nerve root. Clinical significance indeterminate.
2. Otherwise negative lumbar MRI examination.

JE-197.

13. On June 26, 2012, Claimant was evaluated by David Chambers, M.D., also believed by Claimant to be a family physician. Claimant reported low back pain with shooting pain into his sacroiliac area, his left buttock, and his left leg. Dr. Chambers' observations and findings on exam were similar to Dr. Guth's. He issued restrictions and checked a box on a form indicating they were more likely than not related to Claimant's industrial accident. He also referred Claimant to William Ganz, M.D., a neurologist, for follow-up.

14. On July 1, 2012, Claimant was evaluated by Dr. Guth for a refill of his medications. Following exam, Dr. Guth prescribed Tylenol, up to 4000 mg. per day, and Lortab, for pain. He also issued restrictions and checked a box on a form indicating they were more likely than not related to Claimant's industrial accident.

15. **Dr. Ganz.** Claimant was evaluated by Dr. Ganz on July 11, 2012. Claimant described his symptoms as achy, dull, constant, and progressively worsening. He added that they were aggravated by remaining in any position for too long, as well as by physical activity, and that they interfere with his activities of daily living. His symptoms were alleviated with massage, lying down, and frequent position changes. Claimant also reported weakness and intermittent numbness occasionally in his entire left leg. In addition, he had joint pain, fatigue, anxiety, and depression.

16. After reviewing Claimant's imaging, radiology reports, and referring physician notes, Dr. Ganz examined Claimant. Claimant was tender in the lumbosacral area, and his range of motion was decreased due to pain. He had normal lower extremity strength and reflexes. His sensation to light touch was decreased in his left lateral lower leg, and his gait was slow and guarded due to pain.

17. Dr. Ganz opined that Claimant's MRI demonstrated degenerative disc disease at L4-5 with a posterolateral bulge:

It slightly indents the anterior thecal sac but does not cause any significant stenosis. There is no evidence of any other significant disc disease on this study. Axial T1 and T2 images are reviewed which show a posterolateral disc bulge and annular tear at the L4-5 level. It slightly indents the anterior lateral aspect of the thecal sac but does not cause any compression of the exiting L4 nerve root. It may slightly stretch the traversing left L5 nerve root. I see no evidence of any other significant nerve root impingement.

JE-215. He also opined that Claimant's neurological exam demonstrated no focal deficits, but that Claimant did have moderate to severe paraspinous muscle spasm of the lumbar spine to palpation, slightly worse on the left, and extending down into the left sciatic notch region.

18. Dr. Ganz opined that Claimant's symptoms would likely resolve within three months with physical therapy and epidural steroid injections ("ESIs"), specifically noting that he believes ESIs can be helpful even in the absence of any neurological deficit. He did not believe Claimant was a surgical candidate. Dr. Ganz took Claimant off work for three months, and Claimant agreed to pursue Dr. Ganz's treatment recommendations.

19. On July 20, 2012, Dr. Ganz wrote an open letter recommending conservative management of Claimant's symptoms, reiterating that he believed Claimant's symptoms would heal in time, and requesting approval for a gym membership to assist Claimant in maintaining a regular exercise program to strengthen his back.

20. **Physical therapy.** Claimant attended nine physical therapy sessions between July 12, 2012 and August 7, 2012. The August 7 chart note states Claimant demonstrated inconsistent symptoms and measurements throughout his treatment. Also, he appeared to repeatedly fake almost falling on the treadmill, and appeared each day with an adult-sized backpack, and stated he had walked long distances getting to and from physical therapy. "With Paul's inconsistent signs and symptoms and poor progress with supervised physical therapy he will no longer benefit from continued treatment at this time." JE-254.

21. **Dr. Stevens.** On July 25, 2012, Claimant underwent an independent medical evaluation ("IME") by Craig Stevens, M.D., a physiatrist. Dr. Stevens reviewed Claimant's medical records, including Dr. Ganz's notes, and examined him. He also noted

that Claimant had participated in seven physical therapy visits, but had not undergone any ESIs.

22. On exam, Dr. Stevens observed that Claimant walked with a varying antalgic gait and generally moved very slowly. On sensory examination, Claimant described sensory loss in all areas tested in his left leg, relative to his right leg, which Dr. Stevens described as a nonanatomic distribution. In addition, he had no left hip abnormalities on exam, no palpable spasm, symmetrical lower extremity strength, and brisk and symmetrical knee and ankle reflexes without spasticity. Also, “Waddell’s testing was completely positive with description of increase in low back pain with thoracic rotation to both the left and the right as well as axial compression applied to the top of his head.” JE-222. Dr. Stevens opined that although Claimant complained of pain, his neurological and objective physical exams produced entirely normal results.

23. Based upon Claimant’s complaints of left leg numbness and sensory loss, Dr. Stevens administered electrodiagnostic testing. “The study was entirely normal and in particular reveals no evidence of acute or chronic lumbar radiculopathy in the left lower extremity.” JE-222.

24. As to Claimant’s MRI results, Dr. Stevens opined that it “revealed no significant disk herniation or even disk bulge sufficient to cause expected symptoms into the left leg.” JE-222.

25. In relation to the February 2012 industrial accident, Dr. Stevens diagnosed a lumbar strain and a left hip contusion, both of which had resolved, and recommended no further treatment.

He exhibits no consistent objective deficit of strength, range of motion, or other objective parameter to indicate the necessity of continued physical

therapy. He exhibits no neurologic deficits, electrodiagnostic findings or neural foraminal encroachment on MRI to suggest that he actually has a lumbar radiculopathy or lumbar radiculitis. His sensory loss is nondermatomal. I therefore recommend that he not undergo lumbar epidural steroid injections. There are no surgical indications.

He should avoid narcotic analgesics, as there is some question given his multiple refills and early presentation for early refills of narcotic analgesics, that there may be a degree of drug-seeking behavior.

JE-223. Dr. Stevens also opined there was no objective evidence of a permanent anatomic change due to the industrial accident (and, thus, no PPI is warranted), and that Claimant could return to work without restrictions. In addition, he diagnosed minor, age-appropriate, lumbar degenerative changes that were unlikely to contribute to his complaints.

26. Dr. Stevens found no causal relationship between Claimant's then-current left hip or low back symptoms and his industrial accident, due to the lack of supportive objective evidence.

27. On July 28, 2012, Claimant presented to Kootenai Medical Center for emergent care for increasing back pain with numbness from neck to waist, including his arms, that he attributed to Dr. Stevens' EMG testing. Claimant's neurological exam revealed no abnormalities. Yet, "The patient is constantly gripping his hands as if his hands feel numb, but there is normal capillary refill in both hands." JE-76. Anxiety and hyperventilation, along with lumbar disc disease, were diagnosed, and medication was prescribed.

28. On August 13, 2012, Dr. Guth signed a check-box letter provided by Surety indicating that he agreed with Dr. Stevens' findings.

29. On August 16, 2012, Dr. Ganz again examined Claimant, who was now also complaining of numbness radiating up his throat, intermittently into his shoulder blade, around his shoulders, down his arm, and intermittent low back symptoms that he attributed to Dr. Stevens' EMG testing. After reviewing Dr. Stevens' report and Claimant's physical therapy records, Dr. Ganz diagnosed a lumbar strain and released Claimant to work without restrictions. As to the new symptomatology, Dr. Ganz was skeptical. "He was initially unable to even localize where his pain was and each time he described it, it was inconsistent with his prior explanation." JE-266. Dr. Ganz maintained that ESIs may help with Claimant's symptoms, but discharged Claimant from neurological care, as there was no indication for neurological intervention. Also on August 16, 2012, Dr. Ganz signed a check-box letter provided by Surety indicating that he agreed with Dr. Stevens' findings.

30. Surety denied Claimant further benefits. It paid temporary total disability through July 31, 2012 and medical bills through Dr. Ganz's final evaluation as itemized in Exhibit 13.

POST-DENIAL CARE

31. On September 4, 2012, Claimant established care with Terence Calderwood, M.D., thought by Claimant to be a family physician at Dirne Health Clinic. Claimant reported a number of symptoms, including severe side effects from EMG testing (burning dysesthesia in his upper back; numbness in his back, neck, and head; and soreness in his elbows, ankles, and right shoulder), tinnitus, blurry vision, excessive fatigue, chronic pain, joint pain and tenderness, low back pain, neck pain, ataxia, numbness, cephalgia, confusion, and sleep problems. Claimant was also concerned that he may have blood in his

stool, but he was not sure because he is color blind. Dr. Calderwood assessed arthralgia, low back pain, and fractured vertebra, all stable.

32. On October 8, 2012, Claimant was evaluated by Scott Magnuson, M.D., a pain management specialist, for ESI. He reviewed Claimant's medical records and MRI films before opining that Claimant is not a candidate for any interventional therapy. "At this point he primarily has musculoskeletal pain and this will require his commitment and dedication to daily exercise, stretching and slow muscle strengthening." JE-274. Dr. Magnuson expected a full recovery, with Claimant's compliance. He specifically recommended no opioids, and no injections. Also, "Consideration should be given to ongoing cognitive behavioral therapy to assist and reduce his fear avoidance behavior." *Id.*

33. On January 14, 2013, Claimant again sought treatment from Dr. Calderwood for his persisting symptoms. Dr. Calderwood referred Claimant for physical therapy, which Claimant apparently did not obtain. On March 11, 2013, Claimant reported to Dr. Calderwood headaches, among other symptoms. His examination was "unremarkable." JE-280. Dr. Calderwood again recommended physical therapy, and reiterated that Claimant should not take opiates.

34. On March 12, 2013, Claimant underwent a one-time free physical therapy evaluation at Hayden Lake Physical Therapy & Aquatic Center for multiple pain sites, including spine (cervical, thoracic, and low back), knees and ankle. Pool exercises and home exercises were recommended.

35. On March 20, 2013, Claimant sought emergent care from Kootenai Medical Center for pain related to his bicycle accident. He did not want to wait a week for his next Dirne Clinic appointment, so decided to go to the ER for pain medication. He denied

numbness or tingling. On exam, Claimant had muscle pain in his back. Straight leg raise was negative, and reflexes were normal. Claimant was diagnosed with acute lumbar strain, given prescriptions for Flexeril and hydrocodone, and advised to see his regular physician.

36. On March 21, 2013, Claimant was evaluated by Richard Jobe, M.D., thought by Claimant to be a family practitioner, at Dirne Health Clinic. Dr. Jobe noted in the history section of his chart note that Claimant may have sustained neck area symptoms due to his industrial fall, though it is difficult to ascertain why he thought this. Claimant's primary symptoms were lower lumbosacral pain, neck pain, and left sciatica. Dr. Jobe ordered cervical and lumbar spine MRIs, for which Claimant's brother paid. Relevantly, the reading radiologist reported "NO change compared with June 25, 2012. Left paracentral discogenic abnormality with mild abutment of the traversing left L5 nerve root." (Emphasis in original.) JE-289. Dr. Jobe diagnosed neck pain and lumbago, prescribed Tramadol, cyclobenzaprine and ibuprofen, and recommended physical therapy.

37. Claimant was again evaluated by Dr. Jobe on May 2, 2013. This time he noted in his history that Claimant had twisted his neck in his industrial fall, and that he was still experiencing neck and lower back pain since that event. After reviewing Claimant's MRI information, Dr. Jobe recommended a neurological consultation.

38. On June 10, 2013, Dr. Jobe again evaluated Claimant. At Claimant's attorney's request, Dr. Jobe ordered thoracic spine x-ray imaging, which produced normal results. On July 9, 2013, Claimant was evaluated by a physician assistant at Dirne. He reported "jumping spasms" to his bilateral lower extremities for several months, most recently increasing in frequency to 20 times per day notwithstanding that he was taking muscle relaxant medication. Claimant attributed the increase to walking around, job

hunting. Claimant also reported a variety of other symptoms, including right hand and shoulder pain after using a steam cleaner. The physician assistant diagnosed muscle spasm, tremor, and low back pain, and prescribed Tramadol and oxycodone.

39. On July 24, 2013, Claimant was again treated by the physician assistant at Dirne because his medications were not working. She opined that Claimant's spasms were more appropriately characterized as whole body tremors. Claimant reported that they started over a year previously and did not often cause pain. Tremor and muscle spasm were diagnosed, and exercise was recommended. Propranolol was prescribed, and a neurology referral was made. On August 8, 2013, Claimant again saw the physician assistant, who again prescribed medications, including oxycodone. She recommended an evaluation by Dr. Abate. On August 20, 2013, after consulting with Dr. Abate, she discontinued Claimant's narcotic pain medication because objective data did not support its use. She again recommended exercise and made it a prerequisite to receiving a sleep medication, which she then prescribed. She also required Claimant to enter into a pain medication contract agreement. No records from Dirne after this visit, if any, are in evidence.

40. Dr. Stevens was the only physician to testify, via post-hearing deposition. He confirmed and explained his opinions stated in his report, among other things.

41. Claimant's brother, his roommate/massage therapist, and his former supervisor all testified at the hearing. Given the medical evidence in this case, their testimony is not discussed.

DISCUSSION AND FURTHER FINDINGS

The provisions of the Workers' Compensation Law are to be liberally construed in favor of the employee. *Haldiman v. American Fine Foods*, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990). The humane purposes which it serves leave no room for narrow, technical construction. *Ogden v. Thompson*, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996). Facts, however, need not be construed liberally in favor of the worker when evidence is conflicting. *Aldrich v. Lamb-Weston, Inc.*, 122 Idaho 361, 363, 834 P.2d 878, 880 (1992).

42. The Idaho Workers' Compensation Act places an emphasis on the element of causation in determining whether a worker is entitled to compensation. In order to obtain workers' compensation benefits, a claimant's disability must result from an injury, which was caused by an accident arising out of and in the course of employment. *Green v. Columbia Foods, Inc.*, 104 Idaho 204, 657 P.2d 1072 (1983); *Tipton v. Jannson*, 91 Idaho 904, 435 P.2d 244 (1967). Claimant asserts that his time-of-hearing symptomatology was caused by the February 2012 industrial injury.

43. The 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 medical testimony supporting the claim for compensation to a reasonable degree of medical probability. 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, 560-561, 511 P.2d 1334, 1336-1337 (1973), *overruled on other grounds by Jones v. Emmett Manor*, 134 Idaho 160, 997 P.2d 621 (2000).

44. The Idaho Supreme Court has held that 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).

45. When the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of employment, unless it is the result of an independent intervening cause attributable to claimant's own intentional conduct. *Larsons, The Law of Worker's Compensation*, § 13.

46. There is no dispute that Claimant suffered an industrial low back injury on February 1, 2012. The question is whether any of Claimant's symptoms at the time of the hearing are attributable to that event. Dr. Stevens' opinions are credible, unrefuted, and supported by Drs. Ganz and Guth.

47. The balance of persuasive evidence in the record establishes that Claimant suffered from a lumbar strain and a left hip contusion that had fully healed as of July 25, 2012. No physician has opined that Claimant suffered any side effects, let alone permanent effects, from the EMG testing. There is no persuasive evidence linking Claimant's L4-5 MRI findings to the subject accident. Therefore, Claimant has failed to prove by a preponderance of evidence that he continued to suffer from any conditions related to his February 2012 industrial accident.

48. Claimant has failed to prove by a preponderance of evidence that he is entitled to any additional benefits related to his February 1, 2012 industrial accident and injury.

49. All other issues are moot.

CONCLUSIONS OF LAW

1. Claimant has failed to establish that he is entitled to any additional benefits as a result of his February 1, 2012 industrial accident and injury.
2. All other issues are moot.

RECOMMENDATION

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

DATED this 5th day of August, 2014.

INDUSTRIAL COMMISSION

/s/
LaDawn Marsters, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of August, 2014, 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:

RICHARD P WALLACE
2370 N MERRITT CREEK LOOP STE 1
COEUR D'ALENE ID 83814

H JAMES MAGNUSON
PO BOX 2288
COEUR D'ALENE ID 83816-2288

sjw

/s/

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

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Claimant,

v.

GREENBRIAR INN,
Employer,

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Defendants.

IC 2012-008511

ORDER

August 14, 2014

Pursuant to Idaho Code § 72-717, Referee LaDawn Marsters submitted the record in the above-entitled matter, together with her 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 establish that he is entitled to any additional benefits as a result of his February 1, 2012 industrial accident and injury.
2. All other issues are moot.

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

DATED this 14th day of August, 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 14th day of August, 2014, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

RICHARD P WALLACE
2370 N MERRITT CREEK LOOP STE 1
COEUR D'ALENE ID 83814

H JAMES MAGNUSON
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sjw

/s/