

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

JULIE JONES,

Claimant,

v.

ADDUS HEALTH CARE,

Employer,

and

LIBERTY INSURANCE CORPORATION,

Surety,

Defendants.

**IC 2010-031633**

**2012-021728**

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

Filed June 6, 2014

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**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 Boise, Idaho, on January 22, 2014. Claimant was represented by David M. Farney of Nampa. Joseph M. Wager of Boise represented Addus Health Care, (“Employer”) and Liberty Insurance Corporation (“Surety”), Defendants. Oral and documentary evidence was admitted. One post-hearing deposition was taken and the parties submitted post-hearing briefs. The matter came under advisement on May 16, 2014.

**ISSUE**

By agreement of the parties at hearing, the sole issue to be decided is whether Claimant has reached MMI with regard to her right shoulder industrial injury, and if not, is she entitled to further reasonable medical care for this condition. All other issues are reserved.

## **CONTENTIONS OF THE PARTIES**

Claimant asserts she injured her right shoulder in August 2012 while in the course and scope of her employment with Employer. Since that time, her shoulder has been symptomatic. In December 2013, Claimant aggravated her right shoulder, and the exacerbation of her symptoms had not abated by the date of hearing. Claimant believes she is entitled to additional reasonable medical care under Idaho Code § 72-432.

Defendants argue Claimant has failed to establish she is entitled to medical benefits, as she was declared medically stable by Kevin Krafft, M.D. on May 8, 2013, and there is insufficient evidence to support the argument that Claimant's December 2013 incident is causally related to her prior industrial accident.

## **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. Claimant's testimony, taken at hearing;
2. Claimant's Exhibits A through G, admitted at hearing;
3. Defendants' Exhibits 1 through 8, admitted at hearing; and
4. The post-hearing deposition transcript of Kevin Krafft, M.D., taken on March 11, 2014.

The objection posed during the deposition is overruled. Having considered the evidence and briefs of the parties, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

## **FINDINGS OF FACT**

1. At the time of hearing, Claimant was a forty nine year old high school educated woman living in Emmett, Idaho.
2. In 2009, Claimant began working for Addus Health Care (Employer) as a home health aide, whose job entailed caring for disabled and elderly clients.

3. In 2010, while working for Employer, Claimant injured her left shoulder. That injury subsequently resolved, and is not the subject of the present proceeding.

4. On August 23, 2012, Claimant injured her right shoulder while in the course and scope of her employment. It is this injury which is the focus of discussion herein.

5. Claimant reported the injury to Employer, who sent her to Primary Health in Eagle for evaluation and treatment. Initially, Claimant was seen on August 24, 2012 by James Yerger, M.D., who diagnosed a right shoulder strain after x-rays showed no abnormalities. Dr. Yerger imposed light duty work restrictions, prescribed pain medication and conservative care, and scheduled Claimant for follow up with Primary Health physician Stephen Martinez, M.D.

6. On September 4, 2012, Claimant came under the care of Dr. Martinez. He continued to treat her conservatively, with medication for pain and work restrictions to include no use of her right hand.

7. By her September 17, 2012 visit to Dr. Martinez, Claimant was reporting increasing pain and demonstrated decreasing range of right shoulder motion. Dr. Martinez ordered a right shoulder MRI, which was performed on September 24, 2012. The MRI revealed mild supraspinatus tendinopathy, with moderate degenerative joint disease of the AC joint. No rotator cuff tear was seen.

8. On September 26, 2012, Dr. Martinez prescribed physical therapy for Claimant to address her continuing symptoms.

9. Physical therapy did not help, and Dr. Martinez discontinued it on October 17, 2012. Due to Claimant's continuing complaints and limitations, Dr. Martinez referred her to Kyle Palmer, M.D., an orthopedic surgeon in Meridian.

10. On October 23, 2012, Dr. Palmer examined Claimant. She presented with tenderness over her bicep, AC joint, lateral and anterior aspects of her right shoulder, as

well as over her trapezius muscle. She also had limited range of motion in her right shoulder, to wit; active flexion, 100 degrees; abduction, 90 degrees; internal rotation, 65 degrees; and external rotation, 45 degrees. Her passive range of motion was better in all categories, but still limited. Dr. Palmer started her on a Medrol Dosepak with plans to transition her to Mobic over time. He kept her off work for one week. He also advised Claimant to stop smoking; she was at that time smoking roughly half a pack a day.

11. Claimant presented for follow up to Dr. Palmer on October 30, 2012. She denied relief from the Medrol Dosepak. Her range of motion was essentially unchanged. Dr. Palmer could not localize her pain, which he felt was subjectively disproportionate to her objective findings. He injected her right bicep tendon sheath. Dr. Palmer felt a referral to a rehabilitation specialist was appropriate, as he could not explain the amount of pain Claimant was experiencing and she did not presently appear to be a surgical candidate. He referred Claimant to Kevin Krafft, M.D., a rehabilitation physician in Boise.

12. Dr. Krafft first examined Claimant on November 9, 2012. At the time of examination, Claimant complained of constant pain in her right shoulder, rated at about 4 or 5 out of 10, although at times her pain could spike up as high as an 8 or as low as 3. Lifting overhead or putting her arm behind her back increased her pain. She also had limited range of motion in her right shoulder for flexion, rotation and abduction. Dr. Krafft noted she had symptoms of adhesive capsulitis, or “frozen shoulder.” He suggested she continue with physical therapy, which had been helpful in increasing Claimant’s range of motion. He advised her to take pain medication before therapy sessions, to assist with the pain the sessions caused her. Dr. Krafft advanced Claimant’s return to work status.

13. On November 26, 2012, Claimant returned to Dr. Krafft complaining of worsening right shoulder pain, despite increased range of motion. Claimant reported working four to six hours daily, although it was painful to do so. She also reported

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 4**

intermittent tingling and numbness in her right hand. Dr. Krafft injected Claimant's anterior shoulder and conducted a nerve conduction study which ruled out radiculopathy. Claimant was continued on physical therapy and advised to follow up in four weeks.

14. Claimant returned to Dr. Krafft on December 10, 2012. Although she reported a bit less pain post-injection, she still suffered increased discomfort if she slept on her right side or made certain movements with her right arm. Her right arm range of motion was improved with exercise, but still restricted *vis a vis* her left. ROM testing that day showed her right forward flexion at 140 degrees compared to 165 left. Adduction and abduction were both 125 degrees right, 165 left. Claimant's internal rotation was identical on both sides at 65 degrees. Her extension was 35 degrees right, 60 left, and FA was 70 degrees right, 85 left. Claimant mentioned she had "slammed" her shoulder into a door jamb when she tripped over her dog the past weekend. This event produced no significant new complaints or injuries.

15. Dr. Krafft felt it was important for Claimant to push past her current ROM limitations through physical therapy. He suggested she use pain medication before attending P/T so she could work through her limitations and regain a more normal range of motion. It was Dr. Krafft's belief Claimant would reach MMI within the month.

16. On December 27, 2012, Claimant again presented to Dr. Krafft requesting follow up studies for her adhesive capsulitis. Her range of motion was unchanged from the last visit. She continued to have tingling into her first three fingers. She was still in physical therapy. Dr. Krafft's notes indicate he had spoken with Louis Burke, PA-C, who worked with Dr. Palmer, who was suggesting manipulation under anesthesia. Dr. Krafft alternatively suggested Claimant undergo intensive therapy at STARS to address her ROM and return to work activity.

17. P.A. Burke saw Claimant on January 22, 2013, for right shoulder evaluation. Claimant still had restricted range of motion in her right shoulder. P.A. Burke felt Claimant had adhesive capsulitis and would benefit from manipulation under anesthesia and secondary arthroscopy of her shoulder to “do a good internal evaluation of this and coagulate any bleeding or adhesions we see.” DE 6, p. 68. The procedure was scheduled pending Surety authorization.

18. That same day, January 22, 2013, Claimant also saw Dr. Krafft. She was complaining of sleep disturbance due to pain, which she placed at a constant 6/10. Claimant also complained of pain and numbness into her right wrist and thumb. Dr. Krafft added Trazadone to her drug regimen, and continued her on Norco, which he felt was effective for her to take pre-therapy to control pain. He scheduled her for follow up in three weeks.

19. Rather than authorizing Dr. Palmer’s planned surgery, Surety scheduled Claimant for a February 21, 2013 IME with Roman Schwartsman, M.D.

20. Dr. Schwartsman’s report from that examination revealed Claimant’s right shoulder was tender in multiple areas with limited range of motion. Dr. Schwartsman noted Claimant’s range of motion limitations were due to pain, and there was no clinical evidence Claimant suffered from “frozen shoulder.” Instead, he diagnosed “strain of her biceps tendon in the long and reflected head as well as the strain of the pectoralis.” DE 5, p. 54. He believed she would not benefit from manipulation under anesthesia or arthroscopic examination.

21. Dr. Schwartsman felt Claimant’s smoking was a major factor in her continuing condition. As noted in his report;

I think the first order here is for the patient to stop smoking. After she has been smoke free for three months, I would expect her to show significant signs of recovery. She can continue

with self directed therapy in the interim. If further therapy is needed, I would recommend referring her to an experienced shoulder therapist either in Eagle or Star. The patient can continue using antiinflammatories [sic].

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If the patient continues to be symptomatic after three months of conservative therapy in a smoke free environment, consideration would be for a repeat MRI arthrogram with good distention of the shoulder to further evaluate whether any cuff pathology is present. Reevaluate at that point with further decision making if all criteria are met.

DE 5, p. 54.

22. In March 2013, Surety asked Dr. Palmer if he agreed with Dr. Schwartzman's IME assessment. He did not. Instead, he wrote, "I recommend that she just have a [sic] arthroscopy of the shoulder for evaluation. Treat any pathology (if any is found) and get her moving along!" (Emphasis in original.) DE 6, p. 72.

23. Consistent with Dr. Schwartzman's proposal, in early March 2013, Dr. Krafft sent Claimant to Peggy Wilson, P.T. in association with the STARS Workfit Program, for rehabilitation therapy. Dr. Krafft continued at that time to believe surgical intervention might be necessary if therapy was ineffective.

24. On April 2, 2013, Claimant followed up with Dr. Krafft, by which time she was proceeding with her STARS therapy. She reported constant pain which ranged from 2 up to 7 out of 10, worsened by exercise and overhead reaching, helped by ice and heat. Claimant also complained of increased spasms in her right shoulder. Dr. Krafft noted her increasing range of motion and recommended Claimant increase her therapy sessions to three per week from two.

25. Two weeks later, on April 16, 2013, Claimant again presented in follow up with Dr. Krafft. At that time she was progressing in therapy, able to lift over thirty pounds, although she was not yet attempting overhead lifting. Her pain was constant at around 4 over 10. Claimant mentioned she was able to do normal activities at home, such as caring

for her dogs. She reported she had played softball recently, including underhand pitching, which caused a flare in her pain. She was only working three hours per week, and had but one client. She had moderately positive shoulder impingement on exam. Her abduction was 130 degrees and her forward flexion of the right shoulder was 155. Dr. Krafft modified Claimant's work restrictions to now allow lifting of thirty pounds.

26. On April 29, 2013, Dr. Krafft again examined Claimant. She still had shoulder pain, ranging from 2 to 8 over 10 in severity. Gardening the past weekend had flared Claimant's pain, but she was able to continue. Claimant had negative shoulder impingement, was lifting 35 pounds, and was working on overhead reaching in therapy. Her pain was controlled with Norco. Dr. Krafft anticipated she would be at MMI at her next appointment. He allowed lifting of thirty five pounds in her work restriction.

27. On May 8, 2013, Claimant presented to Dr. Krafft in follow up. She was lifting forty five pounds in therapy, with a projected ability to lift fifty. She was able to push and pull one hundred pounds. She was discharged from work conditioning. At that time her shoulder ranges of motion were as follows: forward flexion, right 152 degrees/left 165; abduction, right 151 degrees/left 167; extension, right 57 degrees/left 67; external rotation, right 85 degrees/left 82; internal rotation, right 60 degrees/left >90; and adduction, right 50 degrees/left 64. Claimant had no shoulder impingement. Dr. Krafft declared Claimant at MMI and assigned her a 3% whole person impairment rating for her right shoulder injury. He released Claimant to her pre-injury work position with ongoing conditioning through a home exercise program. Dr. Krafft planned to wean Claimant from Norco, transitioning her to OTC pain medication.

28. In June 2013, Surety asked Drs. Schwartzman and Palmer if they agreed with Dr. Krafft's May 8, 2013 MMI assessment. They both agreed with it. In



August 2013, Surety asked Dr. Palmer if he still felt arthroscopy was reasonably necessary to improve Claimant's function. He no longer felt the surgery was necessary.

29. Although never free of pain in her right shoulder, Claimant attempted to do her normal work and daily home activities after her release from care. What she described as "extreme pain, muscle spasms, and more limited mobility in my right arm," (Tr. p. 26, ll. 9-12), led Claimant, through her attorney, to seek additional care from Dr. Krafft. In a letter from Claimant's counsel to Dr. Krafft dated October 1, 2013, and confirmed as accurate by the doctor, counsel memorialized a previous conversation he had with Dr. Krafft thusly:

[d]uring our conversation, as I recall, you indicated that if Julie Jones could stay tobacco free for 3 months [sic] time and still had ongoing shoulder difficulties, despite the gains which she made that the STARS clinic, you would consider it reasonable for her to have additional considerations for treatment to her shoulder by either yourself or Dr. Palmer.

DE 7 p. 97.

30. Six weeks later, on November 13, 2013, Dr. Krafft saw Claimant in follow up, even though at that time she had only been smoke free for approximately one month, not three.<sup>1</sup> Claimant's history included the fact that cutting firewood with a chain saw had aggravated her shoulder, but typically her pain level was between 3 and 4 over 10. Cleaning windows also caused her trouble. She had shoulder spasms into her neck and deltoid. It appears one reason for her visit was to obtain additional anti-spasmodic medication, which was prescribed as requested. Dr. Krafft noted Claimant's right shoulder pain was unchanged, and recommended she continue her home exercise program. A nicotine blood level test administered that day confirmed Claimant had stopped smoking a

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<sup>1</sup> Defendants argue Claimant's counsel misrepresented how long Claimant had been smoke free in order to obtain authority for this visit, and this impugns Claimant's credibility. This argument is briefly addressed subsequently.

month previously. Claimant had lost range of motion in her right shoulder, which measured 55 degrees forward flexion, and abduction of 125 degrees. Other than encouraging home exercises and providing a prescription for anti-spasmodics, Dr. Krafft suggested nothing further to aid Claimant. He felt she was still at MMI in regard to her injury of record. He has not seen her since.

### ***December 2013 Incident***

31. In early December 2013, Claimant was helping her husband bring in groceries at their house. Claimant took a bag of dog food weighing approximately sixteen pounds from her husband with her right arm. As she extended her right arm to put the bag down, her right shoulder “exploded in immediate pain, muscles spasms” down to her elbow, causing tingling and numbness in her fingers. Tr. p. 27, ll. 2-9.

32. Since then, Claimant’s pain, limitations of movement, and restrictions of daily activities increased beyond her pre-incident baseline. At the time of hearing, Claimant was still having difficulties she attributed to the December event.

## **DISCUSSION AND FURTHER FINDINGS**

33. As noted in *Henderson v. McCain Foods, Inc.*, 142 Idaho 559, 563, 130 P.3d 1097, 1101 (2006)

A worker’s compensation claimant has the burden of proving, by a preponderance of the evidence, all the facts essential to recovery.” *Evans v. Hara’s, Inc.*, 123 Idaho 473, 479, 849 P.2d 934, 940 (1993). One of the facts essential to the recovery of medical expenses is that the expenses were incurred as a result of an industrial accident. An employee's “employer and surety are only liable for medical expenses incurred as a result of ‘an injury’ (*i.e.*, an employment related accident), or ‘disability from an occupational disease.’ I.C. § 72–432(1). An employer cannot be held liable for medical expenses unrelated to any on-the-job accident or occupational disease.” *Sweeney v. Great West Transp.*, 110 Idaho 67, 71, 714 P.2d 36, 40 (1986). The fact that an employee suffered a covered injury to a particular part of his or her body does not make the employer liable for all future medical care to that part of the employee's body, even if the medical care is reasonable.

34. Claimant carries the burden of proving, to a reasonable degree of medical probability, that the injury for which benefits are claimed is causally related to an accident arising out of and in the course of employment, *Wichterman v. J.H. Kelley, Inc.*, 144 Idaho 138, 158 P.3d 301 (2007); she must establish this proof by way of physician's testimony or written medical record—supporting the claim for compensation to a reasonable degree of medical probability. See, e.g. *Hart v. Kaman Bearing & Supply*, 130 Idaho 296, 939 P.2d 1375 (1997). Magic words are not necessary to show a doctor's opinion is held to a reasonable degree of medical probability; only their plain and unequivocal testimony conveying a conviction that events are causally related. *Jensen v. City of Pocatello*, 135 Idaho 406, 412-13, 18 P.3d 211, 217-18 (2001).

35. No doctor has directly opined that Claimant's current condition and limitations are causally related to her August 23, 2012 industrial accident. To the contrary, Dr. Krafft declared Claimant at MMI in May 2013. He continued with that opinion through the time of his deposition in March 2014, although it appears he was not told of Claimant's December incident prior to reaffirming his opinion.

36. When confronted in his deposition with the fact Claimant hurt her shoulder in December 2013, which exacerbated her painful condition, and increased her physical limitations, Dr. Krafft testified that it would be reasonable for Claimant to seek medical treatment if she experienced an increase in symptoms. Claimant argues this testimony is tantamount to Dr. Krafft recanting his prior testimony and belief that Claimant reached MMI in May 2013.

37. Dr. Krafft was not asked if, given Claimant's December onset of symptoms while setting down the dog food bag, he was still of the opinion Claimant was at MMI. He was not asked to opine whether, if Claimant "lit up" her shoulder symptoms handling a bag

of dog food in December 2013, causing an onset of symptoms which persisted to date, he would causally relate her current symptoms back to her 2012 industrial accident.

38. Claimant argues the December 2013 incident was just one more in a string of shoulder aggravations, none of which were more than “minor aggravations” of her original industrial injury, and none of which break the causal chain. Claimant cites to her complaints to Dr. Krafft about increased symptoms due to playing softball, gardening, tripping over her dog, and using a chain saw as examples of “minor aggravations” which were noted, but did not change Dr. Krafft’s treatment plan or opinions. While it may be true the above-listed events were minor aggravations, which did not materially set back Claimant’s recovery, the December accident was a much more significant event. At hearing, Claimant testified at length about the events surrounding her injury in December 2013. She did not even mention the other incidents in direct examination. Certainly, the December incident produced lasting pain and physical limitations which Claimant was not experiencing the day before this event. And, as of the date of hearing, at least, her condition had not improved with exercise and time.

39. Claimant also asserts that when the entirety of the medical records and Dr. Krafft’s deposition are examined, including his testimony that lifting with an outstretched right arm could aggravate Claimant’s shoulder condition, common sense mandates the conclusion that Claimant is not at MMI, and the December accident is causally connected to her industrial accident. Claimant had the opportunity to address this very hypothesis directly with Dr. Krafft during his deposition and apparently for strategic reasons chose not to do so. Instead, Claimant now asks the Referee to “connect the dots” to reach Claimant’s proposed conclusion. The Referee is disinclined to make such a medical conclusion when no doctor has done so. While it may be that Claimant’s theory is accurate, it would be speculation to assume Claimant’s current condition is causally related to her original industrial accident without a medical opinion

on point. The Referee can not rule out the proposition that when Claimant reached with extended arm to put down the bag of dog food last December, she injured herself anew.

40. Whether or not certain medical care is reasonable is a different issue from whether or not the need for such care was caused by the industrial accident. Even though medical care is reasonable, it is still not compensable unless the care was due to the industrial accident. *Henderson, supra* at 565, 1104. While Dr. Krafft opined it would be reasonable for Claimant to seek medical treatment if she experienced increased symptoms, that does not mean, nor can it be implied, that such treatment would necessarily be causally related to her previous industrial accident. Contrary to Claimant's assertions, the record does not supply plain and unequivocal medical testimony conveying a conviction that Claimant's current complaints are causally related to her 2012 work accident.

41. Where Claimant was previously pronounced to be medically stable, and where thereafter she experienced a sudden onset of symptoms occasioned by an unexpected, undesigned, and unlooked for mishap or untoward event, and those symptoms did not return to baseline, it is Claimant's burden of proof to establish with the requisite medical evidence a causal relationship between her industrial accident and her current symptoms. Without a medical opinion on causation, Claimant has failed to meet her burden of proof on this issue. While Claimant's current limitations, pain, and penchant for re-injury with minor activity may well impact her permanent disability rating, she has not proven a right to continued medical treatment for her industrial injury. Therefore, her claim for additional medical benefits is denied.

42. Claimant's argument that Dr. Schwartsman's opinion that Claimant would be entitled to a follow up MRI if her symptoms were not significantly improved once she had been smoke free for three months does not alter the outcome. Claimant reinjured her



**CERTIFICATE OF SERVICE**

I hereby certify that on the 6<sup>th</sup> day of June, 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 OWEN  
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JOSEPH WAGER  
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*/s/*

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Claimant,

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**ORDER**

Filed June 6, 2014

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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 was medically stable on and after May 8, 2013 (MMI date).
2. Claimant is not entitled to additional medical benefits beyond the MMI date.



