

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

LANCE PRAGNELL,

Claimant,

v.

MOWER OFFICE SYSTEMS, INC.,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,
Defendants.

IC 2011-002598

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

Filed October 10, 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 Boise on September 18, 2013. Dennis Petersen represented Claimant. Russell Webb represented Defendants. The parties presented oral and documentary evidence, took posthearing depositions, and submitted briefs. The case came under advisement on April 21, 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 Claimant is medically stable and, if so, on what date;
3. Whether and to what extent Claimant is entitled to benefits for
 - (a) Temporary disability; and
 - (b) Medical care.

These issues apply only to a closed head injury which Claimant suffered in a compensable accident. All other issues are reserved, including aspects of the issues identified above which may relate to low back or shoulder injuries.

CONTENTIONS OF THE PARTIES

The parties agree Claimant was injured in a compensable motor vehicle accident. He injured his low back and shoulder. He suffered a closed head injury.

Claimant contends he suffered a traumatic brain injury (TBI) for which he needs medical care. The injury caused cognitive, memory, and personality changes. He is not at MMI. Physicians have recommended additional treatment. An award of temporary disability benefits should continue until he becomes medically stable.

Defendants contend they have paid for all medical care due Claimant for the closed head injury. He has reached MMI. Physicians have rated his PPI for that condition. His continued symptoms are related to nonindustrial psychological events and stressors. Additional treatment is not reasonable under *Sprague v. Caldwell Transportation, Inc.*, 116 Idaho 720, 779 P.2d 395 (1989).

EVIDENCE CONSIDERED

The record in the instant case included the following:

1. Oral testimony at hearing of Claimant and his wife Faith;
2. Joint exhibits 1 through 26 admitted at hearing; and
3. Posthearing depositions of Craig Beaver, Ph.D. and Nancy Greenwald, M.D. admitted, respectively, as joint exhibits 27 and 28.

Objections raised in depositions are OVERRULED.

After having fully considered the above evidence and arguments of the parties, the Commission hereby issues its decision in this matter.

FINDINGS OF FACT

1. These findings of fact are not intended to prejudice or address any aspect of Claimant's shoulder or low back injuries. They apply only to Claimant's head injury.

The Accident

2. Claimant worked for Employer beginning about 1999 as a delivery driver and repairman, troubleshooting and repairing small to medium office printers and computers. He was also given some managerial duties, sold machines, and performed occasional "handyman" tasks.

3. Claimant was injured in a compensable motor vehicle accident on January 17, 2011. The police accident report shows he T-boned another vehicle in an intersection in Rupert. This report is deemed to have greater weight than Claimant's reports to physicians that the other car hit him. He has amnesia about the actual accident. He recalls sitting in the car immediately afterward. Claimant was wearing a seat belt. His airbag deployed.

4. Initially Claimant refused emergency assistance, but eventually on that day was persuaded to seek medical attention.

5. Claimant's wife recalled that Claimant slept excessively and was very tired for several days, perhaps weeks, after the accident. Instead of being easy-going and fun as he had been before the accident, he became withdrawn and irritable. His personal grooming standards fell.

6. Claimant has not worked since the accident.

7. His pre-accident medical history from 2002 through October 2010 includes chiropractic treatment for recurrent headaches with occasional but rare dizziness. He still gets occasional dizzy headaches which he links to light sensitivity; he gets occasional tinnitus.

These are different and worse than those experienced pre-accident.

Initial Medical Care

8. Claimant visited the ER that day. The ER records note possible brief unconsciousness. The examining physician noted Claimant seemed “a little dazed or maybe mildly confused or a bit slow in answering questions.” No objective neurologic deficits were found by a brain CT.

9. Claimant began chiropractic treatment. At his first visit on January 20, 2011, Claimant reported memory loss. He also ascribed to certain questionnaire items as follows:

- Because of the pain, I am unable to do some washing and dressing without help.
- Pain has restricted my social life to my home.
- I need some help, but manage most of my personal care.
- I have a lot of difficulty in concentrating when I want to.
- I cannot do my usual work.
- I cannot do any recreational activities at all.

Other 2011 Medical Care and Events

10. Chiropractic treatment consisted of 20 visits in the next four months. The treatment notes record complaints of dizziness. In February the chiropractor referred Claimant to a neurologist. In April the chiropractor noted slow but “some” improvement.

11. Kenneth Brait, M.D., provided a neurological consultation. He examined Claimant on April 5. Claimant reported that headaches had been prominent for the first week after the accident, but had subsided. Dizziness continued. Short-term memory loss continued. Tinnitus continued. Dr. Brait diagnosed a TBI, but noted that no treatment would help. He was more concerned with Claimant’s low back issues. A May 17 EEG showed abnormal focal slowing in the left hemisphere with a sharp wave suggesting irritability in the right hemisphere.

12. In June or July Claimant moved to Marysville, California. He was following his fiancé who had moved there a few months earlier. He brought his grandmother with him to provide better care than she had been receiving in Idaho. Claimant was unreliable at feeding her despite his fiancé's efforts to assist with preparation and reminders. Eventually, Claimant's fiancé took over and provided care for Claimant's grandmother.

13. Stephen Mann, M.D., became Claimant's treating physician in California. He first saw Claimant on August 25. At the initial visit Claimant reported memory loss, migraines, and blurred vision, along with orthopedic injuries. Dr. Mann diagnosed mild TBI and referred him to a psychologist. In October he recommended a neuropsychologist and acknowledged Boise might be the best place for that evaluation.

14. Claimant's grandmother fell and broke her hip. During recovery she developed pneumonia. She passed away on December 10 at age 96.

15. On December 20 and 21 Nancy Greenwald, M.D., and Craig Beaver, Ph.D., evaluated Claimant at Surety's request. Relevant complaints included fatigue, inadequate sleep, memory, vision and balance difficulties, tinnitus and headaches. Testing showed borderline depression and mild to moderate pain disability. On examination Dr. Greenwald noted anxiety; cranial nerves were intact. Dr. Greenwald diagnosed concussion and opined his symptoms were consistent with post concussive syndrome. She recommended additional therapy, including vestibular therapy for dizziness.

16. Dr. Beaver's separate report noted that he administered significant psychological testing. The testing was interpreted as showing a valid effort by Claimant. Testing suggested mild over-reporting of symptoms. Conversely, the MMPI-II suggested a naïve under-reporting of symptoms. Generally, he tested in the average range with minor or mild dysfunction in

specific areas. Dr. Beaver noted depression and anxiety. He diagnosed a mild TBI with consistent, mild cognitive difficulties. He opined Claimant was not at MMI. He recommended six months' treatment, including prescriptions to combat depression and anxiety as well as speech cognitive therapy.

17. Claimant became unreliable at performing chores and other tasks. He would walk away from something, even cooking, half finished. Claimant became lost easily and eventually stopped driving altogether. Claimant's fiancé took over bill paying and other household tasks which Claimant had previously performed.

18. Claimant's memory has changed for the worse. He needs lists and written notes. Since counselling stopped, Claimant's now wife makes these for him because he does not remember to do it himself.

2012 Medical Care

19. On February 6, 2012, Dr. McCormick, Ph.D., provided a neuropsychological consultation. Testing suggested Claimant suffered depression consistent with the average chronic pain patient, but suffered increased anxiety and cognitive dysfunction. Testing suggested Claimant was likely to rely upon others, i.e. a physician or caregiver, to reduce his symptoms rather than to use self-help techniques. Dr. McCormick diagnosed cognitive disorder NOS (not otherwise specified) and "pain disorder with both psychological factors and general medical condition." He recommended psychotherapy as well as speech therapy for cognitive remediation.

20. On March 5 Dr. Mann focused more on orthopedic problems, but noted Claimant needed a therapist for the TBI.

21. On April 11 Dr. McCormick recommended continued cognitive behavioral

psychotherapy. Complaints included:

headaches, loss of thoughts, easily distracted forgetfulness and word-finding difficulties, double/blurred vision, . . . mental confusion, overwhelmed by stress and worry, . . . poor balance, dizziness, ringing in the ears, . . . slowed thinking, unclear thinking, reading/writing difficulties, depression, trouble sleeping, loss of interest, unable to relax, chronic fatigue, anxious feelings, recurrent fears and panic attacks.

Claimant reported increased difficulty with attention, memory and irritability with high pain or fatigue. Dr. McCormick noted, “[V]isual disturbances . . . are common in this type of injury.” He suggested a neuro-ophthalmologist. Dr. McCormick maintained his recommendation for continued cognitive behavioral psychotherapy in additional follow-up visits.

22. On April 16 Dr. Mann recommended speech therapy for the head injury.

23. Claimant and his fiancé married in May.

24. On May 11 orthopedist Stephen Weber, M.D., examined Claimant. After addressing work restrictions related to Claimant’s shoulder he stated, “but I think his head injury will probably take precedence.”

25. On June 5 Claimant first visited speech language pathologist Xandra Tielman for a cognitive speech evaluation. Ms. Tielman specializes in treating adults who suffer from stroke, TBI, brain tumors, etc. She provided cognitive therapy through December, assisting Claimant with cognitive exercises and coping skills for better daily function. Claimant found these difficult, but attempted compliance and made some progress in the ensuing weeks. Ms. Tielman noted that a part of the therapy included teaching Claimant’s wife to “fade her cues,” to require Claimant to gradually begin accepting more responsibility for himself. This worked, but imperfectly. Ms. Tielman recognized the impact his brain injury was having on his ability to recover functionality.

26. Shoulder surgery was performed on June 12.

27. On June 26 Robert McAuley, M.D., began providing pain management. Upon examination he diagnosed cognitive disorder NOS as a result of mild traumatic brain injury, depressive disorder and anxiety disorder associated with TBI. He prescribed psychotropic medications.

28. On August 6 Dr. Mann noted Claimant much improved after beginning psychiatric medications.

29. On an October 4 follow-up visit Dr. McCormick recommended consultation of a neuro-optometrist. On November 1 Dr. McCormick recommended a comprehensive cognitive retraining program because Claimant's progress was insufficient with his existing therapy.

30. On November 25 Dr. Greenwald responded to correspondence from Surety. She noted Surety had told her Claimant was inconsistent in attending therapy and "had been working on his farm in California handling daily duties." This information was inaccurate and misleading. On a review of additional records, despite not having seen Claimant since the original panel evaluation, Dr. Greenwald opined Claimant no longer needed speech therapy or treatment for depression and anxiety. She opined Claimant was at MMI and without PPI for the concussion.

31. On December 10 Dr. Mann included post-traumatic stress disorder (PTSD) in his diagnoses.

32. On December 13 Dr. McCormick responded to Dr. Greenwald's opinions. He noted Dr. Greenwald's factual misapprehension about Claimant's level of daily function. He noted his recommendation for intensive retraining had not been approved by Surety, which lack of appropriate therapy eclipsed Dr. Greenwald's opinion about discontinuing speech therapy. He

noted disagreement with Dr. Greenwald's causation and psychotherapy opinions. He noted Dr. Greenwald had not seen Claimant recently and was not in a position to opine about his current abilities or complaints. He disagreed with Dr. Greenwald's opinion that Claimant was "back to baseline." Dr. McCormick opined that Claimant's cognitive dysfunction improved as a result of therapeutic treatment and the passage of time. He opined Claimant was not medically stable yet. He reiterated his recommendation for comprehensive cognitive rehabilitation.

33. On December 14 Dr. Mann deferred an opinion about medical stability relating to the brain injury to the treating psychologist and psychiatrist. In this letter to Surety he stated, "You informed me that the patient has been working on his farm, which he owns in the Marysville area. If he is doing all of his work by himself, then there is little to no impairment from his lumbar complaints." The record shows that Claimant has not significantly worked on any farm since the accident and did not own one.

Medical Care 2013 to Hearing

34. On January 3 Dr. Mann disagreed with Surety's suggestion that "there was no indication for further treatment." He noted Claimant's main problem was the TBI.

35. On February 1 Ms. Tielman noted Claimant "was making progress during the course of therapy in the fall 2012." She described the break in therapy which prevented him from improving. Intervening surgery, his grandmother's death, and other background distractions impinged upon Claimant's ability to focus on therapy. On February 26 she noted Claimant had "lost momentum." In deposition Ms. Tielman opined Claimant needed substantial, intense, structured therapy.

36. On February 12 Drs. Greenwald and Beaver performed a second panel evaluation. Claimant's wife accompanied him this time. Dr. Greenwald noted that Claimant's neuro-

psychological function was significantly worse. She opined that he was still at MMI and that such belated worsening was unrelated to the industrial accident. She recorded his description of difficulty in ADLs, including basic grooming. His pain disability score was dramatically higher than at the 2011 panel evaluation. She concurred with Dr. Beaver's assessment of 5% whole person PPI for the concussion.

37. Dr. Beaver's second report involved largely the same psychological testing for comparison to the first panel evaluation. Claimant showed improvement in a few areas, was static in several others, but dramatically worse in some areas as well. Testing indicated an increase in symptom exaggeration. Dr. Beaver opined that this worsening was inconsistent with his experience in treating TBI and that the worsening should not be considered causally related to the industrial accident. Both Drs. Greenwald and Beaver acknowledged that Claimant needs more psychiatric treatment, but that at this point such treatment would be unrelated to the industrial accident.

38. On March 6 Dr. McAuley opined 5% was too low a PPI rating for Claimant's brain injury. On April 3 Dr. McAuley opined Claimant required additional medication and therapy for his brain injury.

39. On March 15 Dr. McCormick checked a box signifying his agreement that Claimant was not at MMI and needed additional psychological treatment including a home therapist. In deposition Dr. McCormick opined that if and when Claimant becomes medically stable, he will likely continue to need medication and probably some intermittent therapy to maintain stability.

40. On March 19 Dr. Mann checked a box signifying his agreement that Claimant was not at MMI and needed additional psychological treatment including a home therapist.

Prior Medical Care

41. At about age 10 Claimant was injured in a car accident which took his mother's life. Claimant recovered without sequela.

42. Claimant received chiropractic treatment. In 1995 he reported neck and head pain. He made infrequent visits for occasional flare-ups of headaches or neck pain throughout 1996. He returned again in 1999 for two visits and in early 2000 for one visit. He changed chiropractors and made about 6 visits in Summer 2000. He rolled a car in November 2000, made 4 more 2000 visits and 27 visits in the first quarter of 2001.

43. After a March 2002 car accident, Claimant sought chiropractic treatment from yet another chiropractor. He again reported neck and back pain as well as headaches and dizziness. He made several visits through June 2002, one visit each in 2003, 2004, and 2005, three visits in 2006, one in 2007, four in 2008, two in 2009, and 13 in 2010.

44. Near the end of his 2010 chiropractic treatment, Claimant visited orthopedic surgeon David Verst, M.D. Dr. Verst examined Claimant. Despite Claimant reporting anxiety at 2, depression at 6, and irritability at 6 on a 10-scale, Dr. Verst noted no evidence of personality or psychological problems, diagnosed a herniated disc, and recommended home exercises.

Claimant's Functional Status

45. Claimant's day begins when his wife rises to prepare to leave for her work which starts at 5:30 a.m. Claimant may make coffee, breakfast, or prepare her lunch. He has occasionally forgotten to turn off the stove. Claimant's wife chooses and lays out clothes for him to wear. Claimant's morning grooming—including shaving, showering, and brushing his teeth—is haphazard without a written list and reminders from his wife.

46. Claimant lives on a small acreage. Claimant's chore is to feed the dogs, cats,

and rabbits. He is rarely entrusted to feed the horses. He has been unreliable in feeding pets without frequent text or telephone reminders from his wife. In a notebook which he carries with him, she helps him make daily lists of things to do.

47. Claimant reads, but could not recall a novel he has recently read. He described re-reading the same page over and over before he realized he was “not really getting anywhere.”

48. Claimant has noticed vision problems, blurriness or nearsightedness, since the accident. He believes this vision deficit varies from day to day.

49. Although he has a valid Idaho driver’s license, Claimant does not drive anymore. He did occasionally drive in 2011 after the accident. He got lost going to a doctor’s appointment. He gets dizzy, anxious, and confused.

50. Claimant fatigues easily after little exertion.

51. Claimant gets sidetracked easily and forgets to finish small projects he has started. Ms. Tielman noted Claimant has difficulty prioritizing tasks.

52. Claimant’s wife took over caring for Claimant’s grandmother, handling her estate according to her will after she passed, and selling her home in Idaho. This occurred despite Claimant having been named executor of his grandmother’s estate.

53. The Referee found that, at hearing, Claimant’s testimony showed his memory for pre-accident events is at least average.

DISCUSSION AND FURTHER FINDINGS OF FACT

54. 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).

55. At hearing, the Referee found Claimant to be credible; Claimant's demeanor and grooming were consistent with testimony about his personality and attitude as well as of his struggles to perform activities of daily living. Further, the Referee found Claimant's wife to be credible and her testimony consistent. The Commission finds no reason to disturb the Referee's findings and observations on either Claimant's or Claimant's wife's credibility.

Causation

56. 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).

57. Here, the medical evidence demonstrates a dispute between Drs. Beaver and McCormick on the etiology of Claimant's current complaints. Dr. Beaver persuasively testified that the normal course for a closed head injury is that the injured individual's symptoms are typically at their very worst immediately after the injury, and that improvement occurs in the months and years thereafter. Dr. Beaver does not believe that Claimant's current complaints are referable to the subject accident because the nature and severity of Claimant's complaints have

increased, as opposed to decreased, over time. This led Dr. Beaver to conclude that Claimant's current complaints cannot be explained by the organic brain injury he suffered at the time of the subject accident. Although Dr. Beaver is of the view that there is no neurological explanation for Claimant's worsening performance on testing over time, he was not willing to say what is the cause of Claimant's increasing dysfunction. (Beaver Deposition 75/16-24). He speculated that Claimant's current presentation is likely multi-factorial. He further speculated that Claimant has decompensated due to depression, either related to the subject accident or to other situational stressors weighing on Claimant. (Beaver Deposition 25/21-27/2458. Dr. McCormick, too, recognized the multi-factorial nature of Claimant's dysfunction. Although Dr. McCormick acknowledged that many of Claimant's situational stressors are unrelated to the subject accident, Claimant would probably have been able to cope with these stressors were it not for the occurrence of the accident and related traumatic brain injury:

Q. Okay. So if you took out the industrial accident part of it, all those other stressors might very reasonably have caused him great stress and in need of treatment, correct?

A. If he had not had a brain injury, would he have needed to be placed on an ant-psychotic? No.

Q. I didn't say anti-psychotic, but the treatment program with you, for instance.

A. I think that if he had not had the injury of 2011, he would not have needed treatment.

Q. He would have been just fine?

A. He would have been able to deal with the stressors of grandma's estate and probably wouldn't have moved here, but probably would have been able to deal with grandma's estate without needing psychological treatment, speech language treatment or psychiatric treatment.

Q. Is there anything in your objective findings and records that support that?

A. It is hypothetical, isn't it, because he did have a brain injury. But it is based upon my understanding of the impact of a traumatic brain injury, if we put on the balance scales all the factors you are describing, it tips this way.

Doing this graphically, the traumatic brain injury becomes a very heavy stressful and potent factor compared to all of those other things. And the reason is, it's because the mind and the brain is what helps us organize and solve problems and deal with stress. And when the mind is not able to keep track of things and loses the ability to concentrate and remember, then the major tool to deal with stress is now dysfunctional.

(McCormick Deposition 72/17 – 73/23).

59. We find Dr. McCormick's testimony persuasive. Dr. McCormick has persuasively explained that the neurological injuries Claimant suffered as a consequence of the subject accident made him more susceptible to the ordinary stressors of daily life, which caused him to decompensate, and perform more poorly over time on the testing administered by Dr. Beaver. Dr. McCormick adequately explained how the cessation of treatment several months prior to Dr. Beaver's February 2013 exam obliterated whatever progress Claimant had made.

60. It is an axiom of Idaho workers compensation law that the employer takes the employee as it finds him. That Claimant had other life stressors that contributed to his current condition does not insulate employer from liability. Where it is demonstrated, as it has been here, that Claimant suffered a more severe outcome from his traumatic brain injury because of his psychological makeup, or because the organic brain injury left him incapable of dealing with the situational stressors of daily life. Employer is responsible for these consequences of the compensable accident, notwithstanding that a typical individual with such an injury would enjoy improvement, not further decompensation, following a traumatic brain injury.

61. Claimant's history of functioning before the subject accident tends to demonstrate that, but for the accident, Claimant's intervening stressors would not have so dramatically affected Claimant. Dr. McCormick convincingly explained that the TBI caused Claimant's inability to cope with the stress of daily living. Therefore, the worsening of Claimant's condition is caused by the industrial accident. The Commission finds this logic and opinion to be persuasive.

62. Claimant suffered a traumatic brain injury caused by the industrial accident and his decompensation following the accident is demonstrated to be causally related to the subject accident.

Medical Care Benefits

63. An employer is required to provide reasonable medical care for a reasonable time. Idaho Code § 72-432(1). When medical treatment is denied, a claimant may seek medical treatment at Employer's expense. *Id.* The first criterion for determining whether such treatment, once provided, was reasonable is whether a claimant's condition improved as a result of that treatment. *Sprague, supra.*

64. Defendants accepted and paid medical care benefits initially. Treatment was denied based upon the opinions of the panel that Claimant's condition—although still in need of treatment—was no longer related to the industrial accident. The panel further opined that the treatment provided by Ms. Tielman and Dr. McCormick did not result in an improvement of Claimant's condition.

65. However, the panel was able to view Claimant only in two snapshots. It relied on medical records and the representations of Surety to ascertain Claimant's condition during the intervening period. The physicians who actually observed Claimant and authored those medical records agree that Claimant improved substantially with treatment provided. Moreover,

Claimant's wife was in the best position to describe Claimant's daily functionality. Her demeanor was entirely credible; her testimony was entirely consistent of itself and with the medical records. Perhaps more importantly, she is the best witness of record to Claimant's personality and functionality before the accident. Her testimony is consistent with Claimant's work record of having performed a job requiring technical skill and executive function for a period of 13 years before the accident.

66. Persuasive testimony of record shows Claimant's functionality, personality, and psychological condition substantially changed after the accident.

67. Ms. Tielman well explained how even a small cognitive loss can be significant for a high-functioning individual. The fact that Claimant's testing generally shows average performance does not reflect the impact of his cognitive loss without comparison to his pre-accident function.

68. Dr. McCormick's opinion that Ms. Tielman's treatment improved Claimant's condition until treatment was interrupted is persuasive. His opinions that Claimant needs additional treatment and is likely to improve are persuasive. His recommendation for substantial, intensive treatment through Gentiva or a similar program is reasonable. His suggestion for eventual return of Claimant to work through a sheltered workshop or similar program also will constitute reasonable medical care.

Temporary Disability

69. Eligibility for and computation of temporary disability benefits are provided by statute. Idaho Code §72-408, *et. seq.* Upon medical stability, eligibility for temporary disability benefits does not continue. *Jarvis v. Rexburg Nursing*, 136 Idaho 579, 38 P.3d 617 (2001). An injured worker who is unable to work while in a period of recovery is entitled to temporary

disability benefits under the statutes until he has been medically released for work and Employer offers reasonable work within the terms of the medical release. *Malueg v. Pierson Enterprises*, 111 Idaho 789, 727 P.2d 1217, (1986). The statute requires a five-day waiting period before temporary benefits become payable. Idaho Code § 72-402.

70. The record shows Claimant is not yet medically stable. His condition improved when he received treatment and worsened when that treatment was interrupted.

71. Claimant is entitled to continuing temporary disability benefits until treatment has been completed and he becomes medically stable.

CONCLUSIONS

1. Claimant's TBI was caused by the industrial accident; he has not reached maximum medical improvement related to it;

2. Claimant is entitled to reasonable medical benefits for treatment provided and for future medical benefits as described above and as may be reasonably required by treating physicians; and

3. Claimant is entitled to continuing temporary disability until he becomes medically stable.

ORDER

1. Claimant's TBI was caused by the industrial accident; he has not reached maximum medical improvement related to it;

2. Claimant is entitled to reasonable medical benefits for treatment provided and for future medical benefits as described above and as may be reasonably required by treating physicians;

3. Claimant is entitled to continuing temporary disability until he becomes medically

stable; and

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

DATED this 10th day of October , 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 10th day of October , 2014, a true and correct copy of FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER was served by regular United States Mail upon each of the following:

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