

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

AARON WOODRUM,

Claimant,

v.

AUTO LAB, INC.,

Employer,

and

STATE INSURANCE FUND,

Surety,

Defendants.

**IC 2012-011789**

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

**Filed July 7, 2014**

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**INTRODUCTION**

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Michael E. Powers, who conducted a hearing in Lewiston on October 22, 2013. Claimant appeared *pro se*. Mark T. Monson of Moscow represented Employer/Surety. Oral and documentary evidence was presented. No post-hearing depositions were taken. The parties submitted post-hearing briefs and this matter came under advisement on April 9, 2014.

## **ISSUES**

As discussed and agreed to at hearing, the sole issue to be decided is whether Claimant suffered an accident and injury arising out of and in the course of his employment.

## **CONTENTIONS OF THE PARTIES**

Claimant contends that he suffered a back injury while installing a transmission/transfer case by himself at Employer's auto repair shop. He relies on his own testimony, as well as testimony from witnesses who observed him after his accident and saw that he was in pain. Employer is lying when he testified that he, Employer, helped Claimant install the transmission and Claimant did not injure himself.

Defendants contend that Claimant is lying about his alleged accident and Employer's witnesses should be believed over those of Claimant's.

## **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. The testimony of Claimant, Employer Larry Bailey, witness to alleged accident John Bieker, Claimant's landlady Jennifer Barrett, Claimant's ex-girlfriend Ginger Darwin, and Claimant's co-worker Jake White.
2. Claimant's Exhibits (CE) 1-24 and 28-29 admitted at the hearing.
3. Defendants' Exhibits (DE) 2-3.

After having considered all the above evidence and the 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. Claimant was 51 years of age and resided in Moscow at the time of the hearing. He began work as a mechanic at Employer's auto repair shop on June 18, 2011.

2. Claimant alleges that on April 24, 2012, he was installing/repairing a transmission/transfer case by himself on a pickup truck and while so doing he injured his back. He claims his only co-worker did not show up for work that day (or the day before) and Claimant was under pressure to finish the transmission job. Employer left at around noon to pick up some parts in Lewiston (Employer's shop is in Moscow) and returned around 2:30 or 3:00 p.m. At that time, Employer asked Claimant if he "got the transmission in and I said, "Yes, I did, but I think I hurt my back. I'm a little sore."<sup>1</sup> HT, p. 38. According to Claimant, Employer ". . . just brushed it off, well, you can toughen up or something like that, and he didn't say much of anything." *Id.*

3. Employer tells another story. He testified that he helped Claimant re-install the transmission/transfer case before he left for Lewiston to pick up parts.

Q. (By Mr. Mosman): And I'll represent to you, and you listened to the testimony today, that Mr. Woodrum is alleging that you told him to install a complete very heavy transmission and transfer case in a four-by-four by himself with wooden pry bars; is that true?

A. No way.

Q. Do you remember - - do you remember that truck that was being worked on?

A. Yeah.

Q. Did you work on it together with him?

A. Yes, I did.

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<sup>1</sup> Claimant admitted under cross-examination that he told Defendants' investigator that "I didn't have any, quote, 'back pain,' because as I said, I was just for two hours I struggled so like I'm totally wiped out from shoving that thing back in there." HT, p. 76. Claimant reiterated at hearing that he had no immediate back pain and that his back spasms did not start until later that evening.

Q. Do you remember whether you were using the transmission jack?

A. Yes, we were.

Q. Would you have instructed him to do a transmission in that vehicle on his own?

A. No way. We always put two people on them. It's easier.

HT, p. 174.

4. When cross-examined by Claimant regarding the accident, Employer responded:

Q. So it's your testimony today that you and me installed the transmission - -

A. That's a fact. That's true.

Q. That's your testimony - -

A. That is my testimony. I know what happened, partner, I was there.

HT, p. 183.

5. Employer also testified that Claimant did not mention hurting his back and that Employer did not notice any movements made by Claimant for the rest of that day that would indicate any back injury.

6. Claimant called John Bieker as a witness. Mr. Bieker has been Employer's neighbor for ". . . ten, twenty years . . ." and has known Claimant for three or four years. HT, p. 106. He testified that he was at Employer's shop on April 24, 2012 sometime after the lunch hour, and Employer and Jake were not there. He asked Claimant who installed the transmission and Claimant responded that he (Claimant) did. Mr. Bieker did not see Claimant working with the transmission; however, he testified that he saw Claimant

crawling out from under the pickup rubbing his back and asked him if he had hurt himself and Claimant responded that he had hurt his back.<sup>2</sup>

7. Employer called Ginger Darwin as a witness by telephone. She is Claimant's ex-girlfriend and she and Claimant did not part on good terms. She testified that Claimant is faking it and she helped him file a bogus workers' compensation claim. Ms. Darwin never saw Claimant in any distress regarding his back and Claimant moved many totes of her belongings weighing between 50 and 70 pounds by himself after his alleged accident. It was evident from her testimony that she did not like Claimant (to put it mildly) and her testimony is given no weight.

### **DISCUSSION AND FURTHER FINDINGS**

An accident is defined as an unexpected, undesigned, and unlooked for mishap, or untoward event, connected with the industry in which it occurs, and which can be reasonably located as to time when and place where it occurred, causing an injury. Idaho Code § 72-102(17)(b). An injury is defined as a personal injury caused by an accident arising out of and in the course of employment. An injury is construed to include only an injury caused by an accident, which results in violence to the physical structure of the body. Idaho Code § 72-102(17)(a). A claimant must prove not only that he or she was injured, but also that the injury was the result of an accident arising out of and in the course of employment. *Seamans v. Maaco Auto Painting*, 128 Idaho 747, 751, 918 P.2d 1192, 1196 (1996). Proof of a possible link is not sufficient to satisfy this burden. *Beardsley v. Idaho Forest Industries*, 127 Idaho 404, 406, 901 P.2d 511, 513 (1995). A claimant must

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<sup>2</sup> This testimony is again contra to what Claimant told Defendants' investigator about not having back pain at the time of his "accident" and Claimant's testimony at hearing that he had no immediate back pain.

provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability. *Langley v. State, Industrial Special Indemnity Fund*, 126 Idaho 781, 785, 890 P.2d 732, 736 (1995). “Probable” is defined as having “more evidence for than against.” *Fisher v. Bunker Hill Company*, 96 Idaho 341, 344, 528 P.2d 903,906 (1974).

### **The accident**

8. The Referee finds that the evidence in this matter regarding the happening of an accident as alleged by Claimant is in equipoise. In other words, the Referee does not know which “side” to believe. Either Claimant or Employer, or both, are simply lying. This is not an instance where two people can view the same set of facts in a legitimately different way. Both Claimant and Employer have reasons to play loose with the truth - Claimant because he wants benefits and Employer because he is convinced the accident did not happen. It was apparent at hearing that there was animosity between Claimant and Employer and the discrepancies in their testimony cannot be reconciled. Neither party has presented evidence that persuades the Referee in favor of either side.

9. Because the evidence is found to be in equipoise, the Referee finds that Claimant has failed to carry his burden of proof by a preponderance of the evidence that he suffered an accident as he alleges on April 24, 2012.

10. Based on the above finding, whether Claimant suffered an injury as the result of an accident is moot.

### **CONCLUSIONS OF LAW**

1. Claimant has failed to prove by a preponderance of the evidence that he suffered an accident on April 24, 2012.

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 \_\_26<sup>th</sup>\_\_ day of June, 2014.

INDUSTRIAL COMMISSION

/s/  
Michael E. Powers, Referee

## CERTIFICATE OF SERVICE

I hereby certify that on the \_\_7<sup>th</sup>\_\_ day of \_\_July\_\_, 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:

AARON W WOODRUM  
PO BOX 3742  
MOSCOW ID 83843

MARK T MONSON  
PO BOX 8456  
MOSCOW ID 83843

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*Gina Espinosa*

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**ORDER**

**Filed July 7, 2014**

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Pursuant to Idaho Code § 72-717, Referee Michael E. Powers 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 recommendation of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant has failed to prove by a preponderance of the evidence that he suffered an accident on April 24, 2012.
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 \_\_7<sup>th</sup>\_\_ day of \_\_July\_\_, 2014.

INDUSTRIAL COMMISSION

\_\_\_\_\_  
/s/  
Thomas P. Baskin, Chairman

\_\_\_\_\_  
R. D. Maynard, Commissioner

\_\_\_\_\_  
/s/  
Thomas E. Limbaugh, Commissioner

ATTEST:  
\_\_\_\_\_  
/s/  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

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\_\_\_\_\_  
/s/