

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

PAMELA ACKLEY,  
Claimant,

v.

U.S. BANK,  
Employer,

and

OLD REPUBLIC INSURANCE CO.,  
Surety,  
Defendants.

**IC 2010-013553**

**ORDER**

April 25, 2012

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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 prove that she suffered an injury from a workplace accident on February 18, or 19, 2010.
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 25<sup>th</sup> day of April, 2012.

INDUSTRIAL COMMISSION

/s/  
Thomas E. Limbaugh, Chairman

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R.D. Maynard, Commissioner

/s/  
Thomas P. Baskin, Commissioner

ATTEST:

/s/  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the 25<sup>th</sup> day of April 2012, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

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JAMES VERNON & WEEKS, P.A.  
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sjw

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

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

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OLD REPUBLIC INSURANCE CO.,  
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**IC 2010-013553**

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

April 25, 2012

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**INTRODUCTION**

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee LaDawn Marsters, who conducted a hearing in Coeur d'Alene, Idaho on December 20, 2011, at which oral and documentary evidence was admitted. Claimant, Pamela Ackley, was present in person and represented by Stephen J. Nemec, of Coeur d'Alene. Defendant Employer, U.S. Bank, and Defendant Surety, Old Republic Insurance Company, were represented by W. Scott Wigle. No post-hearing depositions were taken. Briefs were later submitted, by Mr. Nemec on behalf of Claimant, and by Eric S. Bailey, of Boise, on behalf of Defendants. The matter came under advisement on March 26, 2012.

**ISSUES**

The issues to be decided by the Commission as the result of the hearing are:

1. Whether Claimant suffered an injury from an accident on or about February 18, 2010, 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 pre-existing and/or subsequent injury/condition;

4. Whether and to what extent Claimant is entitled to medical care, including medical benefits pursuant to *Neel v. Western Construction, Inc.*, 147 Idaho 146, 206 P.3d 852 (2009);

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

6. Whether and to what extent Claimant is entitled to attorney fees pursuant to Idaho Code § 72-804.

### **CONTENTIONS OF THE PARTIES**

Claimant, a customer service representative, contends that she is entitled to reimbursement for medical care costs she incurred on February 18 and 19, 2010, when she was treated for symptoms she experienced at work, including nausea, headache, and transitory left and right-sided numbness and weakness. She relies upon the check-box letter of Brian Snyders, D.O., her treating physician, to establish that her symptoms were caused by inhaling the odor of ABM 310 after it had been used to clean a kitchen and/or bathroom at work. Defendants deny that Claimant's symptoms are related to inhaling ABM 310. They counter that Claimant had a history of symptomatology related to that for which she sought treatment on February 18 and 19, and that Dr. Snyders' opinion lacks sufficient foundation to be deemed persuasive.

### **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. Claimant's Exhibits 1 through 8 admitted at the hearing;
2. Defendant's Exhibits A through M admitted at the hearing; and
3. The testimony of Claimant, Brian Ackley and Nicole Vig taken at the hearing.

### **OBJECTIONS**

All pending objections are overruled. Evidentiary objections raised at the hearing were addressed in the Order on Admission of Exhibits N, O, P and 9 and Expert Testimony of Brian Ackley issued December 29, 2011.

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.

### **FINDINGS OF FACT**

1. At the time of the hearing, Claimant was 31 years of age and residing in Hayden, Idaho. She was working full-time for U.S. Bank as a customer service representative, the same position she held on February 18 and 19, 2010, the dates on which Claimant alleges she sustained injuries from inhaling ABM 310 in her workplace. Previously, Claimant worked as a hotel housekeeper, among other jobs.

#### ***CLAIMANT'S PRIOR MEDICAL HISTORY***

2. Claimant's medical records note she has a treatment history for cardiac abnormalities including rapid heartbeat, hypertension, palpitations and chest pain, and ongoing use of prescription medications including beta blockers, Depo Provera and depression medications. Specifically, her medical records confirm:

- a. May 25, 2003 – Two episodes of tachycardia while pregnant, with history of paroxysmal supraventricular tachycardia (PSVT) or paroxysmal atrial tachycardia (PAT), prescription for beta blocker;

- b. May 29, 2003 - Heart rate of 200 beats per minute; apparent PAT converted to sinus rhythm in the emergency room;
- c. September 22, 2003 – Possible PSVT episode after rising quickly from the sofa;
- d. January 14, 2004<sup>1</sup> – Depo Provera injection;
- e. January 19, 2004<sup>1</sup> – Three episodes of rapid heartbeat, improved from a prior appointment, prescription for beta blocker;
- f. June 4, 2004 – Brief self-limiting episodes of palpitations, lightheadedness and chest pain lasting a second or so before resolving attributed to PSVT following taper-down from beta blocker;
- g. August 13, 2004 – Fatigue likely due to not sleeping at night with baby to care for;
- h. January 7, 2005 – Rash due to fungal or allergic cause, paroxysmal supraventricular tachycardia (PSVT) controlled with a beta blocker, pulse rate changes from 100 to 120;
- i. January 24, 2006 – History of hypertension, pulse rate of 99 beats per minute, blood pressure of 129/90;
- j. February 15, 2006 – History of heart problems, high blood pressure, migraines and depression, pulse rate of 80, blood pressure of 154/92;
- k. July 9, 2009 – Depression, fatigue possibly due to beta blocker, prescriptions for a different beta blocker and depression medication;
- l. July 22, 2009 – Depression, improving;

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<sup>1</sup> The chart notes state “2003”, but the context makes it clear these appointments took place in 2004.

- m. October 15, 2009 – Depression, anxiety on planes for which an anxiety medication was prescribed;
- n. December 4, 2009 – Headaches, neck pain and stiffness, allergies, upper extremity pain, back pain, hip/pelvis pain, sinus problems, stomach pain, chest pain, numbness (Claimant did not elaborate), sciatica and stress; history of tachycardia; currently taking beta blocker, Depo Provera and depression medication; and
- o. January 29, 2010 – Sinus symptoms, cough, stomach ache, diarrhea, body aches, diagnosis of acute sinusitis, medications prescribed, still taking depression medication and beta blocker (propranolol).

***FEBRUARY 18, 2010***

3. On February 18, 2010,<sup>2</sup> Claimant felt unwell at work. At her deposition in March 2011, she recalled that she began feeling numbness in her face just before lunch. “Right before my lunchtime I started feeling numbness, I don’t remember if it was left or right on my face, and then as the day progressed it went down my arm.” Cl. Dep., p. 7. Although Claimant could not readily recall which side of her body felt numb on that day, she guessed it was probably her left. She did not volunteer details regarding her proximity to ABM 310 at the time of her symptom onset.

4. At the hearing nine months later, however, Claimant recalled initial onset of numbness on the right side of her face and later, in her right arm, *after* eating lunch and using the restroom:

From what I can remember, on the 18<sup>th</sup> I went to work like normal, went to lunch, used the restroom and went back to my desk and felt really

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<sup>2</sup> At her deposition, Claimant initially believed her first incident occurred on February 16, 2010. However, she eventually agreed that it must have occurred on February 18, 2010, instead.

funny. Had a little bit of a headache, was nauseated. And then I started feeling my face, and my *face felt like it's numb*. Kind of like when your foot falls asleep. *And then it went down my arm.*

...  
Down my right arm. From what I can remember. *Because if it was my left, I would have been freaking out a lot more.*

Tr., p. 50 (emphasis added).

5. Brian Ackley, Claimant's husband, testified that Claimant telephoned him around 2:30 or 3:00 on the afternoon of February 18, 2010 to report "this weird tingling sensation in her legs, and I think it was the right side of her body, which I kind of felt odd." Tr., p. 24 (emphasis added). Using the same reasoning Claimant used at the hearing, he explained Claimant's symptoms must have been on her right side. "*I didn't panic because it wasn't the left*. So it had to have been the right. I could even tell over the phone that something wasn't right. That - - the speech just wasn't there." Tr., p. 24.

6. As to the right side/left side question, Claimant's medical records confirm that she reported left-sided numbness on February 18, 2010. Claimant was examined by an emergency medical technician (EMT) at U.S. Bank, who diagnosed anxiety and tachycardia. She was later treated by Brian Snyders, D.O., a family practitioner, for paresthesia in the left side of her face and her left arm, blurry vision without aura, fatigue and chest pains. He noted that Claimant was not moving her left arm and that she was "not slurring speech." CE 4, p. 5. Dr. Snyders did not note any leg symptoms, or any history of heart problems, beta blocker use, headaches including migraines, or numbness, as indicated in her prior medical records.

7. On exam, Dr. Snyders recorded a pulse rate of 99 beats per minute and blood pressure of 118/78. Claimant had no heart murmur, a negative Romberg test, intact cranial nerves, clear carotids and equal pupil dilation. The chart note appears to state Claimant has no significant history of headache or migraines and it lists Depo Provera as her only current

medication. Claimant underwent an EKG, which returned normal results with a pulse rate of 80 beats per minute, a comprehensive metabolic panel, a complete blood panel and a thyroid (blood) test.

8. Dr. Snyders diagnosed left-sided paresthesia most likely due to either an atypical migraine or a transient ischemic attack (TIA), fatigue and tachycardia. He ordered both an MRI/MRA (with and without contrast) and a screening treadmill test, and prescribed daily aspirin.

9. Later that evening, Claimant was tired, but better. The next day, she woke up without symptoms and got ready for work like any other day.

***FEBRUARY 19, 2010***

10. According to Claimant at the hearing, on February 19, 2010, she began having similar symptoms, but this time on her left side. “It was after lunch this time. I don’t remember if I had went into a lunchroom or a restroom. But it was kind of the same thing, but on my left side.” Tr., p. 52. Claimant left work early and drove home. Her husband then took her to Kootenai Medical Center (KMC), where she was treated by Anthony L. Russo, D.O., an emergency medicine physician.

11. Mr. Ackley recalled, “She drove home. I don’t know how, with her symptoms. Actually, when she did get home, I’m surprised she didn’t run me or the garage door over.” Tr., p. 25. “At that time her speech was slurred. She had - - I think she had the phone somewhere in the car - - probably on the dash - - talking to me. Her speech was slurred. She said she really couldn’t feel anything in her legs. She wasn’t even sure how she was controlling the vehicle.” Tr., pp. 25-26. “Almost as - - she was like - - I don’t know the best way to describe it. Is [*sic*] almost like drunk. Just slumped over the steering wheel. She couldn’t get out of the car. I had

to take her out of the car and help her into the passenger seat, and I took her to the hospital.” Tr., p. 26.

12. Dr. Russo’s chart note from February 19, 2010 indicates Claimant reported right-side tingling and loss of motion, without speech difficulties. More specifically, Dr. Russo noted:

Twenty-nine-year-old female patient who has waxing and waning symptoms of paresthesias that are lateralizing and then completely abate, and then some weakness pops up in one extremity. She states that it waxes and wanes, and from one minute to the next it seems like it is just fine. She had seen Dr. Snyders about it, and he had talked about the possibility of a transient ischemic attack. She denies any headache, visual complaints, difficulty with speech.

CE 5, p. 1.

13. Dr. Russo conferred with Dr. Snyders, but did not record what they discussed. Claimant underwent an MRI/MRA, which identified only mild maxillary sinusitis, confirming her January 2010 sinusitis diagnosis. Her pulse rate was 89 beats per minute, her blood pressure was 160/103 and her current medications included Wellbutrin and a beta blocker. She was in “no obvious distress.” CE 5, p. 1. Although she initially exhibited some right arm weakness, Claimant was completely asymptomatic by the time Dr. Russo finished his examination. He did not specifically note any leg symptoms, though he did make reference to intermittent symptoms in unspecified “extremities” as noted, above. CE 5, p. 1. Dr. Russo diagnosed migratory paresthesias and weakness of unclear etiology, and recommended a follow-up with Dr. Snyders within the week.

#### ***FOLLOW-UP CARE AND CLAIMANT’S SEARCH FOR A CAUSE***

14. On February 23, 2010, Claimant followed up with Dr. Snyders. She reported dizziness, chest discomfort, left arm numbness and difficulty with word-finding. She also reported getting a Depo Provera injection and donating blood just prior to her initial symptom

onset. Dr. Snyders noted Claimant's husband was present. On exam, he observed Claimant's cheeks were flushed,<sup>3</sup> she was cradling her left arm, and she had a butterfly rash. He also reviewed her MRI/MRA results confirming sinusitis. Claimant's pulse was 91 beats per minute and her blood pressure was 120/90. Dr. Snyders diagnosed migratory paresthesias and weakness, tachycardia and bilateral upper extremity radiculopathy. He ordered follow-up tests to rule out lupus and rheumatoid conditions, as well as a cervical spine MRI and a cardiac stress test. He also prescribed a Medrol Dosepak, presumably for Claimant's sinusitis and/or rash.

15. Sometime after her initial medical care on February 18 and 19, 2010, Claimant began to associate her symptom onset with smelling a strong cleaning product odor in a kitchen or restroom at U.S. Bank:

Q ...When did you first make the connection between the cleaning agents that were being used at U.S. bank and your symptoms?

A Honestly, it was - - because every time I would go into a restroom or into our main lunchroom and use the microwaves after I knew they had been cleaning, I would get [*sic*] sick feeling. I would get that nausea, the headache, kind of dizzy. And I was kind of going okay. Is it something I'm doing, or is it something I'm being exposed to? And just kind of put two and two together after it would happen.

Tr., p. 54.

16. Claimant did not introduce any physical evidence to identify the chemical that she smelled, but she offered two different explanations as to how she knew it was ABM 310:

- a. At her deposition, Claimant explained that she had never worked with ABM 310 before but, after speaking with a member of the cleaning crew and smelling and observing the pink liquid that individual was using, she identified it as ABM 310:

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<sup>3</sup> Claimant testified at hearing that her face often appears flushed when she talks due to rosacea, a condition she has had most of her life.

- i. “It wasn’t bleach, I can tell you that much. It was some type of - - if I had to guess it would be like floor cleaner like they would use - - I know we - - well, we didn’t use that specific chemical when I worked in a different job, but it was like - - kind of like a disinfectant floor cleaner.” Cl. Dep., p. 11.
  - ii. “After all of this happened I found out from the cleaning crew that it is pink, and that’s about all I know.” *Id.* “She told me it was neutralizer, and this was long after everything happened, one of the gals told me it was called neutralizer.” *Id.*
  - iii. “I just asked different questions of, “What do you use on the floor? What do you use on the sinks?” And what she told me is they use a cleaner that is called a neutralizer, and I had already had the MSDS so I knew - - or I assumed that it was the floor cleaner, and she told me they used it on the sinks, the toilets, the microwaves, the counters and the tables, everywhere but the floor.” Cl. Dep., pp. 13-14.
- b. At the hearing, however, Claimant testified:
- i. She knew the substance she smelled was ABM 310 because she used it regularly when she previously worked as a hotel housekeeper. “[Mr. Wigle:] Do you know whether you’d ever worked with this ABM 310 Neutral Cleaner before? [Claimant:] We called it neutralizer. But yes.” Tr., p. 70.
  - ii. She also testified that she saw undiluted jugs of ABM 310 on a shelf at U.S. Bank and (see below) that she observed a worker using the product

out of a bucket. She contradicted that testimony by explaining that she had only ever smelled it. She also acknowledged that the product to which she attributes her symptoms is a pink liquid, while the MSD Sheet she relies on to establish the hazards of that product applies to an orange liquid:

Q Okay. Do you know of your own knowledge whether any of those chemicals were actually used [at U.S. Bank]?

A To my knowledge of physically seeing them, no. But smelling them, yes. I have worked in the hotel industry, so I recognize the pink chemical, and that's the one I've been smelling, even though the one we've been talking about's orange.

Tr., p. 69.

- iii. Claimant further testified that she believed the workers at U.S. Bank did not properly dilute the pink product. Also, it is apparent that, at U.S. Bank, Claimant had no adverse reaction to the pink product, even when she was close enough to observe a rag being pulled from an open bucket of it:

When I worked in the hotel industry, we had the same chemicals as they use at U.S. Bank. It's just they were diluted for us into our bottles. We put them up to a little spout and it did the correct dilution...Where I've walked past the janitor's closet at work, they've just got jugs of it on a counter, you know - - not a counter. On a shelf. They pour it in. They have to manually dilute it. And the smell and looking at the pink chemical when they have taken their rag out, it's not diluted properly. It's supposed to be really light pink, and it was pretty dark.

Tr., p. 69.

iv. Claimant admitted that she had no reaction to ABM 310 when she used it regularly in her work as a hotel housekeeper. “[Mr. Wigle:] You worked with it in your work in a hotel and didn’t have a problem with it? [Claimant:] Never had a problem.” Tr., p. 70.

17. On March 24, 2010, Claimant followed up with Dr. Snyders for the last time. She reported one instance of flushing since her last visit, in which she broke out in a rash on her arms and face, and hot flashing. Claimant appeared flushed to Dr. Snyders, and her last Depo Provera injection was noted to be on February 15, 2010. Her pulse rate was 91 beats per minute and her blood pressure was 122/86. Claimant’s cervical spine MRI and cardiac stress test had returned normal results, and her additional blood tests were apparently negative for lupus and rheumatoid disorders. A King of Hearts monitor from March 5-19, 2010 revealed some episodes of chest pain with normal sinus rhythm, and one episode of dizziness with increased heart rate, normal sinus rhythm and a few isolated premature ventricular contractions. Dr. Snyders diagnosed vitamin D deficiency, flushing/hot flashes and environmental allergies, and prescribed medications.

18. At some point, Mr. Ackley provided Dr. Snyders with Material Safety Data Sheets (“MSD Sheets”) and asked his opinion as to whether Claimant’s inhalation of chemicals could be the cause of her recent symptoms. According to Mr. Ackley, “he said this is the only thing it could be. Looking at these sheets and looking at the specific symptoms that they can cause, especially if they’re not handled correctly, that there isn’t anything else.” Tr., p. 29. Apparently, one of the MSD Sheets Dr. Snyders reviewed was the sheet for ABM 310.

19. The MSD Sheet for ABM 310 Neutral Cleaner, issued on June 1, 1999, was introduced into evidence by both parties.<sup>4</sup> (See CE 2 or DE K). It describes an orange liquid concentrate used to clean floors. It indicates no inhalation hazard and a health hazard rating of “1”, the lowest rating next to “0” on a scale of zero to four. It provides first aid instructions in the event the product comes into contact with eyes or skin (minor irritation could occur), or is swallowed (could cause stomach distress, nausea or vomiting).

### ***FROI***

20. On June 2, 2010, Claimant notified U.S. Bank that she believed her symptoms on February 18, 2010 were work-related. It filed a First Report of Injury (FROI) that day.

21. On August 31, 2010, Surety denied Claimant’s claim. “Medical evidence and other facts learned through the investigation of your claim, [*sic*] do not support the occurrence of a work related [*sic*] accident or injury. Therefore, we hereby deny your claim for benefits.” DE 1, p. 1.

### ***MEDICAL OPINION***

22. On November 21, 2011, Claimant sought Dr. Snyders’ medical opinion concerning the etiology of her paresthesia and tachycardia symptoms on February 18. She asked him to assume that:

- a. On February 18, 2010, she experienced numbness on her left side after using a restroom at work that had recently been cleaned with a variety of cleaning products, diagnosed by him as left-sided paresthesia of unknown origin;

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<sup>4</sup>U.S. Bank provided Claimant with the MSD Sheet for ABM 310, along with others corresponding to chemicals used there, at Claimant’s request.

- b. She was treated in the emergency room when these symptoms returned on February 19, 2010, and was diagnosed with migratory paresthesias and weakness of unclear etiology;
- c. She was treated by him for similar symptoms on February 23 and March 24, 2010, after which her symptoms resolved;
- d. His March 24, 2010 chart note lists environmental allergies as an impression of Claimant's symptoms and that she "believes that these environmental allergies are a direct result of her exposure to the concentrated cleaning solutions used at work before they began to be properly diluted";
- e. She discussed some of the cleaning products identified on MSD Sheets provided by U.S. Bank with the cleaning crew and determined that the product she had most likely smelled was ABM 310; and
- f. ABM 310 contains two hazardous substances.

(See CE 4, p. 1). Attached to Claimant's letter were her chart notes prepared by Dr. Snyders on February 18 and 23, and March 24, 2010; the KMC chart note dated February 19, 2010; and the MSD Sheet for ABM 310.

23. On December 5, 2011, Dr. Snyders responded to Claimant's letter by checking "Yes" in a box affirming the following preprinted statement at the end of that letter:

I, Dr. Snyders, state on a more likely than not basis that Pamela Ackley's paresthesia/tachycardia symptoms that developed on February 18, 2010 and were treated thru [sic] March 24, 2010, were likely due to a chemical exposure at work based on the facts as described in the letter above.

CE 4, p. 2. He added, via handwriting:

Ms. Ackley's symptoms of light headedness [sic], paresthesia and headache were likely due to an exposure either by direct contact or more likely due to inhalation of a chemical or fume. Correlation of onset of

symptoms and exposure in lunch room and bathroom after recent cleaning with “Neutral Cleaner”. Ms. Ackley continues to have some symptoms of nausea and headache with any exposure to this cleaner used at her place of work. The exposure to the cleaning chemical has so far been the only link to the onset of symptoms.

*Id.*

#### ***CLAIMANT’S AND MR. ACKLEY’S CREDIBILITY***

24. Witness credibility is always a factor considered in workers’ compensation proceedings. Here, the scrutiny is heightened as to Claimant’s credibility because her recollection of events is unclear at times, and contradictory at others. Regarding Mr. Ackley, his recollections of Claimant’s symptoms do not jibe with Claimant’s medical records or her testimony.

- a. In her deposition on March 18, 2011, Claimant was confused about the date of her initial symptom onset. At first, she testified that her symptoms began on February 16. She changed her mind only after defense counsel advised that her medical record corresponding to her initial treatment visit was dated February 18. Claimant’s failure to recall the exact date is insignificant; however, the apparent certainty with which she testified to the incorrect date potentially casts some doubt on other relevant facts to which she testified with assuredness.
- b. Also in her deposition, Claimant did not clearly recall which occurred first, her right-sided numbness or her left-sided numbness. At the hearing, however, she explained with little hesitation that initial onset occurred on the right side because she would have been more panicked, had it been on her left side. Similarly, Mr. Ackley explained that Claimant’s symptoms first appeared on her right side because he would have been much more alarmed, had they been on the left.

Although the Ackleys' hearing testimony is mutually consistent, the conclusion they reached is inconsistent with Claimant's medical records, which indicate she experienced left-sided numbness on the first day.

- c. More troubling, however, are Claimant's contradictory statements about how she identified the chemical she alleges caused her transitory numbness and other symptoms. Claimant initially testified that she had never before used ABM 310 and could not identify it without assistance from the cleaning crew at U.S. Bank. However, at the hearing she testified that she used it regularly in a prior job as a hotel housekeeper, in what she believed was a more diluted preparation, without experiencing adverse effects. Claimant's testimony regarding how she identified the substance she smelled at U.S. Bank is irreconcilably inconsistent. She either worked with it in the past, or she did not. Either path presents its own proof problems, but neither can be established by Claimant's internally contradictory testimony.
- d. Mr. Ackley's dramatic description of Claimant's slurring, on both relevant dates, is inconsistent with her medical chart notes, which affirmatively state that Claimant was not slurring (Dr. Snyders) or having speech difficulties (Dr. Russo). Likewise, Mr. Ackley's description of Claimant's significant leg symptoms is inconsistent with the medical records, which only note face and arm numbness, and Claimant's reports, only one of which even hints at any leg symptoms.<sup>5</sup>

25. It would appear that Claimant was forthcoming at her deposition about her difficulty remembering facts associated with the events of her initial symptom onset but then, as

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<sup>5</sup> In her deposition, Claimant testified that, at one point, her numbness was *beginning* to reach her legs.

she prepared for the hearing, she discussed the matter with her husband and they agreed on a sequence of events which ultimately did not correspond with the facts stated in her medical records.

26. Claimant seems well-meaning and generally sincere. However, there is significant evidence in the record establishing that she is a poor reporter of her medical history and that she collaborated with her husband in determining how to testify at the hearing. Also, as described above, her testimony regarding how she identified the cleaner she smelled is not believable.

27. Mr. Ackley's testimony bears significant indicia of advocacy which, while understandable, rob its power to persuade.

28. Claimant does not dispute the accuracy of her medical records, which contemporaneously documented her symptoms, and the Referee finds them more reliable than Claimant's or Mr. Ackley's recollections. Where otherwise credible evidence contradicts Claimant's and/or Mr. Ackley's testimony regarding Claimant's medical history, that evidence will be afforded more weight. Similarly, Claimant's testimony is insufficient to identify by name the chemical to which she attributes her symptoms.

### **DISCUSSION AND FURTHER FINDINGS**

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). 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).

## **CAUSATION**

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).

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. Drapo Corporation*, 95 Idaho 958, 560-61, 511 P.2d 1334, 1336-37 (1973). See also *Callantine, Id.*

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).

29. Claimant's claim rests upon her theory, which she developed several weeks after receiving medical treatment on February 18 and 19, 2010, that her symptoms were caused by inhaling ABM 310 in a room or rooms recently cleaned with it. She was understandably uncomfortable with the failure of objective testing, or her physicians, to provide any explanation for her sudden onset of paresthesia and other symptoms. So, she and her husband researched the

matter for themselves and came to believe that inhaling the residual odor of ABM 310 was the cause. Dr. Snyders' opinion seeks to support this position. Defendants have not offered a medical opinion in rebuttal, so if Dr. Snyders' opinion is sound enough to support Claimant's *prima facie* case, then she will have cleared the first threshold in proving her entitlement to benefits.

30. Unfortunately for Claimant, Dr. Snyders' opinion was rendered via the thinnest of evidence – a checkbox letter on which he scribbled a note. Further, in developing his opinion he assumed that Claimant had inhaled the residual odor of ABM 310, a fact which the evidence in the record fails to establish for two primary reasons. First, Claimant's testimony as to how she identified the cleaner is unpersuasive because it is internally contradictory, as determined above. Second, ABM 310 is an orange liquid, while the cleaner to which Claimant attributes her symptoms is pink.

31. In addition, the record fails to establish that Dr. Snyders was aware of Claimant's relevant history of heart rhythm abnormalities (including tachycardia), her chronic beta blocker use, and her recent history of unspecified numbness. The record also lacks any evidence that Dr. Snyders knew Claimant may have previously worked directly with the substance to which she now alleges a reaction, with no known adverse effects.

32. The Referee finds Dr. Snyders' opinion lacks sufficient foundation and, therefore, it fails to establish that Claimant's relevant symptoms were brought on by inhaling ABM 310.

33. Further, even assuming Dr. Snyders' opinion rests upon a sound understanding of all of the relevant facts related to Claimant, the information on the data sheet for ABM 310 does not list any hazards associated with inhalation, the only method via which Claimant alleges contact. Dr. Snyders' finding of a causal connection, without a great deal more explanation than

his check-box letter provides, is too conclusory to meet the required standard of reasonable medical probability or, in turn, to establish Claimant's *prima facie* case.

34. Claimant has failed to adduce sufficient medical evidence to prove that she sustained an injury from a workplace accident on February 18 or 19, 2010.

35. All other issues are moot.

### CONCLUSIONS OF LAW

1. Claimant has failed to prove that she suffered an injury from a workplace accident on February 18, or 19, 2010.

2. All other issues are moot.

### RECOMMENDATION

Based on 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 13<sup>th</sup> day of April, 2012.

INDUSTRIAL COMMISSION

/s/  
LaDawn Marsters, Referee

ATTEST:

/s/  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the 25<sup>th</sup> day of April, 2012, 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:

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