

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

SILVIA A. NOLASCO ALONSO,)
)
 Claimant,)
)
 v.)
)
 NORTH AMERICAN FOODS, LLC,)
)
 Employer,)
)
 and)
)
 ZURICH AMERICAN INSURANCE)
 COMPANY,)
)
 Surety,)
)
 Defendants.)
 _____)

IC 2009-003622

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

Filed March 2, 2012

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Michael Powers, who conducted a hearing in Idaho Falls, Idaho on July 1, 2011. Claimant, Silvia A. Nolasco Alonso, was present in person and represented by G. Lance Nalder and Chad A. Campos, of Idaho Falls. Defendant Employer, North American Foods, LLC (North American), and Defendant Surety, Zurich American Insurance Company, were represented by David P. Gardner, of Pocatello. The parties presented oral and documentary evidence. No post-hearing depositions were taken and briefs were later submitted. The matter came under advisement on November 15, 2011.

ISSUES

The issues to be decided by the Commission are:

1. Whether Claimant has complied with the notice limitations set forth in Idaho Code § 72-701 through Idaho Code § 72-706, and whether these limitations are tolled pursuant to Idaho Code § 72-604;
2. Whether Claimant suffered a personal injury arising out of and in the course of employment;
3. Whether Claimant's injury was the result of an accident arising out of and in the course of employment;
4. Whether Claimant's condition is due, in whole or in part, to a pre-existing injury or disease or cause not work-related;
5. Whether Claimant's condition is due in whole or in part to a subsequent injury or disease or cause not work-related.
6. Whether Claimant is entitled to reasonable and necessary medical care as provided for by Idaho Code § 72-432, and the extent thereof;
7. Whether Claimant is entitled to temporary partial and/or temporary total disability (TPD/TTD) benefits, and the extent thereof;
8. Whether Claimant is entitled to permanent partial impairment (PPI), and the extent thereof;
9. Whether Claimant is entitled to permanent partial disability (PPD) in excess of permanent impairment, and the extent thereof; and
10. Whether apportionment for a pre-existing condition pursuant to Idaho Code § 72-406 is appropriate.

CONTENTIONS OF THE PARTIES

Claimant asserts that she suffered an industrial accident on May 8, 2008, when a

pressurized hose she was holding in her right hand, jolted her right arm and shoulder, causing cervical whiplash and cervical disc injuries. She seeks medical, and temporary and permanent disability benefits. Defendants argue that her claim is time barred by Idaho Code § 72-701 for failure to file a claim within one year of the accident. They assert tolling of the statute is not appropriate. Defendants further contest whether Claimant's accident caused cervical and right upper extremity injuries.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. The testimony of Claimant, taken at the July 1, 2011 hearing;
3. Claimant's Exhibits 1 through 12 and 14 through 19, admitted at hearing; and
4. Defendants' Exhibits 1 through 3, admitted at the hearing.

All objections posed during the pre-hearing depositions are overruled. After having considered 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. Claimant was 41 years old and lived in Idaho Falls at the time of the hearing. She is right hand dominant. She was born in 1970 in El Salvador, where she completed the seventh grade. She first came to the United States in approximately 1984, at the age of 14, was deported in 1998, and returned to the United States in 2001. Claimant became a United States citizen in 2008. She communicated at hearing only through a Spanish interpreter.

2. In April 2001, Claimant commenced working full-time for North American Foods as a sanitation technician. She continued working at North American until December 2008.

3. On December 20, 2004, Claimant injured her neck, back, left arm, and left shoulder in an automobile accident. She underwent x-rays and was diagnosed with neck and back strain. She sustained no right arm or right shoulder injuries. On January 17, 2005, Claimant presented to Eric Walker, M.D., with continuing complaints of neck and back pain after the automobile accident. Dr. Walker prescribed medications and referred her to physical therapy. He recorded that by March 31, 2005, she was improving. By June 1, 2005, she reported no further pain. In contrast to Dr. Walker's records, when questioned at hearing about her 2004 automobile accident, Claimant denied hurting her neck in the automobile accident.

4. On December 8, 2006, Claimant presented to Michael Packer, M.D., who recorded Claimant's complaints of bilateral hand numbness and tingling. At hearing, Claimant testified she had no recollection of visiting Dr. Packer.

5. On February 5, 2007, Claimant presented to Michael Larson, M.D., who recorded her complaints of radiating pain from her shoulders to her elbows, and into her hands, right greater than left. Her symptoms had persisted for approximately one year. Dr. Larson referred Claimant to physical therapy. In contrast to Dr. Larson's records, when questioned at hearing about her complaints to Dr. Larson, Claimant testified that she reported to Dr. Larson only bilateral wrist pain.

6. In April 2007, Claimant injured her left shoulder at work when a door fell off its hinges, striking her left shoulder and arm. She reported the incident to her supervisor, but sought no medical treatment. She testified that her left shoulder and arm pain entirely resolved.

7. Prior to May 2008, Claimant was diagnosed with Type 2 diabetes mellitus and thereafter treated periodically with John Liljenquist, M.D., to manage her diabetes.

8. Claimant emphatically testified that she had no neck, shoulder, elbow or wrist pain, and no right hand tingling or right arm weakness in the months immediately prior to May 2008. In contrast to Claimant's testimony, Claimant's co-worker and relative, Lorena Fernandez, testified that Claimant complained of right shoulder pain regularly for years prior to May 2008.

9. Claimant testified that on May 8, 2008, she was at work holding a high pressure steam hose over her head with her right hand when a co-worker turned the hose on, resulting in a surge of pressure in the hose that jerked her right arm and shoulder abruptly backward, and causing her neck to whiplash. She testified to immediate neck and right shoulder pain and reported the incident to her supervisor, Jarimie Warner, through her co-worker, Lorena Fernandez, who acted as an interpreter. Based upon information related by Fernandez, Warner completed a Supervisor's Incident Analysis Report which Claimant signed, memorializing her complaint of the steam hose incident and right shoulder pain. The report specifically described "running the steam hose a lot last 3 days," explained the contributing cause as "continuous steam hose use," and the injury as "shoulder strain ... right shoulder." Claimant's Exhibit 19, p. 236. The report made no mention of surging hose pressure, whiplash, or neck pain. Claimant missed no work and sought no medical treatment at that time, thus no Form 1 was completed on May 8, 2008.

10. Claimant testified that after the May 8, 2008 incident, she performed lighter-duty work because she was no longer able to repeatedly lift 50-pound boxes or wet carpets. In contrast to Claimant's account, Fernandez testified that she worked side by side with Claimant after the May 8 incident and noticed no difference in Claimant's performance of her work duties.

11. Claimant testified that her neck, right shoulder, and right upper extremity symptoms worsened from May 8, 2008, until December 8, 2008, when they hindered her ability to work and disturbed her sleep. Claimant testified that she initially attributed her increasing neck, right shoulder, and right arm pain to her pre-existing diabetic condition.

12. On December 8, 2008, Claimant presented to Dr. Liljenquist for bilateral hand numbness and tingling. He diagnosed uncontrolled diabetes. Also on December 8, 2008, Claimant ceased working at North American due to her pain and to her very high blood sugar levels. She missed no work due to her May 8, 2008 accident between May 8 and December 8, 2008. On December 8, 2008, Claimant commenced FMLA leave.

13. Shortly after December 8, 2008, Dr. Liljenquist advised Claimant that her shoulder and neck pain were not related to her diabetes. He ordered an MRI which revealed a C6-7 disc herniation. Dr. Liljenquist then referred Claimant to Mark Weight, M.D.

14. On January 22, 2009, Dr. Weight examined Claimant and recorded her complaints of neck and right upper extremity pain. He reviewed the MRI and confirmed a large disc bulge/herniation at C6-7, central to right paracentral, resulting in central canal stenosis and bilateral neuroforaminal narrowing and recess stenosis. He recommended cervical surgery.

15. On January 23, 2009, Employer completed a Form 1, First Report of Injury or Illness, at Claimant's request. Defendants assert this was the first indication they received that Claimant alleged any neck symptoms and intended to pursue the May 8, 2008 incident as a workers' compensation matter.

16. On February 9, 2009, Claimant's counsel wrote to North American and to its Surety, advising that Claimant was receiving medical treatment for an injury suffered at North American, surgery was scheduled, and Claimant was then unable to work.

17. On February 18, 2009, Dr. Weight performed C6-7 anterior cervical discectomy and fusion with instrumentation. Dr. Weight's operative notes contain no estimated age of the disc herniation at C6-7. Also on February 18, 2009, Surety's adjustor, Jenica Papp, wrote Dr. Weight, denying authorization for Claimant's cervical surgery. Defendants denied the claim for lack of cooperation when initial efforts to obtain Claimant's statement were not successful. Defendants also questioned whether Claimant's cervical disc herniation was caused by an industrial accident.

18. On February 19, 2009, Claimant's counsel wrote Surety again, asserting Claimant's cervical surgery was due to a work-related injury and that she was unable to work pending further evaluation. Claimant's counsel wrote to Surety again on March 11 and April 14, 2009, responding to the adjustor's questions and advising of Claimant's medical progress in recovering from her cervical surgery.

19. On July 16, 2009, Claimant, through counsel, filed her Complaint herein.

20. On August 6, 2009, Dr. Weight released Claimant to return to work without restrictions.

21. On May 27, 2011, Claimant was examined by Gary Walker, M.D., at Defendants' request. Dr. Walker reviewed a number of medical records, including those of Drs. Larson, Weight, and Packer, and Dr. Eric Walker. Dr. Gary Walker opined that Claimant's cervical surgery was appropriate, and that her industrial accident might possibly have caused her C6-7 herniation. However, given her prior complaints, and the seven-month gap between her industrial accident and her first efforts to obtain medical treatment, Dr. Walker could not conclude, to a reasonable medical probability, that Claimant's industrial accident caused her C6-7 disc herniation.

22. On June 7, 2011, Claimant was examined by Robert Ward, D.C., M.D., at Claimant's counsel's request. Dr. Ward opined that Claimant's cervical condition was due to her industrial accident and that she suffered a permanent partial impairment of 11% of the whole person due to her cervical condition.

23. At the time of hearing, Claimant testified she continued to have pain in her neck, right shoulder, and occasionally in her hands.

24. Defendants have paid no benefits for Claimant's industrial accident.

25. Having reviewed the evidence, observed Claimant at hearing, and compared her testimony to other evidence in the record, the Referee finds that Claimant is not a reliable witness.

DISCUSSION AND FURTHER FINDINGS

26. 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).

TIMELY CLAIM

27. The first issue is whether Claimant complied with the notice limitations set forth in Idaho Code §§ 72-701 through 706, and whether these limitations are tolled pursuant to Idaho Code § 72-604.

28. Idaho Code § 72-701 provides in pertinent part:

No proceedings under this law shall be maintained unless a notice of the accident shall have been given to the employer as soon as practicable but not later than

sixty (60) days after the happening thereof, and unless a claim for compensation with respect thereto shall have been made within one (1) year after the date of the accident

Furthermore, Idaho Code § 72-702 requires that the claim for compensation be made in writing.

29. Claimant asserts that the Form 1, First Report of Injury or Illness, satisfies the requirement of making a claim within the one-year period. Claimant further maintains that her attorney's February 9, 2009 letter and various other letters to the Surety also satisfy the statutory requirement of making a claim for compensation. Defendants assert that the recent Commission decision in Godfrey v. The Church of Jesus Christ of Latter-day Saints, 2011 IIC 0023 (April 2011), requires dismissal of Claimant's Complaint.

30. In Godfrey, the injured worker gave notice of an industrial accident in February 2008, but did not file a written claim until November 2009. The Commission found the claim barred, concluding: "It is undisputed the Claimant failed to make the written claim required by I.C. § 72-702 within one year subsequent to the occurrence to the February 4, 2008 accident." Godfrey, 2011 IIC 0023.7. However, Godfrey is not controlling in the present case because Claimant herein contends she made several timely written claims for compensation. Rather, Tonahill v. Legrand Johnson Construction Co., 131 Idaho 737, 963 P.2d 1174 (1998), is dispositive of the instant question.

31. In Tonahill, the Court examined Idaho Code § 72-701 and noted: "This statute mandates a two step process. First, notice of the accident must be provided to the employer by the claimant within sixty days of the accident. [Citation omitted.] Second, a claim for compensation must be made within one year of the accident." Tonahill, 131 Idaho at 740, 963 P.2d at 1177. The Court reviewed Idaho Code §§ 72-701 and 703, observing:

The plain meaning of this statute would indicate that the claim is to be made with the employer not with the Commission.

We hold that the letter [from Tonahill's counsel] received by the Surety on September 2, 1993 constituted a claim made to the employer. It was this letter that put the employer and the surety on notice that Tonahill was pursuing her legal rights to compensation. Since the letter was received well within one year of the accident, Tonahill was timely in filing her claim.

Tonahill, 131 Idaho at 740, 963 P.2d at 1177. The Court then considered Idaho Code § 72-706(1), which allows the injured worker one year from the date of making the claim with the employer to file with the Commission an application requesting a hearing. The Court found Tonahill's complaint timely, concluding:

Tonahill argues that the Commission erred by determining that the "making of a claim" occurred when LeGrand filed the Form-1. We agree. As stated above, I.C. § 72-701 requires that a claim be made with the employer. Tonahill made a claim with the Surety on September 2, 1993, in the form of a letter from her attorney. Therefore, Tonahill had one year from September 2, 1993, to file a complaint with the Commission. Since Tonahill's complaint was filed on August 26, 1994, the complaint was filed within one year of the making of the claim.

Tonahill, 131 Idaho at 741, 963 P.2d at 1178.

32. In the present case, Defendants completed a Form 1, First Report of Injury or Illness, on January 23, 2009. Moreover, Claimant's counsel wrote the Surety on February 9, 2009, advising that Claimant was receiving medical treatment, allegedly for an injury suffered at North American, that surgery was scheduled, and that Claimant was then unable to work. On February 19, 2009, Claimant's counsel wrote the Surety again, advising of Claimant's cervical surgery, allegedly due to a work-related injury and her inability to work pending further evaluation. Claimant's counsel wrote to the Surety again on March 11 and April 14, 2009, responding to the adjustor's questions and advising of Claimant's medical progress in recovering from her surgery. These correspondences constitute claims to the Employer, similar to Tonahill, well within one year of the May 8, 2008 accident. Claimant's Complaint herein, filed July 23, 2009, was well within one year of the date of her claim to Employer.

33. Claimant herein timely made a claim to Employer for compensation for her May 8, 2008 accident, and her claim is not barred by Idaho Code § 72-701. She also timely filed her Complaint herein with the Industrial Commission, and is not barred by Idaho Code § 72-706. There is no need to consider tolling pursuant to Idaho Code § 72-604.

ACCIDENT, INJURY, AND CAUSATION

34. The next issues concern whether Claimant suffered a personal injury as the result of an accident arising out of and in the course of employment, or whether Claimant's condition is due to a pre-existing or subsequent injury or disease not work-related.¹

35. A claimant must prove not only that he or she suffered an injury, 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 causal 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 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). Magic words are not necessary to show a doctor's opinion was held to a reasonable degree of medical probability; only their plain and unequivocal testimony conveying a conviction that events are causally related. See, Jensen v. City of Pocatello, 135 Idaho 406, 412-13, 18 P.3d 211, 217 (2001).

¹ Although the facts of this case arguably put the occurrence of an "accident" at issue, Defendants have not argued that the accident did not occur, or did not occur as alleged. The focus of the defense to the claim is that even if the accident occurred as now alleged, there is no adequate showing that Claimant's cervical spine condition is causally related to that event. Therefore, the Commission will not treat the question of whether, or not, the accident occurred.

36. In the present case, all parties acknowledge that the surgical treatment Dr. Weight provided was appropriate for Claimant's C6-7 disc herniation. However, Dr. Weight's notes tend to confuse rather than clarify the question of causation. On January 22, 2009, Dr. Weight recorded Claimant's neck and right upper extremity complaints and then wrote:

She notes that this began about two years ago at work. She notes that she has been managing this in the past conservatively. Approximately two weeks ago she was working utilizing a pressure washer and she developed significant worsening of her pain down the right upper extremity with weakness in the right upper extremity to the point where she was unable to continue working and had to go home[.]”

Claimant's Exhibit 19, p. 237. In contrast to Dr. Weight's records, Claimant testified at hearing that she never told Dr. Weight that her symptoms began two years earlier or worsened two weeks earlier. She acknowledged that she had not worked since December 8, 2008, and was not working two weeks prior to January 22, 2009. Claimant does not contend, and the Referee does not find, that Dr. Weight's records establish that her cervical disc herniation was caused by her May 8, 2008 industrial accident.

37. As previously noted, two other physicians, Dr. Robert Ward and Dr. Gary Walker, have expressly rendered differing opinions regarding the causation of Claimant's cervical disc injury. Their opinions are examined below.

38. Robert Ward, D.C., M.D., examined Claimant on June 7, 2011, at Claimant's counsel's request. Dr. Ward opined that Claimant's cervical injuries are related to her industrial accident. He also opined that Claimant was a good historian. The history which Dr. Ward received from Claimant, and upon which he relied, is as follows:

She denied any previous problem or history including other work or liability-related injuries, other than she was involved in an MVA approximately 3 years ago. She had some mild neck tenderness. She was treated in a facility where x-rays were taken. They found no problems and there was no treatment prescribed at that time. She has had absolutely no problem since that time until the aforementioned injury with her cervical spine. She also was diagnosed with possible carpal tunnel syndrome, but there was never

any verification made nor was there any treatment rendered. She denies ever having any difficulties prior to the date of the injury which were similar to those that she is currently experiencing.

Claimant's Exhibit 1, pp. 2-3.

39. Dr. Ward expressly found that the information Claimant provided during his evaluation was consistent with the medical records provided. However, the only medical records provided to Dr. Ward were the January 12, 2009 MRI report, a February 2, 2009 scheduling letter and related papers from Eastern Idaho Spinal Neurological Surgery, and Dr. Weight's surgical report, office chart notes, and prescription regarding Claimant's C6-7 surgery. The earliest medical record provided to Dr. Ward is dated January 12, 2009—more than eight months after Claimant's industrial accident. None of the records provided to Dr. Ward pre-date Claimant's industrial accident.

40. Having no pre-accident medical records for evaluation, and in the face of Claimant's denial of prior symptoms, it is not surprising that Dr. Ward found a causal relation between Claimant's industrial accident and her C6-7 disc herniation. He opined:

Based on available information to a reasonable degree of medical probability, there is causal relationship between the examinee's current complaints and the injury reported. Although she had some difficulty after an MVA 3 to 4 years earlier, she has never seen a doctor, never been treated for any kind of neck pain, has not had any problems with it, has not taken over-the-counter medication for it. Therefore, I believe it is noncontributory to the cervical surgery.

Claimant's Exhibit 1, p. 9.

41. Claimant's medical history, as related to Dr. Ward, is largely consistent with her testimony at hearing, but inconsistent, at least in part, with the pre-accident history documented by her medical records.

42. Claimant testified at hearing that she never had similar neck, shoulder, arm, or hand symptoms prior to her May 8, 2008 accident. However, her medical records, detailed

above, indicate significant relevant preexisting symptoms. Further, Claimant was determined to be an unreliable witness, so her testimony must be discounted unless it is corroborated by other credible evidence which, on this point, the record fails to provide. However, when questioned at the hearing about the 2004 automobile accident, Claimant denied hurting her neck.

43. Gary Walker, M.D., examined Claimant at Defendants' request. He opined that Claimant's industrial accident could well have caused her cervical disc injury; however, he could not so state to a reasonable degree of medical probability. Dr. Walker's reluctance arose from Claimant's documented history of neck, right shoulder, and right arm complaints prior to her industrial accident and the seven-month gap between Claimant's May 8, 2008 accident and her first seeking medical treatment in December 2008. He noted:

I do not know why she did not seek any medical treatment between May of 2008 until she saw Dr. Weight. That is certainly unusual to have a gap of several months without any medical care or attention for a significant injury.

• • • •

In answer to the question of whether or not the work injury in May of 2008 caused the disc herniation, the answer is certainly possibly. However, with a seven month gap of any medical care there is no way to know whether or not there may have been any other kind of interval injury during that same period of time. She denies anything of this nature. But her history is also a bit incomplete as she denied ever having had right upper extremity symptoms and also denies ever having had hand numbness and tingling despite the fact that records with Dr. Michael Packer, and Dr. Michael Larson document otherwise. Even when I asked her about the notes with Dr. Larson she denied having any hand symptoms when she saw him.

Claimant's Exhibit 2, pp. 20-21.

44. Defendants herein question both whether Claimant suffered neck pain and whether she actually reported neck pain at the time of her May 8, 2008 accident. The supervisor's report does not mention neck pain. Claimant's co-worker and relative, Lorena

Fernandez, who interpreted Claimant's report of the incident to her supervisor, did not recall Claimant mentioning anything about her neck, only her right shoulder. Fernandez testified that Claimant complained about right shoulder pain for years prior to May 8, 2008, but could not recall Claimant ever complaining about her neck.

45. Dr. Ward had no pre-accident medical records and relied upon Claimant's demonstrably inaccurate recitation of her medical history to determine the cause of her cervical disc herniation. The foundation for Dr. Ward's opinion is problematic. On the other hand, Dr. Walker considered Claimant's prior medical records, the inconsistencies between the medical records and Claimant's history, and her seven-month delay in seeking medical treatment. The Referee finds the opinion of Dr. Walker more persuasive than that of Dr. Ward. Claimant has not proven that her cervical condition is related to her May 8, 2008 industrial accident.

OTHER BENEFITS

46. Inasmuch as Claimant has not proven that her cervical condition is related to her industrial accident, all other issues are moot.

CONCLUSIONS OF LAW

1. Claimant made a timely claim for benefits after her accident and her claim is not barred pursuant to Idaho Code §§ 72-701 through 706.
2. Claimant has not proven that her May 8, 2008 industrial accident caused her need for cervical surgery in January 2009.
3. All other issues are moot.

RECOMMENDATION

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

DATED this __17th__ day of February, 2012.

INDUSTRIAL COMMISSION

_____/s/_____
Michael E. Powers, Referee

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __2nd__ day of __March__, 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:

G LANCE NALDER
591 PARK AVE STE 201
IDAHO FALLS ID 83402

CHAD A CAMPOS
591 PARK AVE STE 303
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DAVID P GARDNER
PO BOX 817
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_____/s/_____

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

SILVIA A. NOLASCO ALONSO,)
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IC 2009-003622

ORDER

Filed March 2, 2012

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 made a timely claim for benefits after her accident and her claim is not barred pursuant to Idaho Code §§ 72-701 through 706.
2. Claimant has not proven that her May 8, 2008 industrial accident caused her need for cervical surgery in January 2009.
3. All other issues are moot.

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

DATED this 2nd day of March, 2012.

INDUSTRIAL COMMISSION

/s/
Thomas E. Limbaugh, Chairman

/s/
Thomas P. Baskin, Commissioner

/s/
R. D. Maynard, Commissioner

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of March 2012, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

G LANCE NALDER
591 PARK AVE STE 201
IDAHO FALLS ID 83402

CHAD A CAMPOS
591 PARK AVE STE 303
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DAVID P GARDNER
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/s/