

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

SANIJE BERISHA,)	
)	
Claimant,)	IC 2002-003038
v.)	
)	
THE GROVE HOTEL,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Employer,)	AND RECOMMENDATION
and)	
)	
INSURANCE COMPANY OF THE WEST,)	
)	FILED: May 31, 2011
Surety,)	
Defendants.)	
)	

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 Boise, Idaho, on January 10, 2011. Claimant represented herself at hearing. Thomas V. Munson represented Defendants. Claimant submitted oral and documentary evidence. Kujtin I. SopotI served as an interpreter for the benefit of Claimant. Post-hearing briefs were filed and the matter came under advisement on March 16, 2011.

PROCEDURAL BACKGROUND AND PREVIOUS FINDINGS

Two previous hearings were held in this case, on October 17, 2003 and December 17, 2009.

Robert D. Barclay was the presiding Referee at the 2003 hearing and Claimant was represented by attorney Vernon K. Smith with whom she is no longer affiliated. A decision was issued on April 5, 2004 in which the Commission ordered that:

1. Claimant incurred CRPS I as a consequence of her February 2002 industrial accident.

2. Claimant is not eligible for any further medical care without further documentation.
3. Claimant is not entitled to any additional temporary partial and/or temporary total disability (TPD/TTD) benefits.
4. Claimant is entitled to a permanent partial impairment (PPI) rating of 5% of the whole person. Surety is entitled to credit for any amount previously paid.
5. Claimant is entitled to a permanent partial disability (PPD) rating of 5% of the whole person inclusive of her PPI.
6. Apportionment under Idaho Code § 72-406 for a pre-existing condition is not warranted.
7. The issue of retraining under Idaho Code § 72-450 has been waived.
8. Claimant is not entitled to attorney's fees as provided for by Idaho Code § 72-804.
9. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to the matters adjudicated.

On April 6, 2009, Claimant filed a new Complaint seeking additional medical care. Claimant was represented by Andrew C. Marsh with Seiniger Law Offices from May 21, 2009, until October 13, 2009. She appeared *pro-se* at the second hearing, at which Susan Veltman was the presiding Referee. A decision was issued on January 21, 2010. The Commission ordered that Claimant had not met her burden of proof to establish entitlement to additional medical benefits.

These previous decisions were not appealed and have become final.

On August 21, 2010, Claimant, still acting *pro se*, filed a third complaint seeking additional medical care. Discovery entanglements ensued, leading to an Order Finding Claimant in Contempt, Denying Claimant's Request to Schedule Hearing and Requiring Discovery and Offer of Proof From Claimant, entered November 22, 2010, and a Motion to Dismiss filed by Defendants on December 9, 2010, alleging that Claimant's November 29, 2010 response to the Order was insufficient. That motion prompted this third hearing. In order to determine if a

threshold legal basis for Claimant's complaint exists, the Referee scheduled the hearing at which evidence was presented for this decision.

ISSUE

Pursuant to the Notice of Hearing dated December 14, 2010, the sole issue to be decided is whether Claimant's complaint should be dismissed because the issues raised therein have already been adjudicated by the Commission. All other issues were reserved.

CONTENTIONS OF THE PARTIES

Claimant's desires have remained constant since her 2002 industrial accident in which her right hand got caught in the rollers of an iron pressing machine. She contends that her right upper extremity (RUE) injury has caused continuous suffering. She seeks an order from the Commission authorizing additional medical treatment and desires to resume treatment. Claimant believes the industrial accident is the source of all of her physical and psychological problems. She wants relief from her pain and to be healed. According to her Complaint, Claimant seeks treatment for multiple problems including but not limited to: RUE pain, headaches, vision loss in her right eye, severe itching leading to scratching and contusions, and depression-related symptoms.

Defendants contend that Claimant has not met her burden of proof to establish entitlement to additional medical benefits and request that consideration be given to the previous findings on this issue.

EVIDENCE CONSIDERED¹

The record in this matter consists of the following:

1. Claimant's Exhibits A, C² and D;

¹ Defendants' objections to admission of the documents in Claimant's Exhibits C and D are overruled, except with respect to the email in Exhibit D; that objection is sustained.

² Exhibit B was withdrawn by Claimant following Defendants' objection.

2. Testimony taken at the January 10, 2010 hearing from Claimant and her husband, Xhevat Berisha; and
3. The Industrial Commission's legal file which includes the decisions, transcripts and exhibits relating to the previous hearings of October 17, 2003 and December 17, 2009.

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

New Evidence

1. The only new medical records submitted were the documents identified above as Claimant's Exhibits.

a. Claimant's Exhibit A:

- (1) Letter to James Tweeten, M.D., ophthalmologist, from his practice partner, Leo Harf, M.D., also an ophthalmologist, dated May 14, 2010, indicating Claimant's vision loss in her right eye could be due to Percher's retinopathy or choroidal ischemia. Dr. Harf writes that Claimant's RUE crush injury could explain her symptoms, but the time frame of the injury "a couple of years ago" does not match up well with her time of onset. In fact, the industrial injury occurred more than 8 years before Dr. Harf's examination.
- (2) Open letter by Chad Sherwood, PA-C, physician's assistant, dated July 5, 2010, referring Claimant to the University of Utah School of Medicine for further evaluation of her symptoms related to CRPS, pain, numbness, migraine headaches, right eye vision loss, itching and scratching down her right side with accompanying fungal rash and depression due to pain. Mr. Sherwood recounts the chronology of her symptoms (all occurring after her RUE crush injury) but he does not state any opinion as to a causal connection between these symptoms and her industrial injury. Explaining why he wrote the letter, he states, "She asked that I write this letter in her behalf outlining her feelings about this issue, and the health problems that she continues to suffer from." Claimant's Exh. A.
- (3) Open letter by Alex J. Reed, Psy.D., psychologist, dated January 2, 2011 (based upon his findings from an evaluation on September 15, 2010), written because, "I have been asked by Ms. Berisha to provide a letter which provides her current DSM-IV diagnoses based upon my initial evaluation conducted on 9/15/10." Claimant's Exh. A. Dr. Reed goes on

to state that Claimant has diagnoses of Post-Traumatic Stress Syndrome (PTSD), Depressive Disorder Not Otherwise Specified³, RUE CRPS, right eye vision impairment, exposure to war atrocities, problems related to interaction with the legal system and discord with her husband. He recommends that Claimant may benefit from psychiatric medications and psychotherapy for her depression and PTSD symptoms. Dr. Reed offers no opinions as to the cause of her symptoms.

b. Claimant's Exhibit C:

- (1) An Operative Report by William G. Binegar, M.D., pain specialist, detailing a February 4, 2010 cervical epidural steroid injection at C6-7. No abnormalities were noted and a possible repeat injection was scheduled for the following week.
- (2) Letter to Kenneth Little, M.D., neurosurgeon, from Fred Friel, PA-C, physician's assistant, dated February 11, 2010, indicating that although Claimant was referred by Dr. Binegar for likely right wrist and hand CRPS, she was complaining more so of bilateral upper extremity radicular symptoms and neck pain. Along those lines, Mr. Friel indicated the February 4 injection had failed and that Claimant had normal thoracic and cervical spine MRIs on January 28, 2010. As a result of these failures to find evidence of pathology, Mr. Friel was requesting a surgical evaluation. He did not offer any opinions as to the cause of any of Claimant's symptoms.
- (4) Letter to Mr. Friel and Dr. Binegar from Phillip C. Berryhill, M.D., a neurosurgeon, dated February 19, 2010, suspecting CRPS and recommending further testing before determining whether to recommend a spinal cord stimulator for pain relief. Dr. Berryhill conducted his examination through an interpreter. Claimant reported significant burning pain, sometimes starting in her neck and sometimes in her arm which causes her to itch and scratch. Dr. Berryhill noted difficulty in testing Claimant's right arm due to pain to touch. He also noted some muscle atrophy and significant pain over her (apparently bilateral) scapulae, atrophic changes in her right arm including shiny skin, no myelopathy symptomatology, and "no other significant problems in her left arm or her legs and appears to have normal sensation in all of these appendages." Claimant's Exh. C. In addition, noting that Claimant reported her right vision impairment and headaches started with her arm pain, he wrote, "It appears that the pain has been slowly progressive over time but has plateaued somewhat over the last couple of years." *Id.*
- (5) A chart note of a March 18, 2010 follow-up examination by Dr. Berryhill

³ In this case, given Claimant's medical history, "Not Otherwise Specified" indicates no specific opinion as to cause.

in which he notes completely normal EMG nerve conduction tests of both UEs which identified no evidence of nerve or muscle pathology. A brain MRI showed patchy white matter changes, yielding a differential diagnosis of advanced microvascular disease, vascular migraine-type headaches, vasculitis or a demyelinating disease, none of which Dr. Berryhill related to Claimant's industrial accident. He concluded what is already evident from Claimant's former medical records, that she has CRPS. He recommended a right stellate ganglion block, noting that he did not have her former records but that he thought she had had one before. He implied that it may have been too soon after the 2002 injury to be helpful.

- (6) A chart note of a March 29, 2010 indicates Claimant followed up with Dr. Binegar for a right stellate ganglion block as recommended by Dr. Berryhill. Strangely, Dr. Binegar's entire note, except the reason for the referral, is devoted to Claimant's itching and scratching problem. He does not say why, but apparently did not perform the block, perhaps because a lesion impaired the skin over the injection site. Dr. Binegar referred Claimant to a dermatologist, noting her normal March 16 nerve conduction study. He did not rescheduled the ganglion block procedure.

c. Claimant's Exhibit D consists of:

- (1) A January 28, 2010 cervical spine MRI without contrast report, as discussed supra; and
- (2) A March 8, 2010 brain MRI without contrast report, as discussed supra.

No other medical evidence was offered beyond what was admitted at the January 2011 hearing.

2. Claimant testified at the 2011 hearing that her pain has not changed: "From 2009 until today I have the same pain as I used to have before 2009." Tr., 41. She went on to describe pain throughout her right upper extremity (RUE) beginning at her hand, pain in the right side of her head, pain down her right lower extremity (RLE), back pain and pain-related sleep difficulties, including left-sided pain when she lays down. Claimant also described appetite problems and symptoms consistent with depression and anxiety.

Prior Hearings

3. At Claimant's first hearing, the Referee considered evidence of her symptoms, including:

- a. "...severe pain beginning at her right wrist and radiating to her hand and up her arm to her shoulder and to the right side of her head." 2003 Decision, p. 12. (Other reports of RUE pain, see *Id.* at p. 9, for example.)
- b. "...marked pain response with passive flexion of her fingers...she would only allow minimal light touching." 2003 Decision, p. 6. "...would not allow [the physician] to touch her RUE. She also refused to move her wrist." *Id.* at p. 7. "...unwilling to allow the [hand] therapist to touch her hand, thereby rendering therapy unproductive." *Id.* at p. 8. "...Claimant would not allow him to touch her hand, but...she readily touched it with her other hand." *Id.* "[The physician] noted he could not perform a decent examination of Claimant's RUE due to her significant hypersensitivity." *Id.* at p. 10.
- c. Claimant's hand therapist's report to Claimant's physician that she staged a "contrived fainting incident" and, after witnessing a similar incident for himself, he opined it was "bizarre." 2003 Decision, p. 8.
- d. A March 11, 2002 bone scan indicating no evidence of CRPS⁴.
- e. A March 13, 2002 right cervical stellate ganglion block suggesting she does not have CRPS because it did not improve her RUE symptoms.
- f. A normal September 1, 2002 venous examination, showing no evidence of deep vein thrombosis.
- g. September 2, 2002 chest x-rays evidencing no congestive heart failure or pneumonia.
- h. Discontinuance of physical therapy by her care provider after 11 sessions when Claimant began to regress after an initial period of improvement.
- i. Normal December 2002 right wrist x-rays and CT scan.
- j. An alternate opinion that the December 2002 right wrist x-rays showed slight demineralization of the right wrist and hand.
- k. An IME physician opinion that Claimant was malingering.
- l. A second treating physician opinion Claimant had CRPS.
- m. An IME panel finding that Claimant had somatization disorder with symptom magnification and mild CRPS in her RUE, and that she was medically stable.

⁴ The 2003 Decision references CRPS as "reflex sympathetic dystrophy" or "RSD" or "CRPS I." CRPS I is an updated identifier for RSD. CRPS I is truncated here as CRPS for simplicity.

n. Claimant's reports of the same symptoms at a follow-up IME on September 30, 2003 and that physician's confirmation that she was medically stable.

(3) At the first hearing, Referee Barclay determined that Claimant was not then presently entitled to additional medical care:

The record reflects the [Independent Medical Examination] Panel found Claimant medically stable and opined she would not improve with any further treatment. Six months later Dr. Weiss re-examined her and found that her condition had not changed. Claimant argues she is entitled to the care recommended by Dr. DuBose. There is no chain of referral from the physicians who were treating Claimant to Dr. DuBose. The sympathetic nerve bloc he recommended had already been tried by Dr. Moore and Dr. Gussner. It had no effect on Claimant. Dr. Moore had also requested the nerve conduction studies recommended by Dr. DuBose, but Claimant refused to allow anyone to touch her to complete the test. This refusal also lead to a curtailment of her physical therapy. The Referee finds Defendants have provided Claimant with the reasonable medical care required by the statute. Thus, the Referee concludes Claimant is not eligible for any further medical care without further documentation. The evidence submitted does not support the need for any further medical care.

5. At her second hearing, the Referee considered evidence of Claimant's symptoms, including:

- a. CRPS pain and a physician's unspecified recommendations for ongoing medical management.
- b. A May 31, 2009 physician's note limiting Claimant's lifting to 10 pounds.
- c. An IME physician report indicating Claimant had been seen, since her industrial accident, for headaches, blindness, a fainting episode at the dentist's office, a right wrist injury after falling into a bathtub and foot pain. He also noted Claimant's blindness was described as psychosomatic and related to secondary gain in 2009.
- d. A chart note stating Claimant screamed loudly when the IME physician touched her right fingers but soon after did not react at all when he touched the same area while he was moving her wrist.
- e. The IME physician observation of 30 to 40 well-healed scars from previous lesions and four or five ulcerated areas on her right arm due to scratching as a result of an itching/burning sensation, as well as his diagnosis of self-mutilization secondary to severe psychiatric issues.

- f. Claimant's reports of severe memory and cognitive defects.
 - g. Claimant's appearance and behavior at the hearing. She wore a gauze bandage wrapped around her head to ease her headaches, wandered around the hearing room during her husband's testimony and intermittently stood staring at a wall. In addition, she completely undressed from the waist up during her testimony to display her contusions.
 - h. Normal diagnostic studies of Claimant's chest and brain.
6. At the second hearing, Referee Veltman also determined Claimant was not

entitled to additional medical benefits:

Claimant failed to meet her burden to establish entitlement to additional medical care for her 2002 industrial injury. The opinion of Dr. Radnovich suggests that ongoing treatment for CRPS is generally appropriate and that Claimant would benefit from ongoing medical management. Dr. Radnovich's report is non-specific about what symptoms related to CRPS I would benefit from treatment and/or what type of treatment plan would be appropriate. Dr. Radnovich did not have the benefit of reviewing a complete set of Claimant's medical records, nor did he have the opportunity to review the previous decision in this case which summarized the treatment rendered to Claimant as well as the obstacles to providing such treatment. Dr. Radnovich's report does not address the nature of symptoms for which Claimant has sought treatment since the 2003 hearing and/or relate Claimant's symptoms to her compensable diagnosis of RUE CRPS I...Claimant has not met her burden of proof to establish entitlement to additional medical benefits.

7. At all three hearings, Claimant expressed a desire for treatment and to be cured. She attributes all of her physical and mental deficits to her 2002 industrial injury.

8. Likewise, Claimant's husband has consistently testified about the significant suffering that has befallen his wife and family as a result of Claimant's 2002 industrial injury. He seeks restoration of his wife's health and financial assistance. He believes that his wife's treatment in the workers' compensation system has been unfair, untimely and discriminatory.

9. Claimant was found not credible at the prior two hearings; this Referee similarly finds Claimant not credible.

DISCUSSION AND FURTHER FINDINGS

The provisions of the 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). However, the Commission is not required to construe facts 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).

The burden of proof in a workers' compensation case is on the claimant. Whether asserting an injury as the result of an accident or an occupational disease, a claimant must prove, to a reasonable degree of medical probability, a causal connection between the condition for which compensation is claimed and the industrial accident or occupational exposure which caused the alleged condition. See, *Hart v. Kaman Bearing & Supply*, 130 Idaho 296, 299, 939 P.2d 1375, 1378 (1997) (proving causation in an injury/accident claim), and *Langley v. State Industrial Special Indemnity Fund*, 126 Idaho 781, 786, 890 P.2d 732, 737 (1995) (proving causation in an occupational disease claim). In either case, medical evidence is necessary to prove a probable causal connection. "In this regard, 'probable' is defined as 'having more evidence for than against.'" *Soto v. Simplot*, 126 Idaho 536, 540, 887 P.2d 1043, 1047 (1994).

Medical evidence required to prove causation must plainly and unequivocally convey the opinion that events are causally related. See, *Jensen v. City of Pocatello*, 135 Idaho 406, 412, 18 P.3d 211, 217 (2000), citing *Paulson v. Idaho Forest Indus., Inc.*, 99 Idaho 896, 901, 591 P.2d 143, 148 (1979). As discussed extensively in *Jensen*, the causation opinion need not be an affirmative finding.

The Issues Raised in Claimant's Complaint Have Been Adjudicated By The Commission

The legal doctrines of *res judicata* and collateral estoppel apply to agency proceedings,

including those of the Industrial Commission. Welch v. Del Monte Corp., 128 Idaho 513, 516, 915 P.2d 1371, 1374 (1996). *Res judicata* is comprised of claim preclusion (true *res judicata*) and issue preclusion (collateral estoppel). Hindmarsh v. Mock, 138 Idaho 92, 94, 57 P.3d 803, 805 (2002). Under the principles of claim preclusion, a valid final judgment rendered on the merits by a court of competent jurisdiction is an absolute bar to a subsequent action between the same parties upon the same claim. Id. The doctrine of claim preclusion bars not only a subsequent relitigation of a claim previously asserted, but also serves as an absolute bar to claims relating to the same cause of action which might have been made. Id. Stated differently, *res judicata* bars relitigation of matters already raised, and those that could or should have been raised from the outset. U.S. Bank National Ass'n v. Kuenzli, 134 Idaho 222, 999 P.2d 877 (2000). The doctrine of *res judicata* extinguishes all claims arising out of the same transaction, or series of transactions from which the cause of action arose. Id. at 881.

In worker's compensation cases, the doctrine is altered. *Res judicata* only bars relitigation of worker's compensation claims that were actually adjudicated:

However, Idaho Code § 72-718 varies the doctrine of *res judicata* as applied to worker's compensation cases. *See Sund v. Gambrel*, 127 Idaho 3, 7, 896 P.2d 329, 333 (1995). Decisions by the Commission are conclusive only as to matters *actually adjudicated*, not as to all matters which could have been adjudicated. *Id.*; *see also Woodvine v. Triangle Dairy, Inc.*, 106 Idaho 716, 720-21, 682 P.2d 1263, 1267-68 (1984).

Wernecke v. St. Maries Joint School Dist. No. 401, 147 Idaho 277, 207 P.3d 1008 (2009).

Regarding the separate, but related, concept of collateral estoppel, issue preclusion bars the relitigation of issues actually adjudicated in prior litigation between the very same parties. Rodriguez v. Department of Correction, 136 Idaho 90, 29 P.3d 401 (2001).

10. Collateral estoppel is inapplicable in cases like this one where the litigation, albeit including several different hearings, is nevertheless all part of the same case. The record does

indicate, however, that some of Claimant's claims may be barred by the application of *res judicata* because the Commission has already rendered a valid final judgment.

11. As noted above, the findings in the previous decisions have become final. At both prior hearings, after presenting testimony and medical records about a number of physical and psychological complaints, it was found that Claimant failed to meet her burden of proof to establish entitlement to further medical care. The only condition previously found causally related to her 2002 industrial injury is her diagnosis of CRPS.

12. At the instant hearing, Claimant's burden was to prove that a change has occurred in her treatment options such that further reasonable medical care is required, *or* that she has developed a new injury as a result of her 2002 industrial accident that has not previously been found to be unrelated. These matters are addressed supra.

Claimant has failed to prove that she is entitled to additional reasonable medical care for CRPS because her treatment options have not changed

13. Claimant's CRPS was found to be compensable at the first hearing, but no further treatment was found reasonable or necessary, in part because Claimant would not allow anyone to touch her right hand for testing or therapy. In addition, there was significant evidence that Claimant was exaggerating her symptoms. Similar evidence was considered at the second hearing where, again, no further treatment was found reasonable.

14. At the third hearing, Claimant described the same pain throughout her right upper extremity (RUE) and beyond, beginning at her hand, and her medical records from 2010 continue to indicate that pain hinders examinations and that no specific treatment is currently recommended. Although Dr. Berryhill suggested a diagnostic stellate ganglion block to determine if Claimant is a good candidate for a spinal cord stimulator for pain relief, he never actually recommended this procedure. He referred Claimant to Dr. Binengar, who

apparently disagreed with this course because, during the appointment set for the procedure, he did not perform it. Moreover, he did not reschedule it after reviewing Claimant's normal nerve conduction studies and observing her lesions.

15. In addition, Claimant already underwent a diagnostic right stellate ganglion block in March 2002. It did not relieve Claimant's pain, and Dr. Binegar did not indicate any reason why another block in 2010 would yield different results related to Claimant's industrial accident. Dr. Berryhill implied that the 2002 procedure may have been performed too soon after the injury to produce favorable results. However, Dr. Berryhill did not have Claimant's relevant medical records at the time and did not know when the prior block was performed in relation to her injury. Further, there is no evidence in the record from which to determine how soon after the accident Dr. Berryhill believed may have been too soon for the procedure to be effective. Finally, it is implied that the attending physician in 2002 believed the procedure was appropriate as a means of trying to relieve Claimant's pain by the fact that he prescribed it.

16. Radiographic and nerve conduction studies in 2010 continue to return results indicating no nerve damage, with the possible exception of a brain MRI showing results not linked to Claimant's industrial accident.

17. As a result of the foregoing, the Referee finds inadequate medical evidence to establish that Dr. Berryhill, or any other physician, diagnosed a change in Claimant's CRPS condition or recommended a new treatment for Claimant's CRPS pain.

18. Claimant's has presented no evidence, to a reasonable degree of medical probability, that either her CRPS condition or her treatment options have changed. Her claim has essentially already been adjudicated. Yet, Claimant seeks to relitigate her continuing but stable CRPS symptoms in hopes of obtaining a different answer this time.

19. Claimant's entitlement to medical care for her diagnosed condition of CRPS is not barred because this is a compensable condition. However, she has failed to adduce new evidence of any change in her treatment options entitling her to additional reasonable medical care. Therefore, her claim for such care should be dismissed without prejudice.

Litigation of some conditions asserted by Claimant in the third hearing is barred by res judicata

20. Although she does not articulate the nature of her claims consistently, Claimant's Complaint, testimony and exhibits indicate she now seeks relief related to the following symptoms and conditions in addition to her CRPS symptoms:

- a. Itching and scratching leading to skin lesions and a fungal rash;
- b. Headaches;
- c. Loss of vision in the right eye; and
- d. Psychological symptoms.

These difficulties were previously found by the Commission to be not compensable, as addressed supra.

21. **Itching and Scratching.** After considering evidence of Claimant's itching and scratching condition, with resultant lesions and rash, Referee Veltman determined it was not compensable. Nevertheless, Claimant continued to seek medical care benefits for this condition at the third hearing. Her claim related to her itching and scratching condition is barred.

22. **Headaches.** Claimant has consistently reported headaches at all three hearings; however, after considering the medical evidence, neither prior Referee found headaches to be a compensable injury. At the third hearing, Claimant presented 2010 evidence that her physician sent her for a brain MRI to investigate her headaches. That MRI revealed several possible causes, none of which any medical expert opined was related to her industrial accident. Regardless of that finding, which would also lead to a conclusion that Claimant is not entitled to

compensation for treatment of her headaches, Claimant's claim related to headaches is barred.

23. **Right Eye Vision Loss.** At the second hearing, Claimant reported and presented evidence of loss of sight in her right eye. The Referee found this condition was not compensable. At the third hearing, Claimant again reported right eye blindness, this time providing medical records from a different ophthalmologist indicating a remotely possible link to her industrial accident. Because her claim related to her right-eye blindness was already adjudicated at the second hearing, it is now barred.

24. **Psychological Symptoms.** At both previous hearings, but especially at the second, Claimant expressed her poor state of mental health and her frustration with her condition, her treatment options and the legal system. At the second hearing, evidence of her mental and cognitive difficulties was considered and these were found to be not compensable. At the third hearing, Claimant presented a new record from Dr. Reed indicating she has now been formally diagnosed with depression and PTSD.

25. Claimant's mental health has previously been considered by the Commission and found to be not compensable. Her claims related to her mental health conditions, including depression and PTSD are barred.

26. The Referee finds good cause to dismiss Claimant's Complaint with prejudice as to those claims found to be barred by *res judicata*.

No new claims established

27. Claimant generally attributes all of her physical and mental difficulties to her 2002 RUE crush injury. However, the Referee finds insufficient evidence in the record to establish that Claimant now asserts any claims with respect to any specific new medical conditions allegedly related to her 2002 industrial injury.

28. All other issues are moot.

CONCLUSIONS OF LAW

1. Claimant has raised no new issues for adjudication by the Commission.

Therefore:

- a. Claimant's Complaint should be dismissed *without prejudice* as to her RUE CRPS claims; and
 - b. Claimant's Complaint should be dismissed *with prejudice* as to those claims found to be barred by *res judicata*.
2. Claimant remains eligible for reasonable and necessary medical treatment for her RUE CRPS.
 3. All other issues are moot.

RECOMMENDATION

The Referee recommends that the Commission adopt the foregoing findings of fact and conclusion of law and issue an appropriate final order.

DATED this 5th day of May, 2011.

INDUSTRIAL COMMISSION

/s/
LaDawn Marsters, Referee

ATTEST:

/s/
Assistant Commission Secretary

db

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

SANIJE BERISHA,)
)
 Claimant,) **IC 2002-003038**
 v.)
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 THE GROVE HOTEL,) **ORDER**
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 Employer,)
 and)
) **FILED: May 31, 2011**
 INSURANCE COMPANY OF THE WEST,)
)
 Surety,)
 Defendants.)
 _____)

Pursuant to Idaho Code § 72-717, Referee LaDawn Marsters submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusions of law to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee’s proposed findings of fact and conclusions of law as its own.

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

1. Claimant has raised no new issues for adjudication by the Commission.

Therefore:

- a. Claimant’s Complaint is dismissed *without prejudice* as to her RUE CRPS claims; and
- b. Claimant’s Complaint is dismissed *with prejudice* as to those claims found to be barred by *res judicata*.

2. Claimant remains eligible for reasonable and necessary medical treatment for her RUE CRPS.

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 31st day of May, 2011.

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 31st day of May, 2011, a true and correct copy of **FINDINGS, CONCLUSIONS, AND ORDER** were served by regular United States Mail upon each of the following:

SANIJE BERISHA
2466 S OWYHEE ST
BOISE ID 83705

THOMAS V. MUNSON
P.O. BOX 7426
BOISE, ID 83702

db

/s/ _____