

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

PENELOPE CAVALLO,

Claimant,

v.

SL START & ASSOCIATES, INC.,

Employer,

and

STATE INSURANCE FUND,

Surety,
Defendants.

IC 2007-041356

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

Filed December 14, 2012

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Alan Taylor, who conducted a hearing in Coeur d'Alene, Idaho on June 22, 2011. Claimant, Penelope Cavallo, was present in person and represented by Starr Kelso, of Coeur d'Alene, Idaho. Defendant Employer, SL Start & Associates, Inc. (SL Start), and Defendant Surety, State Insurance Fund, were represented by H. James Magnuson, of Coeur d'Alene, Idaho. The parties presented oral and documentary evidence. Post-hearing depositions were taken and briefs were later submitted. The matter came under advisement on August 30, 2012.

ISSUE

The parties' dispute was narrowed at hearing to the following single issue: whether Claimant's cervical surgery was required as a result of her industrial accident.

CONTENTIONS OF THE PARTIES

Claimant alleges she suffered cervical disk injury from her industrial accident on December 4, 2007, which progressed until ultimately requiring cervical surgery on September 24, 2008. Defendants acknowledge Claimant's 2007 industrial accident but maintain it caused only a temporary cervical strain which resolved by March 2008. Defendants assert that Claimant's need for cervical surgery resulted from the natural progression of her pre-existing degenerative cervical disk disease.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. The pre-hearing deposition of Claimant, taken January 18, 2011, and admitted into evidence as Defendants' Exhibit 14;
3. Claimant's Exhibits A-C and Defendants' Exhibits 1-14, admitted at the hearing;
4. The testimony of Claimant, taken at the June 22, 2011 hearing;
5. The post-hearing deposition of Kirk Hjeltness, M.D., taken by Claimant on February 7, 2012;
6. The post-hearing deposition of Jeffrey Larson, M.D., taken by Defendants on April 12, 2012;
7. The post-hearing deposition of John M. McNulty, M.D., taken by Claimant on July 25, 2012.

All objections made during the depositions are overruled except Claimant's objection posed at page 15 of Dr. McNulty's deposition, which is sustained, and Defendants' continuing objection, first posed at page 9 of Dr. Hjeltness' deposition, which is also sustained.

After having considered the above evidence and the arguments of the parties, the Referee submits the following findings of fact and conclusion of law for review by the Commission.

FINDINGS OF FACT

1. Claimant was 60 years old and had lived in Coeur d'Alene for approximately six years at the time of the hearing. She is left hand dominant.

2. On September 15, 2000, Claimant underwent cervical spine x-rays for tingling in her right hand. At hearing she did not recall anything regarding this diagnostic examination or any precipitating event that prompted the examination.

3. In July 2002, Claimant fell in the open air garden section while shopping at Home Depot. She was holding a section of privacy lattice when the wind abruptly caught it and caused her to fall onto a broken lawnmower nearby. She lacerated her left arm and bruised her abdomen. The laceration and bruising resolved; however, by December 2002, Claimant noted neck pain with intermittent numbness in her left hand. On November 6, 2003, Claimant underwent a cervical MRI that showed cervical strain and mild osteophytes at C6-7, but no other abnormalities. She underwent physical therapy and her cervical symptoms resolved.

4. On November 24, 2004, Shirley Getting, F.N.P., examined Claimant prior to Claimant signing a settlement agreement with Home Depot regarding her 2002 injuries. Claimant demonstrated normal, painless cervical range of motion. Getting concluded that Claimant had fully recovered from her 2002 injuries without any persisting abnormalities.

5. From November 24, 2004, until December 2007, Claimant experienced no cervical pain or difficulties.

6. In 2005, Claimant moved to Coeur d'Alene and commenced working at Fred Meyer and Children's Village. Claimant later worked at Ambitions (formerly known as Walsh & Associates) where she cared for several high functioning disabled adults.

7. In July 2007, Claimant began working at SL Start while she continued to work at Ambitions. Claimant generally worked from 11:00 p.m. to 7:00 a.m. at Ambitions and from 9:00 a.m. to 2:30 p.m. at SL Start.

8. On December 4, 2007, while working for SL Start, Claimant was transferring a client from the toilet to a wheelchair when the client lost her balance and grabbed Claimant around the neck, abruptly pulling Claimant down into the wheelchair with the client. Claimant felt sharp neck and upper back pain. She finished her shift and reported the accident.

9. Claimant sought medical treatment the next day and was sent to Kirk Hjeltness, M.D. On December 11, 2007, x-rays revealed cervical straightening, consistent with muscle spasm. Claimant was diagnosed with cervical strain and received conservative treatment, including physical therapy with Gary Bartoo, PT. Claimant attended physical therapy three days per week and her symptoms gradually improved. On December 24, 2007, Bartoo recommended continuing physical therapy for symptom management and progressive exercise guidance.

10. On January 7, 2008, Claimant awoke with left hand numbness. She continued to receive conservative care and commenced home exercises at Bartoo's direction.

11. By January 21, 2008, Bartoo reported that Claimant was continuing her home exercise plan in addition to her physical therapy sessions. Claimant reported multiple flare-ups of her cervical symptoms. On January 23, 2008, Bartoo recorded: "She is instructed in some postural exercise activities in-clinic today performing upper body ergometer two minutes each direction, standing row for parascapular strengthening, and specific shoulder strengthening for

external rotators and rotator cuff stabilization. She does this with good postural corrections and has no significant pain with same. She will reproduce these exercises at home using green Thera-Band” Defendants’ Exhibit 11, p. 684.

12. As part of her home exercise program, Claimant started exercising at Vital Fitness where she performed circuit exercises recommended by Bartoo. She avoided some circuit exercises as advised by Bartoo. On January 28, 2008, Bartoo recorded that Claimant “tolerates light exercise in the gym for upper extremity mobility and stabilization.” Defendants’ Exhibit 11, p. 685.

13. On February 12, 2008, Bartoo recorded that Claimant reported a slight flare-up of symptoms due to her work. He noted: “She is doing her best for her home exercise activities at her health club, although will not go tonight due to her flare.” Defendants’ Exhibit 11, p. 684.

14. Approximately February 13, 2008, Claimant terminated her employment with SL Start. She continued working full-time at Ambitions.

15. On February 14, 2008, Claimant reported less pain after terminating her employment at SL Start. Bartoo reported that Claimant was 100% compliant with her physical therapy appointments and her home exercise program. He recommended weekly rechecks to “monitor her home program and advance her exercise management for self-care.” Defendants’ Exhibit 11, p. 677. On February 20, 2008, Bartoo recorded that Claimant “reported consistency with her health club routine.” Defendants’ Exhibit 11, p. 675. On February 27, 2008, Bartoo reported that Claimant had residual neck spasms following her work. He provided manual therapy, including soft tissue mobilization. Bartoo noted: “We did review her health club exercises” Defendants’ Exhibit 11, p. 675. On March 5, 2008, Bartoo observed that Claimant was staying consistent with her workout regimen. On March 12, 2008, Bartoo noted

that Claimant's pain levels were low, from 0-2 out of 10 and recorded: "She has been consistent with her exercises and these are review (sic) for postural training and parascapular strengthening. She will now work on her own using heat and exercise and occasional massage to manage her symptoms." Defendants' Exhibit 11, p. 675.

16. After Claimant's formal physical therapy ended on March 12, 2008, she continued her home exercise program, including the circuit exercises approved by Bartoo. In the first week of April 2008, Claimant noted increased neck pain after circuit exercising. She denied any other inciting event. The increased pain persisted.

17. On May 20, 2008, Claimant presented to Dr. Hjeltness reporting that she had been doing well until the first week of April when she noted increased pain after circuit exercising. Dr. Hjeltness' notes indicate Claimant was exercising with circuit weights. Claimant testified at hearing that she performed only circuit exercises, not circuit weight lifting. Dr. Hjeltness apparently considered this flare-up related to her industrial accident as he listed December 4, 2007, as the date of injury and "work" as the location. Defendants' Exhibit 6, p. 331. He referred Claimant to physical therapy.

18. On June 3, 2008, Claimant presented to Gary Bartoo for physical therapy. She reported a flare-up of neck and right shoulder girdle pain in April 2008. Bartoo provided mechanical cervical traction for soft tissue mobilization. On June 10, 2008, Bartoo recorded that mechanical cervical traction from the prior physical therapy visit increased her symptoms. Bartoo encouraged Claimant to continue a home exercise program consisting of gentle stretching.

19. On June 26, 2008, Claimant returned to Dr. Hjeltness reporting a persisting crunching sensation in her neck with accompanying neck pain and left hand numbness. Dr.

Hjeltness recorded that Claimant had improved but then exacerbated her condition in April during circuit exercising and thereafter noted increased pain and tingling. Dr. Hjeltness requested a cervical MRI that same day. Instead of authorizing the MRI, Defendants sent Claimant to Craig Stevens, M.D. Claimant continued physical therapy.

20. On July 1, 2008, Bartoo described Claimant as 100% compliant with her home exercise plan and treatment attendance. Claimant was motivated to recover and return to work.

21. On July 16, 2008, Dr. Stevens examined Claimant at Defendants' request and opined that she suffered a cervical strain due to her December 2007 accident. He concluded that she needed no further medical care due to her industrial accident. Defendants never authorized the MRI requested by Dr. Hjeltness.

22. On August 4, 2008, Claimant underwent a cervical MRI at her own expense. The MRI revealed cervical degeneration and C6-7 disk protrusion. After reviewing the MRI, Dr. Hjeltness promptly referred Claimant to neurosurgeon, Jeffrey McDonald, M.D.

23. On August 18, 2008, Claimant presented to Dr. McDonald who ordered an EMG which was performed on August 19, 2008, and revealed neuropathy consistent with left carpal tunnel syndrome.¹ On September 4, 2008, Claimant returned to Dr. McDonald. He reviewed the MRI and EMG studies and recommended cervical surgery.

24. On September 24, 2008, Dr. McDonald performed anterior C6-7 discectomy and fusion. Dr. McDonald's operative report described osteophytes at C6-7 and also noted: "Very prominent, however, was a midline disk herniation with significant protrusion into the canal itself." Defendants' Exhibit 1, p. 12. Claimant obtained a good surgical result. Within 48 hours after surgery, her left arm pain ceased. After Claimant achieved medical stability, Dr. McDonald

¹ There is no indication or allegation that Claimant's carpal tunnel syndrome was caused by her 2007 industrial accident.

cautioned her to lift no more than 50 pounds. At the time of hearing, Claimant was working and continued to do well.

25. Having observed Claimant at hearing and compared her testimony with other evidence in the record, the Referee finds that although Claimant's memory is imperfect, she is a credible 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).

27. **Causation.** A claimant must prove not only that 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). Furthermore, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of employment unless it is the result of an independent

intervening cause attributable to the claimant's own intentional conduct. A. Larson, The Law of Workmen's Compensation, § 13.

28. In the present case, it is undisputed that Claimant suffered degenerative cervical disk disease prior to her industrial accident. However, it is well settled that "an employer takes an employee as it finds him or her; a preexisting infirmity does not eliminate the opportunity for a worker's [sic] compensation claim provided the employment aggravated or accelerated the injury for which compensation is sought." Spivey v. Novartis Seed Inc., 137 Idaho 29, 34, 43 P.3d 788, 793 (2002). The sole issue herein is whether Claimant's cervical surgery on September 24, 2008, was required as a result of her December 4, 2007 industrial accident. Several physicians have specifically considered whether Claimant's need for cervical surgery in 2008 was related to her industrial accident. The physicians' opinions and the doctrine of natural consequences are examined below.

29. Dr. Stevens. Defendants' IME physician, Craig Stevens, M.D., opined that Claimant's 2007 industrial accident caused only a temporary cervical strain. He opined that her C6-7 disk herniation was caused by the progression of Claimant's pre-existing cervical degenerative disk disease, and was not related to the industrial accident. Dr. Stevens noted that Claimant's 2003 MRI documented osteophytes at C6-7—indicative of degenerative disk disease—several years before the 2007 industrial accident. He opined that Claimant's C6-7 disk herniation represented a spontaneous progressive degenerative change not related to her 2007 industrial accident.

30. Significantly, while Dr. Stevens opined that Claimant's surgery was necessitated by the natural progression of her degenerative disk disease, Claimant worked for more than three years without cervical symptoms or complaints prior to her 2007 industrial accident. Following

her December 2007 industrial accident, her cervical symptoms fluctuated until her C6-7 diskectomy and fusion in 2008.

31. Dr. McDonald. Neurosurgeon Jeffrey McDonald, M.D., who was Claimant's treating surgeon, indicated on September 8, 2008, that: "Dr. Stevens has determined that her neck is not work related but rather an exacerbation of multiple previous neck injuries. I cannot disagree with this assessment." Defendants' Exhibit 1, p. 20. Dr. McDonald's comment was offered two weeks before he performed Claimant's cervical surgery, after which his operative report described degenerative osteophytes at C6-7 but also noted: "Very prominent, however, was a midline disk herniation with significant protrusion into the canal itself." Defendants' Exhibit 1, p. 12.

32. Dr. McNulty. Dr. McNulty is a board certified, practicing orthopedic surgeon. He is trained in spinal surgery but has not performed spinal surgery for more than ten years. He examined Claimant on May 11, 2011. Dr. McNulty testified that Claimant's 2007 industrial accident caused her C6-7 disk herniation and need for cervical surgery. He observed that Claimant's August 4, 2008, cervical MRI revealed a C6-7 disk herniation—far different than her 2003 MRI had revealed.² He noted that Claimant's 2007 industrial accident was a very forceful neck injury and that she progressed within a relatively short time to needing cervical surgery. He testified that the natural progression of degenerative disk disease from symptoms to surgery

² Radiologist Curtis Handler, M.D., read Claimant's November 6, 2003 cervical MRI and reported: "Mild posterior osteophytic change is noted centrally at C6-7 which effaces the subarachnoid space but does not compress the cervical cord. ... There is no evidence of neural foraminal stenosis, lateral recess stenosis, or central canal stenosis." Defendants' Exhibit 1, p. 35. The 2003 MRI revealed no cervical disk protrusion or herniation. In contrast, radiologist Kevin McDonnell, M.D., read Claimant's August 4, 2008 cervical MRI and reported: "C6-7: Central/left paracentral disk protrusion of approximately 4 mm. Mild flattening of the cord. Narrowing of the neural foramina left greater than right." Defendants' Exhibit 1, p. 35. The 2008 MRI report also refers to degenerative disk disease but makes no mention of osteophytes.

usually does not happen in so short a time. Dr. McNulty also observed: “Dr. McDonald’s operative report notes a soft disk, the finding of a new finding, soft disk versus osteophytes”

McNulty Deposition, p. 9, ll. 8-10. Dr. McNulty summarized his reasoning:

Q. Now there was a discussion relative—in Dr. Larson’s report of March 8, 2001 [sic], which is the only one that I am aware of. He indicates that his opinion is the need for surgery relates to chronic findings and natural progression of degenerative disk disease and disk osteophyte complex at C6-7. Would you—you addressed it before, but would you elaborate on why you disagree with that assessment?

A. Chronic findings and natural progression is what he said. The original MRI in 2003 had a [sic] osteophyte, didn’t have a disk. And the people who have chronic problems, natural progression are going to be exhibiting symptoms over a course of time that is going to lead to surgery over the course of many months to years. Ms. Cavallo—the medical record does not reflect any treatment for cervical spine condition several years prior to her injury. She had a forceful injury rather than a minor injury, aggravated her neck symptoms. She had symptoms that are consistent with the injury. And Dr. McDonald’s operative report on 9/24/2008 mentions a very prominent midline disk herniation with significant protrusion into the canal itself.

So his operative report is consistent with a midline disk herniation in the findings noted on his physical exam, and consistent with the mechanism of injury.

McNulty Deposition, p. 18, l. 20 through p. 19, l. 21.

33. Dr. Larson. Defendants presented the post-hearing deposition testimony of Jeffrey Larson, M.D. Dr. Larson is a board certified neurosurgeon and a practicing spinal surgeon. Dr. Larson examined Claimant on March 8, 2011, at Defendants’ request. He also reviewed Claimant’s medical records and imaging studies. Dr. Larson concluded that Claimant suffered a musculoligamentous neck strain from her December 2007 industrial accident. He opined that Claimant’s neck strain resolved and then she later developed further symptoms. Dr. Larson explained that osteophytes, as shown on Claimant’s 2008 MRI, develop over a period of years from a bone-on-bone condition at the uncinatate joints at the side of the spine as a disk

degenerates, dehydrates and collapses. He noted that this degenerative process was documented on Claimant's 2003 MRI and progressed on her 2008 MRI.

34. Regarding the necessity for surgery, Dr. Larson reported that Claimant's need for C6-7 discectomy and fusion was caused by spondylosis and degenerative disk disease. However, when questioned closely at his post-hearing deposition, Dr. Larson testified:

Q. What would be the cause of the condition for which Dr. McDonald performed surgery?

A. I believe he performed surgery for the degenerative disk at C6-7 with radiculopathy at C7.

Q. And was that just caused by a degenerative condition.

A. Yeah. An exacerbation of a degenerative condition.

Larson Deposition, p. 12, ll. 6-13. Dr. Larson specifically testified that the need for surgery was due to an April 2008 exacerbating event:

THE WITNESS: Dr. McDonald's operating on an April event. That was the last event that happened to her. Something in the gym with circuit training.

BY MR. KELSO:

Q. So it's your testimony that something during the circuit training exacerbated the condition in Ms. Cavallo's neck and led to the surgery?

A. Yes.

Q. Is it also your testimony—

A. Led to Dr. McDonald doing the surgery.

Q. Led to him doing the surgery.

A. Yeah.

Larson Deposition, p. 38, l. 21 through p. 39, l. 7.

35. Dr. Larson then reiterated his conclusion that Claimant's December 2007 accident exacerbated her cervical condition only temporarily and that she recovered therefrom within a few months, but then exacerbated her cervical condition during circuit training in April 2008, which led to her need for surgery.

36. The Referee finds that Dr. McNulty's opinion that Claimant's 2008 surgery is related to her industrial accident is more supported by the record and persuasive than the opinions of Dr. Stevens and Dr. McDonald, who concluded that surgery was due to a spontaneous herniation of a degenerative disk. In addition, Dr. Larson's testimony closely analyzes the circumstances surrounding Claimant's flare-up of cervical symptoms after her release from physical therapy in March 2008, and identifies with precision the manner in which Claimant's cervical surgery is related to her industrial accident. Dr. Larson specifically related Claimant's need for cervical surgery to her April 2008 circuit exercising exacerbation.

37. Natural consequences. In Mulnix v. Medical Staffing Network, Inc., 2010 IIC 0368, the claimant suffered an industrial injury that required left shoulder surgery. She subsequently suffered a left labral tear during therapy for her original industrial injury. The Commission found that the additional medical treatment necessitated by the labral tear sustained during therapy was compensable, noting that when the primary injury arises out of and in the course of employment, every natural consequence flowing from the injury likewise arises out of employment unless it is the result of an independent intervening cause attributable to the claimant's own intentional conduct. See A. Larson, The Law of Workmen's Compensation, § 13. Similarly, in Gerdon v. Con Paulos, Inc., 2012 IIC ____ (filed October 15, 2012), the claimant suffered an industrial accident and then suffered further injury during therapy for his industrial accident. The Commission acknowledged that this further injury overlaid a pre-

existing disk bulge. However, in evaluating causation the Commission stated: “Claimant has proven that his L3-4 disk bulge was permanently aggravated as a result of participating in rehabilitation therapy related to his industrial accident. Therefore he is entitled to workers’ compensation benefits for this injury.” *Id.* at 81.

38. In the present case, Claimant described at hearing that with Bartoo’s input and approval she incorporated specific circuit exercises at Vital Fitness into her home exercise program. She reviewed her circuit exercises with Bartoo, who told her which circuit exercises to do and which to avoid. She testified:

I was just starting what you call circuit exercising, not circuit weights, circuit exercising where you just go from one place to another place to—at Vital Fitness, so you go at your own pace. But I would just do certain things and Gary Bartoo at physical therapy said, don’t do this or this, but you can do this, this and this.

Transcript p. 59, ll. 6-12. Claimant followed Bartoo’s advice “absolutely” in her circuit exercising. Transcript p. 62, l. 5. She continued this home exercise program after being discharged from formal physical therapy sessions.

39. Claimant’s testimony is corroborated by Bartoo’s notes, which make repeated reference to evaluating her exercise program at the gym or health club. Among other entries, on February 20, 2008, Bartoo recorded that Claimant “reported consistency with her health club routine.” Defendants’ Exhibit 11, p. 675. On February 27, 2008, Bartoo recorded: “We did review her health club exercises” Defendants’ Exhibit 11, p. 675.

40. After Claimant’s formal physical therapy with Bartoo ended on March 12, 2008, she continued her home exercise program, including the circuit exercises approved by Bartoo. Approximately three weeks later, in the first week of April 2008, Claimant noted increased neck pain after circuit exercising. Her primary treating physician, Dr. Hjeltness, provided no admissible express opinion regarding the causation of Claimant’s cervical surgery. However,

Dr. Hjeltness' note of May 20, 2008, indicates he considered Claimant's April 2008 flare-up of neck symptoms to be related to her industrial accident, because he listed "12-4-07" and "work" as the date and location of injury. Defendants' Exhibit 6, p. 331. Dr. Larson's testimony establishes that Claimant's need for cervical surgery resulted from the exacerbation of her pre-existing degenerative cervical condition due to her participation in rehabilitation therapy related to her industrial accident; specifically, circuit exercising approved by her physical therapist, Gary Bartoo.

41. Claimant's primary injury of December 4, 2007, is acknowledged by all parties. The prescribed treatment for her injury included formal physical therapy which transitioned into a home exercise program. Her failure to comply with physical therapy as instructed by Bartoo would have been construed as hindering or at least delaying her recovery. Bartoo recorded she was 100% compliant with therapy. The circumstances herein are akin to those in Mulnix and Gerdon. Claimant's exacerbation approximately three weeks after discharge from formal physical therapy, while performing circuit exercises as part of the home exercise program approved by her physical therapist, is a natural consequence flowing from her 2007 industrial injury and not the result of an independent intervening cause attributable to her own intentional conduct. Claimant's C6-7 disk aggravation and resulting surgery is a compensable consequence of her 2007 industrial accident.

42. Claimant has proven that her cervical surgery was related to her 2007 industrial accident.

CONCLUSION OF LAW

Claimant has proven that her cervical surgery was related to her 2007 industrial accident.

RECOMMENDATION

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

DATED this 6th day of December, 2012.

INDUSTRIAL COMMISSION

/s/
Alan Reed Taylor, Referee

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of December, 2012, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

STARR KELSO
PO BOX 1312
COEUR D'ALENE ID 83816-1312

H JAMES MAGNUSON
PO BOX 2288
COEUR D'ALENE ID 83816-2288

kh

/s/

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

PENELOPE CAVALLO,

Claimant,

v.

SL START & ASSOCIATES, INC.,

Employer,

and

STATE INSURANCE FUND,

Surety,
Defendants.

IC 2007-041356

ORDER

Filed December 14, 2012

Pursuant to Idaho Code § 72-717, Referee Alan Reed Taylor submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusion 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 this recommendation. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusion of law as its own.

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

1. Claimant has proven that her cervical surgery was related to her 2007 industrial accident.
2. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 14th day of December, 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 14th day of December, 2012, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

STARR KELSO
PO BOX 1312
COEUR D'ALENE ID 83816-1312

H JAMES MAGNUSON
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kh

/s/ _____