

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

LUIS C. CONTRERAS,)
)
 Claimant,)
)
 v.)
)
 WOODGRAIN MILLWORK, INC.,)
)
 Employer / Self-Insured,)
)
 Defendant.)
 _____)

IC 2001-013201

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

Filed: June 3, 2010

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 Boise on October 9, 2009. Claimant, Luis C. Contreras, was present in person and represented himself. Defendant Employer, Woodgrain Millwork, Inc. (Woodgrain), was represented by Max Sheils, of Boise. The parties presented oral and documentary evidence. Briefs were later submitted and the matter came under advisement on January 13, 2010.

ISSUES

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

1. The nature and extent of Claimant’s injuries from the industrial accident.
2. Whether Claimant’s condition is due, in whole or in part, to a pre-existing and/or subsequent injury/condition.
3. Whether, and to what extent, Claimant is entitled to additional medical care.
4. Whether, and to what extent, Claimant is entitled to temporary partial and/or temporary total disability benefits.
5. Whether, and to what extent, Claimant is entitled to permanent partial impairment benefits.

6. Whether any permanent partial impairment or permanent partial disability is related to the industrial accident.

CONTENTIONS OF THE PARTIES

Claimant suffered an industrial accident on April 26, 2001. He asserts that he is now in constant pain and is entitled to total temporary disability benefits for approximately four years and additional medical care, including surgery. Defendant acknowledges Claimant's industrial accident, but maintains that he has received appropriate medical care and full payment of appropriate permanent partial impairment benefits. Defendant contends that Claimant has provided no medical evidence that his current alleged symptoms are related to his industrial accident or that he is entitled to any additional benefits.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. The testimony of Claimant and Kelly Holmes taken at the October 9, 2009 hearing;
3. Defendant's Exhibits 1 through 6, admitted at the hearing.¹

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 born in Mexico in 1971 and was 39 years old at the time of the hearing.² He left high school one month before graduating. He has not obtained a GED or any

¹ Claimant's proposed Exhibits A through C were denied admission at hearing because they were not provided to Defendant as required by J.R.P. 10(C), though Claimant was advised of this requirement by the Referee through an interpreter in pre-hearing telephone conferences and expressly in the Notice of Hearing. The Referee notes that even if these documents had been admitted into evidence, they would not alter the resolution of the issues addressed herein because they largely reiterate facts already established by other duly-admitted evidence in the record.

² Although, at his request, Claimant testified at hearing through a Spanish interpreter, on several occasions Claimant responded to questions posed in English before the interpreter had the opportunity to translate them. It was apparent Claimant is quite fluent in English.

further formal education. He did not work in Mexico after leaving high school. Claimant came to the United States in approximately 1992 and worked at a nursery earning minimum wage. His primary duty was irrigating. Thereafter Claimant worked at a dairy for four or five years, earning \$500.00 per week plus housing. He also worked at a cannery processor in California. He suffered no significant injuries prior to 1996.

2. In 1996, Claimant came to Idaho and commenced working for Woodgrain, grading, stacking, and feeding wood into processing machines. He became a seven-in-one machine operator producing parts for doors. His duties required bending, lifting, and stacking more than 40 pounds of wood products at a time. Claimant also became proficient in operating other Woodgrain machines.

3. During his years of working for Woodgrain, Claimant also worked part-time for several months preparing food at a restaurant. He later worked part-time on a farm.

4. On April 26, 2001, while at work for Woodgrain, Claimant was handling a large sack of dowels on a raised platform approximately six feet high when he lost his balance and fell backwards over a safety chain. Claimant landed on his back on the concrete floor. He reported his fall to a supervisor, who told him to go to the hospital. However, Claimant declined and finished his shift. He missed no time from work.

5. On May 7, 2001, Claimant presented to Saltzer Quick Care with complaints of low back pain. He was diagnosed with low back strain and treated with medications. On May 22, 2001, physical therapy was prescribed. On June 21, 2001, Claimant returned to the clinic complaining of low back and left leg pain. An MRI study was recommended, but not obtained at that time. Claimant continued working.

6. On October 2, 2002, Claimant underwent a lumbar MRI, which revealed degenerative intervertebral disc disease at multiple levels, but no stenosis or significant neural impingement. On October 23, 2002, Claimant presented to orthopedic surgeon Miers Johnson,

M.D. Claimant advised Dr. Johnson that he had fallen two or three years previously and injured his back. Dr. Johnson recommended steroid injections. Claimant received two steroid injections, but denied improvement. He continued working.

7. On November 26, 2002, orthopedic surgeon Michael Phillips, M.D., examined Claimant at Defendant's request. Claimant acknowledged that he experienced back pain prior to the industrial accident. Dr. Phillips diagnosed lumbosacral contusion from Claimant's industrial accident, superimposed on pre-existing degenerative intervertebral disc disease of the lumbosacral spine. He found Claimant medically stable and rated his permanent impairment at 5% of the whole person, including 2.5% impairment attributable to the industrial accident. Dr. Phillips restricted Claimant to lifting no more than 60 pounds unassisted. Claimant continued working.

8. On August 31, 2004, Claimant was examined by neurosurgeon Ronald Jutzy, M.D. Claimant's left leg pain had resolved, but he reported left shoulder and chest pain, burning pain in his hands, and tingling in his feet. Dr. Jutzy read Claimant's October 2002 MRI as showing mild disc herniations at L4-5 and L5-S1. He ordered another MRI. On September 4, 2004, Claimant underwent another MRI, which revealed mild, broad-based disc bulges in the cervical spine with a small focal disc herniation at T3-4, degenerative changes at L5-S1 without significant stenosis, and mild-to-moderate left foraminal narrowing at L5-S1 with broad-based disc bulging. Dr. Jutzy explained that "these are typical degenerative changes seen in a spine and do not denote any cause for permanent disability." Exhibit 2, p. 4. He diagnosed lumbar strain and noted that Claimant appeared to have musculoligamentous pain that was aggravated by the heavy nature of his work. He recommended that Claimant find less strenuous work, but imposed no permanent restrictions.

9. Claimant saw several other physicians for his ongoing pain complaints.

10. Claimant worked at Woodgrain for approximately five years after his industrial accident, performing generally the same duties, without missing any significant time from work due to his accident. However, Claimant testified that completing his work became increasingly

difficult. In 2006, Claimant ceased work at Woodgrain. He has not worked or looked for work since that time.

11. On March 13, 2006, Claimant was examined by Michael Sant, M.D. Dr. Sant noted that Claimant reported difficulty sleeping and complained of back, leg, neck, left shoulder, knee, and chest pains. Dr. Sant noted that Claimant had a fairly degenerative back, that most of his symptoms were non-verifiable, and that there was evidence of pain amplification behaviors.

12. In 2006, Claimant was denied Social Security disability benefits because his allegations of pain were ruled less than credible.

13. On November 10, 2006, Claimant presented to internal medicine physician Rick Marino, M.D., who opined that Claimant was experiencing debilitating pain that suggested nerve root compression producing sleep disturbance and additional limitations. He believed Claimant might need surgery.

14. On August 5, 2008, Claimant was examined by Nancy Greenwald, MD., at Defendant's request. Dr. Greenwald noted moderate depression, pain syndrome, including neck, right knee, left shoulder, and abdominal pain complaints, and bilateral arm numbness. She opined Claimant had prominent arthritic changes not related to his industrial accident and recommended a functional restoration program. On August 31, 2008, Claimant was examined by licensed psychologist Craig Beaver, Ph.D., at Defendant's request. An interpreter assisted during the interview; however, Dr. Beaver opined that Claimant's verbal comprehension of English appeared adequate. Claimant reported to Dr. Beaver that he hurt everywhere, especially in his back, left leg, left arm, neck, and hip. Dr. Beaver administered multiple psychological tests and thereafter concluded that Claimant presented as significantly depressed, with a tendency towards symptom magnification, and that his level of emotional distress was exacerbating the intensity of his pain complaints. Dr. Beaver noted that Claimant complained of sleep disturbance and insomnia, but in the past had repeatedly declined offers of medical treatment for these issues.

15. On May 25, 2009, Claimant commenced treatment at the Elks LifeFit Chronic Pain Management Program in Boise. Lead program therapist Kelly Holmes, P.T., examined Claimant and found him to be in good physical condition, with very good muscle tone and muscle definition she “describe[d] as athletic.” Transcript, p. 69, l. 23. Nevertheless, Claimant complained of significant non-anatomical full body pain. Claimant participated in the LifeFit program for one day and refused to participate thereafter due to alleged swelling in his feet. Holmes encouraged him to see the program medical director for the swelling but Claimant refused. After being fully advised of the consequences of his refusal, Claimant continued to decline participation and was discharged from the program on May 27, 2009, for noncompliance. During his brief involvement in the program, Claimant spoke and interacted in English, although he was provided with a Spanish translator.

16. On June 4, 2009, licensed psychologist Michael McClay, Ph.D., provided a blind interpretation of Claimant’s MMPI-2 testing administered in preparation for the LifeFit program. He noted that Claimant’s MMPI test results were valid and indicated patterns extant since childhood of over-reporting and overreacting to pain sensations. Dr. McClay concluded that Claimant was a “chronic pain patient with psychiatric profile including somatization, Symptom Magnification Syndrome, probable secondary gain, and probable thought disorder.” Exhibit 5, p. 3.

17. By letter dated June 22, 2009, Robert Friedman, M.D., medical director of the LifeFit program, concurred in the 5% permanent partial impairment rating and 60-pound lifting restriction given to Claimant by Dr. Phillips.

18. At hearing, Claimant testified that due to the industrial accident he had pain in his back, stomach, kidneys, chest muscles, and shoulder, pain and swelling in all of his joints, and pressure on his heart. He believed that he needed surgery.

19. Having heard and observed Claimant at hearing and compared his testimony and demeanor with the testimony of Kelley Holmes and the duly admitted documentary evidence, the

Referee finds that Claimant's testimony is not entirely credible and that Claimant significantly overstates his symptoms and limitations. The Referee finds Holmes is a credible witness.

DISCUSSION AND FURTHER FINDINGS

20. 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).

21. **Causation.** The first two issues are the nature and extent of Claimant's injuries from his industrial accident and whether his condition is due, in whole or in part, to a pre-existing and/or subsequent injury or condition. These issues collectively address whether Claimant's alleged current conditions are caused by his industrial accident.

22. A claimant must prove not only that he 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).

23. Claimant herein alleges multiple injuries due to his 2001 industrial accident. He complains of back pain, multiple lumbar disc injuries, left shoulder pain, neck pain and instability, convulsions, kidney pain, heart pressure, overall body pain, and emotional issues.

24. Defendant readily acknowledges that Dr. Phillips diagnosed lumbosacral contusion resulting from Claimant's industrial accident. Dr. Jutzy diagnosed lumbar strain of unknown etiology. Dr. Marino may have related Claimant's alleged lumbar disc injuries to his industrial accident. Drs. Johnson, Phillips, Jutzy, and Greenwald, however, have not. These physicians have opined that Claimant's disc abnormalities are degenerative in origin. Their opinions in this regard are more persuasive because they are supported by Claimant's report to Dr. Phillips of back pain prior to the 2001 industrial accident and Claimant's report to Dr. Johnson in October 2002 that "he had had another back injury two or three years ago when he had fallen." Exhibit 4, p. 3. Therapist Holmes testified at hearing that Claimant's continued symptoms are not related to his 2001 industrial accident. Except for his lumbosacral contusion, no persuasive medical evidence relates any of Claimant's alleged current conditions to his industrial accident.

25. Claimant has proven that his industrial accident resulted in a lumbosacral contusion. He has not proven that any of his other current complaints were caused by his industrial accident.

26. **Medical care.** The next issue is whether Claimant is presently entitled to additional medical care. An employer shall provide for an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital service, medicines, crutches and apparatus, as may be required by the employee's physician or needed immediately after an injury or disability from an occupational disease, and for a reasonable time thereafter. If the employer fails to provide the same, the injured employee may do so at the expense of the employer. Idaho Code Section 72-432(1). Of course, the employer is only obligated to provide medical treatment necessitated by the industrial accident. The employer is not responsible for medical treatment not related to the industrial accident. Williamson v. Whitman Corp./Pet, Inc., 130 Idaho 602, 944 P.2d 1365 (1997).

27. In the present case, Claimant asserts that he needs additional medical care, including surgery. Two orthopedic surgeons and a neurosurgeon, Drs. Johnson, Phillips, and Jutzy, have reviewed Claimant's condition and have not recommended surgery. According to Dr. Beaver's notes, an internist, Dr. Marino, has suggested surgery may be indicated. The opinions of Drs. Johnson, Phillips, and Jutzy, with their greater individual and collective expertise, are more persuasive than that of Dr. Marino. Claimant has not proven his entitlement to surgery.

28. Claimant failed to prove that any of his other current complaints are related to his industrial accident. He has presented no expert medical evidence of his need for any other medical treatment for his industrial injury. Claimant has not proven his entitlement to any further medical care.

29. **Temporary disability benefits.** The next issue is whether Claimant is entitled to additional temporary disability benefits. Idaho Code § 72-408 provides that income benefits for total and partial disability shall be paid to disabled employees "during the period of recovery." The burden is on a claimant to present medical evidence of the extent and duration of the disability in order to recover income benefits for such disability. Sykes v. C.P. Clare and Company, 100 Idaho 761, 605 P.2d 939 (1980).

30. In the present case, Claimant testified that he missed no time from work between his 2001 industrial accident and the time he left Woodgrain in 2006. Dr. Phillips found Claimant's condition medically stable in November 2002. Claimant requests temporary disability benefits for four years, however there is no medical evidence relating Claimant's failure to work after 2006 to his 2001 industrial accident. Claimant has not proven his entitlement to any temporary disability benefits.

31. **Permanent impairment.** The next issue is whether Claimant is entitled to additional permanent impairment benefits. Permanent impairment is any anatomic or functional abnormality or loss after maximal medical rehabilitation has been achieved and which

abnormality or loss, medically, is considered stable or non-progressive at the time of evaluation. Idaho Code § 72-422. “Evaluation (rating) of permanent impairment” is a medical appraisal of the nature and extent of the injury or disease as it affects an injured employee’s personal efficiency in the activities of daily living, such as self-care, communication, normal living postures, ambulation, traveling, and non-specialized activities of bodily members. Idaho Code § 72-424. When determining impairment, the opinions of physicians are advisory only. The Commission is the ultimate evaluator of impairment. Urry v. Walker & Fox Masonry Contractors, 115 Idaho 750, 755, 769 P.2d 1122, 1127 (1989).

32. Dr. Phillips rated Claimant’s permanent impairment at 5% of the whole person, with 2.5% impairment attributable to his industrial accident. Defendant has acknowledged that Claimant suffered permanent partial impairment of 2.5% of the whole person due to his industrial accident and has paid Claimant benefits accordingly. There is no medical evidence indicating Claimant suffers a greater permanent impairment due to his industrial accident. Claimant has not proven his entitlement to any additional permanent impairment benefits beyond the 2.5% whole person impairment rating, which Defendant has already paid.

33. **Permanent disability.** The final issue is whether Claimant suffers any permanent disability related to the industrial accident. “Permanent disability” or “under a permanent disability” results when the actual or presumed ability to engage in gainful activity is reduced or absent because of permanent impairment and no fundamental or marked change in the future can be reasonably expected. Idaho Code § 72-423. “Evaluation (rating) of permanent disability” is an appraisal of the injured employee’s present and probable future ability to engage in gainful activity as it is affected by the medical factor of permanent impairment and by pertinent nonmedical factors provided in Idaho Code § 72-430. Idaho Code § 72-425. Idaho Code § 72-430 (1) provides that in determining percentages of permanent disabilities, account should be taken of the nature of the physical disablement, the disfigurement if of a kind likely to handicap

the employee in procuring or holding employment, the cumulative effect of multiple injuries, the occupation of the employee, and his or her age at the time of accident causing the injury, or manifestation of the occupational disease, consideration being given to the diminished ability of the affected employee to compete in an open labor market within a reasonable geographical area considering all the personal and economic circumstances of the employee, and other factors as the Commission may deem relevant. In sum, the focus of a determination of permanent disability is on the claimant's ability to engage in gainful activity. Sund v. Gambrel, 127 Idaho 3, 7, 896 P.2d 329, 333 (1995).

34. Claimant herein has not worked since leaving Woodgrain in 2006. He has not submitted any evidence of his current employment opportunities or efforts to find employment. Claimant testified that he is significantly limited by pain, however Holmes' testimony convincingly establishes that Claimant is far more active than he has acknowledged. Dr. Phillips restricted Claimant to lifting no more than 60 pounds unassisted. Dr. Friedman concurred in that restriction. Claimant was earning approximately \$11.95 per hour at the time of his 2001 industrial injury. Based on Claimant's impairment rating of 2.5% of the whole person caused by his industrial accident and resulting lifting restriction, and considering non-medical factors including his age, limited formal education, and prior work experience, Claimant's ability to engage in gainful activity has been reduced. The record establishes that Claimant suffers a permanent disability of 7.5%, including 2.5% impairment, attributable to his industrial accident.

CONCLUSIONS OF LAW

1. Claimant has proven he suffered a lumbosacral contusion as a result of his industrial accident. Claimant has not proven that any of his other current complaints are related to his industrial accident.

2. Claimant has not proven his entitlement to additional medical benefits.

3. Claimant has not proven his entitlement to any temporary disability benefits.

4. Claimant has not proven his entitlement to additional permanent impairment benefits beyond the 2.5% whole person impairment rating, which Defendant has already paid.

5. Claimant has proven his entitlement to permanent disability benefits of 7.5%, inclusive of his 2.5% whole person permanent impairment, due to his industrial accident. Defendant is entitled to credit for all amounts previously paid for Claimant's permanent partial impairment.

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 19th day of May, 2010.

INDUSTRIAL COMMISSION

/s/
Alan Reed Taylor, Referee

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of June, 2010, 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:

LUIS C CONTRERAS
219 SMITH AVE
NAMPA ID 83651

MAX M SHEILS JR
PO BOX 388
BOISE ID 83701

sc

/s/

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

LUIS C. CONTRERAS,)
)
 Claimant,)
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 v.)
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 WOODGRAIN MILLWORK, INC.,)
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 Employer / Self-Insured,)
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 Defendant.)
 _____)

IC 2001-013201

ORDER

Filed: June 3, 2010

Pursuant to Idaho Code § 72-717, Referee Alan Taylor 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 proven he suffered a lumbosacral contusion as a result of his industrial accident. Claimant has not proven that any of his other current complaints are related to his industrial accident.
2. Claimant has not proven his entitlement to additional medical benefits.
3. Claimant has not proven his entitlement to any temporary disability benefits.
4. Claimant has not proven his entitlement to additional permanent impairment benefits beyond the 2.5% whole person impairment rating, which Defendant has already paid.
5. Claimant has proven his entitlement to permanent disability benefits of 7.5%, inclusive of his 2.5% whole person permanent impairment, due to his industrial accident.

Defendant is entitled to credit for all amounts previously paid for Claimant's permanent partial impairment.

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

DATED this 3rd day of June, 2010.

INDUSTRIAL COMMISSION

/s/
R.D. Maynard, Chairman

/s/
Thomas E. Limbaugh, Commissioner

Com. Baskin recused himself
Thomas P. Baskin, Commissioner

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of June, 2010, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

LUIS C CONTRERAS
219 SMITH AVE
NAMPA ID 83651

MAX M SHEILS JR
PO BOX 388
BOISE ID 83701

sc

/s/