

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

ADAM C. CROGHAN,

Claimant,

v.

SPECIALTY INC.,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,  
Defendants.

**IC 2011-011248**

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

**Filed December 20, 2013**

**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, Idaho on April 23, 2013. Claimant, Adam Croghan, was present in person and represented by Bradford Eidam, of Boise. Defendant Employer, Specialty, Inc. (Specialty), and Defendant Surety, Idaho State Insurance Fund, were represented by James Ford, of Boise. The parties presented oral and documentary evidence. Post-hearing depositions were taken and briefs were later submitted. The matter came under advisement on August 21, 2013.

**ISSUES**

The issues were narrowed at hearing to the following:

1. Whether Claimant is entitled to left ACL repair due to his industrial accident; and
2. Whether Claimant is entitled to additional temporary disability benefits.

All other issues are reserved.

## **CONTENTIONS OF THE PARTIES**

Claimant sustained a left knee industrial injury on April 29, 2011, when he twisted his left knee while stacking pallets. Diagnostic testing revealed a meniscus tear and a chronic ACL tear. Defendants authorized arthroscopic meniscectomy but denied responsibility for ACL treatment. Following partial meniscectomy, Claimant asserts that his left knee remains symptomatic. He asserts the accident and/or partial meniscectomy destabilized his knee and requests additional medical treatment, to include left ACL reconstruction to stabilize his knee. He also requests temporary disability benefits from the time he was declared medically stable from his meniscectomy until he recovers from ACL reconstruction.

Defendants acknowledge the April 29, 2011, industrial accident, but observe that Claimant's left ACL tear pre-existed and was not caused by his accident. They maintain his accident and subsequent arthroscopy did not destabilize his knee and assert that Claimant is not entitled to further medical or temporary disability benefits.

## **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 February 15, 2013, and admitted into evidence as Exhibit 17;
3. Exhibits 1-29, admitted at the hearing;
4. The testimony of Claimant, taken at the April 23, 2013 hearing;
5. The post-hearing deposition of Robert H. Friedman, M.D., taken by Claimant on May 7, 2013;

6. The post-hearing deposition of Joseph Gordon Daines, Jr., M.D., taken by Defendants on May 8, 2013; and
7. The post-hearing deposition of George A. Nicola, M.D., taken by Claimant on May 20, 2013.<sup>1</sup>

All objections made during the 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 born in 1984. He was 28 years old and lived in Union, Oregon at the time of the hearing. In 2011, he lived in Marsing, Idaho.

2. **Background.** Claimant was raised in Oregon. He excelled in high school athletics. He initially wrestled, played baseball, and football, but ultimately focused entirely on football. In approximately 2000, he dislocated his right patella playing high school football. He received non-surgical medical attention, “took it easy” for several weeks, and then resumed his usual activities. Claimant participated in calf roping and bull riding occasionally during high school and for several years thereafter. In 2001, Claimant left high school in the eleventh grade and obtained his GED. He commenced logging at \$13.00 per hour. He worked as a choke setter, and thereafter as a chaser and choke setter, ultimately earning \$18.00 per hour. While in Oregon, he also worked as a lumber mill laborer, restaurant cook, and drywall installer.

3. In approximately 2005, Claimant moved to Virginia where he worked as a laborer and machine operator and began playing football again. He enrolled at and played a few college football games for Liberty University in Lynchburg, Virginia. He also played defensive end and

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<sup>1</sup> Defendants scheduled and subsequently gave notice of their intent to vacate Dr. Nicola’s deposition. Claimant then objected and proceeded with Dr. Nicola’s deposition pursuant to JRP 10(E)(2).

tight end in various minor football leagues and played approximately 30 games with the Crimson Cardinals, an NFL semi-professional football team.

4. In approximately 2007, Claimant returned to Oregon and worked as a logger, cook, laborer, and spraying equipment operator. He continued to play minor league football.

5. In March 2010, Claimant commenced working for Specialty as a laborer. He manufactured pallets using various hand power tools, operated a fork lift, and also hand-stacked pallets weighing from 25 to 60 pounds.

6. On April 7, 2010, Claimant presented to Nampa Medical Center requesting a physical exam. He complained of leg muscle cramps after vigorous exercise. He was then six feet four inches tall and weighed 225 pounds. He reported playing minor league football for fun. He reported occasional right knee pain. The chart notes make no mention of any left knee complaint or abnormality.

7. On April 22, 2010, Claimant presented to West Valley Medical Center complaining of nasal congestion, a productive cough, fever, and difficulty breathing. He was diagnosed with acute bronchitis. There is no indication he offered any knee complaints. On April 26, 2010, Claimant presented to West Valley Medical Center complaining of left shoulder pain after a fall. X-rays revealed no fracture. There is no indication he offered any knee complaints.

8. Claimant played defensive end for the Snake River Sabercats, a semi-professional football team, throughout the 2010 season. Dallas Hoffman, owner of the Sabercats, attested that Claimant was in excellent physical condition, played throughout the 2010 season, and participated in spring training in 2011 without any limitations. Claimant testified at hearing that he had no left knee complaints prior to April 29, 2011.

9. **Industrial accident and treatment.** On April 29, 2011, Claimant was working for Specialty when he lifted a pallet, turned to the right to place it on a stack, and felt immediate pain and instability in his left knee. He faltered and his supervisor, working nearby, asked Claimant what happened. Claimant described his knee symptoms and the supervisor directed Claimant to complete an accident report. That same day, Claimant presented to Jon Perry, P.A., reporting “left knee pain that began at work when he lifted a pallet and rotated to put the pallet on a different stack.” Exhibit 6, p. 49. He denied any prior left knee pain or surgery. Examination revealed pain with varus stress of the collateral ligaments. McMurray and Lachman’s tests were negative.

10. On May 16, 2011, Claimant was examined by Stephen Martinez, M.D., who recorded pain, but no laxity with valgus and varus stress, positive McMurray test, negative Lachman’s test, and negative anterior and posterior drawer tests.<sup>2</sup> Dr. Martinez diagnosed left knee sprain, provided a knee brace, ordered an MRI, and directed Claimant to take the rest of the week off work. At the conclusion of that week, Claimant resumed his usual work duties although his knee remained symptomatic.

11. On May 23, 2011, Claimant underwent a left knee MRI which revealed a partial medial meniscus tear and an absent anterior cruciate ligament (ACL), consistent with a chronic ACL tear. On June 2, 2011, Dr. Martinez examined Claimant and again found pain but no laxity with valgus and varus stress, positive McMurray test, negative Lachman’s test, and negative anterior and posterior drawer tests. Exhibit 6, p. 71. Dr. Martinez diagnosed left knee sprain

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<sup>2</sup> The anterior drawer test is performed with the knee bent to 90 degrees while the Lachman test is performed with the leg straight. Both maneuvers test ACL integrity and are positive if the tibia can be pulled forward on the fixed femur. Daines Deposition, pp. 35-36.

with medial meniscus tear and ACL tear. He directed Claimant to cease working and referred him to an orthopedic surgeon.

12. On June 9, 2011, orthopedic surgeon George A. Nicola, M.D., examined Claimant, noting his medial meniscus tear and chronic ACL tear. Dr. Nicola recorded a positive anterior drawer test. He noted that Claimant needed ACL repair and opined that meniscectomy without ACL reconstruction would be problematic. Dr. Nicola provided Claimant a Playmaker brace to stabilize his knee. He directed Claimant to return to work wearing his brace and restricted him from kneeling, squatting, or climbing. Claimant described the brace as a large slip-on style support, approximately 18 inches long that fits above and below his knee, with a hinged metal bar on either side and adjustable straps.

13. Surety authorized medial meniscus surgery, but denied responsibility for ACL reconstruction because the ACL tear pre-existed Claimant's industrial accident.

14. On August 3, 2011, Dr. Nicola performed left knee arthroscopy and partial medial meniscectomy. He removed a large flap tear, constituting approximately one-half of the posterior horn of the medial meniscus. He noted grade II chondromalacia of the posterior portion of the medial femoral condyle and a chronic ACL tear. Dr. Nicola recorded:

[P]reoperatively, the patient did have a 2+ anterior drawer and did have a pivot shift. .... He also was instructed that he need [sic] to have that ACL reconstructed that should be addressed on a nonwork-related basis, but I think the delay in reconstruction of that ACL is going to further damage this joint.

Exhibit 7, p. 83. Dr. Nicola encouraged Claimant to wear his knee brace at work and for any physical activity. Claimant underwent physical therapy from August through December 2011. He then transitioned to home exercises. Claimant's left knee improved after surgery and physical therapy. He was able to walk and even jog with his brace on for about one mile. He could not jog, kneel, or squat without the brace.

15. After being released to return to work, Claimant sought work with Specialty, but was advised that his position had been filled. Claimant then sought employment and eventually found work in landscaping through a temporary employment agency.

16. At time of hearing, Claimant continued to work and diligently perform his home exercises each Monday, Wednesday, and Friday. He stretches daily. His left knee no longer swells, but is still painful. He wears his brace to work, when exercising, and during all activities. He takes 800 milligrams of ibuprofen daily. He does not kneel, squat, jog, or walk downhill without the brace because his knee feels too unstable. He descends steps one step at a time. He is able to kneel, squat, jog, hunt, and fish with his brace on, although these activities are painful. Left knee pain limits his lifting.

17. During the 2012 football season, Claimant coached the Snake River Sabercats. The Sabercats lost approximately 15 players and Claimant played in one or two quarters of three football games. He wore his brace, with his knee wrapped and taped. He has played no football since the end of that season.

18. Dr. Nicola continues to recommend ACL reconstruction.

19. **Credibility.** Having observed Claimant at hearing and compared his testimony with other evidence in the record, the Referee finds that Claimant 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 threshold issue is whether Claimant is entitled to ACL reconstructive surgery due to his April 29, 2011 industrial accident. 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). It is well settled that an 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). However, 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. The inquiry thus becomes whether Claimant’s need for ACL reconstruction is related to his industrial accident or a natural consequence thereof.

22. In the present case, it is undisputed that Claimant’s left ACL tear pre-existed his industrial accident. However, “an employer takes an employee as it finds him or her; a pre-existing 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). Claimant asserts that his industrial accident and treatment destabilized his previously functionally stable



left knee, causing his present need for ACL reconstruction. Defendants assert that his accident and treatment did not destabilize his knee and any need for ACL reconstruction is a result of the progression of his pre-existing degenerative conditions and pre-existing ACL tear.

23. Several physicians have specifically considered the relationship between Claimant's need for ACL surgery and his industrial accident. The physicians' opinions and the doctrine of natural consequences are examined below.

24. Dr. Friedman. Robert Friedman, M.D., is board certified in physical medicine and rehabilitation. He examined Claimant and on September 18, 2012, authored a report concluding that:

1. [T]he injury that Mr. Crogh[an] while [sic] lifting the pallet including the pop included the meniscal tear. This destabilized his knee. Though the patient most likely, based on his clinical history, and MRI, had a pre-existing ACL tear, functionally he had no significant instability. He reports that he did not feel unstable. He was able to be very active. He was able to play semi-pro football.
2. It is my opinion that the meniscal tear, and subsequent repair with partial removal of his meniscus has functionally destabilized his knee. This would, in my opinion be an aggravation of a pre-existing condition. This is now permanently worsened and the change in anatomy with removal of the partial meniscus has caused his left knee to be functionally unstable.

Exhibit 13, p. 195.

25. During Dr. Friedman's deposition, when questioned regarding Claimant's report of playing semi-professional football for several years apparently never knowing he had a torn ACL in his left knee, Dr. Friedman observed:

[P]eople can be very active without an ACL. In fact, I, on my examination, find instability in his right knee. And he may not have an ACL intact in his right knee either. But he is not symptomatic.

The way people function well without an anterior cruciate ligament, which is what ACL stands for, is they do a very aggressive rehabilitation program strengthening the muscles about the knee, specifically the hamstrings and the

quadriceps; which then actively are contracted and replicate, maybe not duplicate, but replicate or simulate what the ACL does to keep the knee from sliding. So, they can function well as long as their knee is kept in really good shape and has a normal gliding with the femur on the tibia in the meniscus.

Friedman Deposition, p. 14, l. 18 through p. 15, l. 7.

26. Dr. Friedman testified that the ACL is a major stabilizer of the knee; the meniscus a minor stabilizer. He opined that in the absence of the major stabilization provided by the ACL, Claimant's work accident causing his meniscal tear further decreased the stability of his left knee, causing Claimant's perception of left knee instability and causing his pre-existing left knee arthritis to become symptomatic. Friedman Deposition, pp. 17-18, 46. Dr. Friedman testified that even though Dr. Nicola performed only a partial meniscectomy, this allowed for more movement of the femur on top of the tibia making Claimant's left knee less stable and producing his ongoing knee pain and perception of knee instability. Friedman Deposition, p. 18.

27. Dr. Nicola. Dr. Nicola is a board certified, practicing orthopedic surgeon and is Claimant's treating surgeon. In his note of April 6, 2012, Dr. Nicola associated Claimant's left knee instability with his industrial accident. Dr. Nicola recorded:

Adam has had significant issues with his knee and states that he was fully functional without any knee problems as a semi-professional football player immediately prior to his accident. He has a statement by the owner of the Snake River SaberCats [sic] football team, he had no limitations at any time during 2010 season, came for off-season workouts in 2011 season and was able to continue playing, but was in great physical health with no issues whatsoever. That tends to make me think that something happened with this patient's ACL, which destabilized the knee as a result of his April 29, 2011 injury; in fact, he had the medial meniscal tear and had what appeared to be an old ACL, so I am somewhat at odds as to why all of a sudden his injury of April 29, 2011 caused his symptoms when he twisted his knee at work and he states it did swell and he did not feel a pop and had catching type sensation. The patient, again I felt at the time of his initial visit of June 9, 2011, had a chronic ACL tear; however, I have affidavit stating that in 2010 and 2011 season, he had no issues with this knee whatsoever. It appears that the patient's injury caused his symptoms of ACL instability, although again I felt that his tear is old and I am really uncertain exactly how he was able to play semi-professional football. I have affidavit

showing that he was able to play and had no issues during the 2010 and 2011 season. Unfortunately, I think this patient is going to need an ACL reconstruction at some point in the future.

Exhibit 7, p. 122 (emphasis supplied).

28. In responding to correspondence from Defendants' counsel in January 2013, Dr. Nicola checked boxes agreeing that Claimant's industrial accident did not cause an aggravation of his pre-existing ACL condition and that reconstruction of the ACL would not be causally related to the industrial accident. Dr. Nicola also indicated Claimant's knee was in poor condition prior to the meniscal tear. Exhibit 7, pp. 125-126.

29. In response to Defendants' inquiry, by letter dated March 14, 2013, Dr. Nicola indicated his agreement with almost the entire report produced by Dr. Daines, wherein Dr. Daines opined that Claimant's industrial accident caused only an extension of a pre-existing meniscal tear, a temporary aggravation of pre-existing left knee pathology, and concluded that Claimant's need for ACL reconstruction was not related to his industrial accident.

30. In his post-hearing deposition, Dr. Nicola again agreed with Dr. Daines' report. However, Dr. Nicola affirmed that the torn portion of the meniscus had to be surgically removed as it could not be repaired. The size of the tear required removal of approximately one-half of the posterior horn of Claimant's medial meniscus. Dr. Nicola testified:

[H]opefully by leaving half of his posterior horn, I left enough of the meniscus to continue to act as a stabilizer of the joint.

Q. (by Mr. Eidam) Is that something that the only way to really know is clinically to observe his recovery to see whether that was enough?

A. (by Dr. Nicola) Yes.

Nicola Deposition, p. 29, ll. 14-20. The record establishes that Claimant has not regained his pre-accident left knee functional stability.

31. Moreover, Dr. Nicola corroborated a critical aspect of Dr. Friedman's analysis by acknowledging that the partial meniscectomy loosened Claimant's left knee and aggravated his arthritis:

So what my impression was of that was the torn meniscus, and when I removed the torn meniscus it now allowed the knee to become looser.

Q. (by Mr. Eidam) Is the fact that he now has some of that meniscus removed then, does that allow for more toggling of the femur on top of the tibial plateau?

A. (by Dr. Nicola) The meniscus serves as a stabilizing function of the joint.

Q. So removal of the half that you removed, that would allow for more movement between the femur and tibia?

A. Yes.

Q. Would that type of movement aggravate his arthritis in his knee, the chondromalacia and cartilage lesions?

A. Any movement of the knee, any looseness of the knee, will aggravate those lesions.

Nicola Deposition, p. 47, l. 24 through p. 48, l. 15.

32. Dr. Nicola also explained an additional likely cause of Claimant's reported post-surgical left knee instability:

Normally when a patient comes in, and particularly after a knee injury and/or surgery, they complain of their knee giving away and hyperextending or they say the knee goes backward and kneecap popping. Again, that's all due to weakness, usually the quad muscle, the quadriceps muscle of the front leg, so we will want to rehab them and strengthen that quad muscle.

Nicola Deposition, p. 32, ll. 14-21. Dr. Nicola specifically opined that the reason Claimant noted instability now was mainly due to the weakness of his quadriceps muscles and that whereas he had previously played football and had strong quadriceps muscles, the pain from his cartilage lesions was getting in the way of his rehabilitating his quadriceps muscles and fully recovering from his surgery. Nicola Deposition, pp. 49-50.

33. Dr. Daines. Joseph Daines, Jr., M.D., is a board certified, practicing orthopedic surgeon. He examined Claimant in February 2012 at Defendants' request. Dr. Daines reviewed the MRI imaging showing Claimant's essentially absent left ACL, degenerative meniscus, thinning medial femoral condyle cartilage, and early arthritis in the medial compartment. He explained Dr. Nicola's operative report and his examination of Claimant's knee under anesthesia that showed moderate instability from his deficient ACL. Dr. Daines opined that at most, Claimant's industrial accident caused only an extension of a pre-existing meniscal tear and a temporary aggravation of his pre-existing left knee pathology. Dr. Daines concluded that Claimant's need for ACL reconstruction is not related to his industrial accident.

34. In concluding that Claimant's work accident only temporarily aggravated his left knee symptoms, Dr. Daines testified that he took Claimant's statement that he had no prior left knee symptoms with "a grain of salt because I would not expect somebody at his age with his activity level of a knee that is looking like that not to have had some problems in his knee before." Daines Deposition, p. 78, ll. 12-15. During cross-examination, Dr. Daines summarized his opinion, including his foundational assumption that Claimant's pre-accident history was inaccurate:

Q. (by Mr. Eidam) What prompted the symptoms he's been complaining of? Did the work accident do that?

A. (by Dr. Daines) The work accident caused him to develop some symptoms. Pain and what he's complaining about now, and instability feelings, they are subjective. Even the instability feelings can be subjective.

Objective evidence he had: He had some swelling that was noted by the doctors that saw him right after that happened, and he developed pain that you could feel along this side of his joint a little bit (indicating). So that is objective evidence.

Now we are dealing more with: My knee hurts, my knee doesn't feel stable, things like that. I'm just saying that the injury that he had on that date

probably did not cause his knee the kind of stress that his ACL was protecting him for, to come into play. And you have to look at the severity of the injury.

I mean, I do believe that you can have aggravation of things and the aggravation would go on, but I think this guy was probably going to have that same thing happen maybe the next day or the day after, maybe it would take a little longer, but he was going to get into the kind of symptoms he has now, which are, in my mind, related to this chronic underlying process and not specifically to the injury of 4/29/11.

Q. In his case though, had he not had that accident at work, as you just mentioned, it could have happened at some point in the future; right?

A. Might have.

Q. It might have—

A. It might have happened in the past and he just is not, he is not—

Q. He's not being honest?

A. He's not telling us that he's experienced anything.

Q. We don't have any reason to think he's being dishonest, do we?

A. I don't have any reason to think he's being dishonest. But I also know human nature is such that, I'm getting a little older and I've got a lot of things going on with my body and I'm great a [sic] denier.

Q. So is your opinion based on your assumption that he's not telling us quite everything?

A. I don't think he's telling us quite everything, no. But I don't think he's—by the same token, I don't think he's lying. I think that is just the way it is.

Daines Deposition, p. 83, l. 8, through p. 85, l. 4.

35. In spite of his ultimate conclusion, Dr. Daines qualified his opinion and implicitly acknowledged that Claimant's April 29, 2011 accident had some residual impact on his left knee condition:

Q. (by Mr. Ford) If he should have an ACL repair, in your opinion, is the cause of the need for that in any way related to the incident of April 29, 2011 or the surgery done by Dr. Nicola?

A. (by Dr. Daines) Not significantly, not by the weight of probability do I feel that incident or that injury played a significant role in what's going to go on in his knee in the future.

Daines Deposition, p. 71, ll. 13-20 (emphasis supplied).

36. Dr. Daines also acknowledged that Claimant's meniscus is contributing to his current knee problems and affirmed that meniscus removal does change the weight-bearing picture for the knee joint. Daines Deposition, p. 61. He agreed that "people who have conditions in their knee that are chronic and not going to disappear probably are a little more susceptible to injuries or developing symptoms after activity than other people." Daines Deposition, p. 79, ll. 11-15. He further acknowledged that Claimant's industrial injury resulted in a stress to his knee. However, when asked whether Claimant's injury on the job caused his pre-existing cartilage damage to become symptomatic, Dr. Daines opined:

I don't think it did, no. It did not cause that to happen. Because my way of looking at it, that's the type of stress that he put on his knee frequently in the work he was doing at that time and it didn't—the thousand times he did it before it didn't cause that.

I don't look at this injury as being a dramatic life-changing injury. You can have those. If somebody had arthritis in their knee and they had a dramatic injury where they broke through the joint or tore ligaments acutely through that like that [sic], then you have more of an argument that his symptoms were caused by this injury. For this injury and amount of stress that he sustained in his knee, that's not that kind of injury.

Daines Deposition, p. 80, l. 18 through p. 81, l. 7.

37. Weighing the medical opinions. Dr. Daines refused to relate Claimant's ongoing complaints to his industrial accident, because the accident was not dramatic. Significantly, the law does not require an accident be dramatic before the injuries therefrom are compensable. "If the claimant be engaged in his ordinary usual work and the strain of such labor becomes

sufficient to overcome the resistance of the claimant's body and causes an injury, the injury is compensable.” *Wynn v. J.R. Simplot Co.*, 105 Idaho 102, 104, 666 P.2d 629, 631 (1983).

38. Defendants correctly observe that Dr. Nicola labeled Surety’s refusal to authorize ACL reconstruction “appropriate” because the ACL tear clearly pre-existed the April 29, 2011 accident. Dr. Nicola is a very experienced, highly skilled, and widely respected orthopedic surgeon. However, the appropriateness of Surety’s refusal to authorize ACL reconstruction under the instant circumstances presents a legal question.

39. Defendants accuse Dr. Friedman of ignoring the medical evidence that Claimant had significant pre-existing left knee pathology, including arthritis and ACL deficiency. However, Dr. Friedman did not necessarily ignore evidence of Claimant’s pre-existing knee pathology. Rather, his opinion accepted as true Claimant’s assertion that his left knee was functionally stable and he had no pre-accident left knee complaints. Dr. Daines cites the medical evidence of Claimant’s pre-existing left knee pathology as justification to assume Claimant’s report that he had no pre-accident left knee complaints is false. Claimant’s testimony that his left knee was functionally stable and he had no pre-existing left knee complaints is well corroborated by his extensively documented high level of rigorous physical activity—including playing semi-professional football without limitation—shortly prior to his accident. Claimant’s testimony is credible.

40. Although Dr. Daines and Dr. Nicola concluded that Claimant’s need for ACL repair is not related to his industrial accident, their testimony actually corroborates several critical elements of Dr. Friedman’s analysis, thereby supporting his ultimate conclusion.

41. Dr. Daines acknowledged that meniscus removal changes the weight-bearing picture for the knee joint. Dr. Nicola affirmed that removal of half of the posterior horn of



Claimant's medial meniscus loosens the knee, allowing more movement between the femur and tibia that would aggravate the pre-existing chondromalacia and cartilage lesions in Claimant's left knee. The surgical removal of part Claimant's medial meniscus is obviously permanent, not temporary. Dr. Nicola confirmed that the only way to know whether sufficient meniscus remained to preserve joint stability is by post-surgical clinical observation. The record establishes that Claimant has not regained his pre-accident left knee functional stability.

42. Dr. Nicola's testimony further establishes Claimant's persisting functional left knee instability resulting from his inability to fully rehabilitate his quadriceps strength post-surgery because of the pain resulting from his left knee arthritis as aggravated by partial meniscectomy—the very treatment necessitated by his industrial injury.

43. Dr. Friedman's ultimate conclusion, that the industrial accident and partial meniscectomy aggravated and functionally destabilized Claimant's left knee, is persuasive. Although Claimant suffered from degenerative left knee pathology and ACL tear prior to his industrial accident, his left knee was asymptomatic and functionally stable. He was able to work and pursue other very strenuous activities—including playing semi-professional football—without limitation due to his knee. Claimant's pre-existing infirmity does not foreclose his worker's compensation claim provided the employment aggravated or accelerated the injury for which he seeks compensation. Spivey v. Novartis Seed Inc., 137 Idaho 29, 43 P.3d 788 (2002). Subsequent to Claimant's industrial accident, his left knee has restricted his work and other activities.

44. Defendants assert that Henderson v. McCain Foods, Inc., 142 Idaho 559, 130 P.3d 1097 (2006), controls the outcome of the present controversy. In Henderson, the Supreme Court affirmed the Commission's conclusion that claimant had not proven that her 2002 cervical

surgery was related to her 1999 industrial accident. The Court noted that Ms. Henderson had degenerative cervical changes, including spondylosis, osteophytes, and longstanding neck pain prior to her industrial accident. The Court observed:

An employee's "employer and surety are only liable for medical expenses incurred as a result of 'an injury' (i.e. an employment related accident), or 'disability from an occupational disease.' I.C. § 72-432(1). An employer cannot be held liable for medical expenses unrelated to any on-the-job accident or occupational disease." Sweeny v. Great West Transp., 110 Idaho 67, 71, 714 P.2d 36, 40 (1986). The fact that an employee suffered a covered injury to a particular part of his or her body does not make the employer liable for all future medical care to that part of the employee's body, even if the medical care is reasonable.

Henderson v. McCain Foods, Inc., 142 Idaho 559, 563, 130 P.3d 1097, 1102 (2006).

45. In the present case, while Claimant had pre-existing left knee conditions, including arthritis and ACL deficiency, Claimant's left knee was asymptomatic and functionally stable before his industrial accident. Persuasive medical evidence establishes that Claimant's industrial accident caused or worsened a medial meniscus tear thus necessitating partial meniscectomy, aggravating his asymptomatic left knee arthritis, and causing his knee to become symptomatic and functionally unstable. Dr. Friedman has persuasively testified that an ACL repair should be offered to Claimant for the purpose of restoring internal stabilization of the knee. Since it was the work accident that caused or contributed to Claimant's symptomatic destabilization, the ACL surgery proposed by Dr. Friedman is causally related to the subject accident. (See Friedman depo. 18/18 – 19/9).

46. 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 0085, 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 disc bulge. However, in evaluating causation the Commission stated: "Claimant has proven that his L3-4 disc 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 0085.56.

47. In the present case, Claimant's primary injury of April 29, 2011, is acknowledged by all parties. The industrial accident produced at least the extension of a pre-existing left medial meniscus tear. The injury and treatment for the meniscal tear required partial medial meniscectomy which decreased the stability of Claimant's left knee and aggravated his pre-existing arthritis.

48. The circumstances herein are akin to those in Mulnix and Gerdon. Claimant's increased left knee instability after partial meniscectomy is a natural consequence flowing from his 2011 industrial injury and not the result of an independent intervening cause attributable to his own intentional conduct. Dr. Nicola has recommended ACL reconstruction. Defendants dispute their responsibility for, but not the reasonableness of, ACL reconstruction. Claimant's present need for ACL reconstruction is a natural consequence of and thus related to his 2011 industrial accident. Claimant has proven that his need for left ACL reconstruction is related to his industrial accident.

49. **Temporary disability benefits.** The final issue is Claimant's entitlement to temporary disability benefits. Idaho Code § 72-102 (10) defines "disability," for the purpose of determining total or partial temporary disability income benefits, as a decrease in wage-earning capacity due to injury or occupational disease, as such capacity is affected by the medical factor of physical impairment, and by pertinent nonmedical factors as provided for in Idaho Code § 72-430. Idaho Code § 72-408 further 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).

50. In Malueg v. Pierson Enterprises, 111 Idaho 789, 791-92, 727 P.2d 1217, 1219-20 (1986), the Supreme Court noted:

[O]nce a claimant establishes by medical evidence that he is still within the period of recovery from the original industrial accident, he is entitled to total temporary disability benefits unless and until evidence is presented that he has been medically released for light work *and* that (1) his former employer has made a reasonable and legitimate offer of employment to him which he is capable of performing under the terms of his light work release and which employment is likely to continue throughout his period of recovery *or* that (2) there is employment available in the general labor market which claimant has a reasonable opportunity of securing and which employment is consistent with the terms of his light duty work release.

51. In the present case, Claimant has proven his need for left ACL reconstruction is related to his April 29, 2011 industrial injury and thus he is entitled to temporary disability benefits during his period of recovery. Dr. Nicola restricted Claimant from kneeling, squatting, crawling or ladder climbing due to his left knee condition. The record does not establish that Specialty offered Claimant suitable employment during his period of recover, rather, Specialty filled Claimant's position, thus precluding his return to employment there after his recovery from

partial meniscectomy. Fortunately, Claimant was able to find work after a time through an employment agency. Claimant has proven that he is still in a period of recovery, and that he is entitled to temporary disability benefits during his recovery.

### **CONCLUSIONS OF LAW**

1. Claimant has proven that his need for left ACL reconstruction is related to his industrial accident.

2. Claimant has proven that he is entitled to temporary disability benefits during his period of recovery.

### **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 19<sup>th</sup> day of December, 2013.

INDUSTRIAL COMMISSION

/s/  
Alan Reed Taylor, Referee

ATTEST:

/s/  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the 20th day of December, 2013, 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:

BRADFORD S. EIDAM  
PO BOX 1677  
BOISE ID 83701-1677

JAMES A FORD  
PO BOX 1539  
BOISE ID 83701

mg

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

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

ADAM C. CROGHAN,

Claimant,

v.

SPECIALTY, INC.,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,  
Defendants.

**IC 2011-011248**

**ORDER**

Filed December 20, 2013

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Pursuant to Idaho Code § 72-717, Referee Alan R. 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 that his need for left ACL reconstruction is related to his industrial accident.
2. Claimant has proven that he is entitled to temporary disability benefits during his period of recovery.
3. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 20th day of December, 2013.

INDUSTRIAL COMMISSION

/s/ \_\_\_\_\_  
Thomas P. Baskin, Chairman

/s/ \_\_\_\_\_  
R.D. Maynard, Commissioner

/s/ \_\_\_\_\_  
Thomas E. Limbaugh, Commissioner

ATTEST:

/s/ \_\_\_\_\_  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the 20th day of December, 2013, a true and correct copy of the foregoing **ORDER** was served by regular United States mail upon each of the following:

BRADFORD S. EIDAM  
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BOISE ID 83701-1677

JAMES A FORD  
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/s/ \_\_\_\_\_