

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JOSEPH HENRY,)
)
 Claimant,)
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 v.)
)
 DEPARTMENT OF CORRECTION,)
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 Employer,)
)
 and)
)
 STATE INSURANCE FUND,)
)
 Surety,)
)
 Defendants.)
 _____)

IC 2009-029710

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

FILED
JULY 15, 2011

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee LaDawn Marsters, who conducted a hearing in Boise on February 14, 2011. Claimant, Joseph Henry, was present in person and represented by Richard S. Owen, of Nampa. Defendant Employer, the Idaho Department of Correction (IDOC), and Defendant Surety, the State Insurance Fund, were represented by Bridget A. Vaughan, of Boise, Idaho. The parties presented oral and documentary evidence. Post-hearing depositions were taken and briefs were later submitted. The matter came under advisement on May 20, 2011.

ISSUES

By agreement of the parties, the issues set at the hearing to be decided are:

1. Whether Claimant suffered an injury from an accident arising out of and in the course of employment on November 15, 2009.

2. Whether and to what extent Claimant is entitled to the following benefits:
 - a. Medical care;
 - b. Temporary Partial and/or Temporary Total Disability benefits (TPD/TTD);
 - c. Permanent Partial Impairment (PPI); and
 - d. Disability in excess of impairment.
3. Whether Claimant is entitled to permanent total disability pursuant to the odd-lot doctrine or otherwise.
4. Whether Claimant is entitled to attorney fees pursuant to Idaho Code § 72-804.
5. Whether the Commission should retain jurisdiction beyond the statute of limitations.

The fourth and fifth issues were not addressed by either party in their briefs; therefore, these issues are deemed waived.

CONTENTIONS OF THE PARTIES

There is no dispute that Claimant suffered a heart attack on the morning of November 15, 2009. Claimant contends that his heart attack is a compensable injury because it was triggered by walking quickly in the early morning below-freezing weather to reach his work post at Unit 15 while stressed due to running late. He further contends that Defendants are liable for benefits related to his triple bypass surgery on November 26, 2009, as well as treatments related to ensuing complications, pursuant to the doctrine of compensable consequences, because his heart attack destabilized the network of arteries that had been successfully compensating for his chronically occluded right coronary artery. Claimant seeks reimbursement for his medical care as well as compensation for temporary total disability, and permanent whole person impairment in the amount of 17% with no apportionment for any preexisting conditions. In addition,

Claimant argues that his heart attack permanently exacerbated his preexisting anxiety disorder, rendering him totally and permanently disabled.

Defendants deny that Claimant suffered an injury from an accident arising out of and in the course of his employment. They assert Claimant's preexisting risk factors for cardiac pathology including smoking, hypercholesterolemia, hypertension, anxiety disorder and sleep apnea, and his own personal circumstances leading him to run late, are causative and, therefore, his claim is not compensable. In addition, they argue that Claimant was not exposed to any hazards at work that he was not also exposed to previously on that morning since he had not engaged in any work activities before suffering his injury.

In the event Claimant's heart attack is found compensable, Defendants deny that it caused his need for triple bypass surgery and assert that this procedure became necessary solely due to Claimant's preexisting conditions. Under these circumstances, Defendants assert Claimant is entitled to no more than medical and temporary disability benefits related to immediate care for his November 15, 2009 heart attack.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. The pre-hearing deposition testimony of Claimant, taken September 15, 2010, and admitted into evidence as Defendants' Exhibit G;
3. The testimony of Claimant and of his wife, Laura Henry, taken at the February 14, 2011 hearing;
4. Joint Exhibits 1 through 32 and Defendants' Exhibits A through H, admitted at the hearing;
5. The post-hearing deposition testimony of Kevin R. Krafft, M.D., taken February 16, 2011;

6. The post-hearing deposition testimony of Jon L. Hlavinka, M.D., taken February 23, 2011;
7. The post-hearing deposition testimony of Bret R. Kimmel, taken February 25, 2011, and admitted into evidence pursuant to an agreement of the parties at hearing;
8. The post-hearing deposition testimony of Aundrea Peaslee, LCPC, M.A., taken March 3, 2011;
9. The post-hearing deposition testimony of Mark G. Parent, M.D., taken March 4, 2011;
10. The post-hearing deposition testimony of Craig W. Beaver, Ph.D., taken March 23, 2011;
11. The post-hearing deposition testimony of Nancy J. Collins, Ph.D., taken March 23, 2011;
12. The post-hearing deposition testimony of Eric F. Holt, M.D., taken March 24, 2011.

OBJECTIONS

All pending objections are overruled.

After considering 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

INTRODUCTION

1. Claimant was 58 years of age and residing in Caldwell at the time of the hearing. He has a relevant history of risk factors for cardiac pathology including hypertension, anxiety disorder, sleep apnea, hypercholesterolemia, and a family history of heart disease. Claimant took medications for his hypertension, anxiety disorder and hypercholesterolemia and had a C-PAP machine, which he used irregularly, for his sleep apnea. In addition, Claimant has been a smoker since he was approximately 16. There have been some interruptions in Claimant's smoking

history, including a seven-year hiatus in the mid-1980's. He started smoking again in approximately 1992 and by 2009 he was smoking 1 – 1 ½ packs per day. At the time of hearing he was smoking ¾ to 1 pack per day. Finally, unbeknownst to Claimant, his heart disease had manifested in triple vessel coronary artery disease, including a totally occluded, but collateralized, right coronary artery. A stress echocardiogram ordered in September 2008 to rule out ischemia failed to detect this condition.

2. From 2001 until March 2010, Claimant worked as a prison guard at the Idaho State Correctional Institution (“ISCI”). On November 15, 2009, he suffered an acute myocardial infarction (“heart attack”) upon arrival at his duty post at approximately 6:30 a.m. Claimant asserts his heart attack is a compensable accident because it was triggered by his activities at work that morning.

3. Mark G. Parent, M.D., Claimant’s treating cardiologist, is the only medical expert to provide an opinion as to the cause of Claimant’s heart attack. He opined that it was triggered by the early morning hour, Claimant’s activities, his stress over being late for work, and the freezing temperature to which he was exposed outside. On April 30, 2010, Dr. Parent wrote to Claimant’s attorney:

You had asked me in my opinion whether or not Mr. Henry’s activities of that morning, getting to work were a factor in causing his heart attack, and knowing these other details of the temperature, the time of day, the activity level and the mental stress he was under, I think it is quite likely that those factors contributed to his myocardial infarction that day.

JE 12, p. 9.

4. Claimant was exposed to similar risks of suffering a heart attack both before and after his arrival at the work place. As noted above, Dr. Parent has proposed in his various writings, and again in his deposition testimony, that Claimant’s injuries are causally related to

the activities/events to which he was exposed following his arrival on the Employer's premises. The threshold issue in this case is whether Dr. Parent's opinion in this regard is sufficient to meet Claimant's burden of proving medical causation to a reasonable degree of medical probability.

MORNING OF NOVEMBER 15, 2009 – PRE-ARRIVAL ACTIVITIES

5. Claimant thought he was running a little behind schedule when he left for work, but he could not recall any particular reason why. He hurried to get out of the house and on the road. Tr., p. 111. He testified that the reason he was running late, whatever it might have been, was purely personal and not work-related.

6. Claimant's morning commute from Caldwell to south Boise took approximately 45 minutes. He started out in a car that had been parked outside all night. He described the weather that morning as being "kind of brisk". Tr., p. 33. Claimant testified that he did not remember anything out of the ordinary occurring that morning or along the way. No domestic unrest, no car trouble, nothing memorable. He testified that he felt no untoward symptoms of discomfort prior to his arrival at the prison.

However, Bret R. Kimmel, central control sergeant, testified that Claimant told him during his recovery that he had symptoms on his way to work that he thought, in retrospect, he should have paid attention to. Mr. Kimmel, the chairman of Employer's morale task force, spoke to Claimant several times after his heart attack while he was recovering. Mr. Kimmel testified:

Q. And then your second call, anything specific you remember about that as far as the nature of the call in general?

A. Again, it was kind of a checkup, how are you doing? What's your recovery—you know, what's it been like. In one of the conversations, you know, Officer Henry was telling me that when he had come in to work that day he wasn't feeling well. And, you know, kind of—during the drive and things like that, he should

have kind of paid attention to, I guess, his own feeling of—but that was after the fact.

...

Q. And he was describing the heart attack that he'd suffered on November 15?

...

A. Yeah. He was referring to the morning coming to work on the 15th. . . .

...

Kimmel Dep., pp. 11-12. Mr. Kimmel's testimony was taken in a post-hearing deposition through the parties' agreement.

7. Similarly, in an April 6, 2010 letter to Dr. Parent prepared based upon Claimant's reports ("the April 6 letter"), Claimant's attorney wrote, "By the time Mr. Henry got to the first administration building he did not feel very good, kind of had a general feeling of malaise, but had no specific symptoms." JE 13, p. 1.

MORNING OF NOVEMBER 15, 2009 – POST-ARRIVAL ACTIVITIES

8. Upon arrival at the prison, Claimant parked his car and walked 75 yards or so to the first security gate, then another 20 yards or so to the Administration Building, where he underwent a routine inspection. At this point, a coworker commented that Claimant looked unwell. The unnamed coworker did not testify, but at his deposition, Claimant related what the coworker said:

A. [Spontaneously] I was reminded by one of my fellow workers there [at the Administration Building] that I didn't - - they told me I didn't look very good.

Q. At this point when you were checking in with the shift lieutenant or his designee?

A. Yes.

Q. So on the day in question someone that was assigned to that duty mentioned to you didn't look well?

A. They said I didn't look very well.

Q. They reminded me. I had forgotten completely about it but...[end of

response].

Claimant Dep., pp. 70-71.

9. Claimant's testimony, however, paints a different picture about how he was feeling. At his deposition, he first testified that he was fine:

A. I came into the Administration Building, went through the control security doors and approached the lieutenant and checked in for the day's work. And they looked at me and kind of - - I forget the details of what they said. It was - - they expressed, "How you doing?" You know, "You okay? Good to go? Ready to go to work?" I don't know what the details were, but they - -

Q. Would that have been extraordinary or just what they normally do on any given day?

A. It's a caring thing, you know, a good supervisor should know how his men are doing.

Q. Okay.

A. So I checked in, I told them, "I'm fine. Let's go." And it's just another - - as far as I was concerned it's just another workday.

Id. at pp. 74-75. When pressed, however, Claimant explained that he did not remember what took place in the Administration Building:

Q. So at that point in time, as you're checking in with the lieutenant in the Admin Building, you were - - absolutely no physical symptoms at all?

A. The lieutenant or his designee - - I don't recall if I was sweating or having serious problems of any type. I do know I was there ready to go to work.

Q. Do you remember having any minor problems at all?

A. Just let's get with the program, time to go to work.

Q. So is your response to my question that you were having no symptoms of any sort, no physical difficulties, whether minor or major at the time that you were entering the Admin Building and checking in with the lieutenant or his designee?

A. I don't know completely. That was some time ago. I've been through a lot.

Id. at pp. 75-76. Then, at the hearing on February 14, 2011, Claimant again testified that he was feeling fine when he arrived at the Administration Building:

Q. Okay. When you get into the first building, Mr. Henry, how were you feeling?

A. Not bad.

Q. Nothing unusual?

A. No, as far as I was concerned it was just another day at work.

Tr., pp. 34-35.

10. Once inside the Administration Building, Claimant passed through a second secured area before exiting outside to walk to his post at Unit 15. Claimant described the distance and grade of the walk:

Q. Can you estimate for me how long that walk is? What's the distance?

A. Oh, I can't be exact, of course, but I would put it at 500 yards, maybe 600 yards.¹

Q. Then when you get to your work unit what happens?

A. By the way, there's slight inclines and slight declines, and there's prison population around on a small scale.

Q. Okay. And then you reach your unit, and then what happens?

A. Well, they have inclines, and you go up and down there walking across all these different slopes. And when you've reached the front of the unit...[remainder of response omitted].

Claimant's Dep., pp. 72-73. At the hearing, Claimant estimated the distance to be 500 yards.

Based upon Claimant's prior representations, Claimant's attorney represented in his April 6 letter to Dr. Parent that the walkway is 450 yards long. Mr. Kimmel testified that the walkway is

¹ Claimant's counsel asserted the distance was 450 yards in an April 6, 2010 letter to Dr. Parent seeking a causation opinion. Claimant's counsel speaks for Claimant, so it is presumed Claimant provided this information, which is inconsistent with his deposition testimony.

about a quarter-mile (440 yards) long and flat.

11. On arrival, Claimant walked up steps to enter Unit 15. He testified that there are six steps. Mr. Kimmel testified there are three.

12. When Claimant arrived at the control room at Unit 15, he sat down to rest. Coworkers commented that he looked kind of funny. Claimant responded, "Oh, I think it was just because I was in a hurry coming down the breezeway," and sat down to rest. Claimant's Dep., p. 80. The April 6 letter states, "By the time Mr. Henry got to the front door of the second building, he was sweating profusely and his co-workers immediately asked if he was alright." JE 13, p. 1.

13. Claimant thought he would be fine but, after sitting for 15 minutes, he thought he may be having a heart attack. His symptoms were escalating to include left arm pain and chest heaviness. After 30 minutes he was convinced he was having a heart attack so he asked someone to send for medical assistance.

14. Claimant was examined by onsite medical personnel, then taken by ambulance to St. Alphonsus Regional Medical Center. At the prison, he asked for, and took, a nitroglycerin pill. Other than checking in at the security gates and ambulating to his post, Claimant did not perform any activities at Employer's that morning.

MEDICAL CARE AND RECOVERY

15. At the hospital, Claimant was diagnosed with an acute posterolateral myocardial infarction due to a blockage of the right circumflex obtuse marginal artery. Mark G. Parent, M.D., a cardiologist, performed an emergency circumflex ejection thrombectomy and placed a stent. Dr. Parent discovered at that time that Claimant's right coronary artery was chronically occluded but completely collateralized by other vessels. He believed it was noncontributory to

Claimant's November 15 cardiac complaints. On the following day, Claimant was still having chest pain, the etiology of which was unclear. A diagnostic cardiac catheterization showed Claimant's stent to be widely patent and confirmed that his right coronary artery occlusion was chronic. Otherwise, it failed to identify a cause for Claimant's symptoms. Dr. Parent concluded:

This patient's chest pain is not due to aortic dissection. His shoulder and back pain I suspect might be more musculoskeletal. He does exhibit some pain seeking type procedure. The patient has clearly had an infarct but I do not believe it is a significant event for him. This could have actually been washout from the diagonal artery intervention rather than any complication from that. Regardless, the patient is hemodynamically stable, angiographically looks well and continues to complain of shoulder pain, which I think now at this point must be presumed to be nonischemic.

JE 11, p. 12.

16. Claimant was discharged on November 17, 2009. On November 25, 2009, Claimant underwent a treadmill test, which induced ventricular tachycardia. After further testing, Claimant was diagnosed with severe triple-vessel coronary artery disease. On November 26, 2009, Claimant underwent a non-emergent triple bypass by Andrew Forbes, M.D., a cardiac surgeon. This surgery was followed by complications including pleural and cardiac effusions requiring further invasive procedures.

17. After his cardiac procedures and a course of cardiac rehabilitation, Claimant attempted light duty work for Employer. He was unable to continue doing this work primarily due to anxiety from being around prisoners. He resigned in March 2010. Claimant has not been employed since then.

CARDIAC OPINION

18. Dr. Parent continued to treat Claimant following his heart attack and bypass surgery. The April 6 letter provided facts he should assume in developing his causation opinion:

Mr. Henry arrived for work on the morning of November 15, 2009, very early, about 6:30 a.m. Mr. Henry tells me that it was below freezing, dark and windy...

Mr. Henry was late to work and got out of his car and walked quickly to the first building which Mr. Henry tells me is approximately 75 to [sic] 100 yards away from the parking lot. By the time Mr. Henry got to the first administration building he did not feel very good, kind of had a general feeling of malaise, but had no specific symptoms.

Mr. Henry went in to the administration building where it was nice and warm and went through a check through process required by his employer. He then went back outside and walked as fast as he could another 450 yards to a second building. Mr. Henry tells me that he was late to work, worried about his job, and walked as fast as he could this last 450 yards in the cold weather.

By the time Mr. Henry got to the front door of the second building, he was sweating profusely and his co-workers immediately asked if he was alright. Mr. Henry indicates that he was taken to a break room and sat down. Over the next half hour, he continued to sweat profusely, his heart was racing, and these symptoms continually and gradually got worse...

JE 13, pp. 1-2. The letter asks Dr. Parent for his "...medical opinion about whether or not the activities Mr. Henry engaged in that morning *in getting to work* were a factor in causing his heart attack at the time and place when he experienced it." *Id.* at p. 2 (emphasis added). It also encouraged Dr. Parent to couch his response in terms of reasonable medical probability.

19. On April 30, 2010, Dr. Parent responded:

I was aware of some of the details of his activities, but not the more intricate details that you have summarized for me. These include that on the morning of the 15th of November 2009 when he arrived to work at 6:30 a.m., it was below freezing, dark, windy and cold and he had to get out of his car and because he was late for work, walk quickly into the first building of a distance of 75-100 yards. He did not feel very good after that walk and once he got in the warmth of the building, he felt a little malaise but he went through the administration building and through the check-in process. Then he had to walk outside and as fast as he could, walk another 450 yards to the second building, again because he was late for work.

When he got to the door of the second building, he was sweating profusely and he looked ill and his coworkers inquired as to his condition and he had to sit down in the break room. For the next one-half hour he began to sweat profusely with his heart feeling like it was racing and the symptoms gradually worsened and

worsened. He eventually came to the emergency room and was found to have a heart attack, the details of which are recorded in the medical record.

You had asked me in my opinion whether or not Mr. Henry's activities of that morning, getting to work were a factor in causing his heart attack, and knowing these other details of the temperature, the time of day, the activity level and the mental stress he was under, I think it is quite likely that those factors contributed to his myocardial infarction that day.

JE 12, p. 9. Notably, Dr. Parent did not figure any of Claimant's pre-arrival activities into his April 30, 2010 opinion. He apparently assumed Claimant's general feeling of malaise was due to his walk from his car to the Administration Building even though the April 6 letter does not represent when Claimant began feeling this way. Moreover, Dr. Parent was unaware of the statements attributed to Claimant by Mr. Kimmel that Claimant had felt unwell during his drive to work.

20. Defendants also sought Dr. Parent's opinion. On September 30, 2010, they provided Dr. Parent with some of Claimant's pre-heart attack medical records and asked directed questions. Dr. Parent replied on October 25, 2010, outlining Claimant's risk factors and likely triggers:

It is clear from the medical literature that longstanding tobacco abuse, hypertension, hypercholesterolemia, along with more minor risk factors of obstructive sleep apnea and anxiety, may lead to a developing atherosclerotic process and the development of a vulnerable atherosclerotic plaque. That plaque then needs some sort of trigger to lead to acute thrombotic heart attack like the one [Claimant] suffered on November 15, 2009. A likely trigger for heart attacks is often early morning exertion under cold temperatures, along with the stress and anxiety of going to work. As you know, [Claimant] has had a very difficult time handling daily life stressors and has required treatment with anxiolytics and antidepressants for a number of years.

JE 12, p. 2. Dr. Parent awkwardly explained that Claimant's early morning walking in the cold weather likely triggered his heart attack:

I would think that the patient had a 50% contribution to his myocardial infarction from his longstanding risk factors mentioned above and 50% due to the acute

provoking risk factors of early morning walking in the cold weather to work. Therefore, I would agree with you that it is equally likely that the heart attack could have been caused by either the longstanding risk factors that caused the development of an atherosclerotic plaque and then the triggering risk factors of that morning's activities.

JE 12, pp. 2-3.

21. Dr. Parent's opinions were further developed at the time of his post hearing deposition. On direct examination, he testified as follows concerning the cause of Claimant's myocardial infarction:

Q. All right, sir. You've indicated in letters to myself and to counsel that when Mr. Henry was late to work, he was hurrying in from a warm building to the cold outside; that the physical stress of that exercise triggered his heart attack. Can you explain, Doctor, the effect of cold weather on the efficiency of a heart and how that works? What I'm thinking, Doctor, is we always here [sic] in the winter of people who are out shoveling snow and have heart attacks, and I was wondering if you could help us understand why.

A. We know that the arteries are very dynamic in their size and under certain stimuli they will constrict. And cold weather and anxiety cause constriction of the artery size so it narrows the channel.

We also know that mental stress, anxiety, exercise, and cold weather, blood pressure goes up, which puts a hemodynamic stress on the artery, increases the need for oxygen to the heart muscle. So at the same time flow needs to be augmented, there's now a reduction of flow because of constriction.

We also know that the hemodynamic stress and probably other factors that are hormonal related to release of certain hormones during stress and anxiety can cause an atherosclerotic plaque to rupture.

...

Q. All right. Do you continue to believe, Dr. Parent, that Mr. Henry's physical exertion against the setting of his underlying personality was the factor and the cause of his heart attack on the morning of November 15 of 2009?

A. I believe it was a factor.

Parent Dep., pp. 42-44.

22. On cross-examination, Dr. Parent initially reiterated his belief that it was Claimant's post-arrival activities that were implicated in the cause of his myocardial infarction. Parent Dep., pp. 48-49. However, further questioning by defense counsel demonstrated that Dr. Parent's opinion on the issue of causation is dependent upon the assumptions he made concerning Claimant's pre- and post-arrival activities of November 15. At first, Dr. Parent acknowledged that sometimes heart attacks occur spontaneously, without any apparent precipitating trigger. He then testified that scientific research has established a causal connection between certain activities/events and the occurrence of a heart attack:

A. . . . But we also do know through scientific research and studies, as we discussed, that there are certain triggers that we identify with an acute myocardial infarction and have been shown. So we have some basis and scientific knowledge that there are triggers more likely to trigger the heart attack at certain times of the day and with certain kinds of activity and certain kinds of stress.

So you can never be a hundred percent sure that these were the trigger, but you can only make the conclusion that because the heart attack occurred on that day, and those activities were occurring at that time, and those events were occurring, that there has to be some contribution to that heart attack on that day. 'Cause why that day? Why not another day?

It's only through that basic science knowledge that we say that it's probable that those are contributing factors. Were they the sole cause? No. But they were contributors.

Parent Dep., p. 50. Dr. Parent was then asked on cross-examination to make some additional assumptions concerning the nature of Claimant's activities of November 15:

Q. Would your opinion with respect to causation change under a slightly different factual scenario, if the facts established that Mr. Henry commuted from Caldwell to his work; that on the morning in question he was aware he was running late while still in Caldwell prior to reporting for work at the correctional facility; that he entered a vehicle that had not been warmed up, that had been parked outside, presumably was exposed to the same temperatures in Caldwell, or close to the same temperatures, and on route to Boise, although in a vehicle, and was aware he was late during that commute, do you think any of those factors may have caused the onset of the myocardial infarction that morning?

Parent Dep., p. 51.

His response is illuminating and is worth quoting at length:

A. It's a little bit like bending a stick and saying, when is the breaking point going to occur? You hear it crack, you hear it pop, you see some splinters, you see some fibers, and then the thing breaks.

So is there a time when he's been exposed to the scenario that you described, is that leading up to or helping prepare this artery for this occasion, is this a contributor to it, it really becomes into fine points that are so difficult to be factual or scientifically based that you just can't distinguish that exact degree of contribution.

We don't know what's going on inside that artery. Was that artery – had a small plaque rupture during that time when he first got in the car? Was it happening as he was driving? Was it little bits of splitting of that atherosclerotic cap? Were things beginning to develop back then?

With any scientific certainty you can't answer that question. You can't say that you know that that was happening. What scientifically you can say is when the onset of symptoms occurred, the artery at that time did close, and the heart attack began at that time.

But can you say where along that day or the day before what was stressing his system, when was this – when was the inevitable day that this thing was going to happen? You have to look at it, I think, major stressors and minor stressors.

And if I look at things, you know, the cold car, the cold steering wheel, the driving through the traffic, were those stressors that were contributing? They likely could have been, should have been, you know, considered. But can you – how far can you dissect that down? That's where I get in trouble of dissecting down all those, you know, minute events that begin to occur.

And I can't go that fine for you as you'd like me to be in discerning which was the one, was it the cold car, the steering wheel, the traffic, the getting out? Certainly in his perception, at the time of my history taking with him, during the time of it and then subsequently going into more depth afterwards, he didn't relate to me those events.

And so in his perception it was really, you know, I was going quickly and it was cold, and those are the things I remember. So I can't pin that down to you in a certainty the preceding – earlier in the – preceding events earlier in the day that contributed to that, what percent. Very difficult for me to give you a discrete, scientifically based answer.

Q. So the opinion that you previously gave was based on the history that Mr. Henry provided to you?

A. Yes. Yes.

Q. Would your opinion at all be affected by evidence which suggested he appeared to be ill when he went through the check-in station, the first building he entered that day after coming from the parking lot?

A. I think a nonmedical person looking at someone who's late to work and who's under stress might easily make a judgment on somebody's health. Mr. Henry is an anxious person who displays that anxiety on his sleeve and you see that in him.

...

For you to ask me what's the contribution of the cold morning getting in the car and the drive to Boise is for me too fine a point to be so accurate to give you an opinion on what contribution – I just can't give that.

Parent Dep., pp. 52-55.

23. The sense that emerges from the quoted testimony is that blockage of the artery immediately leads to symptoms typically associated with a myocardial infarction. Therefore, one can determine when the blockage occurred by looking to the onset of symptomatology. However, Dr. Parent was much more circumspect about identifying the event or events which made the occurrence of the blockage inevitable. It is impossible, in other words, to say whether the inciting events that led to the plaque rupture occurred prior to Claimant's arrival on the premises, or subsequent thereto. For example, Dr. Parent acknowledged that anxiety is associated with myocardial infarction, but Claimant was anxious about being late both before and after his arrival. The time of day is also an important factor, but all the things that happened prior to the myocardial infarction occurred during the early morning hours of November 15. The Referee appreciates that Claimant's post-arrival activities included certain activities that Claimant did not perform until he arrived at the worksite. One must suppose that the walk from his car, to the administration building, to his job site was more physically demanding than the act of piloting his vehicle from Caldwell to the premises. However, though mindful of all these

facts, Dr. Parent was unable to opine which of these activities/events made it inevitable that Claimant would suffer the November 15 thrombosis when he did.

24. Further, Dr. Parent was unaware that Claimant told Mr. Kimmel he suspected something was wrong on the drive to work or that a coworker thought he looked unwell on arrival at the Administration Building. He presumed that Claimant exhibited no onset symptoms until he reached Unit 15; however, the evidence in the record suggests Claimant may have been experiencing onset symptoms before then. Because Dr. Parent failed to consider this evidence, his opinion lacks foundation.

DISCUSSION AND FURTHER FINDINGS

25. 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).

CREDIBILITY

26. **Claimant.** A claimant's credibility is generally at issue in a workers' compensation proceeding. The scrutiny in this case is heightened because two psychologists have opined that, after his heart attack, Claimant likely magnified his symptoms for purposes of secondary gain, either financial or to avoid working at the prison. Similarly, Dr. Parent noted on Claimant's first hospital admittance that he was magnifying his symptoms. In addition, Claimant's testimony with respect to whether he may have been having symptoms of a heart attack before he arrived at work on November 15, 2009 at his deposition and at the hearing is

internally inconsistent (he alternately testifies that he was just fine on arrival and that he cannot remember his condition). It is also inconsistent with Mr. Kimmel's testimony (that Claimant told him he should have paid attention to his pre-arrival symptoms), the unnamed coworker's observation (that Claimant looked unwell on arrival) and his attorney's representation to Dr. Parent (that he was experiencing general malaise at the Administration Building).

27. The Referee finds insufficient evidence to establish that Claimant intentionally failed to report or underreported symptoms consistent with a heart attack that he may have been experiencing before he arrived at work or was otherwise outrightly untruthful about his symptoms. After all, he did admit that a coworker commented he looked unwell on arrival at the Administration Building. However, there is some evidence that Claimant over-emphasized facts he believes would help his case, including his exaggeration of the distance and grade changes between the Administration Building and Unit 15.

28. The evidence of Claimant's self-advocacy, though understandable, is confounding. Given this, the psychological and medical opinions and the inconsistent evidence Claimant has proffered on some pointed key questions about his pre-arrival condition, the Referee finds Claimant's firsthand testimony as to his physical symptoms before he arrived at Unit 15 is unreliable and, therefore, lacks credibility.

29. The balance of Claimant's relevant testimony, excepting his estimate of the distance and grade of the walk to Unit 15 from the Administration Building, bears adequate indicia of reliability and is, therefore, credible.

DOES CLAIMANT'S HEART ATTACK CONSTITUTE A COMPENSABLE ACCIDENT?

30. The term "accident" is a term of art under Idaho law, and is defined at I.C. § 72-102(18)(b) as follows:

"Accident" means an unexpected, undesigned, and unlooked for mishap, or untoward event, connected with the industry in which it occurs, and which can be reasonably located as to time when and place where it occurred, causing an injury.

In meeting his burden of proof, Claimant need not identify, with any great specificity, the time when and place where the accident occurred. All that Claimant is required to do is to reasonably locate the occurrence of the accident in time and space. Here, Claimant has alleged that the injurious event took place at some point in time between his arrival on the premises, and the onset of symptomatology later that morning. These assertions, if true, would be sufficient to meet Claimant's burden of reasonably locating the time and place of the accident.

31. Nor, is it problematic to Claimant's case that he is unable to allege any unusual occurrence on the morning of November 15. Idaho case law makes it clear that an accident can occur when claimant is engaged in the usual and ordinary tasks of his employment when his ability to resist injury is overcome by those tasks. See *Wynn v. J. R. Simplot Company*, 105 Idaho 102, 666 P.2d 629 (1983); *Page v. McCain Foods, Inc.*, 141 Idaho 342, 109 P.3d 1084 (2005).

32. The activities in which Claimant engaged following his arrival on the premises were clearly activities which arose out of his employment even though his employment might not have resulted in a greater exposure to these activities than he experienced apart from his employment. See *Spivey v. Novartis Seed, Inc.*, 137 Idaho 29, 43 P.3d 788 (2002); *Vawter v. United Parcel Services, Inc.*, IC 2010-000114 (2011). In *Vawter*, the issue before the Commission was whether a back injury suffered by Claimant as he bent over to tie his shoes was the result of a risk which "arose" out of his employment. Relying on *Spivey, supra*, the Commission ruled that since the risk to which Claimant was exposed was a risk created by his employment, the accident was one which arose out of Claimant's employment. Application of

that rule to the facts of this case yields the same result; the risk to which Claimant was ostensibly exposed (cold weather and the exertion associated with walking to his worksite), were risks of injury created by his employment, notwithstanding that Claimant might have been exposed to similar risks apart from his employment.

33. In *Vawter*, medical causation was conceded. Medical causation, however, is the central dispute in this matter. Therefore, conceding that the alleged “accident” in this case is one which could be said to arise out of and in the course of Claimant’s employment, Claimant nevertheless bears the burden of establishing that the post-arrival events of November 15 are responsible for causing the myocardial infarction he suffered that morning.

34. In addressing the question of causation in this case, a pivotal issue is ascertainment of when the thrombosis actually occurred. Obviously, if the circumflex artery blockage occurred prior to Claimant’s arrival at the workplace, it is impossible to associate that event with his post-arrival activities. Since it is the blockage of the artery that produces symptomatology, it should be possible, as Dr. Parent has noted, to ascertain when the blockage occurred, by determining when the symptomatology began.

35. Dr. Parent has supposed that the blockage occurred after Claimant arrived on the premises, and there is evidence in the record to support the proposition that Claimant’s symptoms worsened considerably following his arrival at the worksite. Specifically, Dr. Parent considered Claimant’s exertional activities after he arrived at work including walking 75 yards from his car to a security checkpoint, walking another 25 yards into the Administration Building, waiting while his belongings were inspected, walking through the Administration Building where he passed through another security checkpoint, then walking as fast as he could for 450 yards until he reached Unit 15, where he climbed stairs.

36. However, there is also testimony of record which would suggest an onset of symptomatology prior to Claimant's arrival on the premises. In this regard, recall that Mr. Kimmel testified that Claimant reported feeling unwell during his drive to the prison and a coworker commented that he looked unwell on arrival at the Administration Building. Further, Dr. Parent did not consider Claimant's pre-work exertional activities, although he agreed they were likely contributory. In fact, Dr. Parent neither discounted nor quantified any other of the morning's activities in terms of their contribution to the closure of the affected artery at that point in time. At one juncture, Dr. Parent even implied that activities from the day before could have put processes in motion that made Claimant's heart attack on November 15 inevitable.

37. Considering the totality of the evidence, even the fact of Claimant's worsened post-arrival condition ultimately fails to establish that the injurious event which ultimately caused the blockage occurred after Claimant arrived at the worksite.

38. Dr. Parent has testified that the time of day is a relevant factor in determining the cause of Claimant's myocardial infarction. He testified that scientific research has established that myocardial infarctions are more likely to occur during the early morning hours. However, Claimant's pre-arrival and post-arrival activities all occurred during the early morning hours of November 15th, thus blunting the significance of the time of day in connecting Claimant's myocardial infarction to the demands of his employment.

39. Next, Dr. Parent commented on the significance of the psychological stress of being late to work as a factor contributing to the November 15th myocardial infarction. Again, however, this factor obtained both with respect to Claimant's pre-arrival and post-arrival activities. There is no compelling reason to suppose that the fear of being late stressed Claimant any more after he arrived on the premises, than before he got there. It is also worth noting that

there is conflicting evidence on the question of actually how stressed the Claimant was by running a few minutes late, and whether he was, in fact, late at all. (*See*, Claimant's Dep. pp. 76-77, 79; Tr. pp. 37-38).

40. Finally, Dr. Parent testified that research has shown that cold temperature is implicated in contributing to the onset of myocardial infarction. Here, Claimant has testified that on the morning of November 15, 2009, it was "brisk." He stepped out of his Caldwell home, started his car and drove to the prison. The record does not reflect how Claimant was dressed, whether appropriately or inappropriately for the conditions. There is no testimony that even though it was cold outside, Claimant was himself cold. In fact, Claimant testified that he was comfortable. Claimant's Dep., p. 83. On balance, the evidence is insufficient to establish that Claimant was actually exposed to any risk of vasoconstriction due to cold temperatures. Even if he was, the evidence shows he was exposed to this risk both before and after his arrival at the premises.

41. The Referee finds Dr. Parent's testimony insufficient to establish that any of Claimant's activities at his workplace on November 15, 2009 triggered his heart attack because he failed to rule out the earlier morning activities. He acknowledged that he should have considered Claimant's earlier activities including getting into a cold car, gripping a cold steering wheel and driving through traffic to get to work but, nevertheless, he did not. To the extent Dr. Parent's opinion relies upon Claimant's exertional activities at work to establish an industrial accident, it is materially flawed because it fails to rule out Claimant's prior exertional activities that morning.

42. The Referee finds Claimant has failed to establish to a reasonable medical probability that his heart attack was triggered by his activities at work on November 15, 2009. In

the final analysis, Dr. Parent's testimony is insufficient to establish that Claimant's post-arrival activities were responsible for causing or contributing to the occurrence of Claimant's myocardial infarction. Parent Dep., pp. 52-55. The evidence just as easily supports the proposition that it was something that happened prior to Claimant's arrival at the worksite that made his heart attack inevitable and caused it to occur when and how it did.² Having failed to establish a requisite causal relationship between his employment and the November 15 myocardial infarction, all other issues are moot.

CONCLUSIONS OF LAW

1. Claimant has failed to prove that he suffered an industrial accident.
2. All other issues are moot.

² Even assuming that Claimant's myocardial infarction is causally related to his post-arrival activities, it is by no means clear that Claimant's need for coronary bypass surgery is a natural and probable consequence of the November 15 myocardial infarction. Dr. Parent testified that, at most, the myocardial infarction provided the opportunity to discover Claimant's pre-existing right coronary artery blockage and other areas of concern which were addressed at the time of the 3-way bypass surgery. Although it is true that Dr. Parent has speculated that as a result of the myocardial infarction, a small clot slipped into the collateralized bed perfusing the territory normally perfused by the occluded right coronary artery, such that Claimant exhibited symptoms in that area during the November 25 stress test, Dr. Parent made it clear that this was only speculation and that there were many other theories that could explain Claimant's performance on the stress test which did not require some contribution from the November 15 myocardial infarction. On balance, and read as a whole, Dr. Parent's testimony fails to establish, to a reasonable degree of medical probability, that the November 15 myocardial infarction bears any relationship to the Claimant's need for the subsequent 3-way bypass procedure.

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 24TH day of JUNE , 2011.

INDUSTRIAL COMMISSION

/s/
LaDawn Marsters, Referee

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 15 day of JULY , 2011, 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:

RICHARD S OWEN
PO BOX 278
NAMPA ID 83653-0278

BRIDGET A VAUGHAN
1001 N 22ND ST
BOISE ID 83702-3222

srn /s/

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JOSEPH HENRY,)	
)	
Claimant,)	IC 2009-029710
)	
v.)	
)	
DEPARTMENT OF CORRECTION,)	
)	
Employer,)	ORDER
)	
STATE INSURANCE FUND,)	JULY 15, 2011
)	
Surety,)	
)	
Defendants.)	
_____)	

Pursuant to Idaho Code § 72-717, Referee LaDawn Marsters submitted the record in the above-entitled matter, together with her proposed 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 failed to prove that he suffered an industrial accident.
2. All other issues are moot.
3. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all issues adjudicated.

