

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JAVIER HERNANDEZ,)
)
 Claimant,)
)
 v.)
)
 BOB’S INSULATION,)
)
 Employer,)
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 and)
)
 ZURICH AMERICAN INSURANCE CO.,)
)
 Surety,)
 Defendants.)
)
 _____)

IC 2003-003590

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

Filed: February 25, 2011

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Rinda Just, who conducted a hearing in Idaho Falls, Idaho, on April 15, 2010. Paul T. Curtis of Idaho Falls represented Claimant. David P. Gardner of Pocatello represented Defendants. The parties submitted oral and documentary evidence at hearing and took two post-hearing depositions. Both parties submitted post-hearing briefs, and the matter came under advisement on October 28, 2010 and is now ready for decision.

ISSUES

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

1. Whether Claimant has complied with the notice limitations set forth in Idaho Code § 72-701 through Idaho Code § 72-706, and whether these limitations are tolled pursuant to Idaho Code § 72-604;

2. Whether Claimant suffered an injury from an accident arising out of and in the course of employment;
3. Whether the condition for which Claimant seeks benefits was caused by the industrial accident;
4. Whether Claimant's condition is due in whole or in part to a pre-existing and/or subsequent injury/condition;
5. Whether and to what extent Claimant is entitled to the following benefits:
 - A. Medical care;
 - B. Permanent partial impairment (PPI); and
 - C. Permanent partial disability in excess of impairment (PPD).

Because of the way that this case developed, the primary issue to be resolved is whether Claimant's right carpal tunnel syndrome (CTS) relates to his accepted 2003 industrial claim, or is a new injury. If Claimant's CTS is the result of his 2003 injury, then Surety must provide reasonable medical care deemed necessary by Claimant's treating physician. In such event, the issues of PPI and PPD are not ripe for decision. Issues one through three only come into play if the findings lead to a determination that Claimant's CTS is a new injury.

CONTENTIONS OF THE PARTIES

Claimant asserts that, as a result of the amputation of three fingers on his right hand in the 2003 industrial accident, he has developed CTS in that extremity, requiring surgical intervention. Claimant also contends that he is entitled to more than the 16% whole person PPI paid by Defendants for the 2003 injury, and that he is entitled to PPD in excess of his impairment, which Defendants have refused to pay.

Defendants do not dispute that Claimant had CTS in his right upper extremity. They

contend that the CTS is unrelated to the 2003 industrial amputation of fingers on the right hand and is, instead, a new injury. If the CTS is a new injury, then issues of notice and causation require determination. Defendants assert that Claimant is not entitled to additional PPI benefits and that he has failed to prove an entitlement to any PPD benefits.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant, taken at hearing;
2. Claimant's exhibits 1 through 8, and 10 through 14, admitted at hearing;
3. Defendants' exhibits 1 through 3, admitted at hearing;
4. The post-hearing depositions of Casey Huntsman, M.D., taken June 14, 2010, and

David Simon, M.D., taken June 29, 2010.

All objections made during the course of the post-hearing depositions are overruled. After having considered all the above evidence and the briefs of the parties, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

FINDINGS OF FACT

1. Claimant was forty-four years old at the time of hearing. He resided in Shelley with his wife and one minor child. Claimant was born and raised in Durango, Mexico. He completed five years of schooling in Mexico. Claimant came to the United States in 1985, and worked in the potato, dairy, and cattle industries before going to work for Employer in about 1989. Claimant speaks little English and does not read or write the language.¹

¹ At hearing, Claimant testified through an interpreter. The Referee notes, however, that Claimant did not require the use of an interpreter when he was deposed. The deposition transcript reflects some areas of confusion or misunderstanding, but for the most part, Claimant was able to understand and respond to questions from counsel.

2. Claimant went to work for Employer in about 1989, working as an insulation installer.

2003 ACCIDENT AND MEDICAL CARE

3. On February 24, 2003, Claimant was blowing insulation into the walls of a building when the blower hose clogged. Claimant stopped the blower and was removing the blockage with his right hand, when the blade that chops the insulation moved, cutting off the tips of the three middle fingers on his right hand.

4. Claimant went to the hospital, where Dr. Huntsman surgically amputated the three fingers. Claimant had a slow recovery with several complications, including a fingernail that began to grow under the skin on one of the fingers, necessitating a revision surgery. Claimant also suffered from significant swelling in the right hand that took almost a year to resolve. As a result of the edema, Claimant suffered tenosynovitis in his fifth finger (his pinkie) to the extent that the finger locked up (trigger finger), requiring a cortisone injection.

5. Throughout his recovery, Claimant complained of pain and a feeling that his fingers were cold. He also variously experienced hypersensitivity of the amputated fingers and then some loss of sensation in the fingers.

6. Dr. Huntsman found Claimant to be medically stable from his multiple finger amputation in April 2004. Dr. Huntsman released Claimant from care, and rated his PPI at 16% whole person.

RETURN TO WORK

7. As Claimant progressed through his recovery from the industrial accident, he returned to work for Employer with restrictions, and eventually returned to full duty. Claimant continued to work for Employer until 2005, at which time he left to go to work with a new

company started by the co-worker who was his supervisor while he worked for Employer. Claimant testified that he left Employer because the new company, New Age Insulation, was offering health insurance. At the time of hearing in 2010, Claimant continued to work for New Age Insulation.

CARPAL TUNNEL SYNDROME

8. In February 2009, Claimant returned to see Dr. Huntsman about symptoms in his right hand that had persisted since his original injury and became progressively worse. Dr. Huntsman's chart note states:

[Claimant] states he gets a lot of tightness and swelling in his fingers and he feels like they are throbbing when he hangs them down. He is getting pain down into the volar aspect of his wrist and palm. He gets numbness and tingling in the second, third, and fourth fingers and they feel cold all the time. It gets worse with gripping type activities.

Claimant's ex. 5, p. 21. Although not reflected in Dr. Huntsman's notes, he testified that it was his understanding from speaking with Claimant that Claimant had been experiencing this sensation of coldness in his fingers during the entirety of the five years preceding the February 2009 visit. Dr. Huntsman Depo., pp. 41-42. Dr. Huntsman examined Claimant's right hand and noted that the amputation sites looked good, with no edema. Claimant exhibited decreased sensation over the second, third, and fourth fingers, tenderness over the thenar eminence, and positive Phalen's and Tinel's tests at the right wrist. Dr. Huntsman suspected CTS and recommended conservative care, including anti-inflammatories and the use of a night splint.

9. Claimant returned for follow-up in late March, reporting no improvement. Dr. Huntsman's physician assistant ordered EMG and nerve conduction studies, and strongly suspected that Claimant would require CT release surgery on the right upper extremity.

10. Claimant did undergo EMG and nerve conduction studies. The Referee excluded the results of the studies themselves, because Claimant failed to produce the records in a timely manner. However, Dr. Huntsman's chart notes state that the studies confirmed the CTS diagnosis. The physician assistant administered a steroid injection to see if that would resolve Claimant's symptoms.

11. Claimant returned in May 2009, and reported to the physician assistant that the steroid injection only helped for about three days. When Claimant next saw Dr. Huntsman, the doctor recommended surgical CT release.

12. In May 2009, Claimant's counsel sent a letter to Dr. Huntsman asking his opinion on whether or not Claimant's original 2003 injury caused his CTS. Counsel asked Dr. Huntsman to indicate his opinion, on a more likely than not basis, by checking the appropriate box and returning the letter to Claimant's counsel.

CAUSATION OPINIONS

Dr. Huntsman

13. Dr. Huntsman did not complete and respond to counsel's May 2009 letter until February 2010. On February 22, 2010, Dr. Huntsman placed an "x" beside the option that stated: "Based on a medical certainty of 51% more probable than not, [Claimant's] carpal tunnel is an extension of the original injury on 2/24/03." When asked about the delay in responding to the original inquiry, Dr. Huntsman surmised that his office staff filed the letter upon receipt rather than give to him for action. In any event, he was certain that he did not act on the letter until he dated and signed it on February 22, 2010.

14. By letter dated April 5, 2010, Dr. Huntsman provided a more detailed explanation of the reasoning he adopted in the check-box letter. Dr. Huntsman noted that he first saw

Claimant on February 24, 2003, and performed a surgical revision of the amputated digits. He goes on to state:

Since that time I followed him up and he had a lot of problems with flexor tendinitis and synovitis of those same fingers. This went back into the palm of his hand and was a problem when we stopped treating him initially on April 19, 2004.

Claimant's Ex. 5, p. 14. Dr. Huntsman went on to explain:

I do believe the carpal tunnel syndrome is due to the chronic tenosynovitis he has secondary to his fingertip amputations. I do believe there is a high medical probability that those two problems are related.

Id.

Dr. Simon

15. Defendants asked Dr. Simon, a physiatrist, to perform a record review of Claimant's file and offer his opinion on Claimant's CTS diagnosis and its relationship to his 2003 industrial injury. Dr. Simon reviewed Dr. Huntsman's medical records and Claimant's deposition. Dr. Simon opined in his April 5, 2010 report that Claimant's CTS was unrelated to the 2003 accident. Dr. Simon identified the following factors as leading to his decision:

- Dr. Huntsman's medical records from February 2003 through April 2004 "do not show that [Claimant] had symptoms of, or was diagnosed with CTS despite extensive evaluation by Dr. Huntsman." Defendants' Ex. 1, p. 1;
- If Claimant had CTS symptoms that persisted from February 2003 through April 2004, Dr. Huntsman would have performed a CTS release when he performed the amputation revision;
- CTS is common and usually arises from repetitive use. Since Claimant has been doing repetitive work with his right hand for the past four-and-a-half years, this is the most likely cause of his CTS.

Gary L. Cook, M.D.

16. Claimant saw Dr. Cook for an IME on December 29, 2009. Dr. Cook compiled his findings in a seventeen-page report. In particular, he noted that Claimant "had a reasonably

good understanding of English” and did not require a translator. Claimant’s Ex. 11, p. 37. Dr. Cook determined that Claimant was medically stable with regard to his right hand finger amputations. He calculated Claimant’s PPI to be 22% whole person impairment, taking into account the digital amputation, digital nerve sensory deficits (left hand), range-of-motion deficits (right hand), left hand pain, and strength deficit (right hand).

17. Dr. Cook opined that:

To a reasonable degree of medical certainty, there is a causal relationship between the “injury” and the subjective/objective findings as indicated in the review of the records, the individual’s stated history and the physical exam findings.

Id., p. 46. Dr. Cook recommended restrictions, including: Limit/avoid future trauma to the injured fingers, and limit single-handed, repetitive lifting to less than twenty pounds.

DISCUSSION AND FURTHER FINDINGS

18. As noted at the outset of this recommendation, Claimant’s diagnosis of CTS is not at issue in this proceeding. Rather, the parties identify the primary issue that must be resolved as whether the 2003 industrial accident caused Claimant’s CTS.

19. The burden of proof in an industrial accident case is on the claimant.

The claimant carries the burden of proof that to a reasonable degree of medical probability the injury for which benefits are claimed is causally related to an accident occurring in the course of employment. Proof of a possible causal link is insufficient to satisfy the burden. The issue of causation must be proved by expert medical testimony.

Hart v. Kaman Bearing & Supply, 130 Idaho 296, 299, 939 P.2d 1375, 1378 (1997) (internal citations omitted). "In this regard, 'probable' is defined as 'having more evidence for than against.'" *Soto v. Simplot*, 126 Idaho 536, 540, 887 P.2d 1043, 1047 (1994). Once a claimant has met his burden of proving a causal relationship between the injury for which benefits are sought and an industrial accident, then Idaho Code § 72-432 requires that the employer provide

reasonable medical treatment, including medications and procedures.

EXPERT MEDICAL TESTIMONY

20. The record in this proceeding includes expert medical testimony from three physicians regarding a causal relationship between Claimant's 2003 industrial amputations and his current diagnosis of CTS. After careful consideration of each of the opinions, the Referee finds the opinion of Dr. Huntsman the more persuasive.

Dr. Huntsman

21. Dr. Huntsman was the physician who took Claimant to surgery to complete the amputation of the right three middle digits begun by the insulation blower. It was Dr. Huntsman who took Claimant back to surgery to revise one of the amputations. Dr. Huntsman cared for Claimant for well over a year, seeing him, on average, once a month. He was so well-acquainted with Claimant and his course of treatment that he had independent recollection of most of Claimant's treatment, including discussions the two of them had about Claimant's on-going pain symptoms in his right hand.

22. Dr. Huntsman's opinion on the cause of Claimant's CTS, as set out in the correspondence, was clearly stated and fully explained. He provided additional explanation during his deposition:

Any time you have amputations you affect not only the bone but the tendons and the soft tissues that cross that, that area of the finger.

So, he definitely did get some flexor tendonitis after the injury which is inflammation of the tendon.

You know, as an example he had that trigger finger on his fifth finger. That was due to flexor tendonitis. That was a manifestation of that problem.

So I knew he had that problem going on after his injury and for that first year after the—after the problem or after the injury.

He always had complaints of the cold feeling, the numbness and tingling feeling of the second, third and fourth fingers.

As far as me evaluating that as carpal tunnel, as I would in a person with intact fingers, it was hard to do because it cut half of his fingers off.

So we just assumed that these symptoms were secondary to his amputations. But, in fact, we found out later that when we did the testing that he had carpal tunnel syndrome which is consistent with—you know being secondary to the tenosynovitis which thickens the tendons and care take up space and push on the median nerve causing carpal tunnel syndrome.

Q I mean, from a medical standpoint how could an amputation lead to thickening of those tendons in the carpal tunnel area?

A Couple of different ways. Number one: Swelling. He had a lot of bleeding into his hand. A lot of swelling; enough so that his fifth finger was locking.

That tendon was not sliding through the sheath. So, we know he had a lot of inflammation in his tendons. There is no question about that. Secondly: You know, since these injuries he has lost leverage, you know, so he has to use his hand different than he used to.

And I think that makes him more susceptible to having problems such as carpal tunnel.

Dr. Huntsman Depo, pp. 22-23, 38. Dr. Huntsman also pointed out that Claimant had a lengthy course of physical therapy following the amputations, because “he had a hard time getting his motion and strength back in his hand and his grip.” *Id.*, at p. 12. Dr. Huntsman assumed the difficulties related to the amputation, but they could also have been symptoms of CTS.

23. At his deposition, Dr. Huntsman testified that he had read Dr. Simon’s report, and disagreed with the findings, in particular Dr. Simon’s statement that Dr. Huntsman’s chart notes did not mention any CTS symptoms:

Well, [Claimant] complained of the coldness in his fingertips and the sensation change from the very beginning.

So, when he came back to me five years later I assumed that would have just kind of faded away; instead it had become more prominent.

So, I had cared for him before. It thought this was an extension of what he had complained to me about earlier and decided to work it up further at this point.

Id., at p. 25.

Dr. Simon

24. Dr. Simon prepared a causation opinion at the request of Defendants. Dr. Simon

did not conduct an IME, but performed a record review limited to Dr. Huntsman's chart notes and Claimant's deposition. In his written findings, Dr. Simon concluded that Claimant's CTS was unrelated to his original accident. He gave three reasons for his conclusion. First, Dr. Simon asserted that Dr. Huntsman's records made no reference to CTS symptoms or a CTS diagnosis. Second, Dr. Simon concluded that, if Claimant had CTS symptoms for a year, Dr. Huntsman would have done a CT release at the same time he revised the amputation of the fourth finger in January 2004. Finally, Dr. Simon determined that since Claimant had been working as an insulation installer for four-and-a-half years following his amputations, his CTS was the result of repetitive use of his right hand in his post-injury job.

25. None of the reasons that Dr. Simon gives as support for his opinion survive a cursory examination. As discussed at length in his deposition, Dr. Huntsman's records regarding Claimant's treatment include frequent references to symptoms that would have been suspicious for CTS had they not been conflated with the expected effects of the multiple amputations. Dr. Huntsman never diagnosed CTS, but in retrospect, Claimant complained of symptoms consistent with CTS throughout his treatment. Even Dr. Simon has acknowledged that the complaints with which Claimant presented following the industrial accident are consistent with a diagnosis of CTS. Dr. Simon Depo., p.10. Finally, Dr. Simon's assertion that Claimant's CTS was a result of his work as an insulation installer post-injury is not credible. Perhaps Dr. Simon was unaware that Claimant had worked as an insulation installer for many years before his accident, and returned to the same work after his accident. Claimant testified that he used the pneumatic staple gun frequently before his injury, but not so after his injury. Claimant's foreshortened fingers made it difficult for him to activate the staple gun trigger. Claimant stated that, after his injury, he only used the staple gun for short periods—never more than an hour—

and organized his co-workers to handle the parts of the job that were most difficult for him. If Claimant's use of the staple gun, even on a limited basis, was a factor in his worsening CTS, it traces back to the amputation because he had to use the gun in an awkward manner in order to activate the tool. Dr. Huntsman Depo., pp. 38-39.

Dr. Cook

26. Dr. Cook conducted an IME of Claimant under the aegis of "Independent Medical, PLLC," of Rexburg, Idaho. Dr. Cook's specialty and background were not a part of the record in the instant proceedings, nor did any party take his deposition. The Referee is aware of one other Commission case in which Dr. Cook performed an IME (See, *Licano vs. Community Council of Idaho, Inc., and Idaho State Insurance Fund*, 2010 IIC 0377 (November 26, 2010)). At the time he performed the IME in *Licano*, on or about May 26, 2009, Dr. Cook did so under the auspices of Allied Healthcare, PLLC, in Idaho Falls. Dr. Cook's credentials were not included as part of the record in *Licano*.

27. Dr. Cook's report includes a discussion of an office exam, Claimant's performance on tests designed to measure his perceived disability, and a brief evaluation for depression. Dr. Cook agreed with Dr. Huntsman that Claimant's CTS related to his 2003 industrial injury, and calculated Claimant's impairment using the *AMA Guides to the Evaluation of Permanent Impairment*, 5th ed. Dr. Cook concluded that Claimant's whole person impairment was 22% for the 2003 industrial injury. The Referee was unable to verify Dr. Cook's impairment analysis, because it included values for impairment of the left hand in several categories, though Claimant sustained no injury to his left hand. Although medical records do sometimes include an incorrect reference, usually a careful reading of the entire document confirms that a reference to the wrong body part was clearly an oversight. However, in this

report, the references to left hand impairment appear in several different discussions alongside references to the right hand, making it impossible to discern what Dr. Cook actually intended.

28. As a result of its significant flaws, and a complete lack of information about the qualifications of Dr. Cook, the Referee accords Dr. Cook's IME report no weight.

Summary of Causation Evidence

29. The Referee finds that Dr. Huntsman's opinion is the most authoritative on the causation issue. He is well-acquainted with Claimant and the facts surrounding Claimant's industrial injury, subsequent treatment, and course of recovery. His testimony regarding Claimant's symptoms during his recovery from the industrial accident was forthright, especially in light of the fact that some might find Dr. Huntsman at fault for missing the CTS diagnosis initially. In contrast, Dr. Simon's report is over-simplified, conclusory, and evidences a lack of understanding of relevant and undisputed facts of record. The Referee cannot rely on the IME of Dr. Cook, but notes that it is generally consistent with Dr. Huntsman's findings.

REMAINING ISSUES

30. A determination that Claimant's CTS arose out of his 2003 industrial accident moots the first three issues that the parties asked the Commission to resolve. The finding that Claimant's CTS arose out of his 2003 industrial injury carries with it an obligation on the part of Defendants to provide treatment pursuant to Idaho Code § 72-432. Dr. Huntsman's April 5, 2010 report establishes that Claimant is in need of surgical treatment for his CTS, and, therefore, consideration of the issues of impairment and disability are premature. *See*, Claimant's Ex. 5.

CONCLUSIONS OF LAW

1. Claimant has met his burden of proving that his undisputed CTS in the right upper extremity arose out of his 2003 industrial injury.

2. Issues of notice and causation with regard to a new injury are moot.

3. Claimant is entitled to reasonably necessary medical care as prescribed by Dr. Huntsman, his treating physician.

4. Claimant is entitled to time-loss benefits during a period of recovery following the CT release surgery.

5. Impairment and disability issues will not be ripe for decision until Claimant reaches medical stability from his CT release procedure.

RECOMMENDATION

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

DATED this 10 day of February, 2011.

INDUSTRIAL COMMISSION

/s/ _____
Rinda Just, Referee

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

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IC 2003-003590

ORDER

Filed: February 25, 2011

Pursuant to Idaho Code § 72-717, Referee Rinda Just 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 recommendation of the Referee. The Commission concurs with this recommendation. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

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

1. Claimant has met his burden of proving that his undisputed CTS in the right upper extremity arose out of his 2003 industrial injury.
2. Issues of notice and causation with regard to a new injury are moot.
3. Claimant is entitled to reasonably necessary medical care as prescribed by Dr. Huntsman, his treating physician.

4. Claimant is entitled to time-loss benefits during a period of recovery following the CT release surgery.

5. Impairment and disability issues will not be ripe for decision until Claimant reaches medical stability from his CT release procedure.

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

DATED this 25 day of February, 2011.

INDUSTRIAL COMMISSION

/s/ _____
Thomas E. Limbaugh, Chairman

/s/ _____
Thomas P. Baskin, Commissioner

Unavailable to sign
R.D. Maynard, Commissioner

ATTEST:

/s/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of February, 2011, a true and correct copy of the foregoing **FINDINGS, CONCLUSIONS, and ORDER** were served by regular United States Mail upon each of the following persons:

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djb

/s/ _____