

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

DARREN A. JOHNSON,

Claimant,

v.

PAUL GLAZIER,

Employer,

and

STATE INSURANCE FUND,

Surety,

Defendants.

IC 2011-019047

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

Filed December 20, 2012

INTRODUCTION

Pursuant to Idaho Code § 72-508, the Idaho Industrial Commission assigned the above-entitled matter to Referee Michael E. Powers, who conducted a hearing on July 18, 2012. By agreement of the parties and the Referee, Claimant participated in the hearing by telephone from North Dakota, where he is currently employed. Employer/Surety's counsel and Employer, Paul Glazier, participated by telephone from the Coeur d'Alene field office. The Referee participated by telephone from his office in Boise. Oral and documentary evidence was presented. There were no post-hearing depositions. The parties submitted post-hearing briefs and this matter came under advisement on October 12, 2012.

ISSUE

The sole issue to be decided by the Commission is whether Claimant's acute appendicitis and resultant surgery was caused by his June 29, 2011 industrial accident.

CONTENTIONS OF THE PARTIES

Claimant contends that he suffered traumatic appendicitis when he fell from a log deck and landed on his right side. Because Defendants would not authorize it, Claimant was forced to pay for his appendectomy himself. He has yet to have a colonoscopy prescribed by his doctor and still has “unresolved issues” regarding his accident, including his entitlement to reimbursement for his surgery.

Defendants concede that Claimant suffered a workplace accident in which he sustained a fractured right rib, and nothing more. Defendants paid for the treatment of Claimant’s rib fracture and owe nothing else.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant, presented telephonically at the hearing.
2. Defendants’ Exhibits 1-7, admitted at the hearing.

After having considered all the above evidence and 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 43 years of age and resided in Trout Creek, Montana, at the time of the hearing. He was hired by Employer as a skidder operator in June 2011. Claimant has a documented history of right flank pain and, in 2009, underwent a CT scan that identified a chronically dilated appendix.

2. On June 29, 2011, near Priest River, Claimant suffered an accident: “And I was doing some limbing and bumped a couple of knots there and the bark had come off in a spot or two and I slipped, came down and rammed a top up into my freaking guts there; about four to

five feet there I fell. And then I went over backwards and landed on my back and that's how I broke the rib in my back." Hearing Transcript, pp. 13-14.

3. Claimant missed no work as a result of his accident until August 5, 2011 when he was terminated for reasons not pertinent to this claim. He first sought medical care post-accident on July 15, 2011, when he saw Mark Hernandez, M.D., and Nurse Practitioner Brett O'Conner at Sandpoint Family Medicine. Claimant was diagnosed with a right abdominal injury via blunt trauma. Claimant was referred to Bonner General ER for an abdominal CT scan that revealed: "The appendix is slightly prominent and there is suggestion of slight edema along the appendix. In the setting of right lower quadrant trauma, these findings are of uncertain clinical significance and could either be inflammatory or posttraumatic in nature." Defendants' Exhibit 5, p. 4. Claimant was released with analgesic medication.

4. On August 22, 2011, Claimant again saw NP O'Conner who continued the diagnosis of "right abdominal blunt injury." *Id.*, p. 6. Mr. O'Conner noted, "At this point, I'm not sure what is going on w/pt so we will send him to Coeur d'Alene for a GI surgery evaluation." *Id.*

5. That same day, another CT scan revealed a healing rib fracture. It also revealed: "The appendix is again demonstrated to be somewhat prominent, measuring nine or 10 mm in diameter. There is also again noted to be probable edema along the appendix. The appendix is very similar in appearance to the previous examination. Small, slightly prominent right lower quadrant lymph nodes are noted. No abscess is suggested in the right lower or pelvis. There is no CT evidence of diverticulitis. No ascites." Defendants' Exhibit 5, p. 7.

6. Claimant presented to Edward G. deTar, M.D., a board certified general surgeon, on September 14, 2011, on referral from Dr. Hernandez. The listed reason for the consultation was traumatic appendicitis and right-sided abdominal pain. Dr. deTar took the following history:

The patient is a 43 year-old-male who was involved in an accident about 5 weeks ago. He fell approximately 4 feet onto the end of a 12-inch diameter log, hitting the right side of his abdomen [and] the inferior right ribs. At that time, a CT scan of his abdomen was obtained which demonstrated edema around his appendix, and a slightly enlarged appendix. Since that time he has had right-sided abdominal pain, nausea, dizziness, and light-headedness, and he has had diarrhea. The diarrhea has not really improved nor has his pain. On the day prior to my consultation, he had an incisional CT scan of his abdomen. This demonstrated a callus around an inferior right-sided rib. This clearly demonstrates that he fractured a rib and that this is healing. This might explain some of his pain, but he also continues to have edema around his appendix and some adenopathy in the right lower quadrant. He continues to have diarrhea. He denies having blood in his stool. He has no sick contacts. He has no fever and chills.

Defendants' Exhibit 6, p. 6.

7. Based on a diagnosis of right-sided abdominal pain with a distended and edematous appendix, Dr. deTar recommended that Claimant undergo a colonoscopy to rule out mucosal abnormalities or inflammatory bowel disease. He also recommends a laparoscopic appendectomy, given Claimant's abnormal findings on CT scan and persistent right-sided pain. Because Dr. deTar believed all of Claimant's symptoms began with his accident, ". . . it does appear to be posttraumatic." *Id.*, pp. 6-7.

8. Claimant returned to NP O'Conner and Dr. Hernandez on December 12, 2011, still complaining of debilitating right flank pain. It was noted that Claimant was having ongoing, worsening edema of the appendix of unclear etiology and continuing, ongoing abdominal pain.

9. On December 26, 2011, Claimant presented to Bonner General Hospital ER complaining of abdominal pain that began the day before. Claimant reported some nausea, but no vomiting or diarrhea. A CT scan obtained that day showed no acute findings but did reveal

Claimant's appendix measured up to 12 mm in diameter. While atypical in appearance, Claimant's appendix was similar as to what was seen on previous scans. The attending physician's impression was "Acute abdominal pain, probably secondary to an obstipation (intractable constipation) type of picture in a patient with a chronically enlarged appendix of questionable significance." Defendants' Exhibit 3, p. 17.

10. In a History and Physical prepared on February 28, 2012, Dr. deTar noted: "Appendiceal enlargement, likely chronic, doubt posttraumatic, however, in the setting of abdominal pain and this enlarged appendix, I do recommend appendectomy. He potentially has a mucinous tumor of his appendix, which does carry significant morbidity, should it enlarge and rupture." Defendants' Exhibit 6, p. 12.

11. On February 28, 2012, Dr. deTar performed an elective laparoscopic appendectomy for Claimant's enlarged appendix. A pathology report indicated that Claimant was suffering from acute appendicitis. His post-operative recovery was uneventful and all of his pre-surgery symptoms resolved.

DISCUSSION AND FURTHER FINDINGS

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). Magic words are not necessary to show a doctor's opinion is held to a reasonable degree of medical probability; only their plain and unequivocal testimony conveying a conviction that events are causally related. See, *Jensen v. City of Pocatello*, 135 Idaho 406, 412-413, 18 P.3d 211, 217-218 (2001). A physician's testimony is not required in every case, but his or her

medical records may be utilized to provide “medical testimony.” See, *Jones v. Emmett Manor*, 134 Idaho 160, 997 P.2d 621 (2000).

Dr. Spitz IME

12. At Defendants’ request, Claimant saw board certified surgeon Jonathan D. Spitz, M.D., on January 5, 2012. Dr. Spitz is the Director of Trauma Surgery at Deaconess Medical Center in Spokane and an attending physician at Rockwell Clinic. His CV is found at pages 1-5 of Defendants’ Exhibit 7. Dr. Spitz reviewed medical records both pre- and post-accident. He reviewed copies of CT scans of Claimant’s abdomen dated April 23, July 15, and December 26, 2011. He examined Claimant and generated a report. (Defendants’ Exhibit 7).

13. Claimant informed Dr. Spitz that his right flank pain was getting worse and was exacerbated by activity and walking, and was associated with a lot of nausea. Dr. Spitz found the following upon examination of Claimant’s abdomen:

The abdomen is soft and flat. There is tenderness over the right lateral abdominal wall and right flank without palpable abnormality or hernia in this area. There is no detectable organomegaly, ascites, or abdominal mass. There are no cutaneous abnormalities of the skin overlying the right abdominal wall or right flank.

Defendants’ Exhibit 7, p. 15.

14. Regarding his review of the CT scans, Dr. Spitz noted, “The findings of a slightly dilated appendix has been consistent dating back to the 2009 CTs, and there are no associated inflammatory changes in the tissue related to the slightly dilated appendix.” *Id.*, p. 16. Dr. Spitz concluded that Claimant fractured his right 11th rib in his industrial accident:

Mr. Johnson sustained a blunt trauma to the lateral right abdomen and right flank. He did sustain a fracture of the right 11th rib, as evidenced by findings of the acute fracture on the CT scan dated July 15, 2011, and subsequent CT scan findings of callus formation and ultimately healing on the December 26, 2011, CT. There are no other acute intraabdominal or abdominal wall abnormalities

noted by his multiple CT scans. Therefore, my diagnosis is that of a right 11th rib fracture that did occur at the time of his injury on June 29, 2011.

Id., p. 16.

15. Regarding Dr. deTar's recommendation for a colonoscopy/appendectomy, Dr. Spitz observed:

The concept of traumatic injury to the appendix would be distinctly unusual. Based on my experience taking care of similar patients, I do not believe that Mr. Johnson requires evaluation with colonoscopy and/or appendectomy at this time. Should there develop or exist a clinical condition that does require these things, it would be unrelated to the industrial accident of June 29, 2011.

Id., p. 17.

16. Defendants, as did Claimant's then attorney, provided Dr. Spitz' IME report to Dr. deTar. In his January 26, 2012 reply to Claimant's former attorney, Dr. deTar defended his recommendation for a laparoscopic appendectomy. However, he noted:

At the time of my evaluation I was unaware of a previous CT from 2009 that did demonstrate a chronically dilated appendix. Consequently my impression is that his dilated appendix could be post-traumatic. I have since learned from Dr. Spitz evaluation that his dilated appendix preceded his injury. If this truly is the case then it certainly would be unrelated to his injury.

Defendants' Exhibit 6, p. 11.

17. In another response to an inquiry from Claimant's former attorney dated April 16, 2012, Dr. deTar wrote:

As you are aware, I did perform a laparoscopic appendectomy with incidental hernia repair. [Claimant's] final Path Report demonstrated a slight amount of inflammation of his appendix. It is my opinion that this is likely not related to his trauma. His hernia is also unrelated to his trauma. All that I can say with certainty is that he had an enlarged appendix that appears to predate his trauma. The appendix was removed. It was abnormal on Path. It is impossible for me to determine if there is any relationship with this abnormal finding in [sic] his trauma.

Id., p. 23.

18. Claimant argues that it is not fair for Defendants to use causation opinions gleaned from Dr. deTar, whose services Claimant paid for, against him. However, Defendants are certainly free to use, or not, whatever information a treating physician may possess, including opinions regarding causation, just as Claimant is similarly free to so use Defendants' expert's opinions. All medical opinions regarding Claimant's care for his relevant conditions are pertinent to the Commission, which seeks the most accurate and comprehensive diagnoses and recommendations possible to underlie and support its decisions.

19. The only medical experts in this case both agree that there is no relation between Claimant's enlarged appendix and his need for a colonoscopy and his industrial accident. The Referee finds, based on compelling and undisputed evidence, that Claimant has failed to prove that his appendicitis and resultant laparoscopic appendectomy is related to his industrial accident. Claimant has a history of right flank pain since at least 2001. The only medical experts in this case both agree that there is no relation between Claimant's enlarged appendix and his need for a colonoscopy or surgery.

CONCLUSIONS OF LAW

1. Claimant has failed to prove that his appendicitis and resultant appendectomy is related to his industrial accident.
2. Claimant has failed to prove that a recommended colonoscopy is related to his industrial accident.
3. Claimant's Complaint should be dismissed with prejudice.

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 14th day of December, 2012.

INDUSTRIAL COMMISSION

/s/
Michael E. Powers, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of December, 2012, 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:

DARREN JOHNSON
PO BOX 1263
TROUT CREEK MT 59874

BRADLEY J STODDARD
PO BOX 896
COEUR D ALENE ID 83816

ge

Lisa Espinosa

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PAUL GLAZIER,

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ORDER

Filed December 20, 2012

Pursuant to Idaho Code § 72-717, Referee Michael E. Powers 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 recommendation 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 his appendicitis and resultant appendectomy is related to his industrial accident.
2. Claimant has failed to prove that a recommended colonoscopy is related to his industrial accident.

3. Claimant's Complaint is dismissed with prejudice.

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

DATED this __20th__ day of __December__, 2012.

INDUSTRIAL COMMISSION

_____/s/_____
Thomas E. Limbaugh, Chairman

_____/s/_____
Thomas P. Baskin, Commissioner

_____/s/_____
R. D. Maynard, Commissioner

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __20th__ day of __December__ 2012, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

DARREN JOHNSON
PO BOX 1263
TROUT CREEK MT 59874

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ge

_____/s/_____