

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

NELS JORGENSEN,)
)
 Claimant,)
)
 v.)
)
 HENDERSON & MEDALIST)
 RESTORATION & CLEANING LLC,)
)
 Employer,)
)
 and)
)
 STATE INSURANCE FUND,)
)
 Surety,)
)
 Defendants.)
 _____)

IC 2009-017197

ORDER

FILED 11/18/2011

Pursuant to Idaho Code § 72-717, Referee 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 not proven that his right knee condition is related to his industrial accident.
2. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 18th day of November, 2011.

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 18th day of November, 2011, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

BRENT GORDON
477 SHOUP AVE STE 203
IDAHO FALLS ID 83402-3658

MAX M SHEILS JR
PO BOX 388
BOISE ID 83701-0388

srn

/s/

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

FILED 11/18/2011

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 Idaho Falls on April 15, 2011. The hearing was continued on May 4, 2011, in Boise. Claimant, Nels Jorgensen, was present at the April 15 hearing and represented by Brent Gordon, of Idaho Falls, at both hearings. Defendant Employer, Henderson & Medalist Restoration & Cleaning, LLC (Henderson Restoration), and Defendant Surety, State Insurance Fund, were represented by Max M. Sheils, of Boise, at both hearings. The parties presented oral and documentary evidence, and briefs were later submitted. No post-hearing depositions were taken. The matter came under advisement on August 11, 2011.

ISSUE

The sole issue to be decided is whether Claimant's right knee condition was caused by his industrial accident.

CONTENTIONS OF THE PARTIES

Claimant asserts that he suffered an industrial accident on June 18, 2009, resulting in a right knee meniscal tear, for which he is entitled to compensation.

Defendants acknowledge Claimant's June 18, 2009 industrial accident and have paid benefits relating to his low back injuries therefrom. However, Defendants assert Claimant has not shown that his current right knee condition is causally related to his industrial accident.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. The testimony of Claimant, taken at the April 15, 2011 hearing;
3. Defendants' Exhibits 1-7, admitted at the April 15, 2011 hearing and supplemented at the May 4, 2011 hearing; and
4. The testimony of William C. Lindner, M.D., taken at the May 4, 2011 hearing.

After having considered the above evidence and the arguments of the parties, the Referee submits the following findings of fact and conclusion of law for review by the Commission.

FINDINGS OF FACT

1. Claimant was born in September 1991. He was 29 years old and resided in Idaho Falls at the time of the hearing.

2. On June 18, 2009, Claimant was working as a carpet cleaner for Henderson Restoration when he tripped over a hose and fell down eight or nine concrete steps, landing hard

on his back, buttocks, and right side. He noted immediate back and radiating right leg pain. On June 22, 2009, Claimant presented to Idaho Urgent Care, reporting back pain and pain radiating into his right leg and shoulder. He was treated by Daniel Rick, P.A.-C, who prescribed medications and released him from work. Claimant reported pain radiating to his knee, but reported no right knee pain. On June 29, 2009, Claimant returned to Idaho Urgent Care reporting low back pain with radiating right leg and shoulder pain. He was observed to have an antalgic gait and paraspinal tenderness or spasm. Mr. Rick noted Claimant's complaints of right leg pain radiating into his upper thigh. There was no report of right knee pain. Spinal x-rays were negative and Mr. Rick referred Claimant to physical therapy.

3. On June 30, 2009, Claimant was evaluated by Nathan Hunsaker, P.T., and found to have symptoms consistent with acute lumbar strain, including numbness and tingling extending down the posterior right thigh. He was noted to have an altered gait. There was no report of right knee pain. He was diagnosed with lumbar and thoracic sprain. Manual muscle testing of the lower extremities was fair. On July 1, 2009, Claimant returned for further physical therapy to include knee to opposite shoulder stretches, which did not increase his pain. There was no report of right knee pain. Claimant returned for further physical therapy on July 2 and 6, 2009, and reported no right knee pain. On July 8, 2009, Claimant returned again to Idaho Urgent Care Center reporting low back pain and muscle spasm. Mr. Rick referred Claimant to Gary Walker, M.D.

4. On July 12, 2009, Claimant presented to Dr. Walker with low back and right lower extremity complaints. He reported intermittent tingling and numbness down his right leg and infrequent right leg pain. Dr. Walker noted that Claimant's gait was slow but non-antalgic. Manual muscle testing demonstrated 5/5 strength in the lower extremities. There was no report

of right knee pain. Straight leg raising testing produced shooting pain on the right down to the knee. Dr. Walker ordered a lumbar MRI and released Claimant to light-duty work with a 20-pound lifting restriction. Employer had no suitable light-duty work available.

5. On July 13, 2009, Claimant underwent a lumbar MRI which revealed no significant spinal stenosis, no disc herniations, and only minimal diffuse disc bulges at multiple levels without significant disc desiccation. On July 18, 2009, Claimant returned to Dr. Walker who discussed his relatively normal lumbar MRI results and administered a right iliolumbar ligament steroid injection. There was no report of right knee pain.

6. On July 25, 2009, Claimant returned to Dr. Walker reporting that the prior steroid injection had not really helped at all. There was no report of right knee pain. On July 27, 2009, Dr. Walker performed a right intra-articular sacroiliac joint steroid injection under fluoroscopic guidance.

7. On September 9, 2009, Claimant returned to Dr. Walker reporting that the prior injection really had not helped other than to reduce some of his leg tingling. There was no report of right knee pain. Dr. Walker again reviewed the MRI with Claimant, referred him to physical therapy, and released him to work with a 50-pound lifting restriction and instructions to avoid repetitive bending, twisting, or lifting. Dr. Walker referred Claimant to Mark Weight, M.D., for consultation. Claimant returned to work within his lifting restrictions.

8. On or about September 14, 2009, Claimant commenced physical therapy with Shari Sampson, MPT. Claimant returned for physical therapy on September 16, 18, and 21, and October 19, 2009. Although the therapist's notes are handwritten and difficult to decipher, they do not appear to contain any report of right knee pain.

9. On October 6, 2009, Claimant presented to Dr. Weight. Dr. Weight noted that Claimant presented with a slight antalgic gait favoring his right lower extremity. This dissipated with distraction. Lower extremity motor strength was 5/5. Testing of Claimant's knees showed satisfactory range of motion, good stability, and good muscle tone. There was no report of right knee pain. Dr. Weight encouraged Claimant to continue conservative treatment as directed by Dr. Walker and to continue working.

10. On October 21, 2009, Claimant returned to Dr. Walker reporting continued low back pain and intermittent lower extremity pain, right greater than left. Claimant reported bilateral knee swelling, right much greater than left, new left knee pain, and right knee pain for two weeks prior. He attributed his knee pain to standing at work. Upon questioning, Claimant related a family history of rheumatoid arthritis. Dr. Walker noted very small bilateral knee effusions, right greater than left. He encouraged Claimant to continue working.

11. On November 17, 2009, Claimant presented to Dr. Walker reporting that his low back pain was mostly going away and he still had some numbness in his right buttock going down his thigh towards his knee at times. He reported infected hemorrhoids for which he was being treated by his family doctor. There was no report of right knee pain.

12. On or about November 29, 2009, Claimant underwent emergency surgery for anal abscess.

13. On January 8, 2010, Claimant wrote a letter to Surety in which he asserted that he had mentioned his "buttocks, leg and knee pain" to his doctor and was told he should see another doctor about those issues. Exhibit 7, p. 1. Claimant's letter asserted that his diarrhea, constipation, bowel pain, buttock pain and abscesses were the result of his industrial accident, and he requested the Surety provide medical treatment therefor.

14. On January 11, 2010, Dr. Walker opined that Claimant's condition was medically stable and he suffered no permanent impairment from his industrial accident.

15. On or about January 14, 2010, Claimant underwent additional hemorrhoid and anal abscess surgery. He later dropped his assertion that these conditions were related to his industrial accident.

16. On March 2, 2010, Claimant was examined by Gregory West, M.D. Claimant reported to Dr. West that he noted slight right knee swelling at the time of his accident and a locking and catching sensation in his knee thereafter. Dr. West ordered a right knee MRI which confirmed a right medial meniscus tear with edema in the medial femoral condyle and medial tibial plateau, potentially representing bone contusion as well as joint effusion.

17. On May 11, 2010, Claimant was examined by orthopedic surgeon William Lindner, M.D., at Defendants' request. Claimant acknowledged to Dr. Lindner that he did not report right knee swelling at the time of his industrial accident. Furthermore, Claimant denied any sensation of locking or catching in the right knee. Dr. Lindner examined Claimant, reviewed his medical records, and concluded that his right knee condition was most likely not related to his industrial accident.

18. Claimant testified at hearing that he had never hurt his right knee before or after his June 2009 industrial accident. At hearing, Claimant also testified that he went to Idaho Urgent Care the day after his June 18, 2009 accident. The medical records establish that he first went to Idaho Urgent Care on June 22, 2009. The Industrial Commission rehabilitation consultant's records establish that on July 25, 2009, Claimant indicated that he was referred to Dr. Walker and after three weeks of waiting for the Surety to authorize the MRI, he finally received it. The medical records reveal that Dr. Walker ordered a lumbar MRI on July 12, 2009,

and it was performed the very next day. Claimant testified at hearing that he told all of his doctors about his right knee pain after his accident. However, Dr. Lindner noted that Claimant acknowledged that he had not discussed his right knee specifically with anyone, with the apparent exception of Dr. West. Moreover, there is no mention of right knee pain in any of the records of the 17 medical-related visits Claimant attended during the four months following his industrial accident. The first and only report of any knee symptoms in the six months following Claimant's accident came over four months after the accident occurred. Claimant did not mention those symptoms again until nearly six months after the industrial accident.

19. Having observed Claimant at hearing, and carefully examined the record herein, the Referee finds that Claimant is not an entirely reliable 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 sole issue is whether Claimant's current right knee complaints are caused by his industrial accident. Idaho Code § 72-432(1) mandates that an employer shall provide for an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital service, medicines, crutches and apparatus, as may be required by the employee's physician or needed immediately after an injury or disability from an occupational disease, and for a reasonable time thereafter. If the employer fails to provide the

same, the injured employee may do so at the expense of the employer. Idaho Code § 72-432(1). Of course, the employer is only obligated to provide medical treatment necessitated by the industrial accident. The employer is not responsible for medical treatment not related to the industrial accident. Williamson v. Whitman Corp./Pet, Inc., 130 Idaho 602, 944 P.2d 1365 (1997). Hence, a claimant must prove not only that he suffered an injury, but also that the injury was the result of an accident arising out of and in the course of employment. Seamans v. Maaco Auto Painting, 128 Idaho 747, 751, 918 P.2d 1192, 1196 (1996). 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, 890 P.2d 732 (1995). The claimant must establish a probable, not merely a possible, connection between the injuries alleged and the industrial accident. Dean v. Drapo Corporation, 95 Idaho 958, 511 P.2d 1334 (1973).

22. In the present case, Claimant asserts that Defendants have failed to show that Claimant sustained any trauma, other than the industrial accident, which may have caused his right knee injury. There is no direct evidence in the record that Claimant suffered any traumatic event between his June 2009 fall at work and his diagnoses of right knee meniscal tear in March 2010. However, it is not Defendants' burden to prove that Claimant's present right knee condition is not work-related. Rather, Claimant bears the burden of proving that his present right knee condition is work-related.

23. Claimant strives to equate references to complaints of right leg pain in the medical records, with complaints of right knee pain. Dr. Lindner resisted this approach, noting that the former are symptoms of radicular pain from a lumbar injury, while the latter are symptoms of potential meniscal injury. As noted, the medical records demonstrate that Claimant

was examined or treated by medical providers at least 17 times during the four months between his June 18, 2009 accident and his first report of right knee pain on October 21, 2009.

24. Dr. Lindner testified that Claimant suffers a right knee meniscus tear but that it is not related to his industrial accident on a more probable than not basis. He testified that the meniscal tear revealed by Claimant's 2010 MRI would have produced pain at the time it occurred. Dr. Lindner opined that the lower extremity muscle testing and stretching exercises done by physicians and physical therapists for several months after Claimant's accident would have provoked right knee pain if Claimant had actually had a torn meniscus at that time. Dr. Lindner also testified that the bone contusion revealed by Claimant's 2010 MRI would likely not have persisted for 10 months after an injury, thus suggesting that Claimant suffered an undisclosed knee trauma sometime after his industrial accident. Dr. Lindner therefore concluded that Claimant's meniscus tear was probably not related to his industrial accident. Dr. Lindner's opinion is well explained, supported by the record, and credible. The record contains no conflicting medical opinion.¹

25. Claimant has not proven that his right knee condition is related to his industrial accident.

¹ The record contains no opinion by Dr. West, only a statement by Dr. Lindner disagreeing with Dr. West's opinion. In his briefing, Claimant alleges that Dr. West attributed Claimant's meniscal tear to his industrial accident. Any such opinion would need to be fully evaluated to determine the weight it merited. Given Dr. Lindner's persuasive testimony, such an opinion would necessarily be founded upon credible complaints of right knee symptoms commencing with the industrial accident and continuing through March 2010. Because the extensive medical record herein does not provide that foundation, it seems inescapable that an opinion relating Claimant's meniscus tear to his accident would have to rest upon Claimant's representations that he suffered knee symptoms during this period, even though he failed to report them to, and they were not noticed by, multiple examining physicians and physical therapists. As previously noted, Claimant is not an entirely reliable witness.

