

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

STEVIE McCOY,)
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 Claimant,)
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 v.)
)
 STEVEN HERBST,)
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 Employer,)
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 and)
)
 STATE INSURANCE FUND,)
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 Surety,)
)
 Defendants.)
)
 _____)

IC 2008-018205

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

Filed April 20, 2010

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Michael E. Powers, who conducted a hearing in Pocatello on October 20, 2009. Claimant was present and represented by Albert Matsuura of Goicoechea Law Offices, Pocatello. Steven R. Fuller of Preston represented Employer and the State Insurance Fund at hearing. The parties presented oral and documentary evidence and three post-hearing depositions were taken. Claimant and Defendants then each submitted post-hearing briefs, after which Claimant submitted a reply brief. This matter came under advisement on February 9, 2010.

ISSUES

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

1. Whether and to what extent the condition(s) for which Claimant received medical treatment were caused by the May 29, 2008 accident.
2. Whether and to what extent Claimant's condition is due to an underlying degenerative condition.
3. Whether and to what extent Claimant is entitled to past and future medical care.

CONTENTIONS OF THE PARTIES

Claimant contends that, as a result of a back injury incurred while "throwing cows" to castrate them at work for Employer, he required surgery as a means of lessening or eliminating his debilitating back and leg pain. Claimant's treating physician, Christopher Shields, M.D., and the neurosurgeon that performed Claimant's April 27, 2009 surgery, Brent Greenwald, M.D., both opined that Claimant's injury was caused by the accident at work and that surgical intervention was medically necessary. While he concedes that he had some preexisting back pain, Claimant contends that his condition and pain symptomatology changed after his May 2008 accident and he is entitled to continuing medical treatment.

Defendants contend that Claimant's injury was not caused by the May 2008 accident. They argue that Claimant has a long and substantial documented history of back problems, including a 1991 lumbar surgery and subsequent treatment for back pain, and that his recent complaints stem from his underlying lumbar degenerative disc disease, not from his 2008 industrial accident. Defendants further contend that they are not liable for the surgical

intervention under the *Sprague* criteria because, although the procedure was required by Claimant's physicians, it was not reasonable.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The pre-hearing depositions of Claimant and Sheila McCoy, Claimant's wife;
2. The testimony of Claimant and Sheila McCoy taken at the hearing;
3. Joint Exhibits A-I admitted at the hearing;
4. Defendants' Exhibit J admitted at the hearing¹;
5. The post-hearing deposition of David B. Verst, M.D., taken by Claimant on October 26, 2009;
6. The post-hearing deposition of Christopher Shields, M.D., taken by Defendants on October 27, 2009; and
7. The post-hearing deposition of Brent H. Greenwald, M.D., taken by Defendants on November 18, 2009.

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 51 years of age and resided in Pocatello, both at the time of the hearing and before he moved to Salmon to work for Employer.
2. Claimant is functionally illiterate and has primarily worked as a laborer in various industries, most predominantly agriculture. He was unemployed at the time of the hearing.

¹ Exhibit J is a surveillance DVD. The Commission's copy was unviewable.

3. In 1991, Claimant underwent discectomy surgery at L5-S1. Subsequently, Claimant returned to work with no restrictions. However, he has had some recurring back pain over the years, for which he has taken prescription muscle relaxers and pain medications. Claimant has also been treated periodically for depression.

4. On May 29, 2008, when working for Employer, Claimant injured his low back while “throwing cows” to castrate them. Claimant notified Employer of his injury that same day, and Defendants accepted his workers’ compensation claim. Although his back was hurting, Claimant finished work, worked the next day driving a tractor, and then took the weekend off.

5. By June 2, 2008, Claimant’s back pain had progressed down his right leg, so he sought treatment at Steele Memorial Medical Center where he was examined by Craig J. Panos, M.D. Claimant described his pain as intermittent, but the pain was not present at the time of the examination. Dr. Panos reported objective findings, including x-rays of the lumbosacral vertebra showing “perhaps some mild decrease in vertebral body height at L5” with only mild arthritic changes, tenderness in the lumbar region, equal pain bilaterally, a positive left straight-leg lift at 60 degrees, and a positive right straight-leg lift at 30 degrees. Exhibit A, p. 1. Dr. Panos diagnosed low back strain and prescribed medications, rest, intermittent icing, no lifting greater than ten or fifteen pounds, and no twisting. In addition, Dr. Panos recommended that Claimant follow up with his regular physician.

6. On June 6, 2008, Claimant returned to Steele Memorial Medical Center, where he was seen by Samuel Gardner, D.O. Claimant reported ongoing back pain radiating into his right leg and toes, with tingling and numbness in his toes that was not present at the time of the exam. Dr. Gardner (like Dr. Panos) noted that the x-ray from June 2 indicated severe degenerative disc

disease in the lumbosacral area and ordered an MRI. Dr. Gardner took Claimant off work until the MRI could be administered and interpreted.

7. On June 10, 2008, Claimant underwent an MRI of his spine, interpreted by Peter L. Vance, M.D. Dr. Vance found degenerative disc disease at L4-L5 and L5-S1. In addition, at L4-L5, he found effacement and triangulation of the thecal sac consistent with moderate central canal stenosis and bilateral lateral process stenosis, greater on the right, as well as moderate right foraminal stenosis and mild to moderate left foraminal stenosis. As a result, Dr. Vance diagnosed degenerative spondylosis. Exhibit A, p. 8.

8. On June 12, 2008, Dr. Panos restricted Claimant from twisting, bending or lifting in excess of 10-15 pounds. Exhibit A, p. 9.

9. On June 13, 2008, Claimant met with Dr. Gardner to review the MRI findings. Claimant had low back pain radiating into the buttocks and thighs with intermittent tingling in his feet. Dr. Gardner assessed degenerative disc disease of the lumbar spine and suggested Claimant be evaluated for steroid injections or, failing that, referral to a neurosurgeon.

10. By June 20, 2008, Claimant had returned to live in the Pocatello area. On that day, he was examined by his regular physician of more than ten years, Christopher Shields, M.D. Claimant presented with severe pain down the lateral right thigh to the calf when walking, numbness in his right foot and toes, difficulty raising his right foot to a footstool, some pain in the left leg, sleep problems, and a change in his stool pattern. Exhibit B, p. 1. Dr. Shields reported a positive right straight-leg lift at 10 degrees in both sitting and supine positions, as well as other findings. In addition, based on the June 10 MRI film provided by Claimant, Dr. Shields opined that Claimant had an “apparent acute herniation” of the L4-L5 disc, with right greater

than left radicular findings and an absent right ankle jerk. Exhibit B, p. 2; Shields Dep., p. 22. As a result, Dr. Shields prescribed pain medications and a muscle relaxer, and referred Claimant to a neurosurgeon for follow-up.

11. On July 10, 2008, Claimant was examined by Brent H. Greenwald, M.D., a neurosurgeon. Exhibit C, pp. 1-2. Claimant presented with pain radiating down his right leg to the foot, pain when coughing or sneezing, and constipation. Dr. Greenwald found weakness in right dorsiflexion at 4/5, weakness in right inversion at 4+/5, limitations in knee extension and knee flexion from pain on the right side, decreased sensation in the dorsal right foot, hypoactive deep tendon reflexes at 1/4 equal bilaterally in the knees and ankles and a positive right straight leg lift. Dr. Greenwald also observed, from the June 10 MRI, a disc herniation at L4-5 causing moderate neuroforaminal narrowing with triangulation of the thecal sac and degenerative disc disease at L5-S1 with collapse of the interspace and bilateral recessed and foraminal stenosis. Dr. Greenwald opined that conservative treatment had failed and recommended a right L4-L5 microdiscectomy. Greenwald Dep., pp. 6-13.

12. After Dr. Greenwald recommended surgery, Defendants scheduled an independent medical examination, on August 13, 2008, with David B. Verst, M.D., an orthopedic surgeon. Claimant presented to Dr. Verst with chronic back pain and debilitating right leg pain, leg weakness, sleeping difficulties and occasional bladder incontinence. Exhibit F, p. 1. Dr. Verst recorded that Claimant's pain increased with sitting, lying on his back, coughing, sneezing and driving; and that it decreased with walking. In addition, Dr. Verst found mild weakness with ankle dorsiflexion and extensor hallucis longus function, with pain that travels in a L5 dermatomal pattern and limited range of motion of the lumbar spine. Dr. Verst

opined that Claimant's MRI indicated multilevel disc degeneration, most profound at the L4-L5 level, and associated focal disc protrusion at the L4-L5 right lateral recess. As noted by Dr. Shields and Dr. Greenwald, Dr. Verst also reported that Claimant was obese.

13. In addition to his review of the medical records and his examination of Claimant, Dr. Verst viewed a surveillance video of Claimant, recorded at the direction of Defendants. Exhibit J. Dr. Verst reported that the video demonstrated Claimant was able to walk up and down steep terrain, sit and stand for extended periods of time, and drive. In his report, Dr. Verst wrote that, in spite of Claimant's "subjective radiculopathy," "clinically he functions quite well . . . (based on DVD surveillance)." Exhibit F, p. 2. Dr. Verst was also suspicious of Claimant's high scores on a functional rating index (39/40) and a DRAM index (40/40), even though concurrent credibility tests failed to indicate Claimant was over-exaggerating his symptoms. Exhibit F, p. 2; Verst Dep., p. 46.

14. Dr. Shields and Dr. Greenwald both subsequently viewed the surveillance video, and both disagreed that it evidenced that Claimant was functioning at a level that exceeded their respective expectations for him. Exhibit B, p. 11; Exhibit C, p. 3. Consequently, neither Dr. Shields nor Dr. Greenwald changed his opinion as to Claimant's condition, or the treatment recommended therefor, after viewing the video.

15. As a result of his findings, Dr. Verst opined that Claimant had a disc protrusion at L4-L5 but, nevertheless, that Claimant was medically stable, would function well without surgery, and was capable of performing his regular duties at work without any restrictions. According to Dr. Verst, the accident caused back pain "that follows the natural history of degenerative disc disease" and, consequently, Claimant is not entitled to any industrially related

permanent partial impairment “because of the degenerative process and lack of acute findings on MRI.” Exhibit F, p. 3; Verst Dep., p. 62.

16. Based upon Dr. Verst’s recommendation, Defendants denied further payment on the claim. Nevertheless, Claimant continued to obtain treatment for his symptoms, as he could afford it², and continued to take pain medications and muscle relaxers prescribed by his physicians. Toward that end, Claimant saw Dr. Shields on September 18, 2008, October 3, 2008, October 10, 2008, March 8, 2009 and March 21, 2009. On September 18, Dr. Shields noted Claimant’s deteriorating frame of mind from being off work and prescribed Zoloft, among other things. In addition, he took Claimant off work indefinitely. Dr. Shields also expressed frustration that Claimant was unable to follow through with his treatment plan due to his inability to obtain workers’ compensation benefits. By March 8, Claimant had gained 30 pounds due to inactivity. Exhibit B, p. 13.

17. On March 18, 2009, Claimant underwent a second MRI in preparation for further evaluation and treatment. It revealed moderate spinal canal stenosis and moderate bilateral neural foraminal stenosis at L4-L5, moderate-to-severe bilateral neural foraminal stenosis at L5-S1, and moderate-to-advanced facet spondylosis throughout the lumbar spine, greatest at L4-L5 and L5-S1.

18. On April 2, 2009, Dr. Greenwald again examined Claimant. Claimant presented with left-sided pain radiating into his lower extremity, pain in his back that was worse than his left leg pain, discomfort on the right side, pain with coughing and sneezing, and left leg numbness with walking, sitting and standing. Dr. Greenwald conducted tests and diagnosed

² Claimant was approved for Medicaid in late 2008.

acute disc herniation at L4-L5, as well as chronic degenerative changes at L5-S1. He recommended a fusion because Claimant's pain was mostly located in his back, and radical decompression because Claimant's pain had migrated from his right side to his left side. He changed his surgical plan from his original 2008 plan because, in the intervening months, Claimant had developed pain down his left leg, in addition to the low back pain and pain down his right leg. Exhibit C, p. 5.

19. On April 27, 2009, Dr. Greenwald performed L4-S1 decompression, fusion and fixation surgery. Dr. Greenwald found at surgery, "A very large disk herniation at the L4-5 level that was midline and causing posterior displacement of the thecal sac." Exhibit E, pp. 1-8.

20. Claimant's post-operative course saw some of Claimant's symptoms return. For instance, he had numbness in his middle left toes for which he walked with a cane, had trouble putting on his socks and shoes and had experienced increased, but improving, sleep disturbances due to the discomfort associated with the metal in his back. However, Claimant's condition has improved overall, with his back pain receding from an 8 or 9 out of 10 to a 5 or 6, and the elimination of all of his leg pain, in addition to improved clinical findings. Tr., pp. 27-28.

DISCUSSION AND FURTHER FINDINGS

21. The provisions of the 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). However, the Commission is not required to construe facts 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).

Medical causation/underlying degenerative condition.

22. A claimant must prove not only that he or she 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, 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). Proof of a possible causal link is not sufficient to satisfy this burden. *Beardsley v. Idaho Forest Industries*, 127 Idaho 404, 406, 901 P.2d 511, 513 (1995). Magic words are not necessary to show a doctor’s opinion was 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, 412-13, 18 P.3d 211, 217 (2001). An employee may be compensated for the aggravation or acceleration of a preexisting condition, but only if the aggravation results from an industrial accident as defined by Idaho Code § 72-102(18).

23. Claimant’s testimony regarding the occurrence of an industrial accident causing back pain on May 29, 2008 is credible and is not contested by Defendants. However, Defendants argue that Claimant’s back condition, for which he seeks benefits, was not caused by the May 29, 2008, industrial accident. Instead, Defendants contend that Claimant’s symptomatology was the result of degenerative disc disease.

24. In the present case, Claimant has a history of discectomy surgery at L5-S1 in 1991, and residual back pain that pre-existed the 2008 industrial injury. Indeed, Claimant's testimony and medical records establish that he has been occasionally prescribed muscle relaxers and pain medication for at least the last several years. Further, Dr. Verst opined that Claimant is not entitled to benefits "because of the degenerative process and lack of acute findings on MRI." He surmised that Claimant's industrial injury "ignited back pain that follows the natural history of degenerative disc disease." Exhibit F, p. 3. 25.

25. However, the medical records also establish that Dr. Shields and Dr. Greenwald each unequivocally related Claimant's 2009 surgery to his 2008 industrial accident. Dr. Shields based his opinion on the fact that during the several years before the accident in which he treated Claimant, Claimant had never complained of any pain in his legs. In combination with the clinical and MRI findings, Dr. Shields opined that the industrial accident had caused a new injury to the nerve. Specifically, he wrote, "I truly doubt there is a significant relationship between the two injuries; certainly I would not consider this an aggravation of a pre-existing injury." Exhibit B, p. 7.

26. Likewise, Dr. Greenwald noted that Claimant had gone 17 years without difficulties and stated, "I think, without that accident, he could have gone another 17 years." Greenwald Dep., pp. 46-47. In addition, he attributed Claimant's need for the 2009 surgery to the industrial accident, which exacerbated his existing pain and also caused a change in his pain:

"...the cause and effect relationship that I saw was that he had a long history of lower back pain that was well controlled with conservative therapy, enabling him to perform a very strenuous job doing heavy labor . . . it was that work accident that caused not only an exacerbation of pain but a change in pain that resulted in him no longer functioning at a full capacity, no longer enabling him to obtain

good function and probably gainful employment that caused him to seek medical attention.”

Greenwald Dep., p. 36.

27. Although Dr. Gardner and Dr. Vance both diagnosed degenerative disc disease, neither advanced an opinion as to whether any of Claimant’s symptoms were caused by the industrial accident.

28. The opinions of Dr. Shields and Dr. Greenwald are consistent and persuasive. They each opined that Claimant’s 2009 back surgery was necessitated by either a new injury or exacerbation of his preexisting degenerative condition as a result of the 2008 industrial accident. Further, the record demonstrates that neither Dr. Shields nor Dr. Greenwald believed surgery was inevitable in the absence of the industrial accident. As a result, the Referee finds that Claimant has proven his May 29, 2008 accident caused the need for his L4-S1 fusion and Defendant’s are liable for all benefits associated therewith.

Medical care.

Defendants further argue that Claimant’s 2009 surgery was not reasonable. Idaho Code § 72-432(1) obligates an employer to provide an injured employee reasonable medical care as may be required by his or her physician immediately following an injury and for a reasonable time thereafter. It is for the physician, not the Commission, to decide whether the treatment is required. The only review the Commission is entitled to make is whether the treatment was reasonable. *See, Sprague v. Caldwell Transportation, Inc.*, 116 Idaho 720, 779 P.2d 395 (1989). 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). “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).

29. In *Sprague*, the following factors were found to be relevant to the determination of whether the particular care at issue in that case was reasonable: (1). A claimant should benefit from gradual improvement from the treatment rendered. (2). The treatment was required by a claimant’s treating physician. (3). The treatment was within the physician’s standard of practice and the charges were fair and reasonable.

Gradual improvement:

30. The evidence demonstrates that Claimant has improved in a meaningful way from the 2009 surgery. Without referencing every statement or each of the voluminous medical records supporting Claimant’s improvement, a brief summary follows.

Claimant’s testimony:

31. While certainly not medical evidence, Claimant’s testimony is nonetheless revealing regarding his gradual improvement, or lack thereof, following April 2009. He testified that the decompression, fusion and fixation surgery reduced his pre-surgical pain level from a “10” to a “4” or “5” by the date of the hearing. Claimant Dep., p. 70.

Medical records and opinions:

32. On May 16, 2009, Dr. Shields examined Claimant. Claimant still had right leg weakness, at the same level as pre-surgery, but reported less pain than pre-surgery. Claimant had lost weight and was in a genial mood, notwithstanding that he still reported having major problems, mostly in the mornings. Exhibit B, p. 26.

33. On June 10, 2009, Claimant followed up with Dr. Greenwald. Claimant denied any back pain, but indicated that he had a little more numbness in his left leg than previously. Dr. Greenwald assessed fair strength in Claimant's left leg, and excellent strength in the right. Exhibit C, p. 7.

34. Claimant was again examined, by Dr. Shields, on July 24, 2009. Exhibit B, pp. 26-27. Claimant reported an improvement in the overall quality of his pain, but also that he had persisting numbness in his left foot/first toe area. Dr. Shields surmised the numbness was the result of nerve damage due to the surgery delay. On examination, Dr. Shields had trouble finding a left ankle jerk, but found Claimant to have a negative straight-leg raise.

35. On August 5, 2009, Claimant again followed-up with Dr. Greenwald. Exhibit C, p. 8. Claimant had good strength in his lower extremities, less pain in his back and less pain down his legs. However, Claimant reported numbness in his great toe and Dr. Greenwald reported breakthrough weakness ("not true weakness") in left dorsiflexion, eversion and knee extension. Greenwald Dep., p. 28.

36. On September 4, 2009, Claimant was again seen by Dr. Shields. Exhibit C, pp. 28-29. Claimant reported that his depression medication was no longer controlling his irritability. He further reported a reduction in pain 4 weeks previously that had leveled off for the past 2 weeks. In addition, Claimant described pain in his left leg that was gradually lessening, as well as numbness in his first toe.

37. Claimant testified at hearing that he had not been released to return to work, and that he was going to continue to treat with Dr. Greenwald and Dr. Shields until he is deemed

medically stable. Transcript, p. 73. Claimant's testimony is consistent with the medical records of those physicians compiled prior to hearing. Exhibits B, C.

38. Dr. Greenwald confirmed that Claimant's condition has improved since surgery, and will continue to improve as the bone remodels and fuses. Greenwald Dep., p. 31.

39. Even though the record indicates Claimant is still experiencing some symptoms after his 2009 surgery, it establishes both that Claimant's condition has gradually improved, and that he had not yet reached maximum medical improvement at the time of hearing. The Referee finds that Claimant has established the first criterion of *Sprague*.

Treatment is required:

40. Based upon Dr. Verst's testimony, Defendants argue that even though the 2009 surgery was "required" by the surgeon who performed the procedure, in the sense that the physician recommended the procedure for Claimant, it was nevertheless not medically reasonable because Claimant was a poor candidate for the procedure. Dr. Verst believed Claimant was a poor candidate because he had psycho-social issues that needed to be addressed, a troubling smoking history, no instability in his back, and was grossly obese. Verst Dep., p. 32.

41. Dr. Verst also opined that surgery was not medically necessary because conservative therapies were not adequately trialed first. However, the record demonstrates that, by the time of Claimant's surgery, he had undergone conservative therapies for 11 months, to no avail.

42. For his part, Dr. Greenwald explained that Claimant required surgery in April 2009 because he needed to get the pressure off the nerve, and also because he felt Claimant's condition was severe enough that it would be best, in terms of Claimant's prognosis for returning

to full-time duty, to operate “sooner rather than later.” Greenwald Dep., p. 47. Further, as noted above, Dr. Greenwald found at surgery that Claimant’s herniated disc was acute.

43. In this case, the testimony of the surgeon who performed the surgery, later validated by Claimant’s post-surgery improvement, carries greater weight than that of Dr. Verst arguing against the suitability of the L4-S1 surgery for Claimant. The Referee finds, based on credible medical evidence, that the back surgery Claimant underwent was required by his treating physician.

Standard of practice:

44. The third prong of *Sprague* is that the procedure at issue must be within the standard of practice and the charges, therefore, must be fair and reasonable. Dr. Greenwald is a neurosurgeon and the decompression, fusion and fixation procedure he performed on Claimant is within his standard of practice. Further, there was no objection to the fairness or reasonableness of the charges for this procedure, as set forth by Claimant in Exhibit “P”. As a result, Claimant has met his burden of proving the third prong.

45. The Referee finds that the surgery performed on Claimant was reasonable and necessary medical care pursuant to Idaho Code § 72-432, and that Claimant is entitled to past and future reasonable and necessary medical care for his May 29, 2008 industrial accident.

CONCLUSIONS OF LAW

1. Claimant has proven that his 2008 back injury is due to the industrial accident and not to his preexisting underlying degenerative condition.

2. Claimant has proven his entitlement to past and future medical benefits for his back condition.

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 9th day of April, 2010.

INDUSTRIAL COMMISSION

/s/
Michael E. Powers, Referee

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of April , 2010, 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:

ALBERT MATSUURA
P O BOX 2196
POCATELLO ID 83206

STEVEN R. FULLER
PO BOX 191
PRESTON, ID 83263

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Gina Espinoza

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

STEVIE McCOY,)
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 Claimant,)
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 v.)
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 STEVEN HERBST,)
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IC 2008-018205

ORDER

Filed April 20, 2010

Pursuant to Idaho Code § 72-717, Referee Michael E. Powers submitted the record in the above-entitled matter, together with his 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 proven that his 2008 back injury is due to the industrial accident.
2. Claimant has proven his entitlement to past and future medical care for his back condition.

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

DATED this __20th__ day of __April____, 2010.

INDUSTRIAL COMMISSION

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

_____/s/_____
Thomas E. Limbaugh, Commissioner

_____/s/_____
Thomas P. Baskin, Commissioner

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __20th__ day of __April____, 2010, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following persons:

ALBERT MATSUURA
P O BOX 2196
POCATELLO ID 83206

STEVEN R FULLER
P O BOX 191
PRESTON ID 83263

ge

Gina Espinosa