

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

RICHARD O'QUINN,)
)
 Claimant,)
)
 v.)
)
 IDAHO DEPARTMENT OF LANDS,)
)
 Employer,)
)
 and)
)
 STATE INSURANCE FUND,)
)
 Surety,)
)
 Defendants.)
 _____)

IC 2006-508241

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

Filed: October 21, 2010

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 June 8, 2010. Claimant, Richard O'Quinn, was present in person and represented himself. Defendant Employer, Idaho Department of Lands (Department of Lands), and Defendant Surety, Idaho State Insurance Fund, were represented by Neil McFeeley, of Boise. The parties presented oral and documentary evidence. Post-hearing depositions were taken and briefs were later submitted. The matter came under advisement on August 24, 2010.

ISSUES

The issues to be decided by the Commission as the result of the hearing are:

1. Whether the condition for which Claimant seeks benefits was caused by the industrial accident.

2. Whether Claimant's condition is due, in whole or in part, to a pre-existing and/or subsequent injury/condition.
3. Whether, and to what extent, Claimant is entitled to the following benefits:
 - a. Medical care;
 - b. Permanent Partial Impairment (PPI); and
 - c. Disability in excess of impairment.
4. Whether apportionment for a pre-existing or subsequent condition pursuant to Idaho Code § 72-406 is appropriate.

CONTENTIONS OF THE PARTIES

Claimant asserts that his current condition and need for additional medical care for his back is the result of his November 3, 2005 industrial accident. Defendants maintain that Claimant has not proven that his present need for further medical care is related to his industrial accident. Defendants contend that Claimant has also failed to prove that he suffered any permanent impairment or disability from 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 June 8, 2010 hearing;
3. Claimant's Exhibits 1 through 3 and Defendants' Exhibits A through J, admitted at the hearing.

After having considered 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

1. Claimant was born in Minnesota in 1965 and was 45 years old at the time of the hearing. He sustained a left tibia fracture in 1978. In 1984, he graduated from high school and completed two years of college before commencing working at Old Faithful in Yellowstone. Claimant worked in the kitchens, earning between \$3.50 and \$5.00 per hour.

2. In 1987, Claimant was a passenger in a flip-over helicopter crash in Colorado. He fractured both of his arms. Some individuals in the helicopter crash lost their lives. In 1988, Claimant was a passenger in a helicopter that lost power and fell approximately 10 feet to the ground. He reported that this was a hard, jarring landing. In 1990, Claimant was in an airplane accident in which the plane made an emergency landing in a grain field. He endured jarring, bumping, bruising, and scrapes. In 1990, Claimant returned to college. In 1992, he separated his left shoulder and underwent surgery.

3. In 1993, Claimant completed his Bachelor of Science degree in forestry and resource management. He then began working for the U.S. Forest Service on the Boise National Forest, arranging and assisting with timber sales and fighting fires and earning approximately \$10.00 to \$11.00 per hour. In approximately 1994, Claimant severely sprained his ankle. He recovered and continued working. In 1998, Claimant sustained a right tibia fracture. In 1998, Claimant moved to Idaho Falls and commenced working for the Idaho Department of Lands as a seasonal resource manager, earning approximately \$12.00 to \$13.00 per hour. In 1999, Claimant became a permanent full-time Department employee.

4. On October 30, 2001, Claimant suffered back pain while carrying a heavy load of paint. He believed this was a pulled muscle and sought medical treatment. The emergency room record indicates that Claimant had a back injury with bilateral leg/foot numbness. The nurse's notes from that visit indicate that Claimant fell in a twisting motion while carrying 40 pounds of paint and

experienced back pain and lower extremity symptoms. The emergency room records indicate that he arrived in a wheelchair with a pain score of eight, on a scale of one to ten. Jeffrey Stieglitz, M.D., treated Claimant with medications that day and recorded that Claimant “has chronic pain problems and sees Dr. Linderman here locally. He has had both a CAT scan and an MRI of his back for similar episodes this year.” Defendants’ Exhibit J, p. 65. Claimant was off work briefly and then returned to his usual duties.

5. In March 2002, K.C. Huntsman, M.D., performed surgery on Claimant’s left shoulder. In February 2003, Dr. Huntsman performed arthroscopic surgery and medial meniscus repair of Claimant’s right knee. On July 11, 2003, Claimant presented to David Simon, M.D., with complaints of low back and right hip pain. On November 1, 2004, Claimant presented again to Dr. Simon who recorded:

He states that recently his back pain has increased and he attributes it to the dramatic change in the weather [sic]. In addition to increased back pain he reports that over the past week or two he has had intermittent shooting pains down both legs all the way to the bottom of the foot. This would generally occur in one leg or the other but not both at the same time.

Claimant’s Exhibit 2, p. 1. Dr. Simon noted that Claimant had low back pain on the left side with left straight-leg raise testing. He recorded his impressions of chronic low back pain and referred to a prior MRI that showed no large disc herniation causing radiculopathy. He prescribed medications.

6. On November 3, 2005, while working for the Department of Lands, Claimant slipped on a steep, snow-covered slope and fell. He landed hard on his back and “saw stars” momentarily. He noted immediate back pain, particularly in his mid-back. He radioed a co-worker and slowly walked three-fourths of a mile back to the truck. He ceased his work activities for the day. Claimant was earning between approximately \$18.00 and \$21.00 per hour at the time of his accident. He promptly reported his fall to his supervisor. Claimant returned to work, but testified that his back symptoms persisted.

7. On January 4, 2006, Claimant presented to Idaho Urgent Care with complaints of left leg muscle cramps. Medical notes of that visit indicate a history of back pain with a small bulge at L4, which was treated with prescription medications. Later in January 2006, Dr. Huntsman performed arthroscopic surgery and lateral meniscus repair of Claimant's right knee.

8. On March 16, 2006, Claimant presented to Idaho Urgent Care complaining of muscle cramps in his legs, back, and left arm. Cervical spine x-rays showed moderately severe degenerative joint disease involving the lower cervical spine. Lumbar spine x-rays show degenerative joint disease of the upper lumbar spine, stable retrolisthesis of L2 on L3, and mild wedging of L1 and L2 of indeterminate age. On April 2, 2006, Claimant presented again to Idaho Urgent Care, complaining of muscle cramps in his back. On April 28, 2006, Claimant underwent an MRI of the lumbar spine, which revealed congenitally shortened pedicles from L2 to L5 with mild bilateral neuroforaminal narrowing, multiple Schmorl's nodes, a small annular tear at L5-S1 not associated with any disc bulge, and no significant posterior disc bulge or spinal canal stenosis. On May 11, 2006, Claimant underwent an MRI of the thoracic spine, which showed a focal right paracentral disc protrusion at T7-8. He received prescription medications, physical therapy, and multiple steroid injections for his back symptoms.

9. On August 27, 2007, Kevin Hill, M.D., examined Claimant at Defendants' request. Dr. Hill diagnosed chronic cervical/thoracic lumbar pain secondary to trauma and degenerative disc disease. Dr. Hill concluded that Claimant's need for additional medical treatment was not related to his industrial accident. He found Claimant medically stable with regard to his industrial accident and opined that Claimant had sustained no permanent impairment due to his industrial accident.

10. Between the time of Claimant's 2005 accident and Dr. Hill's examination in 2007, Defendants paid medical benefits totaling more than \$10,000.00 for treatment of Claimant's industrial accident. Defendants declined to pay for additional medical treatment after Dr. Hill's report.

11. Claimant testified at hearing that he has significant ongoing back pain, which he believes is caused, at least in part, by his 2005 industrial accident and for which he desires additional medical treatment. At the time of hearing, Claimant testified he was taking pain medication for an unrelated condition and that this helped control his ongoing back symptoms.

12. At the time of hearing, Claimant was earning approximately \$23.43 per hour and continued working at the Department of Lands. He testified that his job duties currently are similar to those for which he was hired and that he is able to perform all of his job duties. Claimant has no medical restrictions on his work activities. He testified that no doctor has told him that he needs additional medical treatment due to his industrial accident. Claimant acknowledged that no physician has concluded that he has any permanent impairment due to his industrial accident.

13. Having observed Claimant at hearing, and carefully examined the record herein, the Referee finds that Claimant is a credible witness.

DISCUSSION AND FURTHER FINDINGS

14. 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).

15. **Causation and additional medical care.** The first three noticed issues concern Claimant's entitlement to additional medical care and turn on the question of whether the condition for which Claimant seeks benefits was caused by his industrial accident. Claimant's testimony regarding the occurrence of an industrial accident while at work on November 3, 2005, is credible. However, the crux of the instant case is whether Claimant's current back condition, for which he seeks additional benefits, was caused by the industrial accident.

16. An employer is only obligated to provide medical treatment necessitated by an 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). 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). 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). 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 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).

17. In the present case, Dr. Hill’s report of 2007 does not relate Claimant’s industrial accident to his current complaints. Claimant wrote the adjustor, criticizing and questioning Dr. Hill’s report. The adjustor provided Claimant’s letter to Dr. Hill for review. Dr. Hill responded that Claimant’s concerns did not change his opinion. The adjustor requested an opinion from Rosemary Brown, F.N.P., who had treated Claimant for prior conditions, regarding whether Claimant’s need for treatment was related to his industrial accident. Brown did not respond. The adjustor then scheduled Claimant to be evaluated by Dr. Hill. After the evaluation, the adjustor repeatedly requested an opinion from Claimant’s treating physician, David Bowman, M.D., agreeing or disagreeing with Dr. Hill’s conclusions. The record contains no response from Dr. Bowman and no indication that Dr. Bowman ever responded to the adjustor’s request.

18. Claimant argues that Dr. Hill's report is flawed in that it does not consider Claimant's 2006 lumbar MRI, which revealed a small annular tear at L5. However, neuroradiologist Glen Moradian, M.D., who performed and reported the study, expressly noted that the tear did not coincide with any disc bulging. It was not of sufficient concern to Dr. Moradian to enumerate in the report summary. Additionally, Dr. Hill was advised of Claimant's concerns about the adequacy of his report but indicated that this did not change his opinion.

19. Claimant also asserts that Dr. Hill's report is flawed because it does not establish a causal connection between Claimant's back complaints pre-existing his industrial accident and his back condition subsequent to his industrial accident. However, Defendants are not required by the Idaho Workers' Compensation Law to prove that Claimant's symptoms more than four years after his industrial accident are unrelated to a pre-existing condition. Rather, to obligate Defendants to provide further medical treatment, Claimant must prove that his alleged present need for additional medical treatment is related to his 2005 industrial accident. The absence of satisfactory medical proof that Claimant's current back complaints are related to a pre-existing condition does not provide affirmative medical proof that his current back complaints are related to his 2005 industrial accident. Claimant may need further medical treatment for his back condition. However, he has not proven that his 2005 industrial accident caused his alleged current need for additional medical treatment.

20. **Impairment.** "Permanent impairment" is any anatomic or functional abnormality or loss after maximal medical rehabilitation has been achieved and which abnormality or loss, medically, is considered stable or non-progressive at the time of evaluation. Idaho Code § 72-422. "Evaluation (rating) of permanent impairment" is a medical appraisal of the nature and extent of the injury or disease as it affects an injured employee's personal efficiency in the activities of daily

living, such as self-care, communication, normal living postures, ambulation, traveling, and non-specialized activities of bodily members. Idaho Code § 72-424.

21. Dr. Hill opined that Claimant sustained no permanent impairment due to his industrial accident. There is no impairment rating in the record relating to Claimant's industrial accident. Claimant testified that no physician has opined that he suffered any permanent impairment due to his 2005 industrial accident. Claimant has not proven that he has any permanent partial impairment due to his industrial accident.

22. **Permanent Disability.** "Permanent disability" or "under a permanent disability" results when the actual or presumed ability to engage in gainful activity is reduced or absent because of permanent impairment and no fundamental or marked change in the future can be reasonably expected. Idaho Code § 72-423. "Evaluation (rating) of permanent disability" is an appraisal of the injured employee's present and probable future ability to engage in gainful activity as it is affected by the medical factor of permanent impairment and by pertinent nonmedical factors provided in Idaho Code § 72-430. The test for determining whether a claimant has suffered a permanent disability greater than permanent impairment is "whether the physical impairment, taken in conjunction with non-medical factors, has reduced the claimant's capacity for gainful employment." Graybill v. Swift & Company, 115 Idaho 293, 294, 766 P.2d 763, 764 (1988).

23. Claimant herein has not proven that he has any permanent impairment due to his industrial accident. It follows that he has not proven he suffers any permanent disability due to his industrial accident.

24. **Apportionment.** The issue of apportionment of permanent disability pursuant to Idaho Code § 72-406 is moot.

CONCLUSIONS OF LAW

1. Claimant has not proven that his alleged need for additional medical treatment was

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_____/s/_____

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IC 2006-508241

ORDER

Filed: October 21, 2010

Pursuant to Idaho Code § 72-717, Referee Alan Taylor 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 alleged need for additional medical treatment was caused by his industrial accident.
2. Claimant has not proven that he suffers any permanent impairment due to his industrial accident.
3. Claimant has not proven that he suffers any permanent disability due to his industrial accident.

4. The issue of apportionment pursuant to Idaho Code § 72-406 is moot.

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

DATED this 21st day of October, 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 21st day of October, 2010, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

RICHARD O'QUINN
686 E 16TH ST
IDAHO FALLS ID 83404

NEIL D MCFEELEY
PO BOX 1368
BOISE ID 83701-1368

sc

/s/