BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

WILLIAM A. POWELL, Claimant, v. NORTHWEST CASCADE, INC., Employer, and EMPLOYERS INSURANCE OF WAUSAU, Surety, Defendants.	**IC 2007-001470** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** **Filed January 18, 2013**

Pursuant to Idaho Code § 72-506, the Industrial Commission assigned the above-entitled matter to Referee Douglas A. Donohue, who conducted a hearing in Coeur d'Alene on June 22, 2012. Claimant appeared *pro se*. Defendants were represented by E. Scott Harmon. The parties presented oral and documentary evidence. Oral argument in lieu of briefing was presented on August 9, 2012. The case is now ready for decision. The undersigned Commissioners have chosen not to adopt the Referee's recommendation and hereby issue their own findings of fact and conclusions of law.

ISSUES

The issues to be decided by the Commission are:

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

2. Whether Claimant is medically stable, and if so, the date thereof; and

3. Whether and to what extent Claimant is entitled to medical care.

Other issues are reserved.

CONTENTIONS OF THE PARTIES

It is undisputed that Claimant suffered back and groin injuries in a work-related motor vehicle accident on December 28, 2006. Claimant contends that he has not yet reached medical stability and that he is entitled to additional medical care. Defendants contend that they have paid all benefits to which Claimant is entitled. Defendants based their decision to discontinue benefits on the opinion of Dr. Spencer Greendyke, who stated that Claimant attained medical stability by March 2, 2007. Claimant disputes Dr. Greendyke's opinion, arguing that it is contrary to the evidence in the record.

EVIDENCE CONSIDERED

The record in the instant case includes the following:

1. The hearing testimony of Claimant, Claimant's wife, and David Overman;
2. Claimant's Exhibits A-E, admitted at hearing;
3. Defendants' Exhibits A-K, admitted at hearing; and
4. The Industrial Commission legal file pertaining to this claim.

After having considered the above evidence and the arguments of the parties, the Commissioners issue the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Claimant was born on November 28, 1963 and was 48 years old at the time of hearing. He suffered work-related back injuries in 1992[1] and 2003 and has a history of chronic back pain. However, his back was asymptomatic for two years prior to the industrial accident at issue in this case.

2. Claimant worked as a route driver for Employer, a sanitation company. On December 28, 2006, he was traveling approximately 20 miles per hour on an icy road when he

[1] Possibly 1993; evidence in the record is conflicting.

lost control of his truck and struck a tree. Claimant was wearing his seatbelt but was transported to Kootenai Medical Center as a precautionary measure.

3. At the emergency room, Claimant was examined by Anthony L. Russo, M.D. Claimant complained of low back pain, right hip pain, and dizziness. Films of Claimant's lumbar spine and right hip were taken but were negative for fracture. Dr. Russo diagnosed Claimant with an acute lumbosacral strain. Claimant was prescribed Naproxen, Soma, and Lortab and advised to return in approximately one week for further evaluation. He was also placed on modified duty.

4. Claimant presented to Kootenai Medical Center's Occupational Medicine Clinic on January 4, 2007, where he was seen by Michael A. Ludwig, M.D. Claimant complained of "throbbing, sharp, stabbing pain" in his low back. D.E. G, p. 39. The medications prescribed by Dr. Russo at the emergency room had provided only partial relief.

5. Dr. Ludwig diagnosed acute low back strain, with no evidence of radicular pattern or neurologic compromise. He prescribed prednisone and Lortab and imposed temporary work restrictions, including no bending and no lifting over 25 pounds. Shortly after these restrictions were imposed, Claimant was terminated by Employer.

6. Claimant returned to Dr. Ludwig on January 11, 2007. Claimant reported that he continued to experience back pain, which became worse with any kind of motion. He described the pain as similar to the back pain he had experienced in the past, but "significantly more severe." D.E. G, p. 42. Additionally, Claimant reported right anterior groin pain. Dr. Ludwig believed the groin pain was consistent with an iliopsoas strain. He recommended an MRI to evaluate for disc herniation. He also recommended physical therapy. Dr. Ludwig continued Claimant on modified duty, with no bending and no lifting greater than 20 pounds.

7. On January 16, 2007, Claimant presented to Katharine Holmes, P.T., for physical

therapy. Claimant reported sharp stabbing pain in his low back and groin. Ms. Holmes noted under her objective findings that Claimant was "very tender" at his left SI joint and along the right anterior groin. D.E. I, p. 184. She could not assess his joint mobility in the lumbar region due to severe muscle spasms. Ms. Holmes believed that Claimant's motor vehicle accident had aggravated his preexisting back condition.

8. Claimant presented to Ms. Holmes for another session of physical therapy on January 19, 2007. He reported back pain, groin pain, and muscle spasms. Also on January 19, Claimant underwent an MRI of his lumbar spine. Slight degenerative changes were observed at various levels, as well as a slight posterior disc bulge at L5-S1.

9. On January 22, 2007, Claimant presented to Dr. Ludwig to review the MRI. Though Claimant reported pain levels of up to 8-9/10, and though Dr. Ludwig found, during examination, that Claimant had "exquisite tenderness" to touch "over the posterior soft tissues at L5-S1," Dr. Ludwig believed that Claimant's disc bulge was "minimal at best." D.E. G, p. 44. Dr. Ludwig prescribed Robaxin to treat Claimant's muscle spasms, as well as a Lidoderm patch. He continued Claimant on modified duty, with no bending and no lifting greater than 10 pounds.

10. At his physical therapy sessions on January 23 and January 26, 2007, Claimant reported to Ms. Holmes that he continued to suffer from muscle spasms, and Ms. Holmes noted that Claimant's spasms increased when he attempted certain exercises. On January 30, 2007, when Claimant's exercises again provoked muscle spasms, Ms. Holmes became concerned that Claimant suffered from lumbar instability.

11. Claimant returned to Dr. Ludwig on February 5, 2007. Claimant reported constant pain that was not relieved by physical therapy or by the Robaxin and Lidoderm prescriptions. Claimant's pain was "localized to approximately [the] L5 segment of his low back." D.E. G,

p. 46. On examination, Dr. Ludwig noted that Claimant had "exquisite tenderness through the low back [at] approximately the L5 level even to light touch." Dr. Ludwig assessed "continued axial low back pain, unclear etiology." *Id*. He recommended a bone scan to evaluate for focal uptake. He contacted Ms. Holmes to put Claimant's physical therapy on hold while he attempted to determine the reason for Claimant's "hypersensitivity." Ex. I, p. 189.

12. Claimant's bone scan was taken on February 16, 2007, by Keith C. Hewel, M.D. Dr. Hewel found a "small focus of increased uptake in the region of the right L4-L5 facet." D.E. E, p. 26. Otherwise, Claimant's lumbosacral spine was normal.

13. On February 21, 2007, Dr. Ludwig examined Claimant and reviewed the bone scan. Claimant continued to have localized pain at around the L4-L5 level, as well as right groin pain. A hernia exam was negative. Dr. Ludwig recorded his assessment as follows:

> 1. History of low back problems with no focal disc herniations or nerve root impingement.
>
> 2. Right L4-5 facet uptake on bone scan, which correlates with his area of the axial back pain.
>
> 3. Right groin/hip pain. No evidence of hernia. It is possible this could be some referred pain from the distribution [of] the L4-5 facet. I have recommended a diagnostic and hopefully therapeutic right L4-5 facet injection.
>
> I would like to see him back following his IME to discuss further treatment. In the meantime, he will restart physical therapy. I have also given him an unlimited supply of Trazodone for sleep assistance. He will discontinue it if he notices any adverse side effects or seek medical attention.

D.E. G, p. 47.

14. On March 1, 2007, Claimant resumed his physical therapy with Ms. Holmes. She noted that Claimant was "very tender" at L4-5 and L5-S1. D.E. I, p. 191. She sent copies of her records to Spencer Greendyke, M.D., who would be performing an independent medical

examination (IME) of Claimant the following day. In her progress report, Ms. Holmes stated that Claimant's severe muscle spasms and back pain were limiting all of his activities and that his physical therapy was not yet complete.

15. On March 2, 2007, at Defendants' request, Claimant underwent an IME with Dr. Greendyke, who recorded that Claimant's current complaints were "low back pain, mid-portion, at L5-S1 area without radicular symptoms" and "low-grade right-sided anterior groin pain, intermittent." D.E. K, p. 217. He reviewed Claimant's medical records, noting that Claimant's MRI demonstrated "multi-leveled dessication of the lumbar disc consistent with age" with "no significant disc bulging or herniated nucleus pulposus." *Id*. at 218. Dr. Greendyke diagnosed Claimant with a mechanical strain of the lumbar spine and a right groin strain, both of which, he opined, were "directly and causally related" to Claimant's motor vehicle accident. *Id*. However, despite Claimant's complaints of ongoing pain, and despite Dr. Ludwig and Ms. Holmes's recommendations for further treatment, Dr. Greendyke opined that "no further formal intervention" was required for Claimant's injuries. *Id*. He stated that:

> [Claimant] sustained an exacerbation of his preexisting mechanical back problem during this incident and that this should have been healed as much as it is going to heal within 6 to 8 weeks after the injury. He was appropriately treated conservatively with anti-inflammatory medications, pain medication, muscle relaxants and [physical] therapy….In the opinion of this examiner, [Claimant's] 12/28/06 work incident was a major contributing cause [of] his need for treatment between 12/28/06 and 3/2/07. At this point, however, I think he is at MMI and does not require any further intervention.

D.E. K, p. 218.

16. Under the criteria in the AMA *Guides to the Evaluation of Permanent Impairment*, 5th Edition, Dr. Greendyke found that Claimant's back condition corresponded to lumbar category 1, yielding 0% permanent impairment. Dr. Greendyke noted:

> This category recognizes no significant clinical findings, no observed muscle guarding or spasm, no documentable neurologic impairment, no documented alteration in structural integrity and no other indication of impairment related to injury or illness, no fractures. This particular category seems to fit Mr. Powell's condition the best and I believe it is the most appropriate for him.

D.E. K, p. 219. Curiously, however, Dr. Greendyke imposed permanent restrictions of no lifting greater than 10 pounds, no bending, stooping, or leaning, and no climbing ladders. Such restrictions would seem to indicate that Claimant was significantly impaired. Claimant argues that he would not be able to return to his time-of-injury position or to any comparable position under such restrictions.

17. It is not clear from Dr. Greendyke's report whether he related Claimant's restrictions to the industrial injury or to a preexisting degenerative back condition.

18. After receiving Dr. Greendyke's report, Surety discontinued Claimant's workers' compensation benefits in March 2007. Since that time, Claimant has experienced back pain, which Claimant believes is related to his industrial accident.

19. At hearing, the Referee found that Claimant was a credible witness. The Commissioners see no reason to disturb this finding.

DISCUSSION AND FURTHER FINDINGS

20. The provisions of the Idaho workers' compensation law are to be liberally construed in favor the employee. *Haldiman v. American Fine Foods*, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990). The humane purposes which the law 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).

Causation

21. The claimant has the burden of proving the condition for which compensation is sought is causally related to an industrial accident. *Callantine v. Blue Ribbon Supply*, 103 Idaho 734, 653 P.2d 455 (1982). The claimant is required to establish a probable, not merely possible, connection between cause and effect to support his contention. *Dean v. Dravo Corporation*, 95 Idaho 558, 560-561, 511 P.2d 1334, 1336-1337 (1973). However, medical evidence need not take the form of oral opinion testimony in order to be substantial and competent evidence of causation. *Jones v. Emmett Manor*, 134 Idaho 160, 164, 997 P.2d 621, 625 (2000). "Requiring oral or deposition testimony in every workers' compensation case would impose an unnecessary procedural and financial burden on injured workers." *Id*. While deposition or hearing testimony by a medical expert might sometimes be "necessary to meet the substantial and competent burden…this does not mean that medical reports are inadequate *per se* when there is no contrary medical evidence." *Id*.

22. Here, Defendants argue that Claimant must prove the issue of causation through expert medical testimony. *See* Oral Argument Tr. 33:18-19 (August 9, 2012). As held in *Jones*, cited above, this is incorrect. As long as there is substantial and competent medical evidence in the record to establish causation, Claimant may rely on such evidence to prove his case.

23. Furthermore, there is no dispute that Claimant's back and groin injuries were caused by the motor vehicle accident. The opinion of Defendants' own expert, Dr. Greendyke, establishes this, and his opinion is supported by the records of Dr. Russo, Dr. Ludwig, and Ms. Holmes. Though Dr. Russo and Dr. Ludwig did not specifically opine as to the cause of Claimant's back and groin injuries in their notes, it is clear from their records that they were treating Claimant for his post-accident symptoms. Ms. Holmes did conclude that Claimant's

preexisting back condition had been aggravated by his motor vehicle accident. *See* D.E. I, p. 185.

24. Claimant has proven that he suffered back and groin injuries as a result of his motor vehicle accident.

Medical Stability

25. One of the principal requirements of the workers' compensation law is that the "injured employee must be rehabilitated by reasonable and proper treatment and as far as possible [restored to] his health." *Burch v. Potlatch Forests*, 82 Idaho 323, 327, 353 P.2d 1076, 1078 (1960). The injured employee is "entitled to such medical, surgical, or other treatment as may be reasonably required to relieve him from the effects of his injury and arrest and stay further damage which would naturally flow from the injury." *Id*. Thus, the employer/surety shall provide such reasonable medical treatment as may be reasonably required by the employee's physician. Idaho Code § 72-432(1). Under Title 72, Idaho Code, a physician includes members of healing professions who are licensed pursuant to Idaho statute. Idaho Code § 72-102(25). Consequently, both Dr. Ludwig, a licensed medical doctor, and Ms. Holmes, a licensed physical therapist, qualify as physicians for purposes of Title 72.

26. There is no dispute that Claimant was entitled to the medical care he received from December 28, 2006 to March 2, 2007. After Dr. Greendyke opined that Claimant had attained medical stability, Defendants ceased paying benefits on the claim. Claimant now argues that he had not reached medical stability as of March 2, 2007, and in fact, has never attained medical stability due to lack of proper medical care after Defendants terminated compensation.

27. Medical stability, or maximum medical improvement (MMI), "essentially means that a worker has achieved the fullest reasonably expected recovery with respect to a work-related injury." *Perkins v. Jayco*, 905 N.E.2d 1085, 1088-1089 (Ind. App. 2009). A claimant

attains MMI on the "date after which further recovery from, or lasting improvement to, an injury can no longer reasonably be anticipated, based upon reasonable medical probability." *Lemmer v. Urban Electrical, Inc.*, 947 So.2d 1196, 1198 (Fla. App. 2007). "A finding of MMI is precluded where treatment is being provided with a reasonable expectation that it will bring about some degree of recovery, even if treatment ultimately proves ineffective." *Id*. In determining whether a claimant has reached MMI, the Commission may consider such factors as a return to work, the extent of the injury, and, most importantly, whether medical evidence or testimony shows that the injury has actually stabilized. *See Westin Hotel v. Industrial Comm'n of Illinois*, 865 N.E.2d 342, 356 (Ill. App. 2007).

28. Though Dr. Greendyke's opinion on causation is supported by the medical evidence in the record, his opinion that Claimant attained medical stability by March 2, 2007 is not. Neither of Claimant's treating physicians, Dr. Ludwig or Ms. Holmes, had indicated that Claimant's injury was stable; in fact, both recommended additional treatment. Less than two weeks prior to the IME, Dr. Ludwig recommended a facet injection at L4-5, which he hoped would prove both diagnostic and therapeutic. Ms. Holmes, in the progress report she forwarded to Dr. Greendyke, outlined her therapy plans and goals for Claimant's recovery. She specifically stated that "physical therapy services continue to be needed to address" Claimant's impairments and to meet various objectives, including Claimant's ability to perform his activities of daily living without pain or with tolerable pain. D.E. I, p. 191-192.

29. Claimant's symptoms had not remitted or even significantly improved by March 2, 2007. The records of Dr. Ludwig and Ms. Holmes show that Claimant's symptoms were steady at best and perhaps worsening. Neither Dr. Ludwig nor Ms. Holmes expressed any suspicion that Claimant's symptoms were exaggerated, and such a suspicion was not expressed

by Dr. Greendyke in his report. Indeed, Dr. Greendyke opined that the treatment Claimant had received up to March 2, 2007 was appropriate and reasonable.

30. It is therefore unclear why Dr. Greendyke opined that Claimant was stable when he clearly was not. Claimant's symptoms, which Dr. Greendyke related to compensable injuries, had not ceased prior to March 2, and Claimant's physicians had recommended additional treatment. Dr. Greendyke's opinion might be more persuasive if he had reasoned that Claimant's symptoms as of March 2, 2007 were of a different nature, and had a different cause, than the symptoms Claimant suffered due to his compensable injuries; but no such distinction was made in Dr. Greendyke's report, and no such distinction can be found in the medical records. Claimant's symptoms appear to have been relatively uniform from the date of the accident through at least the date of Claimant's IME, and his treatment should have continued until his condition stabilized.

31. Unfortunately, because Claimant's medical care was aborted, the Commission cannot determine if or when Claimant's work-related injury became stable. Such a determination cannot be made with the evidence currently in the record. Thus, the issues of when Claimant attained medical stability and to what extent he is entitled to additional medical care are not ripe for decision. These issues are reserved.

32. Based on the foregoing findings, Defendants are ordered to provide such additional diagnostic or other medical evaluation necessary to determine whether Claimant is medically stable from the effects of the subject accident. Further, Defendants are ordered to provide such additional care as may be necessary to treat Claimant for the effects of the subject accident. The outstanding issues in this case will be addressed at a future hearing, if necessary.

CONCLUSIONS OF LAW AND ORDER

1. Claimant has proven that he suffered low back and groin injuries as a result of his December 28, 2006 industrial accident.

2. Claimant has proven that he was still in a period of recovery as of March 2, 2007.

3. Defendants shall, within one month of the date of this decision, arrange for Claimant to undergo a diagnostic examination to determine the current status of his industrial injuries and his need for additional medical care. Defendants shall provide such additional care that Claimant may require for the effects of the subject accident.

4. Other issues are reserved.

IT IS SO ORDERED.

DATED this _18th____ day of January, 2013.

INDUSTRIAL COMMISSION

/s/_____
Thomas P. Baskin, Chairman

_____
/s/R.D. Maynard, Commissioner

PARTICIPATED BUT DID NOT SIGN
_____
Thomas E. Limbaugh, Commissioner

ATTEST:

/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __18th____ day of January, 2013, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** was served by regular United States Mail upon each of the following:

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