BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

TODD L. VLAHOS, Claimant, vs. LIBERTY COMPANIES, Employer, and LIBERTY NORTHWEST INSURANCE CORPORATION, Surety, Defendants.	)	**IC 2009-027446** **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION**. February 4, 2011

Pursuant to Idaho Code § 72-506, the above entitled matter was assigned to Referee LaDawn Marsters, who conducted a hearing on August 11, 2010 in Twin Falls, Idaho. Claimant was present in person and was represented by Dennis R. Peterson. Employer and Surety were represented by Kimberly A. Doyle. Oral and documentary evidence was admitted, and one post-hearing deposition was taken. The matter was briefed and came under advisement on December 28, 2010.

ISSUES

As stipulated by the parties, the sole issue to be decided is whether Claimant suffered an injury caused by an accident arising out of and in the course of employment on August 11, 2009.

CONTENTIONS OF THE PARTIES

Claimant contends that he injured his left knee while engaged in heavy lifting, bending or squatting at work on August 11, 2009, necessitating arthroscopic surgery on January 18, 2010 to repair a meniscal tear and smooth out chondromalacia. Claimant admits that he did not experience

any injury onset symptoms at work and did not report he thought he had been injured at work for several weeks. However, he argues that he was not engaged in any activities outside of work that would have resulted in his left knee injury and that he believed his job would have been in jeopardy, had he reported it. Claimant relies upon the medical opinion of Blake Gammell Johnson, M.D., his orthopedic surgeon, to support his contention that his left knee injury occurred at work.

Employer argues that Claimant did not suffer an industrial accident. It relies on testimony from several witnesses to establish that Claimant injured his left knee while he was on vacation July 27, 2009 through August 2, 2009, rather than at work. According to these witnesses, Claimant was moving to a different residence during his vacation and he was limping upon his return to work on August 3, 2009. Employer denies that Claimant's employment would have been threatened, had he reported his injury. On the contrary, failure to report a workplace accident or injury could have jeopardized Claimant's employment.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. Claimant's Exhibits 1 through 10 admitted at the hearing;
3. Defendants' Exhibits A through K admitted at the hearing;
4. The testimony of Claimant taken at the hearing;
5. The testimony of Russell Ellifrits taken at the hearing;
6. The testimony of Thomas Carroll taken at the hearing;
7. The testimony of Shane Herald taken at the hearing;
8. The testimony of Robert Kreger taken at the hearing;
9. The testimony of Darren Sparks taken at the hearing; and

10. The post-hearing deposition testimony of Blake Gammell Johnson, M.D., taken September 2, 2010.

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.

OBJECTIONS

No objections were pending at the time the Referee took the case under advisement.

FINDINGS OF FACT

Background

1. Claimant was 43 years of age at the time of the hearing and residing in Gooding. He was unemployed and taking addiction studies classes at College of Southern Idaho toward his goal of becoming a drug and alcohol counselor.

2. Claimant's work history comprises an interesting mix of construction and manufacturing/fabrication positions, in addition to a couple of jobs in the medical field. As an adult, he has been employed as a heavy equipment operator, a medic in the Navy, a certified nurse assistant, a welder's helper, a siding installer and a welder. Claimant's total aggregate time spent working in these positions amounts to 15 years or less. Claimant also spent some time incarcerated on charges unrelated to these proceedings.

3. Claimant has suffered a number of industrial injuries over the years, but none involving his left knee.

4. At the time of his alleged industrial accident, Claimant had worked at Employer's, as a welder, for approximately one and one-half years, including time he worked in a temporary position before he was hired permanently. Claimant was aware that Employer's policy required him to immediately report all workplace accidents. Prior to injuring his left knee, he had reported two

industrial injuries involving himself (on July 1, 2008 and June 12, 2009), and one involving a coworker, all in accordance with Employer's accident reporting policy. Claimant was also aware that St. Benedict's Hospital was Employer's designated medical care provider, and that employees undergoing examinations for workplace injuries are automatically drug tested according to Employer's policy.

5. A number of preliminary facts are undisputed. First, Claimant's left knee was not injured before he went on vacation, July 27, 2009 through August 2, 2009. Second, Claimant's Time Off Request, submitted June 30, 2009, states he needed this vacation time off to move to Gooding. Third, Claimant told his co-workers that he would be moving during his vacation. And fourth, Claimant's first day back at work after his vacation was August 3, 2009.

6. In spite of his initial plans, Claimant testified that he spent his vacation at home visiting with his mother-in-law, who was in from out of town, and that he did nothing to injure his left knee. He explained that his plans changed when his target residence became available earlier than expected, on July 14. As a result, Claimant testified, his teenage sons did all of the moving while he was at work, finishing the job before his vacation week began.

7. Russell Ellifrits, general manager, and Shane Herald, a salesman and supervisor, each testified that Claimant said, upon his return, that he had been moving while he was on vacation. According to Mr. Herald, "…we kind of joked about it because the whole – now he was on vacation coming back to work, you know. And [I] can relate because I had just moved then, too…". Tr., p. 155.

8. Claimant was the only witness with firsthand knowledge of how he spent his vacation from July 27-August 2, 2009. Further, Mr. Ellifrits and Mr. Herald each admitted at the hearing that they wrote in their respective statements in October 2009 that Claimant had told them that he had spent

his vacation moving on days when he had not actually said that. Each explained that they were simply confirming information from an earlier day when Claimant did say he had been moving during his vacation.

Injury: Time of Onset

Claimant's Position: The Injury Occurred August 11, 2009

9. Claimant testified that he first experienced left knee pain after working all day on August 11, 2009. Claimant could not recall what he did on August 11; however, his testimony that his day probably involved squatting, bending and lifting was uncontroverted.

10. Claimant explained that he experienced no onset symptoms at work. His left knee started hurting when he got up to go to the bathroom at approximately 2:00 a.m. on the morning of August 11. Claimant testified that the back and inside of his left knee were painful, making it difficult to walk.

11. Claimant testified that he went to work on August 12 and 13, limping, and told Shane Herald that his left knee hurt but he did not know why:

> Q. And when you got to work, did you tell anybody that your knee was hurting?
> A. I believe Shane probably asked me 'cause I was noticeably limping.
> Q. And Shane, give me Shane's last name.
> A. Shane Herald.
> Q. Shane Herald?
> A. (The witness nods.)
> Q. Okay. And do you recall telling Shane that your knee was hurting?
> A. Yes.
> Q. And what if – and is Shane a co-worker? A supervisor?
> A. Shane is a supervisor.
> Q. Okay. And did you tell Shane anything about why or how the knee started to hurt?
> A. I just told him I did not know.
> Q. Did you – did Shane say anything, you know, like, "Go see a doctor" or anything like that?
> A. No.

Tr., pp. 40-41.

12. Claimant stayed home from work and sought medical care from his own provider on August 14. During that visit, John Etcheto, P.A., recorded notes concerning the history reported by Claimant:

> He is in to the clinic today for evaluation of pain in the left knee. He reports that the pain started about four days ago. He woke up early in the morning. And when he got out of bed, he noticed pain in the knee. He does not recall any specific injury to the knee. He does do a lot of carrying heavy loads at his work and thinks that this could have contributed to…the knee problem.

Tr., p. 43. Claimant confirmed at the hearing that he reported this information to Mr. Etcheto. Mr. Etcheto's notes also indicate that Claimant's left knee was wrapped with an Ace bandage on arrival.

13. Mr. Etcheto provided Claimant with pain medication and recommended compression of the left knee. An August 18, 2009 chart note by Talia Sierra, P.A. indicates that she recommended a knee brace, and an August 22, 2009 chart note by Ms. Sierra indicates, for the first time, that Claimant had been wearing one. Along those lines, two[1] witnesses for Employer testified that Claimant appeared at work on August 3 in a knee brace. Claimant, himself, testified that he obtained a knee brace on August 14. On this point, the Referee finds the evidence in the medical records by Ms. Sierra, that Claimant did not obtain a knee brace until August 18 or later, most persuasive.

14. Mr. Etcheto also provided a five-day release from work, which Claimant hand-delivered to Russell Ellifrits, general manager at Employer's, later in the day on August 14, 2009. Claimant admitted at the hearing that he must have erred when he wrote in his First Report of Injury ("FROI") statement that Mr. Etcheto initially provided a two-week release from work.

---

1 Roger Kreger, a supervisee of Claimant's, and Marty Fox, bookkeeper, both testified that when Claimant returned from vacation, he was wearing a knee brace. Darren Sparks testified that Claimant was not wearing a knee brace,

15. Following his left knee injury and prior to his discharge, Claimant only communicated with Employer when he dropped off his work release slips, roughly every couple of weeks following expiration of his first work release slip. He continued to maintain that he did not know how he injured his knee, in spite of his conversation with Mr. Etcheto on August 14, 2009 in which he posited that heavy lifting at work could be a factor.

16. Claimant's pain continued at the same level after August 14. By August 18, he developed a "catch" in his left knee that felt as if his knee was locking up. Tr., p. 47. Claimant's symptoms did not resolve, and his medical care provider recommended an MRI to facilitate a diagnosis and further treatment.

17. Claimant eventually obtained an MRI, which led to arthroscopic surgery on January 18, 2010 to repair a torn meniscus and smooth out chondromalacia in Claimant's left knee. Claimant recovered well and had no remaining left knee problems at the time of hearing.

18. Claimant's orthopedic surgeon, Dr. Johnson, opined that Claimant's injury was work-related. He had no firsthand knowledge of Claimant's activities that might have caused his meniscal tear and chondromalacia, so he relied upon Claimant's report that he was doing heavy lifting, bending and squatting at work.

19. Undercutting Claimant's position, however, Dr. Johnson opined that Claimant's left knee condition could also have been caused by other unspecified activities:

> …As a meniscus becomes degenerative, it can spontaneously soften. So it doesn't matter if the bending and squatting is at work, it doesn't matter if it's an outside activity. It's just at some point, if the force is right, it can spontaneously tear and cause the problems.

Johnson Dep., p. 18. Further, Claimant's January 18, 2010 arthroscopy showed only degenerative

---

but was limping on August 3, and that he thought Claimant began wearing a knee brace the next day.

changes, with no acute pathology. According to Dr. Johnson, Claimant's knee was "pristine" but for chondromalacia, a non-specific finding that could result from either aging or an injury.

20. In addition, Dr. Johnson's October 8, 2009 chart note was inaccurate in that it reported that Claimant's condition was related to his work-related activity on August 14, 2009. Dr. Johnson testified that his ultimate opinion would be the same, whether the correct date was August 14 or August 11.

Employer's Position: The Injury Occurred Before August 3, 2009

21. Five witnesses for Employer testified that they first saw Claimant limping upon his return to work on August 3, 2009. They each explained how they could recall the date. According to Mr. Ellifrits:

> It's the first day he came back. We were gearing to go, we were behind on our schedules, I needed my key man back. And that's the only reason I recall that, without looking back at, you know, the records.

Tr., p. 115; Defendants' Exh. D, p. 9. Shane Herald, a supervisor, recalled:

> …I had spoke [sic] to [Claimant] when he came back from vacation and noticed that he was limping. I was outside having my morning cup of coffee and cigarette, and I just asked him what was going on and if he was all right.

Tr., p. 153; Defendants' Exh. D, p. 12. Mr. Herald also explained, on cross examination, why he could remember that Claimant was limping specifically on the day Claimant returned from his vacation:

> A. He was gone a week before I left for vacation. He went to vacation, he came back, and I left to go to Seattle.
> …
> A. …He came back, and then I left for vacation. I left for vacation on a Thursday, and he came back on a Monday.
> Q. Okay. He came back – back the 3rd, and you left on vacation August 6th?

A. Somewhere right around there…

Tr., p. 160. Darren Sparks, CEO and part owner, testified:

> A. You know, Todd just returned and, you know, we were outside having coffee. I don't smoke, but I have to stand outside with the boys and kind of making a plan, because we were glad Todd was coming back, because being without him was tough. And so we got – if I see somebody packing an elbow or – you know, we'll go up and ask them, you know, "What's wrong? What happened?"
> Q. …do you remember the date as to when this conversation occurred?
> A. It would have been the Monday that he returned from vacation.
> Q. And how do you know it was that Monday? Why do you remember that?
> A. Just because we – you know, we're a small company. So when people are gone, we feel it. And I just know that Monday it was a tough time for us because Shane was leaving just a few days later. And so we were kind of trying to make a plan for Todd's return on how to, you know, make sure we got everything covered before Shane was gone. So it's just kind of a distinctive point in that time of year.

Tr., pp. 197-198; Defendants' Exh. D, p. 10. Robert Kreger, who performed various jobs for Employer and worked closely with Claimant for about five months inside the shop, responded to questions on direct examination:

> Q. …So your statement is rather brief, so I'll just read it. It says, "Todd told me that he hurt himself, but he never said that it was on the job." Could you expand on that a little more…? What led you to write that?
> A. Pretty much when Todd came back from vacation, he was injured, but he never said he did it at work. I knew he was injured and – but it was never said it was done at work.
> Q. How did you know he was injured, sir?
> A. Well, he come [sic] in limping and wearing a knee brace.

Tr., pp. 170-171; Defendants' Exh. D., p. 11. Marti Fox, former bookkeeper in charge of accident reporting[2], testified:

2 Ms. Fox testified that she was laid off by Employer due to lack of work on December 13, 2009. She is still on

> The only thing I recall is he had gone on vacation. And when he came back, I noticed he had his knee in a brace. And I said, you know, "How did you hurt your knee?" "I don't remember. I don't know," he said. And that's about, oh, I – I believe I asked him, "Do you" – "Did you hurt it on the job, or do you need to fill out an incident report?" And he said, "No."

Tr., pp. 184-185; Defendants' Exh. D., p. 13.

22. One witness for Employer could not recall Claimant ever limping. Thomas Carroll, current project supervisor for Employer who previously worked for Claimant in a temporary position, recalled very little about the relevant time period. He did recall talking with Claimant about his plans to move during his vacation, but the record does not indicate when this conversation took place.

Left Knee Injury and Claimant's Discharge

23. As a result of Claimant's left knee injury, he was unable to perform his normal duties and Employer had no light duty work for him. After Claimant was off work for several weeks and still had no plan for recovery, Employer discharged him. Notice of his discharge, effective September 16, 2009, was mailed to Claimant on or about September 22, 2009.

24. Claimant never reported to anyone at Employer's that he believed his left knee condition was the result of a workplace injury before he was discharged. Claimant always just said he did not know how he injured his knee.

First Report of Injury

25. Within approximately two weeks after Claimant received notice that he had been discharged from his job, he filed a FROI with the Commission. Claimant filed the FROI in an effort to obtain funding for an MRI because his medical insurance provider had denied coverage, and he was unable

---

good terms with Employer.

to pay for it out-of-pocket. Dave Duhaime, a vocational consultant with the Commission, provided the form.

26. Claimant testified that he thought he filed the FROI form in late August or early September 2009. However, the form itself indicates that Claimant's employment was terminated on September 16, 2009, so it must have been completed sometime after that date. Claimant's Exh. 1. Further, an additional sheet Claimant attached to the FROI describing the sequence of events leading to the injury indicates Claimant filed the FROI after September 22, 2009, when he received notice of his discharge from Employer's. Defendants' Exh. C, p. 5.

27. In the FROI, Claimant indicated he was involved in a workplace accident on August 11, 2009.

28. Claimant testified that he did not report his injury sooner because he believed his job would be jeopardized if he did. However, he admitted that his job had not been threatened after either of his previous injury reports to Employer, and he knew of no employee who had been discharged for filing a worker's compensation claim. In addition, several witnesses disputed that Employer fostered such a belief, testifying that company policy, emphasized in the employee handbook and at mandatory safety meetings, required immediate accident reporting, with consequences for those who did not follow the policy.

DISCUSSION AND FURTHER FINDINGS

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). 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

The Idaho Workers' Compensation Act places an emphasis on the element of causation in determining whether a worker is entitled to compensation. In order to obtain workers' compensation benefits, a claimant's disability must result from an injury, which was caused by an accident arising out of and in the course of employment. *Green v. Columbia Foods, Inc.*, 104 Idaho 204, 657 P.2d 1072 (1983); *Tipton v. Jannson*, 91 Idaho 904, 435 P.2d 244 (1967). An employer is not liable for medical treatment that is not causally related to an industrial accident. *Sweeney v. Great West Transp.,* 110 Idaho 7, 714 P.2d 36 (1986); *Williamson v. Whitman Corp./Pet, Inc.,* 130 Idaho 602, 944 P.2d 1365 (1997).

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). Further, there must be medical testimony supporting the claim for compensation to a reasonable degree of medical probability. A claimant is required to establish a probable, not merely a possible, connection between cause and effect to support his or her contention. *Dean v. Drapo Corporation*, 95 Idaho 958, 560-61, 511 P.2d 1334, 1336-37 (1973). See also *Callantine*, *Id*.

The Idaho Supreme Court has held that no special formula is necessary when medical opinion evidence plainly and unequivocally conveys a doctor's conviction that the events of an industrial accident and injury are causally related. *Paulson v. Idaho Forest Industries, Inc.*, 99 Idaho 896, 591 P.2d 143 (1979); *Roberts v. Kit Manufacturing Company, Inc.*, 124 Idaho 946, 866 P.2d 969 (1993).

As a threshold matter, every claimant must prove that he suffered an industrial injury caused by an accident. Qualifying injuries include only those caused by an accident resulting in violence to the physical structure of the body. I.C. § 72-102(18)(c). An accident is defined as "an unexpected,

undesigned, and unlooked for mishap, or untoward event, connected with the industry in which it occurs, and which can be reasonably located as to time when and place where it occurred, causing an injury." I.C. § 72-102(18)(b). Without an accident, there can be no compensable injury.

The Idaho Supreme Court has elucidated, in several decisions over the years, what does and what does not constitute an accident. For example, mere onset of hip pain after standing for two hours at work does not amount to an accident because there was no event that resulted in "violence to the physical structure of the body." *Perez v. J.R. Simplot Co.,* 120 Idaho 435, 816 P.2d 992 (1991). Likewise, the Commission's finding of no accident was upheld where the claimant experienced no symptoms of any injury until the morning following a day in which he was unloading windows and refrigerators at work. *Roberts v. Kit Manufacturing Company, Inc.*, 124 Idaho 946, 866 P.2d 969 (1993). Although the *Roberts* claimant felt pain on waking, he went to work that day anyway. He eventually underwent surgical correction to his C5-6 and C6-7 vertebrae by Dr. Henbest, which completely relieved all of his symptoms. Dr. Henbest opined that the injury corrected by the surgery was work-related. However, the referee concluded that Dr. Henbest's opinion was inadequate to establish an accident had occurred because his only knowledge of what caused Claimant's injury was gleaned from Claimant's reports. In addition, Dr. Henbest otherwise voiced uncertainty about the merit of his own conclusions. Therefore, Dr. Henbest's opinion did not plainly and unequivocably convey his conviction that the injury was work-related as required by *Paulson*. *Id.*

Conversely, the Court has held that a compensable accident did occur when an employee felt a pop and burning sensation in her shoulder while reaching across a conveyor belt to perform her job. *Spivey v. Novartis Seed Inc.,* 137 Idaho 29, 43 P.3d 788 (2002). The *Spivey* factual scenario illustrates the rule stated by the Court nearly two decades prior: "If the claimant be engaged in his

ordinary usual work and the strain of such labor becomes sufficient to overcome the resistance of the claimant's body and causes an injury, the injury is compensable." *Wynn v. J.R. Simplot Co.*, 105 Idaho 102, 666 P.2d 629 (1983). Similarly, the Court held that a compensable accident occurred when a claimant felt her knee "grab" and experienced pain as she rose from a chair in the company break room. *Page v. McCain Foods, Inc.,* 141 Idaho 342, 109 P.3d 1084 (2005). It was irrelevant that the claimant in *Page* did not consider the event an accident. *Id.*

Witness Credibility

29. There is inadequate evidence in the record from which to determine that any witness made any intentionally inaccurate statements. However, the credibility of each witness in this case is challenged by the memory-dulling time lapse of seven or eight weeks between the time of onset of Claimant's limp and the date on which he filed his FROI, notifying Employer for the first time that he believed his injury was work-related.

30. We find that each witness is generally credible; however, most of the witnesses, including Claimant, have made inaccurate statements in the record in these proceedings, as detailed above. Only Mr. Carroll has not provided any testimony deemed erroneous. Unfortunately, Mr. Carroll's testimony (that he could not remember Claimant limping), while apparently accurate, is of little assistance in light of the overwhelming evidence from both parties that Claimant was limping at work.

Accident

31. Claimant alleges that he suffered a compensable workplace accident on August 11, 2009. However, a number of facts in the record fail to support, or altogether dispute, Claimant's allegation.

32. First, Claimant did not file his FROI until after he was discharged by Employer. Claimant's testimony, that he feared he would be terminated for reporting a workplace accident, is specious. He

had previously reported industrial accidents and received related medical care. As a result, the Referee finds that his testimony about his reasons for failing to report his injury to Employer prior to his discharge is not credible. It is more likely, given that Claimant repeatedly reported he did not know how he injured his knee, that he had sufficient doubts about whether or not the injury was work-related to prevent him from notifying Employer earlier. Evidence of Claimant's lack of certainty as to whether his injury was work-related is probative because it is consistent with Employer's position that Claimant injured himself somewhere other than at work.

33. Second, Claimant's testimony is challenged by that of his coworkers, Mr. Herald's in particular.

a. Mr. Sparks testified that Claimant had been limping for more than a week already by August 11, and Mr. Ellifrits and Mr. Herald similarly testified that Claimant returned from his vacation limping[3]. Claimant confirmed that he spoke to Mr. Herald about his left knee injury when he returned to work, telling him that he did not know how it happened. Further, Mr. Herald testified that he (Mr. Herald) left on his own vacation, through the end of August, on or about August 6. Mr. Sparks confirmed that Mr. Herald left on vacation during the same week in which Claimant returned from his.

b. Since Claimant did not return to work for Employer after August 13, and Mr. Herald was gone August 6 through the end of the month, the only period in which Mr. Herald could have seen Claimant limping while working was August 3-5. The evidence in the

[3] Mr. Kreger and Ms. Fox also testified that Claimant returned on August 3 limping. However, they each also testified that Claimant was wearing a knee brace which, as we found above, is inaccurate. This inaccuracy draws scrutiny to the credibility of these witnesses on the critical issue of the time when they each first saw Claimant limping because if they first saw him limping when he was wearing a brace, then it must have been on or after August 18. As a result, their testimony on this point is less persuasive than that of the other witnesses.

record is insufficient to refute that Mr. Herald left on vacation on or about August 6. As a result, Mr. Herald's was the most persuasive witness testimony with respect to when Claimant first exhibited a limp.

c. Mr. Herald's testimony was also more persuasive than Mr. Etcheto's chart note of August 14, stating Claimant's left knee pain began four days prior. The Commission commonly relies upon information recorded in medical records when witness testimony is in dispute because they carry indicia of reliability when they are contemporaneously recorded and the information provided is necessary to render proper treatment. However, in this instance, more weight is allocated to Mr. Herald's testimony than to Mr. Etcheto's chart note. While the onset date reported in the chart note was recorded more proximally to the time when Claimant first began experiencing symptoms than was Mr. Herald's testimony, it is based upon Claimant's unverified report which was not crucial to obtaining proper care. Regardless of whether Claimant reported he experienced onset symptoms a few days previously or a week and a half previously, he could reasonably expect to obtain the same diagnosis and treatment. Further, the note is subject to ordinary transcription errors that cannot be readily ruled out, since Mr. Etcheto did not testify. In addition, the note offers dubious support for Claimant's position since it locates the injury in time to August 10, not August 11. There is no evidence in the record that Claimant worked on August 10, a Sunday. Mr. Herald's testimony, however, is supported by Claimant's testimony that they spoke about his injury while Claimant was at work, as well as by Mr. Sparks' testimony that Mr. Herald was leaving for vacation during the same week in which Claimant was returning.

34. Third, Dr. Johnson's testimony does not support Claimant's allegation beyond agreeing that

his knee injury was consistent with his reported history. Since the accuracy of Claimant's reported history is at issue, Dr. Johnson's opinion is not conclusive.

35. Fourth, Claimant reported to Mr. Etcheto on August 14 that he thought his knee injury may be related to work activities, yet he never reported this to Employer while he was employed there.

36. Claimant's case is overcome by a preponderance of evidence in the record that denigrates his allegation that he experienced a workplace accident on August 11, 2009. Claimant has failed to prove the occurrence of an accident at the time and place he alleges. As a result, Claimant has failed to prove that he suffered a compensable injury.

CONCLUSION OF LAW

Claimant has failed to prove by a preponderance of evidence that he suffered an industrial accident on August 11, 2009 or that his left knee meniscal tear and chondromalacia were otherwise the result of a workplace accident. As a result, his Complaint should be dismissed with prejudice.

RECOMMENDATION

Based upon the foregoing findings of fact and conclusion of law, the Referee recommends that the Commission adopt such findings and conclusions as its own and issue an appropriate final order.

DATED in Boise, Idaho, on ___25_____ day of __January_____, 2011.

INDUSTRIAL COMMISSION

_/s/_____
LaDawn Marsters, Referee

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

TODD L. VLAHOS, Claimant, v. LIBERTY COMPANIES, Employer, LIBERTY NORTHWEST INSURANCE CORPORATION, Surety, Defendants.	)	**IC 2009-027446** **ORDER** February 4, 2011

Pursuant to Idaho Code § 72-717, Referee LaDawn Marsters submitted the record in the above-entitled matter, together with her 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 failed to prove by a preponderance of evidence that he suffered an industrial accident on August 11, 2009 or that his left knee meniscal tear and chondromalacia were otherwise the result of a workplace accident. As a result, his Complaint should be dismissed with prejudice.

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

DATED this __4___ day of __February_____, 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 __4___ day of _February_____, 2011, a true and correct copy of the foregoing **Order** was served by regular United States Mail upon each of the following persons:

DENNIS R PETERSEN
P O BOX 1645
IDAHO FALLS ID 83403-1645

KIMBERLY A DOYLE
LAW OFFICES OF HARMON & DAY
P O BOX 6358
BOISE ID 83707-6358

jkc _/s/_____