

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JARAN WAGNER,

Claimant,

v.

SANITARY SERVICE, INC.,

Employer,

and

LIBERTY NORTHWEST INSURANCE
CORPORATION,

Surety,
Defendants.

IC 2009-026130

ORDER

Filed April 5, 2012

Pursuant to Idaho Code § 72-717, Referee submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusions of law, to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant has proven that he suffers a left knee injury caused by his October 5, 2009 industrial accident.
2. Claimant has proven his entitlement to medical care for his left knee injury, including but not necessarily limited to arthroscopy, as recommended by Dr. Curtin.
3. Given Claimant's proven entitlement to medical care for his left knee injury, he may be entitled to temporary disability benefits during any future period of recovery.

4. Inasmuch as Claimant has proven his entitlement to medical care for his left knee injury, the issue of his entitlement to permanent partial impairment benefits due to his left knee injury is not presently ripe for determination.

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

DATED this 5th day of April, 2012.

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 5th day of April, 2012, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

ROBERT A NAUMAN
3501 ELDER ST STE 108
BOISE ID 83705-4986

ROGER BROWN
PO BOX 6358
BOISE ID 83707

srb

/s/ _____

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

Filed April 5, 2012

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 Boise, Idaho on April 28, 2011. Claimant, Jaran Wagner, was present in person and represented by Robert A. Nauman, of Boise. Defendant Employer, Sanitary Services, Inc. (SSC), and Defendant Surety, Liberty Northwest Insurance Corporation, were represented by Kimberly A. Doyle, of Boise. The parties presented oral and documentary evidence. Post-hearing depositions were taken and briefs were later submitted. Patrick Brown, of Boise, authored Defendants' post-hearing brief. The matter came under advisement on December 19, 2011.

ISSUES

The issues to be decided are:

1. Whether Claimant suffered a left knee injury caused by an industrial accident, or whether his left knee condition is due to a pre-existing and/or subsequent injury/condition;

2. Whether Claimant is entitled to medical care;
3. Whether Claimant is entitled to temporary disability benefits; and
4. Whether Claimant is entitled to permanent partial impairment.

CONTENTIONS OF THE PARTIES

Claimant suffered an industrial accident on October 5, 2009, while working for SSC when a third party backed a car into Claimant, pinning his left foot to the ground. Defendants acknowledged the accident and paid benefits for a left foot crush injury and for a left hip injury. Claimant alleges he also suffered a left knee injury at the time of the October 5, 2009 accident and requests medical, temporary disability, and permanent partial impairment benefits therefore. Defendants deny that Claimant sustained any left knee injury as a result of his October 5, 2009, industrial accident.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. The pre-hearing deposition of Claimant taken March 23, 2011;
3. The testimony of Claimant taken at the April 28, 2011 hearing;
4. Claimant's Exhibits 1-13 and 16-19, and Defendants' Exhibits A-T, admitted at the hearing;
5. The post-hearing deposition of Michael J. Curtin, M.D., taken by Claimant on May 11, 2011; and
6. The post-hearing deposition of Dr. Roman Schwartsman, taken by Defendants on July 29, 2011.

All objections made during the depositions are overruled.

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. **Background.** Claimant was born in 1983. He was 28 years old and had lived in Nampa for five months at the time of the hearing. He received his GED at the age of 15 and thereafter worked for McDonalds and Sports Authority. He later supervised men's department sales at Old Navy for approximately six months. Claimant worked as the store manager of a shoe company in California and eventually became an operations manager at a plumbing business in Arizona, where he was responsible for hiring, firing, and supervising employees.

2. In approximately 2000, Claimant fractured his right wrist and one rib in a car accident. In approximately 2005, his father was diagnosed with cancer and Claimant moved to Idaho. On June 21, 2005, Claimant was a passenger in a fender bender motor vehicle accident. He was examined by a medical practitioner and released without needing any further medical care. He received no settlement or compensation for the accident and sustained no injury therefrom.

3. On January 11, 2006, Claimant began working full-time as a sanitary engineer, or garbage collector, for SSC. He alternated with coworkers driving the garbage truck and "throwing garbage" at one-hour intervals.

4. While working for SSC on April 27, 2006, Claimant sustained a left knee strain. He was examined by Rebecca Goodspeed, PA-C, on April 28, 2006. She found full range of motion, all ligaments stable, no joint line tenderness, no effusion, and no edema. She diagnosed medial left knee sprain and prescribed a neoprene sleeve and Naprosyn. She restricted Claimant from lifting, repetitive twisting, stooping, squatting, or kneeling. By May 4, 2006, Claimant's

left knee was improved. He continued to display good stability both laterally and medially, with no swelling. He was not using any medications for pain control. On May 11, 2006, Lawrence Sladich, M.D., examined Claimant and found good left knee stability and no swelling. Dr. Sladich encouraged Claimant to resume running and playing basketball, and released Claimant to work but continued to restrict him from squatting or kneeling. On May 25, 2006, Dr Sladich again examined Claimant and found good left knee stability, full range of motion, and no effusion. Dr. Sladich observed that Claimant had developed some mild weakness from wearing the left knee brace and prescribed two weeks of physical therapy. Dr. Sladich continued to approve Claimant for work, restricting him only from squatting or kneeling. On June 23, 2006, Claimant presented to Rebecca Goodspeed after stepping on a nail at work. Goodspeed provided a tetanus immunization and found that Claimant had no work restrictions. Claimant continued to perform his usual work duties at SSC without any left knee complaints for the next three years.

5. While working for SSC, Claimant also sustained the following injuries on the dates indicated: right wrist sprain on September 27, 2006, lumbosacral strain on April 28, 2008 and July 21, 2008, and a displaced rib on August 6, 2009. He sustained no permanent impairment from any of these injuries. Immediately prior to October 5, 2009, Claimant had no foot, knee, or ankle symptoms.

6. On October 5, 2009, in addition to working full-time at SSC, Claimant was also a part-time server at Red Robin, where he worked 10-15 hours per week.

7. **Industrial accident and treatment.** On October 5, 2009, Claimant was “throwing garbage” when the driver of a small parked car abruptly backed the car into Claimant, striking his left hip and pinning his left foot under the left rear tire of the car for 10 to 15 seconds. Claimant banged on the back of the car, until the driver pulled forward and released

Claimant's foot. Claimant felt immediate left foot and ankle pain. He was earning \$15.20 per hour at the time of the accident. He immediately reported the accident to his supervisor, who took him to Howard Shoemaker, M.D.

8. On October 5, 2009, Dr. Shoemaker examined Claimant and assessed crushing left foot injury and left ankle pain. He noted that Claimant's left foot showed no swelling or effusion and x-rays were normal. Dr. Shoemaker prescribed Naprosyn and restricted Claimant to light-duty work. Claimant testified that he also reported left knee pain; however, Dr. Shoemaker's October 5, 2009 notes make no mention of left knee complaints. Claimant testified that Dr. Shoemaker advised him that his left knee pain resulted from his altered gait due to his left foot and ankle pain, and that his left knee pain would resolve as his left foot and ankle healed.

9. After the October 5, 2009 accident, Claimant could not tolerate the standing required as a part-time server and ceased his work at Red Robin.

10. On October 12, 2009, Dr. Shoemaker again examined Claimant. Claimant's left foot pain had become severe and Dr. Shoemaker suspected complex regional pain syndrome (CRPS). He prescribed Neurontin and ordered an MRI. Dr. Shoemaker did not record any left knee complaints. On October 13, 2009, Claimant underwent a left foot and ankle MRI that showed a medial bone contusion, but no other abnormality. On October 16, 2009, Dr. Shoemaker reviewed the MRI with Claimant and encouraged him to maintain functional activity. Dr. Shoemaker recommended that Claimant attend physical therapy and resume exercising at the gym. Dr. Shoemaker examined Claimant again on October 30, 2009, noting continued severe left foot and ankle pain, but no left knee complaints.

11. Claimant testified at hearing that although his left knee pain worsened over the weeks following his accident, he did not mention it again for several weeks, believing Dr. Shoemaker's earlier assurance that the knee pain was a consequence of Claimant's altered gait and would resolve as his left foot pain resolved. Claimant continued to increase his activity per Dr. Shoemaker's recommendation.

12. On November 9, 2009, Dr. Shoemaker examined Claimant and recorded that he was progressing his activity, performing light-duty work at SSC, working out in the gym regularly, and needed no further physical therapy. Claimant continued to report severe left foot and ankle pain, but no left knee symptoms. Claimant testified that his gym workouts consisted of upper body exercises, but no running or leg exercises.

13. On November 16, 2009, Claimant underwent a left ankle bone scan that was positive for osteo-septic joint, consistent with CRPS. Claimant continued to work light-duty and be as active as possible.

14. On November 24, 2009, Claimant returned to Dr. Shoemaker reporting worsening left ankle pain and also left knee pain. This is the first report of left knee pain in the medical records after Claimant's industrial accident. Dr. Shoemaker concluded that Claimant's CRPS was progressing, and referred him to a specialist.

15. On December 7, 2009, Claimant was examined by Barbara Quattrone, M.D. Dr. Quattrone recorded Claimant's left knee pain complaints. She observed that his bone scan was conclusive evidence of regional sympathetic dystrophy (RSD) or CRPS, and that he was doing a great job of working through the pain by walking and remaining active. Dr. Quattrone noted that Claimant went to the gym five days a week and had a very healthy diet. She noted that Claimant

preferred sympathetic nerve block injections to treat his CRPS, rather than taking further medications.

16. On December 10, 2009, Claimant presented to Christian Gussner, M.D., who provided a lumbar sympathetic nerve block injection. On December 21, 2009, Claimant returned to Dr. Gussner, who recorded that Claimant's left foot pain decreased 50% after the injection. Dr. Gussner also recorded Claimant's left knee complaints and cautioned Claimant to avoid running. On December 29, 2009, Dr. Gussner provided another lumbar sympathetic nerve block injection. On January 7, 2010, Dr. Gussner examined Claimant and noted that he received additional partial relief of his left foot pain after the second nerve block injection. Dr. Gussner concluded that no further nerve block injections were necessary, and deferred to Dr. Shoemaker a referral to an orthopedist.

17. On January 19, 2010, Claimant returned to Dr. Shoemaker, reporting continued left knee pain. Dr. Shoemaker referred him to orthopedic surgeon Ronald Kristensen, M.D. It does not appear that Claimant was ever seen by Dr. Kristensen. On February 5, 2010, Dr. Shoemaker examined Claimant and recorded his complaints of left knee pain. Dr. Shoemaker assessed chondromalacia of the left patella secondary to gait abnormality, reasonably work related. He performed an intra-articular left knee steroid injection which temporarily increased Claimant's left knee pain and swelling. Dr. Shoemaker continued to stress maintaining functional activity and Claimant continued working.

18. On February 12 and 19, 2010, Claimant was examined by orthopedist Christopher Hirose, M.D., who assessed left foot crush injury and resultant CRPS. Dr. Hirose also recorded Claimant's complaints of left knee pain.

19. On February 23, 2010, Dr. Shoemaker examined Claimant again and recorded left knee and also right knee complaints, caused by gait abnormality due to his work injury. Dr. Shoemaker continued to encourage Claimant to maintain functional activity and not be sedentary. He noted that Claimant was working full-duty on his garbage collection routes and doing upper body exercises five days per week at the gym. Dr. Shoemaker also encouraged Claimant to try a stationary bike.

20. On March 3, 2010, Dr. Shoemaker examined Claimant again and recorded bilateral knee complaints secondary to gait abnormality. Dr. Shoemaker continued to relate this to Claimant's work injury. Dr. Shoemaker continued to stress maintaining functional activity, noted that Claimant exercised five days a week, upper body only, and that he had tried a stationary bike, per Dr. Shoemaker's recommendation. However, stationary biking caused Claimant consistent left knee popping.

21. On March 15, 2010, Claimant underwent another bone scan of his left foot and ankle, which was reported as normal.

22. On March 19, 2010, Dr. Gussner examined Claimant and recorded both left and right knee complaints. Dr. Gussner reported that Claimant displayed no pain amplification behavior and concluded that Claimant's CRPS had resolved, per the recent bone scan. Dr. Gussner opined that the evolution of Claimant's knee pain was unclear and probably related to reactive depression, and recommended referral to the WorkFit chronic pain management program.

23. On March 26, 2010, Dr. Hirose expressly requested Surety's approval to refer Claimant to knee specialist William Linder, M.D., to evaluate and treat Claimant's ongoing left knee pain. Instead, Defendants arranged for Claimant's attendance at the WorkFit program and

Claimant commenced participation there. While at the WorkFit program, Claimant's left knee was examined by Ronald Schwartzman, M.D. Based upon the examination, Dr. Schwartzman suspected internal derangement and ordered an MRI.

24. On April 7, 2010, WorkFit program director Nancy Greenwald, M.D., recommended that Claimant stop his participation in the WorkFit program. She noted that Dr. Schwartzman did not recommend the WorkFit program given Claimant's ongoing knee complaints. On April 27, 2010, Claimant underwent a left knee MRI that revealed no left knee abnormalities. Dr. Schwartzman met with Claimant on April 27, 2010, to review his MRI results. On April 28, 2010, Dr. Schwartzman released Claimant to full-duty work without restrictions, indicating he found no objective evidence of left knee injury.

25. On June 8, 2010, Dr. Greenwald rated the permanent impairment of Claimant's left foot at 2% of the whole person due to sensory peripheral neuropathies from his left foot crush injury. Dr. Greenwald declined to address Claimant's continued left knee complaints because Surety asserted that Claimant's left knee complaints were not work-related.

26. On July 1, 2010, Claimant, on his own volition, sought left knee treatment from Michael Curtin, M.D., who initially suspected that Claimant had inflamed synovial tissue in his left knee. Dr. Curtin administered an intra-articular steroid injection of Claimant's left knee.

27. On July 20, 2010, Dr. Shoemaker examined Claimant and noted trace effusion in his left knee. Dr. Shoemaker released Claimant to return to full-duty work, but recorded continued reports of left knee symptoms.

28. On July 22, 2010, Claimant returned to Dr. Curtin and reported the injection made his left knee worse for a few days. Dr. Curtin examined Claimant again on September 7, 2010.

Dr. Curtin became convinced that Claimant suffered synovial plica syndrome in his left knee as a result of his industrial accident.

29. The record reveals that following Claimant's October 5, 2009 industrial accident, while recovering from his crushing left foot injury, he continued to work at SSC, initially performing light-duty work and progressing to performing nearly his normal duties. He diligently maintained functional activity through consistent exercise as recommended by Drs. Shoemaker, Quattrone, and Gussner. Claimant was entirely compliant with the WorkFit program until discharged by Dr. Greenwald and Dr. Schwartzman due to his left knee symptoms. At the time of the hearing, Claimant continued working for SSC and had been driving a transfer truck for several months. He continued to have left knee pain, increasing with activity.

30. Having observed Claimant at hearing, and compared his testimony to other evidence in the record, the Referee finds that Claimant is a credible witness.

DISCUSSION AND FURTHER FINDINGS

31. The provisions of the Idaho Workers' Compensation Law are to be liberally construed in favor of the employee. Haldiman v. American Fine Foods, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990). The humane purposes which it serves leave no room for narrow, technical construction. Ogden v. Thompson, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996). Facts, however, need not be construed liberally in favor of the worker when evidence is conflicting. Aldrich v. Lamb-Weston, Inc., 122 Idaho 361, 363, 834 P.2d 878, 880 (1992).

32. **Occurrence and causation.** The threshold issues concern whether Claimant suffers a left knee injury due to his October 5, 2009, industrial accident.

33. 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, 18 P.3d 211, 217 (2001).

34. Claimant herein maintains that his October 5, 2009 industrial accident caused his left knee injury, specifically, synovial plica syndrome, as diagnosed by Dr. Curtin, a board certified orthopedic surgeon. Defendants rely principally upon the opinion of Dr. Schwartzman, also a board certified orthopedic surgeon, that Claimant has no left knee abnormality and that his industrial accident caused no left knee injury. Thus, Defendants dispute both the existence and causation of Claimant’s left knee injury. The medical opinions of Drs. Schwartzman and Curtin are examined below as to both issues. The record contains no medical opinion that Claimant’s left knee injury was caused by a pre-existing or subsequent event.

35. Existence of injury. Dr. Schwartzman observed that a plica is a normally occurring asymptomatic wrinkle or infolding of the synovial lining of the knee. Dr. Curtin testified that a minority of individuals have knee plica and that individuals having plica in one knee, usually have nearly symmetrical plica in the other knee also. He noted there are four common areas of intra-articular plica in the knee; the two most common locations of plica are

infrapatellar and in the medial shelf area. Dr. Curtin explained the occurrence of synovial plica syndrome and the somewhat frequent incidence of a traumatic event causing the plica to become symptomatic. He noted that symptomatic synovial plicae may or may not produce knee swelling: “I’ve seen more often than not they don’t swell, rather—as opposed to the fact that they do.” Curtin Deposition, p. 12, ll. 14-16. He testified that MRI is not very effective in detecting synovial plica except in the case of extraordinarily large and thick plica. Dr. Curtin expressly observed that: “infrapatellar plica, ... because of the position the knee is in at the time of the study, is almost never picked up; although, it’s the most commonly seen plica.” Curtin Deposition, p. 17, ll. 12-15. Dr. Curtin testified that arthroscopy is the gold standard and the best tool for detecting synovial plica syndrome. He noted that frequently arthroscopy will reveal sizable plica causing excoriation of the femoral condyle that was not imaged or reported on MRI. Dr. Curtin testified that during his ten years of orthopedic practice he has treated approximately 10 patients per year—for a total of approximately 100 patients—solely for symptomatic synovial plica in their knees, and approximately four times that many patients for symptomatic synovial plica in combination with additional knee pathology.

36. Dr. Schwartzman testified that in his 20 years of practicing medicine, he could count on one hand the number of truly symptomatic knee plica he has excised. He examined Claimant on April 6, 2010, at Defendants’ request, and recorded Claimant’s symptoms of injury:

Focused examination on the patient’s left knee shows pain along the medial joint line. Apley grind in flexion and McMurray maneuver are both symptomatic. A palpable click is elicited. The patient also has some discomfort in the patellofemoral joint superiorly. There is a small plica appreciated with patellofemoral flexion.

Defendants’ Exhibit H, p. 170. Based upon this examination, Dr. Schwartzman ordered a left knee MRI. He affirmed that the MRI taken of Claimant’s knee was the highest quality MRI

available and was read by himself and a highly trained radiologist. Dr. Schwartzman testified that the MRI disclosed no left knee abnormality and only a very thin plica with no reactive change around it. He explained that the MRI would have shown a reactive change if plica irritation had been present. Dr. Schwartzman asserted that the medical literature does not support the allegation that MRIs seldom image plica. However, he acknowledged that MRI radiologists often do not report plicae because plicae are so rarely symptomatic. Dr. Schwartzman acknowledged that Claimant's described accident is a classic mechanism for knee ligament and meniscus injury, but testified that there was no objective evidence to substantiate Claimant's pain reports and alleged knee injury. Dr. Schwartzman opined that the normal MRI and Claimant's lack of improvement after two intra-articular left knee injections disproved the presence of symptomatic left knee plica.

37. Dr. Curtin acknowledged that Claimant's left knee MRI did not show any abnormality, but based upon his experience treating over 100 patients with synovial plica syndrome, reiterated that MRIs seldom show symptomatic plica. Dr. Curtin testified that Claimant consistently had two areas of tenderness to palpitation in his left knee: the medial femoral condyle, corresponding to the medial-shelf region plica, and just below the patella, corresponding to the infrapatellar plica. Both of these areas are common locations of symptomatic synovial plica. He noted that Claimant reported his left knee swelled intermittently, consistent with synovial plica syndrome. Dr. Curtin explained that Claimant's reports that his left knee did not improve, but actually worsened temporarily after both of his intra-articular steroid injections are consistent with hypersensitivity reactions to the carriers injected. Dr. Curtin testified that such a response, known as a "steroid flare," is uncommon, but does occur. Dr. Curtin testified that the fact that Claimant later developed transitory symptoms

in his right knee was most probably due to temporary irritation of Claimant's right knee plica caused by his abnormal gait resulting from his left foot crush injury.

38. Close comparison of Dr. Curtin's and Dr. Schwartzman's opinions is enlightening. As Dr. Schwartzman affirmed, Claimant's left knee MRI revealed a "plica is in front of his knee on the outside." Schwartzman Deposition, p. 15, ll. 16-17. This plica was not symptomatic, showing no irritation on MRI. Thus, the areas of Claimant's reported discomfort do not correspond to the plica imaged on his MRI. However, as Dr. Curtin testified, Claimant's left knee complaints were in two areas: 1) the infrapatellar area, and 2) "around the medial-shelf region of his knee ... which is on the inside aspect of the knee, the distal or far end of the thigh bone." Curtin Deposition, p. 10, l. 22 through p. 11, l. 1. Dr. Schwartzman's observations were similar: "the patient's pointing to the back of his knee along the inside of his knee as to the location of his pain." Schwartzman Deposition, p. 15, l. 9-11. Significantly, as Dr. Curtin summarized:

Both of those locations are locations where when a patient does have a synovial plica in their knee, which is symptomatic, are often the sources of the discomfort.

So in other words, his complaints of where he was tender matched where patients oftentimes have issues with symptomatic synovial plica or symptomatic synovitis. And that was pretty consistent; that is, his knee from the time that I met him was tender in those locations.

The lack of objectivity came with the fact that he'd had an MRI which did not show these bends. The MRI's seldom do, in my experience and in the experience of others.

Curtin Deposition, p. 11, ll. 3-18.

39. Finally, Dr. Curtin's conclusion that Claimant's passing right knee complaints were due to temporarily symptomatic right knee plica is consistent with his observation that plica usually occur symmetrically in both knees of the population having synovial plica.

40. Dr. Curtin's experience in treating synovial plica syndrome is demonstrably more extensive than Dr. Schwartzman's experience. Dr. Schwartzman's opinion denying the existence of Claimant's synovial plica syndrome is not persuasive. Neither are the opinions of Dr. Shoemaker or Dr. Hirose on this question because they both ultimately rely upon Dr. Schwartzman's opinion. Dr. Curtin's opinion is well explained, consistent with and supported by the evidence and persuasive. The Referee finds that Claimant likely suffers synovial plica syndrome in his left knee.

41. Causation. Dr. Schwartzman examined Claimant on April 6, 2010, at Defendants' request, and recorded Claimant's description of his October 5, 2009 accident as follows:

The patient reports that he was hit in the left hip by a passenger car, which then proceeded to park its tires [sic] on his left foot. The patient was under the wheel of the car for approximately 10-15 seconds with his left foot directly under the wheel, [sic] while he was hit he fell backwards. The patient describes it [sic] backward twisting, fall pivoting around his left leg.

Defendants' Exhibit H, p. 170. Defendants assert that Claimant overstated his accident to Dr. Schwartzman and did not previously report any twisting or falling down after being backed into by the car on October 5, 2009.

42. Claimant did not report falling down in his description of his accident; however, he has described nearly falling down. It is significant that on April 9, 2010, the driver of the car that backed into Claimant provided a statement to Defendants' representative. The driver acknowledged that Claimant was moving garbage cans behind his car, that he backed his car up, and that Claimant expressly asserted the driver ran over his foot. The driver maintained that he did not see Claimant when he was backing up and that his car's trunk extended far enough, that to have backed over Claimant's foot, Claimant would have fallen to the ground. Defendants' Exhibit R.

43. On April 13, 2010, Claimant described his accident to Defendants' adjustor:

As I was walking back behind his car to put the can back on the curb, all of a sudden he just popped into reverse and then hit my hip, and I kind of started to fall back. I was trying to get out of the way, so I didn't get run over. And then he just stopped right on the top of my left foot, ankle.

Defendants' Exhibit Q, p. 316. Claimant subsequently elaborated that he was behind the middle of the car when it began backing up, that he tried to push himself out of the way and caught himself with his right leg which kept him from falling to the ground. He was only able to signal the driver of the car by banging on the back—not the side or rear windshield—of the car that crushed his left foot. Claimant's account of his accident is consistent in asserting that he nearly fell to the ground after being struck in the left hip and having his left foot pinned under the left rear tire of the car.

44. Dr. Schwartzman's record of Claimant's description is brief and slightly vague. However, it does not establish an exaggerated report by Claimant. Claimant's description of his accident to Dr. Schwartzman was reasonably consistent with other accounts in the record. As noted above, Dr. Schwartzman testified that Claimant's described accident is a classic mechanism for knee ligament and meniscus injuries; however, Dr. Schwartzman ultimately opined that Claimant has no left knee injury. As noted previously, Dr. Schwartzman's opinion in this regard is not persuasive.

45. Dr. Curtin opined that the force of a vehicle—not contacting Claimant's knee—but rolling onto his foot, would transmit force up the limb and produce an inciting trauma, causing Claimant's left knee plica to become symptomatic. Dr. Curtin testified that this event would produce symptoms within weeks of the injury.

46. Defendants note that Dr. Shoemaker's November 24, 2009, note is the first medical record documenting Claimant's complaints of left knee pain, made approximately six

weeks after his October 5, 2009 accident. Claimant testified that he reported left knee pain to Dr. Shoemaker the day of his accident, but not again for several weeks thereafter because he accepted Dr. Shoemaker's initial prediction that the left knee symptoms were caused by Claimant's altered gait and would resolve as his crushed left foot and ankle healed. The Referee finds Claimant's testimony and explanation in this regard credible.

47. Dr. Curtin's opinion that Claimant's industrial accident caused his left knee injury—synovial plica syndrome—is well explained, corroborated by the record, and persuasive. Claimant has proven that he suffers a left knee injury caused by his October 5, 2009 industrial accident.

48. **Medical care.** Idaho Code § 72-432(1) mandates that an employer shall provide for an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital service, medicines, crutches and apparatus, as may be required by the employee's physician or needed immediately after an injury or disability from an occupational disease, and for a reasonable time thereafter. If the employer fails to provide the same, the injured employee may do so at the expense of the employer. Idaho Code § 72-432(1). Of course an employer is only obligated to provide medical treatment necessitated by the industrial accident. The employer is not responsible for medical treatment not related to the industrial accident. Williamson v. Whitman Corp./Pet, Inc., 130 Idaho 602, 944 P.2d 1365 (1997). In Sprague v. Caldwell Transportation, 116 Idaho 720, 722-723, 779 P.2d 395, 397-398 (1989), the Court held that medical treatment already received is reasonable when: 1.) the claimant made gradual improvement from the treatment; 2.) the treatment was required by the claimant's physician; and 3.) the treatment was within the physician's standard of practice, the charges for which were fair, reasonable, and similar to charges in the same profession. The Court has announced no similar

standard for prospective medical treatment; thus, Sprague provides some guidance but the instant case must be judged on the totality of the circumstances. Ferguson v. CDA Computone, 2011 IIC 0015 (February 25, 2011); Richan v. Arlo G. Lott Trucking, Inc., 2001 IIC 0008 (February 7, 2011).

49. In the present case, Claimant asserts entitlement to additional medical care, including arthroscopy, for his left knee. Dr. Schwartzman opined that Claimant needed no further treatment of his left knee and expressly concluded that knee arthroscopy was not warranted. As already noted, Dr. Schwartzman's opinion assumes Claimant had no left knee pathology, and is not persuasive.

50. Dr. Curtin testified that appropriate treatment for persistent synovial plica syndrome which has failed to respond to appropriate therapy, anti-inflammatory medication, and selective injection, is arthroscopy and arthroscopic ablation or section of the symptomatic tissues. Arthroscopy is a common part of Dr. Curtin's orthopedic surgical practice. He has performed hundreds of knee arthroscopies. He opined that it was much more probable than not that Claimant suffers synovial plica syndrome and that there is an 80% probability that his symptoms will improve with arthroscopy.

51. Claimant has proven his entitlement to medical care for his left knee injury, including but not necessarily limited to arthroscopy, as recommended by Dr. Curtin.

52. **Temporary disability.** Claimant has not requested temporary disability benefits for any period of recovery prior to the time of the hearing. Given Claimant's proven entitlement to medical care for his left knee injury, he may be entitled to temporary disability benefits during any future period of recovery.

53. **Permanent impairment.** Dr. Schwartzman opined that Claimant sustained no permanent impairment to his left knee due to his industrial accident. However, Dr. Schwartzman's opinion that Claimant suffered no left knee injury is not persuasive. Inasmuch as Claimant has proven his entitlement to medical care for his left knee injury, the issue of his entitlement to permanent partial impairment benefits due to his left knee injury is not presently ripe for determination.

CONCLUSIONS OF LAW

1. Claimant has proven that he suffers a left knee injury caused by his October 5, 2009 industrial accident.

2. Claimant has proven his entitlement to medical care for his left knee injury, including but not necessarily limited to arthroscopy, as recommended by Dr. Curtin.

3. Given Claimant's proven entitlement to medical care for his left knee injury, he may be entitled to temporary disability benefits during any future period of recovery.

4. Inasmuch as Claimant has proven his entitlement to medical care for his left knee injury, the issue of his entitlement to permanent partial impairment benefits due to his left knee injury is not presently ripe for determination.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Referee recommends that the Commission adopt such findings and conclusions as its own and issue an appropriate final order.

DATED this 21st day of March, 2012.

INDUSTRIAL COMMISSION

/s/ _____
Alan Reed Taylor, Referee

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of April, 2012, 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:

ROBERT A NAUMAN
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srb

/s/