

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

KENNY SANTOS JAUREGUI,
Claimant,
v.
SCHAEFFER FARMS GENERAL
PARTNERSHIP,
Employer,
and
IDAHO STATE INSURANCE FUND,
Surety,
Defendants.

IC 2018-009390
**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

FILED
FEBRUARY 8, 2024

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee John C. Hummel, who conducted a hearing in Idaho Falls, Idaho, on August 15, 2023. Claimant, Kenny Santos Jauregui, was present in person; Andrew A. Adams, of Idaho Falls, represented him. Paul J. Augustine, of Boise, was present and represented Employer Shaeffer Farms General Partnership and Surety Idaho State Insurance Fund. The parties presented oral and documentary evidence and later held post-hearing depositions. The parties also submitted briefs. The matter came under advisement on December 29, 2023.

ISSUES

The noticed issues were as follows:

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

2. Whether and to what extent Claimant is entitled to the following benefits:
 - a. Medical care;
 - b. Temporary partial and/or temporary total disability benefits (TPD/TTD);
 - c. Permanent partial impairment (PPI); and
 - d. Permanent partial disability (PPD); and
3. Whether Claimant is entitled to attorney fees pursuant to Idaho Code § 72-804.

CONTENTIONS OF THE PARTIES

Claimant contends that he was injured while in the employment of Employer in an accident with a large cow on January 15, 2018. He claims injuries to his right elbow, right knee, and right hip for which he alleges that he is entitled to medical care, temporary partial and/or temporary total disability benefits (TPD/TTD), permanent partial impairment (PPI) in the amount of 1% WPD, and permanent partial disability (PPD) between 5% and 7%.

Employer and Surety admit that an accident and injury occurred and fully covered the claim with respect to Claimant's right elbow and right knee. They deny that the injury to Claimant's right hip is related to the industrial accident and thus deny liability for workers' compensation benefits attributable to Claimant's right hip.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. The transcript of hearing of August 15, 2023;
3. Joint Exhibits 1 through 27;
4. Deposition of Claimant, taken on December 10, 2020;
5. Deposition of Jacob Moss, M.D., taken on October 5, 2023;

6. Deposition of Keith Holley, M.D., taken on October 11, 2023; and
7. Deposition of Roger Schaeffer, taken on September 6, 2023.

FINDINGS OF FACT

1. **Claimant's Background.** Claimant was 31 years of age at the time of hearing and was born in Long Beach, California on October 10, 1991. He attended school through the third grade in Mexico. He finished grade school and high school in California, and he graduated from Sierra High School in Glendora, California, in 2009. He did not attend college or any post-high school education. At the time of hearing, he resided in Burley, Idaho. Tr., 20:1-21:21; Claimant's Dep. 6:3-15; Ex. 3:2.

2. **Claimant's Prior Work History.** Claimant's employment history prior to working for Employer was focused solely on medium to heavy laboring positions. He did not perform any office or sedentary work. His first job was with the City of Irwindale, California, on a cleaning crew. Tr., 22:3-17. When he moved to Burley with his family after high school, at age 19, Claimant began working on various farms - helping with harvesting, herding livestock and operating farm equipment. Farms that he worked for included Patterson Farms, Schoew Farms, and H & M Farms. Claimant's Dep., 6-15.

3. **Subject Employment.** Employer is a general partnership family farm located northwest of Paul, Idaho, that has been in operation since the 1970s. It raises approximately 4,000 acres of crops (alfalfa, sugar beets, corn, beans, potatoes, and malting barley) and operates a cattle feedlot which feeds from 200 to 6,000 beef cattle. Roger Schaeffer manages the farm. Danny Schaeffer and Justin Schaeffer are also involved in running the farm, with Danny Schaeffer running the feedlot portion of the farm operation. Employer had seven to eleven full-time

employees (including Claimant), as well as seasonal contract laborers which raised the number of employees to 22 to 25. Roger Schaeffer Dep., 6:3 – 10:23.

4. Employer hired Claimant as a full-time employee on May 17, 2017, for a wage of \$11.75 per hour. *Id.* at 9:16-18. Claimant was a driver and a general farm hand. He operated trucks, loaders, and other farm equipment. He also herded cattle and assisted in the harvest of alfalfa, hay, corn, and other crops. Tr., 23:18-25:21.

5. **Industrial Accident.** On January 15, 2018,¹ Claimant had an incident with a large cow while assisting with moving cattle through a gate in the feed lot. The operation involved separating large cattle from small cattle. Claimant’s assignment was to open and close a gate through which large cattle moved. (Another gate was adjacent for small cows that a coworker operated.) During this process, a 900-pound cow became agitated while it was moving through the chute; the cow slid on a wet floor against Claimant and pinned him against the gate. Claimant fell under the full weight of the cow and felt the cow hit him on and below his right knee; he heard something “crack” in his leg.² The cow “stomped” on him. After the incident, Claimant had trouble standing and experienced limping. It took him several minutes to get up from the cement floor. Claimant felt like passing out from the pain. A coworker, Jason, gave Claimant a ride to the farm’s shop, where his pickup truck was located in the parking lot. Claimant then told his supervisor, Justin Schaeffer, what had happened. Schaeffer inquired whether Claimant was alright and told him that he should see a doctor, however Claimant did not want to go to the doctor at

¹ Claimant’s Complaint alleges that the accident occurred on January 15, 2018. Several other references in the record to the accident state that it occurred on January 16, 2018. Claimant’s Brief states that the accident occurred in or about “January of 2018.” *See*, Claimant’s Brief at 2. Defendants consistently referred to the date of injury as January 16, 2018. *See*, Defendant’s Brief at 2. For purposes of these findings, January 15, 2018, the date the complaint alleges, will be assumed to be the date of injury.

² Claimant was vague about the “cracking” in his leg and where the pain was located. In his deposition, he testified in pertinent part as follows: “Q. you said you had that, like, cracking sensation in your leg? A. Yes. Q. Where was it? A. I don’t know. I just heard it. Q. Where was the pain in your leg, in your right leg? A. I don’t know. I just couldn’t move it. I mean my whole body was stomped by the cow...” Claimant’s Dep., 24:25-25:8.

that time because he was covered in manure from the floor of the cattle chute. Claimant then drove his own vehicle to his home. Tr., 25:22-28:15; *see also*, Claimant's Dep. 19-29.

6. On January 17, 2018, Roger Schaeffer telephoned Claimant and arranged to meet him at an urgent care clinic. Tr., 29:5-8. *See also*, Ex. 3:3; Schaeffer Dep., 17:7-9; Claimant Dep., 30-31.

7. **Medical Care and Surrounding Circumstances.** Dr. Donald Konrad, M.D., evaluated Claimant at Riverview Urgent Care and Medical Center on January 17, 2018. *See*, Ex. 6. Claimant complained of "constant pain of the right elbow and right lower extremity" to Dr. Konrad. Claimant described the quality of the pain as sharp and the severity as moderate. *Id.* at 1. Claimant denied similar problems in the past. Claimant described the accident to Dr. Konrad as occurring at work and that he "slipped under a cow." Dr. Konrad observed further that Claimant "also reports muscle pain and swelling as symptoms related to the complaint." *Id.* Dr. Konrad recorded the following as abnormalities in the physical examination: muscular (right) abnormal; limp favoring muscular right abnormal; right knee active range of motion and flexion reduced extension abnormal; right lower extremity tenderness; and skin (right) abnormal, tender and swollen. *Id.* at 1-2. Dr. Konrad recorded no abnormalities of the right hip and thigh. *Id.*

8. Claimant admitted that he did not have any hip pain at the time of his initial consultation with Dr. Konrad. Tr., 30:14-18; 66:12-23.³

³ Claimant's counsel unsuccessfully attempted to elicit a response from Claimant at hearing that he was experiencing hip pain on January 17, 2018, in pertinent part as follows: "Q. Were you experiencing hip pain at this time? A. Well, I wasn't necessarily in pain, but I couldn't – couldn't walk straight. I had to kind of like take this type of step, you know, just throw my leg out. Q. Well, he [Dr. Konrad] says – in that first report, he says, 'The following exam elements were documented to be abnormal.' And then if you go down that list it says, 'Muscular abnormality noted, limp favoring.' And so what I was trying to understand, so we understand, were you limping because your knee hurt? Were you limping because you hip hurt? Were you limping just because you hurt everywhere, like – A. Well, I mean, it was the next day, so, yeah, everything was hurting. But for some reason, at the bottom, like, as soon as I would try to step, everything would hurt. So I was putting all my weight on my left leg. And I just couldn't do it until a couple days after, you know. I was able to step, but not walk straight." Tr., 30:14-31:8.

9. Dr. Konrad ordered X-rays for Claimant taken on January 17, 2018. The study of Claimant's right elbow showed no fractures or avulsions, no dislocations, and no other readable abnormalities. Ex. 6:2. The study of Claimant's right knee had similar benign findings, as did the study of Claimant's right tibia and fibula. *Id.* at 4.

10. Dr. Konrad's diagnoses of Claimant on January 17, 2018 were as follows: contusion of right elbow, contusion of right knee, and contusion of right lower leg. *Id.* at 6.

11. Dr. Konrad released Claimant to return to work with the following light duty restrictions: avoid kneeling, twisting, jumping, running, and climbing ladders entirely; avoid prolonged standing; no lifting over the shoulder in excess of 20 pounds using the right arm; no lifting from the waist to shoulder greater than 20 pounds; and left handed duty only. Restrictions were in place until January 24, 2018. Claimant was advised to rest, ice, compress and elevate and use nonsteroidal anti-inflammatories for pain. *Id.*

12. Roger Schaeffer recalled that Employer accommodated Claimant's light duty restrictions by having him do "some cleanup projects in the shop. I remember doing some various sweeping and just some cleanup." Schaeffer Dep., 18:17-22.

13. Claimant returned to Riverview on January 23, 2018. Claimant reported that he was able to walk and apply pressure to his right leg but he still had some pain. Upon examination, Dr. Konrad stated that the contusion of the right lower leg was stable/improved, the contusion of the right knee was stable/improved, and contusion of the right knee required no further workup. Dr. Konrad discharged Claimant from the clinic's care, as follows: "Patient is released from our care

for this condition. The condition is resolved and the patient is at maximum medical improvement (MMI) with no residual disability. Fit for duty without restrictions.”⁴ Ex. 6:10-12.

14. Claimant returned to full duty with Employer thereafter on January 24, 2018. Schaeffer Dep., 21:6-7. Claimant drove trucks, helped pick up metal, put the metal into trucks, cleaned the farm shop, fixed motors, and helped at the feedlot as needed. Tr., 33:17-25; *see also*, Schaeffer Dep., 21:6-19.

15. Claimant felt like he had no choice but to return to work despite not feeling well, otherwise he believed that Roger Schaeffer would fire him. Tr., 32:3-8. Roger Schaeffer asserted that he did not put pressure on Dr. Konrad, Claimant or anyone else to return Claimant to full duty. Schaeffer Dep., 20:6-11.

16. Claimant worked his normal hours from February through May 2018. *See*, Ex. 27 (Claimant’s payroll records). This included working 101 hours over two weeks following Claimant’s return to work on January 24, 2018. He worked 156 hours during a two week period from April 19, 2018 through May 2, 2018. Ex. 27; Schaeffer Dep., 23.

17. Claimant did not tell his supervisors or Roger Schaeffer that he was having difficulty physically doing his job during this time period. Schaeffer Dep.; 21:20-22:4. Claimant recalled that he was able to do “everything” at work and did not complain to his supervisors about having pain after he returned to work. Claimant’s Dep., 40:10-23.

⁴ Claimant disagreed with being released to return to work, as follows: “Q. Is there any – did you feel like you could go back to work? A. I told him [Dr. Konrad] I couldn’t, but, you know, he was repeating the same thing that Roger Schaeffer had told me on the phone a couple of minutes before. And I told him [Dr. Konrad], you know, ‘You’re just telling me the same thing. I don’t feel good, but If I don’t go back, he’s [Roger Schaeffer] going to fire me.’” Tr., 32:1-8. Claimant did not specifically complain to Dr. Konrad about hip pain on January 23, 2018 as a reason why he did not wish to return to work. He testified as follows in response to his counsel’s question about hip pain: “Q. So at this time he [Dr. Konrad] diagnoses you with a right-lower leg contusion, a right-knee contusion, and a right-elbow contusion. Anytime during that conversation, did you have a conversation with him about your right hip? A. No. I was just in pain...” Tr., 32:13-18. Thus, again, given an opportunity on the record to testify that he experienced hip pain following the accident, Claimant demurred by not directly answering the question.

18. Claimant had an injury at an unspecified date and time between January and June 2018 while he was picking up scrap aluminum and placing it in a pickup truck. Claimant was bending over to pick up the scrap metal and felt that he could not move his legs. He sat down until the sensation went away. Tr., 34:5-19. Employer directed workers, including Claimant, to collect scrap aluminum and put it in the back of a dump truck, which required Claimant to engage in repetitive bending at the waist. Schaeffer Dep., 24:3-24. Claimant did not file a separate claim for workers' compensation benefits related to this incident.

19. Claimant returned to Riverview on May 15, 2018 and received a medical evaluation from Marcy Morrow, P.A. Claimant returned for a checkup on his right elbow, which was still painful, and a “recheck to his right knee. Pt states he told the doctor on his last visit that he was still having a lot of pain but that he was released back to full duty anyways. Pt states he is now having pain in his lower back from compensating his right leg.” Ex. 6:16. Claimant did not complain about his right hip to Morrow, according to the record of the visit. Morrow released Claimant to return to work driving a truck on light duty, with restrictions similar to those given on January 17, 2018. *Id.* at 17-18. Claimant was also referred to orthotics.

20. Prior to the industrial accident, Claimant had no problems with his hips. He also did not experience any problems with his hips from playing sports and was not involved in any automobile accidents. Tr., 43:7-18.

21. Claimant received a referral to physical therapy. Ex. 6:18-19. Morrow’s fax cover to Burley Physical Therapy & Rehabilitation on May 15, 2018 stated that Claimant’s case was “W/C from Schaeffer Farms (stepped on by cow, continues r knee pain, compensating for altered gait cause back pain.)” Diagnoses were right knee pain and lumbar spasm. Burley Physical

Therapy was asked to evaluate and treat Claimant for three weeks, four times per week. Claimant also received instruction to follow up with orthotics. Ex. 6:17-18.

22. The orthotics department of Riverview evaluated Claimant on May 25, 2018. Claimant was still complaining about pain in his right knee and right elbow. Kyle James fitted Claimant with a right knee orthosis. *Id.* at 22-23.

23. Claimant's initial encounter with Burley Physical Therapy occurred on May 29, 2018. Nick Greenwell, MPT, noted the history of the present condition/mechanism of injury as follows: Claimant "got stepped on by a cow, injuring his right knee/elbow. Compensatory gait has caused some L-sided low back pain. He is feeling quite a bit better at this point in his elbow, but his knee is still bothersome." Ex. 7:2. There was no mention of hip pain. *Id.* Greenwell's assessment was as follows: "Pt with chronic R knee and L S-1 pain after being stepped on by a cow." Greenwell noted, however, in "Patient Clinical Presentation," that the "clinical presentation is evolving with changing characteristics." *Id.* at 4. Claimant carried the diagnoses of pain in the right knee and low back pain at this time. *Id.* at 6.

24. A form for requesting treatment was generated to the attention of Surety by Burley Physical Therapy and Rehabilitation on May 29, 2018. It listed the injured body parts as right knee and back; Claimant's right hip was not mentioned. The form requested authorization for 12 PT visits between May 29, 2018 through June 29, 2018. *Id.* at 8.

25. On May 31, 2018, Claimant responded well to PT modalities at Burley Physical Therapy, but still had "some mild knee soreness" after exercises. *Id.* at 9. The first mention of hip pain occurred in physical therapy on May 31, 2018, in which the physical therapist noted that Claimant had decreased complaints of back and hip pain. *Id.*

26. Claimant received an evaluation from Dr. Gilbert K. Crane, M.D., of Burley, Idaho on June 5, 2018. Ex. 8:1. Dr. Crane recorded that Claimant's "knee has been in constant pain and has *traveled into his hip* and back." [Emphasis added.] The right elbow was also causing Claimant pain problems *Id.* Dr. Crane performed a right knee joint steroidal injection. The right knee represented a "patellar contusion from direct impact injury to his knee." There was no sign of problems with the knee ligaments. Based upon X-rays, Dr. Crane did not think Claimant had a medial meniscal tear, although Claimant had some medial joint tenderness. Dr. Crane recommended a steroidal injection into the right knee joint to help reduce inflammation since it had been several months since Claimant's injury and he continued to have a lot of pain. Meanwhile, the right elbow had a "deep bone bruise probably from direct impact. Remainder of his elbow exam is normal." If the knee was not significantly improved, Dr. Crane would recommend an MRI. *Id.* at 2. There was no mention in Dr. Crane's plan of care at this time for Claimant's right hip. *Id.*

27. On June 6, 2018, Claimant had an MRI of his lumbar spine due to low back pain without sciatica. The impression was of a normal MRI of the lumbar spine. Ex. 9:4-5.

28. On June 21, 2018, Dr. Crane sent a work release form to the attention of Surety. He stated that Claimant had been under his care for patellofemoral disorders, right knee, and pain in right elbow. There was no mention of Claimant's right hip. Claimant was released to return to work with the following restrictions: no heavy lifting greater than 15 pounds; no squatting or kneeling; no climbing ladders or stairs; and no pushing with the right arm. Ex. 8:4.

29. Claimant received physical therapy treatment again on the following dates: June 5, 2018; June 7, 2018; June 12, 2018; June 14, 2018; June 19, 2018; June 21, 2018; June 26, 2018; and June 28, 2018. Ex. 7:11–26.

30. On June 26, 2018, Claimant reported to his PT provider that his hip continued to “pop out of place” and he continued to have pain. *Id.* at 23. At the conclusion of PT, Claimant felt that “he has met his functional goals and can continue on his own.” Ex. 7 at 25.

31. Claimant returned to Dr. Crane on August 9, 2018 for follow-up of the knee and elbow. Dr. Crane noted that the steroidal knee injection performed at the last visit did not bring Claimant any relief. Claimant was now complaining of right hip pain and right knee pain. Claimant complained of “instability or something popping out and the hip catching in the hip [sic] and also pain in the knee.” Ex. 8:5. Claimant was diagnosed with ongoing problems with the right knee and Dr. Crane recommended an MRI for the right knee. Claimant was “also very concerned about his hip, he feels like his hip is dislocating or somethings coming out of place... Therefore he [Claimant] is interested in having an MRI of his hip as well to see what is going on.” Furthermore, Claimant felt “that the knee is not getting better because his hip keeps dislocating. He had to quit his job because of this.” Dr. Crane stated that he would obtain Surety’s approval for the MRIs and follow up after they were performed. *Id.* at 5-6.

32. Counsel for Claimant inquired as to his hip as follows:

Q. Okay. So when you – did you have this popping, this right-hip-popping-out problem, did you have that in January, February, and March. When did that start actually happening?

A. I think the first time that I felt it like that was when we were filling up the pickup with metal. Because I was picking the metal, you know, it wasn’t like super heavy, just too much, too many pieces that we had to throw up there. And, you

know, out of nowhere I bend down to do it, and I couldn't stand up. So I just sat down for a little till it went away.

Tr., 45:3-14.⁵

33. Dr. Crane's office sent a request to Surety on August 9, 2018 for approval for MRIs of the right knee and right hip for Claimant. Ex. 8:7.

34. Claimant had an MRI of his right knee at Cassia Regional Hospital on August 22, 2018. Imaging of the right knee disclosed "no significant internal derangement" and was an "unremarkable exam." Ex. 9:2. An MRI of the right hip was performed simultaneously with an MRI of the right knee. *Id.* at 2-3.

35. Claimant followed up with Dr. Crane on August 23, 2018 for his right hip and right knee. Ex. 8:8. Dr. Crane noted on August 23, 2018, in pertinent part as follows: "Hip MRI does show evidence of a labral tear. He does describe mechanical symptoms with this hip and significant pain. No improvement with conservative measures. Therefore, at this point, I would refer him to an orthopedic surgeon who specializes in hip arthroscopy for treatment of this condition." Ex. 8:9.

36. **Independent Medical Examination.** At Surety's request, Keith Holley, M.D., an orthopedic surgeon with Objective Medical Assessments, performed an independent medical examination of Claimant on September 28, 2018. *See*, Ex. 10:1. Dr. Holley undertook a chart review of preexisting medical documents related to Claimant following his industrial accident and also performed a physical examination of Claimant. *Id.* at 2 – 6.

⁵ Claimant did not specify a date when the incident of picking up metal and feeling pain in his hip occurred. From the full context of the record, however, it appears that this incident could have occurred approximately three months after the industrial accident. Claimant did not file a separate workers' compensation claim concerning this incident.

37. Dr. Holley noted that at Claimant's examination, "he does elicit some pain behaviors, including nonphysiologic patterns of pain, exaggerated movements, and grimacing." Ex. 10 at 6. Nevertheless, Claimant walked with a normal gait without a limp, but reported that he had pain both in the right hip and right knee. *Id.* Dr. Holley's examination of Claimant's lower extremities showed the following in pertinent part with regard to Claimant's hips:

Examination of the lower extremities showed symmetric limb length and alignment. Muscle bulk and tone is equal. No edema, atrophy, or deformity noted. He has no pain with logroll maneuver in the hips. He has full flexion and symmetric rotation in both hips with 40 degrees of external rotation. 15 degrees of internal rotation. He reports mild pain with maximum range of motion in both hips. Mildly positive impingement tests bilaterally, negative Stinchfield test bilaterally.

Id.

38. Claimant reported ongoing right hip, knee and elbow pain to Dr. Holley. Dr. Holley opined that Claimant carried the three following diagnoses: 1.) right elbow contusion, occupationally-related and now resolved; 2.) right knee contusion, occupationally-related and now resolved; and 3.) right hip acetabular labral tear disclosed by an MRI, not occupationally related. Diagnoses #1 and #2 were due to the industrial injury, according to Dr. Holley. He noted that treatment records documented a direct contusion-type injury to the right elbow and right knee as a result of the accident with the cow. Dr. Holley opined that diagnosis #3, however, was not related to the industrial injury due to "lack of any documentation of right hip pain between January and August 2018,⁶ and the lack of any corresponding mechanism of injury when he was pinned by the cow that would cause an acetabular labral tear." *Id.* at 7.

39. Dr. Holley concluded his exam report by stating as follows: Claimant "is considered medically fixed and stable with regard to his industrial injury of January 16, 2018, with no ratable

⁶ Claimant, however, reported hip pain to his physical therapist on May 31, 2018. Ex. 7:9. Dr. Crane also recorded on June 5, 2018 that Claimant had pain traveling down his lower back into his right hip, as follows: "The knee has been in constant pain and has traveled into his hip and back." Ex. 8:1.

permanent partial impairment related to the right elbow and knee injuries. Further treatment and consideration of hip arthroscopy for labral repair for the right hip condition is appropriate outside of the industrial injury claim.” Ex. 10 at 8.⁷

40. **Additional Medical Care and Evaluation.** Claimant sought an evaluation in the emergency department of LDS Hospital in Salt Lake City, Utah, on May 30, 2019. Dr. Michael McLaughlin, M.D., recorded in pertinent part as follows:

The patient is a 27 year-old male who arrives to the emergency department stating that he was having continued right hip and leg pain after a work injury when he was crushed by a cow approximately one year ago. I saw this patient along with nurse practitioner Erin Burt and I have independently examined the patient, confirmed pertinent historical and physical findings as well as conferred on treatment plan. The patient states that he had MRIs performed and had a labral tear in his right hip which he brings documentation of. He reports being frustrated by the Workers Compensation not covering surgery and therefore came to Utah essentially for a second opinion.

Patient presents essentially hoping to get referral to an orthopedic doctor for a second opinion. We did not feel any diagnostic studies were needed. He does bring documentation of his reports. He’ll be seen by care manager and be given a referral to orthopedics for follow-up.

Ex. 11:1.

41. NP Burt advised Claimant that he should follow up with a provider in his hometown of Burley. *Id.* at 3.

42. Claimant followed up the next day, May 31, 2019, with Family Health Services in Burley. Claimant reported to Lyndsie Chatburn, FNP, that he got hurt at work on January 15, 2018. FNP Chatburn recorded in the “history of present illness” in pertinent part as follows: “He was trampled by a cow at work, went to the doctor the next day, went to Riverview Urgent Care. An x-ray was normal. Pain was in his entire right side and he couldn’t walk. He was told to go

⁷ Counsel for Defendants wrote a letter to Dr. Crane on August 18, 2020, to which he attached a copy of Dr. Holley’s IME report. Counsel asked Dr. Crane to comment whether he agreed with Dr. Holley’s findings; Dr. Crane signed the letter at the bottom to indicate that he agreed with Dr. Holley’s September 28, 2018 IME opinions.

back to work and 3 months later he reports being hurt again while picking up aluminum and his back started hurting again... He was hit below the right knee.” FNP Chatburn further noted that Dr. Crane did an MRI which “showed he had a tear in the labrum of the hip,” but that Claimant “didn’t get the arthroscopy done.” Claimant reported pain at the 10 level when he was sleeping. “Right now the pain is in his knee,” but Claimant could not give a number for it, “maybe 6.” Claimant otherwise received no further workup, treatment or evaluation of his reported work injuries at Family Health Services. Ex. 12:1-7.

43. Claimant presented to PA-C Yvonne Fuellenbach of TOSH Orthopedics in Murray, Utah on June 13, 2019. Claimant reported “being involved in an injury while working with cows on 1/15/08.” He reported initially having primarily knee pain but then experiencing increased hip pain a couple of months later while loading aluminum. Claimant reported further that his workers’ compensation claim for benefits related to his right hip was denied, thus he was planning to self-pay his medical expenses at that time. Ex. 13:1.

44. Claimant returned to TOSH Orthopedics on June 17, 2019, where he was evaluated by James D. Wylie, M.D. Claimant complained of right hip pain. Dr. Wylie reviewed MRI imaging that showed a labral tear of the right hip joint. Claimant carried the diagnosis of a femoral acetabular impingement (FAI) of the right hip. Dr. Wylie recommended surgery given Claimant’s “continued pain and dysfunction” despite conservative treatments. He specifically recommended a right labral repair and a femoroplasty to “remove the bone on the femoral side that is causing the impingement to take place.” *Id.* at 6.

45. Claimant returned to Dr. Wylie on July 6, 2020. Dr. Wylie noted that he had evaluated Claimant a year before, but that now Claimant had obtained Medicaid insurance to cover the cost of right hip surgery. Dr. Wylie noted that Claimant had injuries to his back and

knee which had resolved with time, but that he continued to have deep groin pain which he described as a constant burning pain. Dr. Wylie explained to Claimant and his family the diagnosis of femoral acetabular impingement (FAI), as follows in pertinent part:

I discussed with the patient and their family the diagnosis of femoroacetabular impingement. This likely developed during growth in adolescence and can be due to stress of the upper femoral growth plate from intense sporting activity. It leads to a femoral head and neck that is not congruent with the patient's acetabulum and leads to impingement in deep hip flexion, causing the patient's pain with deep flexion activities including sitting. This can be exacerbated by a deep and/or retroverted hip socket (acetabulum) or by true or relative femoral retroversion (less than 10 degrees of femoral anteversion). The femoral-sided (cam) deformity leads to minor repetitive injury to the junction of the cartilage and labrum in the acetabulum causing cartilage damage and labral tearing. Over time the femoral sided cam deformity leads to joint degeneration and arthritis, as evidenced in multiple natural history studies."

Ex. 13:9-10. Dr. Wylie recommended surgery given Claimant's "continued pain and dysfunction despite non-operative treatments." *Id.* at 10.

46. Claimant recalled that Dr. Wylie told him "I had been playing too many sports throughout my life and that I was born like that." Claimant denied that he played heavy competitive sports while in high school; he played "casual" sports like "tennis or soccer, just whatever at school they put you to play." Claimant Dep., 54:22-55:4; Tr., 49:23-50:5.

47. Claimant underwent right hip surgery on July 9, 2020 with Dr. Wylie as his surgeon. The preoperative diagnosis was right hip femoral acetabular impingement (FAI), cam type, and right hip acetabular labral tear. Claimant carried the same diagnoses post-operatively. The operations performed were a right hip arthroscopy with femoroplasty and right hip arthroscopy with labral repair. Claimant tolerated the procedures well. Ex. 13:11-13.

48. Claimant returned to Dr. Wylie on July 20, 2020 for a two-week status post right hip surgery evaluation. The medical plan was for Claimant to undergo 12 weeks of physical therapy and to slowly wean off of crutches and on to weight bearing on his right hip. Claimant

was doing well post-surgery and was compliant with all post-surgery instructions, including icing and taking Naprosyn for pain. Dr. Wylie removed Claimant's nylon stitches. Claimant had no complaints. Ex. 13 at 16-18.

49. On January 8, 2021, Claimant returned to Dr. Wylie for follow-up six months after his surgery. Claimant was now for the first time complaining of left hip pain. If Claimant continued to have such symptoms, Dr. Wylie advised that a possible left hip arthroscopic femoroplasty and labral debridement would be the next step in Claimant's treatment. Claimant was doing well with his right hip but now was having similar pain on his left side. *Id.* at 19-21.

50. Claimant returned again to the TOSH clinic to be evaluated by Dr. Wylie on September 21, 2021. Claimant had done "excellent" with his progress on his right hip surgery. He consented to go forward with a similar surgery on his left side, which Dr. Wylie recommended. *Id.* at 22-24.

51. On December 9, 2021, Claimant carried the diagnoses of left hip cam type femoral stem impingement and left type possible anterior/superior acetabular labral tear. Claimant underwent the following surgical procedures by Dr. Wylie: left hip arthroscopy with femoroplasty and left hip arthroscopy with labral repair. He tolerated the procedures well. *Id.* at 25-27.

52. Claimant returned to Dr. Wylie on December 27, 2021 for a two-week surgical follow-up. He had been doing well after surgery. Dr. Wylie ordered a plan of progressive physical therapy to enable Claimant to be weight bearing as tolerated and be off his crutches by four weeks from surgery. Dr. Wylie would continue to monitor Claimant's progress. *Id.* at 28-29.

53. **Second Independent Medical Examination.** Jacob W. Moss, M.D., J.D., performed an IME of Claimant at the request of Claimant's counsel on February 3, 2023. He performed both a records review and physical examination of Claimant. Ex. 17:1-8.

54. Dr. Moss noted that Claimant was “engaged throughout the examination with no obvious symptom magnification or malingering behaviors.” Ex. 17 at 8.

55. Dr. Moss diagnosed Claimant with anterior-superior labral tear, bilateral; contusion of right elbow; contusion of right knee; and femoral acetabular impingement (FAI), bilateral. *Id.* at 8.

56. Dr. Moss opined that Claimant’s “prognosis is good. According to current research, five-year outcomes after arthroscopic treatment for FAI are good when taking into consideration overall reduction of pain and improved hip function.” *Id.* Dr. Moss further opined that Claimant was at maximum medical improvement (MMI). *Id.*

57. Dr. Moss assigned 2% lower extremity impairment, which equated to a 1% whole person impairment, to Claimant’s hip condition, according to the 6th edition of the AMA Guides to Evaluation of Permanent Impairment. *Id.* at 9. He further opined on restrictions as follows:

Given that Mr. Santos has appreciated significant improvements to his pain after surgical correction of his bilateral FAI, it is difficult to apply permanent restrictions with regard to his injury. However, I anticipate claimant would have difficulty or experience pain with prolonged walking, sitting, squatting, climbing stairs, pivoting and leaning forward. Thus, I would limit claimant to engaging in these motions or activities to an occasional basis.

Id. at 9.

58. Dr. Moss opined that Claimant would not require further surgical intervention but would benefit from joint injections and physical therapy. *Id.*

59. Dr. Moss opined that, on a more probable than not basis, Claimant’s right hip injury was causally related to the industrial accident in question because Claimant “denied previous hip related complaints or difficulty performing his work-related duties.” Dr. Moss apportioned 100% of Claimant’s permanent impairment to the industrial accident in question, despite his “predisposition to sustaining a right acetabular labral tear.” After reviewing available medical

literature, Dr. Moss concluded that acetabular labral tears are common secondary to FAI, trauma, dysplasia, capsular laxity and degeneration with FAI considered the most common cause. Nevertheless, Dr. Moss opined that “the accident in question was material to the development of claimant’s right acetabular labral tear,” which in turn “likely caused or contributed to Claimant’s left acetabular labral tear.” Ex. 17:9-10.

60. **Holley Supplemental Report.** On July 26, 2023, Dr. Holley supplemented his IME report. Ex. 10:11-14. Dr. Holley still held “the opinion that Mr. Santos’ right hip acetabular labral tear is unrelated to the industrial accident in question. This is not only due to the delayed onset of his symptoms, but also to the medical literature indicating that femoral acetabular impingement is far and away the most common cause of acetabular labral tears in the population.” *Id.* at 13. Dr. Holley disagreed with Dr. Moss’s opinion that Claimant’s right hip acetabular labral tear was related to the industrial accident. *Id.* Dr. Holley believed that Dr. Wylie’s medical records supported his opinion that Claimant’s bilateral hip problems were unrelated to the industrial accident. *Id.* at 14.

61. **Deposition of Dr. Moss.** A deposition of Dr. Moss occurred on October 5, 2023. Moss Dep., 1:18 - 4:8. Dr. Moss discussed his professional qualifications during the deposition and a copy of his curriculum vitae was attached to the deposition transcript as Exhibit 1. He received a Bachelor of Science degree at Brigham Young University in 2006. After that, Dr. Moss attended Southern Illinois University Schools of Law and Medicine. He received joint Juris Doctor and Medical Doctor degrees there in 2013. He performed post-graduate training at an internship and residency at the University of Colorado Denver, which was completed in 2014. He obtained medical licensure in both the states of Idaho and Georgia. He also completed certifications in various disciplines. Having originally trained to be a urology surgeon, Dr. Moss

transitioned to become a family practice physician, primary care, following schooling. He does not have credentials in orthopedic medicine and is not an orthopedic surgeon. At the time of deposition, Dr. Moss served as the clinic director of Teton Valley Health in Rexburg, Idaho since July 2022. He regularly performs three independent medical examinations (IMEs) per month. Moss Dep., 4:12–9:15; 25:1–26:3; Moss Dep. Ex. 1.

62. Dr. Moss’s approach to conducting IMEs in workers’ compensation cases was to first review and summarize all available medical records pertaining to the claimant. Next he would meet with the claimant and obtain a medical history from him or her. Finally, he would perform a physical examination. Following that, he would return to review his summary of the medical history and records, review peer-reviewed medical literature concerning the condition(s) in question, and then provide an opinion as to whether the injury in question could be attributed to the industrial accident. This is the approach that Dr. Moss utilized in performing the IME of Claimant in this case. Moss Dep., 9:24 – 11:19. In this case, Dr. Moss “honed in on” Claimant’s complaints about his hips. *Id.* at 11:20-24.

63. Dr. Moss observed in pertinent part with respect to Claimant’s diagnosis: “And there are a handful of the population that has certain defects. And in this instance, Mr. Santos had this defect called a ‘cam lesion,’ which means, essentially, the head of – you know, the head portion has kind of a bony prominence that with certain movement would, kind of, catch or almost impinge that acetabular cartridge. And, over time, there’s certain movements that can wear down that cartilage. Common predisposition – you know.” *Id.*,15:7-16.

64. Dr. Moss was impressed by two factors in determining that Claimant’s acetabular defect was not due solely to a congenital condition but rather was permanently exacerbated by the industrial accident. First, Claimant “never had any hip-related complaints until the injury in

question.” Moss Dep., 15:23-16:2. Second, Claimant’s complaints of knee pain “doesn’t necessarily mean it’s a knee related complaint... There’s something called ‘referred pain’... You can have hip injuries that present as knee pain, you know. It’s all, kind of, interconnected.” *Id.* at 16:20-17:3.

65. Dr. Moss admitted in pertinent part as follows: “And, yeah, I can’t deny that he was predisposed to these kind of injuries. But based on the chain of events, my assertion is – or my opinion is, but for that injury [on January 15, 2018], this probably wouldn’t have occurred.” *Id.* at 18:24 – 19:3. Dr. Moss did not explain the mechanism by which pain from the hip was “referred” to the knee.

66. Counsel asked Dr. Moss to comment on the aluminum incident, as follows: “Q. Okay. Does that – after reading the hearing transcript and hearing him [Claimant] talk about how he was working a lot of hours afterwards and how they were having to move a lot of aluminum, does any of that change your opinion? A. No. I do remember the aluminum mentioned, but as far as I recall and from what was read, that was more of that lower-back type complaint. But, no, I mean, that does not change, you know, my opinion as to, you know, the cause of the injury itself.” *Id.*, 19:11-21.

67. Significantly, Dr. Moss admitted in deposition that he could not attribute the left hip condition to the industrial accident. Nevertheless, he reaffirmed his opinion that Claimant’s right hip condition was related to the industrial accident. *Id.*, 19:22 – 20:19; 22:24 -23:8.

68. Dr. Moss agreed with the statement that the diagnosis of femoral acetabular impingement (FAI) can be attributed to a development during growth and adolescence and can also be due to stress of the upper femoral growth plate from intense sporting activity. He further agreed with the statement that FAI leads to femoral head and neck that is not congruent with their

acetabulum and leads to impingement and deep hip flexion causing patient's pain with deep flexion activities including sitting. Moss Dep., 27:4 – 28:4. Dr. Moss further agreed with the proposition that Claimant's FAI condition preexisted his industrial accident and that there was no documentation of any hip or groin pain for at least several months following the industrial accident. *Id.* at 28:24 -29:24.

69. Dr. Moss agreed with the statement by Dr. Wylie that because Claimant had FAI, he was predisposed to an acetabular labral tear. *Id.* at 30:16-20.

70. **Deposition of Dr. Holley.** Dr. Holley's deposition occurred on October 11, 2023. Holley Dep., 4:1-8. Dr. Holley is an orthopedic surgeon engaged in the full-time practice of orthopedic surgery with Allied Orthopedics which has offices in Boise and Meridian, Idaho. *Id.* at 6:8-13. He received an undergraduate degree from Texas A&M University. He received a medical degree from the University of Texas at Galveston. He completed a surgical internship and orthopedic residency at the Naval Medical Center in San Diego, California, after which he completed a fellowship in adult reconstructive surgery at the Hospital for Special Surgery in New York. Dr. Holley is board certified by the American Board of Orthopedic Surgery. Prior to the deposition, he had practiced medicine for approximately 20 years following his fellowship. He is licensed to practice medicine in Idaho. *Id.* at 6:14-7:11. Dr. Holley specializes in replacement and joint reconstruction surgery primarily in the hip and knee, but he also performs some shoulder surgeries. Holley Dep., 7:18-23. He has performed approximately 300 to 500 hip and knee reconstructive surgeries during his career. *Id.* at 8:1-6. Dr. Holley has treated patients with femoral acetabular impingement (FAI). *Id.* at 8:23-9:1.

71. The basis of Dr. Holley's opinion that Claimant's right acetabular tear was unrelated to the industrial injury was, first, that he "did not see anything in the mechanism of

injury that made me feel it was medically probable that it would have caused an acetabular labral tear. Those typically require a significant amount of force on the hip joint to cause a traumatic tear.” The second reason was the chronology of the symptoms. “The onset of his hip pain was significantly later than the industrial injury. It was not reported initially. And this argues against it being directly related to the occupational event.” The third reason was that Claimant’s femoral acetabular impingement underlay the condition, which is “developmental, not traumatic.” Holley Dep., 15:14-16:12.

72. According to Dr. Holley, in Claimant’s case, his FAI would be a preexisting or congenital condition. *Id.* at 17:23-18:1. The imaging reports and surgical reports that Dr. Holley reviewed from Dr. Wylie were “entirely consistent with this developmental condition of femoroacetabular impingement or FAI.” *Id.* at 19:9-12.

73. Dr. Holley did not find Dr. Moss’s conclusion that Claimant’s accident aggravated or caused this FAI to become symptomatic “medically likely.” As for Dr. Moss’s theory of referred knee pain, Dr. Holley noted that Claimant sustained a direct injury to his knee “that was the source of his knee symptoms. This is not referred pain.” Furthermore, Claimant only became symptomatic later. *Id.*, 21:2-12. Dr. Holley opined that “if somebody does sustain a traumatic injury to the hip with a labral tear, you typically would expect onset of symptoms right away from that, not months later.” *Id.*, 21:20-23.

74. Dr. Holley disagreed with Dr. Moss’s opinion that the acetabular tear was related to Claimant’s industrial accident, as follows: “I believe it’s related to a developmental condition which is clearly preexisting and was present in both hips.” *Id.* at 22:7-9.

75. Claimant’s counsel questioned Dr. Holley in pertinent part as follows: “Q. I mean, here’s where I’m thinking well, he [Claimant] got hit by a cow. That seems pretty forceful. And

I was hoping you could help me walk through that. A. Right. I didn't mean to suggest it might not have been a forceful injury. But to cause a labral tear, you typically need some type of torsional, rotational, or hyperflexion type of mechanism on the joint, which I don't think occurred here. He may have gotten hit very hard on the lower leg at the knee, but I don't see how that would have caused the labral tear in the hip." Holley Dep., 25:11-22.

76. **Claimant's Work Status at Time of Hearing.** At the time of hearing, Claimant was working as a driver for a trucking company known as Magana Brothers. Because Claimant now had a CDL, he was making more money per hour than he made for Employer. He drove in southern Idaho. Claimant earned \$22 per hour in this position. Tr., 62:16-65:2.

77. **Credibility.** Claimant generally testified credibly, however his testimony at times was vague and nonspecific. For example, when asked to testify whether he was suffering pain in his right hip following the industrial accident, Claimant did not directly answer the question. In the absence of unequivocal testimony from Claimant on this issue, the medical records will be relied upon instead. Relying upon Claimant's statements that his whole body slipped under the cow and his entire body hurt following the accident are insufficient to infer that this specifically included hip pain caused by a direct injury to the hip.

FURTHER FINDINGS AND DISCUSSION

78. 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).

79. **Causation.** Claimant bears the burden of proving that 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). 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 contention. *Dean v. Dravo Corporation*, 95 Idaho 958, 560-61, 511 P.2d 1334, 1336-37 (1973).

80. The compensable consequences doctrine is recognized in Idaho. A subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if there is a demonstrable causal connection between the compensation sought and the work-connected injury. *Sharp v. Thomas Brothers Plumbing*, 510 P.3d 1136 (2022). The permanent aggravation of a preexisting condition or disease is compensable. *Bowman v. Twin Falls Construction Company, Inc.*, 99 Idaho 312, 581 P.2d 770 (1978).

81. 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, 901, 591 P.2d 143, 148 (1979). While a temporal relationship is always required to support a finding of causation between an accident and the injury, the existence of a temporal relationship alone, in the absence of substantive medical evidence establishing causation, is insufficient to satisfy Claimant's burden of proof. *Swain v. Data Dispatch, Inc.* IIC 2005-528388 (February 24, 2012).

82. The Industrial Commission, as the fact finder, is free to determine the weight to be given to the testimony of a medical expert. *Rivas v. K.C. Logging*, 134 Idaho 603, 608, 7 P.3d 212, 217 (2000). "When deciding the weight to be given an expert opinion, the Commission can certainly consider whether the expert's reasoning and methodology has been sufficiently disclosed

and whether or not the opinion takes into consideration all relevant facts.” *Eacret v. Clearwater Forest Industries*, 136 Idaho 733, 737, 40 P.3d 91, 95 (2002).

83. The first requirement for determining whether Claimant has sustained any disability in excess of impairment is to establish that Claimant has a permanent partial impairment. *See, e.g., Urry v. Walker and Fox Masonry Contractors*, 115 Idaho 750, 769 P.2d 1122 (1989). Defendants accepted and paid workers’ compensation benefits associated with Claimant’s right knee and right elbow contusion injuries. No physician opined that Claimant suffered any impairment as a result of his right knee and right elbow injuries. In the absence of impairment, Claimant is not entitled to any permanent disability from these injuries.

84. It is undisputed that that Claimant had preexisting FAI bilaterally in both hips. Therefore, to be entitled to workers’ compensation benefits pertaining to his right hip, Claimant must prove that the January 15, 2018 accident permanently aggravated or accelerated his underlying FAI condition, resulting in a torn right labrum in his hip. Claimant argues that he suffered a torn labrum in his right hip as a result of a permanent aggravation of a preexisting condition due to the industrial accident. *See*, Claimant’s Brief at 7-8.

85. Claimant’s argument relies upon the IME and testimony of Dr. Moss, who opined that the industrial accident permanently aggravated Claimant’s preexisting FAI and thus caused Claimant’s right hip labral tear. *See*, Claimant’s Brief at 9 – 10. Defendants, however, rely upon the IME and testimony of Dr. Holley, who opined that Claimant’s congenital FAI caused the right hip labral tear and that the industrial accident did not exacerbate the defect. *See*, Defendants’ Brief at 16 – 17. For the reasons discussed below, the opinion of Dr. Holley is entitled to greater weight than the opinion of Dr. Moss.

86. Despite the medical consensus that FAI is a congenital condition, Dr. Moss apportioned Claimant's right hip labral tear 100% to the industrial accident. He did not apportion any portion of the right hip labral tear to Claimant's preexisting FAI. His reasoning for doing so was, first, that Claimant had no complaints of right hip pain prior to the industrial accident of January 15, 2018, and second, Claimant's complaints of right knee pain in the months following the accident was "referred" pain from Claimant's hip. "You can have hip injuries that present as knee pain, you know. It's all, kind of, interconnected." Moss Dep., 16:20-17:3.

87. Nevertheless, Claimant did not complain of hip pain immediately following the industrial accident and complaints of hip pain did not appear in the medical records until on or about May 31, 2018. The medical records demonstrate the lack of any immediate complaints by Claimant of right hip pain following the January 15, 2018 industrial accident, which, as Dr. Holley pointed out, one would expect if the accident had either resulted in a torn labrum, or if the accident had permanently aggravated Claimant's preexisting FAI. The sole focus of Claimant's pain complaints and medical evaluation of the same between January and May 2018 was due to the contusions on Claimant's right elbow and right knee, not his right hip.

88. The first mention of hip pain in the medical records is when the physical therapist noted hip pain on May 31, 2018. Dr. Crane then recorded on June 5, 2018 that Claimant's knee was "in constant pain and has *traveled into his hip* and back." Ex. 8:1 [Emphasis added.] Even then, treatment for hip pain was not in Dr. Crane's plan of care for Claimant until August 9, 2018, when Dr. Crane noted that Claimant was then complaining of "instability or something popping out and the hip catching." See, Ex. 8:5-6. Claimant expressed concern on this occasion because he felt like his hip was dislocating or "something coming out of place." *Id.* Dr. Crane then decided to

obtain Surety's approval for a right hip MRI, which, when completed, disclosed the right hip labral tear, which Dr. Crane first noted on August 23, 2018. Ex. 8:9.

89. Dr. Moss's opinion about referred pain is belied by what actually happened in the industrial accident. Claimant sustained a direct contusion to his right knee in the accident – that is not in dispute. As Dr. Holley noted, this is not referred pain but rather a direct injury to Claimant's right knee. Holley Dep., 21:2-12. Dr. Moss's theory of referred pain is a stretch. He did not explain how the mechanism of injury resulted in referred pain in the knee. For example, are there factors connecting the hip and knee that can account for referred pain? Dr. Moss's opinion about referred pain is purely conclusory.

90. Dr. Holley did not see anything in the mechanism of injury that made it medically probable that the accident would have caused an acetabular labral tear, which requires a significant amount of force on the hip joint to cause a traumatic tear. The force of the industrial injury on January 16, 2018, however, was on Claimant's right knee and below, and also on his right elbow, not his hip. Claimant testified that he felt the cow hit him in the knee and below the knee and did not testify that he had pain in his hip following the accident. As Dr. Holley noted in his deposition, Claimant "may have gotten hit very hard on the lower leg at the knee, but I don't see how that would have caused the labral tear in the hip." *See*, Holley Dep., 25:20-22.

91. Furthermore, Dr. Holley did not mean to suggest that the industrial injury was not a forceful one, as follows: "But to cause a labral tear, you typically need some type of torsional, rotational, or hyperflexion type of mechanism on the joint, which I don't think occurred here." *Id.* at 25:16-20.

92. The fact that Claimant also later developed left hip acetabular labral impingement three years later shows that the condition was congenital and bilateral, not the result of an accident.

Dr. Moss himself admitted in deposition that Claimant's left-sided FAI was not caused by the industrial accident, but rather was entirely congenital. This was a reversal of Dr. Moss's opinion delivered in his IME report.

93. The salient fact that defeats Claimant's case for causation is that his FAI was bilateral in both hips. Had it occurred only in Claimant's right hip, he would have a stronger case for causation. Claimant, however, began complaining about left hip pain in or about January 2021, three years after the original industrial accident on January 15, 2018. There is simply no way that Claimant's left-sided FAI was related to the industrial accident. The reasonable conclusion is that Claimant's bilateral FAI was congenital,⁸ which all medical authorities in the case agreed upon, and that the FAI in Claimant's right hip was not exacerbated or accelerated by the industrial accident.

94. While Dr. Holley was an orthopedic surgeon, who himself had treated patients with FAI, Dr. Moss was a family practice physician and did not specialize in orthopedic complaints of the hip. It is reasonable to give greater weight to Dr. Holley's opinion for this reason. Both physicians relied upon medical literature for their opinions. Dr. Moss appended to his IME a list of medical journal articles that he considered relevant to his diagnosis and causation opinion. Dr. Holley similarly mentioned medical literature for his opinion but did not disclose the titles of any such articles that he had read. Claimant criticized Dr. Holley for this, however the Referee is more persuaded by the opinion of an orthopedic surgeon who has conducted hundreds of hip operations

⁸ A special note here is required concerning the issue of playing sports as an adolescent. Claimant testified that he did not engage in heavy sports while in high school. Nevertheless, this fact is a red herring because there is sufficient evidence to conclude that ordinary wear and tear to the hip acetabular joint contributed to the problem. Claimant was employed in medium to heavy positions prior to working for Employer and his position with Employer was also medium to heavy. Furthermore, Claimant was engaged in repetitive picking up of metal following the accident which could have accelerated the tearing of his labrum. Claimant did not file a separate workers' compensation claim related to the picking up of metal incident.

and also actually treated cases of FAI, than the opinion of a general practice physician and IME professional who has not practiced orthopedic medicine.

95. In summary, Claimant had an industrial accident on January 15, 2018, in which he was hit on and below the right knee and on his right elbow by a charging cow. Nevertheless, Claimant had no complaints of hip pain until on or about May 31, 2018. The mechanism of injury for Claimant to have suffered a direct impact on his right hip is lacking. Furthermore, the concept of referred pain fails to adequately describe what happened in Claimant's accident, in which he sustained a direct hit to his knee causing a contusion. Claimant did not suffer a permanent exacerbation of his preexisting FAI.

96. For all the foregoing reasons, Claimant has failed to establish causation.

97. **Other Issues Moot.** Because Claimant has failed to prove a causal link between the industrial accident of January 15, 2018 and his bilateral FAI, the remaining issues of medical care, temporary disability benefits, permanent partial impairment, permanent partial disability, and attorney fees, are moot or resolved. Without causality, Claimant is not entitled to any further workers' compensation benefits beyond those he has already received for his right elbow and right knee.

CONCLUSIONS OF LAW

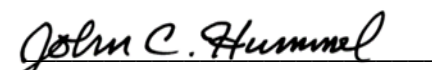
1. Claimant has failed to prove causation on his claim for benefits relating to his right hip.
2. All other issues are moot or resolved by the causation finding.

RECOMMENDATION

Based on 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 16th day of January, 2024.

INDUSTRIAL COMMISSION


John C. Hummel, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of February, 2024, a true and correct copy of the foregoing ***FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION*** was served *via* **Regular United States Mail** and **Electronic Mail** upon each of the following:

ANDREW A ADAMS
598 N CAPITAL
IDAHO FALLS ID 83402
office@curtisandporter.com
crystal@curtisandporter.com

PAUL J AUGUSTINE
PO BOX 1521
BOISE ID 83701
pja@augustinelaw.com
taw@augustinelaw.com

mh



BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

KENNY SANTOS JAUREGUI,
Claimant,
v.
SCHAEFFER FARMS GENERAL
PARTNERSHIP,
Employer,
and
IDAHO STATE INSURANCE FUND,
Surety,
Defendants.

IC 2018-009390

ORDER

FILED

FEB 08 2024

INDUSTRIAL COMMISSION

Pursuant to Idaho Code § 72-717, Referee John Hummel 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 failed to prove causation on his claim for benefits relating to his right hip.
2. All other issues are moot or resolved by the causation finding.
3. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 8th day of February, 2024.

INDUSTRIAL COMMISSION




Thomas E. Limbaugh, Chairman


Claire Sharp, Commissioner


Aaron White, Commissioner

ATTEST:


Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of February, 2024, a true and correct copy of the foregoing **ORDER** was served via **Regular United States Mail** and **Electronic Mail** upon each of the following:

ANDREW A ADAMS
598 N CAPITAL
IDAHO FALLS ID 83402
office@curtisandporter.com
crystal@curtisandporter.com

PAUL J AUGUSTINE
PO BOX 1521
BOISE ID 83701
pja@augustinelaw.com
taw@augustinelaw.com

mh

