BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

SHANON R. NOLL, Claimant, v. AMAZON.COM SERVICES, LLC, Employer, and LM INSURANCE CORP., Surety, Defendants.	**IC 2023-008767** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** **FILED** **JUL 16 2024** **INDUSTRIAL COMMISSION**

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Brian Harper, who conducted a hearing in Boise, Idaho, on June 20, 2024. Claimant represented herself *pro se* in this litigation. She failed to present herself at hearing despite having written notice of the hearing. H. Chad Walker represented Defendants. The matter came under advisement on July 3, 2024.

ISSUES

The issues slated for resolution at the hearing were:

1. Whether Claimant has complied with the notice limitations set forth in Idaho Code § 72-701 through Idaho Code § 72-704, and whether these limitations are tolled pursuant to Idaho Code § 72-604;

2. Whether Claimant suffered an injury from an accident arising out of and in the course of her employment;

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

4. Whether and to what extent Claimant is entitled to:

a. Medical care;

b. Temporary disability, total or partial;

c. Disability based on medical factors, known as permanent impairment; and

d. Permanent partial disability attributable to all factors.

EVIDENCE CONSIDERED

The record in this matter consists of Defendants' Exhibits 1 through 6, and the Industrial Commission file. No testimony was taken at hearing, and no post-hearing depositions were conducted.

FINDINGS OF FACT

1. The facts are limited to those which can be gleaned from the admitted exhibits introduced by Defendants at hearing.[1]

2. Based on the information contained in Defendants' exhibits, as well as the complaint on file herein, Claimant felt pain in her right elbow while pulling ladder at work on May 12, 2022.

3. She first sought treatment for her right elbow on March 28, 2023.

[1] Claimant's *self-serving* out-of-court statements are hearsay and will not be afforded weight. It is difficult to analyze self-authenticating medical records, and other documents worthy of consideration, in a way which completely separates observations, medical opinions, and conclusion from any and all hearsay contained within, so to the extent such hearsay is foundational to the record in question, it will be considered. Keeping in mind it was the Defendants who introduced the exhibits, it must have been Defendants' intent that the undersigned consider and analyze such documents in their entirety.

4. Claimant was initially diagnosed with medial epicondylitis, with a suggestion of the possibility of cubital tunnel syndrome.

5. Claimant was consistent in her history of how and when her elbow symptoms began, as well as the symptoms she was experiencing at the time of her medical treatments.

6. Claimant continued to work off and on for Employer during the relevant time period, with restrictions and a brace. Claimant was prescribed prednisone, ibuprofen and Tylenol.

7. Claimant attended one session of physical therapy prior to her claim being denied.

8. Claimant saw Michael Daines, M.D. on May 16, 2023. In his notes from his visit with Claimant, Dr. Daines wrote "[Claimant] has irritation of her ulnar nerve. This could have been caused by the injury from the ladder." DE 5, p. 81.[2] Dr. Daines suggested treatment options including ulnar nerve release surgery. Dr. Daines noted Claimant was scheduled for an IME on May 24, and that a previous physician felt her condition was not related to the ladder incident.[3]

9. Defendants had Claimant seen by R. David Bauer, M.D., on May 24, 2023, in an independent medical examination setting. Dr. Bauer took a history from Claimant, reviewed medical records, and conducted a physical examination.

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[2] In her history, Claimant had related how, while pulling a ladder, the wheels on the ladder abruptly stopped, pulling Claimant's elbow and shoulder. The repetitive nature of her job also contributed to worsening pain since the ladder incident.

[3] While the undersigned does not recall seeing a record where causality was specifically denied, he did note the physical therapist may have felt Claimant's elbow injury was work related.

10. During this visit, Claimant expressed some doubt as to whether her condition was due to pulling the stuck ladder in May 2022, or whether it was due to the highly repetitive nature of her job tasks. Her pain was increasing over time.

11. Dr. Bauer diagnosed ulnar neuropathy at the elbow, which was neither caused by, nor aggravated by Claimant's work activities. Instead, he called her ulnar neuritis, also known as cubital tunnel syndrome, a "disease of life" which is the second most commonly diagnosed mononeuropathy after carpal tunnel syndrome. DE 6, pp. 96, 97. He explained that cubital tunnel syndrome is thought to be a chronic condition caused by years of flexion and extension of the elbow. Also, the condition can be caused by elbow joint trauma, repetitive elbow pressure, or prolonged elbow flexion. Dr. Bauer noted he was "unable to find a reference that suggests that the single incidence of trauma" Claimant sustained would lead to ulnar neuropathy. As such, he felt "the described mechanism of injury in May 2022 is not sufficient to cause the described symptoms." *Id.* at 97.

12. Dr. Bauer opined that Claimant could return to gainful employment as she had the capacity to work without restrictions other than an elbow pad.

DISCUSSION AND FURTHER FINDINGS

Notice

13. Idaho Code § 72-701 provides, in pertinent part:

> No proceedings under this law shall be maintained unless a notice of the accident shall have been given to the employer as soon as practicable but not later than sixty (60) days after the happening thereof ...

14. Idaho Code § 72-702 requires that the notice must be in writing. However, notice required under Idaho Code § 72-701 is sufficient, even if the formal requirements are not met, so long as "...the employer, his agent or representative had knowledge of the injury

or occupational disease or...the employer has not been prejudiced by such delay or want of notice." Idaho Code § 72-704. Notice is sufficient if it apprises the employer of the accident arising out of and in the course of employment causing personal injury. *Murray-Donahue v. National Car Rental Licensee Association*, 127 Idaho 337, 339, 900 P.2d 1348, 1350 (1995).

15. Claimant carries the burden of proving she provided notice to Employer within sixty days of the date of her accident. She did not testify. While there are several instances in the record where she told medical providers that she told her supervisor of her injury on the day it occurred, and states as much in her complaint, by failing to appear at her hearing she deprived Defendants of the chance to cross examine her on this issue. Her statements in her complaint and in her subjective history to providers is not dispositive.

16. Defendants introduced at hearing Claimant's First Report of Injury. It was prepared by Employer on March 28, 2023, and references an injury date of May 12, 2022. The document also includes the date of May 12, 2022 as the date Employer was first notified. Because the document was prepared by Employer, it could qualify as a statement of a party-opponent, and thus an exception to the hearsay rule. Also, the Commission is not bound by the same rules of evidence that civil courts adhere to. As our Supreme Court noted, the Commission has the "discretionary power to consider any type of reliable, trustworthy evidence having probative value . . . even though that evidence may not be admissible in a court of law." *Mazzone v. Texas Roadhouse, Inc.*, 154 Idaho 750, 758, 302 P.3d 718, 726 (2013) (quoting *Hite v. Kulhenak Bldg. Contractor*, 96 Idaho 70, 72, 524 P.2d 531, 533 (1974)). The first report of injury completed by Employer is a type of trustworthy document admissible at the discretion of the Commission. It establishes the fact that Claimant did

timely notify Employer of her accident.

17. When the entirety of the record is examined, Claimant has proven by a preponderance of the evidence that she gave timely notice under Idaho Code §72-701.

Causation

18. Claimant has the burden of proving the condition for which compensation is sought is causally related to the industrial accident. *Callantine v Blue Ribbon Supply*, 103 Idaho 734, 653 P.2d 455 (1982). Further, there must be evidence of medical opinion—by way of physician's testimony or written medical record—supporting the claim for compensation to a reasonable degree of medical probability. Claimant must prove not only that she was injured, but also that her 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). However, magic words are not necessary to show a doctor's opinion is held to a reasonable degree of medical probability; only their plain and unequivocal testimony conveying a conviction that events are causally related. *Jensen v. City of Pocatello*, 135 Idaho 406, 412-13, 18 P.3d 211, 217-18 (2001).

19. Two entries into the physical therapy notes from Kennedy Gillespie, PT, state the injury suffered by Claimant (medial epicondylitis, right elbow), was accident related. The first was on the initial evaluation form under the heading "Current Injury." Therein, in answer to the question, "Is this a work related injury?" the reply was "yes." DE 4, p. 69. Under the heading "ASSESSMENT" PT Gillespie noted, "[Claimant] is a 44 year old female who presents to physical

therapy with R elbow pain after a work related accident when she was reaching for a ladder back in May of 2022." *Id.* at 72.

20. Likewise, as noted above, Dr. Daines mentioned in his records that Claimant's elbow condition "could have been caused by the injury from the ladder." DE 5, p. 81.

21. The issue with the above quoted references is that they lack any substance, analysis, or authority. PT Gillespie's records might not even be considered a medical conclusion, as it is unclear if she was simply noting Claimant's assertion that her condition was work related, or if she also felt, based on knowledge and expertise, independent of Claimant's assertion, that on a more likely than not basis Claimant's elbow condition was due to the accident. The ambiguity is substantive, since "a physician does not render a medical opinion by merely recording the assertion of a patient. *Meikle v. Alpine Flagging*, LLC, 2001 WL 470656 (Idaho Ind. Com. Apr. 27, 2001).

22. Dr. Daines, acknowledging that the injury "could" have been work related is a less than plain and unequivocal statement. While Dr. Daines did not have to make the statement of causation using any preset language, his statement must plainly and unequivocally convey his conviction that the events of an industrial accident and injury are causally related.

23. Neither the physical therapist nor Dr. Daines' statements on causation are convincing, especially in light of the contrary opinion on causation by Dr. Bauer.

24. Not only did Dr. Bauer state his opinion on the lack of causation between Claimant's condition and her work accident, he also supported his opinion with research and authority beyond his own conclusions. He noted the frequency of such conditions, brought on by life, as he put it – a condition of years of wear and tear, or trauma sufficiently severe to contuse the ulnar nerve. His conclusions are supported with medical studies and publications.

25. When weighing the opinions of PT Gillespie, Dr. Daines, and Dr. Bauer, it is the opinions of Dr. Bauer which are afforded the greater weight.

26. When the record as a whole is considered, Claimant has failed to establish by the preponderance of the evidence that her elbow injury was caused by her work accident of May 12, 2022.

27. Because Claimant has failed to prove causation by a preponderance of the evidence, the remaining issues of Claimant's entitlement to medical, temporary disability, impairment, and permanent disability benefits, are moot.

CONCLUSIONS OF LAW

1. When the totality of the record is examined, Claimant has proven by a preponderance of the evidence that she gave timely notice under Idaho Code §72-701.

2. When the totality of the record is examined, Claimant has failed to establish by the preponderance of the evidence that her elbow injury was caused by her work accident of May 12, 2022.

3. The issues of Claimant's entitlement to medical, temporary disability, impairment, and permanent disability are rendered moot by her failure to prove by a preponderance of the evidence a causal connection between her right elbow condition and the work accident of May 12, 2022.

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RECOMMENDATION

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

DATED this 8th day of July, 2024.

INDUSTRIAL COMMISSION

Brian Harper

Brian Harper, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of July, 2024, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by email transmission and by regular United States Mail upon each of the following:

SHANON NOLL

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jsk

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

SHANON R. NOLL, Claimant, v. AMAZON.COM SERVICES, LLC, Employer, and LM INSURANCE CORP., Surety, Defendants.	**IC 2023-008767** **ORDER** FILED JUL 16 2024 INDUSTRIAL COMMISSION

Pursuant to Idaho Code § 72-717, Referee Brian Harper 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 recommendation of the Referee. The Commission concurs with this recommendation.

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, IT IS HEREBY ORDERED that:

1. When the totality of the record is examined, Claimant has proven by a preponderance of the evidence that she gave timely notice under Idaho Code §72-701.

2. When the totality of the record is examined, Claimant has failed to establish by the preponderance of the evidence that her elbow injury was caused by her work accident of May 12, 2022.

3. The issues of Claimant's entitlement to medical, temporary disability, impairment, and permanent disability are rendered moot by her failure to prove by a preponderance of the evidence a causal connection between her right elbow condition and the work accident of May 12, 2022.

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

DATED this the 12th day of July, 2024.

INDUSTRIAL COMMISSION

Thomas E. Limbaugh, Chairman

Claire Sharp, Commissioner

Aaron White, Commissioner

ATTEST:

Kamerron Slay
Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of July, 2024, a true and correct copy of the foregoing **ORDER** was served by email transmission and regular United States Mail upon each of the following:

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