

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

SANIJE BERISHA,)
)
 Claimant,)
)
 v.)
)
 THE GROVE HOTEL,)
)
 Employer,)
)
 and)
)
 INSURANCE COMPANY OF THE)
 WEST,)
)
 Surety,)
 Defendants.)
)
 _____)

IC 2002-003038

**FINDINGS OF FACT,
CONCLUSION OF LAW,
AND RECOMMENDATION**

January 21, 2010

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Susan Veltman, who conducted a hearing in Boise, Idaho, on December 17, 2009. Claimant represented herself at hearing. Thomas V. Munson represented Defendants. The parties submitted oral and documentary evidence. Kujtin I. SopotI served as an interpreter for the benefit of Claimant. Claimant waived the filing of a post-hearing brief in order to expedite the issuance of a decision. Defendants filed a post-hearing brief and the matter came under advisement on January 8, 2010.

PROCEDURAL BACKGROUND AND PREVIOUS FINDINGS

A previous hearing was held in this case on October 17, 2003. Robert D. Barclay was the presiding Referee and Claimant was represented by attorney Vernon K. Smith with whom she is

no longer affiliated. A decision was issued on April 5, 2004 in which the Commission ordered that:

1. Claimant incurred CRPS I as a consequence of her February 2002 industrial accident.
2. Claimant is not eligible for any further medical care without further documentation.
3. Claimant is not entitled to any additional temporary partial and/or temporary total disability (TPD/TTD) benefits.
4. Claimant is entitled to a permanent partial impairment (PPI) rating of 5% of the whole person. Surety is entitled to credit for any amount previously paid.
5. Claimant is entitled to a permanent partial disability (PPD) rating of 5% of the whole person inclusive of her PPI.
6. Apportionment under Idaho Code § 72-406 for a pre-existing condition is not warranted.
7. The issue of retraining under Idaho Code § 72-450 has been waived.
8. Claimant is not entitled to attorney's fees as provided for by Idaho Code § 72-804.
9. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to the matters adjudicated.

The previous decision was not appealed and has become final.

On April 6, 2009, Claimant filed a new Complaint seeking additional medical care. Claimant was represented by Andrew C. Marsh with Seiniger Law Offices from May 21, 2009, until October 13, 2009. Claimant, acting *pro-se*, filed a Request for Hearing on October 22, 2009.

ISSUE

Pursuant to the Notice of Hearing dated November 18, 2009 and by agreement of the parties at hearing, the sole issue to be decided is whether and to what extent Claimant is entitled to additional reasonable and necessary medical care as provided for by Idaho Code § 72-432.

CONTENTIONS OF THE PARTIES

Claimant contends that her 2002 right upper extremity (RUE) injury has caused continuous suffering. She seeks an order from the Commission authorizing additional medical treatment and desires to resume treatment with pain management physician, Richard A. DuBose, M.D. Claimant wants relief from her pain and to be healed. She seeks treatment related to nerve damage in her RUE which she asserts has caused multiple problems including RUE pain, headaches, back pain, nose bleeds, vision loss, contusions to her left breast, right leg numbness and memory loss.

Defendants contend that Claimant has not met her burden of proof to establish entitlement to additional medical benefits and request that consideration be given to the previous findings on this issue.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. Claimant's Exhibit 1- Letter from Richard Radnovich, D.O., to Seiniger Law Offices dated April 7, 2009;
2. Claimant's Exhibit 2- Work restrictions from Eric Paul Kendall, M.D., dated May 31, 2009 ;
3. Defendants' Exhibit 1- Report of Troy B. Watkins, Jr., M.D., dated October 8, 2009;

4. Testimony taken at the December 17, 2009 hearing from Claimant and her husband, Xhevat Berisha; and

5. The Industrial Commission's legal file which includes the decision, transcript and exhibits relating to the previous hearing of October 17, 2003.

After having considered all the above evidence and the briefs of the parties, the Referee submits the following findings of fact and conclusion of law for review by the Commission.

FINDINGS OF FACT

1. The only new medical records submitted were the reports identified above as Exhibits. No other medical evidence was offered beyond what was admitted at the October 2003 hearing.

2. On April 7, 2009, Claimant was evaluated by Richard Radnovich, D.O., at the request of Seiniger Law Offices. Dr. Radnovich's report identifies medical service providers from whom he reviewed records, but does not identify the dates or date range of records reviewed. It appears that he was provided with some, but not all, of the medical records admitted into evidence at the October 2003 hearing. There is no indication as to which reports he reviewed, if any, that were generated after the October 2003 hearing.

3. Dr. Radnovich concluded that:

Complex regional pain syndrome is a known complication of orthopedic procedures and trauma. [Claimant's] mechanism of injury is known to cause this kind of problem. The nature of the disease is chronic and ongoing and requires medical management to control symptoms and maintain function. There is no known specific treatment that has cured it. I am unaware of any medical justification for arbitrary cessation of treatment. This Claimant would likely benefit from ongoing medical management to help control her symptoms and improve her function.

Claimant's Exhibit 1, p.2.

4. Claimant's Exhibit 2 is a release for Claimant to return to work as of May 31, 2009, with a ten pound lifting restriction. The document does not contain information regarding causation or medical treatment.

5. On October 8, 2009, Troy B. Watkins, Jr., M.D., evaluated Claimant at the request of Surety. Dr. Watkins utilized an interpreter during the evaluation. He was initially provided with Claimant's medical records from February 2002 through March 2003 and from July 2004 through February 2009. Dr. Watkins requested records from March 2003 through June 2004 from Surety, but there is no indication that he reviewed additional information.

6. Dr. Watkins summarized the medical records he reviewed. Although the actual medical records are not in evidence, Dr. Watkins' report reflects that Claimant has been evaluated since her October 2003 hearing in July 2004 for complaints of headaches and blindness; in August 2004 for having an "attack" and fainting at a dentist's office following teeth cleaning; in December 2006 for a right wrist injury after falling in the bathtub; in August 2007 for foot pain; and in February 2009 when her blindness was described as psychosomatic and related to secondary gain. All of Claimant's treatment, other than the dentist visit, occurred in emergency rooms. Diagnostic studies of Claimant's chest and brain performed during emergency room visits were normal.

7. Dr. Watkins compared Claimant's RUE with her left upper extremity (LUE) and found both to be without evidence of atrophy, hypertrophy or fasciculations (muscle twitching). Claimant's LUE range of motion, vascular supply and neurological function were normal. Claimant was uncooperative regarding examination of her RUE. She screamed loudly when Dr. Watkins initially touched her right finger pads but moments later did not react when he touched the same area while he was simultaneously moving her wrist.

8. Dr. Watkins noted that Claimant had four or five superficial ulcerated areas on her right forearm which Claimant attributed to scratching because of a burning/itching sensation. He observed 30 to 40 well healed scars from previous lesions. Dr. Watkins diagnosed self-mutilization secondary to severe psychiatric issues.

9. Dr. Watkins did not recommend additional treatment for Claimant's industrial injury.

10. Claimant's presentation at hearing lacked inhibition. During her opening statement, she demonstrated multiple open wounds, scabs and contusions by removing her clothing above her waist. Various sores and contusions were visible on both of her arms and on her left breast. Claimant wore a gauze type bandage wrapped around her head which she explained eased her headaches. During the testimony of her husband, Claimant wandered around the hearing room and intermittently stood still while facing the wall. Claimant reported severe memory and cognitive defects that she attributes to her RUE injury.

11. Claimant expressed a desire to return to Dr. DuBose for treatment but was unaware of what treatment had been recommended. She has not returned to Dr. DuBose since the October 2003 hearing. Claimant expressed a desire to be cured. She attributes all of her physical and mental deficits to her 2002 industrial injury.

12. Claimant's husband testified about the significant suffering that has befallen his wife and family as a result of Claimant's 2002 industrial injury. He seeks restoration of his wife's health and financial assistance. He believes that his wife's treatment in the workers' compensation system has been unfair, untimely and discriminatory.

DISCUSSION AND FURTHER FINDINGS

13. Idaho Code § 72-432(1) mandates that an employer provide reasonable medical care that is related to a compensable injury. The claimant bears the burden of proving that medical expenses were incurred as a result of an industrial injury. *Langley* at 785. The employer is not responsible for medical treatment that is not related to the industrial accident. *Williamson V. Whitman Corp./Pet, Inc.*, 130 Idaho 602, 944 P.2d1365 (1997). The fact that a claimant suffers a covered injury to a particular part of his or her body does not make the employer liable for all future medical care to that part of the employee's body, even if the medical care is reasonable. *Henderson v. McCain Foods, Inc.*, 142 Idaho 559, 563, 130 P.3d 1097, 1101 (2006).

14. At the previous hearing, Referee Barclay determined that:

The record reflects the [Independent Medical Examination] Panel found Claimant medically stable and opined she would not improve with any further treatment. Six months later Dr. Weiss re-examined her and found that her condition had not changed. Claimant argues she is entitled to the care recommended by Dr. DuBose. There is no chain of referral from the physicians who were treating Claimant to Dr. DuBose. The sympathetic nerve bloc he recommended had already been tried by Dr. Moore and Dr. Gussner. It had no effect on Claimant. Dr. Moore had also requested the nerve conduction studies recommended by Dr. DuBose, but Claimant refused to allow anyone to touch her to complete the test. This refusal also lead to a curtailment of her physical therapy. The Referee finds Defendants have provided Claimant with the reasonable medical care required by the statute. Thus, the Referee concludes Claimant is not eligible for any further medical care without further documentation. The evidence submitted does not support the need for any further medical care.

15. As noted above, the findings in the previous decision were not appealed and have become final. At the October 2003 hearing, Claimant failed to meet her burden of proof to establish entitlement to further medical care and it was determined that Defendants provided

reasonable care. However, the decision allows for the possibility of Claimant re-establishing entitlement to medical benefits for services rendered after the October 2003 hearing.

16. Claimant failed to meet her burden to establish entitlement to additional medical care for her 2002 industrial injury. The opinion of Dr. Radnovich suggests that ongoing treatment for CRPS is generally appropriate and that Claimant would benefit from ongoing medical management. Dr. Radnovich's report is non-specific about what symptoms related to CRPS 1 would benefit from treatment and/or what type of treatment plan would be appropriate. Dr. Radnovich did not have the benefit of reviewing a complete set of Claimant's medical records, nor did he have the opportunity to review the previous decision in this case which summarized the treatment rendered to Claimant as well as the obstacles to providing such treatment. Dr. Radnovich's report does not address the nature of symptoms for which Claimant has sought treatment since the 2003 hearing and/or relate Claimant's symptoms to her compensable diagnosis of RUE CRPS 1.

17. The report of Dr. Watkins is credible and provides a reasonable explanation for the multiple skin lesions, scabs and contusions that Claimant demonstrated during hearing.

CONCLUSION OF LAW

Claimant has not met her burden of proof to establish entitlement to additional medical benefits.

RECOMMENDATION

The Referee recommends that the Commission adopt the foregoing findings of fact and conclusion of law and issue an appropriate final order.

DATED this 8 day of January 2010.

INDUSTRIAL COMMISSION

 /s/
Susan Veltman, Referee

ATTEST:

 /s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 21 day of January a true and correct copy of **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon:

SANIJE BERISHA



THOMAS V MUNSON
200 N FOURTH STREET STE 30
BOISE ID 83702

jkc

 /s/

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ORDER

January 21, 2010

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

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

1. Claimant has not met her burden of proof to establish entitlement to additional medical benefits.
2. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all issues adjudicated.

DATED this 21 day of January , 2010.

INDUSTRIAL COMMISSION

unavailable for signature
R. D. Maynard, Chairman

/s/
Thomas E. Limbaugh, Commissioner

/s/
Thomas P. Baskin, Commissioner

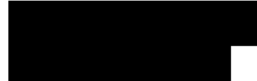
ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 21 day of January, 2010, a true and correct copy of the foregoing **Order** was served by regular United States Mail upon each of the following persons:

SANJE BERISHA



THOMAS V MUNSON
200 N FOURTH STREET STE 30
BOISE ID 83702

jkc

/s/