BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

CRAIG WHITTED, Claimant, v. IDAHO INDUSTRIAL COMMISSION, Employer, and IDAHO STATE INSURANCE FUND, Surety, Defendants.	**IC 2023-057953** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** **FILED March 28, 2025** **IDAHO INDUSTRIAL COMMISSION**

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission ("Commission") assigned the above-entitled matter to Referee Paul Jefferies, who conducted a hearing in Boise on November 25, 2024. Claimant, Craig Whitted, was present and represented himself *pro se*. Defendant Employer, the Commission, and Defendant Surety, Idaho State Insurance Fund, were represented by Tyler Neill. The parties presented oral and documentary evidence. No post-hearing depositions were taken. Claimant did not file an opening brief. Defendants submitted a brief. Claimant filed a reply brief. The matter came under advisement on February 19, 2025 and is ready for decision.

ISSUES

Per the August 13, 2024 Notice of Hearing and as confirmed at the hearing, the issues to be decided are:

1. Whether and to what extent an accident occurred on November 6, 2023;
2. Whether and to what extent Claimant's limitations are a result of subsequent injury or condition;
3. Whether Claimant is entitled to:
    a. Medical benefits;
    b. Temporary disability benefits;
    c. Attorney's fees.

CONTENTIONS OF THE PARTIES

Claimant did not file an opening brief. However, at the hearing Claimant contended that he suffered a workplace accident when, on November 6, 2023, he hit his left knee on a keyboard tray that was attached to the underside of the desk where he was working. Claimant informed his supervisors of the accident. Claimant's supervisor, Richelle Flores, filled out the First Report of Injury (FROI) form and submitted it to Surety without giving Claimant an opportunity to review it. Flores wrongfully checked "YES" in response to the prompt: "Do you question this claim?" Flores also made numerous errors in filling out the FROI. These actions led to Surety's decision to deny his claim. Employer's desk violated OSHA regulations. Employer removed the keyboard tray from the underside of the desk after the accident. Claimant informed both Cody D. Heiner, M.D., and his treating physician, Andrew R. Curran, D.O., that he hit his left knee on the keyboard tray. After the accident, Claimant's pain in his left knee was so bad that he needed to use a cane to walk. Claimant was planning to have a right knee replacement but delayed the procedure in order to address his left knee. Claimant had a left knee revision in February 2024. Claimant subsequently had a right total knee replacement in May 2024. Claimant did not have enough accumulated vacation or sick leave to recover from both of these surgeries and thus, was without pay for two weeks. Claimant's left knee has improved since the revision, but the pain is worse compared to before the accident and he still uses a cane to walk.

Defendants contend that Claimant has failed to prove that an industrial accident occurred on November 6, 2023. Claimant has a history of pre-existing degenerative joint disease in both knees. Claimant's contemporaneous report of the incident to his supervisors do not mention an accident but rather simply reference pain while sitting at the front reception desk. Furthermore, the medical records contain no mention of Claimant's left knee hitting a keyboard tray or other accident. It was not until his deposition on October 8, 2024, that Claimant first mentioned a traumatic event, i.e. that he hit his left knee on a keyboard tray attached to the underside of the desk. Additionally, Claimant has failed to establish that his left knee revision of February 2024 was the result of a compensable accident. No medical provider has opined that his left knee injury was the result of his alleged industrial accident.

In his reply brief, Claimant restates the same arguments that he raised at the hearing.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. Claimant's Exhibits (CE) 1 through 8;[1]
3. Defendants' Exhibits (DE) 1 through 26;
4. The testimony of Claimant, Kayla Pollard, Richelle Flores, and Patti Vaughn, taken at the hearing.

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

[1] Initially, Claimant indicated that he was submitting nine (9) exhibits; however, during Mr. Neill's cross-examination of Claimant it became necessary to clarify the numbering of Claimant's exhibits. During an off-the-record discussion, it was determined that there were actually only eight (8) exhibits submitted by Claimant and the Referee numbered and marked each page of Claimant's exhibits in the upper-right corner accordingly. (*See* Tr. 4, 42.)

FINDINGS OF FACT

1. At the time of the hearing, Claimant was 64 years old and lived in Melba, Idaho. DE 1. At the time of the hearing, Claimant worked as a claims examiner for Employer and had been since approximately April 2022. Clt. Depo. 7:22-8:4.[2]

2. **Relevant Pre-Accident Medical History.** Claimant has a history of pre-existing degenerative joint disease in both right and left knees. On May 26, 2010, Claimant was seen by Andrew Curran, D.O., for right knee pain. After imaging was conducted, Dr. Curran diagnosed Claimant with severe right patellofemoral degenerative joint disease and a much more mild degenerative joint disease within the right medial and lateral compartments. DE 8:5. Dr. Curran also diagnosed Claimant with mild left knee degenerative joint disease. DE 8:5.

3. Claimant continued treatment with Dr. Curran for his right knee condition which ultimately led to a right knee arthroscopy on December 6, 2010. DE 8:13-14. In the following years, Claimant would seek treatment from Dr. Curran for his right knee condition and eventually underwent a right total knee arthroplasty on May 20, 2024. DE 13:117; (*see generally* DE 8, 9, 10, 11, 12, and 13 for medical history relating to right knee condition from 2010-2024). However, at the time of hearing, Claimant made it clear that he does not seek compensation for nor claim that his right knee condition and the subsequent right total knee arthroplasty of May 20, 2024, are related to the alleged industrial accident. Tr. 27:21-28:13; 54:11-15.

4. On January 24, 2021, Claimant reported to Dr. Curran for left knee swelling and pain. DE 13:1-4. The notes reflect that Claimant stated he developed swelling in the first part of January, and did not recall any injury. DE 13:1. MRI findings of the left knee revealed "[d]iminutive and irregular appearance of the body of the medial meniscus. Findings could

[2] A transcript of Claimant's October 8, 2024 Deposition is included in the record as DE 24.

represent complex tear and/or postsurgical change. Correlation with any history of prior partial meniscectomy is recommended. The lateral meniscus is intact. … Severe patellofemoral compartment osteoarthrosis. Moderate to severe medial compartment osteoarthrosis. Mild joint effusion with suspected large joint body abutting the medial femoral condyle. Correlation with radiographs is recommended." DE 9:88.

5. Claimant continued treatment with Dr. Curran for his left knee pain and eventually underwent a left total knee arthroplasty on June 16, 2021. DE 13:55-56. Claimant progressed well post-surgery and on September 9, 2021, Dr. Curran discharged Claimant with directions to follow-up as needed. DE 13:85-88.

6. On October 24, 2023 – two weeks before the alleged industrial accident – Claimant reported to Dr. Curran for left knee pain. Dr. Curran's notes indicate the following: "This is a 62 year old male who is here for a follow up on his LEFT knee. He has a notable history of a LEFT total knee arthroplasty 6/16/21. He reports he has been having pain with twisting movement 2 months ago. Pain subsided but has returned and is a constant ache. He also is complaining of RIGHT pain. He has known osteoarthritis and would like to discuss further treatment." DE 13:98 (emphasis in original). In-office X-rays showed advanced bone-on-bone arthritis of right knee. DE 13:98. Dr. Curran's notes further stated: "Today we aspirated and injected [Claimant's] left knee with cortisone to manage his sudden swelling. If he continues to have issues with this knee, we will follow up for further evaluation. For his right knee, [Claimant] should follow up when he is ready to schedule a TKA to address his progressing arthritis in that knee." DE 13:99.

7. **Industrial Accident.** Claimant usually worked at his cubicle but occasionally would work at the front reception desk as necessary. Tr. 25:22-26:1. On November 6, 2023, Claimant worked at the front reception desk for about an hour. Tr. 26:2-10. Claimant asserts that,

while he was sitting at the front reception desk and turned his chair to answer the phone, he suffered an accident when he hit his left knee on a keyboard tray, or cradle, that had been installed to the underside of the reception desk. Claimant's testimony was as follows:

> On the day of my Workmen's Comp accident, when I was done talking to a person at the visitor window, the phone rang. And I turned to the left and my knee run [sic] into the keyboard cradle hard enough that my knee started to hurt bad. My knee hurt so bad that when I was done with my shift at reception I went immediately out to the car and got the cane that was in the trunk.

Tr. 17:12-18.

8. On that same day, November 6, 2023, Claimant sent the reception supervisor, Kayla Pollard, an email with the subject "desk height and chair height." DE 21:1-2. The email reads, in its entirety, as follows: "The reception desk and chair height, not being high enough hurts my knees." DE 21:1-2. Pollard responded by forwarding the email to Claimant's direct supervisor, Richelle Flores. DE 21:1-2.

9. Claimant acknowledges that he did not mention the accident – hitting his left knee on the keyboard tray – in his email to Pollard. Tr. 27:10-12. When asked if he subsequently reported the accident to Pollard, Claimant's answer was somewhat equivocal: "When she come [sic] to me. I believe she come [sic] and talked to me and I believe we talked about it a little bit. Exactly what I said I do not know. That is why I put it in the e-mail so there was a paper trail." Tr. 27:13-17. Pollard testified that she did not ever recall Claimant telling her that he had struck his knee on the keyboard tray. Tr. 69:7-10.

10. Flores met with Claimant on November 8, 2023 to discuss Claimant's email complaining about the reception desk and chair height. Tr. 72-73. Flores wanted to ascertain if Claimant intended to file a workers compensation claim regarding the matter. Tr. 73:2-12. Flores testified that Claimant acknowledged that he had ongoing knee issues and was unsure if he wanted

to file a claim at the time. Flores testified that Claimant did not report an accident – either by hitting his left knee on the keyboard tray or otherwise – but instead simply complained of knee pain. Tr. 73:13-75:2. Claimant's testimony of what he reported to Flores in regard to the accident was somewhat equivocal and vague. Claimant's testimony was as follows:

Q: [By Mr. Neill] Did you discuss an accident with [Flores]?

A: I said I got hurt there; yeah.

…

Q: So did you discuss the accident with [Flores] though?

A: I said I twisted my knee; yes.

Tr. 45:21-22; 46:11-13.

11. The next day, November 9, 2023, Claimant reported to Flores that he wished to see the designated provider for his knee pain and he was referred to Cody Heiner, M.D. Claimant presented to Dr. Heiner on that same day, November 9, 2023. Dr. Heiner noted that Claimant's chief complaint was bilateral knee pain. DE 16:1. Dr. Heiner documented as follows:

> Date of injury/onset: 11/6/2023. Mechanism of injury/onset: [Claimant] reports he worked for 1-2 hours at a desk that was too low. It was harder/awkward for him to turn side-to-side. He gradually developed knee pain, L>R. There was no trauma. He waited 3 days before presenting for evaluation of this condition, due to hoping for a time that it would resolve on its own.

DE 16:1. X-rays of the left knee showed "No acute fracture. No dislocation. Intact total knee arthroplasty. Trace joint effusion." DE 17:1. Dr. Heiner opined that there was insufficient evidence to conclude that Claimant's condition was work-related. Dr. Heiner wrote the following:

> I considered both occupational and non-occupational etiologies for the patient's presentation. Based on the information currently available, this is: Possibly work-related, but evidence does not reach the threshold of "medically more probable than not." I would not expect the mechanism he described to cause an injury, overuse pain, or illness.

DE 16:3. Dr. Heiner's records do not contain any mention of Claimant hitting his left knee on a keyboard tray or any other traumatic event. Despite the absence, Claimant asserts that he did report to Dr. Heiner that he hit his left knee on the keyboard tray at his November 9, 2023, appointment. Tr. 50:1-5; 19-21.

12. Flores prepared a First Report of Injury (FROI) and submitted it to Surety on December 13, 2023. DE 1. Tr. 92:7-17. The form stated that the "Date of Injury" was November 6, 2023. DE 1:1. In response to the prompt "How injury or illness occurred" Flores wrote the following:

> [Claimant] typically works from a cubicle in the claims department. On the date of the reported injury, 11/06/23, he was asked to cover the reception desk for an hour while the receptionist attended a meeting. Following his one hour shift at reception, he emailed the reception supervisor, Kayla Pollard, stating "the reception desk and chair height, not being high enough hurts my knees." The reception supervisor then forwarded to [Claimant's] supervisor. He left on 11/09 to see doctor and returned 11/13/23.

DE 1:1. In response to the prompt: "Do you question this claim?" Flores answered "YES." DE 1:1. Flores testified that she marked the box "YES" because Claimant did not describe an accident to her but instead simply stated that he was experiencing knee pain while sitting at the front reception desk, and thus she felt that Claimant himself questioned the claim that a work accident had occurred. Tr. 75:3-22; 86:9-88:4.

13. In the following weeks, Employer attempted to make the front reception desk/workstation more comfortable for Claimant. Employer removed the keyboard tray that was attached to the underside of the desk in order to allow more room for someone sitting at the desk. Tr. 72:11-73:1; 80:17-81:19; 98:10-25.

14. Claimant presented to Dr. Curran on November 16, 2023 for his left knee pain. Dr. Curran's notes of this visit do not mention an accident – there is no reference to Claimant hitting

his knee on a keyboard tray or to any other traumatic event. DE 13:100. Dr. Curran noted as follows:

> [Claimant] was previously evaluated in the office on 10/24/23 at which time he was suffering from ongoing pain and swelling. He underwent knee joint aspiration and injection of corticosteroid. He presents today with ongoing pain and discomfort. Today he presents with renewed discomfort. He states his pain is medially of his Left knee. He notes he only had one week of improvement following his injection.

DE 13:100. Dr. Curran diagnosed left knee osteoarthritis. DE 13:100. Furthermore, Dr. Curran's notes of this visit and subsequent follow-up visits do not mention a work accident nor relate Claimant's left knee condition to a work accident. Despite this absence, Claimant testified that he did report the work accident to Dr. Curran; he was not sure precisely when but that he "absolutely" reported to Dr. Curran of a work-related accident at least by the time of his follow-up appointment on November 30, 2023. Tr. 37:13-39:16; 50:23-51:12.

15. Claimant had a telehealth follow-up visit with Dr. Heiner on November 20, 2023. DE 16:5-6. Dr. Heiner noted that Claimant would continue careful full-duty work and that there was no need for further care or follow-up with him. DE 16:6. Dr. Heiner recommended that Claimant continue to seek treatment from Dr. Curran. DE 16:6.

16. Claimant continued to seek treatment from Dr. Curran for his left knee pain and eventually underwent a revision of his left total knee arthroplasty on February 26, 2024. DE 15:3-4. Claimant's left knee condition improved after the revision. DE 13:114.

17. Surety denied Claimant's claim on December 6, 2023 for the following reason: "Available information fails to establish a causal relationship between your condition and your employment." DE 22.

18. Claimant filed a complaint on December 7, 2023 with a date of injury of November 6, 2023. Claimant described the injury as follows:

> Twisting knees in an inadequate workstation assigned to for a temporary amount of time. When my time was done at this workstation on 11.06.2023 my knees swelled up and hurt really bad. I limped out to my car and got a cane out of the trunk that is kept there for times when my wife might need it and have been using it at work and other times ever since. Informed the reception supervisor about the inadequate workstation hurting my knees verbally twice before on previous occasions, and basically nothing was done. This time I sent an email, then things seemed to happen quickly to try to alleviate the workstation problem. This claim was causal.

DE 2:1.

19. In February 2024, Claimant spoke with Patti Vaughn, Employer's manager and Flores's direct supervisor. Vaughn stated that she could not speak with Claimant about his claim and directed him to discuss with HR. Tr. 94:9-25. Vaughn testified that Claimant did not mention a specific accident while sitting at the front reception desk to her but simply stated that his knee started hurting on November 9, 2024. Tr. 95:8-16.

20. On July 7, 2024, Claimant filed an amended complaint in which he described the November 6, 2023, injury as follows: "I twisted my knee under the reception desk on the keyboard holder turning from the reception window back to the compuer [sic] screen." DE 4:1.

21. In his deposition of October 8, 2024, Claimant described the November 6, 2023, accident in the same exact words he used to describe the accident during his direct examination at the hearing. *See* Clt. Depo. 17:22-18:5; Tr. 17:12-18.[3]

22. On November 8, 2024, Kyle Palmer, M.D. conducted a record review of Claimant's medical history on Defendants' request and concluded that Claimant had pre-existing degenerative joint disease in both right and left knees prior to the date of injury that would, to a reasonable

[3] During his testimony-on-direct at the hearing, Claimant read from a written statement he had prepared describing the accident, among other things. *See* Tr. 15:19-24:12. It appears that Claimant also read from this same prepared statement at his deposition. *See* Clt. Depo. 16:14-23:14.

degree of certainty, have led to the need for a total knee arthroplasty independent of any intervening events. DE 20:10.

23. **Credibility.** The Referee finds that Kayla Pollard, Richelle Flores, and Patti Vaughn all testified credibly.

24. For reasons discussed further below, the Referee finds that Claimant's testimony regarding the alleged accident of November 6, 2023, is not credible. There are also substantive credibility issues. Claimant's description of the November 6, 2023 accident – hitting his left knee against a keyboard tray attached to the underside of the desk – is not referenced or mentioned in any of the pertinent medical records. The pertinent medical records do not reference a work-related accident or traumatic event. Despite its omission in the physicians' records, Claimant testified that he did report to both Dr. Heiner and Dr. Curran that he hit his knee under the desk on the day in question. Perhaps if only one doctor had failed to mention the accident in their respective records for whatever reason, this Referee might be inclined to give more weight to Claimant's assertion that he reported the alleged accident to them. However, the fact that both doctors' records do not reference an accident is problematic and suggests that Claimant did not report his account of the alleged accident to either Dr. Heiner or Dr. Curran. In conclusion, where Claimant's testimony contradicts the medical record, the medical record will be relied upon.

DISCUSSION AND FURTHER FINDINGS

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

Inc., 122 Idaho 361, 363, 834 P.2d 878, 880 (1992).

26. **Causation.** A worker's compensation claimant has the burden of proving, by a preponderance of the evidence, all the facts essential to recovery. *Evans v. Hara's, Inc.*, 123 Idaho 473, 479, 849 P.2d 934 (1993). A worker is entitled to compensation under the Worker's Compensation Law when the employee suffers an injury that was caused by an accident arising out of and in the course of employment. *Clark v. Shari's Management Corp.*, 155 Idaho 576, 579, 314 P.3d 631, 634 (2013). The terms "injury" and "accident" are defined under Worker's Compensation Law as follows:

> "Injury" means a personal injury caused by an accident arising out of and in the course of any employment covered by the worker's compensation law.
>
> "Accident" means an unexpected, undesigned, and unlooked for mishap, or untoward event, connected with the industry in which it occurs, and which can be reasonably located as to time when and place where it occurred, causing an injury.
>
> "Injury" and "personal injury" shall be construed to include only an injury caused by an accident, which results in violence to the physical structure of the body. The terms shall in no case be construed to include an occupational disease and only such nonoccupational diseases as result directly from an injury.

Idaho Code § 72-102(17). Although "accident" and "injury" are interrelated definitionally, they are not synonymous terms. *Clark*, 155 Idaho 576, 580, 314 P.3d 631, 635.

27. A 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). Furthermore, a claimant must adduce medical opinion – by way of physician's testimony or written medical records – in support of his claim, and he must prove his claim to a reasonable degree of medical probability. *Dean v. Dravo Corporation*, 95 Idaho 558, 511 P.2d 1334 (1973). 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. *Jensen v. City of Pocatello*, 135 Idaho 406, 18 P.3d 211 (2000). The permanent aggravation of a pre-existing condition is compensable. *Bowman v. Twin Falls Construction Company, Inc.*, 99 Idaho 312, 581 P.2d 770 (1978). A claimant is required to establish a probable, not merely a possible, connection between cause and effect to support his contention that he suffered a compensable accident. *Davenport v. Big Tom Breeder Farms, Inc.*, 85 Idaho 604, 382 P.2d 762 (1963).

28. The Idaho Supreme Court has upheld the Commission's findings of lack of substantive credibility where a claimant makes inconsistent statements regarding the industrial accident and the symptoms resulting therefrom. *Clark*, 155 Idaho 576, 314 P.3d 631 (although the claimant indicated her injury might be work-related, she never suggested that her injury was due to an accident at work until she filed a worker's compensation claim after discovering her need for surgery); *Painter v. Potlatch Corp.*, 138 Idaho 309, 63 P.3d 435 (2003) (the Court upheld Commission's findings of lack of substantive credibility when the claimant did not adequately explain why he recorded the alleged incidents on his calendar on the days they occurred but did not report them to his doctors or to his employer until weeks later); *compare with Stevens-Mcatee v. Potlatch Corp.*, 145 Idaho 325, 179 P.3d 288 (2008) (Court found the claimant credible because, although his descriptions as to the cause of his injury were more vague prior to the hearing, he consistently maintained that his injury arose from the jostling and vibrations of his forklift.) The Court has held that the appropriate standard for evaluating substantive credibility is to look for substantial consistency supported by the other evidence in the record. *Clark*, 155 Idaho 576, 581, 314 P.3d 636.

29. Claimant must prove, by a preponderance of the evidence, that he suffered an "accident" that caused an "injury." Claimant contends that on November 6, 2023, he hit his left

knee against a keyboard tray that had been attached to the underside of the front reception desk while turning his chair to answer the phone.

30. However, the record establishes that Claimant did not report this account of the accident to Employer nor to his medical providers at the time. Pollard, Flores, and Vaughn all testified that Claimant never informed them that he hit his left knee on a keyboard tray. Instead, they all testified that Claimant simply reported pain in his knees due to the height of the front reception desk. Claimant's email to Pollard on November 6, 2023, does not reference or mention that Claimant hit his knee against the keyboard tray, nor does it reference a traumatic event. Claimant's November 6, 2023, email stated, in full, "The reception desk and chair height, not being high enough hurts my knees." DE 21:2. Claimant asserts that he had previously complained verbally to Pollard about the desk height and stated that he sent a written communication via email on November 6, 2023, in order to create a "paper trail." *See* Tr. 16:18-23; 27:3-20. If this was Claimant's intent in sending the email to Pollard, it is strange that Claimant would not include any details of the alleged accident as described at the hearing – i.e. that he hit his left knee against the keyboard tray – in the email.

31. Furthermore, the medical record of Claimant's visit with Dr. Heiner on November 9, 2023, is consistent with his emailed report to Pollard. The medical record notes that Claimant reported that he worked for an hour at a desk that was too low and that he gradually developed knee pain, left greater than right. DE 16:1. Importantly, the record notes that Claimant did not report trauma. DE 16:1. Despite this, Claimant asserts at hearing that he did report to Dr. Heiner that he hit his left knee against the keyboard tray. Claimant cites to Dr. Heiner's statement "I would not expect the mechanism he described to cause an injury, overuse pain, or illness" (DE 16:3) as evidence to support his assertion that he did report the accident as he described at hearing to Dr.

Heiner. Claimant's argument is not persuasive. It is clear that the "mechanism" as used in that sentence is a reference to the "mechanism of injury/onset" as described in the beginning of the report. Again, the "mechanism of injury/onset" does not mention Claimant hitting his knee on a keyboard tray or any other traumatic event. Instead, it stated as follows:

> Mechanism of injury/onset: [Claimant] reports he worked for 1-2 hours at a desk that was too low. It was harder/awkward for him to turn side-to-side. He gradually developed knee pain, L>R. There was no trauma. He waited 3 days before presenting for evaluation of this condition, due to hoping for a time that it would resolve on its own.

DE 16:1. Although Dr. Heiner's report stated that Claimant's left knee condition was "possibly" work-related, Dr. Heiner opined that the evidence does not reach the threshold of medically more probable than not. DE 16:3. This is insufficient to establish that Claimant's left knee condition was related to a work-related accident to a reasonable degree of medical probability.

32. Additionally, the records of Claimant's treating physician, Dr. Curran, do not support the occurrence of a work-related accident as Claimant described at hearing. On October 24, 2023 – approximately two weeks before the alleged accident – Claimant re-established care with Dr. Curran complaining of pain in both his left and right knees. Dr. Curran's notes of the visit state that Claimant reported pain in his left knee due to "a twisting movement 2 months ago." DE 13:98. Dr. Curran diagnosed bilateral primary osteoarthritis of knee. DE 13:98. In the first treatment note with Dr. Curran following the alleged accident, November 16, 2023, there is no mention or reference to a work-related accident. *See* DE 13:100. Again, Claimant testified that he reported to Dr. Curran that he hit his left knee under the desk at work. Despite this assertion, Dr. Curran's medical records simply diagnose osteoarthritis of his left knee with no attribution to a workplace injury or accident. Nor do they mention or reference an accident as described by Claimant at hearing. *See generally* DE 13. Claimant's account of the accident, as described at the

hearing, lacks substantive credibility.

33. Claimant relies on a letter from Dr. Curran (CE 4) to establish that his February 26, 2024 revision of his left total knee arthroplasty was connected to the alleged accident. This letter fails to establish causation. First, the letter is undated, but Claimant testified that he received the letter from Dr. Curran a few weeks before the hearing, sometime in October or November of 2024. Tr. 40:17-41:3; 48:4-12. The letter states as follows:

> [Claimant] had a total knee arthroplasty carried out on his **right** knee. He had a twisting injury at work and began having increased pain in his knee. He subsequently was discovered to have a loose prosthesis that required a revision. Since having the revision his knee pain has markedly improved. He did require time off of work while recovering from this surgery.

CE 4 (emphasis added). Importantly, the undated letter references Claimant's *right* knee (not his left). As stated previously, Claimant is not claiming that his right knee condition and subsequent right total knee arthroplasty is related to the alleged accident. At the hearing, Claimant surmises that this is a typo, and that Dr. Curran meant to say "left knee" instead of "right knee." Dr. Curran's deposition was not taken. With nothing further from Dr. Curran to explain his letter, Claimant's assertion that Dr. Curran meant to reference the left knee, instead of the right, is speculation. Regardless, even if this Referee were to set aside the foundational issues of the undated letter and assume that this letter references Claimant's left knee, it is not sufficient to establish causation to a reasonable degree of medical probability. Dr. Curran does not state that the loose prosthesis and revision were the result of the alleged industrial accident. Dr. Curran's letter does not establish that a work-related accident aggravated Claimant's pre-existing osteoarthritis in his left knee. Accordingly, the Referee assigns little to no weight to Dr. Curran's undated letter (CE 4).

34. Claimant argues that Employer's subsequent removal of the keyboard tray from the desk supports his contention that the alleged accident occurred as he described at hearing. The

Referee determines that the fact that Employer removed the tray is not particularly probative to the issue of whether the November 6, 2023, accident occurred. As both Flores and Vaughn testified, Employer's removal of the keyboard tray was in response to Claimant's complaints that the desk was too low, not because Claimant reported an accident involving the keyboard tray. The record establishes that Employer removed the keyboard tray in an attempt to simply provide more space underneath the front reception desk.

35. Claimant also argues that the low height of the front reception desk violated OSHA. Claimant points to a document entitled "Computer Workstations eTool" that he retrieved from the U.S. Department of Labor's website (CE 1:1-3) to support this claim. This documentation fails to establish that Employer violated OSHA. The document is simply a checklist that employers can use to evaluate the safety of a computer workstation. The document states:

> This checklist can help you create a safe and comfortable computer workstation. You can also use it in conjunction with the purchasing guide checklist. A "no" response indicates that a problem **may** exist. Refer to the appropriate section of the eTool for assistance and ideas about how to analyze and control the problem.

CE 1:1 (emphasis added). There is insufficient evidence on this record to determine that Employer violated OSHA. Furthermore, and more importantly, even if the height of the desk did violate OSHA, such a finding does not necessarily establish that the alleged accident occurred. The Commission is tasked to determine whether a claimant suffered an injury caused by an accident arising out of and in the course of employment, it is not a fault-finding exercise. Therefore, Claimant's arguments that Employer violated OSHA is not relevant to the noticed issues.

36. Additionally, at the hearing and again in his reply brief, Claimant raises several arguments pertaining to Employer's actions after the alleged accident occurred, i.e. Flores failed to allow him an opportunity to review the FROI before it was submitted, Flores used the wrong form to submit the FROI, Flores wrongfully checked "YES" in response to the prompt "do you

question the claim?", and Flores incorrectly filled out the FROI. Claimant has failed to demonstrate the relevance of these arguments to the issue of whether the November 6, 2023, accident occurred or not. These arguments would possibly only be relevant if the Referee determined that Employer's or Surety's actions justified an award of attorney fees under Idaho Code § 72-804. For example, if Employer's actions led the Surety to contest Claimant's claim without reasonable ground, etc. However, Claimant's failure to prove causation renders the issue of attorney fees moot. *See Salinas v. Bridgeview Estates*, 162 Idaho 91, 394 P.3d 793 (2017). Furthermore, and more importantly, Claimant is representing himself pro se. The Idaho Supreme Court has ruled that pro se litigants are not entitled to attorney fees. *Roe v. Albertson's Inc.*, 141 Idaho 524, 531, 112 P.3d 812, 819 (2005) (citing *O'Neil v. Schuckardt*, 112 Idaho 472, 480, 733 P.2d 693, 701 (1986)).

37. In conclusion, Claimant has failed to prove by a preponderance of the evidence that an accident, as defined by Idaho Code § 72-102(17), occurred on November 6, 2023. The evidentiary record does not support Claimant's contention that he hit his left knee against the keyboard tray as he described at the hearing.

38. At best, Claimant has demonstrated that the height of the reception desk caused him discomfort and that he gradually developed knee pain, as he described in his November 6, 2023 email to Pollard and as he reported to Dr. Heiner on December 9, 2023. However, this does not constitute an "accident" as defined by Workers' Compensation Law. Claimant has not demonstrated that he experienced an "unexpected, undesigned, and unlooked for mishap, or untoward event" pursuant to Idaho Code § 72-102(17). As the Idaho Supreme Court has ruled, in order to establish that a mishap or event occurred, an injured worker must do more than show an onset of pain while at work. *Konvalinka v. Bonneville County*, 140 Idaho 477, 95 P.3d 628 (2004) (repetitive motion of the claimant's thumbs while working long hours, that caused her pre-existing

osteoarthritis to become symptomatic, did not constitute an "accident" under Worker's Compensation Law); *Nelson v. Ponsness-Warren Idgas Enterprises*, 126 Idaho 129, 879 P.2d 592 (1994) (repetitive hand motions that caused a pre-existing carpal tunnel condition to become symptomatic was not a series of "mini-traumas" constituting an accident); *DeMain v. Bruce McLaughlin Logging*, 132 Idaho 782, 979 P.2d 655 (1999) (exposure to prolonged vibrations which aggravated a pre-existing degenerative disk disease did not constitute an accident); *Tupper v. State Farm Ins.*, 131 Idaho 724, 963 P.2d 1161 (1998) (a claimant who suffered shoulder and upper back pain due to the repetitive use of her arm at work failed to show that her condition was caused by an accident.)

39. Furthermore, no physician of record has opined to a reasonable degree of medical probability that Claimant's left knee condition and the February 26, 2024 revision was likely related to an industrial accident. Nor have they opined to a reasonable degree of medical probability that an industrial accident aggravated Claimant's pre-existing knee condition.

40. Having failed to prove a specific accident or untoward event and having failed to establish it likely through medical opinion that Claimant's left knee condition was caused or aggravated by an industrial accident, Claimant has not met his burden of proof to establish a compensable claim. Accordingly, all other noticed issues are rendered moot.

CONCLUSIONS OF LAW

1. Claimant failed to establish by a preponderance of the evidence that a compensable accident occurred on November 6, 2023.
2. Claimant failed to establish by medical evidence that his condition is causally related to the alleged work accident.
3. All other issues are moot.

RECOMMENDATION

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

DATED this 24th day of March, 2025.

INDUSTRIAL COMMISSION

Paul Jefferies, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the _28TH_ day of __March_____, 2025, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by *E-mail transmission* and United States Certified Mail upon each of the following:

CRAIG WHITTED
[redacted]

TYLER NEILL
345 BOBWHITE CT. STE 215
BOISE, ID 83706
tyler@nlgid.com

ge

_____Gina Espinosa_____

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

CRAIG WHITTED, Claimant, v. IDAHO INDUSTRIAL COMMISSION, Employer, and IDAHO STATE INSURANCE FUND, Surety, Defendants.	**IC 2023-057953** **ORDER** **FILED March 28, 2025** **IDAHO INDUSTRIAL COMMISSION**

Pursuant to Idaho Code § 72-717, Referee Paul Jefferies 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. Claimant failed to establish by a preponderance of the evidence that a compensable accident occurred on November 6, 2023.
2. Claimant failed to establish by medical evidence that his condition is causally related to the alleged work accident.

3. All other issues are moot.

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

DATED this 28th day of March, 2025.

INDUSTRIAL COMMISSION

Claire Sharp

Claire Sharp, Chair

Aaron White, Commissioner

RECUSED

Thomas E. Limbaugh, Commissioner

INDUSTRIAL COMMISSION SEAL STATE OF IDAHO

ATTEST:

Kamerron Slay

Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __28th___ day of __March_____, 2025, a true and correct copy of the foregoing **ORDER** was served by *E-mail transmission* and United States Mail upon each of the following:

CRAIG WHITTED
[redacted]

TYLER NEILL
345 BOBWHITE CT. STE 215
BOISE, ID 83706
tyler@nlgid.com

___Gina Espinosa_____