BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

GREGORY HANSON, Claimant, v. BLN HUETTIG FARM, Employer, and IDAHO STATE INSURANCE FUND, Surety, Defendants.	**IC 2014-013893** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** Filed January 9, 2017

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Michael E. Powers, who conducted a hearing in Twin Falls on May 11, 2016. Claimant was present and represented by Patrick D. Brown of Twin Falls. Lyle J. Fuller of Preston represented Employer/Surety. Oral and documentary evidence was presented and the record remained open for the taking of one post-hearing deposition. The parties then submitted post-hearing briefs and this matter is now ready for decision.

ISSUES

The bifurcated issues to be decided as the result of the hearing are:

1. Whether Claimant suffered an accident causing injury arising out of and in the course of his employment with Employer and, if so,

2. Whether Claimant is entitled to an award of medical benefits; and,

3. Whether Claimant is entitled to an award of attorney fees for Employer/Surety's wrongful denial of his claim.

The issue of whether Claimant suffered from a relevant pre-existing condition is reserved for the development of additional medical evidence, pending how the Commission decides the first two listed issues.

CONTENTIONS OF THE PARTIES

Claimant contends that he suffered an accident causing a low back injury when he was attempting to pull a stuck landing gear (outrigger) in order to stabilize his service truck when using its crane. He claims he has witnesses to corroborate his rendition of the accident.

Defendants contend that no such accident happened and that Claimant's witnesses are of no help to him in establishing an accident. Claimant's own version of events is so inconsistent and contradictory as to render his version unreliable.

EVIDENCE CONSIDERED

The evidence in this matter consists of the following:

1. The testimony of Claimant, Employer's co-owner Brian Huettig (Brian), Claimant's co-workers Chayse Hanson (Chayse), Gabe Laraway (Gabe), Brigham Hurd (Brigham), Surety's claims adjuster Paula Adams (Paula), and Claimant's mother Carolyn Hanson (Carolyn), taken at the hearing.

2. Claimant's Exhibits (CE) A-N, admitted at the hearing.

3. Defendants' Exhibits (DE) 1-9, admitted at the hearing.

4. The post-hearing deposition of Lynn B. Berkebile, D.C., taken by Claimant on May 24, 2016.

FINDINGS OF FACT

Claimant's Deposition and Hearing testimony

1. Claimant was 50 years of age and was raised and resided in Twin Falls at the time of the hearing. Claimant was in special education classes; he did not attend high school or obtain his GED. He lives with his mother and they "get by" on her retirement and food stamps. Claimant has been married twice, although he was not married at the time of the hearing. He has five adult children from his second marriage. Claimant is bipolar, resulting in depression and anxiety issues. He was, at age 13, involved with an alcohol and drug treatment program and later, with a two-year Mental Health Court, from which he graduated in 2012, and has been "clean and sober" since.

2. Claimant went to work for Employer as a mechanic in March 2014. For the four or five years prior to that, Claimant owned his own janitorial service that did work for his church. Claimant also worked as a farm mechanic at various farms in the Magic Valley.

3. At or about 7:00 p.m. on Friday, May 19, 2014, Claimant was helping to prepare a swather for a move to another location. Claimant contends that he injured his back while attempting to pull out a stuck outrigger on his service truck (more details below).

4. Claimant testified that his pain was so severe that he could not sleep the night of his accident, the 9th of May. He worked the next day[1] and described his low back pain like being stabbed with a knife. He told Chayse and Brigham about his back hurting during lunch on the 10th and Chayse and/or Brigham asked about his condition when they noticed that Claimant had trouble getting out of the vehicle that took him to lunch. He also had a discussion with Jim on the date of the accident about preparing a first report of injury. Jim indicated he would get together with Brian and make the report.

[1] Claimant testified that Brian wanted him to clean the restrooms because there was to be drug testing on Monday. Claimant could not explain why Brian would inform him of a drug test that was supposed to be random.

5. Claimant did not work on Sunday following the accident. He stayed in bed and could ". . . hardly get up to go the bathroom or get a drink of water." HT, p. 163-164. Claimant's mother wanted him to go the hospital, but he declined, figuring he had simply pulled a muscle. With Jim's permission, Clamant had his mother make an appointment for him to see Lynn Berkebile, D.C., a chiropractor, for Thursday morning.

6. Claimant saw Dr. Berkebile on Thursday, May 15, 2014 who placed Claimant on light duty. Claimant testified that he gave a note to that effect to Brian that same day and Brian ". . . really didn't say nothing." *Id.*, p. 168. According to Claimant, Brian did not provide him with light-duty work, so he walked off the job at around 10:00 p.m. and has not worked since.

7. The next day, Friday May 16th, Claimant and his mother went to pick up his paycheck. Brian told Claimant that he was sorry he got hurt and if there were any more medical bills he would take care of them. Claimant thought that Brian knew he, Claimant, was hurt during the "outrigger incident."

Brian Huettig

8. Brian is a partner with his father and mother in Employer, BLN Huettig Farm. Brian takes care of the day-to-day operations. He denied knowing of Claimant's accident/injury until at least May 27, 2014, even though he saw the light-duty release prepared by Dr. Berkebile. He did not ask Claimant what caused his injury: "There was no thought of any injuries." HT, p. 22. Brian testified that Claimant, as well as other employees, have seen a chiropractor before for "sore backs" without any particular incident or event, and Brian believed that this chiropractic visit was for the same reason, a "sore back." Jim, Claimant's direct supervisor, never told Brian that Claimant was alleging a work-related injury and Brian never asked; however, Jim did ask Brian if he would pay for Claimant's visit to Dr. Berkebile

and Brian agreed to pay for one visit. When Claimant came to pickup his check on May 16th, he informed Brian that he was feeling fine and probably would not have to see Dr. Berkebile again.

9. Even though he did not inquire regarding the nature and extent of Claimant's injury, Brian testified that he takes all injuries seriously and takes his injured workers personally to obtain appropriate medical care. Brian did not find out any particulars of Claimant's accident/injury until a couple of weeks after Claimant picked up his paycheck on May 16th, when Claimant called and told him. Brian then talked to the people Claimant indicated were present and had knowledge of his accident.

10. Brian disagrees that Claimant was not provided light work after seeing Dr. Berkebile's light-duty release. There was light-duty work available for Claimant to perform such as sweeping and organizing tools. Brian wondered about Claimant's need for light-duty work when he observed him ". . . laughing and carrying on with another coworker."[2] HT, p.48.

11. Brian first learned of Claimant's alleged accident toward the end of May when Claimant called him and told him. Brian was upset because Claimant had waited so long to tell him. Jim (who was no longer working for Brian at the time Claimant told Brian of his accident), never told Brian that Claimant was hurt or that a FROI should be prepared and filed.

Chayse Hanson

12. Chayse is Brian's nephew and was employed as a mechanic at all relevant times hereto.[3] Chayse observed Claimant pushing/pulling on the outrigger but: "I am not a hundred

[2] Brian observed Claimant standing on the step to the cab of a semi-truck being operated by a co-worker. Claimant explained that he was merely helping her as she had never driven a semi before. Based on this observation, Brian concluded that Claimant was unwilling to work light-duty and so informed Surety. Claimant never told anyone that he was unwilling to do light-duty work.

[3] Chayse was fired after Claimant's alleged accident.

percent sure whether he got hurt doing that or not." HT, p. 58. Chayse remembers going to lunch with Claimant and Brigham the day following Claimant's accident, but does not remember any discussion regarding whether Claimant was injured. He does, however, remember Claimant and Jim talking about Claimant hurting his back and that Jim was going to talk to Brian about it. It is unknown when and where this conversation took place.

13. Chayse testified that there was a video camera that should have shown the area where Claimant was allegedly injured, but he did not know whether or not the camera was on at the time.

14. Chayse testified that he did not see Claimant suffer an on-the-job injury at Employer's. He did not hear Claimant's back pop or see him fall to his knees as though he had injured his back. Chayse told Paula, an adjuster for Surety, that he was "surprised" that Claimant was alleging an injury. HT, p. 67.

Brigham Hurd

15. Brigham was Employer's swather manager in May 2014. At hearing, Brigham testified that he told Paula Claimant had issues with honesty and reiterated the same in his deposition, but could provide no examples of Claimant being dishonest. Brigham acknowledged that he went to lunch with Claimant and Chayse on Saturday, May 10, 2014, but does not remember telling Claimant to be sure and tell Brian or Jim that he had hurt his back. Brigham does recall that Claimant talked with him about hurting his back on Monday, May 12.

16. While Brigham does not remember the exact date, he does remember the "outrigger incident." He testified that there were a lot of people around at the time and he thinks Brian was present (Brian denied that he was). On re-cross examination, Brigham testified that other than Claimant, and perhaps Chayse, he did not know who was in the vicinity of the outrigger when he and Claimant were working to free it.

17. Brigham testified that he did not see Claimant go to his knees as if in pain nor did he hear Claimant's back pop. Claimant never told him that he had hurt his back that day. Brigham testified that sometime after the outrigger incident in Jerome, Claimant was climbing into the back of his service truck "a little bit slow" and mentioned that it was "old age." HT, p. 144-145. [4]

Gabe Laraway

18. Gabe worked a "little bit" with Claimant at Employer's farm. He and Claimant had a conversation sometime between April and May 15, 2014, wherein Claimant informed Gabe that he, Claimant, had to quit a job as a church custodian because the job was too hard on his back. Gabe was not present at the outrigger incident. He did not hear of that incident from Claimant, but from a conversation between Brian and Brigham "a couple of weeks ago." HT, p. 133. Gabe testified that there were security cameras that would have showed the area where the outrigger incident took place.[5]

Carolyn Hanson

19. Carolyn is Claimant's mother and helped him fill out the FROI as his handwriting was not very legible. She testified that she was aware of Claimant's injury on the day that it happened, although she did not know what day that was. Claimant called her and told her to make an appointment with chiropractor Berkebile. As Claimant lived with Carolyn, she was able to observe his post-accident behavior: "Well, he couldn't walk very well. He was - - he would sit down and he couldn't get up. He said he would hurt every time he would walk." HT, p. 119.

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[4] The Referee wonders how this happened as Claimant quit the day following his alleged accident, and there is no corroborating testimony regarding Claimant ever being in Jerome with his service truck on that day.

[5] Brian testified that at the time of the outrigger incident, there was no camera in place that would show the area in question; the camera had not yet been installed.

20. Carolyn went with Claimant to Huettig Farm to pick up his paycheck. Brian was there and said he was sorry Claimant got hurt and that he would pay for any medical treatment. Carolyn did not hear any discussion between Claimant and Brian regarding how Claimant got hurt. Brian agreed that Claimant did not tell him how he got hurt during that conversation and that Claimant told him that there was probably no need for a second appointment with Dr. Berkebile.

Paula Adams

21. Paula is a claims adjuster for Surety and was primarily responsible for the handling of Claimant's claim. She first became aware of Claimant's alleged accident and injury when she received the FROI that was prepared by Claimant's mother (Carolyn). Thinking that the FROI was completed by Employer, Paula called and reached Carolyn on June 4, 2014. During the course of her conversation with Claimant's mother, Paula realized she was not talking to Employer or any of its representatives. Paula did not recall whether it was at that time that she interviewed Claimant. She also did not remember asking why Carolyn, and not Employer, filled out the FROI. Paula testified that while it was a bit "unusual" for the mother of an injured worker to prepare a FROI, she was never informed that Carolyn did so because Brian refused to.

22. Paula eventually talked with Brian's wife who informed her that Employer did not file an FROI because they were not aware of any accident causing an injury. Paula testified that on the FROI filled out by Carolyn, the date of the accident was listed as May 9, 2014. Claimant later clarified that the actual date of is accident was May 10, 2014. This discrepancy in the date of the accident led, among other things, Paula to deny Claimant's claim.

23. Another "red flag" regarding Claimant's claim was raised by Claimant himself during his conversation with Paula: "He asked me what would happen if the witnesses denied that they saw anything." HT, p. 106. Paula wondered why Claimant would suspect that his witnesses would do that. Claimant responded by saying "He told me that the witnesses[6] absolutely saw it. They heard his back pop and there was no question." *Id*.

24. Paula interviewed Claimant's witnesses on July 18, 2004. Brigham told Paula that Claimant had problems with honesty, but gave no specific examples of such. Chayse told Paula that he was surprised that Claimant had filed a claim because he saw no signs that Claimant was injured. Jim told Paula that he did not witness any accident or injury involving Claimant even though he was working with him to free the outrigger. Jim thought it was the day after the alleged accident that Claimant returned with a light-duty release from Dr. Berkebile. Jim believed it was that day, May 13, 2014, that Claimant reported that he had hurt his back; however, Claimant never said how he hurt his back. Jim was suspicious of Claimant's claim and indicated that Claimant had quit three times in the last ten days.

DISCUSSION AND FURTHER FINDINGS

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, 793 P.2d 187 (1990). The humane purposes which it serves leaves no room for narrow, technical construction. *Ogden v. Thompson*, 128 Idaho 87, 910 P.2d 759 (1996).

An accident is defined as 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. Idaho Code § 72-102(17)(b). An injury is defined as a personal injury caused by an accident arising out of and

[6] Claimant named Chayse, Brigham and Jim as witnesses to his accident.

in the course of employment. An injury is construed to include only an injury caused by an accident, which results in violence to the physical structure of the body. Idaho Code § 72-102(17)(a). A claimant must prove not only that he or she was injured, but also that the injury was the result of an accident arising out of and in the course of employment. *Seamans v. Maaco Auto Painting*, 128 Idaho 747, 751, 918 P.2d 1192, 1196 (1996). Proof of a possible link is not sufficient to satisfy this burden. *Beardsley v. Idaho Forest Industries*, 127 Idaho 404, 406, 901 P.2d 511, 513 (1995). A claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability. *Langley v. State, Industrial Special Indemnity Fund*, 126 Idaho 781, 785, 890 P.2d 732, 736 (1995). "Probable" is defined as having "more evidence for than against." *Fisher v. Bunker Hill Company*, 96 Idaho 341, 344, 528 P.2d 903,906 (1974).

25. The Referee is not persuaded that Claimant suffered an accident and injury as he alleges on or about May 9, 2014. While the "floating date" issue is troublesome, Claimant's description of his accident and injury is even more so:

> We was trying to get the landing gear out off[7] - - out on the truck and it wouldn't - - it wouldn't budge and we - - Brigham and I were pulling on it and, then, Chayse and Jim Schvaneveldt showed up and they were there helping us pull on it and everything and there was just - - there wasn't enough room for the handle and everything to pull on it and when we were pulling on it I felt something pop and I went to my knees and they asked me if I was okay and that's when Jim says, well, why don't you guys get the bars out and - - and use the bar. So, that's what we - - we got the bar - - I got the bar out, we pulled it out about six inches and, then, we started pulling - - using the bar and everything, pulling on it again and it came out about a foot and they asked me if we had a come along and I told them should we use the come along when we got the crane right there and just pull the cable out and hook that cable to the - - to the outrigger and that's how we finished getting that outrigger back all the way out, and, then, we moved the tires around. We - - I put the crane back, we were trying to push the landing gear back in and the landing gear - - I greased it underneath to help the rust and everything on the problem with the landing gear being stuck and when we pushed it back in it would

[7] Claimant and others were attempting to stabilize a service truck supporting a crane by positioning the truck's "landing gear" or "outrigger," so that they could safely use the crane to position the swather on the transport trailer.

> only go in a little ways and it was stuck out about this far and you could see it in the rear-view mirror, but it was time to go home, so they just told me to go around and park the truck and we will deal with that Monday when we use the truck to - - to go to Jerome for a pilot car.
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> * * *
>
> I just - - I had severe pain in my lower back and that's when I fell to my knees that was about the same time that Jim showed up and I told him that I hurt my back and he thought the other people heard the - - the pop, but apparently not.

HT, pp. 157-158.

26. None of the witnesses Claimant counted on to corroborate his version of events regarding the outrigger did so. All of them testified that they did not hear Claimant's back pop, see him fall to his knees in pain, or in any way observe Claimant to be hurt either immediately following his alleged accident or the following day. Claimant's description of the outrigger incident is long on what he did immediately following his injury but short on how his injury, as traumatic as he described it, affected his ability to perform the tasks he described post-accident.

27. In his Answer to Interrogatories Number 6 regarding how his accident and injury occurred, Claimant provided much detail in his approximately five-and-a-half page response. At hearing, Claimant testified that his back audibly popped and he dropped to his knees in pain and had trouble standing back up. He then proceeded to provide minute details regarding what took place from that point on as though the pop in his back and subsequent falling to his knees was not a significant event. What is significant is that none of Claimant's witnesses heard his back pop or saw him fall to his knees.[8] Of further significance is the fact that Claimant told

[8] Claimant never impeached any of the witnesses and there is no reason why they should not be believed.

Dr. Berkebile on May 15, 2014 that ". . . he didn't feel any pain until Monday afternoon."[9] Dr. Berkebile Depo., p. 6.

28. The Referee finds that there are too many inconsistencies and contradictions in Claimant's story to find it believable. While it may well be that Claimant believes what he has said regarding his alleged accident and injury is the truth, the record as a whole does not support him. It would seem that if Claimant can remember in exquisite detail the particulars of the outrigger event, he could at least remember the date and/or day that such a significant traumatic event happened. It appears it was an impending need for surgery that prompted Claimant to attempt to reconstruct his alleged accident by supplying facts that do not exist.

29. The Referee finds that Claimant has failed to prove that he suffered an accident causing injury on or about May 9, 2014.

CONCLUSIONS OF LAW

1. Claimant has failed to prove he suffered an accident causing injury on or about May 9, 2014.

2 All other issues are moot.

RECOMMENDATION

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

DATED this 21st day of December, 2016.

INDUSTRIAL COMMISSION

___/s/_____
Michael E. Powers, Referee

[9] Claimant testified at hearing that, even though he was in extreme pain following his accident, he nonetheless mustered the resolve to go to work the next day.

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of January, 2017, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

PATRICK D BROWN
PO BOX 125
TWIN FALLS ID 83303

LYLE J FULLER
PO BOX 191
PRESTON ID 83263

ge ___/s/_____

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

GREGORY HANSON, Claimant, v. BLN HUETTIG FARM, Employer, and IDAHO STATE INSURANCE FUND, Surety, Defendants.	**IC 2014-013893** **ORDER** Filed January 9, 2017

Pursuant to Idaho Code § 72-717, Referee Michael E. Powers 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 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 he suffered an accident causing injury on or about May 9, 2014.

2 All other issues are moot.

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

DATED this 9th day of January, 2017.

INDUSTRIAL COMMISSION

___/s/_____
Thomas E. Limbaugh, Chairman

___/s/_____
Thomas P. Baskin, Commissioner

___/s/_____
R.D. Maynard, Commissioner

ATTEST:
___/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of January 2017, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

PATRICK D BROWN
PO BOX 125
TWIN FALLS ID 83303

LYLE J FULLER
PO BOX 191
PRESTON ID 83263

ge ___/s/_____