

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

ROSA CASTRO,

Claimant,

v.

COLLEGE OF SOUTHERN IDAHO,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,

Defendants.

IC 2016-033930

IC 2017-009800

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

Filed 4/9/19

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 Twin Falls, Idaho, on July 17, 2018. Dennis Petersen of Idaho Falls represented Claimant. Paul Augustine of Boise represented Defendants. The parties produced oral and documentary evidence at the hearing, took post-hearing depositions, and submitted briefs. The matter came under advisement on January 22, 2019.

ISSUES

The issues noticed for resolution at hearing were:

1. Whether Claimant's low back condition for which she seeks additional benefits was caused by either or both of her industrial accidents;

2. Whether and to what extent Claimant is entitled to the following benefits:
 - a. Medical care;
 - b. Temporary disability benefits¹; and
3. Whether Claimant is entitled to a change of physician to Dr. Benjamin Blair.

All other issues are reserved.

CONTENTIONS OF THE PARTIES

Claimant contends she suffered injury to her low back as the result of one or two falling accidents while in the course and scope of her employment. These accidents occurred on November 14 and December 22, 2016. After Surety declared Claimant at MMI, she saw Dr. Benjamin Blair for her continuing low back complaints. Dr. Blair recommended lumbar surgery, and attributed the need for such surgery entirely to Claimant's industrial accidents. Defendants denied the surgery. Claimant is entitled to continuing medical care as proposed by Dr. Blair, including surgery. Claimant also asserts Dr. Blair should be designated as Claimant's treating physician moving forward.

Defendants argue that Claimant has not proven she suffered an injury to her low back that requires lumbar surgery from either or both of her industrial accidents. Claimant had pre-existing low back arthritis, and at most strained her back in the work accidents, which strain has resolved. Claimant's ongoing symptomatology is due to conditions unrelated to her

¹ Claimant argues that *if* she is awarded additional medical treatment in the form of surgery, she would also be entitled to temporary disability benefits for the time when she could not work while recovering from that surgery. If she were to undergo other compensable treatment, such as physical therapy, Claimant argues she should be awarded temporary disability benefits if the treatment resulted in lost wages. Claimant acknowledged in briefing that this argument is "somewhat speculative." Nevertheless, she seeks an "appropriate" order from the Commission on this issue. Cl. Brief, p. 13. As recently pointed out in *Boswell v. Edgewood Vista*, IC 2015-033326 (March 15, 2019), where Defendants do not currently dispute Claimant's right to such contingent future temporary disability payments there is no currently-justiciable issue for resolution. Issues which are merely hypothetical or advisory are not ripe for adjudication. *Accord, ABC Agra, LLC, v. Critical Access Group, Inc.*, 156 Idaho 781, 331 P.3d 523 (2014). As such, Claimant's request for potential future temporary disability benefits will not be decided at this time, as the issue is premature.

work accident. Her radicular leg pain is subjective, and not correlated by objective MRI findings. Furthermore, Dr. Blair's opinions are based on Claimant's unreliable, inaccurate history.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant taken at hearing;
2. Joint exhibits (JE) A through X admitted at hearing; and
3. The post-hearing deposition transcripts of Benjamin Blair, M.D., and Paul Montalbano, M.D., taken on September 5, and October 17, 2018, respectively.

FINDINGS OF FACT

1. At the time of hearing Claimant was a 54 year old married woman living in Rupert, Idaho.

November Accident

2. In November 2016 Claimant worked for Employer as a teacher's assistant helping teach children in the classroom and performing home visits with families. During one such home visit on November 14, 2016, Claimant tripped over something protruding from the ground as she approached the house. Claimant fell forward to the ground. Claimant testified she experienced pain in her neck, left shoulder, and left knee² immediately after her fall.

3. Claimant sought medical treatment at Minidoka Medical Center. Claimant was prescribed a muscle relaxant for her neck spasm. Claimant soon began complaining of right hand pain as well. She was referred to Burley orthopedist Gilbert Crane, M.D., for her left

² At hearing Claimant initially stated she had pain in her left knee, and then changed it to right knee. The records from her post-fall medical visits indicate Claimant's left knee was bothersome, and Claimant agreed with that assessment at hearing.

shoulder, right hand and left knee pain. Dr. Crane treated those complaints, but did not address Claimant's neck problems because he "[didn't] do spine[s]." JE G, p. 27. Dr. Crane's treatment was considerable, including left shoulder and right carpal tunnel surgeries, but such treatment is not germane to this decision, and therefore not set forth in detail.³

December Accident

4. On December 22, 2016, Claimant slipped on ice while at work. At hearing Claimant testified she landed "on [her] butt." Tr. p. 43. In her deposition she claimed she fell forward during this second accident, landing on "all fours." JE T, p. 330. Her first office visit notes from this accident also mention a fall onto her hands and knees. All subsequent medical notes describing the incident indicate Claimant fell onto her hands and knees, or "all fours."

5. After falling on the ice, Claimant presented at Minidoka Medical Center, complaining of low and upper back pain, and left ankle pain. While low back pain was mentioned on this visit, it appears the initial treatment focused on Claimant's ankle. At the time she fell in December, Claimant was still under Dr. Crane's care for her right hand and left knee and shoulder complaints, all of which were still symptomatic.

6. On her followup visit of December 29, 2016, Claimant did not mention back pain; instead she focused on her left shoulder, left ankle, left knee, neck, and right hand. Low back pain was noted under the heading "Current Problems," but not actively examined or treated.

7. While the office notes of Claimant's January 12, 2017 visit to the Center again do not mention ongoing low back complaints, Claimant was referred to Southern Idaho Physical

³While Dr. Crane's office notes of March 30, 2017 and June 27, 2017, list a diagnosis of low back pain (among others), nowhere in corresponding narration is there even a passing mention of Claimant experiencing low back issues during this treatment period.

Therapy for “evaluation of neck, right wrist and hand, left knee, left ankle, and low back pain.” JE N, p. 250. Notes from the physical therapist do not include any treatment for low back complaints. Claimant did mention back pain on a few occasions, such as on January 26, 2017, the day after she had a shoulder MRI, and on June 22, 2017, when she stated her bed might be causing her to have a back ache.

8. On July 21, 2017, Surety sent Claimant to Keith Holley, M.D., for an orthopedic IME. At that time Claimant reported central low back pain without radicular symptoms, but with occasional tingling in her toes. She also reported tenderness to palpation at L4 to S1 without paraspinal muscle tenderness.

9. Dr. Holley diagnosed a myofascial lumbar strain from Claimant’s November industrial accident. Findings which were unrelated to either work accident included Claimant’s lumbar spondylosis and degenerative disc changes. Dr. Holley felt Claimant’s ongoing low back symptoms were age related and “primarily due to her morbid truncal obesity.”⁴ JE O, p. 269. He found Claimant was medically stable from her two industrial accidents.

10. Subsequently Dr. Crane agreed with Dr. Holley’s findings in a “check the box” format letter from Surety.

11. After the IME report was prepared, Claimant saw Benjamin Blair, M.D. a Pocatello orthopedic surgeon with OrthoIdaho on August 15, 2017. On this initial visit, Claimant indicated in writing that she had injured her neck, left shoulder, left knee, and right hand in the November accident, and her right knee, left ankle, and right shoulder in the December accident. However, she complained of low back pain to Dr. Blair, which she orally related to her November accident. Dr. Blair’s notes of that date state that Claimant had

⁴ At the time of examination Claimant was 53 years old, stood 5’4” and weighed 283 pounds.

no previous history of low back pain until her November accident, at which time she noted “sudden onset...low back pain radiating to the lower extremity.” JE P, p. 282. Claimant’s December accident aggravated her ongoing symptoms according to Dr. Blair’s notes. Dr. Blair felt Claimant was of “average weight” at 283 pounds with a BMI of 48.6. JE O, p. 283.

12. Dr. Blair examined Claimant. All mechanical testing was negative. Claimant walked without abnormal gait. X-rays taken that day showed disc narrowing at L5-S1 with grade 1 spondylolisthesis as interpreted by the doctor. MRIs were ordered.

13. Dr. Blair interpreted the lumbar MRI as showing degenerative disc disease, central disc bulge with significant disc space collapse, facet arthropathy, and secondary L5-S1 stenosis. He suggested an epidural steroid injection for Claimant’s symptomatic low back.

14. Claimant denied significant relief from the lumbar injection. Dr. Blair felt it would be appropriate for Claimant to consider a lumbar laminectomy, partial facetectomy, foraminotomy L5-S1, due to what the doctor described as “progressive, severe symptoms which had been ongoing for quite some time and interfered with Claimant’s quality of life.” He stated Claimant had “undergone multiple conservative therapies including [a single] steroid injection.” JE O, p. 295. Dr. Blair (unsuccessfully) sought Surety authorization for the surgery.

15. Dr. Blair has steadfastly maintained his belief that Claimant’s proposed surgery was necessitated by the industrial accidents in question.

16. Claimant accompanied her husband to Mexico in the fall/winter of 2017/18 to help effectuate repairs to his parents’ house, which he had inherited.

17. Upon her return to the U.S., Surety sent Claimant to Paul Montalbano, M.D., a Boise neurosurgeon on March 14, 2018, for an IME and written report.

18. Claimant told Dr. Montalbano her low back and left leg pain had been an issue since her November 2017 work accident. She also denied any low back or left lower extremity pain prior to such fall.

19. Dr. Montalbano examined Claimant. He found her muscle strength 5/5 in upper and lower extremities. Claimant had positive straight left leg raise at 15 degrees. No other findings of note. In reviewing previous medical records provided by Surety, Dr. Montalbano noted documentation from 2015 where Claimant had complaints of low back pain for which she sought out treatment.

20. Dr. Montalbano requested followup x-rays and lumbar MRI, as well as the actual MRI film from Claimant's August 17, 2017 MRI. Pending review of the requested films, Dr. Montalbano diagnosed Claimant with lumbosacral spondylosis without myelopathy or radiculopathy.

21. After repeat diagnostic studies were completed, Dr. Montalbano found Claimant had at that time a slight anterolisthesis at L4-5 and L5-S1. She also had bilateral synovial cysts within those joints. These findings were consistent with the reading radiologist's report. Dr. Montalbano added lumbosacral spondylolisthesis to his previous diagnosis. He felt the findings were nontraumatic in nature.

22. In his report, Dr. Montalbano opined Claimant's low back condition was degenerative and not the result of her work accidents. He noted Claimant was morbidly obese, and had low back symptoms which pre-dated the industrial accidents. Claimant was not a surgical candidate, but would benefit from a weight loss program and conservative measures. Claimant's only industrial low back injury was a strain, which had reached maximum medical improvement with no work restrictions.

Pre-Existing Back Complaints

23. Claimant fell in late 2015 while working for Grant 4D Farms. She was seen thereafter by Erik Evans, D.C., of Evans Family Chiropractic in Burley. Notes from the initial visit stated “On her intake form [Claimant] complained of low back and knee pain from hitting the ground, but when I asked her about this she says the pains are in her neck and mid back areas.” JE N, p. 204. As such, Dr. Evans treated Claimant’s neck and mid back.

24. In late October 2015, Claimant was referred to David Jensen, D.O., for additional treatment. Her intake form with Dr. Jensen indicated Claimant was complaining of “joint pain, joint swelling, joint stiffness, morning stiffness, muscle weakness, neck pain, mid-back pain and low-back pain.” JE M, p. 215. However, Claimant’s primary complaint was left-sided pain in her neck and shoulder. She had no radiculopathy in either her upper or lower extremities.

25. Claimant was initially evaluated and treated for her shoulder and neck. At a followup visit on November 2, 2015, Claimant’s history included the fact that “she continues to complain of shoulder pain and low back pain and headaches.” *Id.*, p. 219. Dr. Jensen noted Claimant was morbidly obese at 312 pounds, and tender to light touch to her axial low back. Straight leg raises were negative. Dr. Jensen ordered low back x-rays, which were largely negative other than a congenital condition (partial sacralization of L5, which Dr. Montalbano described in his deposition as a transitional segment or a rudimentary extra disc).

26. On February 23, 2016, Claimant established care with family doctor Wayne Blauer, M.D. She had hypertension and numbness and swelling in her feet. She complained of low back pain when standing up straight and after hard work. At a subsequent visit in September 2016, Claimant mentioned in passing that she “always has low back pain.” She was at the doctor’s office for a suspected epigastric hernia and possible UTI.

DISCUSSION AND FURTHER FINDINGS

27. Idaho Code § 72-432(1) mandates that an employer shall provide for an injured employee such reasonable medical, surgical or other attendance or treatment as may be reasonably required by the employee's physician or needed immediately after an injury, and for a reasonable time thereafter. If the employer fails to provide the care, the injured employee may obtain that care at the expense of the employer.

28. An employer is only obligated to provide necessary and reasonable medical treatment necessitated by the industrial accident, and is not responsible for treatment unrelated to the industrial accident. *Williamson v. Whitman Corp./Pet, Inc.*, 130 Idaho 602, 944 P.2d 1365 (1997).

29. Claimant has the burden of proving the condition for which compensation is sought is causally related to an industrial accident with 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. *Callantine v Blue Ribbon Supply*, 103 Idaho 734, 653 P.2d 455 (1982). Claimant is required to establish a probable, not merely a possible, connection between cause and effect to support his contention. *Dean v. Dravo Corporation*, 95 Idaho 558, 560-61, 511 P.2d 1334, 1336-37 (1973).

30. A pre-existing disease or infirmity does not disqualify a workers' compensation claim. As noted in *Wynn v. J.R. Simplot Co.*, 105 Idaho 102, 104, 666 P.2d 629, 631 (1983), "our compensation law does not limit awards to workmen who, prior to injury, were in sound condition and perfect health. Rather, an employer takes an employee as he finds him."

31. Claimant seeks compensation for a claimed permanent aggravation of her pre-existing degenerative low back condition. Permanent aggravation of a pre-existing

condition is compensable if the aggravation is caused by an industrial accident. *Koch v. Micron Technology*, 136 Idaho 885, 42 P.3d 678 (2002).

CAUSATION AND MEDICAL/SURGERY BENEFITS

32. In the present case, the first two issues – whether Claimant’s low back condition was caused by one or more of her industrial accidents in question, and whether she is entitled to additional medical care to include surgery – dovetail together into a single analysis. If Claimant’s current low back condition is not causally related to either of her 2016 industrial accidents (November 14 and December 22), then she is not entitled to related additional medical benefits for her low back, as per *Williamson, supra*. While Claimant in theory could prove her current low back condition is causally related to her work accidents and still fail to prove her entitlement to additional medical benefits, including surgery, such scenario is not raised by either party. As such, if Claimant proves her current condition is causally related to either of her work accidents, then she would be entitled to additional medical treatment, including surgery.

Causation

33. Claimant relies on Dr. Blair to provide the needed medical opinion establishing the causal connection between her industrial accidents of 2016 and her current condition. In addition to his medical records, Dr. Blair had the opportunity to expound on his opinions at his deposition.

Dr. Blair’s Deposition Testimony

34. In his deposition Dr. Blair reaffirmed his belief that Claimant’s low back complaints were the result of her industrial accident of November 14, 2016, perhaps with aggravation to that injury during her December work accident. Dr. Blair acknowledged

Claimant had pre-existing degenerative changes in her lumbar spine. He felt the MRI of August 2017 showed a central disc bulge at L4-5 and L5-S1 which “pinched her nerves.” Blair Depo. p. 9. However, contemporaneously-taken lumbar flexion/extension x-rays showed no lumbar instability, or sliding of the discs. Dr. Blair felt this pinching was the cause of Claimant’s continuing leg pain. He testified an L5-S1 laminectomy surgery was warranted to relieve this “pinching” and decrease Claimant’s leg pain, primarily, and perhaps also decrease Claimant’s low back discomfort. Surgery was warranted because Claimant had pinched nerves, and she had “exhausted everything potentially nonsurgical.” Blair Depo. p. 15.

35. Dr. Blair causally related Claimant’s central disc bulge or spondylosis to her November 2016 work accident because “that’s when she became symptomatic” by her history. *Id.* p. 14. Dr. Blair stuck with this opinion even after he was shown medical records showing Claimant complained of back pain prior to November 14, 2016. Specifically, when asked about Dr. Blauer’s note which indicated Claimant had low back pain when standing up straight, and working hard, Dr. Blair noted that while Claimant’s degenerative lumbar changes were longstanding, when she noted back pain to Dr. Blauer, she was still able to work, but by the time she came to see Dr. Blair her condition had progressed to the point Claimant was wanting surgery. Dr. Blair claimed Claimant was not seeking low back treatment with Dr. Blauer because it was not bothering her enough to “do anything about it” at that time. *Id.* p. 21.

36. During cross examination Dr. Blair admitted he was basing his need for surgery on Claimant’s subjective complaints. He also acknowledged that Claimant had told him she had never had low back pain prior to her November work accident, when in fact she reported low back pain to Dr. Blauer just two months prior to her industrial accident. Dr. Blair testified that Claimant told him she had pain radiating into her leg immediately after the November accident,

but he did not know when medical records first recorded Claimant complaining of leg pain after her work accidents in question. Dr. Blair confirmed it was Claimant's complaints of pain radiating into her legs which was the deciding factor for recommending surgery.

Dr. Montalbano's Deposition Testimony

37. Dr. Montalbano was deposed on October 17, 2018. He saw Claimant in March 2018, at which time she walked with a painful gait and had a left-sided positive straight leg test, indicative of an irritated left-sided nerve root. Dr. Montalbano reviewed the radiologist's MRI report from 2017 and developed a working diagnosis of lumbosacral spondylosis or arthritis of the lumbar spine without myelopathy or radiculopathy. He ordered repeat x-rays and MRI films. X-rays taken in 2018 showed instability or spondylolisthesis at L4-5 and L5-S1. This condition was not caused by trauma; it was a degenerative arthritic condition. Claimant's spondylolisthesis was not industrially related.

38. Dr. Montalbano recommended against surgery for several reasons. First, Claimant had not exhausted conservative treatment; by her own admission she had undergone no physical therapy for her low back. Second, a weight reduction program with core strengthening should precede any surgical consideration. Third, Dr. Montalbano saw nothing in the MRIs to indicate surgery, as discussed below. Finally, given Claimant's weight and physical conditioning, Dr. Montalbano felt a laminectomy at either L4-5 or L5-S1 would almost guarantee Claimant would need a future fusion due to worsening symptomology. In any event, Dr. Montalbano opined that any and all future treatment, including surgery, would be unrelated to Claimant's work accidents.

39. Dr. Montalbano disagreed with Dr. Blair's testimony that the 2017 MRI showed nerve root impingement and mild spinal canal stenosis at L5-S1. Instead, he argued the MRI

showed “no evidence of any nerve root compression...none whatsoever.” Montalbano Depo. p. 18. Dr. Montalbano pointed out his opinion was consistent with the radiologist who read the film. The doctor testified that there was no objective medical evidence to explain Claimant’s symptomology of left leg pain. Without objective medical evidence of a correctable issue, Dr. Montalbano would not recommend surgery.

40. Dr. Montalbano admitted Claimant’s minimal instability could cause her back pain, but that condition was unrelated to her work accidents. He questioned whether the degree of instability shown in the x-rays would warrant surgery, especially in light of the factors mentioned above.

41. Dr. Montalbano would have expected to see medical documentation of leg pain complaints, if caused by the accidents, within six weeks of the event(s). He noted that Claimant’s first complaints of leg pain came in August 2017 when she was seen by Dr. Blair.

42. Dr. Montalbano agreed with Dr. Holley’s IME report conclusion that Claimant’s low back symptoms were due to her morbid obesity and pre-existing, degenerative spinal condition.

Medical Testimony Analysis

43. While a temporal relationship is always required to support a finding of causation between an accident and the injury, the existence of a temporal relationship alone, in the absence of substantive medical evidence establishing causation, is insufficient to satisfy Claimant’s burden of proof. *Swain v. Data Dispatch, Inc.* IIC 2005-528388 (February 24, 2012). The Industrial Commission, as the fact finder, is free to determine the weight to be given to the testimony of a medical expert. *Rivas v. K.C. Logging*, 134 Idaho 603, 608, 7 P.3d 212, 217 (2000). “When deciding the weight to be given an expert opinion, the Commission can certainly

consider whether the expert's reasoning and methodology has been sufficiently disclosed and whether or not the opinion takes into consideration all relevant facts." *Eacret v. Clearwater Forest Industries*, 136 Idaho 733, 737, 40 P.3d 91, 95 (2002). Claimant's burden of proof requires "a reasonable degree of medical probability" that her injury was caused by an industrial accident. *Anderson v. Harper's Inc.*, 143 Idaho 193, 196, 141 P.3d 1062, 1065 (2006). Probable means having more credible evidence for a proposition than against it. *Soto v. Simplot*, 126 Idaho 536, 887 P.2d 1043 (1994).

44. Dr. Blair relied on inaccurate information in forming his opinion on causation. Claimant did complain or least suffer from low back pain before her November 2016 industrial accident, as evidenced by the medical records in this case. Furthermore, Claimant did not experience immediate, consistent, persistent low back and left leg pain after her November 14, 2016 work accident. The medical records at best support some low back pain after Claimant's December 22, 2016 industrial accident, but there is no evidence of radicular pain until she first saw Dr. Blair in August 2017. Additionally, Claimant's low back pain complaints did not appear from the medical records to be unrelenting, or sufficiently severe as to warrant treatment. This is true even though Claimant underwent physical therapy for other injuries stemming from these accidents.

45. Dr. Blair discounted Claimant's pre-existing complaints by noting she was not seeking treatment for her low back pain, just simply mentioning it in passing as part of a comprehensive history with various physicians. While that is not necessarily accurate, since her complaints were sufficient to warrant x-ray studies, even if the statement was accurate it would not help the doctor establish causation in this case. After Claimant's work accidents in question, Claimant sought no treatment for low back complaints for over seven months.

While she may have mentioned low back pain in passing, she has a history of making such comments even before the subject accidents.

46. The record does not support the proposition that Claimant suffered a permanent aggravation to her admittedly-longstanding lumbar spine degenerative condition when she fell at work in late 2016. While one would expect the aggravation to manifest with radiculopathy within six weeks or so post accident, the record shows Claimant sought treatment for various accident-related injuries, including wrist, shoulder, and neck, but not for low back pain, with or without radiculopathy, until well after the events.

47. Dr. Blair admittedly relied on Claimant's credibility in forming his causation opinion. However, Claimant is a poor historian when it comes to her medical conditions and their chronology. She could not remember which knee was hurt when she fell, and claimed more than once at hearing that in December she fell on her buttocks, when all the medical records (and Claimant's deposition testimony) stand in opposition to that claim. When medical records contradict Claimant's statements, either to other physicians or at hearing, those medical records carry more weight than Claimant's pronouncements.

48. When Dr. Blair was asked why Claimant's previous low back complaints to Dr. Blauer did not change his opinion on causation, he responded:

Because I think there's no question that she had pre-existing degenerative changes in her back, the degenerative changes she has on the x-rays had been longstanding. So that's what would have been bothering her, but she was able to work. She's saying when she works long and hard it bothers her somewhat. By the time I saw her it was severe enough she was having difficulty at work and the pain was enough that she wanted treatment, which she wasn't seeking then.

Blair Depo. pp. 20, 21. That explanation only establishes that Claimant's condition is progressive, not that it is causally related to any accident. Due to its degenerative nature, Claimant's low back condition will deteriorate with time. Dr. Blair's logic is unpersuasive.

49. On the other hand, Dr. Montalbano's opinions on causation are much more rooted in the record. Claimant had a degenerative low back condition which progressed with time to the point her arthritis began to cause instability, which in turn could lead to pain complaints. She had no radicular lower extremity complaints until well after the accidents. Even then, there was no objective evidence of nerve root compression, as noted by Dr. Montalbano and the reading radiologist, to explain Claimant's nonspecific leg complaints. Her obesity and age contributed to her condition. Claimant underwent no therapy designed to strengthen her core and help her lumbar instability.

50. Dr. Montalbano's opinion was consistent with the opinions of Dr. Holley (and endorsed by Dr. Crane), who likewise found Claimant's complaints were best explained by her age, obesity, and deconditioning. Nothing in the record suggests the industrial accidents caused a permanent aggravation of Claimant's pre-existing degenerative low back condition.

51. When the totality of the record is examined, the weight of the evidence fails to support a finding of causal relationship between Claimant's current low back condition and the industrial accidents of November and December 2016.

52. Claimant has failed to prove her current low back condition was causally related to one or both of her 2016 industrial accidents at issue.

Medical Care

53. The only medical benefits at issue in this hearing were those associated with Claimant's assertion that she is entitled to lumbar spine surgery. Since Claimant suffered other

injuries in the industrial accidents in question, she may be entitled to additional Idaho Code § 72-432(1) benefits, but those claims are not in play in this decision. The weight of the evidence supports the finding that Claimant is not entitled to additional or ongoing medical benefits with regard to any temporary strain injury Claimant may have suffered to her low back as a result of the accidents in question.

54. Claimant has failed to prove her entitlement to additional medical benefits for treatment of her low back complaints, up to and including surgery.

CHANGE OF PHYSICIAN

55. Claimant seeks a change of physician to Dr. Blair for the purpose of ongoing low back treatment. Claimant has not established her right to continuing care for her low back complaints as a compensable benefit under Idaho's Worker's Compensation Act; as such, her continuing low back care is not subject to the provisions of the Act. Claimant is free to treat with a physician of her choosing to provide additional low back care. Payment of such physician charges is not the Defendants' responsibility, and therefore they have no say in the matter. A change of physician petition as contemplated under the Act is not applicable in this situation.

56. Because the hearing did not address all of Claimant's injuries, and the record is silent on what, if any, additional compensable medical care Claimant may be entitled to, it is possible further Surety-directed medical treatment may be rendered by physicians selected by Surety, or in the chain of referral from such physicians. In the unlikely event Claimant's request for change of physician away from such physicians to Dr. Blair is contemplated by this change of physician request, Claimant has failed to provide any reasonable grounds on which to grant the request.

57. Claimant's request for change of physician is denied.

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of April, 2019, 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:

DENNIS PETERSEN
PO BOX 1645
IDAHO FALLS ID 83403

PAUL AUGUSTINE
PO BOX 1521
BOISE ID 83701

jsk

/s/

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

ROSA CASTRO,

Claimant,

v.

COLLEGE OF SOUTHERN IDAHO,

Employer,

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IDAHO STATE INSURANCE FUND,

Surety,

Defendants.

**IC 2016-033930
IC 2017-009800**

ORDER

Filed 4/9/19

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 conclusion 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 conclusion of law as its own.

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

1. Claimant has failed to prove her current low back condition for which she seeks benefits was caused or permanently aggravated by either or both of her industrial accidents of November 14 and/or December 22, 2016.

2. Claimant has failed to prove her entitlement to additional medical benefits for treatment of her low back complaints, up to and including her right to surgery resulting from either or both of her industrial accidents of November 14 and/or December 22, 2016.

3. Claimant has failed to establish reasonable grounds for a change of physician, and thus her request for change of physician is DENIED.

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

DATED this 9th day of April, 2019.

INDUSTRIAL COMMISSION

/s/
Thomas P. Baskin, Chairman

/s/
Aaron White, Commissioner

/s/
Thomas E. Limbaugh, Commissioner

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of April, 2019, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

DENNIS PETERSEN
PO BOX 1645
IDAHO FALLS ID 83403

PAUL AUGUSTINE
PO BOX 1521
BOISE ID 83701

jsk

/s/