

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

EFRAIN OLAGUEZ,

Claimant,

v.

HYDROBLEND, INC.,

Employer,

and

ALASKA NATIONAL INSURANCE CO.,

Surety,

Defendants.

**IC 2016-024971**

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

**Filed 6/21/19**

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**INTRODUCTION**

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Brian Harper, who conducted a hearing in Boise, Idaho, on June 5, 2019. Claimant represented himself *pro se*. Susan Veltman, of Boise, represented Hydroblend, Inc. (Employer), and Alaska National Insurance Co. (Surety), Defendants. A Spanish-language interpreter translated the proceedings for Claimant. Oral and documentary evidence was admitted. Post-hearing briefing was waived by the parties after extensive discussion and explanation of the briefing process, and instead both parties voluntarily elected to present oral closing arguments in lieu of written briefs. No post-hearing depositions were taken. The matter came under advisement on June 12, 2019.

## **ISSUES**

The issues listed for resolution are:

1. Determination of the correct date of injury;
2. Whether the condition for which Claimant seeks benefits was caused by an industrial injury while working for Employer;
3. Whether and to what extent Claimant is entitled to the following benefits:
  - a. Medical care beyond that previously provided by Defendants;
  - b. Temporary partial and/or temporary total disability benefits (TPD/TTD);
  - c. Permanent partial impairment (PPI); and
  - d. Permanent partial disability in excess of impairment.

## **CONTENTIONS OF THE PARTIES**

Claimant's position is that he sustained a back injury in 2014 while working for Employer. The claim was accepted and Claimant received treatment for this injury. By November 2014, after physical therapy, Claimant's back was doing better and he was released without restrictions to return to his time-of-injury job. However, his back never felt right and continued to hurt, and he repeatedly complained to Employer of increasing pain. Claimant eventually sought additional treatment for his back pain in 2016. Claimant was not at fault in the accident and seeks additional treatment to re-establish his low back health.

Defendants argue Claimant suffered a work-related strain/contusion injury to his low back, for which all medical bills have been paid. Claimant reached MMI in November 2014. Claimant missed no work due to this injury. He was given no permanent partial impairment (PPI) rating, and was assigned no work restrictions when released from care. Over one year later Claimant complained of back pain and Employer paid for him to go to a physician for evaluation. An MRI showed

degenerative changes, but was read as essentially “normal.” Claimant is not entitled to any additional benefits, as no doctor has indicated Claimant’s current low back complaints are related to his work injury.

### **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. Claimant’s testimony, taken at hearing;
2. Claimant’s Exhibits (CE) A and B, admitted at hearing; and
3. Defendants’ Exhibits (DE) 1 through 11, admitted at hearing.

### **FINDINGS OF FACT**

1. Claimant was working for Employer in August 2014, and held a second job at Oxford Suites in Boise.

2. Claimant testified that on Monday, August 18, 2014,<sup>1</sup> while at work at Employer’s warehouse, he was injured by a co-worker, Mr. Herrera. Mr. Herrera grabbed Claimant’s shoulders from behind while Claimant was on his knees working, and kneed Claimant in the lower back. Claimant felt immediate pain from this incident. Claimant notified his superiors of the incident soon afterwards.

3. Claimant was advised to go to the doctor, but instead decided to wait and see if the pain subsided on its own. When it did not, Claimant went to St. Al’s Occupational Medicine Clinic, where he saw Kevin Chicoine, M.D.

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<sup>1</sup> There is a discrepancy between Claimant’s memory of the date of injury and other information in the file. The first report of injury, prepared on August 28, 2014, lists the date of injury as August 25, 2014. Claimant’s complaint lists the date of injury as August 18, 2014. Claimant’s answers to interrogatories (at a time when Claimant was represented by an attorney) do not dispute the August 25 date, although that date differs from Claimant’s memory. At hearing, Claimant testified the accident happened on a Monday in August; both the 18<sup>th</sup> and 25<sup>th</sup> are Mondays. Claimant testified he sought medical treatment a couple of days post-accident; his first medical visit was on August 28, 2014. The weight of the evidence supports an injury date of August 25, 2014, but since the exact date of the accident is not vital to the decision herein, it is sufficient to acknowledge the accident took place on a Monday in the last half of August 2014, and there was but a single event for which Claimant seeks benefits.

4. Claimant was diagnosed with a lumbar sprain and contusion. His x-rays were read as normal. Claimant was given temporary lifting, twisting, and stooping restrictions (which restrictions lessened with time as Claimant's condition improved) and returned to work. He was directed to physical therapy and given a prescription for pain medication.

5. Claimant attended physical therapy, never missing an appointment, and faithfully following through with his exercises, both at therapy sessions and at home. Claimant improved with treatment, to the point that on November 13, 2014, he was released to regular work duties with no restrictions. He received no impairment rating.

6. Physical therapy notes from November 12, 2014 state "[Claimant] feels 100% better. Feels he is ready for discharge." DE 5, p. 36.

7. Claimant acknowledged the physical therapy assisted him greatly, but even when he indicated the pain was gone, there was "something there" in his back which he felt was not right. Tr. p. 24. Claimant continued to take pain medicine after he was discharged. Claimant testified that with time his pain returned. He also testified he informed Employer of his continuing back pain, but further treatment was not authorized.

8. Claimant sought additional treatment on his own at Terry Reilly Clinic (TRC) in Nampa for his back beginning in late 2015. He was seen by Kathleen Pyatek, PA on November 17. In the intake notes PA Pyatek indicated Claimant's back pain had begun about two weeks previous to this initial visit. Claimant's pain was severe on the date of examination. Claimant was prescribed NSAID medication and told to attempt home exercises if not aggravating pain. He was given temporary work restrictions.

9. Claimant returned to TRC on March 15, 2016, complaining of returning back pain since he ran out of the prescription medications from his November 2015 visit. X-rays and physical therapy were ordered. The lumbar x-rays were interpreted as “relatively normal ... with mild degeneration perhaps at ... L5-S1.” CE A, p. 5.

10. On April 4, 2016, Defendants sent Claimant for an evaluation and MRI. The MRI findings of significance include L5-S1 disc desiccation, posterior annular fissure, and early facet arthrosis and bulging of the disc annulus. DE 6, p. 2. The examining PAC, Charles Frost, stated in his notes “this (Claimant’s contemporaneous complaints of back pain) is not a work related injury.” CE A, p. 14, DE 4, p. 26. Mr. Frost imposed no work restrictions, and recommended followup care with Claimant’s primary care physician.

11. Claimant’s physical therapy treatments progressed well. It was noted that by April 21, 2016 Claimant was able to perform all work activities and had complete resolution of his symptoms. He was discharged with a home exercise program.

12. In May 2018, Shane Andrew, DO, examined Claimant and reviewed x-rays and MRI films. He concluded the films showed only mild degenerative disc disease at L5-S1, and “relatively normal-appearing lumbar spine” x-rays. DE 7, p. 3. Claimant was offered an injection at L5-S1, which he declined. The injection was specifically noted to be for Claimant’s degenerative condition.

## **DISCUSSION AND FURTHER FINDINGS**

### ***Date of Injury***

13. The first noticed issue requests a determination of the correct date of injury. The concern was set out in Defendants’ Motion to Consolidate dated March 14, 2019. Therein it was noted;

The Industrial Commission records identify two separate claims. Claim number 2014-022611 was established for an accepted claim with an injury date of August 25, 2014. Claimant subsequently filed a *pro se* Complaint, alleging a date of injury of August 18, 2014, for which the Industrial Commission established new claim number of 2016-024971. \*\*\* Defendants seek resolution of both pending claims and request that the Referee consolidate the two claims so that a single hearing may be held. \*\*\* Absent consolidation, Defendants have both administrative and legal finality concerns.

It was noted in response to the Motion to Consolidate that claims without a Complaint cannot be consolidated with active legal cases, even though both have IIC numbers. However, Defendants' concern for finality could be addressed at hearing.

14. It was made clear at hearing that Claimant was pursuing but one claim for one injury, and that he did not suffer more than one injury while working for Employer. The determination made herein will result in the final and complete resolution of Claimant's attempt to obtain further workers' compensation benefits from Employer.

15. There was confusion regarding the actual date of this one single incident, but that was handled in footnote one, *supra*. For the purpose of this decision the evidence supports a date of August 25, 2014, which is determined to be the date of Claimant's work injury.

### ***Causation***

16. The main area of dispute in this case is whether Claimant's ongoing back issues were caused or permanently aggravated by the work incident in August 2014. While no one questions whether Claimant has some current low back complaints, the question is whether the Claimant has proven those complaints are the result of his 2014 work injury.

17. Claimant testified that he believes his ongoing back complaints can be traced back to the work incident described above. However, Idaho law is very clear that in order to prove his current complaints are the result of his prior work injury, Claimant must provide medical

testimony from a physician that supports his claim for benefits. *Langley v. State, Industrial Special Indemnity Fund*, 126 Idaho 781, 785, 890 P.2d 732, 736 (1995). That testimony can come from the medical records, or by a doctor testifying. Failure to present such evidence from a doctor is fatal to Claimant's claim.

18. In this case, not only did Claimant fail to support his claim with medical testimony relating his current back complaints to the previous work injury, but there is a notation in the medical records that Claimant's current condition is not the result of his prior work injury. CE A, p. 14, DE 4, p. 26. Claimant himself admitted under oath at hearing that no doctor ever told him his ongoing back problems were related to his 2014 work accident. Tr. p. 27.

19. This Referee has examined all medical records produced in this case, looking for any evidence connecting Claimant's ongoing back complaints to his work injury and could find none. Even though Claimant came across as a very honest, hard-working, sincere individual who clearly felt his back issues were due to his work accident in 2014, there is no support for such belief in the record. Without the supporting medical records, Claimant has failed as a matter of law to prove his entitlement to any further benefits. The Referee cannot ignore this lack of proof; he is bound by law to rule against Claimant because Claimant failed to submit medical evidence to support his claim.

20. Claimant has failed to establish that his current condition was caused or permanently aggravated by his work accident in August 2014.

### ***Medical Stability Date***

21. The record established Claimant's date of medical stability from his August 25, 2014 work accident was November 13, 2014, when he was released from further care with no restrictions or impairment, and allowed to return to his regular work.

### ***Medical and Disability Benefits***

22. Defendants paid all medical benefits for Claimant's care through the date of medical stability. Claimant missed no work other than for medical treatment, and suffered no uncompensated temporary disability as defined in the Act. No physician rated Claimant for any permanent impairment, also known as medical disability. No evidence was introduced that Claimant suffered a permanent disability from his work accident. Furthermore, without permanent impairment, by law there can be no permanent disability awarded. *Urry v. Walker & Fox Masonry Contractors*, 115 Idaho 750, 753, 769 P.2d 1122, 1125 (1989).

23. Claimant has failed to prove his entitlement to additional medical benefits over those previously paid by Defendants.

24. Claimant has failed to prove his entitlement to disability benefits, temporary, or permanent.

### **CONCLUSIONS OF LAW**

1. Claimant's work accident occurred on August 25, 2014.
2. Claimant has failed to establish that his current condition was caused or permanently aggravated by his work accident in August 2014.
3. Claimant reached medical stability from his August 25, 2014 work injury on November 13, 2014.
4. Claimant has failed to prove his entitlement to additional medical benefits over those previously paid by Defendants.
5. Claimant has failed to prove his entitlement to disability benefits, temporary or permanent.



**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 18<sup>th</sup> day of June, 2019.

INDUSTRIAL COMMISSION

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/s/  
Brian Harper, Referee

**CERTIFICATE OF SERVICE**

I hereby certify that on the 21<sup>st</sup> day of June, 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:

EFRAIN OLAGUEZ  
7243 W COLONIAL ST, APT #302  
BOISE ID 83709

SUSAN VELTMAN  
1703 W HILL RD  
BOISE ID 83702

jsk

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/s/

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**ORDER**

**Filed 6/21/19**

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Pursuant to Idaho Code § 72-717, Referee Brian Harper submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusions of law, to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendation of the Referee. The Commission concurs with this recommendation.

Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

Based upon the foregoing, IT IS HEREBY ORDERED that:

1. Claimant's work accident occurred on August 25, 2014.

2. Claimant has failed to establish that his current condition was caused or permanently aggravated by his work accident in August 2014.

3. Claimant reached medical stability from his August 25, 2014 work injury on November 13, 2014.

4. Claimant has failed to prove his entitlement to additional medical benefits over those previously paid by Defendants.

5. Claimant has failed to prove his entitlement to disability benefits, temporary or permanent.

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

DATED this 21<sup>st</sup> day of June, 2019.

INDUSTRIAL COMMISSION

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/s/  
Thomas P. Baskin, Chairman

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/s/  
Aaron White, Commissioner

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/s/  
Thomas E. Limbaugh, Commissioner

ATTEST:

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/s/  
Assistant Commission Secretary

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