

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BRANDON HENNEFER,
v.
AGRI-SERVICE, LLC,
and
FARMLAND MUTUAL
INSURANCE COMPANY,
Claimant,
Employer,
Surety,
Defendants.

IC 2015-008390

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

Filed August 5, 2019

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Industrial Commission assigned this matter to Referee Douglas A. Donohue. He conducted a hearing in Twin Falls on October 9, 2018. Andrew Adams represented Claimant. Lora Breen represented Employer and Surety. The parties presented oral and documentary evidence. The parties took post-hearing depositions and submitted briefs. The case came under advisement on April 29, 2019 and is ready for decision.

ISSUES

The issues to be decided according to the Notice of Hearing are:

1. Whether the condition for which Claimant seeks benefits was caused by the alleged industrial accident;
2. Whether and to what extent Claimant is entitled to:
 - a) Temporary disability,
 - b) Permanent partial impairment,
 - c) Permanent disability in excess of impairment,
 - d) Medical care, and
 - e) Attorney fees;
3. Whether apportionment is appropriate under Idaho Code § 72-406; and
4. Whether and to what extent Claimant is entitled to retraining benefits.

CONTENTIONS OF THE PARTIES

Claimant contends he injured his shoulder and low back in a compensable accident on September 24, 2014. Because of an ongoing infection from a kidney stone, he did not recognize low back symptoms until February 2015. Medical opinions which relate the low back condition to the accident are more persuasive. He is entitled to benefits including retraining. Medical care for his low back should be paid at the *Neel* rate. After he reported the accident, Employer treated him differently and fired him on June 22, 2018. A vocational expert's assessment of 57% permanent disability is persuasive.

Employer and Surety contend they paid all benefits due for Claimant's shoulder injury and correctly denied the alleged low back injury. Medical opinion that Claimant's low back symptoms were unrelated to the accident is more persuasive. Medical history shows it likely that Claimant experienced an undocumented subsequent event which initiated or aggravated low back symptoms about January 2015. He has prior low back symptoms, degeneration, and has received treatment for it as well. Although benefits for Claimant's low back condition are not compensable and should be denied, if determined otherwise, PPD should be limited to 14% inclusive of PPI. Claimant has failed to establish eligibility for retraining and/or attorney fees.

EVIDENCE CONSIDERED

The record in the instant case included the following:

1. Oral testimony at hearing of Claimant and Employer's HR vice-president Rachel Richins;
2. Joint exhibits 1 through 53; and
3. Post-hearing depositions of Mark Weight, M.D., Benjamin Blair, M.D., Brian Tallerico, D.O., Delyn Porter, and Mary Barros-Bailey.

All objections raised in post-hearing depositions are OVERRULED.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION - 2

The Referee submits the following findings of fact and conclusions of law for the approval of the Commission and recommends it approve and adopt the same.

FINDINGS OF FACT

1. Beginning August 2005, Claimant worked for Employer as a mechanic. On September 24, 2014, he injured his right arm and shoulder lifting a heavy object at work.

2. On his First Report of Injury, dated September 25, 2014, he identified right arm and shoulder as the injured body parts. Another First Report of Injury, undated (although clearly completed months later) and in another hand, adds additional information, corrects some information, and incorrectly alters other information. Neither FROI is signed. Neither expressly references a low back injury.

3. In 2014—on September 12 and October 6, dates just before and after the alleged accident—Claimant visited R. Thomas Jones, M.D., Claimant's primary care physician, with complaints related to a urinary tract infection and/or prostatitis. Upon physical examinations, Dr. Jones noted mild abdominal tenderness over the bladder on the first visit, none on the second. At both visits, Dr. Jones found that Claimant's back showed normal range of motion and was pain free. On October 27, Claimant's urologic pain continued, but he reported no back pain. By a November 12 visit, the urologic pain had subsided and Claimant reported another immaterial complaint. Again, he reported no back pain. On none of these 2014 visits did Claimant report back or shoulder pain; on all of them Dr. Jones recorded full upper extremity range of motion.

4. In November 2014, Peter Cannon, M.D., treated Claimant's urological complaints. He suggested that Claimant's symptoms indicated anxiety. Claimant did not mention to Dr. Cannon any shoulder or low back symptoms. Dr. Cannon ordered a CT of

Claimant's abdomen and pelvis. The CT showed no objective basis for Claimant's urological complaints. It also noted, "No acute osseous findings."

5. As noted *infra*, Claimant was treated for low back and other ailments at Back to Health Chiropractic between May 3, 2005 and November 18, 2013. Post accident, Claimant was seen at Back to Health for one treatment session on November 26, 2014. That note reflects that Claimant's presenting complaint was of right shoulder pain. However, unknown objective findings were identified at T3-T7, L3-L5, C2-C4, C5-C7, and in Claimant's right trapezius musculature.

6. Urologist Tim Taylor, M.D., examined Claimant on December 15, 2014. His note of that date reflects that Claimant presented with the following history:

He complains of lower urinary tract symptoms. [S]ymptoms began acutely on September 12, 2014 at 2:00 in the morning. At that time he felt a stabbing pain in the penis and had urgency incontinence. He then experienced press/discomfort suprapubically.

JE 15, p. 137. In his "review of symptoms," Dr. Taylor noted Claimant's complaints of "joint pain, muscle pains." After examining Claimant, he concluded that the etiology of Claimant's symptoms was difficult to ascertain, but that a diagnosis of prostatitis could certainly be entertained.

7. Claimant's first recorded mention of low back or lower extremity symptoms after the alleged accident is found in notes of Jonathan Egbert, D.C. dated January 6, 2015. Claimant reported low back pain and right sciatica—pain rated 10 out of 10—without any indication of a precipitating event. However, Claimant identified a date of onset of January 4, 2015. This is the only note from this chiropractor despite his recommendation for thrice weekly treatment.

8. On February 16, 2015, Dr. Taylor noted that Claimant complained of suprapubic pain “for the last 2 weeks. ... He has pain that radiates down the left lower extremity into the foot a[nd] caused numbness on the foot. This lasted for about a day.” Urinary symptoms and complaints still predominated. Dr. Taylor suggested looking to Claimant’s back as a possible source of Claimant’s complaints.

9. On February 23, 2015, Claimant visited Gary Walker, M.D. Claimant reported his history of urological symptoms. Dr. Walker’s history continues:

Early on, around Christmastime, he had numbness in the foot on the left. He went to a chiropractor which helped somewhat. However in the last week or two he is now having pain shooting down the left leg into the foot with tingling and numbness into the foot. There is no weakness. There is the tingling and numbness in the leg and occasionally in the hands.

Dr. Walker’s examination found normal gait, sensation, and reflexes. Claimant complained of pain on range-of-motion testing. Although tests for straight-leg raising, reverse straight-leg raising, internal and external rotation, and Patrick testing were all negative, Dr. Walker did observe some left leg weakness. After an MRI, Dr. Walker recommended injections to the L5-S1 disk bulge to assess possible surgery. He noted this finding did not correlate well with Claimant’s urological complaints.

10. On February 23, 2015, a lumbar MRI showed mild degenerative disease with mild stenosis at L4-5, and disc bulges and Schmorl’s nodes observed generally.

11. On March 4, 2015, Claimant reported to Dr. Jones that Claimant had visited a neurosurgeon because he had thought his bladder pain “might be related to his back and possible impingement of nerves. That apparently was not true.” Dr. Jones further recorded, “Tim Taylor, our urologist, looked at him head to toe. He has not been able to find anything.” Claimant’s subsequent visits to Dr. Jones’ office to the date of hearing do not describe relevant complaints.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION - 5

12. On March 31, 2015, five days after the injection, Claimant reported a decrease in pain and a change in the numbness and tingling, but also an episode of left arm numbness and tingling. Dr. Walker noted his examination showed no muscle weakness, a change from February's examination. Dr. Walker recommended additional conservative measures including physical therapy.

13. Physical therapy began April 15, 2015. Claimant reported he suffered back pain from the September 2014 accident which resolved but became incontinence and numbness. Upon initial evaluation Claimant reported pain with light palpation in multiple areas. The physical therapist suspected mechanical back pain with radiculopathy. On May 8, 2015, after eight visits, Claimant was discharged. He had been compliant with his home exercise program and reported some reduction in his pain.

14. On April 30, 2015, Claimant said a second injection was less helpful.

15. On May 13, 2015, Claimant visited Mark Weight, M.D. Dr. Weight's history reflects Claimant reported to him immediate low back pain, which Claimant tied to the industrial accident. Dr. Weight reviewed an MRI and examined Claimant. He recommended surgery.

16. On June 8, 2015, Dr. Walker performed a left L5-S1 discectomy.

17. On June 25, 2015, Dr. Weight noted that Claimant reported "significant improvement" but that some intermittent paresthesias continued.

18. Physical therapy resumed on July 23, 2015 to aid post-surgical recovery. The physical therapist characterized Claimant's progress as "good" and as "slow but steady." On January 4, 2016, after 42 visits, Claimant still reported some symptoms. On March 21, 2016, without additional visits, Claimant was discharged from this round of physical therapy.

19. On August 25, 2015, a lumbar MRI showed the L5-S1 surgical changes

and otherwise confirmed the degeneration seen in February. Another lumbar MRI taken December 22, 2015 showed no new findings.

20. On January 5, 2016, Dr. Weight released Claimant to return to work part-time effective January 11. He imposed temporary restrictions.

21. Also on January 5, 2016, Stephen Vincent, M.D., performed an EMG/NCV. The EMG was negative. The nerve conduction velocity test showed latency in Claimant's left peroneal motor nerve which Dr. Vincent opined to be "likely related to patient's history of L5-S1 radiculopathy."

22. A January 7, 2016 T-spine MRI showed multilevel degenerative disc changes.

23. On March 18, 2016, Brian Tallerico, D.O., reviewed records and conducted a forensic examination at Defendants' request. Dr. Tallerico's recitation of Claimant's reported history shows skepticism about Claimant's recollection vis-à-vis contemporaneously made medical records. He opined Claimant's right arm and shoulder strain were related to the accident but that urologic and lumbar issues were not. He opined the L5-S1 disc herniation was caused by a subsequent intervening event about late December 2014. Medical care beginning January 2015 to treat Claimant's lumbar spine was not related to the industrial accident.

24. On August 25, 2018, Dr. Tallerico reviewed additional records and performed another forensic examination. Dr. Tallerico's causation opinions remained unchanged. Regardless of causation, he rated the lumbar condition at 12% PPI and recommended restrictions including "no repetitive bending or stooping while lifting anything greater than 35 pounds and no absolute lifting, pushing, pulling, or carrying greater than 100 pounds."

25. On March 31, 2016, Dr. Vincent examined Claimant. Based upon Claimant's recitation of history and report of dyesthesia in his left foot and toes, he opined Claimant's

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION - 7

urological and foot symptoms were “likely due to the injury (from the disc).” He further opined that “it can take some time for maximum recovery to occur.”

26. On April 19, 2016, Dr. Weight opined Claimant was at MMI and released him to regular activity without restriction.

27. Another lumbar MRI on October 24, 2016 showed little to no change.

28. On January 17, 2017, Benjamin Blair, M.D., reviewed records and conducted a forensic examination of Claimant at Claimant’s request. Dr. Blair reported Claimant’s history as Claimant described it. He noted “there was a delay in definitive diagnosis of the herniated nucleus pulposus” but attributed this to the masking effect of the “ongoing” urological symptoms. The report is unclear whether Dr. Blair would link some urological symptoms to the disc issue or not.¹ Dr. Blair opined Claimant had achieved maximum medical improvement with a 13% whole-person permanent impairment. He attributed it to the work injury without apportionment. He recommended restrictions—no lifting over 50 pounds occasionally, 35 pounds frequently, and avoidance of certain repetitive motions. He recommended against additional surgery.

29. On September 18, 2017, Claimant began another round of physical therapy incited by increased low back pain after a “jolt” getting off a tractor. After three September visits, Claimant elected to hold off additional physical therapy.

30. On September 26, 2017, Dr. Jones ordered a CT of Claimant’s abdomen and pelvis. It showed a small inguinal hernia, diverticulosis, and degenerative changes of the lumbar spine.

¹ In deposition, Dr. Blair opined he did think the disc herniation and some urologic issues were related.

31. An October 17 2017, MRI of Claimant's L-spine showed degenerative changes throughout and surgical changes at L5-S1.

32. Claimant said a November 9, 2017 steroid injection at L5-S1 decreased his pain.

33. On December 8, 2017, lumbar X-rays taken at University of Utah showed mild degenerative disc disease and facet arthropathy.

34. On December 13, 2017, Claimant again began a round of physical therapy. Claimant described continuing pain which he attributed to the tractor incident. Physical therapy notes show 10 visits to January 24, 2018.

35. On March 6, 2018, a lumbar MRI taken at University of Utah showed multilevel degenerative changes.

36. On September 18, 2018, Dr. Weight checked a box to opine that Claimant's treatment was related to the industrial accident.

Prior Conditions and Medical Records

37. In 2002, Claimant was treated for irritable bowel syndrome versus Crohn's disease. A colonoscopy showed nodules of the terminal ileum which were nonspecific indicators of intestinal disease. This was diagnosed as ileitis. In 2008, recurring symptoms prompted another colonoscopy. In 2014, the physician equated this ileitis as "essentially Crohns disease."

38. Claimant received occasional chiropractic treatment between May 2005 and November 2013. Treatment in 2005 was for low back pain which included numbness in his legs, but included manipulation of the C-spine and T-spine as well. He reported inability to tolerate sitting more than five minutes. He reported an earlier low back injury from a horse accident at age 19-20. By July 5, 2005, after nine treatments, the chiropractor noted Claimant "feels fine" and that he was "closing case."

39. On August 5, 2005, Claimant returned with complaints of cervical pain and low back pain, “no known cause.” On the next visit, Claimant reported his pain was “bad like before hasn’t lifted anything heavy.” After three visits, the chiropractor noted Claimant would call the State Insurance Fund.² This series of treatments ended in August 2005.

40. Beginning January 23, 2006, Claimant returned to the chiropractor complaining of left hand numbness. The chiropractor recommended home shoulder exercises. This visit began a pattern of one-off visits: On August 23, 2006, Claimant returned to the chiropractor complaining of low back pain; on December 27, 2006, Claimant complained of low back pain after shoveling snow; on April 13, 2007, Claimant complained of low back and mid back pain; on September 28, 2009, Claimant complained of right shoulder pain after a piece of metal fell on him; on April 19, 2011, Claimant complained of low back and neck pain; on August 29, 2012, Claimant complained of low back and neck and right shoulder pain; on November 18, 2013, Claimant complained of right shoulder stiffness. Some of these complaints are supported by documentation which shows them to have occurred at work.

41. In 2009, Claimant injured his right knee at work. In 2011, PPI was paid after he recovered from surgery.

42. He has suffered several lacerations to his hands, none of permanent significance.

Vocational Factors

43. Born April 6, 1977, Claimant was 41 years of age at the time of hearing.

44. Claimant’s education includes an AA degree in diesel mechanics. He is certified as a welder.

² Commission records reflect Claimant reported an alleged accident/injury to his low back with a date of injury of March 9, 2005, claim number 2005-5111125, while working for Empro Professional Services, which at that time, was insured by the State Insurance Fund.

45. On August 1, 2018, Delyn Porter provided a report of his vocational evaluation as requested by Claimant. Mr. Porter's evaluation assumes a lumbar spine injury caused by a work accident on September 24, 2014. Mr. Porter considered Claimant to be a "good historian. The information that he shared correlated closely with the vocational and medical records reviewed." Mr. Porter opined that based upon Dr. Weight's and Dr. Tallerico's opinions, Claimant suffers no permanent disability. Based upon Dr. Blair's, Claimant suffers 66.7% loss of labor market access and loss of wage-earning capacity of 38.4% to 48.3%. Mr. Porter based the wage-loss calculation on an estimated pre-accident capacity of \$26.40 per hour instead of Claimant's time-of-injury wage of \$24.00 per hour. He weighted the wage-loss factor more heavily, assigning it a weighted value of 1.25 and multiplying before averaging the two factors. Mr. Porter's overall disability rating based upon Dr. Blair's opinions would range from 57.4% to 63.5% depending upon how health insurance benefits are counted in the wage-loss calculation. He opined Claimant could be retrained by completing his bachelor's degree.

46. On September 27, 2018, Mary Barros-Bailey performed a vocational evaluation at Defendants' request. She opined Claimant's loss of labor market access would rate at 31% or 17% depending upon acceptance of Dr. Blair's or Dr. Tallerico's restrictions, and his wage loss would rate at 11%. Overall, permanent disability would rate at 22% or 14% depending upon whose restrictions were accepted. Dr. Barros-Bailey noted that upon completion of a bachelor's degree, Claimant's labor market access loss and wage loss would be lessened.

DISCUSSION AND FURTHER FINDINGS OF FACT

47. The provisions of the Idaho 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).

48. 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). Uncontradicted testimony of a credible witness must be accepted as true, unless that testimony is inherently improbable, or rendered so by facts and circumstances, or is impeached. *Pierstorff v. Gray's Auto Shop*, 58 Idaho 438, 447-48, 74 P.2d 171, 175 (1937). *See also Dinneen v. Finch*, 100 Idaho 620, 626-27, 603 P.2d 575, 581-82 (1979); *Wood v. Hoglund*, 131 Idaho 700, 703, 963 P.2d 383, 386 (1998).

49. Claimant is pleasant and personable. He makes a good first impression. His demeanor appears forthright. However, his recollection of onset of various symptoms is inconsistent with documentary evidence of record. To accept his version of events, one must ignore or explain away the documentation. There is no mention of low back and/or leg symptoms for about three months after the accident. The first recorded reports of low back and/or leg symptoms show Claimant first felt the onset of such pain "around Christmastime." It is much later that any record notes that Claimant first alleged that at the time of the accident he felt a "pop" with slight pain which gradually increased in his back and leg. By the time of his deposition about one year later, Claimant equated a significant portion of his urological symptoms as resulting from the accident as well.

50. Claimant's deposition and hearing testimony about the onset of pain is inconsistent with both FROIs and with all medical records through the January 2015 chiropractic visit. Claimant's recollection of immediate slight low back and leg pain which he reported to Employer immediately after the accident and repeated that report to Employer again the next day and reported to physicians at each visit there after, receives less weight than the cumulative

picture which arises from the documents themselves.

Causation

51. A claimant must prove that he was injured as 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 causal 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). Magic words are not necessary to show a doctor's opinion is held to a reasonable degree of medical probability; only their plain and unequivocal testimony conveying a conviction that events are causally related. *Jensen v. City of Pocatello*, 135 Idaho 406, 412-13, 18 P.3d 211, 217-18 (2001). Aggravation, exacerbation, or acceleration of a preexisting condition caused by a compensable accident is compensable in Idaho Worker's Compensation Law. *Nelson v. Ponsness-Warren Idgas Enterprises*, 126 Idaho 129, 879 P.2d 592 (1994).

52. The preponderance of evidence supports that the industrial accident caused an injury to Claimant's shoulder and arm which healed without impairment.

53. In his Complaint, Claimant included "acute urinary incontinence" and "groin and subrapubic [sic] pain" as medical problems alleged as a result of the accident. The weight of medical opinion finds these symptoms unrelated to the industrial accident. When Claimant first presented to Dr. Taylor for evaluation of his urinary tract difficulties on December 15, 2014, he gave a specific date of onset on September 12, 2014 at two in the morning. If Claimant's urinary tract problems pre-date the subject accident, it is hard to argue that these problems were causally related to an accident-caused disc herniation "masquerading as a urology problem."

Clf's Brief, p. 5. The fact that Claimant exhibited urologic symptoms prior to the subject accident undercuts Dr. Blair's testimony that Claimant's urologic symptoms are simply the manifestation of a low back injury caused by the subject accident. Further, Dr. Tallerico explained urologic symptoms are "pretty rare" and generally caused by "a massive, complete disc herniation." Dr. Weight seemingly agreed with Dr. Tallerico's first conclusion, noting it was "very uncommon" to see urologic symptoms with disc herniation. Lastly, Claimant's urologic symptoms did not subside after his discectomy.

54. Claimant's major allegation is that the accident caused a low back injury. The parties do not dispute that the accident caused a shoulder and arm injury which healed quickly and fully and that all benefits related to the upper extremity have been paid.

55. In deposition, Dr. Blair explained that his opinion about causation was based upon "a clear history of the symptoms, which I'm attributing to his spine, since the time of the injury." Dr. Blair summarized his basis for his causation opinion by noting that Claimant had been asymptomatic before the accident and symptomatic after and that Claimant was shown to have a herniated disc which required surgery. He did not expressly opine that the accident caused the herniated disc observed on MRI. Dr. Blair acknowledged that a long drive—Idaho to Kansas—could have aggravated Claimant's low back condition, but it was less likely that it caused it.

56. Dr. Blair acknowledged that he did not have medical records generated before February 23, 2015 when preparing his report. He relied upon Claimant's oral recitation of his history, given January 17, 2017 as his basis for opining about causation. Dr. Blair stated he does prefer to have all the contemporaneous medical records when issuing an opinion.

57. In deposition, Dr. Weight acknowledged that his opinion about causation was based in part upon Claimant's reports of symptoms arising immediately after the lifting accident.

He acknowledged that he did not have the FROI or any prior chiropractic records at the time he formed his causation opinion. Dr. Weight acknowledged it was possible that Claimant's trip to Kansas from Idaho could have caused or aggravated Claimant's disc herniation.

58. Regardless of causation, Dr. Weight opined Claimant had reached medical stability and required no restrictions related to his low back.

59. In deposition, Dr. Tallerico considered the causation issue in this case "pretty cut-and-dried, black and white to me" that the accident involved Claimant's right shoulder and arm and was unrelated to any low back condition. Dr. Tallerico does not dispute that Claimant had a disc herniation at least by February 2015 or that surgery was "appropriate" to correct it.

60. Neither Dr. Blair nor Dr. Weight were provided medical records which show Claimant did not begin to complain about low back symptoms until about January 2015.

61. Dr. Tallerico's reliance upon contemporaneously made medical records is entitled to more weight than other physicians' reliance upon Claimant's later arising recollection of low back and leg symptoms and recollection of having told Employer and physicians—all of whom failed to make any written reference—about those symptoms.

62. Claimant attaches particular significance to the Back to Health Chiropractic note of November 26, 2014, discussed above. He contends that it proves he presented with complaints of low back pain on November 26, 2014 when seen by Dr. Booth. Claimant argues that this follows from the fact that Dr. Booth made note of an unknown "objective" finding at "L3-5." This argument is unpersuasive. First, the nature of the objective finding at L3-5 is not explained, making it difficult to understand if the finding was consistent with a recent accident. Second, Dr. Booth did record Claimant's subjective complaints of right shoulder discomfort, but did not document radiating back pain. Pre-injury, Dr. Booth consistently recorded Claimant's complaints,

even minor or immaterial ones. The absence of a note of complaint of radiating back pain on November 26, 2014 shows that Claimant likely made no such complaint. The Referee finds the contemporaneous chart note is more persuasive than Claimant's subsequent assertion that he reported low back pain on the occasion of the November 26, 2014 visit.

63. Claimant failed to show it likely that his low back condition was caused by the accident. All other issues are moot.

CONCLUSIONS

1. Claimant injured his shoulder and his arm in a compensable accident on September 24, 2014;
2. Claimant failed to show it likely he also injured his low back in that accident; and
3. 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 _____ 18th _____ day of JULY, 2019.

INDUSTRIAL COMMISSION

_____/s/_____
Douglas A. Donohue, Referee

ATTEST:

_____/s/_____
Assistant Commission Secretary dkb

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of August, 2019, a true and correct copy of the **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

ANDREW A. ADAMS
598 N. CAPITAL AVENUE
IDAHO FALLS, ID 83402

LORA RAINEY BREEN
1703 W. HILL ROAD
BOISE, ID 83702

dkb

/s/ _____

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BRANDON HENNEFER,
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AGRI-SERVICE, LLC,
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FARMLAND MUTUAL
INSURANCE COMPANY,
Claimant,
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Defendants.

IC 2015-008390

ORDER

Filed August 5, 2019

Pursuant to Idaho Code § 72-717, Referee Douglas A. Donohue 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 recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

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

1. Claimant injured his shoulder and his arm in a compensable accident on September 24, 2014.
2. Claimant failed to show it likely he also injured his low back in that 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 _____ 5th _____ day of _____ August _____, 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 _____5th_____ day of _____August_____, 2019, a true and correct copy of the **ORDER** was served by regular United States Mail upon each of the following:

ANDREW A. ADAMS
598 N. CAPITAL AVENUE
IDAHO FALLS, ID 83402

LORA RAINEY BREEN
1703 W. HILL ROAD
BOISE, ID 83702

dkb

_____/s/_____