

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

LENI HAWKS,

Claimant,

v.

KOOTENAI HOSPITAL DISTRICT,

Employer,

and

TRAVELERS PROPERTY & CASUALTY
CO. OF AMERICA,

Surety,

Defendants.

IC 2015-016693

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

Issued 5/25/18

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 Coeur d'Alene, Idaho, on September 11, 2017. Stephen Nemec of Coeur d'Alene represented Claimant. W. Scott Wigle of Boise represented Defendants. The parties produced oral and documentary evidence at hearing and submitted post-hearing briefs. Two post-hearing depositions were taken. The matter came under advisement on April 5, 2018.

ISSUES

At hearing, the parties agreed to the following issues for adjudication:

1. Whether the condition for which Claimant seeks benefits was caused by the industrial accident;

2. Whether Claimant's condition is due in whole or in part to a subsequent injury, disease, or cause;
3. Whether and to what extent Claimant is entitled to the following benefits:
 - a. Medical Care;
 - b. Temporary partial and/or temporary total disability (TPD/TTD);
 - c. Permanent Partial Impairment (PPI);
 - d. Permanent Partial Disability (PPD) in excess of impairment; and
4. Whether the Commission should retain jurisdiction beyond the statute of limitations.¹

CONTENTIONS OF THE PARTIES

The chief issue in this matter is causation. Claimant asserts she injured her rotator cuff in an accepted industrial accident. This injury ultimately led to surgery. She is entitled to medical care and temporary disability benefits associated with the surgery and related care. She also suffered PPI and PPD as the result of her shoulder injury and surgery.

Defendants argue that Claimant temporarily bruised her shoulder in the industrial accident, but did not tear her rotator cuff or cause any other permanent damage. Rather, approximately two months after the work accident, Claimant fell while at her house. This fall injured Claimant's rotator cuff and led to surgery. Defendants are not liable for any expenses or benefits claimed in this matter.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant, James Hawks, and Lori Sauve, taken at hearing;
2. Claimant's exhibits (CE) A through E, admitted at hearing;

¹ No party put forth any argument in favor of or opposing retention of jurisdiction. Because no arguments were presented on this issue, it is deemed waived.

3 Defendants' exhibits (DE) 1 through 19, admitted at hearing, with the exception of pages 268, and 270 through 281 of DE 14, which are excluded; and

4. The post-hearing deposition transcripts of Michael Ludwig, M.D., and Kirk Hjeltness, M.D., taken on November 29, 2017.

FINDINGS OF FACT

INDUSTRIAL ACCIDENT

1. On March 13, 2015, Claimant was working as a patient registrar for Employer at the hospital in Coeur d'Alene. Claimant was injured when a heavy "fire door" struck her on her right shoulder as she was attempting to wheel a computer cart from the emergency room to the adjacent patient access office. The door was equipped with a self-closing mechanism and as it closed it struck the front of Claimant's right shoulder.

2. This door had a history of being difficult to open and negotiate equipment through due to its weight and automatic closing feature which apparently did not work properly. In fact, a co-worker had previously torn her rotator cuff attempting to pull open this door against the resistance of the closing mechanism. By the time of hearing, the door in question had been replaced as part of a larger remodelling project.

3. Claimant promptly reported the incident. She testified the accident bruised her shoulder, but Claimant did not seek immediate medical care. She continued working her regular shift for the next several weeks with no time missed due to this injury. No FROI was filed until June 26, 2015, after Claimant began actively treating for her right shoulder. Interestingly, the report contains an error by Surety; it states Claimant was injured while carrying a bowl of dough up stairs, at which time she hurt her right knee.

4. Claimant testified at hearing that the pain in her injured shoulder gradually got “a little bit worse and worse” from March to May. Tr. p. 35. However, her supervisor, Lori Sauve, who observed Claimant on most days that Claimant worked, testified that she saw no indication that Claimant was having problems with her shoulder during this time frame.

5. A form filled out by Claimant at Occupational Health on June 25, 2015 stated that Claimant’s pain was immediate after the March accident, but then “off and on” thereafter. DE 3, p. 28.

SUBSEQUENT NON-INDUSTRIAL ACCIDENT

6. On or about May 8, 2015², Claimant had an accident at her house, the details of which, injuries sustained therein, and subsequent medical records documenting the same, are all in dispute. Resolution of these issues is pivotal to determining this claim.

7. The only undisputed element to this accident is that Claimant was pushing a wheelbarrow full of grass clippings at her residence when the wheelbarrow tipped sideways and fell, causing her to fall.

8. Claimant, her husband, and Ms. Sauve all testified concerning their recollection of what Claimant told them about the event. Furthermore, medical records concerning Claimant’s treatment related to this fall were admitted in the record, and the records were discussed in the treator’s post-hearing deposition.

Claimant’s Hearing Version

9. Claimant testified at hearing about how the wheelbarrow accident occurred.

² The date is deduced from the fact that Claimant testified at hearing she sought medical care related to this accident three days after the event. The first medical record referencing the event is dated May 11, 2015. However, in her deposition dated April 7, 2016, she testified she sought care the day following the incident. Her husband testified she had sought care the day of the accident while he was not at home.

The following colloquy took place during her direct examination:

Q. [By Mr. Nemeč] I'd like to ask you about the accident that brings us here today. Do you recall approximately what time of day the accident occurred?

A. I believe it was around 2:00 in the afternoon.

Q. Can you describe for us what happened, how your shoulder was injured?

A. I had my wheelbarrow full of grass clippings, and I was pushing it to the area where I dump my clippings.

Tr. p. 28. Claimant's counsel stopped Claimant at that point and re-directed her back to March 2015 when the door hit her shoulder while at work. After discussing that event, Claimant again testified about the wheelbarrow incident:

A. I was pushing grass clippings in my wheelbarrow on a small incline. It wasn't a hill. You couldn't even – when I say it wasn't a hill, it's not like you can throw a rock and it would roll down. It wasn't a hill. The rock would just land. It was a small incline. And when I went up there, there was a root, and my front tire hit the root, and the wheelbarrow went to the left. And when I went down with it, my knee twisted and I sat on my knee backwards.

Q. Okay. Do you recall, did your hands leave the wheelbarrow when you fell to the ground?

A. My left hand did, because I caught myself. I was probably still trying to hold on to the wheelbarrow.

Tr. pp. 32, 33.

Claimant's Deposition Version

10. Claimant was deposed on April 7, 2016. Therein she testified about the wheelbarrow incident as follows:

Q. [By Mr. Wigle] You went to Kootenai Urgent Care before this, in May. Correct?

A. Yes.

Q. What caused that?

A. I injured my left knee.

Q. How?

A. I was pushing a small plastic wheelbarrow with grass clippings in it, into our field, and I hit a knot, so that when I was pushing the wheelbarrow, the wheelbarrow went to the left, and I came down with it and twisted my left knee underneath me.

Q. Were you home at the time?

A. I was.

Q. Had you been mowing the lawn?

A. I don't know if it was me or my husband. One of us was.

Q. Think about it. Was it you or your husband?

A. It was probably my husband and I was just doing the wheelbarrow.

Q. What time of day?

A. Late afternoon.

Q. Was he home?

A. Yes. My husband comes home usually at around 12:00 or 1:00.

Q. I take it that he doesn't always mow the lawn?

A. No.

Q. Sometimes you do it?

A. Yes.

11. After confirming the wheelbarrow was of a standard design, with a single wheel

in front and handles on either side, questioning concerning the accident continued:

Q. [By Mr. Wigle] Why would you have been doing that at all if your shoulder was causing you problems?

- A. Because I never stopped doing – living my life. I was still doing things. I wasn't doing anything above my head or out to the side.
- Q. Did you fall in this incident with the wheelbarrow?
- A. I came straight down on my leg backwards. My leg actually went the wrong direction behind me.
- Q. Which leg? Left?
- A. My left leg.
- Q. Were you on a hillside?
- A. It wasn't a hillside. It was flat where I was. There was a hillside right next to it. I was going to go up the hillside, but I didn't.
- Q. So you were moving on relatively flat ground with the wheelbarrow in front of you?
- A. Correct.
- Q. When the wheel on the wheelbarrow strikes a tree root?
- A. It must have been. There was a big brush pile there at one time that my husband had cleared. And there's just a -- it's not hill. Well, it is a little small hill. I was just dumping at the bottom of the hill. I was coming up and going this way to dump it right there, and that's when I hit the root. I caught the root on the wheelbarrow and it brought me down.
- Q. Okay. Did you land on the ground?
- A. I landed [with] my leg behind me. My upper body didn't hit the ground. Just my leg.
- Q. Did your arms contact the ground?
- A. No. To get myself up, I did.
- Q. So you ended up on your bottom, basically, with your leg behind you?
- A. Yes. My leg was backwards behind me the wrong way.
- Q. Did you injure your right shoulder in this incident at home?
- A. No.

Q. Did you aggravate the prior injury to your right shoulder in this incident at home?

A. No.

DE 17, pp. 57 through 60 of deposition; pages not Bates numbered in this exhibit.

Claimant's Husband's Version

12. Claimant's husband, James Hawks, also testified at hearing. He did not witness the wheelbarrow accident, but testified based on his understanding of events as told to him by Claimant as follows:

Q. [By Mr. Nemeč] ... Were you present that day?

A. No. But she [Claimant] told it to me that evening or whatever. She said that the wheelbarrow tipped over and she tweaked her knee, more or less, is what I – and so she had been in the – to get checked out.

Q. Okay. Did she mention that she fell backward down a hill and injured her right shoulder?

A. No.

Q. Do you have an understanding – is there a hill near where she would be dumping this wheelbarrow on your property?

A. Yeah, just a little up, incline, where she pushed the wheelbarrow, and just got sideways, as far as I was told, just kind of sideways and just tipped over. And she was more like probably trying to catch it, you know, as it's tipping over, and then she tweaked her knee, so I didn't hear anything about all the downhill falling or any of that.

Tr. p. 22.

Lori Sauve's Version

13. Claimant also discussed the wheelbarrow incident with her supervisor, Lori Sauve, who testified:

Q. [By Mr. Wigle] At some point did you become aware that [Claimant] had an accident at home involving a wheelbarrow?

A. Yes. [Claimant] came to work and told me that she took a tumble is how she described it. She took a tumble down the hill. And that she was pushing a wheelbarrow and it just stopped, and that she – that her shoulder was really hurting and her leg was hurting at that time.

Q. At the time of that conversation, did she show you any injuries or was that later?

A. I recalled her showing it to me at that time, so I'm not sure if it was an incident later like she described earlier in this conversation, but I remember her pulling her dress up and showing me an injury to her leg. And it was definitely bruised and very banged up, so –

Q. Okay. She recalled that that might have happened later in the game.

A. Yeah.

Q. So you don't know definitively?

A. I do not.

Q. Do you have a recollection of her mentioning that her shoulder was bothering her after the wheelbarrow incident?

A. She definitely said her shoulder was bothering her after she fell.

Tr. pp. 94, 95.

Medical Records

14. Claimant sought medical care at Kootenai Urgent Care after the wheelbarrow accident, and was seen by Kirk Hjeltness, M.D. on May 11, 2015.

15. The office records from that visit list under the heading 'Chief Complaint', "Patient comes in today for a Shoulder injury, Knee injury and Fall." In the patient history section the record in pertinent part listed a right shoulder injury, a knee injury, and a fall. The onset for the shoulder and knee injuries was listed at three days. DE 2, p. 20.

16. The description of the accident was included in a "free text" section, which Dr. Hjeltness testified he wrote. It stated Claimant was "pushing wheelbarrow up a hill

and ran into sudden stop falling backwards down the hill. Pain R shoulder especially overhead and R knee hard to extend has pain in her calf.” *Id.*

17. Claimant’s right shoulder was x-rayed that day, but no knee x-rays were taken.

SYNOPSIS OF MEDICAL CARE

18. As mentioned above, the first physician Claimant saw for shoulder complaints was Dr. Hjeltness. She then filed a claim and was directed to seek care at Kootenai Occupational Health, where she was seen by Stuart Denny, M.D. He noted Claimant’s “shoulder pain may be multifactorial.” DE 3, p. 36. His initial diagnosis was an AC sprain and bicep tendon strain. Dr. Denny injected Claimant’s right AC joint with Kenalog, which resulted in some improvement. Physical therapy was prescribed.

19. Dr. Denny next ordered a right shoulder MRI, which showed AC arthropathy and supraspinatus impingement. Dr. Denny suspected Claimant was a surgical candidate and referred her to Jonathan King, M.D., a Coeur d’Alene orthopedic surgeon.

20. In August 2015, Dr. King performed a right shoulder arthroscopy, debridement of her glenohumeral joint SLAP tear, distal clavicle excision, biceps tenodesis, and rotator cuff repair for Claimant’s right shoulder type II SLAP tear, supraspinatus partial articular sided tear, subacromial spur and AC arthritis.

21. Claimant missed approximately three months work recovering from this surgery. Surety did not cover the cost of the surgery or the time missed from work post-surgery.

DISCUSSION AND FURTHER FINDINGS

22. Claimant has the burden of proving the condition for which compensation is sought is causally related to an industrial accident. *Callantine v Blue Ribbon Supply*, 103 Idaho 734, 653 P.2d 455 (1982). The proof required is “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). Claimant is required to establish a probable, not merely a possible, connection between cause and effect to support her contention. *Dean v. Dravo Corporation*, 95 Idaho 558, 560-61, 511 P.2d 1334, 1336-37 (1973). In other words, Claimant must show there is more evidence for causation than against. *Fisher v. Bunker Hill Co.*, 96 Idaho 341, 528 P.2d 903 (1974). In determining causation, it is the role of the Commission to determine the weight and credibility of testimony and to resolve conflicting interpretations of testimony.

23. The fact that Claimant suffered a covered injury to a particular part of her body does not make Defendants liable for all future medical care to that part of her body, even if the medical care is reasonable. *Henderson v. McCain Foods, Inc.*, 142 Idaho 559, 563, 130 P.3d 1097, 1101 (2006). In the present case, it is undisputed that Claimant injured her right shoulder on March 13, 2015. There is a dispute over whether it was this work accident, or a subsequent non-industrial accident, which necessitated the need for Claimant’s August 19, 2015 shoulder surgery.

Claimant’s Causation Arguments

24. While Claimant acknowledges the medical records from Kootenai Urgent Care (the Clinic) indicate that she injured her right shoulder in a fall at home in early May, she insists the medical records are mistaken, and that she never told anyone at the Clinic she hurt her shoulder when she fell; only her knee. She claims she simply asked for a right shoulder x-ray since she was at the doctor’s office and her shoulder had been bothering her ever since her industrial accident. She admits that she did not inform anyone at the Clinic that her right

shoulder was work-related, but claims she had no idea she was supposed to inform the staff that her injury happened at work.

25. Claimant points to the myriad of other mistakes in the record to support her proposition that the doctor and staff at the Clinic mistakenly assigned her shoulder complaints to her wheelbarrow accident. She lists as examples the mistake of her marital status, (single instead of married) and the fact she injured her right knee, instead of left knee, all contrary to Clinic notes from the May 11 visit. Claimant also notes the glaring mistakes made by Surety when preparing the FROI, listing her as her mechanism of injury as carrying dough up stairs, and injuring her knee instead of her shoulder. She also notes a subsequent medical entry from the Clinic (July 27, 2015) stating Claimant had abnormal ROM in her *left* shoulder, instead of her right.

26. Claimant also places emphasis on the fact a co-worker suffered a surgery-necessitating injury to her shoulder using that same door.

27. Claimant testified that she fell on her left side, and left knee, in the wheelbarrow incident. As such, she argues it is unlikely she would have injured her right shoulder in the fall. She testified under oath that she did not injure her right shoulder in the May 2015 accident. Her husband's testimony supported Claimant's story.

28. From a medical standpoint, Dr. King, the treating surgeon, on September 10, 2015, authored a "To Whom it May Concern" letter in which he wrote, "[s]ince [Claimant's] initial injury was in [sic] March 13, 2015 for the right shoulder, it is likely that this initial injury is what caused her shoulder pathology. Although she did also have an injury in May of 2015, I feel it is likely that her initial injury in March at work is the one that caused her shoulder pathology." CE C, p. 21.

29. Subsequently, in responding to a letter from Surety, Dr. King wrote on October 9, 2015, “without an MRI scan done before the wheelbarrow injury, we cannot know for sure which injury caused [Claimant’s] tear. She has never reported any other injury to me except the industrial injury.” *Id.* at 22.

30. A year later, in October 2016, Dr. King authored another letter. Therein he stated:

[Claimant] sustained an injury to her right shoulder at work when a door hit her directly on the anterior right shoulder in March of 2015. She continued to have right shoulder pain and an MRI scan was not obtained at that time. She did have a second injury where she fell in May of 2015 [sic, and] reaggravated her right shoulder. Ultimately, she was found to have a high-grade partial-thickness rotator cuff tear and a superior labral tear, both of which required surgical repair. Although a direct blow to the anterior shoulder is not a common cause for rotator cuff and labral pathology, at this point, since she had no symptoms before this injury and her symptoms persisted after this injury, it would be reasonable to conclude that this direct trauma to her shoulder more likely than not caused the tear in her rotator cuff and labrum.

Id. at 23.

Defendants’ Causation Position

31. Defendants note Claimant has testified the only injury to her shoulder occurred when the fire door hit her shoulder while at work. However, after that incident Claimant declined any medical treatment, continued to do her job without complaints or accomodation, and gave no indication she was suffering from a serious shoulder injury requiring surgery to correct. Moreover, the type of damage noted in surgery is not consistent with the mechanism of injury described in her work accident.

32. Claimant’s only medical testimony on causation came from Dr. King. His opinions carry little weight as he provided no explanation or basis for them. However, even Dr. King admits it would be unusual for the type of trauma Claimant suffered at work

to lead to the type of injury noted at surgery. When analyzed closely, Dr. King's opinions are 1) a recitation of the history provided by Claimant, and 2) at odds with Claimant's testimony when Dr. King admits Claimant injured ("reaggravated") her shoulder when she fell while pushing a wheelbarrow. Claimant contends she absolutely did not to any degree injure, re-injure, or aggravate her previous shoulder injury in the second accident. Instead she claims her right shoulder was not even involved in the wheelbarrow incident. How Dr. King's opinion would change if he was aware of this contention is unknown, since he was not deposed.

33. Defendants are critical of Claimant's argument that the Clinic's records are completely inaccurate. Defendants note that no matter what else may or may not be accurate, Claimant did not ever tell anyone at the Clinic that her shoulder injury was work related. Defendants find it ironic that Claimant, as a patient registrar who deals with worker's compensation patients and knows there are different protocols for handling their paperwork and billing, would fail to mention that her request for a shoulder x-ray was due to a work accident. Instead, they argue that Claimant hurt her shoulder during the wheelbarrow incident, and went to the Clinic to have it, and her knee, examined. Her attempts to claim otherwise are not credible.

34. Defendants hired Michael Ludwig, M.D., to analyze Claimant's shoulder injury. He examined Claimant, prepared a report, and was deposed.

35. In his report Dr. Ludwig opined that the force of the door closing on the front of Claimant's right shoulder would most likely have contused or bruised her shoulder, which is consistent with Claimant's memory, but would not have had the force needed to cause deep structural damage to the shoulder. Furthermore, he opined that someone with

an 80% tear of the supraspinatus tendon would not likely tolerate pushing a wheelbarrow up a hill. As such, he felt her shoulder surgery was not necessitated by her work injury, but more likely was the result of Claimant's non-industrial accident in May 2015.

36. In his subsequent deposition Dr. Ludwig found it significant that Claimant sought no medical treatment after the March accident but before the May incident. As such there is no documented lineage of symptoms. Instead, Claimant's first medical treatment for her shoulder came on the heel of her May accident. Dr. Ludwig also reiterated his belief if Claimant had suffered a rotator cuff tear in March it is unlikely she would have been pushing a heavy wheelbarrow up a hill in May.

37. Dr. Ludwig testified that a torn rotator cuff typically involves pain and inflammation when actively moving or loading the shoulder. In addition to degenerative causes, a torn rotator cuff can be caused by an unexpected loading of the shoulder, such as unexpected loads, or loads that are heavier than anticipated, or loads that change their weight. He listed examples such as carrying a bag which catches on something so that suddenly there is an increased resistance to motion, and momentum of a heavy object that one is trying to stabilize or control. Dr. Ludwig also pointed out that as people age the rotator cuff becomes more of a "weak link" in the shoulder.

38. Conversely, according to Dr. Ludwig, injuries involving a direct blow to the front of the shoulder would not often cause a rotator cuff tear unless the force is from a high-velocity impact, such as falling off a moving bicycle and impacting the ground with the affected shoulder. In cases where there is sufficient force of a direct frontal impact to the shoulder to tear a rotator cuff, the pain would be debilitating and the person would lose function of that arm.

39. Dr. Ludwig felt it was far more likely the wheelbarrow accident would cause a torn rotator cuff than the work accident, because of the mechanical stresses involved with the wheelbarrow. There was in the first instance an amount of force needed to push the loaded wheelbarrow. The sudden stop of momentum would cause stresses on the shoulder. Also there was a sudden shift in weight as the wheelbarrow began to tip. Claimant tried to hold up the wheelbarrow, and stop it from tipping, with her right arm as the weight was twisting, or rotating, as the wheelbarrow fell. This sequence placed Claimant at a high risk for a rotator cuff tear.

40. Dr. Ludwig felt that Claimant seeking treatment three days following such an injury would be plausible. It was not plausible that she would wait nearly two months to seek medical treatment for a torn rotator cuff, since she would have been losing function in her arm during that time, with an inability to reach or lift.

41. In cross examination Dr. Ludwig acknowledged he made considerable income from doing IMEs, mainly for sureties. He also acknowledged he was not told of another employee who was injured by the door in question; tearing a rotator cuff while attempting to open it. He also did not know if the wheelbarrow had a metal bucket or a plastic bucket. Finally he stated it would not be “impossible” for Claimant to injure her rotator cuff as the result of being struck by a heavy door.

Preliminary Findings

42. Defendants call into question Claimant’s credibility. The Referee did not find overt evidence of intentional misrepresentations in Claimant’s testimony,

but there were a number of inconsistencies noted in her testimony.³ Although it is not apparent there was intent to mislead by these inconsistencies, they nevertheless call into question the details of certain aspects of Claimant's testimony. She at best is a fair historian. Her testimony must be examined in light of the totality of the record. When it appears Claimant's testimony is at odds with the weight of the record, or internally inconsistent, such inconsistencies will weigh against Claimant.

43. The medical records from Kootenai Urgent Care must likewise be scrutinized carefully. The records contain several mistakes. However, simply because there are mistakes in the record does not mean the record in its entirety is afforded no weight. The record must be considered in light of the totality of the evidence in this matter.

44. The record shows that Claimant was struck by a heavy door with malfunctioning hydraulics on March 13, 2015. The door hit the front of Claimant's right shoulder. The impact visibly bruised Claimant's shoulder. She declined medical care and missed no work from this incident. She was able to perform her duties at work, and did so for eight weeks thereafter. Her shoulder pain was immediate, but settled into an "off and on" scenario thereafter. DE 3, p. 28. The injury disrupted Claimant's sleep.

45. On May 11, 2015, Claimant was pushing a wheelbarrow loaded with grass clippings.⁴ The wheelbarrow began to tip. Claimant tried with her right arm

³ Some of the inconsistencies include the wheelbarrow accident happening at 2p.m. and then in the "late afternoon", pushing the wheelbarrow on flat ground then on an incline, the involvement of her left arm, and then no arm, when she fell, husband mowing the yard when he testified he was not at home, and the timing of treatment, from day of accident, to day after accident, to three days post-accident.

⁴ Claimant testified at deposition that typically either she or her husband would mow the lawn and the other would dump the grass clippings as they were loaded into the wheelbarrow. However, she also testified that she at times would mow the lawn. Since her husband convincingly testified that he was not present when Claimant fell while dumping grass clippings and did not find out about it until well after the fact (either that night or possibly not until after Claimant went to the doctor – it is not clear which from his testimony), it stands to reason that

to prevent the wheelbarrow from spilling. The force of the wheelbarrow falling was sufficient to cause Claimant to lose her balance and fall to the ground.

46. The mechanism of injury in Claimant's March work accident is not likely to cause a torn rotator cuff. The mechanism of Claimant's May non-industrial accident put Claimant at risk for tearing her rotator cuff.

Causation Analysis

47. Claimant relies on Dr. King's opinions for causation. Dr. King stated his opinions on three occasions. The first was on September 10, 2015, when he wrote that "it is likely that [Claimant's] initial injury is what caused her shoulder pathology.... I feel it is likely that her initial injury in March at work is the one that caused her shoulder pathology." This conclusory statement is unsupported by any analysis, theory, or evidence. Dr. King makes no effort to explain *why* the March accident, as opposed to the May accident, caused Claimant's torn rotator cuff. This opinion carries very little weight and offers absolutely no insight as to why this contested opinion should be accepted.

48. Next, Dr. King noted that "without an MRI scan before the wheelbarrow injury, we cannot know for sure which injury caused [Claimant's rotator cuff] tear." This is not an opinion linking Claimant's injury to the March accident; it is an explanation as to why it is not possible to know which injury caused the tear. This statement actually cuts against Claimant's claim, since it is incumbent on her to prove which accident caused the tear, and the statement does not support her claim that the March accident caused her tear.

49. In his final opinion letter, Dr. King acknowledges that a direct blow to the front of

on May 11, 2015 Claimant may have been mowing the lawn and dumping the grass clippings. However, this conclusion is in no way material to the holding, but rather is simply an observation, which if true would further support the conclusion that Claimant did not tear her rotator cuff in March.

Claimant's shoulder is not a common cause of rotator cuff tears. However, he notes that because Claimant had no symptoms before March, and had symptoms after March, it would be reasonable to conclude the March accident caused her rotator cuff tear. This opinion is flawed.

50. Dr. King's opinion that Claimant's torn rotator cuff was the result of her work accident is afforded little weight. The opinion is simply a *post hoc* conclusion, which is rarely convincing. *See, e.g., Wegner v. Coeur d'Alene Power Tools*, 2015 WL 3777411 (May 19, 2015); *Yopez v. Driscoll Brothers*, 2016 WL 6884651 (August 19, 2016). The argument that Claimant's work accident must have caused her rotator cuff injury because she did not have shoulder symptoms before the work accident and did thereafter ignores the intervening wheelbarrow accident and the mechanics of injury involved therein. It also ignores the fact that just three days after the wheelbarrow accident Claimant sought an x-ray for her right shoulder. Dr. King's opinion lacks the analysis to successfully rebut Dr. Ludwig's contrary opinion.

51. Dr. Ludwig was the only expert to be deposed. Therein, he gave a clear, cogent explanation as to why it is more likely Claimant's May accident tore her rotator cuff than the March accident. The mechanism of injury in attempting to hold up the tipping wheelbarrow load is more plausible than a direct blow to the front of Claimant's shoulder as a source of her torn rotator cuff. As Dr. Ludwig noted, Claimant was at high risk for a torn rotator cuff during the wheelbarrow incident and at low risk for such injury as the result of her work accident.

52. Dr. Ludwig was the only doctor who explained the "why" of his opinion, and did so logically and convincingly. Dr. Ludwig's opinion is given more weight than the opinion of Dr. King.

53. Claimant's testimony that she in no way injured her right shoulder during

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of May, 2018, 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:

STEPHEN NEMEC
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SCOTT WIGLE
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jsk

/s/

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

LENI HAWKS,

Claimant,

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KOOTENAI HOSPITAL DISTRICT,

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IC 2015-016693

ORDER

Issued 5/25/18

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 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 has failed to prove her right shoulder condition for which she seeks benefits was caused by her industrial accident of March 13, 2015.
2. All remaining issues are moot.

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

DATED this 25th day of May, 2018.

INDUSTRIAL COMMISSION

/s/
Thomas E. Limbaugh, Chairman

/s/
Thomas P. Baskin, Commissioner

/s/
Aaron White, Commissioner

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of May, 2018, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

STEPHEN NEMEC
1626 LINCOLN WAY
COEUR D ALENE ID 83814

SCOTT WIGLE
PO BOX 1007
BOISE ID 83707

jsk

/s/