

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

SUSIE J. YOUNT,)
)
 Claimant,)
)
 v.)
)
 SEUBERTS, INC.,)
)
 Employer,)
)
 and)
)
 STATE INSURANCE FUND,)
)
 Surety,)
 Defendants.)
 _____)

IC 02-502227

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

Filed: April 25, 2006

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Rinda Just, who conducted a hearing in Lewiston, Idaho, on September 21, 2005. Charles L. Graham of Moscow represented Claimant. Wynn Mosman of Moscow represented Defendants. The parties submitted oral and documentary evidence. Two post-hearing depositions were taken and the parties submitted post-hearing briefs. The matter came under advisement on January 25, 2006 and is now ready for decision.

ISSUE

By agreement of the parties at hearing, the sole issue to be decided is:

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

CONTENTIONS OF THE PARTIES

Claimant asserts that she sustained injuries to her left shoulder and her neck when a client she was assisting lost her balance and fell back against Claimant's left arm and shoulder. Both her neck and shoulder injuries were the result of the accident, and she is entitled to medical care for her on-going neck complaints.

Defendants assert that only Claimant's left shoulder was injured as a result of her January 15, 2002 accident. She received medical care for her left shoulder until she was medically stable. Claimant's current complaints regarding her neck and/or cervical spine cannot be traced back to her January 2002 industrial injury.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant and Eric Tennant offered at hearing;
2. Joint Exhibits 1 through 8, admitted at hearing; and
3. Post-hearing depositions of John Gerald McManus, M.D., and Francis Spain, M.D.

All objections raised in the depositions of Drs. McManus and Spain are overruled. After having considered all the above evidence and the briefs of the parties, the Referee submits the following findings of fact and conclusion of law for review by the Commission.

FINDINGS OF FACT

1. At the time of hearing, Claimant was 45 years of age, and resided in Moscow, Idaho.
2. At the time of her industrial accident, Claimant worked approximately twenty hours per week for Employer providing care and performing housekeeping for Employer's

elderly clients. Claimant also worked fifteen to twenty hours per week for another employer performing similar services. Claimant did not return to either of her personal care positions following her accident-related shoulder surgery in April 2002. Claimant returned to work as a laboratory technician with a new employer on October 28, 2002. Claimant spoke with Wade Beeler, Industrial Commission Rehabilitation Division (ICRD) Consultant, about her new position on November 4. She told him that the work (sitting and looking through a microscope counting specimens in water samples) was causing pain in her neck, back and shoulders.

ACCIDENT

3. On January 15, 2002, while working for Employer, Claimant was injured while she was assisting a client to her feet. Claimant was standing on the right side of the approximately 300-pound woman with her left arm around the client's upper torso. The client lost her balance and fell back against Claimant's left side, abducting Claimant's left shoulder. Claimant felt immediate pain in her left shoulder, but finished her workday. Claimant reported the injury to Employer the next day, January 16. She worked both January 16 and January 17, although she was taking Ibuprofen and was experiencing a lot of pain.

MEDICAL CARE

4. On January 18, Claimant sought medical care from Moscow Family Medicine, where she saw Dr. Spain. Claimant complained of pain in her left shoulder and denied any prior injury. Chart notes documenting Dr. Spain's examination of Claimant's neck and shoulder state:

Neck: . . . Trigger point tenderness of the neck is noted at multiple sites and limited motion to about 45 degrees of lateral rotation bilaterally[.]

Spine: Reduced mobility cervical spine, reduced motion[.]

Extremities: Large joint degen changes[.] Pain around the left shoulder with supraspinatus, short head and long head of the biceps tendon, hurts a lot with motion, she can get over her head with difficulty and unable to abduct against

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pressure[.] Crepitus of the left shoulder is noted by the exam and is felt with the examining [sic] hand[.] The right shoulder does not have a similar degree of crepitus.

Ex. 2, p. 3. Dr. Spain diagnosed a shoulder sprain and a sprain or strain of the supraspinatus. He prescribed heat, motion, and Ibuprofen, and placed Claimant on restricted duty including no lifting of more than ten pounds, and no lifting with the left upper extremity. Claimant was advised to return for follow up in two weeks. A chart note from January 21 indicates that Ibuprofen was not helping Claimant's shoulder pain. She was given samples of a prescription analgesic and was allowed to use a sling.

5. Claimant returned for follow up with Dr. Spain on February 1. Claimant was not improved and complained of pain and discomfort in the left shoulder. Chart notes on exam state:

Spine: normal mobility, no deformities[.]

Extremities: Large joint degen changes[.] Can only abduct to 90 degrees, rest of motion is limited, some pain posteriorly, with passive she can be taken into overhead motion, abduction is limited to 90 degrees and fixed at that point. She has a lot of crepitus of the shoulder and a lot of discomfort over the supraspinatus tendon at this time.

Id., at p. 8. Dr. Spain suspected a rotator cuff tear and referred Claimant to Steven E. Pennington, M.D., an orthopedic surgeon, to evaluate her shoulder.

6. Claimant saw Dr. Pennington on February 5. She reported that the pain in her shoulder had worsened. On exam, Dr. Pennington noted that her passive range of motion was limited by pain, but there were no adhesions in the shoulder. Her internal and external rotation was intact, but she had a lot of pain to palpation of the biceps tendon anteriorly. X-rays disclosed no fracture or dislocation of the shoulder. Dr. Pennington diagnosed traumatic biceps tendinitis or partial rupture of the biceps tendon. He recommended conservative treatment, and if Claimant didn't show improvement in a month, he would consider an MRI.

7. Claimant returned to Dr. Pennington on March 5. She was no better, so Dr. Pennington ordered an MRI of the left shoulder. The MRI was done on March 18. It revealed a small pinhole-type tear in the rotator cuff and a tear of the anterior labrum. Claimant opted to proceed with a surgical repair. On April 18, Dr. Pennington performed an arthroscopic subacromial decompression and open rotator cuff repair. Claimant started physical therapy a week after her surgery and was recovering nicely until she fell during a vacation, landing on her left shoulder. Thereafter, Claimant's recovery was variable. On June 10, Dr. Pennington suspected that Claimant had adhesive capsulitis, but felt it was premature to do a manipulation. Instead, he administered a corticosteroid injection that provided relief from Claimant's shoulder pain. While the injection helped with her pain, it did not resolve Claimant's adhesive capsulitis, and on June 24, Dr. Pennington performed a manipulation under anesthesia. Claimant's recovery continued to be variable over the summer. In August, Dr. Pennington opined that Claimant had not had the kind of result he had come to expect following shoulder decompression. A month later, he noted that she was improved but opined, "it will take her a good while, probably a year to retain full ROM [range of motion]." Ex. 3, p. 46.

8. On November 5, Claimant continued to show improvement in her range of motion, but complained to Dr. Pennington that she had been having severe headaches and pain that radiated from the left side of her neck and down her arm. Dr. Pennington's chart note states:

She feels as though it is related to her original injury and her surgery, and this very well may be the case that she had 2 problems going on at the same time.

Id. at p. 47. Dr. Pennington recommended an MRI of her cervical spine, which was denied by Surety because Surety believed that Claimant's neck complaints were not related to her industrial accident.

9. Claimant continued with physical therapy for her left shoulder through November

13, 2002. On her last physical therapy visit, she reported increased headaches and left-sided neck/upper trapezius pain.

CAUSATION OPINIONS

10. On October 24, 2002, at the request of Defendants, Claimant saw Dr. McManus for an independent medical exam (IME). Dr. McManus is a board-certified orthopedic surgeon. He retired from his surgical practice in 2003, but continues to treat some former patients and performs approximately 104 independent medical exams per year.

11. Claimant presented to Dr. McManus complaining of loss of range of motion in her left shoulder. She also advised that she had shoulder pain on an episodic basis. Between the periodic pain, usually brought on by overuse, Claimant's shoulder was pain-free. Claimant also complained of headaches and pain in the left side of her neck, which were not necessarily connected to her intermittent shoulder pain. She advised that the shoulder pain was worse than the neck pain. Claimant denied any numbness or tingling in her neck, shoulders, or upper extremities.

12. Dr. McManus examined Claimant, including range of motion, reflex, sensation, and strength tests. Ultimately, he opined that Claimant's arthroscopy and rotator cuff tear of the left shoulder, and her subsequent arthrofibrosis of the left shoulder, were all the result of her January 2002 industrial accident. He noted that she still had a considerable range of motion deficit but was making progress. Dr. McManus's treatment recommendations included intermittent physical therapy, perhaps weekly or every other week, and that she continue to be followed by Dr. Pennington until her range of motion had plateaued for at least a month. He did not believe that Claimant was medically stable, so declined to provide a permanent partial impairment (PPI) rating.

13. After receiving Dr. Pennington's medical record for Claimant's November 5 visit, in which she first voiced complaints about her neck, Surety sent a copy of the record to Dr. McManus and asked him to review his October 24 opinion in light of the November 5 chart note from Dr. Pennington. Dr. McManus responded to Surety by letter dated November 19. He opined that while Claimant had complained to him of neck pain when he saw her, this was the first time that any medical records pertaining to Claimant's injury raised the issue of neck pain, and that given the length of time that had passed from the date of injury, he did not believe that Claimant's neck complaints were related to her industrial accident. He agreed with Dr. Pennington that an MRI might be appropriate, but not because of the industrial injury.

14. Surety provided Dr. Pennington an opportunity to review Dr. McManus's October 24, 2002 IME report. On December 3, 2002, Dr. Pennington expressed agreement with the findings by checking a box on a form letter sent to him by Surety.

15. Dr. McManus performed a follow-up IME of Claimant on March 6, 2003. While he noted her on-going complaints relating to her neck, Dr. McManus continued to believe her neck problems were unrelated to her industrial accident. Dr. McManus opined that Claimant was medically stable. He imposed a permanent twenty-pound lifting restriction above the shoulder and rated her at 2% whole person PPI as a result of her work injury.¹

16. Surety provided Dr. Pennington with the March 2003 supplemental IME report prepared by Dr. McManus and asked whether he agreed with the findings. Again, Dr. Pennington checked the "Yes, I agree with the findings" option and returned the letter to Surety.

17. Claimant returned to Dr. Pennington June 2, 2003. She reported having engaged

¹ Dr. McManus based his PPI rating on the *AMA Guides to the Evaluation of Permanent Impairment*, 5th ed., using the range of motion (ROM) methodology, Figures 16-40 and 16-43 and Table 16-3.

in some vigorous activity over the preceding week and developed a severe pain from her trapezium to her humerus in the medial scapular muscles. Dr. Pennington appreciated some tightness in Claimant's paraspinous musculature, but no problem with her neck or her shoulder. He recommended stretching, anti-inflammatories, and aerobic fitness with follow up as needed.

18. On February 18, 2004, Claimant saw Dr. Spain, complaining of neck pain. On exam, Dr. Spain observed:

Stiff neck. She has marked limitation of motion of the neck, rotation to each side to 45 degrees, lateral bend to 10 degrees, extension to 10 degrees and difficulty flexing the chin to the chest. She has profound muscle spasm of the trapezius and rhomboid muscles, left side worse than the right with extensive trigger point tenderness in the left trapezius, rhomboid, lateral neck and sub occipital areas. She has marked adductor weakness [sic] of both thumbs, left greater than the right.

Ex. 2, p. 28. Dr. Spain recommended cervical spine films and physical therapy.

19. Apparently as a result of the February 18 chart note, counsel for Claimant wrote Dr. Spain on February 27, 2004, seeking to solidify the doctor's opinion regarding causation of Claimant's cervical complaints. The letter asked whether Dr. Spain believed it more probable than not that Claimant's loss of range of motion in her neck, the muscle spasms of the trapezius and rhomboid muscles, the trigger point tenderness in the left trapezius, rhomboid, lateral neck and suboccipital areas and the adductor weakness of both thumbs was the result of her January 2002 industrial accident. Dr. Spain responded in the affirmative and recommended C-spine films and cervical MRI.

20. Counsel for Claimant then forwarded his letter to Dr. Spain, with the doctor's responses, to Dr. Pennington, requesting Dr. Pennington to weigh in on the causation issue. Dr. Pennington responded, "I don't know. I have no record of a neck injury at the time of her accident. Chronic shoulder pain and stiffness can lead to neck spasm." Ex. 3, p. 58. Dr.

Pennington did concur that a cervical MRI would be an appropriate next step in treating Claimant's neck complaints.

21. In December 2004, counsel for Claimant again wrote to Dr. Pennington, trying once again to get him to weigh in on the cause of Claimant's neck complaints. Included with the letter were Dr. Spain's notes from his initial visit with Claimant in January 2002. Receiving no response, counsel renewed his request to Dr. Pennington in March 2005. Dr. Pennington responded on March 22, 2005. Dr. Pennington explained that he could not comment on Claimant's neck complaints because neck and back problems were not a part of his practice; he was treating Claimant for her shoulder. He also observed that his chart notes indicated he believed that Claimant's problems were coming from her shoulder injury and that in June 2004 he specifically noted she had no problem with her neck or the musculature of the neck. Additionally, Dr. Pennington observed that because he was not a neck and spine specialist, it would not be appropriate for him to comment on another physician's opinion regarding Claimant's neck complaints. He concluded that counsel would "have to take [Dr. Spain's] word" on the causation issue.

22. Claimant arranged for a cervical MRI at her own expense. The MRI was done on April 18, 2005. The MRI showed mild early degenerative disk disease at C5-6. There was some narrowing of the disk space, mild spurring, and a minimal bulge to the disk that did not encroach on the spinal canal, the spinal cord, or the neural foramen. Otherwise, the cervical spine was normal. Dr. Spain sent the MRI results to Claimant, stating, "Given the report, it appears that the findings are fairly mild and in most cases, this level of disease does not cause pain or discomfort." Ex. 2, p. 33. Dr. Spain met with Claimant at his office on May 4 and discussed the MRI. Although the chart note states that Claimant's chronic neck and shoulder pain were due to

her industrial accident, the note also states:

Her MRI results were discussed with her and there is no apparent reason for the problem given the neck findings of mild degenerative disease. I think she is best served with physical therapy to try and relieve the neck pain.

Id., at p. 35.

23. Surety provided Dr. McManus with additional medical records, including the MRI results. By letter dated June 7, 2005, Dr. McManus reaffirmed his position that Claimant's neck complaints were unrelated to her industrial accident and that she needed no further treatment for her shoulder injury.

24. Claimant is a credible, but not particularly helpful, witness. As evidenced in the medical records and readily observable at the hearing, Claimant was never able to localize her complaints or provide anything more than general and vague responses either to her physicians or in response to questions at hearing. The following exchange was typical:

- Q. [By Mr. Graham] All right. What symptoms were you having at work?
A. I was in a lot of pain. I was hurting pretty bad.
Q. And were you able to localize the pain in terms of where it was?
A. All I know, it was in my left side. You know, I was hurting.

Tr., pp. 30-31.

DISCUSSION AND FURTHER FINDINGS

25. The issue in this proceeding is purely an issue of causation. If Claimant's neck complaints were caused by her January 2002 industrial accident, then they are compensable. If Claimant's neck complaints cannot be medically related to her industrial injury then they are not compensable.

26. The burden of proof in an industrial accident case is on the claimant.

The claimant carries the burden of proof that to a reasonable degree of medical probability the injury for which benefits are claimed is causally related to an accident occurring in the course of employment. Proof of a possible causal link is

insufficient to satisfy the burden. The issue of causation must be proved by expert medical testimony.

Hart v. Kaman Bearing & Supply, 130 Idaho 296, 299, 939 P.2d 1375, 1378 (1997) (internal citations omitted). "In this regard, 'probable' is defined as 'having more evidence for than against.'" *Soto v. Simplot*, 126 Idaho 536, 540, 887 P.2d 1043, 1047 (1994). Once a claimant has met his burden of proving a causal relationship between the injury for which benefits are sought and an industrial accident, then Idaho Code § 72-432 requires that the employer provide reasonable medical treatment, including medications and procedures.

27. For the reasons discussed herein, Claimant has failed to carry her burden of proving that her neck complaints were caused by her industrial accident. Several factors loom large in reaching this conclusion.

28. Reporting. Claimant did not report any problems with her neck until October 24, 2002, nearly nine months after her injury. This first mention of neck pain was on her initial visit to Dr. McManus. Thereafter, Claimant raised the issue on November 5 with Dr. Pennington, and on November 13, the last of her 37 visits to physical therapy. The latter two of these discussions occurred after Claimant had started her new job as a lab tech, and had complained to the ICRD consultant that sitting at the microscope all day caused her neck and shoulders to hurt.

29. Examinations. Claimant argues that neck and shoulder problems are often confounding, and that Dr. Spain observed loss of range of motion in her neck on her first visit to him just days after the accident. While both assertions find some support in the record, they fail to account for the fact that Dr. Spain specifically did not find any neck involvement when he examined Claimant on February 1, 2002, nor did Dr. Pennington note any neck problems when he examined her in June 2003.

30. MRI. Claimant's cervical spine MRI showed no evidence of acute bony injury and no pathology that would cause Claimant's pain complaints. Even Dr. Spain, who is the only physician to attribute Claimant's neck problem to the January 2002 accident, wrote on two separate occasions that Claimant's mild degenerative disk disease could not account for her pain complaints.

31. Treatment/Referral. There is no reason to believe that if Claimant exhibited or complained of problems with her neck, that Dr. Spain would not have addressed those complaints in his chart notes and recommended treatment at the outset. Similarly, there is no reason to believe that had Dr. Pennington been aware of any problems with Claimant's neck, he would not have referred her for treatment of those complaints since they were outside his practice. Finally, assuming for purposes of argument that the neck complaints were there all along but were masked by the shoulder pain, the fact that the corticosteroid injection into Claimant's shoulder relieved her symptoms suggests that her cervical spine was not an independent pain generator.

CONCLUSION OF LAW

1. Claimant has failed to carry her burden of proving that she sustained any neck or cervical injury as a result of her January 2002 industrial accident.

RECOMMENDATION

The Referee recommends that the Commission adopt the foregoing findings of fact and conclusion of law and issue an appropriate final order.

DATED this 17 day of April, 2006.

INDUSTRIAL COMMISSION

/s/ _____
Rinda Just, Referee

ATTEST:

/s/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 25 day of April, 2006 a true and correct copy of **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon:

CHARLES L GRAHAM
PO BOX 9344
MOSCOW ID 83843-9344

WYNN MOSMAN
PO BOX 8456
MOSCOW ID 83843-8456

djb

/s/ _____

matters adjudicated.

DATED this 25 day of April, 2006.

INDUSTRIAL COMMISSION

/s/ _____
Thomas E. Limbaugh, Chairman

/s/ _____
James F. Kile, Commissioner

/s/ _____
R.D. Maynard, Commissioner

ATTEST:

/s/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 25 day of April, 2006, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following persons:

CHARLES L GRAHAM
PO BOX 9344
MOSCOW ID 83843-9344

WYNN MOSMAN
PO BOX 8456
MOSCOW ID 83843-8456

djb

/s/ _____