BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BRENT TRACY, Claimant, v. P & L TRUCKING (currently L&P TRUCKING), Employer, and IDAHO STATE INSURANCE FUND, Surety, Defendants.	))))))))))))))))	**IC 01-024092** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** FILED JUNE 24 2005

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Commission assigned this matter to Referee Douglas A. Donohue. He conducted a hearing in Twin Falls, Idaho, on December 7, 2004. Brad D. Parkinson represented Claimant. David P. Gardner represented Defendants. After hearing, the record was held open for 60 days to allow limited discovery concerning unexpected and previously undisclosed testimony by a witness. The parties submitted briefs, and the case is now ready for decision.

ISSUES

After due notice and by agreement of the parties at hearing, the issues are:

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

2. Whether Claimant is medically stable and, if so, on what date;

3. Whether and to what extent Claimant is entitled to the following benefits:

(a) temporary disability for his left shoulder;
(b) permanent partial impairment (PPI) for his torn biceps; and
(c) medical care for his left shoulder.

Claimant withdrew the issues of attorney fees and retained jurisdiction. The parties agreed PPI for Claimant's shoulder condition and permanent disability should be reserved.

CONTENTIONS OF THE PARTIES

Claimant contends he injured his left arm at work. His claim for a biceps tear was accepted, and medical and TTD benefits for the surgical repair were paid. A carpal tunnel release surgery was likewise accepted and paid. Claimant's left shoulder injury was denied. He is entitled to benefits for the shoulder injury and PPI for the biceps tear. His left shoulder is not yet stable.

Defendants contend Claimant's left shoulder condition is unrelated to the accident that caused the biceps injury. Claimant is stable and is entitled to no PPI for his biceps injury.

EVIDENCE CONSIDERED

The record in the instant case consists of the following:

1. Oral testimony at hearing by Claimant, his mother and his girlfriend;

2. Joint Exhibits 1-11, 13-17 (After exhibit 12 was admitted, it was discovered not to relate to Claimant and was withdrawn.); and

3. Claimant's prehearing deposition.

FINDINGS OF FACT

1. Claimant worked for Employer driving truck. On November 7, 2001, Claimant loaded a truck in Fresno, California. While doing so, he lifted a tarp and his left arm snapped. He later learned his biceps had torn free of the bone. He reported the accident by telephone. Although he could barely use his arm, he finished loading the truck and drove it back to Idaho.

By the time he returned to Idaho, his biceps had balled up under his skin and his skin showed bruising. He sought medical care as soon as he returned to Idaho.

2. Claimant saw Daniel Henrie, M.D., in the Cassia Regional Medical Center emergency department on November 10, 2001. Dr. Henrie diagnosed a "partial disruption of insertion of biceps tendon." Dr. Henrie recorded bruising and swelling at the left elbow and antecubital fossa. He ordered an Ace wrap and a sling. An X-ray showed no fracture.

3. Employer fired Claimant about November 21, 2001.

4. On December 4, 2001, Claimant visited Gilbert K. Crane, M.D. On examination, Dr. Crane noted the biceps injury as well as "neck is supple," and "clavicle is nontender." Dr. Crane did not specifically mention Claimant's shoulder.

5. On December 10, 2001, Dr. Crane surgically repaired the biceps tendon.

6. Claimant has not been employed since his biceps surgery.

7. On December 27, 2001, Eugene Holm, M.D., released Claimant to return to his regular job but warned Claimant to "be cautious" with heavy lifting or pulling.

8. On December 27, 2001, January 3, 8, 10, and 15, 2002, Claimant visited David Long, D.C. Dr. Long noted Claimant complained of neck and left shoulder pain.

9. On March 29, 2002, Dr. Crane first recorded a complaint by Claimant about his shoulder. "He says he has had this on and off since the time of the injury."

10. On April 9, 2002, John F. Pilch, M.D., performed electrodiagnostic studies which confirmed Claimant's carpal tunnel symptoms.

11. On April 18, 2002, Dr. Crane opined that Claimant's carpal tunnel symptoms were related to the original biceps injury, but stated, "His shoulder pain is fairly classic for typical impingement syndrome rotator cuff tendonitis. . . I do not feel this is clearly related to his

work comp injury since these symptoms seemed to have arrived more recently than at the time of his original injury."

12. Claimant underwent a left carpal tunnel release on July 10, 2002, also performed by Dr. Crane.

13. On September 24, 2002, Dr. Crane noted, "He does complain about his shoulder, I believe this is not related to Work[ers'] Comp[ensation]." Dr. Crane released Claimant to full duty "in terms of Work[ers'] Comp[ensation] injuries" without permanent impairment or restrictions.

14. On September 30, 2002, Claimant underwent a left shoulder arthrogram. It showed "moderate degenerative change" and a torn labrum.

15. On October 3, 2002, Dr. Crane noted, "I have again indicated to him that I do not feel I can prove his shoulder injury is related to his work injury."

16. On January 28, 2003, Dr. Crane responded to information about Claimant's visits to Dr. Long by stating:

> It is fairly common for patients at that point in time [17 days after biceps surgery] to complain of neck and shoulder pain simply from packing around a very heavy cast with a strap that goes around their neck. It may indeed be true that his shoulder symptoms are related to his work related injury. However this represents the first documented complaint that he had of shoulder pain and this was well after his elbow surgery and while he was in a cast. Therefore, I still do not necessarily feel comfortable saying that his shoulder injury was work related.

17. On October 14, 2003, Dr. Pilch examined Claimant and diagnosed a "left rotator cuff repair with chronic left shoulder pain." The report is in error. Claimant had undergone no shoulder surgery then.

18. On January 20, 2004, orthopedist David Schenkar, M.D., reported his medical evaluation of Claimant. Based in part upon Claimant's description of immediate shoulder pain at

the time of injury, Dr. Schenkar opined Claimant's shoulder injury was related to the industrial injury. He opined Claimant suffered permanent impairment from the biceps injury rated at 5% of the upper extremity.

Discussion and Further Findings

19. **Credibility.** The record includes discussion and testimony about whether Claimant is a convicted felon. Claimant testified he received a withheld judgment on a felony charge of nonpayment of child support during the time he was without income after the accident and he had been fired from his job. This issue received essentially no weight in impeaching Claimant.

20. Claimant, his mother and his girlfriend testified about the extent of bruising after the accident, and Claimant and his girlfriend testified about shoulder complaints made to Dr. Crane. The actual extent of bruising has not been shown to be indicative of a rotator cuff tear, the injury Claimant asserts he also suffered in the industrial accident. Moreover, Dr. Crane first saw Claimant on December 4, 2001, and his records show he saw a bruise. If the bruising was more extensive than Dr. Crane recorded, Dr. Crane saw it; if Claimant complained of shoulder complaints to Dr. Crane, Dr. Crane heard it. As the treating physician at the relevant periods of time, Dr. Crane was in the best position to evaluate Claimant's condition.

21. **Causation.** A claimant must prove 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, 918 P.2d 1192 (1996). Proof of a possible causal link is not sufficient to satisfy this burden. Beardsley v. Idaho Forest Industries, 127 Idaho 404, 901 P.2d 511 (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, 890 P.2d 732 (1995).

22. Here, based upon repeated observations during Claimant's period of recovery, Dr. Crane opined Claimant's shoulder condition was unrelated to the industrial accident. Dr. Crane was in the best position to evaluate and opine. The arthrogram identified degenerative changes in Claimant's shoulder. Confronted with additional records from Dr. Long, Dr. Crane softened somewhat but still maintained his earlier-expressed opinion that Claimant's shoulder condition was not related to the accident.

23. Dr. Crane demonstrated a concern for Claimant's physical well being. He listened to Claimant's complaints. Otherwise, the compensable carpal tunnel symptoms might have been ignored. The weight attached to Dr. Crane's professional clinical judgment concerning Claimant's shoulder is enhanced by the attention and care he showed in diagnosing and determining the causal relationship between the industrial accident, ruptured biceps, and the carpal tunnel symptoms.

24. Dr. Schenkar's opinion is based upon a single visit with Claimant more than two years after the accident and a review of the records. The history Claimant reported to Dr. Schenkar in 2004 differed from the records which support mild intermittent pain in January 2002. Thus, Dr. Schenkar's opinions were based upon faulty information emphasizing facts which encouraged Dr. Schenkar to arrive at the opinions he did. Dr. Crane's opinions are entitled to more weight.

25. **Stability.** Here too, Dr. Crane's opinions are entitled to more weight. Claimant had achieved medical stability from the industrial accident on September 24, 2002, as reported by Dr. Crane.

26. **Temporary disability and medical care for shoulder.** As explained above, Claimant is not entitled to benefits for medical care nor temporary disability for his shoulder condition.

27. **PPI for biceps.** Dr. Crane released Claimant to full work without restriction. He expressly opined Claimant suffered no permanent impairment. Residual weakness or symptoms, if any, were too insignificant to be rated. Claimant is entitled to no PPI for the biceps repair.

CONCLUSIONS OF LAW

1. Claimant suffered a ruptured biceps tendon as a result of the industrial accident, which injury, after repair, resulted in no ratable PPI;

2. Claimant became medically stable from injuries sustained as a result of the industrial accident on September 24, 2002; and

3. Claimant failed to show his shoulder condition was caused by the industrial accident, and failed to show he is entitled to any benefits related to it.

RECOMMENDATION

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

DATED this 17TH day of June, 2005.

INDUSTRIAL COMMISSION

/S/_____
Douglas A. Donohue, Referee

ATTEST:

/S/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 24TH day of JUNE, 2005, 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:

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db /S/_____