BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

TIM ROONES, Claimant, v. PIONEER FLOORS CARPET ONE, INC., Employer, and STATE INSURANCE FUND, Surety, Defendants.	)	**IC 04-518417** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** Filed February 17, 2006

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Michael E. Powers who conducted a hearing in Twin Falls, Idaho, on July 22, 2005. Claimant appeared *pro se*. M. Jay Meyers represented Defendant Employer/Surety. Oral and documentary evidence was presented. There were no post-hearing depositions. The parties submitted post-hearing briefs and this matter came under advisement on December 9, 2005.

ISSUES

As agreed to by the parties at hearing, the issues to be decided are:

1. Whether Claimant's condition is the result of an accident arising out of and in the course of employment;

2. Whether Claimant's condition is due in whole or in part to a pre-existing injury or disease or a cause not work-related;

3. Whether Claimant is entitled to reasonable and necessary medical care, and the extent thereof;

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

(a) Temporary partial or temporary total disability (TPD/TTD);

(b) Permanent partial impairment (PPI); and

(c) Permanent partial or permanent total disability (PPD/PTD) in excess of PPI; and

5. Whether apportionment for a pre-existing condition pursuant to Idaho Code § 72-406 is appropriate.

CONTENTIONS OF THE PARTIES

Claimant contends that he injured his left knee when he stepped out of the back of Employer's van on employer's business premises. He seeks further medical treatment including an MRI requested by his treating physician.

Defendants contend that Claimant did not injure himself as he described because he did not immediately inform a co-worker and Employer's office manager. The alleged accident occurred on a Friday afternoon and Claimant rode his motorcycle from Twin Falls to Caldwell and back that weekend and if he injured his knee to the extent claimed it is doubtful he would have been able to make that trip. Further, Claimant has had prior left knee problems resulting in a surgery and any benefits awarded should be apportioned. Finally, Claimant is not credible in his rendition of events, especially in not informing others that he reported his accident/injury to the vice president of Employer's business the next day.

Claimant counters that he did not immediately report the accident because he did not believe it to be as serious as it turned out to be until his knee began to swell up and hurt during

the course of the weekend. In any event, he duly reported the accident Sunday evening. All Claimant is presently seeking is a left knee MRI that was recommended by his treating physician in August of 2004 to determine the extent, if any, of any damage that may have been done.

EVIDENCE CONSIDERED

The record in this matter consist of the following:

1. The testimony of Claimant, Leila Sanchez, Don Hodge, Katie Rippee, and Eldon Palmer presented at the hearing; and

2. Defendants' Exhibits A-J admitted at the haring.

After having considered all the above evidence and the briefs of the parties, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

FINDINGS OF FACT

1. Claimant was 38 years of age and resided in Twin Falls at the time of the hearing. Employer is in the business of building and installing residential and commercial flooring, custom cabinets, ceramic tile, window covering, and decorating. Claimant was Employer's cabinet shop manager and had been employed there since 1990.

2. On August 13, 2004, Claimant and his co-worker, Don Hodge (Don), had returned from a job in Employer's van and were in the process of quitting for the week (it was late in the afternoon on a Friday). Don parked the van in Employer's lot, locked the driver's side and rear doors with his key, and went into Employer's business to clock out.

3. Claimant remained with the van to retrieve his lunch box that had slid to the rear of the van by the rear doors. The van had double rear doors as well as a sliding side door on the passenger side. At hearing Claimant described the chain of events leading to his injury as follows:

> He (Don) got out of the van. He locked his door and the back door. And when I got out of my side, I still had to lock my door and the side door of the van.
>
> And I noticed that my lunch box was in the back of the van. And he got out and was already walking into the store where we got to punch out and so forth. And I jumped in the side of the van, and I walked to the back to get my lunch box. And while I was in the back, I just decided to unlock the door. And I opened it and jumped out. And when I jumped, I -- I don't know, just twisted and jarred my knee when I hit the ground. I don't know if I landed on some - - a rock or what, but it just twisted my knee a little bit, and I caught myself.

Hearing transcript, p. 10.

4. Claimant then went into the store where he saw Don in the front in the area where employees clock out. Claimant stayed toward the back of the store and asked if Don would clock out for him, which Don did. Katie Rippee (Katie), the office manager, was also in the vicinity of Don; she did not see Claimant but heard him ask Don to clock him out. Neither Don nor Katie heard anything unusual in Claimant's voice that would indicate he was in pain, but neither was paying any attention to his voice in any event. Claimant admitted he did not inform either Don or Katie of his accident at that time. Claimant then went home, applied ice to his knee and took some aspirin.

5. The following day, Claimant rode his motorcycle to a previously planned event in Caldwell. He testified that his knee was swollen before he left but he reasoned that sitting on his motorcycle would be no different than sitting in his chair at home. However, by the time he arrived in Caldwell his knee was painful and swollen to the extent that he was unable to return to his home and had to spend the night at his ex-wife's brother's home and return the following day, Sunday.

6. Claimant's ex-wife, Leila Sanchez (Leila) testified that she observed Claimant's knee to be swollen on Saturday before Claimant left for Caldwell and he told her he had jumped out of a van the day before and hurt his knee. Leila and her parents followed Claimant to

Caldwell in their car as they were attending the same event as Claimant and Leila spent the day and night with Claimant and corroborated Claimant's testimony regarding the condition of his knee during that time.

7. Claimant testified that he told Brent Compton (Brent), Employer's vice president and manager of the Twin Falls store, of his injury on Saturday, August 14, before he left for Caldwell; however, he did not tell him how he got hurt. Eldon Parker (Eldon), the owner of the business, testified that he was unaware of Claimant's conversation with Brent until right before the hearing. Claimant informed Eldon of his accident and injury Sunday evening, August 16.[1]

8. Claimant first sought medical treatment on August 16 when he presented to Magic Valley Regional Medical Center and saw Douglas Stagg, M.D. Claimant gave Dr. Stagg a history of his accident consistent with his hearing testimony. Dr. Stagg noted that Claimant had an ACL repair on his left knee thirteen years ago. Upon examination and an x-ray that showed no acute damage, Dr. Stagg diagnosed a left knee strain with a large effusion. He prescribed a hinged knee brace, non-weight bearing crutches, pain medication, and sedentary work only until his follow-up visit on August 19, 2004.

9. Dr. Stagg continued to treat Claimant conservatively. On August 24, 2004, Dr. Stagg recommended a left knee MRI to rule out an internal derangement due to persistent left knee swelling, pain, and instability; Surety denied approval. Dr. Stagg continued Claimant on sedentary work only which Eldon provided. On September 8, 2004, Dr. Stagg noted that Claimant was "back for recheck of his left knee injury from 8-13-04 from jumping out of his van." Defendants' Exhibit D, p. 11.

[1] Eldon testified he believed Claimant informed him of his accident and injury early Monday morning rather that Sunday evening. In either event, Claimant's report was timely.

10. With Surety approval for the recommended MRI not forthcoming, on September 23, 2004, Claimant informed Dr. Stagg that he was considering having the MRI done through his private health insurance. However, Claimant testified at hearing that he did not do so as his accident was work-related and the MRI should be covered by workers' compensation.

11. Dr. Stagg released Claimant to full-duty work on September 23, 2004, although he was concerned that he might have a "significant injury here." Defendants' Exhibit D, p. 11.

DISCUSSION AND FURTHER FINDINGS

An accident is defined as an unexpected, undesigned, and unlooked for mishap, or untoward event, connected with the industry in which it occurs, and which can be reasonably located as to time when and place where it occurred, causing an injury. Idaho Code § 72-102(17)(b). An injury is defined as a personal injury caused by an accident arising out of and in the course of employment. An injury is construed to include only an injury caused by an accident, which results in violence to the physical structure of the body. Idaho Code § 72-102(17)(a). A claimant must prove not only that he or she was injured, but also that the injury was 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 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). "Probable" is defined as having "more evidence for than against." *Fisher v. Bunker Hill Company*, 96 Idaho 341, 344, 528 P.2d 903, 906 (1974).

A pre-existing disease or infirmity of the employee does not disqualify a workers' compensation claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. An employer takes the employee as found. *Wynn v. J.R. Simplot Company*, 105 Idaho 102, 666 P.2d 629 (1983).

A **presumption** arises that an accident arises out of and in the course of employment when the accident occurs on the employer's premises. *Foust v. Birds Eye Division of General Foods Corp*., 91 Idaho 418, 422 P.2d 616 (1967). However, the mere fact that the injury occurs on the employer's premises is not the exclusive test for compensability, but is only one factor to be considered. *Dinius v. Loving Care and More, Inc*., 133 Idaho 572, 990 P.2d 738 (1999), citing *In re Malmquist*, 78 Idaho 117, 300 P.2d 820 (1956). An employee does not have to be actually engaged in the performance of a task of employment at the time of the accident to recover if there was an exposure to risk by reason of employment. *Dinius, Id*., citing *Nichols v. Godfrey*, 90 Idaho 345, 351, 411 P.2d 763, 766 (1966).

12. Defendants make no objection, challenge or argument concerning medical causation for Claimant's injury. Their sole issue was based on whether an accident took place. The Referee will, therefore, assume that the requisite medical evidence has been conceded by Defendants.

13. Eldon had concerns regarding the legitimacy of this claim because Claimant did not tell Don or Katie of his accident and injury before he checked out and Don had locked all the van doors with his key, thus preventing Claimant from re-entering the van and jumping out the back as claimed. However, Claimant plausibly testified that he did not immediately report his accident because he did not feel his injury was that serious at the time. However, after his knee worsened over the weekend, Claimant timely informed Eldon Sunday night.

14. Regarding the locking of the van, Eldon testified at hearing:

> And I asked Don, I said, Are [*sic*] you aware of Tim [Claimant] getting his knee hurt? And he said, No [*sic*], I'm not. I asked him that on – I said, well, he has – he's got a claim out that he hurt his knee, and he said he jumped out of the back door of the van. And Don's words at that time to me, says, Well [*sic*], how could he have done that? He said, I had the keys to the van, I had already locked it up.
>
> Now, when I questioned Don this morning, about it, because I've never discussed it with him, again Don told me he had only locked two doors, and Tim was responsible for locking the other two. And this is the first time that I heard of this, period. That Don told me this, oh, about 30 minutes prior to us coming over here.

Hearing Transcript, p. 63.

15. In spite of what Don may have told Eldon, or what Eldon understood, all of the **evidence** is consistent with Claimant's version of events. Defendants have failed to provide a reasonable alternative explanation for Claimant's injury. While he might have had prior left knee problems, there is no evidence that such was (is) the cause of his current difficulties and apportionment to any pre-existing condition(s) is not appropriate. The inference is that because this was a Friday afternoon "quitting time" accident that Claimant failed to immediately report, he must have done something to his knee over the weekend. However, there is simply no **evidence** that that was the case. The Referee finds that Claimant suffered a compensable accident and injury to his left knee while jumping out of Employer's van on August 13, 2004.

16. Claimant has not attempted to and has thus failed to prove his entitlement to any benefits other than continued medical care with Dr. Stagg should Dr. Stagg deem it necessary as Claimant has been back to full-time regular employment for almost a year and a half.

CONCLUSIONS OF LAW

1. Claimant has proven that he suffered a compensable accident and injury on August 13, 2004.

2. Claimant is entitled to continued treatment from Dr. Stagg should Dr. Stagg deem it necessary and is entitled to reimbursement for out of pocket expenses incurred in Dr. Stagg's treatment to date, if any.

3. Claimant has failed to present evidence that he is entitled to any other benefits at this time.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Referee recommends that the Commission adopt such findings and conclusions as its own and issue an appropriate final order.

DATED this __31st __ day of ___January___, 2006.

INDUSTRIAL COMMISSION

__/s/_____
Michael E. Powers, Referee

ATTEST:
__/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __17th __ day of _February_, 2006, 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:

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