

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

JUAN SALINAS,

Claimant,

v.

CIRCLE 7 RANCH, INC.,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,

Defendants.

**IC 2014-005967**

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

Filed May 26, 2017

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**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 Pocatello on August 31, 2016. Claimant was present and represented by Albert Matsuura of Pocatello. Steven R. Fuller of Preston represented Employer (Circle 7) and its Surety, Idaho State Insurance Fund. Oral and documentary evidence was presented and the record remained open for the taking of two post-hearing depositions. The parties then submitted post-hearing briefs and this matter came under advisement on March 13, 2017.

**ISSUES**

The issues to be decided are:

1. Whether Claimant injured his right shoulder in a work-related accident; and, if so

2. Whether Claimant is entitled to medical care pursuant to Idaho Code § 72-432; and

3. Whether Claimant is entitled to total temporary disability (TTD) benefits.

### **CONTENTIONS OF THE PARTIES**

Claimant injured his left shoulder in a compensable industrial accident. He contends that he also injured his right shoulder and seeks medical treatment and associated benefits. Claimant further contends that he told all of the doctors and a physical therapist treating his left shoulder that he also injured his right shoulder. At that time, one of the first physicians to treat Claimant for his left shoulder injury indicated that he remembered Claimant complaining of right shoulder pain even though he failed to document any such complaint at the time of Claimant's initial (and only) visit.

Defendants contend that it would be remarkable if the doctors (including a physical therapist who oversaw Claimant's physical therapy) never recorded any right shoulder complaints if Claimant had mentioned the same. Claimant, his wife, and his daughter are not telling the truth regarding the timing of the onset of Claimant's right shoulder pain. Further, the doctor who "remembered" such a complaint some 10 months later should not be believed as he is a "patients' advocate" and only did what Claimant requested without any independent basis or investigation.

### **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. The testimony of Claimant, Claimant's wife, and daughter, Circle 7's owner/operator, and Circle 7's farm and dairy manager presented at the hearing.
2. Joint Exhibits (JE) A-I admitted at the hearing

### **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 2**

3. The post-hearing depositions of: Surety claims examiner Laurie Crawford taken by Claimant on March 10, 2016; Todd J. Miller, M.D., taken by Claimant on September 9, 2016; and that of Bart W. Fotheringham, M.D., taken by Defendants on October 24, 2016.

All pending objections made during the course of taking the above-referenced depositions are overruled.

After having considered all the above evidence and 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 34 years of age at the time of the hearing and residing in Tremonton, Utah, with his wife of 17 years and their five children. He speaks and understands limited English, and an interpreter assisted at hearing. Claimant was working as a dishwasher at JC's Diner in Elwood, Utah. He attended school in Mexico and completed the 9<sup>th</sup> grade there. Claimant has been in the United States for 18 years.

2. At the time of his industrial accident, Claimant was working for Circle 7, in Franklin, Idaho. Circle 7's dairy operation consists of between 550 to 600 cows and employs nine employees. Claimant had about 10 years of experience in the livestock and dairy industry before beginning his employment with Circle 7.

3. Claimant described his duties as a "ranch manager": "to care for the cows, insemination, to take care of the cows with medicine, and to oversee the employees, and to manage the information that had to be input into the computer." HT p. 17. Generally, the work Claimant performed could be classified as "medium" to "heavy."

4. After about seven months of working for Circle 7, on February 19, 2014, Claimant tripped and fell while attempting to jump over a fence to corral an escaped cow. At hearing, he testified that he landed on his hands on a concrete surface and, “I felt, yes, I felt pain on my arms and on my shoulders, my head, and on my [left] ankle.” *Id.*, p. 22. He also testified that he lost consciousness momentarily.

5. Claimant did not seek medical care for his injuries until nine days later on February 28, 2014 with Dr. Chad Merrell of Bear River Family Medicine. He explained the reason for his delay in seeking care as, “One of the reasons was because I needed to talk to my employer to report the fact that I had fallen, and also because I thought my pain will not go - - will not increase as much.” *Id.*, p. 23.

6. The February 28 medical records of Bear River Family Medicine indicate that Claimant presented with a history of pain in his left arm and left ankle as well as his head after a fall wherein Claimant “landed mostly on [his] left shoulder.” There is no mention at this visit of right shoulder pain.

7. The Employer first learned of Claimant’s accident on March 1, 2014 when Claimant presented him with a doctor’s bill. Claimant told Employer that he injured his left shoulder, head, and foot or leg. Employer filed a FROI and forwarded the bill to Surety. The FROI states that Claimant “landed on his shoulder.”

8. On March 18, 2014, Claimant saw Suzanne Lee, MD., for problems generally unrelated to his industrial injury but he did mention that he was having left shoulder pain. Dr. Lee recorded the cause as “a fall at workplace (comp case already under way) but challenging in that he uses his L arm for some of his procedures e.g.

working w/cows at his job” [sic]. There is no mention in Dr. Lee’s records regarding right shoulder pain.

9. Claimant returned to Bear River and saw Dr. Miller for the first time on April 21, 2014 to discuss the results of diagnostic testing. The results were negative for a left ankle and brain injury; however, a left shoulder MRI was positive for an acute injury and Surety accepted responsibility for that injury. There is no mention in the records for this visit of right shoulder pain, and Dr. Miller described Claimant’s injury as from “a fall at work directly on his left shoulder.”

10. On April 25, 2014, Claimant saw orthopedic surgeon Matthew Bitner, M.D., for his left shoulder pain. In his notes, Dr. Bitner stated the injury resulted from a fall with Claimant “landing directly on his left shoulder.” Dr. Bitner administered an epidural steroid injection. There is no mention of right shoulder pain in Dr. Bitner’s records for this visit.

11. Claimant was terminated for reasons unrelated to his injury on June 26, 2014.

12. On June 30, 2014, Dr. Bitner performed left shoulder arthroscopy surgery with debridement.

13. Claimant completed physical therapy post-surgery. He attended PT from July 2014 to November 2014 and was treated approximately 23 times by four separate physical therapists. In his initial visit, Carol Herzog, PT, described the injury as to his “left shoulder.” There is no mention of right shoulder pain in any of the records by any of the physical therapists.

14. On November 12, 2014, Claimant met with Susan Burt of the Industrial Commission's Rehabilitation Division (ICRD). In her initial interview with Claimant, she recorded the following under history of accident: "When jumping over fencing, he fell and tried to catch himself with his left arm, hurting his head and left shoulder." JE G., p. 3.

15. On December 5, 2014, Dr. Bitner released Claimant to return to work without restrictions concerning his left shoulder. Regarding Claimant's right shoulder, Dr. Bitner noted:

Patient reports that his right shoulder bothers him and feels that there may have been some connection with the injury that occurred months ago that, also, involved his left shoulder. I do not have any notes that discussed his right shoulder at any time during my visits and treatment.

\* \* \*

Right shoulder pain which the patient states he feels it is connected to his original injury. Impingement with rotator cuff tendinosis as noted. Plan: I talked with the patient and I will release him to full duty in regards to his left shoulder. I did explain to him that his right shoulder does show some impingement with rotator cuff tendinosis, but I could not say that it relates to his injury as I saw him 2 months after the injury occurred and did not discuss it at any time. I recommended that he followup with those to [sic] care for him in [sic] early months of his injury to determine whether it was ever dressed [sic] and that I would be happy to see him back in a month and if it is determined to not to be related to the original injury we can still address it and discuss options at that time.

JE C., p. 24.

16. Claimant saw Dr. Bart Fotheringham at Surety's request on February 12, 2015 for an independent medical exam.

17. In an addendum dated February 24, 2015, Todd Miller, M.D., stated:

Patient initially presented to our clinic for evaluation of a work related injury. Mainly was complaining of left sided shoulder pain and ankle pain. Had less severe right sided symptoms at the same time, but our focus was mainly at the left shoulder due to the severity of the injury.

I saw him on 4/21/14 and ordered testing and Orthopedic [sic] referral for evaluation of the left shoulder pain. He also had right shoulder pain from the same accident on 2/19/14 but never got treatment for the right side. The left side symptoms have all been treated well, but he has had ongoing right sided pain. He has required injections in the right shoulder from Orthopedics [sic] as well for pain and ongoing symptoms.

JE A., pp. 8-9.

18. Dr. Lee authored an addendum to her records dated February 25, 2015 that stated:

Patient seen again for follow-up. Concerned that although he recalls talking about bilateral shoulder pain at the time of our visit 4/2014, that I did not document these pain concerns in my note from that visit. At this time, several months later, I do not recall specifically whether we also discussed right-sided shoulder pain. It is probable that although we did discuss bilateral shoulder pain, my focus on the day was LEFT side due to that being the side which had undergone MRI 3/27/14 and for which we were reviewing MRI results. I did not document either a normal or abnormal R shoulder examination on that day. However it is certainly possible that the patient reported R shoulder pain to me on 4/9/14 which was not documented on that day due to my focus on his L-sided imaging reports, ordered by an outside provider.

DE B, p. 5.

19. On July 10, 2015, Claimant presented for follow-up with Dr. Bitner. Referring back to his December 2014 note, Dr. Bitner said Claimant presented him with paperwork from Dr. Miller about his right shoulder:

I did not document right shoulder pain until after the surgery on the left, but there is a note Dr Miller [sic] that does discuss in [sic] his right shoulder on his presentation of his injury as well as on his left side. As I did not address on my on my early visits *I have to rely on the report of the referring physician who did address it.* [Emphasis added.]

20. Dr. Miller also authored a "TWMC" letter dated July 16, 2015:

The patient has had ongoing right sided pain from an industrial accident that occurred on 2/19/14. His symptoms were initially worse on the left side and the focus was mainly on the left shoulder. He had surgery and physical therapy for the left shoulder injury. His right sided symptoms

have not resolved. I feel that both injuries are from the same accident on 2/19/14.

JE A., p. 11.

21. Contrary to medical records discussed above, which fail to reference a right shoulder injury or complaint of right shoulder symptoms prior to December 2015, Claimant testified that in the course of treatment he told each and every one of his medical care providers that he was experiencing right shoulder problems.

#### Hearing testimony

22. Claimant testified that after his bilateral shoulder injuries he had help from co-workers performing the most strenuous parts of his job.

23. Claimant testified that he did not injure his right shoulder in any work or non-work accident after his February 19, 2014 accident or during the period of recovery from his left shoulder surgery.

24. Claimant continued to do some artificial insemination (“an intense physical activity” that requires the use of both arms) during the time between his accident and when his employment was terminated in June 2014. HT p. 40.

25. Claimant’s wife of 17 years, **Maria Bonilla** (Maria), testified that Claimant told her of his February 2014 accident and that he complained of injuring both shoulders,<sup>1</sup> his head, and his ankle. She also testified that Claimant had never complained of right shoulder pain before his accident and that he did not complain of injuring his right shoulder in any non-work related activity post-accident.

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<sup>1</sup> Defense counsel noted on the record that Maria pointed to her left shoulder when she testified regarding both shoulders.



26. **Darlene Salinas**, (Darlene) Claimant's 16-year-old daughter, testified that she accompanied Claimant to some doctor and physical therapy appointments including his left shoulder surgery and thereafter to help with interpreting.<sup>2</sup> She testified that Claimant complained of pain in both his shoulders, "He [Claimant] mentioned both of them, but he said like it could have been just that he was using more of his right shoulder because of his left injury, like his surgery." HT p. 62.

27. The defense called **Troy Hobbs** (Troy) as a witness. He has been the owner/operator of Circle 7 since 1999. Circle 7 ". . . is a dairy operation, and we produce milk and we produce beef and we raise crops." *Id.*, p. 66. Troy hired Claimant in July of 2013 as a herdsman: "A herdsman's responsibility is to oversee the health of the animals through the entire herd; breeding the cows, pulling calves, sorting the cows. It's his job to put the inputs into the computer, take care of the baby calves, that sort of thing." *Id.*, p. 67. A herdsman also performs pregnancy tests.

28. Some of Claimant's duties, especially those involving artificial insemination and pulling cows (assisting calves being born in a breech position, etc.), requires the use of both shoulders and arms and is physically intensive as Claimant described.

29. Claimant continued to work at Circle 7 until June 26, 2014 after his February 19, 2014 accident. His duties as a herdsman did not change; however, Claimant asked Troy if he could train a co-worker, Chano, to be a certified artificial inseminator, and Troy approved that request.

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<sup>2</sup> Claimant testified that Darlene only accompanied him to one appointment.

30. Claimant never complained to Troy about right shoulder pain. Troy first learned that Claimant was complaining of a right shoulder injury when so informed by defense counsel. In the two or three times a week that Troy would see Claimant on the job, he never noticed Claimant favoring his right shoulder. Troy was aware that Claimant's work was getting done post-accident, but was unaware of exactly how his work was getting done.

31. **Jay Ryan Fellows** (J.R.) was the farm and dairy manager at all times relevant hereto and, as such, was Claimant's supervisor. J.R. lived in the center of the dairy operations at Circle K and had daily contact with Claimant.

32. After his accident, Claimant continued to artificially inseminate cows. J.R. disagrees with Claimant's testimony that Chano was helping him. Chano was not certified or knowledgeable in inseminating cows and would have had no time to learn and still perform his own duties. Claimant and J.R. were the only two certified to conduct artificial inseminations, and J.R. only did them on Sundays, Claimant's day off. J.R. testified that Claimant continued artificially inseminating cows from the date of his accident until Claimant left his employment in June 2014. J.R. testified that he and Claimant inseminated between 5-10 cows a day and sometimes up to 20. Barring unforeseen difficulties, it takes about 45-50 seconds for a proficient breeder to inseminate one cow once in position. J.R. testified that he, J.R., would be unable to artificially inseminate a cow if he had significant shoulder pain.

33. Claimant's duties also included stripping cows or milking them to remove milk that might have been missed or left over from the milking process in order to prevent infections. Claimant was also tasked with pulling calves. This was necessary

when birthing calves would get their head or legs in a position that prevents a smooth delivery. When that occurred, it would be necessary to physically reach inside the cow and straighten out the calf. This was a strenuous activity that sometimes required two people. J.R. posited that one could not perform the pulling task with an injured shoulder (which does not explain how Claimant could have done so with his injured left shoulder).

34. J.R. was unaware of Claimant's accident until March 1, 2014 when Troy so informed him. From the time of his injury until he left his employment, Claimant never asked for assistance in doing any of his job requirements.

35. J.R. communicated with Claimant in English only. He would use Claimant as an interpreter for his non-English-speaking workers.

#### Post-hearing depositions

36. Claimant took the deposition of **Todd Miller, M.D.**, on September 9, 2016 at his practice in Tremonton, Utah. Dr. Miller is a board certified family practitioner who first saw Claimant on April 21, 2014 for left shoulder pain. Claimant had already seen one of Dr. Miller's partners, Dr. Chad Merrell, and had undergone a left shoulder MRI. On exam, Dr. Miller noted that Claimant's left shoulder still had limited range of motion due to pain and weakness. No other injuries, including Claimant's right shoulder, were noted but Dr. Miller does not document every condition a patient may have unless it is related to the particular problem for which the patient is being seen.

37. In an addendum dated February 24, 2015, at Claimant's request, Dr. Miller recorded that, according to his independent recollection of the events surrounding Claimant's April 21, 2014 visit, Claimant was experiencing right shoulder pain as well as left shoulder pain even though he failed to document right shoulder pain at that time.

38. Dr. Miller relates Claimant's right shoulder injury to his February 2014 industrial accident even though he normally notes all injuries mentioned at the time of examination. Dr. Miller did not remember the exact words Claimant used to describe his right shoulder injury or the context of that conversation at the one and only time he examined him.

39. Defense counsel asked Dr. Miller:

Q. So, we're ten months later, and are you indicating that you actually recall him complaining of right shoulder symptoms back ten months before that time?

A. Yeah, that's - - and it's even another length of time to now, so my recollection of the time when I wrote the letter is even more vague than when I wrote the letter in the first place.

Q. And I understand, Doctor. What I'm trying to get at is this: I - - I don't remember what I had for breakfast yesterday. Can - - I'm asking you, is this a specific recollection that you had when you wrote this addendum that Mr. Salinas indicated to you back ten months earlier in your one visit with him that he had right shoulder pain?

A. Yes. And I wouldn't have written the note - - the addendum to the note to just appease him without recollecting the original visit, to a certain degree. And I can still remember him. And I can still remember him coming in and I can still remember his concerns.

But I - - like, you would forget a lot the details in the meantime. So I'm - - I'm - - basing my confidence that I do recall - - that I did recall in 2015 some of the complaints about other injuries that happened clear back in 2014 on the note that I wrote that forms a bookmark that says this is what I do remember at the time and this is what I'm willing to stand by for the record.

So it's not a - - it's not a very long or flowery note, but it does state very specifically what I felt at the moment on February 24, 2015.

Q. As we sit here today, do you have specific recollection of Mr. Salinas telling you on 4-21-14 that he had right shoulder pain?

A. No.

Dr. Miller Depo., pp. 21-22.

40. Dr. Miller testified that it is his practice to document any injury a patient may be complaining of contemporaneously with the meeting with the patient, but he failed to do so in this case even though he documented a concussion and ankle injury.

41. Dr. Miller agreed that Claimant's treating surgeon, Dr. Bitner, subsequently relied on Dr. Miller's February 2015 addendum in concluding that Claimant did, in fact, suffer a right shoulder injury.

42. Although Dr. Miller testified that Claimant told him of right shoulder pain in his visit of April 21, 2014, he did not examine or prescribe any treatment regarding Claimant's right shoulder. He did refer Claimant to Dr. Bitner regarding Claimant's left shoulder.

43. Defendants' counsel asked Dr. Miller this final question:

Doctor, do you find it unusual that this right shoulder problem did not resurface until a year after this incident occurred and there had been ongoing treatment for his left shoulder and so forth, but the right shoulder didn't surface for an entire year?

A. Yes.

Dr. Miller Depo., p. 34.

44. Defendants took the deposition of **Bart W. Fotheringham, M.D.**, on October 24, 2015. He is a board certified physiatrist practicing in Salt Lake City. As mentioned above, Dr. Fotheringham saw Claimant on February 12, 2015 at Surety's request. He spends about 90% of his time treating patients and 10% performing impairment ratings and IMEs.

45. Dr. Fotheringham took Claimant's history regarding his right shoulder injury including the treatment he received, reviewed medical records, performed a

physical examination of Claimant's right shoulder, and prepared a report (JE E and Exhibit 1 to his deposition).

46. Claimant informed Dr. Fotheringham that he fell on both of his outstretched arms; however, Dr. Fotheringham noted that Claimant had told all of his previous treaters that he fell directly onto his left shoulder. Claimant also informed Dr. Fotheringham that he told all of his previous providers, including his physical therapist, that he also injured his right shoulder when he fell although their records do not so reflect. He testified:

Q. (By Mr. Fuller): In your experience, would it be unusual for none of his doctors to have mentioned in their records that he had had right shoulder pain, even though he said he was complaining of it to each of them?

A. All of the providers, yes. Now, if one of them had missed it and the other three had mentioned it, that's very possible. I mean, I see that frequently. But with all of them, that is not within a reasonable probability.

It's either that they're all incompetent, which doesn't sound like it because they mentioned left ankle, the head, and the left shoulder. Very consistent all the way along. No mention of the right shoulder.

Dr. Fotheringham Depo., p. 14.

47. Dr. Fotheringham commented that Dr. Bitner's use of the term "insidious" in his January 9, 2015 office note in describing Claimant's right shoulder pain means, generally, a chronic versus acute condition of unknown origin. If Claimant had suffered an acute injury, it would have occurred much later than the date of Claimant's accident.

48. In reviewing the physical therapy notes, Dr. Fotheringham states that most of the exercises involving Claimant's left shoulder would also have involved his right shoulder. Had those exercises caused problems with Claimant's right shoulder, Dr. Fotheringham would have expected the therapist to so note.

49. Dr. Fotheringham also found significance in Dr. Bitner's initial failure to relate Claimant's right shoulder condition, once discovered, to Claimant's accident.

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 14**

## **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).

50. The Referee is not convinced that Claimant suffered an accident causing an injury to his right shoulder on February 19, 2014.

51. It defies logic to accept that Claimant informed all of his medical providers, as well as his physical therapist, of his right shoulder injury, yet each and every of them failed to contemporaneously note that injury. This is especially true in light of those same providers noting his ankle and head injuries. It is also puzzling that Claimant

testified that he told his wife and daughter of his right shoulder injury, and they both corroborated this, yet no doctor did. While it might be conceivable that had Claimant told at least one of his providers of his right shoulder injury and he or she somehow failed to record it, it is not conceivable that all of his providers failed to so record. It is also telling that Claimant did not contact Drs. Miller, Lee, and Bitner regarding their “missing” right shoulder notes until after Dr. Fotheringham authored his report.

52. Moreover, Claimant’s report of how the accident occurred is consistent until December 2014; the accident is described as ‘landing on his shoulder’ in the FROI, his vocational records, to two different doctors on his first and second visit to Bear River Family Medicine, to his family physician at Community Health Center, and finally to his surgeon, Dr. Bitner. The very first time Claimant says he landed with both arms outstretched is in December 2014 to Dr. Redd, a practitioner with Dr. Lee, at Community Health Center.

53. Dr. Miller’s testimony is vague and unconvincing. He testified that he must have remembered Claimant telling him on April 24, 2014 of his right shoulder injury or he would not have written his February 24, 2015 addendum. Yet, he also testified that, as of the date of his September 9, 2016 deposition, he had no specific recollection of Claimant telling him of his right shoulder injury on April 24, 2014. Further, Dr. Miller could not remember whether his visit with Claimant was conducted in English or Spanish, something arguably more memorable than whether Claimant complained of right shoulder pain.

54. Dr. Lee noted that it was “possible” that Claimant mentioned his right shoulder injury and she failed to so note because she was concentrating on his left



shoulder. Conversely, it is also equally possible that she did not note right shoulder pain because Claimant did not mention it.

55. Claimant continued to perform his job duties for about four months post-accident with an injured left shoulder. By all accounts, most of the work he performed, especially artificial inseminations and calf-pulling, were labor intensive and involved the use of both arms/shoulders. Neither Toby nor J.R. noticed Claimant favoring his right arm/shoulder or anything else to indicate he had injured his right shoulder. While it may be argued that Claimant over-used his right shoulder in protecting his left, no such argument is being made here and no medical evidence has been admitted in that regard.

56. The Referee need not discredit Claimant's, his wife's, or his daughter's credibility regarding their assertions that Claimant informed them and his doctors of his right shoulder injury. The same can be said regarding Dr. Miller. In fact, Claimant may well have suffered a right shoulder injury and reported the same. However, when their testimony is compared to the entirety of the record, that testimony must be given less weight than that of Dr. Fotheringham, the records of Bear River Family Medicine, and Dr. Bitner.

57. The Referee finds that Claimant has failed to prove that he injured his right shoulder in an industrial accident on February 19, 2014.

58. All remaining issues are moot.

#### **CONCLUSIONS OF LAW**

1. Claimant had failed to prove he suffered an accident causing an injury to his right shoulder on February 14, 2014.

2. All remaining 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 9<sup>th</sup> day of May, 2017.

INDUSTRIAL COMMISSION

\_\_\_\_\_/s/\_\_\_\_\_  
Michael E. Powers, Referee

## CERTIFICATE OF SERVICE

I hereby certify that on the 26<sup>th</sup> day of May, 2017, 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:

ALBERT MATSUURA  
PO BOX 2196  
POCATELLO ID 83206-2196

STEVEN R FULLER  
PO BOX 191  
PRESTON ID 83263

\_\_\_\_\_/s/\_\_\_\_\_

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

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Claimant,

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CIRCLE 7 RANCH, INC.,

Employer,

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IDAHO STATE INSURANCE FUND,

Surety,

Defendants.

**IC 2014-005967**

**ORDER**

Filed May 26, 2017

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Pursuant to Idaho Code § 72-717, Referee Michael E. Powers 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 recommendation 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 had failed to prove he suffered an accident causing an injury to his right shoulder on February 14, 2014.

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 26<sup>th</sup> day of May, 2017.

INDUSTRIAL COMMISSION

\_\_\_\_\_/s/\_\_\_\_\_  
Thomas E. Limbaugh, Chairman

\_\_\_\_\_/s/\_\_\_\_\_  
Thomas P. Baskin, Commissioner

\_\_\_\_\_/s/\_\_\_\_\_  
R. D. Maynard, Commissioner

ATTEST:  
\_\_\_\_\_/s/\_\_\_\_\_  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the 26<sup>th</sup> day of May 2017, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

ALBERT MATSUURA  
PO BOX 2196  
POCATELLO ID 83206-2196

STEVEN R FULLER  
PO BOX 191  
PRESTON ID 83263

\_\_\_\_\_/s/\_\_\_\_\_