

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

STEVE PAULSON,

Claimant,

v.

STATE HOSPITAL NORTH,
DEPARTMENT OF HEALTH & WELFARE,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,

Defendants.

IC 2016-005756

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

Filed 12/19/17

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 Lewiston on May 16, 2017. Claimant appeared *pro se*. Mark T. Monson of Moscow represented Employer/Surety (Employer). Oral and documentary evidence was presented. No post-hearing depositions were taken. The parties submitted post-hearing briefs and this matter is ready for decision.

ISSUES

The issues to be decided as a result of the hearing are:

1. Whether Claimant is entitled to medical care pursuant to Idaho Code § 72-432; and
2. Whether Claimant is entitled to total temporary disability (TTD) benefits.

Employer has added the issues of Claimant's entitlement to permanent partial impairment and permanent partial disability benefits. However, these are not issues raised by Claimant and will not be

decided herein. Claimant seems to make an argument that he is entitled to pain and suffering. If that is the case, that issue will not be decided as no such remedy is provided for in Idaho Workers' Compensation statutes.

CONTENTIONS OF THE PARTIES

Claimant contends that he suffered an adverse reaction to an Employer-sponsored flu shot and is entitled to medical and TTD benefits. Employer contends that Claimant has failed to produce medical evidence establishing a connection between his flu shot and any compensable injury and Employer is not liable for any benefits claimed.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant presented at the hearing.
2. Claimant's Exhibits (CE) 1-4 admitted at the hearing.
3. Employer's Exhibits (EE) pages 1-30 admitted at the hearing.

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. At all times relevant hereto, Claimant was employed as a registered nurse at State Hospital North in Orofino. On October 31, 2015, Claimant received an Employer-sponsored flu shot at Employer's facility that he contends resulted in an allergic reaction:

Well, in a nutshell, there are a certain percentage of vaccines that result in adverse reaction [sic]. I don't know what the percentage is, but there are. And the method of, you know, the injury from the needle is - - I talked in-depth to Dr. Koontz about it, the medical director at State Hospital North. And he gave me four options of what really occurred: Retrograde axonal transport, autoimmune self-antigen attack, allergic immune response, or a general lidocaine mediated malaise.

HT, p. 5.

2. When Claimant woke up the morning after his flu shot, he could not move his left arm and had pain radiating into his back and up into neck as well as pain at the injection site. Claimant missed no work and reported his adverse reaction to the medical director who told him to report his problem to the Center for Disease Control, which Claimant did.

3. Over the next few weeks, Claimant's back and neck pain resolved, but the range of motion in his left shoulder deteriorated to the point that he sought medical attention.

4. Claimant saw Tammy Miller, NP-C at Clearwater Valley Medical Clinic on February 3, 2016. He reported a history consistent with the above. Claimant told Ms. Miller, "... he has talked with his supervisor about this as a work injury." EE, p. 6. Even though Claimant informed Ms. Miller of the flu shot and his reaction thereto, she nonetheless suspected tendinitis or bursitis¹ and prescribed physical therapy.

5. Claimant returned to Ms. Miller on March 25, 2016, and was provided with a note to Employer that he was not to perform "violent takedowns." Claimant had not yet started physical therapy pending Surety approval. Ms. Miller noted that physical therapy was "highly advised." *Id.*, p. 13.

6. Because Surety would not authorize physical therapy, Claimant began a home exercise program including passive range of motion. On April 5, 2016, Ms. Miller noted that Claimant's left shoulder pain had resolved and she released Claimant to return to work.²

DISCUSSION AND FURTHER FINDINGS

Idaho Code § 72-432(1) obligates an employer to provide an injured employee reasonable medical care as may be required by his or her physician immediately following an injury and for a

¹ Claimant testified that Ms. Miller diagnosed adverse reaction to flu vaccine at this visit but her office note for this visit does not make any such diagnosis.

² Ms. Miller's note in that regard is interesting in that, as far as this Referee can tell, she never took Claimant off work in the first place. She did send a letter to Employer stating that Claimant should not be doing violent takedowns, but did not take him completely off work.

reasonable time thereafter. 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). “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). No “magic” words are necessary where a physician plainly and unequivocally conveys his or her conviction that events are causally related. *Paulson v. Idaho Forest Industries, Inc*, 99 Idaho 896, 901, 591 P.2d 143, 148 (1979). A physician’s oral testimony is not required in every case, but his or her medical records may be utilized to provide “medical testimony.” *Jones v. Emmett Manor*, 134 Idaho 160, 997 P.2d 621 (2000).

7. The pivotal issue is whether Claimant has proven by medical testimony that his shoulder condition is causally related to his vaccination. Ms. Miller simply repeats what Claimant told her regarding his subjective understanding that he had a compensable adverse reaction to a flu shot. No physician has testified or offered any evidence that there is a causative connection between Claimant’s flu shot and any resultant injury requiring medical treatment. Claimant has presented no medical evidence regarding an exact diagnosis of his left shoulder condition, or how that condition may have been caused by a flu shot.

8. Claimant has failed to prove his entitlement to medical benefits.

9. All other issues are moot.

CONCLUSIONS OF LAW

1. Claimant has failed to prove his entitlement to medical benefits.

2. All other 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 __6th__ day of December, 2017.

INDUSTRIAL COMMISSION

_____/s/_____
Michael E. Powers, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the __19th__ day of __December__, 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:

STEVE PAULSON
213 BLACKBERRY LN
LENORE ID 83541

MARK T MONSON
PO BOX 8456
MOSCOW ID 83843

ge

Gina Espinoza

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STATE HOSPITAL NORTH,
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IC 2016-005756

ORDER

Filed 12/19/17

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 has failed to prove his entitlement to medical benefits.
2. All other issues are moot.

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

DATED this 19th day of December , 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 19th day of December 2017, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

STEVE PAULSON
213 BLACKBERRY LN
LENORE ID 83541

MARK T MONSON
PO BOX 8456
MOSCOW ID 83843

ge

Gina Espinosa