

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

ERIC ZOLLINGER,

Claimant,

v.

IDAHO STEEL PRODUCTS, INC,

Employer,

and

TRAVELERS CASUALTY AND SURETY
COMPANY,

Surety, Defendants.

IC 2018-016466

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

FILED
DEC 10 2021
INDUSTRIAL COMMISSION

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Sonnet Robinson. In lieu of hearing, the parties submitted stipulated facts. Claimant, Eric Zollinger, was represented by Ryan Farnsworth of Idaho Falls. Scott Wigle of Boise represented Defendants. The matter came under advisement on November 23, 2021, and is ready for decision.

ISSUE

The sole issue to be decided is whether the injury to Claimant's tooth #12 was caused by the February 1, 2017 industrial accident.

CONTENTIONS OF THE PARTIES

Claimant contends his injury was caused by the industrial accident and offers Claimant's treating physician, Dr. Dansie's, opinion. Claimant argues Dr. Dansie's opinion is superior as the treating physician.

FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION - 1

Defendants argue Claimant's alleged injury to tooth #12 is pre-existing in nature and offer Dr. Savitske's opinion to support their argument.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. Stipulated facts;
3. Attached exhibits 1-6.

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

STIPULATED FACTS

1. Claimant Eric Zollinger was born April 18, 1958 and is currently 63 years of age. He resides in Menan, Idaho with his wife Diana Zollinger.

2. Claimant has been employed by Defendant Idaho Steel Products, Inc. of Idaho Falls since 1977. At [all] times relevant, he worked for the company as a Facilities Manager/Safety Director.

3. On February 1, 2017 Claimant suffered an accident and injury in the course and scope of his employment. He was working on the Employer's premises and had been putting an extension cord under a bay door. He had reached down to pick up the cord to plug it in, then rose up and turned. In the process he walked into a rack of a Sky-Track, (similar to the tines of a forklift) striking his face on the rack.

4. The accident resulted in injury to Claimant's mouth and teeth. The accident was promptly reported and there was no question about the occurrence of the accident and injury.

5. A First Report of Injury or Illness (Form 1) was timely prepared and submitted to

the Industrial Commission and to the Surety. A true and correct copy of said report is attached as Exhibit 1.

6. Claimant's workers compensation claim was accepted by the Employer and Surety.

7. Following the accident and injury Claimant was treated by his dentist, Ben Dansie DMD of Dansie Dental in Rigby Idaho.

8. Claimant saw Dr. Dansie on the date of the accident, February 1, 2017. Prior to the accident Claimant had a dental bridge between three upper teeth, numbers 9 through 11. See the attached Dental Number Chart. Exhibit 2.

9. When Claimant saw Dr. Dansie on the date of the accident he was complaining that it felt as though the accident had loosened the bridge and "knocked his jaw and teeth weird." See the records of Dr. Dansie, attached hereto as Exhibit 3.

10. After examining Claimant, Dr. Dansie determined that he wanted Claimant's mouth to have some time to heal before he attempted to take the bridge off. Claimant was given some medication and asked to follow up in a few days.

11. Claimant returned to Dr. Dansie the following day, February 2, 2017, indicating to the doctor that he felt as though his teeth were not aligned correctly. Dr. Dansie removed the bridge between number 9 and number 11 and found that both of those teeth had been broken at the gum line. It was determined that the best approach was to extract those two teeth and place implants in place of number 9 and number 11 and then redo the bridge to span between those teeth. Teeth 9 and 11 were extracted and the process of replacing those teeth with implants was started with the installation of posts for the eventual implants. This process was expected to take several months to complete. It was anticipated that the process would be completed in October 2017.

12. The proposed dental work contemplating the replacement of teeth 9 and 11 with

implants and reconstruction of the bridge was authorized by Surety.

13. Claimant returned to Dr. Dansie on August 30 2017 with complaints about tooth number 12, adjacent to the area where the bridge had been removed and implants were being placed. X-rays were taken and Dr. Dansie noted that the tooth “has a spical [sic-apical] abscess infection and has a fistula on the B tissue.” He noted that he suspected tooth number 12 had been damaged in the accident but had not been broken off at the time of the accident and was now manifesting itself. He recommended that tooth number 12 also be extracted and replaced with an implant.

14. In November 2017 crowns were placed on teeth numbers 9 and 11 and the bridge between those teeth was replaced, completing the work that had originally been contemplated.

15. In early December 2017 the claims adjuster communicated with Claimant to determine whether the dental work had been completed. She learned from Claimant that an additional tooth (number 12) was going to be replaced with an implant and that the dentist believed that this was related to the industrial accident. Claimant was advised that the Surety would need to review the situation and ask[ed] that he have the dentist send her his report. (See the excerpts from adjuster’s claims notes, Exhibit 4).

16. In response Dr. Dansie corresponded with the adjustor expressing his opinion that tooth number 12 had been injured in the industrial accident.

17. Subsequently, the adjuster sent Claimant’s dental records to Nadent, a dental trauma review service for an opinion as to whether the need for replacement of tooth number 12 was related to the industrial accident. Claimant’s dental records were reviewed by Daniel Savitske, D.D.S., who authored a report dated March 10, 2018 expressing his opinion that the need for

replacement of tooth number 12 was not related causally to the industrial accident but instead to prior problems with the tooth as demonstrated on earlier x-rays. (Exhibit 5).

18. The report of Dr. Savitske was forwarded to Dr. Dansie for review and comment. He authored a letter dated May 15, 2018 indicating that he continued to be of the opinion that the involved tooth was damaged in the industrial accident.

19. Dr. Dansie's response was provided to Dr. Savitske, who continues to be of the opinion that there is no causal relationship between the industrial accident and the need for replacement of tooth number 12.

20. The Surety has paid for the treatment provided by Dr. Dansie with regard to tooth number 9 and 11 and the adjoining bridge, payments totaling \$6,505. The Surety has not paid for the replacement of tooth number 12.

21. No compensable time loss has been incurred as a result of the industrial accident.

22. Records and films of prior dental treatment by Dr. Scott Allen are included as Exhibit 6.

23. The foregoing stipulated facts are accepted and adopted by the Commission.

FURTHER FINDINGS OF FACT

24. Ben Dansie, DMD, was Claimant's treating physician for this injury and authored two causation letters. The first letter is undated and recounts the accident and other treatment. Dr. Dansie then writes regarding tooth #12 at the time of his initial exam:

At this time #12 was not broken even though that side of his mouth was hit. The 1st pa [sic] shows no problems with #12[,] it had a root canal and crown that was done in the past. #12 started having problems on 08-30-2017 while #9-11 were healing. The pa [sic] shows apical infection.

The tooth #12 was extracted on 9-12-2017[.] [T]he infection was manifested on the vertical root surface and our opinion was the tooth had a vertical root fracture probably [sic] caused from the trauma on 02-01-2017 as it was stable before that time.

JE 3:22.

25. Surety sent dental records, claims forms, X-rays, and print color photos to Daniel Savitske DDS, FAGD, for a second opinion. JE 5:77. Dr. Savitske reviewed X-rays from January 24, 2017, August 30, 2017, and a panoramic X-ray dated October 6, 2014. *Id.* at 78.

26. On March 10, 2018, Dr. Savistke wrote that he could not relate Claimant's #12 tooth injury to his industrial accident. Dr. Savistke's opinion was that the August 2017 X-rays showed prior unsuccessful root canal therapy and a bony lesion associated with chronic infection. Dr. Savistke wrote that the bony defect caused by the chronic infection on the 2017 X-ray appeared in the 2014 X-rays, and that "it would be unlikely to be able to resolve this infection for long term retention of the tooth." *Id.* at 78. In other words, Claimant was going to lose this tooth regardless of the accident due to pre-existing issues relating to his prior unsuccessful root canal therapy.

27. On April 9, 2018, Dr. Savistke updated his opinion to respond to Dr. Dansie's causation letter. JE 5:80. Dr. Savistke disagreed with Dr. Dansie as follows:

As per my previous review of this claim, Tooth #12 exhibited "problems" as far back as 10/6/14 as observed by the bony defect associated with the root of the mouth. This defect was likely the result of the inadequate and unsuccessful prior root canal therapy. Due to the long posts in the tooth, re-treatment of the root canal therapy would not be a reasonable option and removal of the tooth would be the most likely treatment to resolve the infection that caused the bony defect. Contrary to Dr. Dansie's statement, there are no X-rays dated 2/2/17 or 4/10/17 that depict the root of this tooth in records presented by the previous review or this review. I continue to recommend not accepting this claim for payment of services related to tooth #12. There is no condition or treatment needed after the accident that was not already present regarding this tooth.

Id.

28. On May 15, 2018, Dr. Dansie responded to Dr. Savistke's opinion. JE 3:24. Dr. Dansie agreed that Claimant had pre-existing chronic radial lucency at the apex of tooth #12, but no clinical signs of an active infection, nor was it systematic prior to the industrial accident.

At the time of Dr. Dansie's initial evaluation on February 2, the tooth was not "visually" broken and there were no signs of infection, so no further X-rays of tooth #12 were taken at that time. Dr. Dansie reiterated his opinion that Claimant's #12 tooth fracture was caused by trauma from the accident because it manifested "so soon" after the accident happened. *Id.*

DISCUSSION

29. Idaho Code § 72-432(1) requires an employer to provide an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital service, medicines, crutches and apparatus, as may be reasonably required by the employee's physician or needed immediately after an injury or manifestation of an occupational disease, and for a reasonable time thereafter.

30. A worker's compensation claimant has the burden of proving, by a preponderance of the evidence, all the facts essential to recovery. *Evans v. Hara's, Inc.*, 123 Idaho 473, 849 P.2d 934 (1993). Claimant must adduce medical proof in support of his claim, and he must prove his claim to a reasonable degree of medical probability. *Dean v. Dravo Corporation*, 95 Idaho 558, 511 P.2d 1334 (1973).

31. While a temporal relationship is always required to support a finding of causation between an accident and the injury, the existence of a temporal relationship alone, in the absence of substantive medical evidence establishing causation, is insufficient to satisfy Claimant's burden of proof. *Swain v. Data Dispatch, Inc.* IIC 2005-528388 (Issued February 24, 2012). The Industrial Commission, as the fact finder, is free to determine the weight to be given to the testimony of a medical expert. *Rivas v. K.C. Logging*, 134 Idaho 603, 608, 7 P.3d 212, 217 (2000). "When deciding the weight to be given an expert opinion, the Commission can certainly consider whether the expert's reasoning and methodology has been sufficiently disclosed and whether or not the

opinion takes into consideration all relevant facts.” *Eacret v. Clearwater Forest Industries*, 136 Idaho 733, 737, 40 P.3d 91, 95 (2002).

32. Claimant has not met his burden of showing to a degree of medical probability that his injury to tooth #12 is related to his industrial accident. Claimant’s medical proof is inadequate. Dr. Dansie’s first opinion was well-refuted by Dr. Savistke’s opinion, and his second opinion is based solely on a temporal relationship.

33. Dr. Dansie initially wrote that #12 appeared fine on X-rays at the time of his February exam, but by August, it had developed an infection and showed a vertical root fracture. However, Dr. Savistke pointed out: “Contrary to Dr. Dansie’s statement, there are no X-rays dated 2/2/17 or 4/10/17 that depict the root of this tooth in records presented by the previous review or this review.” JE 5:80.

34. In response to his misstatement, Dr. Dansie changed his opinion and stated that the tooth was not “visually” broken during his February inspection and showed no obvious signs of infection at the time. He admitted that no X-rays of tooth #12 were taken and that Claimant had pre-existing chronic radial lucency present in the tooth. Dr. Dansie made no attempt to refute or otherwise discount Dr. Savistke’s theory that Claimant’s issue with tooth #12 was due to an infection caused by Claimant’s prior root canal on that same tooth.

35. Dr. Dansie maintained his opinion that the #12 tooth injury was related to the accident due solely to a temporal relationship to the accident: “Dr[.] Dansie believes this fracture was from the accident on February 2, 2017 as it has manifested so soon after the accident happened.” JE 3:37. A temporal relationship alone is insufficient to prove causation.

36. Dr. Dansie admitted there were no visual defects or signs of infection for tooth #12 at the time of February exam, admitted there was pre-existing chronic radial lucency in that same

tooth, and offered no other support for his opinion that the injury was caused by the accident other than a temporal relationship. Claimant has failed to a prove to a degree of medical probability that the injury to tooth #12 was related to the accident.

CONCLUSION OF LAW

1. Claimant has failed to prove the injuries to tooth #12 were caused by the industrial accident.

RECOMMENDATION

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

DATED this 6th day of December, 2021.

INDUSTRIAL COMMISSION

Sonnet Robinson

Sonnet Robinson, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of December, 2021, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION** was served by *E-mail transmission* and regular United States Mail upon each of the following:

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Hina Espinoza

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ORDER

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Pursuant to Idaho Code § 72-717, Referee Sonnet Robinson submitted the record in the above-entitled matter, together with her recommended findings of fact and conclusion 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 conclusion of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant has failed to prove the injuries to tooth #12 were caused by the industrial accident.

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

DATED this 10th day of December, 2021.

INDUSTRIAL COMMISSION



Aaron White, Chairman

Thomas E. Limbaugh, Commissioner

Thomas P. Baskin, Commissioner

ATTEST:

Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of December 2021, a true and correct copy of the foregoing **ORDER** was served by *E-mail transmission* and regular United States Mail upon each of the following:

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