

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JANINE SKENANDORE,

Claimant,

v.

ALLSTATE INSURANCE COMPANY,

Employer,

and

ARCH INSURANCE COMPANY,

Surety, Defendants.

IC 2017-023827

IC 2017-027956

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

FILED

SEP 30 2022

INDUSTRIAL COMMISSION

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Douglas Donohue, who conducted a hearing on June 29, 2021. Claimant appeared in person and was *pro se*. Matt Pappas of Boise represented Defendants. The parties presented oral and documentary evidence. A post-hearing deposition was taken. The matter came under advisement on April 22, 2022 and is ready for decision.

ISSUES¹

The issues to be decided and clarified at hearing are:

1. Whether Claimant suffered an injury caused by an accident arising out of and in the course of employment.
2. Whether the conditions for which Claimant seeks benefits was caused by the alleged industrial accident.

¹ Defendants did not argue notice and it will not be discussed herein.

3. Whether Claimant suffers from a compensable occupational disease.
4. Whether Claimant's condition is due, in whole or in part, to a subsequent intervening cause.
5. Whether and to what extent Claimant is entitled to the following benefits:
 - a. Temporary partial and/or temporary total disability benefits (TPD/TTD);
 - b. Permanent partial impairment (PPI);
 - c. Disability in excess of impairment; and
 - d. Medical care.
6. Whether apportionment for a pre-existing condition pursuant to Idaho Code § 72-406 is appropriate.

CONTENTIONS OF THE PARTIES

Claimant contends she suffered a new occurrence of bilateral carpal tunnel syndrome and eye strain requiring prescription glasses caused by her regular duties at Employer. Claimant was an excellent employee who promptly reported her injuries to her team lead, who declined to report her injuries to the Industrial Commission.

Defendants argue Claimant cannot prove her eye strain is related to an accident or anything other than the natural age-related degeneration in her eyes. Claimant's bilateral carpal tunnel syndrome is related to her pre-existing bilateral carpal tunnel syndrome and other chronic conditions, and not caused by the conditions of her employment.

Claimant did not file a responsive brief.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;

2. The pre-hearing deposition of Claimant, taken September 27, 2018;
3. The testimony of Claimant taken at hearing;
4. Claimant's Exhibits, A-C;
5. Defendants' Exhibits 1-11;
6. The post-hearing deposition of Robert J. Lee, M.D. taken by Defendants.

After having considered the above evidence and the arguments 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 born in Pocatello, Idaho on October 3, 1960.
2. Claimant underwent bilateral carpal tunnel releases in the early 1990s.
3. Claimant was diagnosed with Type II diabetes in 2001.
4. On March 17, 2003 Claimant was prescribed reading glasses and was diagnosed with presbyopia at the Fort Hall Indian Health Services. Claimant's eyes were regularly examined thereafter by Christopher Nield, O.D. with an ongoing prescription for over-the-counter glasses.
5. Employer hired Claimant in 2013 and she worked across several departments taking calls, typing notes, and helping customers.
6. Claimant testified she told her team lead, Anthony Nelson, of her hand problems and eye strain in October 2016.
7. The first report of injury reflects the Employer was notified on June 7, 2017 of Claimant's hand complaints with an injury date of May 31, 2017.

2017 Medical Treatment

8. Claimant presented to Vernon Esplin, M.D. on August 22. Claimant reported carpal tunnel releases over 20 years ago and numbness and pain in her hands similar to what she

experienced then. Claimant relayed that her work at the call center seemed to aggravate her hands. Dr. Esplin diagnosed probable recurrent carpal tunnel disease, and possible Guyon's canal compression. Dr. Esplin recommended a nerve conduction study and wrote to Surety that Claimant's condition was "maybe" related to her work because repetitive activities could contribute to her condition, but most causes were idiopathic.

9. On September 30 Claimant fell on her way into work and injured her left ankle, right knee, and left arm. This claim was accepted, Claimant was treated, and released back to work without restrictions.

10. Stephen Vincent, M.D. performed the nerve conduction study on October 12. Dr. Vincent wrote Claimant's results were consistent with mild carpal tunnel syndrome bilaterally and that all other results were normal.

11. Claimant returned to Dr. Esplin on November 7 who injected her left and right carpal tunnel with Lidocaine. At follow-up Claimant reported 50% improvement on her left side and 60% on her right side, but Claimant remained symptomatic with numbness and sore, achy tightness in her hands. Claimant elected surgery and Dr. Esplin requested authorization from Surety. Dr. Esplin wrote in his request that Claimant's work significantly contributed to her symptoms worsening.

12. On December 6 Claimant was examined by Michael Flandro, O.D. Claimant reported that she suffered from computer eye strain and headaches at work, and that her headaches started after about two to three hours of computer use. She relayed she had some improvement with reading glasses, which had faded. Under the heading entitled "Diagnosis/Assessment/Plan" Dr. Flandro wrote "blur eye strain and headaches from computer work. Hyperopia [sic] [indecipherable] Hyperopia [sic]/Presbyopia. Ocular Health: Normal. Rx below for computer

glasses.” Ex. 5 at p. 517.² Dr. Flandro informed Claimant that her eye conditions were “due to age.” As Claimant testified:

Q. [BY MR. PAPPAS] And you went to go see a Dr. Flandro here in town?

A. Uh-huh.

Q. And he did an eye exam and eventually gave you a prescription for glasses?

A. Uh-huh.

Q. Do you recall specifically him saying one way or the other why your eyes were in the condition that they were?

A. He said it was due to age.

Tr. 28:21-29:5.

2018 Treatment

13. Claimant was referred for a forensic examination with Robert Lee, M.D. an orthopedic surgeon on February 16. Claimant discussed her prior bilateral carpal tunnel release surgeries, and that she currently was experiencing pain, numbness, and a cold sensation through both hands. Dr. Lee reviewed records, conducted an examination, and diagnosed Claimant with bilateral mild carpal tunnel syndrome, unrelated to her work on a more probable than not basis. Dr. Lee wrote Claimant’s exam findings did not correlate well to her complaints and that available medical literature demonstrated no consistent evidence that computer use and carpal tunnel syndrome were related. Dr. Lee agreed Claimant required treatment, was not at MMI, but that her condition was unrelated to her job on a more probable than not basis. Dr. Lee elaborated that Claimant’s diabetes, gender, BMI, age, and prior carpal tunnel release were all predisposing factors to recurrent bilateral carpal tunnel syndrome.

² The parties’ initial submission of Ex. 5 at p. 517 contained a photocopying error that rendered Dr. Flandro’s handwritten note illegible. Upon request by the Commission, the parties submitted a more legible copy of this exhibit.

14. On March 15 Dr. Esplin responded to Dr. Lee's report and agreed with Dr. Lee's assessment.

15. Claimant was deposed on September 27, 2018. Claimant reported that in the early 1990s she had numbness in her hands for about six months and then she had bilateral carpal tunnel releases to treat her hands falling asleep. After her surgery, Claimant underwent physical therapy and splinting, but remembered recovering well and did not recall any restrictions related to that surgery. Claimant explained that her hands had started to go numb in June of 2016 and that she reported it to her supervisor in October of 2016. She also reported her eye strain around the same time.

16. Dr. Lee was deposed on December 27, 2021. Dr. Lee testified consistent with his written opinion that Claimant's bilateral carpal tunnel syndrome was not related to her work.

17. Claimant had regular eye exams with Dr. Nield on May 21, 2018, and April 3, 2019. Neither visit documents any eye disease, injury, or condition related to Claimant's work, only Claimant's ongoing diagnoses of presbyopia.

18. Claimant underwent right sided carpal tunnel release surgery. Claimant reported the surgery relieved her pain, but she had not yet had her left sided carpal tunnel release. Claimant testified her knee and shoulder conditions had resolved.

19. Claimant testified credibly and had a poised, understated demeanor.

DISCUSSION AND FURTHER FINDINGS

20. The provisions of the Workers' Compensation Law are to be liberally construed in favor of the employee. *Haldiman v. American Fine Foods*, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990). The humane purposes which it serves leave no room for narrow, technical construction. *Ogden v. Thompson*, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996). Facts, however, need not be

construed liberally in favor of the worker when evidence is conflicting. *Aldrich v. Lamb-Weston, Inc.*, 122 Idaho 361, 363, 834 P.2d 878, 880 (1992). 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, 479, 849 P.2d 934 (1993). Uncontradicted testimony of a credible witness must be accepted as true, unless that testimony is inherently improbable, or rendered so by facts and circumstances, or is impeached. *Pierstorff v. Gray's Auto Shop*, 58 Idaho 438, 447–48, 74 P.2d 171, 175 (1937).

21. Claimant seeks medical care for her bilateral carpal tunnel syndrome and reimbursement for her prescription glasses. Claimant testified at hearing that she had no residuals from her September 2017 fall and was not seeking any benefits related to that claim.

22. A claimant bears the burden of proving that the condition for which compensation is sought is causally related to an industrial accident. *Callantine v Blue Ribbon Supply*, 103 Idaho 734, 653 P.2d 455 (1982). Further, there must be evidence of medical opinion—by way of physician's testimony or written medical record—supporting the claim for compensation to a reasonable degree of medical probability. No special formula is necessary when medical opinion evidence plainly and unequivocally conveys a doctor's conviction that the events of an industrial accident and injury are causally related. *Jensen v. City of Pocatello*, 135 Idaho 406, 18 P.3d 211 (2000), *Paulson v. Idaho Forest Industries, Inc.*, 99 Idaho 896, 591 P.2d 143 (1979); *Roberts v. Kit Manufacturing Company, Inc.*, 124 Idaho 946, 866 P.2d 969 (1993). A claimant is required to establish a probable, not merely a possible, connection between cause and effect to support his or her contention. *Dean v. Dravo Corporation*, 95 Idaho 558, 560-61, 511 P.2d 1334, 1336-37 (1973).

23. Regarding Claimant's bilateral carpal tunnel syndrome, no physician has opined that Claimant's work was the cause of her condition either via an accident or as an occupational

disease. Claimant's treating physician, Dr. Esplin, agreed with Dr. Lee's report wherein he stated her condition was not related to her work on a more probable than not basis. Claimant has offered no other medical opinion or proof relating her condition to her work. Without medical evidence linking Claimant's condition to her work, Claimant cannot prevail.

24. Regarding Claimant's eye strain and headache, Dr. Flandro recorded that Claimant's presenting complaint was "computer eye strain and headaches at work." Ex. 5 at p. 516. Under a separate heading entitled "Diagnosis/Assessment/Plan", Dr. Flandro wrote "blur eye strain and headaches from computer work. Hyperopea [sic] [indecipherable] Hyperopea [sic]/Presbyopia. Occular Health: Normal. Rx below for computer glasses." Ex. 5 at p. 517. Dr. Flandro was not deposed as part of this proceeding. However, it is clear that the above quoted note, while diagnosing Claimant with "hyperopea" and "presbyopia" does not relate those diagnoses in any way to Claimant's work. Indeed, other eye care records generated before Claimant commenced work for Employer refer to the same diagnoses. Ex. 3. This leaves for consideration Dr. Flandro's statement that Claimant suffers from "blur eye strain and headaches from computer work" as part of his "Diagnosis/Assessment/Plan." In so stating, it is not clear whether Dr. Flandro was rendering a medical opinion that Claimant suffered from eye strain and headaches *caused* by Claimant's employment, or whether he was simply reiterating Claimant's subjective sense of the cause of her problems. The latter seems more likely, particularly in view of the similarity between Claimant's subjective history to Dr. Flandro, and the first part of his "Diagnosis/Assessment/Plan." More important in this regard is Claimant's admission at hearing that Dr. Flandro told her that her eye condition was "due to age." Tr. 29:2-5. Finally, Claimant was seen for treatment of her eye problems by Dr. Nield on a number of occasions subsequent to December 6, 2017. In none of those records is there any reference to a work-related cause of Claimant's eye problems. Ex. 3 at pp.

505-512. It is the Claimant who bears the burden of establishing medical causation in this matter. On the evidence presented, this Referee cannot conclude that Claimant has established by competent medical authority that any of the conditions referenced in Dr. Flandro's "Diagnosis/Assessment/Plan" of December 6, 2017, are more likely than not causally related to her employment.

25. Claimant has failed to prove her bilateral carpal tunnel syndrome or eye strain was caused by her work, either via an accident/injury or as an occupational disease.

CONCLUSIONS OF LAW

1. Claimant has failed to prove her bilateral carpal tunnel syndrome or eye strain was caused by her work, either via an accident/injury or as an occupational disease.


2. All other issues are moot.

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 16th day of August, 2022.

INDUSTRIAL COMMISSION



Douglas A. Donohue, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of September, 2022, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail and Electronic Mail upon each of the following:

JANINE SKENANDORE
180 HAZELNUT LANE
POCATELLO, ID 83204
janineskenandore@yahoo.com

MATTHEW O. PAPPAS
PO BOX 7426
BOISE, ID 83707
mpappas@ajhlaw.com
cfarnworth@ajhlaw.com

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ORDER

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INDUSTRIAL COMMISSION

Pursuant to Idaho Code § 72-717, Referee Doug Donohue 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 recommendations 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 her bilateral carpal tunnel syndrome or eye strain was caused by her work, either via an accident/injury or as an occupational disease.
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 30th day of September, 2022.



INDUSTRIAL COMMISSION



Aaron White, Chairman



Thomas E. Limbaugh, Commissioner



Thomas P. Baskin, Commissioner

ATTEST:



Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of September, 2022, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail and Electronic Mail upon each of the following:

JANINE SKENANDORE
180 HAZELNUT LANE
POCATELLO, ID 83204
janineskenandore@yahoo.com

MATTHEW O. PAPPAS
PO BOX 7426
BOISE, ID 83707
mpappas@ajhlaw.com
cfarnworth@ajhlaw.com

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ORDER - 2