

9-22-2010

Fife v. Home Depot, Inc. Agency's Record Dckt. 37894

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LAW CLERK

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

FLOYD BLAINE FIFE,)
)
 Claimant/Appellant,)
)
 v.)
)
 THE HOME DEPOT, INC., Employer,)
 and NATIONAL UNION FIRE)
 INSURANCE COMPANY OF)
 PITTSBURGH, Surety,)
)
 Defendants/Respondent.)
 _____)

SUPREME COURT NO. 37894

AGENCY RECORD

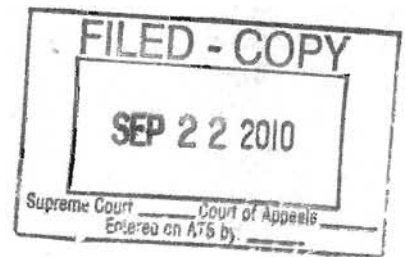
BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

Attorney for Appellant

JAMES D HOLMAN
2635 CHANNING WAY
IDAHO FALLS ID 83404

Attorney for Respondent

W SCOTT WIGLE
P O BOX 1007
BOISE ID 83701



AGENCY RECORD – FIFE – SC# 37894 - 1

37894

COPY

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

FLOYD BLAINE FIFE,)
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 Claimant/Appellant,)
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 v.)
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 THE HOME DEPOT, INC., Employer,)
 and NATIONAL UNION FIRE)
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 PITTSBURGH, Surety,)
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 Defendants/Respondent.)
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SUPREME COURT NO. 37894

AGENCY RECORD

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

Attorney for Appellant

JAMES D HOLMAN
2635 CHANNING WAY
IDAHO FALLS ID 83404

Attorney for Respondent

W SCOTT WIGLE
P O BOX 1007
BOISE ID 83701

COPY

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LIST OF EXHIBITS

Reporter's Transcript taken November 5, 2009

Claimant's Exhibits:

1. Records of Family Emergency Center East and Community Care 8/24/04-6/23/08
2. Records of Idaho Spine Center, Grant Walker, M.D. 3/3/08-3/11/08
3. Records of Aspen Home Health/Integricare 3/22/08-5/20/08
4. Bingham Memorial Emergency Room record 3/22/08
5. Records of Bingham Memorial Hospital 3/3/08-3/26/08
6. Medical Billing Summary
7. Radiology report, mri and Exercise Stress Test Evaluation Report 3/5/08-3/6/08
8. Interventional Radiology Report, David Shelley, M.D. 7/22/08
9. Grant Walker, M.D. New Patient History and Physical 3/8/08 and Operative Report 3/11/08
10. Interventional Radiology Report and Operative Report, deep venous thrombosis, 3/11/08-3/19/08 and follow up
11. Bingham Memorial Hospital E.R. record 3/22/08
12. Community Care records 2/25/08
13. Grant Walker, M.D. 1/26/09 office note
14. David Shelley, M.D. follow up consultations 4/14/08, 5/2/08 and 7/18/08
15. Grant Walker, M.D. records 3/31/08-6/2/08
16. Bingham Memorial Hospital Patient Account Detail
17. Idaho Spine Center Transaction History 6/23/08
18. Pocatello Radiology Associates billing statement 9/22/08
19. Pay Stub 3/13/09
20. Blaine Fife list of out-of-pocket expenses
21. Blaine Fife Statement of how injury occurred
22. Grant Walker, M.D. impairment rating
23. Notice of Claim Status 7/3/08
24. Deposition Richard Knoebel, M.D.
25. Deposition Grant E. Walker, M.D. **(listed as additional document)**
26. Walgreens Pharmacy billing statements and summary of medication bills

Defendants' Exhibits – Liberty Northwest Insurance Corporation:

- A. Community Care records
- B. Grant Walker, M.D. records
- C. Bingham Memorial Hospital records
- D. Bingham Memorial Hospital ER records (post-op bleeding)
- E. Integricare of Eastern Idaho records

- F. Katy Searle, NP records
- G. Richard Knoebel, M.D. IME report and CV
- H. Gary Walker, M.D. IME report
- I. The Home Depot Personnel records
- J. Sedgwick CMS claim file information
- K. Claimant's deposition
- L. Blue Cross/Blue Shield of Georgia payment records (supplemental exhibit)

Additional Documents:

1. Deposition of Richard Knoebel, M.D. taken October 1, 2009 (**Claimant's exhibit 24**)
2. Deposition of Grant Walker, M.D. taken November 2, 2009
3. Deposition of Lene O'Dell taken November 24, 2009

PHYSICIANS WHO TREATED CLAIMANT (NAME AND ADDRESS)

Grant E. Walker, M.D., Idaho Spine Center, 131 N. Oak St., Blackfoot, ID 83221

WHAT MEDICAL COSTS HAVE YOU INCURRED TO DATE? \$724,783.70

WHAT MEDICAL COSTS HAS YOUR EMPLOYER PAID, IF ANY? \$

WHAT MEDICAL COSTS HAVE YOU PAID, IF ANY? \$6,000.00

I AM INTERESTED IN MEDIATING THIS CLAIM, IF THE OTHER PARTIES AGREE.

YES NO

DATE

January 30, 2009

SIGNATURE OF CLAIMANT OR ATTORNEY

TYPE OR PRINT NAME:

James D. Holman
James D. Holman

PLEASE ANSWER THE SET OF QUESTIONS IMMEDIATELY BELOW
ONLY IF CLAIM IS MADE FOR DEATH BENEFITS

NAME AND SOCIAL SECURITY NUMBER OF PARTY
FILING COMPLAINT

DATE OF DEATH

RELATION TO DECEASED CLAIMANT

WAS FILING PARTY DEPENDENT ON DECEASED?

YES NO

DID FILING PARTY LIVE WITH DECEASED AT TIME OF ACCIDENT?

YES NO

CLAIMANT MUST COMPLETE, SIGN AND DATE THE ATTACHED MEDICAL RELEASE FORM

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of January, 2009, I caused to be served a true and correct copy of the foregoing Complaint upon:

EMPLOYER'S NAME AND ADDRESS

The Home Depot, Inc.
2075 S. Holmes Ave.
Idaho Falls, ID 83404

SURETY'S NAME AND ADDRESS

Sedgwick CMS
PO Box 14543
Lexington, KY 40512-4543

via: personal service of process

regular U.S. Mail

via: personal service of process

regular U.S. Mail

James D. Holman
Signature

James D. Holman
Print or Type Name

NOTICE: An Employer or Insurance Company served with a Complaint must file an Answer on Form I.C. 1003 with the Industrial Commission within 21 days of the date of service as specified on the certificate of mailing to avoid default. If no answer is filed, a Default Award may be entered!

Further information may be obtained from: Industrial Commission, Judicial Division, P.O. Box 83720, Boise, Idaho 83720-0041 (208) 334-6000.

3/10/08

Home Depot – Met Life – Workman's Compensation

On Friday, February 22nd I was working the closing schedule, 12:30 – 9:00.

We were short on associates and there wasn't anyone to help me pull orders. I paged for some help and looked for someone to help me, even for a MOD but there was no response. We had a customer that was waiting at the Service desk for their dryer.

I found the dryer down the isle in Garden. The isle was plugged with a new shipment of appliances that were totally blocking in the dryer. The dryer was also double stacked. 1st I had to move a lot of the appliances out of the way to get to it, then I had to lift it down from on top another dryer. Upon doing this I felt this sharp pain in my back – I thought I had just pulled a muscle in my back.

Later in the night I had to go outside to the outside storage units to get a microwave and then later an LG dryer. It was snowing hard with the wind blowing and cold. I had to go back again and get a 2nd dryer because the first dryer was damaged. It was strenuous pushing the carts in the fresh snow.

The pain from my earlier injury had gotten extremely worse. I went and took some Ibuprophene thing the pain would go away.

Blaine J. [Signature]

Continued

I hadn't reported it at this time because I thought it would go away with a little rubbing, it was late and past time to go home.

I had arranged for Saturday off to go skiing with my kids and grandkids. I was in so much pain that I didn't even buy a ski ticket, I just photographed all of them.

I came into work Sunday but was unable to do any lifting or pull orders. I told some of the management that I had hurt my back on Friday night.

On Monday I did come into work and clocked in but I was in so much pain that I told management I need to go to a Doctor. I went to Community Care where Doctor Thompson took an X-Ray and told me that my lower vertebrae had collapsed and was pinching the nerve. He put me on a 15 pound lifting limitation and told me to go see a Spine Surgeon.

Blaine Leph

Patient Name: Floyd Blaine Fife
Birth Date: [REDACTED]
Address: 651 E 600 N, Firth, ID 83236
Phone Number: 208-346-6152
SSN or Case Number: [REDACTED]

(Provider Use Only)
Medical Record Number: _____
 Pick up Copies Fax Copies # _____
 Mail Copies
ID Confirmed by: _____

AUTHORIZATION FOR DISCLOSURE OF HEALTH INFORMATION

I hereby authorize _____ to disclose health information as specified:
Provider Name – must be specific for each provider

To: _____
Insurance Company/Third Party Administrator/Self Insured Employer/ISIF, their attorneys or patient's attorney

Street Address

City State Zip Code

Purpose or need for data: Worker's Compensation Claim
(e.g. Worker's Compensation Claim)

Information to be disclosed: _____ Date(s) of Hospitalization/Care: February 2008 to present

- Discharge Summary
- History & Physical Exam
- Consultation Reports
- Operative Reports
- Lab
- Pathology
- Radiology Reports
- Entire Record
- Other: Specify _____

I understand that the disclosure may include information relating to (check if applicable):
 AIDS or HIV
 Psychiatric or Mental Health Information
 Drug/Alcohol Abuse Information

I understand that the information to be released may include material that is protected by Federal Law (45 CFR Part 164) and that the information may be subject to redisclosure by the recipient and no longer be protected by the federal regulations. I understand that this authorization may be revoked in writing at any time by notifying the privacy officer, except that revoking the authorization won't apply to information already released in response to this authorization. I understand that the provider will not condition treatment, payment, enrollment, or eligibility for benefits on my signing this authorization. Unless otherwise revoked, this authorization will expire upon resolution of worker's compensation claim. Provider, its employees, officers, copy service contractor, and physicians are hereby released from any legal responsibility or liability for disclosure of the above information to the extent indicated and authorized by me on this form and as outlined in the Notice of Privacy. My signature below authorizes release of all information specified in this authorization. Any questions that I have regarding disclosure may be directed to the privacy officer of the Provider specified above.

Floyd Blaine Fife _____
Signature of Patient Date 1/30/09

Signature of Legal Representative & Relationship to Patient/Authority to Act Date
Barbara Hellekson Bookkeeper _____
Signature of Witness Title Date 1/30/09

ANSWER TO COMPLAINT

I.C. NO. 2008-008636

INJURY DATE: 2/22/08

- The above-named employer or employer/surety responds to Claimant's Complaint by stating:
- The Industrial Special Indemnity Fund responds to the Complaint against the ISIF by stating:

<p>CLAIMANT'S NAME AND ADDRESS</p> <p>Floyd Blaine Fife 651 East 600 North Firth, Idaho 83236 (208) 346-6152</p>	<p>CLAIMANT'S ATTORNEY'S NAME AND ADDRESS</p> <p>James D. Holman Thomsen Stephens Law Offices 2635 Channing Way Idaho Falls, Idaho 83404</p>
<p>EMPLOYER'S NAME AND ADDRESS</p> <p>The Home Depot, Inc. 2075 South Holmes Avenue Idaho Falls, Idaho 83404</p>	<p>WORKERS' COMPENSATION INSURANCE CARRIER'S (NOT ADJUSTOR'S) NAME AND ADDRESS</p> <p>National Union Fire Ins. Co. of Pittsburgh c/o Helmsman Management Co./Liberty Northwest PO Box 7505 Boise, Idaho 83707-1507</p>
<p>ATTORNEY REPRESENTING EMPLOYER/SURETY (NAME AND ADDRESS)</p> <p>W. Scott Wigle BOWEN & BAILEY, LLP PO Box 1007 Boise, Idaho 83702</p>	<p>ATTORNEY REPRESENTING INDUSTRIAL SPECIAL INDEMNITY FUND (NAME AND ADDRESS)</p>

RECEIVED
INDUSTRIAL COMMISSION
2008 MAR 25 1 P 1: 31

IT IS: (Check one)	
Admitted	Denied
Under Investigation	
X	
X	
	X
Not Alleged	
X	
Under Investigation	
X	

1. That the accident or occupational exposure alleged in the Complaint actually occurred on or about the time claimed.
2. That the employer/employee relationship existed.
3. That the parties were subject to the provisions of the Idaho Workers' Compensation Act.
4. That the condition for which benefits are claimed was caused partly _____ entirely _____ by an accident arising out of and in the course of Claimant's employment.
5. That, if an occupational disease is alleged, manifestation of such disease is or was due to the nature of the employment in which the hazards of such disease actually exist, are characteristic of and peculiar to the trade, occupation, process, or employment.
6. That the notice of the accident causing the injury, or notice of the occupational disease, was given to the employer as soon as practical but not later than 60 days after such accident or 60 days of the manifestation of such occupational disease.
7. That the rate of wages claimed is correct. If denied, state the average weekly wage pursuant to Idaho Code, Section 72-419: \$ _____.
8. That the alleged employer was insured or permissibly self-insured under the Idaho Workers' Compensation Act.

9. What benefits, if any, do you concede are due Claimant?

None.

10. State with specificity what matters are in dispute and your reason for denying liability, together with any affirmative defenses.

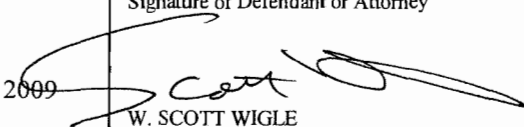
- I. Whether Claimant sustained an injury from an accident arising out of and in the course of his employment;
- II. Whether the need for Claimant's spinal surgery resulted from an industrial accident or pre-existing condition;
- III. Whether Claimant is entitled to medical benefits, temporary disability benefits, permanent physical impairment benefits and permanent partial disability benefits; and,
- IV. Apportionment to pre-existing conditions pursuant to IC §72-406.

Under the Commission rules, you have twenty-one (21) days from the date of service of the Complaint to answer the Complaint. A copy of your Answer must be mailed to the Commission and a copy must be served on all parties or their attorneys by regular U.S. mail or by personal service of process. Unless you deny liability, you should pay immediately the compensation required by law, and not cause the claimant, as well as yourself, the expense of a hearing. All compensation which is concededly due and accrued should be paid. Payments due should not be withheld because a Complaint has been filed. Rule III(D), Judicial Rules of Practice and Procedure under the Idaho Workers' Compensation Law, applies. Complaints against the Industrial Special Indemnity Fund must be filed on Form I.C. 1002.

I AM INTERESTED IN MEDIATING THIS CLAIM, IF THE OTHER PARTIES AGREE. YES ___ NO ___ Defendants will notify the Commission if and when mediation is appropriate.

DO YOU BELIEVE THIS CLAIM PRESENTS A NEW QUESTION OF LAW OR A COMPLICATED SET OF FACTS? IF SO, PLEASE STATE.

NO.

Amount of Compensation paid to date			Dated	Signature of Defendant or Attorney
PPD:	TID:	Medical:		
-0-	-0-	-0-	March 24, 2009	 W. SCOTT WIGLE

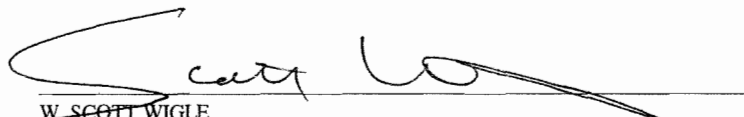
PLEASE COMPLETE

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of March, 2009, I caused to be served a true and correct copy of the foregoing Answer to Complaint upon:

James D. Holman
 Thomsen Stephens Law Offices
 2635 Channing Way
 Idaho Falls, Idaho 83404

- via personal service of process
 regular U.S. mail
 facsimile


 W. SCOTT WIGLE

**AMENDED
ANSWER TO COMPLAINT**

ORIGINAL

I.C. NO. 2008-008636

INJURY DATE:

2/22/08

- The above-named employer or employer/surety responds to Claimant's Complaint by stating:
 The Industrial Special Indemnity Fund responds to the Complaint against the ISIF by stating:

CLAIMANT'S NAME AND ADDRESS Floyd Blaine Fife 651 East 600 North Firth, Idaho 83236 (208) 346-6152	CLAIMANT'S ATTORNEY'S NAME AND ADDRESS James D. Holman Thomsen Stephens Law Offices 2635 Channing Way Idaho Falls, Idaho 83404
EMPLOYER'S NAME AND ADDRESS The Home Depot, Inc. 2075 South Holmes Avenue Idaho Falls, Idaho 83404	WORKERS' COMPENSATION CARRIER'S (NOT ADJUSTOR'S) NAME AND ADDRESS National Union Fire Ins. Co. of Pittsburgh c/o Helmsman Management Co./Liberty Northwest PO Box 7505 Boise, Idaho 83707-1507
ATTORNEY REPRESENTING EMPLOYER/SURETY (NAME AND ADDRESS) W. Scott Wigle BOWEN & BAILEY, LLP PO Box 1007 Boise, Idaho 83702	ATTORNEY REPRESENTING INDUSTRIAL SPECIAL INDEMNITY FUND (NAME AND ADDRESS)

IT IS: (Check one)	
Admitted	Denied
Under	Investigation
X	
X	
	X
Not	Alleged
X	
Under	Investigation
X	

- That the accident or occupational exposure alleged in the Complaint actually occurred on or about the time claimed.
- That the employer/employee relationship existed.
- That the parties were subject to the provisions of the Idaho Workers' Compensation Act.
- That the condition for which benefits are claimed was caused partly _____ entirely _____ by an accident arising out of and in the course of Claimant's employment.
- That, if an occupational disease is alleged, manifestation of such disease is or was due to the nature of the employment in which the hazards of such disease actually exist, are characteristic of and peculiar to the trade, occupation, process, or employment.
- That the notice of the accident causing the injury, or notice of the occupational disease, was given to the employer as soon as practical but not later than 60 days after such accident or 60 days of the manifestation of such occupational disease.
- That the rate of wages claimed is correct. If denied, state the average weekly wage pursuant to Idaho Code, Section 72-419: \$ _____.
- That the alleged employer was insured or permissibly self-insured under the Idaho Workers' Compensation Act.

9. What benefits, if any, do you concede are due Claimant?

None.

RECEIVED
 INDUSTRIAL COMMISSION
 JUL 29 11 2:58 AM '08

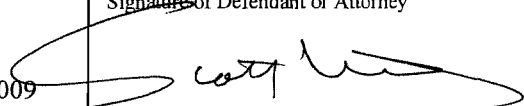
10. State with specificity what matters are in dispute and your reason for denying liability, together with any affirmative defenses.
- I. Whether Claimant sustained an injury from an accident arising out of and in the course of his employment;
 - II. Whether the need for Claimant's spinal surgery resulted from an industrial accident or pre-existing condition;
 - III. Whether Claimant is entitled to medical benefits, temporary disability benefits, permanent physical impairment benefits and permanent partial disability benefits;
 - IV. Apportionment to pre-existing conditions pursuant to IC §72-406; and,
 - V. Whether the medical treatment Claimant received following the alleged accident was reasonable and necessary pursuant to IC §72-432.

Under the Commission rules, you have twenty-one (21) days from the date of service of the Complaint to answer the Complaint. A copy of your Answer must be mailed to the Commission and a copy must be served on all parties or their attorneys by regular U.S. mail or by personal service of process. Unless you deny liability, you should pay immediately the compensation required by law, and not cause the claimant, as well as yourself, the expense of a hearing. All compensation which is concededly due and accrued should be paid. Payments due should not be withheld because a Complaint has been filed. Rule III(D), Judicial Rules of Practice and Procedure under the Idaho Workers' Compensation Law, applies. Complaints against the Industrial Special Indemnity Fund must be filed on Form I.C. 1002.

I AM INTERESTED IN MEDIATING THIS CLAIM, IF THE OTHER PARTIES AGREE. YES ___ NO ___ Defendants will notify the Commission if and when mediation is appropriate.

DO YOU BELIEVE THIS CLAIM PRESENTS A NEW QUESTION OF LAW OR A COMPLICATED SET OF FACTS? IF SO, PLEASE STATE.

NO.

Amount of Compensation paid to date			Dated	Signature of Defendant or Attorney
PPD:	TTD:	Medical:		
-0-	-0-	-0-	July 29, 2009	 W. SCOTT WIGLE

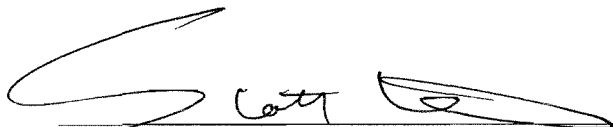
PLEASE COMPLETE

CERTIFICATE OF SERVICE

I hereby certify that on the 29 day of July, 2009, I caused to be served a true and correct copy of the foregoing Amended Answer to Complaint upon:

James D. Holman
 Thomsen Stephens Law Offices
 2635 Channing Way
 Idaho Falls, Idaho 83404

- via personal service of process
 regular U.S. mail
 facsimile


 W. SCOTT WIGLE

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

FLOYD BLAINE FIFE,)
)
 Claimant,)
)
 v.)
)
 HOME DEPOT, INC.,)
)
 Employer,)
)
 and)
)
 NATIONAL UNION FIRE INSURANCE)
 COMPANY OF PITTSBURGH,)
)
 Surety,)
 Defendants.)
 _____)

IC 2008-008636

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

FILED

JUN - 8 2010

INDUSTRIAL COMMISSION

Pursuant to Idaho Code § 72-506, the Commission assigned this matter to Referee Susan Veltman. Referee Susan Veltman conducted a hearing in Idaho Falls on November 5, 2009. Subsequently, Referee Veltman left the Commission and this case was reassigned to the Commissioners. James D. Holman represented Claimant. W. Scott Wigle represented Employer and Surety. The parties presented oral and documentary evidence at the hearing, and subsequently submitted post-hearing briefs. The case came under advisement on March 29, 2010. It is now ready for decision.

ISSUES

After due notice and by agreement of the parties at hearing the issues were:

1. Whether Claimant suffered an injury caused by an accident arising out of and in the course of employment;

2. Whether the condition for which Claimant seeks benefits was caused by the alleged industrial accident;

3. Whether and to what extent Claimant is entitled to reasonable and necessary medical care as provided for by Idaho Code § 72-432, including spinal surgery;

4. Whether and to what extent Claimant is entitled to temporary partial and/or temporary total disability (TPD/TTD) benefits;

5. Whether and to what extent Claimant is entitled to permanent partial impairment (PPI) benefits;

6. Whether and to what extent Claimant is entitled to permanent partial disability (PPD) benefits in excess of permanent impairment; and,

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

CONTENTIONS OF THE PARTIES

Claimant argues that his need for back surgery is related to his industrial accident. Claimant contends that he promptly notified Employer, but Employer refused to fill out a notice of injury or a claim for benefits. Claimant argues that his medical care was reasonable, and that Employer is responsible for the full invoiced amount of medical expenses under *Neel v. Western Construction, Inc.*, 147 Idaho 146, 206 P.3d 852 (2009). Claimant argues for TTD benefits from March 11, 2008, the date of his back surgery, until June 9, 2008. Claimant argues that he is entitled to PPI and PPD benefits without apportionment to pre-existing conditions, because Claimant had never treated with a physician or chiropractor for back pain.

Defendants dispute the occurrence of the industrial accident and the reasonableness of the medical treatment. In the alternative, Defendants contend that the need for surgery is not related

to an accident caused injury. Defendants argue for apportionment of PPI and PPD to Claimant's pre-existing condition. Defendants argue that Claimant should not receive PPD, because Claimant has returned to work on a full-time basis for Employer, and earns more money than he did prior to the alleged accident. Defendants argue that the factual scenario of this case is distinct from *Neel v. Western Construction, Inc.*, 147 Idaho 146 (2009), and that the rationale of *Neel* does not apply here where the evidence establishes that Claimant has no obligation to pay the full invoiced amount of the bills he incurred outside the workers' compensation system, since provider is contractually bound to forego balance billing of the amount not paid by Claimant's non-occupational insurer.

EVIDENCE CONSIDERED

The record in this instant case consists of the following:

1. Oral Testimony at hearing from Blaine Fife, David Lowry, and Katie Hazelbush.
2. Claimant's Exhibits 1 through 25 admitted at hearing.
3. Defendants' Exhibits A through L admitted at hearing.
4. The Commission's legal file.

After having fully considered the above evidence and arguments of the parties, the Commission hereby issues its decision in this matter. There were various objections raised during depositions by the parties. These objections are overruled.

FINDINGS OF FACTS

1. Claimant was 66 years old at the time of the hearing. Claimant was an appliance sales specialist for Home Depot. Claimant has worked for Home Depot for about 10 years. Prior to his employment with Home Depot, Claimant owned and operated his own business in

Idaho Falls and handled service and customer relations matters for Whirlpool Corporation and Frigidaire. On February 22, 2008, Claimant alleges that he was injured when moving a dryer at Home Depot. Claimant was 64 years old at the time of the alleged injury. Claimant felt a sharp pain in his lower back. Claimant finished his shift and retrieved other appliances for customers as needed. Claimant had February 23, 2008, off and took his family skiing. Hr.Tr., p. 71. Claimant did not ski because of his back discomfort. Hr.Tr., p. 73. Claimant returned to work on February 24, 2008, and completed a full shift. Hr.Tr., p. 74. On Monday, February 25, 2008, Claimant went to work in the morning, but left work early to seek treatment from Community Care for his back pain. *Id.*

2. Claimant met with Dr. Thompson at Community Care for treatment on February 25, 2008. Claimant's Exh. 12. Notes generated in connection with Claimant's initial medical visit with Community Care do not indicate that Claimant told his medical providers that he was injured at work. *Id.* Claimant's x-ray revealed severe degenerative changes in his thoracic and lumbar spine with disc space narrowing. *Id.* Dr. Thompson's notes indicate that Claimant complained of "right sided sciatica when lifting or standing on concrete . . . onset for years on/off." *Id.* Dr. Michael Biddulph reviewed images of Claimant's spine taken during Dr. Thompson's exam and reported the following:

There are degenerative change hypertrophic changes in the thoracic and lumbar spine. Severe degenerative disc disease is noted at L3-4, L4-5 and L5-S1. There is also degenerative arthritis in the lower lumbar fact joints. No fractures are seen.

Id.

Claimant was released with a 15-pound lifting restriction, medication and a referral to Dr. Eric Walker, a physical medicine and rehabilitation specialist. Claimant's Exh. 12, Hr.Tr., p. 21.

3. Claimant canceled his appointment with Dr. Eric Walker, because he did not wish to handle his pain symptoms with narcotic medication. Hr.Tr., p. 51. Claimant wanted to have a consultation with a surgeon. *Id.* Claimant had previous problems with narcotic pain medications and wanted to avoid them entirely. Hr.Tr., p. 82. On March 3, 2008, Claimant self-referred to Dr. Grant Walker, an orthopaedic surgeon. Claimant's Exh. 9. Claimant was not interested in pursuing conservative measures to treat his back pain. Hr.Tr., p.53. After Claimant's initial examination, Dr. Grant Walker recommended a four-level spinal fusion surgery from L3 to S1 to alleviate Claimant's back pain, and diagnosed Claimant with L4-S1 degenerative disc problem, stenosis, and greater trochanteric bursitis. Claimant's Exh. 9. Claimant decided to proceed with the lumbar fusion, and Claimant contacted his private medical insurer for authorization. Sometime after Claimant first visited with Dr. Walker, Claimant's son-in-law, a nurse anesthetist, traveled from out-of-state to dissuade Claimant from proceeding with the surgery.

4. On March 6, 2008, Claimant had a lumbar spine MRI, which Dr. Marc Cardinal evaluated. Claimant's Exh. 2. Dr. Cardinal found spinal stenosis at L3-4, moderate narrowing of the foramina on L3-4, L4-5 and L5-S1, moderate facet degenerative change and hypertrophy at L2-3, L3-4, L4-5, and L5-S1. Claimant's Exh. 2.

5. Claimant continued to work from the date of the alleged accident until his scheduled surgery. Claimant's Exh. 19. On March 11, 2008, Dr. Grant Walker noted that Claimant's primary diagnosis was "degenerative disk disease." Claimant's Exh. 2. Shortly before the surgery, Dr. Grant Walker discussed including the L2 level to remedy a large level of stenosis in that area. Claimant's Exh. 9. Claimant agreed and underwent a five-level, L2-S1 decompression and fusion, instead of a four-level, L3-S1 decompression and fusion. *Id.* Dr. Walker conceded that Claimant's surgery was not performed on an emergency basis. Dr. Walker

Depo., p. 45. Claimant's surgery was performed at Bingham Memorial Hospital. Claimant's Exh. 9. During surgery, Claimant's common iliac vein was compromised. Claimant's Exh. 10. Thereafter, Claimant experienced an unfortunate and life-threatening surgical complication of deep veinous thrombosis, which extended his hospital stay, and required months of additional medical treatment. *Id.*

6. The parties disputed when Employer had notice of Claimant's accident. Claimant maintains that he returned to Employer on February 25, 2008, and discussed filling out a claim with a human resources representative named Debbie in the presence of Steve Hanson, Claimant's assistant manager. Hr.Tr., pp. 46-48. Claimant could not recall Debbie's full name, but reports that she refused to allow Claimant to complete an accident report or notice of injury and indicated that Employer was not responsible for his preexisting condition. Hr.Tr., p. 46. Employer denies Claimant account. The Commission is not persuaded that Employer had notice of Claimant's accident on February 25, 2008. The contemporaneous medical records from Community Care, where Claimant first sought treatment for his back injury, do not indicate that Claimant injured his back at work. It appears that Claimant initially attempted to pursue benefits under a long-term disability coverage policy through his work, but that was unsuccessful. Hr.Tr., pp. 79-80. The timing of Claimant's claim for workers' compensation benefits suggests that Claimant may have not filed his claim until after he learned he had a surgical recommendation and would not receive long-term disability benefits. *Id.* The Commission finds that Employer had notice of Claimant's injury on March 4, 2008, when Claimant filed his notice of injury and claim for benefits.

7. Claimant filed a notice of injury and claim for benefits on March 4, 2008. Employer's adjusting company, Sedgwick, received Claimant's claim the following day, on

March 5, 2008. Lene O'Dell, Sedgwick claims adjuster, was assigned to Claimant's claim and initiated "three-point contact." O'Dell Depo. As part of the three-point contact, Ms. O'Dell attempted to speak with Employer, Claimant and Claimant's medical provider. *Id.* Ms. O'Dell testified that she contacted Employer's representative, Ron Smith, on March 5, 2008. *Id.* Ms. O'Dell also attempted to contact Claimant and left a message on March 5, 2008. *Id.* Ms. O'Dell contacted Tiffany at Community Care, who indicated that she would send medical records to Surety. *Id.* At that point, Ms. O'Dell was aware that Claimant might have some pre-existing issues, but had not spoken to Claimant or reviewed any medical records. *Id.* Ms. O'Dell made two more attempts to speak with Claimant, on March 6 and March 10, 2008. *Id.* Each time, Ms. O'Dell left messages with her contact information. *Id.* Claimant argues that he attempted to contact Surety, but was given evasive responses. Hr.Tr., p. 90. First, Claimant maintains that Surety told him that there was no file, then his claim was under investigation, and then the claim was denied. Hr. Tr., p. 90. When questioned, Claimant acknowledged that he could not recall when he exactly spoke with Surety. Hr. Tr., pp. 90-93. Ms. O'Dell does not have any notes indicating that Claimant called her back prior to his scheduled surgery, although it is standard procedure to note when a claimant calls. O'Dell Depo. On March 25, 2008, Surety received Dr. Walker's diagnosis of degenerative disc disease, stenosis and scoliosis with a recommendation for surgery. *Id.* Prior to that point, Surety was unaware that Claimant had already had his lumbar surgery on March 11, 2008. *Id.*

8. Surety received the first medical records in this case on March 25, 2008. *Id.* On March 26, 2008, Claimant and Surety finally spoke on the telephone. *Id.* Surety learned that Claimant had already undergone a major lumbar surgery and requested additional medical records. *Id.* Surety spoke with Ron Smith and confirmed that Claimant had not worked since

the March 11, 2008 surgery. *Id.* On April 4, 2008, Surety requested wage information from Wanda Porter. *Id.* On April 11, 2008, Surety received wage information from Employer. *Id.* Ms. O'Dell left Surety for another position and was replaced by Ms. Roxanne Hathaway Stevens. Ms. Stevens received authorization for an independent medical exam. *Id.* On May 5, 2008, Surety arranged for Dr. Knoebel to perform an IME. *Id.* Claimant and Surety spoke on May 9, 2008, and Claimant expressed his concerns about the status of his claim. *Id.* Surety informed him that an independent medical exam was scheduled for June 19, 2008. *Id.* Subsequently, Surety attempted to place Claimant on Dr. Knoebel's cancellation list for independent medical exam at an earlier date. *Id.* Surety's notes indicated that Dr. Knoebel would not be in his Idaho Falls office before June 19, 2008. *Id.*

9. On June 2, 2008, Dr. Grant Walker issued the following restrictions for Claimant of lifting maximum of 10-15 pounds, no repetitive lifting greater than 8 pounds, and no repetitive pushing, pulling, bending, stooping, crawling, kneeling, climbing or use of ladders, stairs, roofs. Claimant's Exh. 2.

10. On June 19, 2008, Dr. Richard Knoebel performed an IME. Dr. Knoebel reviewed Claimant's medical history, including Claimant's February 25, 2008 lumbar and thoracic spine x-rays, and March 6, 2008 lumbar MRI scan. Claimant's Exh. 24. Dr. Knoebel noted that Claimant's lumbar and thoracic spine x-rays indicated multilevel degenerative changes without any evidence of fracture, dislocation, spondylolisthesis or soft tissue swelling. *Id.* Claimant's lumbar MRI scan showed multilevel degenerative disc signal changes and disc collapse with significant disc bulging, also without any evidence of acute injury, fracture or dislocation consistent with an industrial accident or injury. *Id.* Dr. Knoebel found that

Claimant's need for the surgery was not related to the industrial accident. *Id.* On July 3, 2008, Surety denied Claimant's claim for workers' compensation based on Dr. Knoebel's report. *Id.*

11. On January 1, 2009, Dr. Grant Walker issued a causation opinion. Claimant's Exh. 13. Dr. Grant Walker acknowledges that Claimant had preexisting degenerative changes, which, according to Claimant, required him to take ibuprofen and stretch his back once or twice a year. *Id.* Dr. Grant Walker opined that Claimant's industrial accident was related to his injury, because the February 22, 2008 incident exacerbated his condition, and Claimant felt an increase in symptoms which did not subside. *Id.*

12. Claimant's counsel arranged for Dr. Gary Walker to evaluate Claimant for the purposes of a permanent impairment rating. Claimant's Exh. 22. Claimant reported to Dr. Gary Walker that he was very comfortable lifting 40 lbs, and continues to take ibuprofen and Tramadol to manage his ongoing pain. *Id.* Dr. Gary Walker concluded that Claimant's condition warranted a 15% whole person impairment rating, with 5% apportioned to pre-existing degenerative conditions. *Id.* Defendants do not dispute the total impairment assessment calculated by Dr. Gary Walker. However, Defendants dispute whether any of the impairment should be attributed to the industrial accident, given that Claimant's claimed accident was an acute event, and the impairment assessment is based on pre-existing pathology.

13. Claimant argues that PPD of 30%-40% whole man, inclusive of impairment is appropriate. Claimant's post-injury employment is with Employer in the home appliances department, where Claimant earns more than he did at the time of his injury. Claimant argues that his back condition affects his ability to stand for an extended period of time, and he is unable to take breaks. Claimant argues that he now has a 15-pound lifting restriction from Dr. Grant Walker, although Claimant reported being able to lift up to 40 pounds without any problems.

Claimant's testified that his back pain has not resolved, and he misses about four days of work each month, due to his condition.

14. Claimant's surgical and post-surgical treatment resulted in medical bills totaling over \$400,000.00. Defendants' Exh. L. Claimant requests \$339,961.39, representing the amount invoiced for his hospital stay. Claimant's Exh. 16. Claimant's surgery was billed under his private health carrier, Blue Cross, and Claimant paid the appropriate deductibles and co-payments to Blue Cross. Ms. Hazelbush, Bingham Memorial Hospital's billing director, and Mr. James Lowry, Director of Surgical Services, who handles the pricing of inpatient services, testified about hospital billing practices. The testimony established that Bingham Memorial Hospital's invoice is not a reflection of its expectation of payment for the services involved, and that acceptance of the Blue Cross contract forbids the hospital from balance billing a patient for contractual reductions taken by Blue Cross. Hr.Tr., pp. 131-132, 139, 152. Against invoiced hospital bills in the amount of \$339,961.39, Blue Cross has paid an estimated \$29,674.75, to settle these bills. Hr.Tr., p.143. In all, Blue Cross has paid approximately \$90,000.00 to settle Claimant's medical bills. Hr.Tr., p. 144.

Pre-existing Condition

15. As to Claimant's previous medical history, Claimant remembers visiting a chiropractor in the early 1970s, but denied that a physician has ever treated him for low back pain prior to his accident. The lack of medical treatment does not mean that Claimant was problem-free prior to the appliance moving incident. Claimant reported that he experienced occasional low back pain, which he managed through stretching, ibuprofen and rest. The record also reflects that at the time he was evaluated by Dr. Knoebel, Claimant acknowledged that prior to the subject accident he had some difficulty with heavy lifting. Dr. Knoebel Depo., p. 12. The

medical record supports that Claimant had extensive degenerative disc problems in his back. Claimant filed a workers' compensation claim in 2004 for a left shoulder injury. Claimant's Exh. 1. Dr. David R. Warden III diagnosed Claimant with degenerative joint disease at the left acromioclavicular joint. *Id.* Claimant underwent physical therapy for his shoulder and was given a full work release on November 20, 2004. *Id.*

DISCUSSION

Claimant's industrial accident/injury

16. Idaho Code § 72-102(17)(b) defines accident 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." An injury is defined as "a personal injury caused by an accident arising out of and in the course of any employment covered by the worker's compensation law." Idaho Code § 72-102(17)(a).

17. As stated above, Claimant alleges that he was injured when moving a dryer at work on February 22, 2008. Claimant reportedly felt a sharp pain contemporaneous with moving the appliance. Claimant finished his shift, and retrieved other appliances for customers as needed. Claimant had February 23, 2008 off from work and took his family skiing. Claimant testified that he did not ski because of his back discomfort. Claimant returned to work on February 24, 2008 and completed a full shift. On Monday, February 25, 2008, Claimant went to work in the morning, but left early to seek treatment from Community Care for his back pain. Employer argues that Claimant's statements about how he gave notice to Employer cast doubt on whether an industrial accident actually occurred, because Claimant did not give notice until he received a surgical recommendation. Claimant argues that he gave Employer notice on February 25, 2008, prior to receiving Dr. Grant Walker's surgical recommendation. Employer disputes

that Claimant gave notice at that time and argues that it only became unaware of Claimant's industrial accident on March 4, 2008, when Claimant filed out his notice of injury and claim for benefits. The medical record from Claimant's February 25, 2008 visit does not mention that Claimant injured his back at work.

18. Claimant's testimony on giving notice to Employer prior to the filing of his notice of injury and claim for benefits is not persuasive. However, Claimant's testimony that he felt increased back pain after moving an appliance at work has been consistent and is persuasive on the matter. Claimant has shown that he suffered an industrial accident.

Causation and Medical care

19. 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). Magic words are not necessary to show a doctor's opinion is held to a reasonable degree of medical probability, only his or her plain and unequivocal testimony conveying a conviction that events are causally related. *See, Jensen v. City of Pocatello*, 135 Idaho 406, 412-413, 18 P. 3d 211, 217-218 (2001).

20. 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 reasonable time thereafter. It is for the physician, not the Commission, to decide whether the treatment is required. The only review the Commission is entitled to make is whether the treatment was reasonable. *See, Sprague v. Caldwell Transportation, Inc.*, 116 Idaho 720, 779 P.2d 395 (1989). Idaho Code § 72-432(1) further permits an injured employee to

obtain treatment on their own, at the expense of the employer, if the employer fails to provide reasonable medical treatment for the industrial injury.

21. The employer is not responsible for medical treatment that is not related to the industrial accident. *Williamson v. Whitman Corp./Pet, Inc.*, 130 Idaho 602, 944 P.2d 1365 (1997). However, an employer takes an employee as it finds him or her and a pre-existing infirmity does not eliminate compensability provided that the industrial injury aggravated or accelerated the injury for which compensation is sought. *Spivy v. Novartis Seed, Inc.*, 137 Idaho 29, 34, 43 P.3d 788, 793 (2002).

22. In this case, Claimant sought treatment from Dr. Thompson at Community Care on February 25, 2008. Dr. Thompson referred Claimant to Dr. Eric Walker. Claimant's Exh. 12. Claimant canceled his appointment with Dr. Eric Walker, because Claimant had already made up his mind that he wanted surgical intervention. Hr.Tr., pp. 50-51. After some internet research and consultation with friends, Claimant made an appointment with Dr. Grant Walker. Hr.Tr., p. 52. Claimant had his first appointment with Dr. Walker on March 3, 2008, and a spine MRI on March 6, 2011. Claimant had a five-level fusion operation with Dr. Grant Walker on March 11, 2008. Claimant's Exh. 9. The crux of this case is whether Claimant is entitled to the five-level fusion he had on March 11, 2008, as a result of his industrial accident.

23. Dr. Grant Walker opined that Claimant's need for surgery was work-related on January 26, 2009. During Dr. Grant Walker's initial examination, Claimant was able to perform several objective tests without any difficulty or evidence of problems with lower extremity strength and reflexes. Dr. Walker Depo., pp. 37-40. However, Claimant was having muscle spasms in his lower back and reported increased pain. Dr. Walker Depo., p. 10. Claimant rated his pain on a scale of one to ten as a four on the day of Dr. Grant Walker's examination, and that

it had recently been as high as six. Dr. Walker Depo., p. 10. Claimant denied previous medical treatment for his low back condition, although he acknowledged using rest and ibuprofen to alleviate his symptoms. Hr.Tr., pp. 28-30. Claimant's medical exam demonstrated lumbar spine degenerative changes that were pre-existing, and not caused by an acute event, such as the industrial accident described by Claimant. Dr. Walker Depo., pp. 9-10. Dr. Walker acknowledged that Claimant's degenerative changes in his lumbar spine are not the result of Claimant's industrial accident. Dr. Walker Depo., pp. 10-11, 47. In fact, Dr. Walker was unable to identify any anatomic findings that were likely related to the subject accident. In the final analysis, the basis for Dr. Walker's opinion that Claimant suffered some additional injury as a result of the work accident is found only in the fact that Claimant suffered a significant and unrelenting (at least through the day of surgery) increase in his pain following the accident:

Q. You also note in this office visit note of Exhibit 013 of January 26, 2009, you offer an opinion as to whether or not his injury and the resultant surgery was related to the incident at work on February 22, 2008. Do you see that?

A. Yes. I said it is my opinion that was a symptomatic event that occurred on February 22nd, 2008, during his employment at Home Depot and that this symptomatic exacerbation was uncovered, which is to say that there may have been—well, not may. There was most certainly those degenerative changes at that location in the spine preexisted before Mr. Fife entered my clinic.

However, he had the symptoms associated with it that were small and that injury was kind of like the straw that broke the camel's back. There was a specific event that occurred, and that event, regardless of what the x-rays showed, was the point that led to these significant pain levels that the patient sought my help for.

. . . .

Q. Are we in agreement, Doctor, that the surgery that you performed was to address pathology which would have preexisted his industrial accident of February 22nd, 2008?

A. In part. The other part

Q. Well, explain to me precisely what pathology in his back you relate to the accident of February 22nd, 2008.

A. The symptomatology.

Q. No. What pathology in his back do you relate to . . .

A. Pain.

Q. I understand that symptomatology—I understand that angle.

A. There is no answer to your question. You know, you're basically saying, you know, point to the airplane in the sky with a bent finger. You can't point to an x-ray, an MRI, and say, you know, what was the reason based on this MRI or this x-ray that the patient had surgery.

Q. Well, sure, you can. I don't want to be argumentative. For example, Doctor, if we take the MRI findings of spinal stenosis, you would agree, would you not, that that's a condition that is degenerative in nature and developed over the course of time and not as a result of the accident of February 22, 2008?

A. Absolutely, I agree with you.

Q. Okay. And I understand your point. He was getting along okay with these preexisting problems until February 22, 2008, and something happened to increase his symptomatology. I'm following that.

A. Yes.

Q. Can you point to any objective pathological findings in any of the diagnostic studies that were done that specifically relate to a recent trauma as opposed to something degenerative?

A. No.

Dr. Walker Depo., pp. 20/14-21/9, 46/11-48/1.

24. From the foregoing, it seems that Dr. Walker believes that since Claimant experienced an increase in pain following the accident, it follows that this pain is the result of some physical injury too subtle to be imaged on any of the radiological studies. For this reason, Dr. Walker related the need for the five-level surgery to the subject accident. Granting, for the sake of discussion, that Dr. Walker is correct in concluding that Claimant suffered an unspecified

subtle injury as a result of the accident, which injury is responsible for increasing Claimant's pre-injury pain, does it necessarily follow that the need for surgery, and Claimant's post-surgical treatment is causally related to the subject accident? To answer this question it would be helpful to better understand the nature of the physical injury causing Claimant's pain. Dr. Walker's testimony is unclear, to the point of opacity, as to the actual nature of the injury which he claims is responsible for the need for surgery. Dr. Knoebel, however, has testified convincingly to the probable nature of the suspected injury. Dr. Knoebel accepted Claimant's testimony that Claimant's pain following the accident was much worse than the pain he experienced on a pre-injury basis. However, Dr. Knoebel also noted that there was neither radiological nor surgical evidence of an accident produced injury. As explained by Dr. Knoebel, the cause of low back pain in the absence of objective evidence of anatomic injury is somewhat mysterious. Dr. Knoebel Depo., p. 25, ll. 5-17. In this case, Dr. Knoebel proposed that in the absence of any objective evidence of injury, it is more likely than not that Claimant's increase in pain is a result of a nonspecific low back strain suffered as a result of the lifting incident of February 22, 2008. In other words, Dr. Knoebel believes that Claimant suffered a muscle strain as a consequence of the accident. *Id.* at p. 25, ll. 24 – p. 26, l. 9. We find this testimony persuasive.

25. With this understanding of the nature of Claimant's injury in place, we must next consider the question of whether or not Claimant's surgical treatment was necessitated because of his injury. In this regard, it is worth repeating that although Dr. Walker testified that surgery was recommended for Claimant only after he had failed conservative therapy, only seventeen days elapsed between the date of injury and Claimant's surgery. Moreover, there is nothing in Dr. Walker's testimony to support the proposition that surgery was performed on an emergency basis due to unbearable pain or to an acute radiculopathy. Although Dr. Knoebel does not

necessarily quarrel with the proposition that Claimant required multi-level surgery, his point is that the surgery that was performed is wholly related to Claimant's well documented pre-existing condition, and not to the low back strain which was caused by the subject accident. The surgery did not address, nor would it be expected to address, a non-specific low back strain, a condition better treated with conservative modalities. Dr. Knoebel's testimony that Claimant was not given a meaningful trial of conservative therapy is persuasive. Dr. Knoebel would have expected Claimant to improve with conservative therapy, and eventually return to his baseline level of discomfort. As Dr. Knoebel has recognized, the condition for which surgery was performed is distinct from the condition that is Claimant's true pain generator. Said another way, the evidence fails to establish that the work accident contributed to the condition for which Claimant required multi-level back surgery. Claimant may have needed back surgery, but not for a work related injury. For his work injury, Claimant required conservative treatment which was denied him in the rush to surgery. That Claimant may have experienced improvement following surgery does nothing to prove his case, since the normal course of a low back sprain/strain is that it resolves over time. Claimant's pain likely resolved quite apart from the surgery.

26. Claimant has not shown that the surgery or any of its residual effects is related to the industrial accident, or that the industrial accident aggravated his underlying condition. Claimant has not shown that his five-level fusion was reasonable medical care for his industrial accident. Claimant has not shown that his industrial accident permanently aggravated his underlying degenerative back condition. Claimant has shown that he was entitled to the February 25, 2008 medical visit with Dr. Thompson at Community Care.

TPD/TTDs

27. Idaho Code § 72-408 provides that income benefits for total and partial disability shall be paid to disabled employees “during the period of recovery.” The burden is on a claimant to present evidence of the extent and duration of the disability in order to recover income benefits for such disability. *Sykes v. C.P. Clare and Company*, 100 Idaho 761, 605 P.2d 939 (1980). Generally, a claimant’s period of recovery ends when he or she is medically stable. *Jarvis v. Rexburg Nursing Ctr.*, 136 Idaho 579, 586, 38 P.3d 617, 624 (2001).

28. Claimant missed part of a work day on February 25, 2008, when he sought medical care with Dr. Thompson at Community Care. Thereafter, Claimant continued to work until his March 11, 2008 surgery, which the Commission finds is unrelated to Claimant industrial accident, and unreasonable care for Claimant’s work injury. Therefore, Claimant is not eligible for TTD benefits.

PPI/PPD

29. Claimant received a 15% impairment rating from Dr. Gary Walker, with 5% attributed to pre-existing conditions. Dr. Gary Walker’s analysis was based on the consequences of Claimant’s multi-level fusion, which the Commission finds is non-compensable, and unrelated to Claimant’s industrial accident. Certainly, Claimant’s multi-level fusion surgery did not go as expected, and Claimant had major complications and residual pain from his degenerative back condition. However, Claimant has not demonstrated any entitlement to PPI/PPD as a result of the industrial accident.

30. Because we have not found that the Claimant’s surgical treatment is causally related to the subject accident, we do not reach the interesting question of whether this case is one to which the rule of *Neel, supra*, would apply.

ORDER


Based on the foregoing analysis, IT IS HEREBY ORDERED That:

1. Claimant has shown that he is entitled to the medical care of the February 25, 2008 visit with Dr. Thompson at Community Care. Claimant has not met his burden of showing that the medical care connected with his five-level fusion was causally related to the industrial accident or that his industrial accident aggravated his preexisting degenerative condition.
2. Claimant has not shown his entitlement to PPI/PPD as a result of his industrial accident.
3. All other issues are moot.
4. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all issues adjudicated.

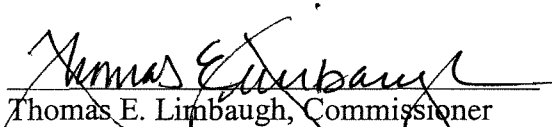
IT IS SO ORDERED.

DATED this 8th day of June, 2010.

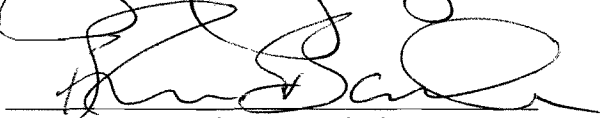
INDUSTRIAL COMMISSION



R.D. Maynard, Chairman



Thomas E. Limbaugh, Commissioner



Thomas P. Baskin, Commissioner

ATTEST:




Assistant Commission Secretary
STATE OF IDAHO

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER - 19

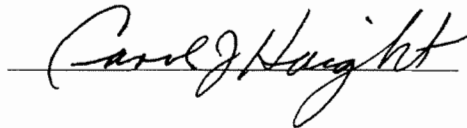
CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of June, 2010 a true and correct copy of **FINDINGS, CONCLUSIONS, AND ORDER** was served by regular United States Mail upon:

JAMES D HOLMAN
2635 CHANNING WAY
IDAHO FALLS ID 83404

W SCOTT WIGLE
JEFFERSON PLACE, SUITE 200
350 NORTH 9TH ST
PO BOX 1007
BOISE ID 83701

cs-m/cjh



James D. Holman, Esq., ISB #2547
 THOMSEN STEPHENS LAW OFFICES, PLLC
 2635 Channing Way
 Idaho Falls, ID 83404
 Telephone: (208) 522-1230
 Fax: (208) 522-1277
 E-mail: holman@thomsenstephenslaw.com

Attorneys for Appellant

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

FLOYD BLAINE FIFE,)
)
 Claimant/Appellant,)
)
 v.)
)
 THE HOME DEPOT, INC.,)
)
 Employer,)
)
 and)
)
 NATIONAL UNION FIRE INSURANCE)
 COMPANY OF PITTSBURGH,)
)
 Surety/Defendants/Respondents.)
 _____)

I.C. No. 2008-008636

NOTICE OF APPEAL

FILED

JUL 16 2010

INDUSTRIAL COMMISSION

TO: THE ABOVE NAMED RESPONDENTS, THE HOME DEPOT, INC. AND NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH AND THE PARTIES' ATTORNEY, W. SCOTT WIGLE, P.O. BOX 1007, BOISE, ID 83701, AND THE CLERK OF THE INDUSTRIAL COMMISSION

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant Floyd Blaine Fife appeals against the above named respondents to the Idaho Supreme Court from the Findings of Fact, Conclusions of Law and Order

1 NOTICE OF APPEAL

James D. Holman, Esq., ISB #2547
 THOMSEN STEPHENS LAW OFFICES, PLLC
 2635 Channing Way
 Idaho Falls, ID 83404
 Telephone: (208) 522-1230
 Fax: (208) 522-1277
 E-mail: holman@thomsenstephenslaw.com

Attorneys for Appellant

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

FLOYD BLAINE FIFE,)	I.C. No. 2008-008636
)	
Claimant/Appellant,)	
)	
v.)	NOTICE OF APPEAL
)	
THE HOME DEPOT, INC.,)	
)	
Employer,)	
)	
and)	
)	
NATIONAL UNION FIRE INSURANCE)	
COMPANY OF PITTSBURGH,)	
)	
Surety/Defendants/Respondents.)	
_____)	

TO: THE ABOVE NAMED RESPONDENTS, THE HOME DEPOT, INC. AND NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH AND THE PARTIES' ATTORNEY, W. SCOTT WIGLE, P.O. BOX 1007, BOISE, ID 83701, AND THE CLERK OF THE INDUSTRIAL COMMISSION

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant Floyd Blaine Fife appeals against the above named respondents to the Idaho Supreme Court from the Findings of Fact, Conclusions of Law and Order

entered in the above-entitled proceeding on the 8th day of June, 2010, Chairman R.D. Maynard presiding.

2. That Appellant has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 are appealable order under and pursuant to Idaho Appellate Rule 11(d).

3. Preliminary statement of the issues on appeal:

- a. Whether the Commission erred in its Findings of Fact and determinations of credibility when the commissioners were not present at hearing;
- b. Whether the Commission erred in determining that claimant's surgery and related medical treatment is not related to the industrial accident;
- c. Whether the Commission erred in denying claimant temporary total disability and permanent partial impairment benefits.

4. No portion of the record has been sealed.

5. A reporter's transcript is requested; specifically plaintiff requests the standard transcript as defined in Rule 25(c), I.A.R.

6. The appellant requests the following documents to be included in the agency's record in addition to those automatically included under Rule 28 I.A.R.:

- a. The deposition of Grant Walker.

7. None.

8. I certify:

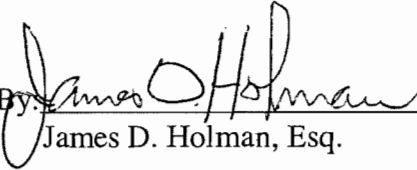
- a. That the hearing transcript has been requested and that a copy of this notice of appeal has been served on the reporter Rebecca Martin at T&T Reporting,

PO Box 51020, Idaho Falls, Idaho;

- b. That the fee of \$86.00 to the Idaho Supreme Court has been paid;
- c. That the fee of \$100.00 to the Idaho Industrial Commission has been paid;
- d. That service has been made upon all parties required to be served.

DATED this 16 day of July, 2010.

THOMSEN STEPHENS LAW OFFICES, PLLC

By:  _____
James D. Holman, Esq.

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that on the 16 day of July, 2010, I caused a true and correct copy of the foregoing **NOTICE OF APPEAL** to be served upon the following persons at the addresses below their names either by depositing said document in the United States mail with the correct postage thereon or by hand delivering or by transmitting by facsimile as set forth below.

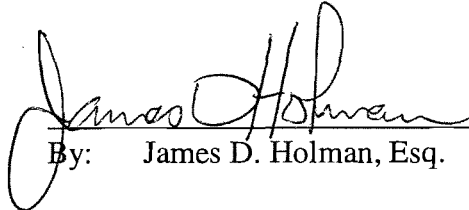
W. SCOTT WIGLE
BOWEN & BAILEY
1311 WEST JEFFERSON
PO BOX 1007
BOISE, ID 83701-1007
FAX: 208-344-9670

Mail
 Hand Delivery
 Facsimile

REBECCA MARTIN
T&T REPORTING
525 PARK AVENUE
P O BOX 51020
IDAHO FALLS ID 83405-1020
FAX: 529-5496

Mail
 Hand Delivery
 Facsimile

THOMSEN STEPHENS LAW OFFICES, PLLC


By: James D. Holman, Esq.

JDH:skp
6886\001 Ntc Appeal.wpd

Notice of Appeal Filed:

July 16, 2010

Appellate Fee Paid:

\$86.00

Name of Reporter:

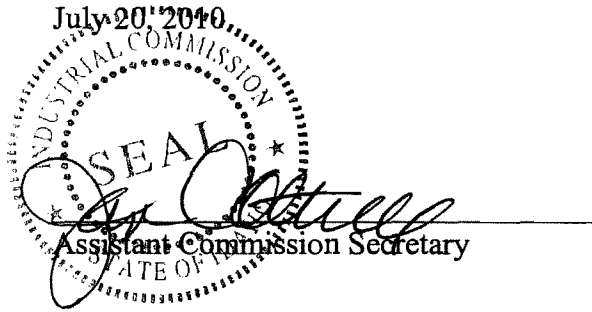
Rebecca Martin – T&T Reporting

Transcript Requested:

Standard transcript has been requested. Transcript has been prepared and filed with the Commission.

Dated:

July 20, 2010



INDUSTRIAL COMMISSION
SEAL
Assistant Commission Secretary
STATE OF TENNESSEE

CERTIFICATION

I, the undersigned Assistant Secretary of the Industrial Commission of the State of Idaho, hereby CERTIFY that the foregoing is a true and correct photocopy of the Notice of Appeal; Findings of Fact, Conclusions of Law, and Recommendation; and Order, and the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Commission this 20 day of July, 2010.


Jan K. Cottrell
Assistant Commission Secretary



The seal is circular with a dotted border. The text 'INDUSTRIAL COMMISSION' is written along the top inner edge, and 'STATE OF IDAHO' is written along the bottom inner edge. In the center, the word 'SEAL' is written in a large, bold font, flanked by two small stars.

ORIGINAL

W. SCOTT WIGLE, ISB #2802
BOWEN & BAILEY, LLP
1311 West Jefferson
Post Office Box 1007
Boise, Idaho 83701-1007
Telephone: (208) 344-7200
Facsimile: (208) 344-9670
Attorneys for Defendant

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

FLOYD BLAINE FIFE,)	
)	I.C. No. 2008-008636
Claimant,)	
)	
vs.)	REQUEST FOR
)	ADDITIONAL
THE HOME DEPOT, INC.,)	AGENCY RECORD
)	
Employer,)	
)	
and)	
)	
NATIONAL UNION FIRE INSURANCE)	
CO. OF PITTSBURGH,)	
)	
Surety/Defendants.)	

01/10/08 9:30 AM

COME NOW, the Defendants/Respondents, pursuant to Rule 19 IAR, and request the inclusion of the following documents in addition to the standard agency record previously requested.

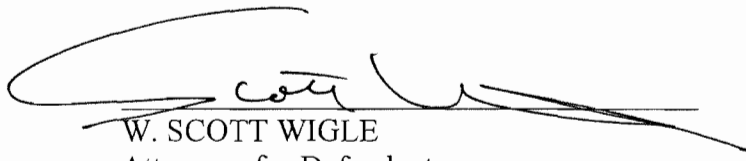
- 1) The oral deposition of Richard Knoebel, MD (admitted into evidence at the hearing as Exhibit 24);

2) The post-hearing deposition of Lene O'Dell taken on November 24, 2009 and submitted to the Commission on or about February 10, 2010.

Defendants/Respondents will be responsible for any additional costs incurred as a result of this request.

DATED this 23 day of July, 2010.

BOWEN & BAILEY, L.L.P.



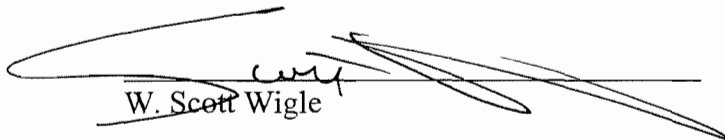
W. SCOTT WIGLE
Attorneys for Defendants

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 23 day of July, 2010, I caused a true and correct copy of the within and foregoing instrument to be served as follows:

James D. Holman
Thomsen, Stephens Law Offices
2635 Channing Way
Idaho Falls, Idaho 83404
Fax: (208) 522-1277

US Mail
 Hand Delivery
 Express Mail
 Facsimile
 Electronic Mail



W. Scott Wigle

CERTIFICATION

I, the undersigned Assistant Secretary of the Industrial Commission of the State of Idaho, hereby CERTIFY that the foregoing is a true and correct photocopy of Defendants Request for Additional Agency Record filed July 26, 2010.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Commission this 28 day of July, 2010.


Jan K. Cottrell
Jan K. Cottrell
Assistant Commission Secretary

CERTIFICATION OF RECORD

I, the undersigned Assistant Secretary of the Industrial Commission, do hereby certify that the foregoing record contains true and correct copies of all pleadings, documents, and papers designated to be included in the Clerk's Record on appeal by Rule 28(3) of the Idaho Appellate Rules and by the Notice of Appeal, pursuant to the provisions of Rule 28(b).

I further certify that all exhibits offered or admitted in this proceeding, if any, are correctly listed in the List of Exhibits. Said exhibits will be lodged with the Supreme Court after the Record is settled.

DATED at Boise, Idaho, this 16 day of August, 2010.

The seal of the Industrial Commission of Idaho is circular with a dotted border. The text "INDUSTRIAL COMMISSION" is written along the top inner edge, and "STATE OF IDAHO" is written along the bottom inner edge. In the center, the word "SEAL" is written in a large, bold, serif font. A signature, which appears to be "Jan Cottrell", is written in cursive across the seal. Below the seal, the name "Jan Cottrell" and the title "Assistant Commission Secretary" are printed in a standard font.

Jan Cottrell
Assistant Commission Secretary

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

FLOYD BLAINE FIFE,)
)
 Claimant/Appellant,)
)
 v.)
)
 THE HOME DEPOT, INC., Employer,)
 and NATIONAL UNION FIRE)
 INSURANCE COMPANY OF)
 PITTSBURGH, Surety,)
)
 Defendants/Respondent.)
 _____)

SUPREME COURT NO. 37894

NOTICE OF COMPLETION

TO: Stephen Kenyon, Clerk of the Courts; and
James D. Holman for the Appellants; and
W. Scott Wigle for the Respondent.

YOU ARE HEREBY NOTIFIED that the Clerk's Record was completed on this date and,
pursuant to Rule 24(a) and Rule 27(a), Idaho Appellate Rules, copies of the same have been served
by regular U.S. mail upon each of the following:

JAMES D HOLMAN
2635 CHANNING WAY
IDAHO FALLS ID 83404

W SCOTT WIGLE
P O BOX 1007
BOISE ID 83701

YOU ARE FURTHER NOTIFIED that pursuant to Rule 29(a), Idaho Appellate Rules, all
parties have twenty-eight days from the date of this Notice in which to file objections to the Clerk's
Record or Reporter's Transcript, including requests for corrections, additions or deletions. In the

event no objections to the Clerk's Record or Reporter's Transcript are filed within the twenty-eight day period, the Clerk's Record and Reporter's Transcript shall be deemed settled.

DATED at Boise, Idaho, this 16 day of August, 2010.


Jan Cottrell
Assistant Commission Secretary

INDUSTRIAL COMMISSION
OF IDAHO