7-26-2011

Gomez v. Dura Mark Inc. Agency's Record Dckt. 38809

Vol 1 of 2

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

MARIA GOMEZ, Claimant/Appellant, v. DURA MARK, INC., Employer, and STATE INSURANCE FUND, Surety, Defendants/Respondents.	**SUPREME COURT NO. 38809** **AGENCY RECORD**

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

Attorney for Appellant:

MICHAEL R MCBRIDE
1495 EAST 17TH ST
IDAHO FALLS ID 83404

Attorney for Respondents:

PAUL J AUGUSTINE
PO BOX 1521
BOISE ID 83701

38809

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

MARIA GOMEZ, Claimant/Appellant, v. DURA MARK, INC., Employer, and STATE INSURANCE FUND, Surety, Defendants/Respondents.	)	**SUPREME COURT NO. 38809** **AGENCY RECORD**

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Attorney for Appellant:

MICHAEL R MCBRIDE
1495 EAST 17TH ST
IDAHO FALLS ID 83404

Attorney for Respondents:

PAUL J AUGUSTINE
PO BOX 1521
BOISE ID 83701

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2. Medical Records, Dr. Scott Huneycutt
3. Medical Records, Blackfoot Physical Therapy
4. Medical Records, Blackfoot Medical Clinic
5. Industrial Commission Rehabilitation Records
6. Mortgage Statement
7. Medical Billing, Dr. Jake Poulter
8. TTD Check
9. Notice of Trustee Sale

Defendants' Exhibits:

A. Medical Records, Dr. David C. Simon
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C. Claimant's Personnel File

Additional Documents:

1. Transcript of deposition of David C. Simon, M.D., taken 11/2/10
2. Claimant's Post-Hearing Brief, filed 12/27/10
3. Defendants' Post Hearing Brief, filed 12/28/10

SEND ORIGINAL TO : INDUSTRIAL COMMISSION, JUDICIAL DIVISION, PO BOX 83720, BOISE, ID 83720-0041

WORKER'S COMPENSATION COMPLAINT

CLAIMANT'S (INJURED WORKER) NAME AND ADDRESS	CLAIMANTS'S ATTORNEY'S NAME AND ADDRESS AND TELEPHONE NUMBER
Maria Gomez 1225 W. 90 S. Blackfoot, Idaho 83221 TELEPHONE NUMBER: (208) 680-0814	Michael R. McBride McBride & Roberts, Attorneys 1495 East 17th Street Idaho Falls, Idaho 83404
EMPLOYER'S NAME AND ADDRESS	WORKER'S COMPENSATION INSURANCE CARRIER'S (NOT ADJUSTOR'S) NAME AND ADDRESS:
Blackfoot Brass P.O. Box 885 Blackfoot, Idaho 83221	State Insurance Fund P.O. Box 83720 Boise, Idaho 83720-0044
CLAIMANT'S SOCIAL SECURITY NO. [redacted] CLAIMANT'S BIRTH DATE [redacted]	DATE OF INJURY OR MANIFESTATION OF OCCUPATIONAL DISEASE 7/24/09
STATE AND COUNTY IN WHICH INJURY OCCURRED IDAHO - BINGHAM	WHEN INJURED, CLAIMANT WAS EARNING AN AVERAGE WEEKLY WAGE OF : $460.00 PURSUANT TO IDAHO CODE § 72-419

DESCRIBE HOW INJURY OR OCCUPATIONAL DISEASE OCCURRED (WHAT HAPPENED)

Claimant was bending and lifting 60 pound boxes and hurt her back.

NATURE OF MEDICAL PROBLEMS ALLEGED AS A RESULT OF ACCIDENT OR OCCUPATIONAL DISEASE

Claimant injured her low back.

WHAT WORKER'S COMPENSATION BENEFITS ARE YOU CLAIMING AT THIS TIME?

Determination of medical, TTD, PPD and PPI.

DATE ON WHICH NOTICE OF INJURY WAS GIVEN TO EMPLOYER	TO WHOM NOTICE WAS GIVEN
7/24/09	Josh Scott

HOW NOTICE WAS GIVEN: ☒ ORAL ☐ WRITTEN ☐ OTHER, PLEASE SPECIFY

ISSUE OR ISSUES INVOLVED

Determination of medical, TTD, PPD and PPI and attorney fees for unreasonable denial of benefits.

DO YOU BELIEVE THIS CLAIM PRESENTS A NEW QUESTION OF LAW OR A COMPLICATED SET OF FACTS? ☐ YES ☒ NO IF SO, PLEASE STATE WHY.

NOTICE: COMPLAINTS AGAINST THE *INDUSTRIAL SPECIAL INDEMNITY FUND* MUST BE IN ACCORDANCE WITH IDAHO CODE §72-334 AND FILED ON FORM I.C. 1002

ORIGINAL

PHYSICIANS WHO TREATED CLAIMANT (NAME AND ADDRESS)
Dr. A. Jake Poulter, Idaho Pain Group, 98 Poplar Street, Blackfoot, Idaho 83221
Dr. Scott Huneycutt, 500 S. 11th, Ste. 504, Pocatello, Idaho 83201
Dr. David Simon, 2860 Channing Way, Ste. 213, Idaho Falls, Idaho 83404

WHAT MEDICAL COSTS HAVE YOU INCURRED TO DATE? UNKNOWN

WHAT MEDICAL COSTS HAS YOUR EMPLOYER PAID, IF ANY? $ UNKNOWN WHAT MEDICAL COST HAVE YOU PAID, IF ANY? $ UNKNOWN

I AM INTERESTED IN MEDIATING THIS CLAIM, IF THE OTHER PARTIES AGREE. ☑ YES ☐ NO

DATE

SIGNATURE OF CLAIMANT OR ATTORNEY: [signature]

TYPE OR PRINT NAME: Michael R McBride

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

NAME AND SOCIAL SECURITY NUMBER OF PARTY	DATE OF DEATH	RELATION OF DECEASED TO CLAIMANT FILING COMPLAINT

WAS CLAIMANT DEPENDENT ON DECEASED? ☐ YES ☐ NO

DID CLAIMANT 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 25 day of June, 2010, I caused to be served a true and correct copy of the foregoing Complaint upon:

EMPLOYER'S NAME AND ADDRESS

Blackfoot Brass
P.O. Box 885
Blackfoot, Idaho 83221

Via: ☐ Personal service of process
☑ Regular U.S. Mail

SURETY'S NAME AND ADDRESS

State Insurance Fund
P.O. Box 83720
Boise, Idaho 83720-0044

Via: ☐ Personal service of process
☑ Regular U.S. Mail

Wendy Henman
Signature

Wendy Henman
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.

(COMPLETE MEDICAL RELEASE FORM ON PAGE 3)

Patient Name: Maria Gomez
Birth Date: [redacted]
Address: 1225 W. 90 S., Blackfoot, Idaho 83221
Phone Number:(208) 680-0814
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: _____
(e.g. Worker's Compensation Claim)

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

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

I understand that the disclosure my 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 (45CFR 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.

Maria Gomez 6/24/10
Signature of Patient *Date*

_____
Signature of Legal Representative & Relationship to Patient/Authority to Act *Date*

_____
Signature of Witness *Title* *Date*

Michael R. McBride
McBRIDE & ROBERTS, ATTORNEYS
Signature Law Group, P.L.L.C.
1495 East 17th Street
Idaho Falls, Idaho 83404
Telephone: (208) 525-2552
Facsimile: (208) 525-5288
ISB License No: 3037

Attorney for Claimant

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARIA GOMEZ, Claimant, v. BLACKFOOT BRASS, Employer, and IDAHO STATE INSURANCE FUND, Surety, Defendants.	I.C. No.: 09-018790 CLAIMANT'S REQUEST FOR AN EMERGENCY HEARING

COMES NOW Claimant and pursuant to Rule3(e) petitions the Commission for an emergency hearing on the issue of whether Claimant is entitled to payment of TTD benefits. Grounds for said motion are that:

ORIGIN. 4

1. Claimant was injured in a work accident on July 24, 2009.

2. Claimant has not received any TTD benefits since March 18, 2010.

3. The State Insurance Fund sent Claimant to see Dr. David Simon on February 16, 2010, for an insurance medical exam.

4. On February 16, 2010, Dr. Simon determined Claimant was medically stable and that no future treatment was needed or any work restrictions.

5. Dr. Poulter, Claimant's treating physician, wrote a letter on April 8, 2010, stating he did not agree with Dr. Simon's findings and that due to Claimant's persistent disc bulge she was not ready to return to work. (Exhibit 1).

6. That Dr. Huneycutt, an orthopaedic surgeon, reviewed Claimant's MRI and found a herniated impinging disc and that surgery was reasonable. (Exhibit 2).

7. Dr. Poulter filled out a Work Restriction Form dated April 22, 2010 stating that Claimant could not return to work until her treatment was completed. (Exhibit 3).

8. Claimant returned to Dr. Poulter's office on June 23, 2010, and was notified she was to remain off work through July 22, 2010. (Exhibit 4).

9. That even though State Insurance Fund has been provided Dr. Poulter's opinions, it has not voluntarily made benefits for TTD's. (Exhibit 5).

10. Claimant has hired an attorney to secure these benefits and that she has been unable to obtain those presently.

11. That Claimant is in desperate need of funds to take care of household expenses.

12. That without having benefits, Claimant will be forced to undertake extreme measures to secure payment of her household expenses to include selling of personal property or real property at a tremendous loss.

DATED this 6 day of July, 2010.

MCBRIDE & ROBERTS, ATTORNEYS

Michael R. McBride
Attorney for Claimant

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 this 6 day of July, 2010, I caused a true and correct copy of the foregoing document to be served upon the person(s) listed below either by mailing, overnight delivery, hand delivery or facsimile:

Angie Prescott
State Insurance Fund
P.O. Box 83720
Boise, Idaho 83720-0044

- ☑ Mail
- ☐ Overnight Delivery
- ☐ Hand Delivery
- ☐ Facsimile

MCBRIDE & ROBERTS, ATTORNEYS

By: _____
Michael R. McBride

BINGHAM MEMORIAL HOSPITAL
Your Health, Your Community, Your Hospital

98 Poplar Street
Blackfoot, Idaho 83221
208.785.4100
208.785.3806 - fax
www.binghammemorial.org

April 08, 2010

Idaho Industrial Commission Rehabilitation Division
1820 E 17th Street
Idaho Falls, Idaho 83404
Fax: 208-525-7013
Phone: 208-525-7248

To Whom It May Concern:

RE: Maria Gomez, Date of birth: [redacted]

I am writing this letter on behalf of my patient, Maria Gomez. As you are aware, the patient is a 42-year-old woman who was involved in a work-related back injury a number of months ago. On her MRI she had an acute L4-L5 disk rupture with right neuroforaminal stenosis and contact with the exiting nerve root at this level. We have performed a single transforaminal epidural steroid injection targeting this lesion. This was performed on 12/14/2009. She returned to the clinic for follow up stating that she had approximately 30% improvement. She has then spent an approximately 1-2 month period of time focusing on physical therapy. She has unfortunately responded favorably to physical therapy and has not returned to a point where she is able to return to work. At out last appointment one month ago we discussed a treatment plan, including a repeat epidural steroid injection targeting this disk bulge and agreed that if she failed to receive significant benefit from this injection that she would be sent to a neurosurgeon for decompressive surgery evaluation and discussion. In the interim we unfortunately failed to receive authorization from the Worker's Compensation Program for the second injection.

She has, in the interim, been evaluated by Dr. Simons whom they report now works for the Worker's Compensation Fund. They report to me that Dr. Simons' evaluation released her back to work. Reading through his evaluation suggests that he was concerned about discrepancies between her reported pain experience and his physical examination. The patient returns today to discuss these findings with myself and for options regarding future treatment.

By her history the patient continues to report severe pain. She is unsure if she would tolerate going back to work in her very demanding previous employment position. She has persistent low back pain and right lower extremity radicular symptoms in the posterolateral aspect of her lower extremity. She describes her pain with neuropathic descriptors. On her physical examination she continues to have sensation discrepancy between her right and left lower extremities. I find a subtle difference in her reflexes bilaterally and to provocative testing she continues to have neural tension signs which reproduce her pain in her right lower extremity, nicely concordant with her pain description.

CONTINUED

EXHIBIT 7

Re: Maria Gomez

It is my opinion that the patient has a persistent disk bulge which continues to be symptomatic. I do not feel like she is ready to return to work. We had a previous treatment plan in place, but unfortunately this has been halted secondary to a recent workman's compensation evaluation. I do not agree with Dr. Simons findings. I find that the patient continues to have neural tension signs on physical examination and findings in her right lower extremity which are concerning for ongoing neural tension and neurological changes.

My recommendation is that she undergo a repeat transforaminal epidural steroid injection targeting the disk bulge at the L4-L5 level. She may need more than one injection. If she fails to receive adequate benefit from this, I recommend she have a neurosurgical consultation for possible decompressive surgery.

If you have further questions I welcome your phone calls or contact.

Sincerely,

A. Jake Poulter, M.D.
Pain Management Specialist
Idaho Pain Group

Bingham Memorial Hospital
98 Poplar Street
Blackfoot, Idaho 83221
Phone: 208-782-3701
Fax: 208-782-3994

AJP/kyp

IDAHO PHYSICIANS CLINIC

NEUROSURGERY CLINIC NOTE:

PATIENT:	GOMEZ, MARIA D.
ACCT:	114444
DATE OF BIRTH:	[redacted]
DATE:	11/11/2009
PHYSICIAN:	W. SCOTT HUNEYCUTT, M.D.

CHIEF COMPLAINT: The patient has low back pain with right lower extremity radiation.

HISTORY OF PRESENT ILLNESS: The patient is a very pleasant right-handed 42-year-old female who presents for a consultation in neurosurgery today for the first time at the request of Guss Grimmett. The patient reports an on-the-job injury on July 24, 2009, that resulted in low back pain with right lower extremity radiation. She reports that prior to this date, she was doing quite well, although she has a distant history of low back pain following a previous industrial incident, perhaps three years previous. The patient reports that she has had continual pain as described, including pain radiating over her right buttock and over the lateral aspect of her right leg into her foot. She reports weakness, pain, and numbness in this leg. The patient reports that these symptoms prevent her from completing her job-related duties. The patient reports that she has undergone treatment, including physical therapy, medical therapy including pain medications and muscle relaxers, and chiropractic care. The patient reports despite these treatments, her symptoms persist.

REVIEW OF SYSTEMS: A complete review of systems is positive for muscle pain, numbness, anxiety, allergies, muscle weakness, tingling, depression, blurry vision, and spine pain.

PAST MEDICAL HISTORY: It is negative.

PAST SURGICAL HISTORY: It is negative.

CURRENT MEDICATIONS: There are none listed.

ALLERGIES: No drug allergies are listed.

SOCIAL HISTORY: The patient reports that she is currently employed at Blackfoot Brass. She denies alcohol or tobacco use.

FAMILY HISTORY: Family history is negative.

PHYSICAL EXAMINATION:

VITAL SIGNS:	Height is 65 inches. Weight is 169 pounds. Temperature is 96.9. Blood pressure is 128/80. Respirations are 16. Pulse is 78. SpO2 is 97% on room air.
HEENT:	Head is normocephalic and atraumatic.
NECK:	The neck is supple with free range of motion.
CHEST:	Chest is clear to auscultation.
CARDIOVASCULAR:	Heart has regular rate and rhythm.
ABDOMEN:	Abdomen is nontender and nondistended.
EXTREMITIES:	Extremities have 1+ distal pulses.
NEUROLOGIC:	Motor strength is 5/5 throughout, although there is hesitancy in the right leg secondary to pain. Deep tendon reflexes are 1+ and symmetric.

EXHIBIT 9

IDAHO PHYSICIANS CLINIC

NEUROSURGERY CLINIC NOTE:

PATIENT: GOMEZ, MARIA D.

ACCT: 114444

DATE OF BIRTH: [redacted]

DATE: 11/11/2009

PHYSICIAN: W. SCOTT HUNEYCUTT, M.D.

Sensation is grossly intact. The patient has markedly positive straight leg raise on the right side at approximately 30 degrees.

RADIOLOGY: The radiology is reviewed. The patient presents with a recent lumbar MRI. This imaging study reveals evidence of herniation of the disk at L4-L5 with impingement of the exiting nerve root on the right side and resultant neural foraminal stenosis. Note, there is desiccation and collapse of the disk at L5-S1 as well.

IMPRESSION: Herniated disk with lumbar radiculopathy and low back pain following a lifting incident at work.

DISCUSSION: I have discussed with the patient various options. I have discussed with the patient expectant management versus physical therapy versus medical therapy versus pain management intervention, and I also discussed her options in regard to surgical intervention. In regard to surgical intervention, I have discussed the surgery known as lumbar diskectomy. I have reviewed with her the risks of surgery, which include but are not limited to bleeding, infection, nerve injury, weakness, pain, paralysis, heart attacks, stroke, blindness, coma, and death. At this juncture, the patient has elected to pursue a pain management evaluation and possible spine injection therapy. A prescription was provided to the patient for physical therapy. At the patient's request, a release from work was issued until the patient could follow up with pain management.

I have made it clear to the patient that I am happy to see her in the future should she feel that she wishes to pursue surgical intervention. I have made no statement in reference to causality. I made it clear to the patient that I would defer her to a physical medicine specialist in the determination of causality or disability determinations.

WSH/rk
d 11/11/09
t 11/12/09

TO AVOID DELAY
SENT WITHOUT SIGNATURE

W. SCOTT HUNEYCUTT, M.D.

cc: Guss Grimmett, N.P.
Michael L. Johnson, DC
Jake Poulter, M.D.
Maria D. Gomez
State Insurance Company

CLAIMANT: Maria Gomez

DATE OF INJURY: 7/24/09

CLAIM NO.: 200908703

SOCIAL SECURITY NO.: 608-26-6979

INSURANCE CARRIER: State Insurance Fund

CLAIMANTS WORK STATUS IS:

A. X Not able to return to work at this time.

B. Return appointment is scheduled for from May 2010.

C. X May return to light duty work for ___ hours per day and ___ days per week and ___ weeks per month.

D. Work restrictions are as follows: Needs to Complete Treatment Plan.

E. ___ May return to full work duty.

F. Provide dates released from work:

Starting date: From Now until She is

Ending date: Better.

G. Other ___

Physicians Signature

4/22/10
Date

JAKE POULTER, MD
DEA # FP0964420

JAKE POULTER, MD
DEA # FP0964420

EXHIBIT 3

11

CLAIMANT: Maria Gomez

DATE OF INJURY: 7/24/09

CLAIM NO.: 200908703

SOCIAL SECURITY NO.: [redacted]

INSURANCE CARRIER: State Insurance Fund

CLAIMANTS WORK STATUS IS:

A. X Not able to return to work at this time. She has a herniated disc at L4-L5. (Lumbar Spine)

B. Return appointment is scheduled for July-22-10 12:PM

C. ____ May return to light duty work for ____ hours per day and _____ days per week and _____ weeks per month.

D. Work restrictions are as follows:_____

_____

_____

E. _____ May return to full work duty.

F. Provide dates released from work:

Starting date: _____

Ending date: _____

G. Other _____

_____

_____

Gary D. Myers PA-C
Physicians Signature

6/23/10
Date

EXHIBIT 4

Idaho State Insurance Fund

IDAHO STATE INSURANCE FUND
1215 West State Street
P.O. Box 83720
Boise, Idaho 83720-0044

CLAIMANT
MARIA GOMEZ

LAST check From work compensation

CLAIM NUMBER
200908703

DATE
03/30/2010

CHECK NUMBER
1646289

1646289

MARIA GOMEZ
1225 W 90 S
BLACKFOOT, ID 83221

NOTICE: If you returned to work BEFORE the ending date of the Temporary Total Benefits on this check, you are not entitled to this payment. If you have returned to work, please enter the date, sign and return this slip with the enclosed check to us, and we will forward a corrected check.

Date returned to work _____ **Signature** _____

Acceptance of this check is illegal if you returned to work before the ending date on this check.

Compensation Type	Payment Type	From	Through	Days	Amount
TEMPORARY TOTAL	REGULAR	03/17/2010	03/18/2010	2	$ 118.69

COPYS

Gross Check Amount	Overpay Reduction	Garnishment	Net Check Amount
$ 118.69	$ 0.00	$ 0.00	$ 118.69

EXHIBIT 5 13

Michael R. McBride
McBRIDE & ROBERTS, ATTORNEYS
Signature Law Group, P.L.L.C.
1495 East 17th Street
Idaho Falls, Idaho 83404
Telephone: (208) 525-2552
Facsimile: (208) 525-5288
ISB License No: 3037

Attorney for Claimant

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARIA GOMEZ, Claimant, v. BLACKFOOT BRASS, Employer, and IDAHO STATE INSURANCE FUND, Surety, Defendants.	I.C. No.: 09-018790 CLAIMANT'S AFFIDAVIT IN SUPPORT OF REQUEST FOR AN EMERGENCY HEARING

STATE OF IDAHO)
:ss.
County of Bonneville)

COMES NOW Claimant and hereby affirms:

1. I was injured on July 24, 2009, while working for Blackfoot Brass.

ORIGINAL 14

2. That I am off work on my doctors advice until July 23, 2010. (Exhibit 1 & 2).

3. That I have financial obligations that require immediate funding. That I have no immediate source of income to cover these expenses including an arrearage on my mortgage. That a true and correct copy of my mortgage statement is attached as (Exhibit 3).

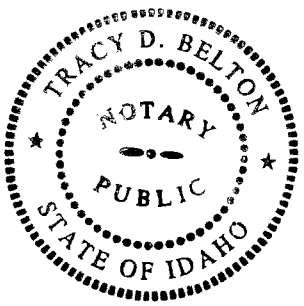
4. That I have not been paid time loss benefits from State Insurance Fund since March 18, 2010.

5. That a true and correct copy of my last TTD check is attached as (Exhibit 4).

DATED this 1st day of July, 2010.

Maria Gomez

SUBSCRIBED AND SWORN to before me this 1st day of July, 2010.



NOTARY PUBLIC FOR IDAHO
Residing at: Idaho Falls
My Commission Expires: 06/05/2016

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 this 16 day of July, 2010, I caused a true and correct copy of the foregoing document to be served upon the person(s) listed below either by mailing, overnight delivery, hand delivery or facsimile:

Angie Prescott	☑	Mail
State Insurance Fund	☐	Overnight Delivery
P.O. Box 83720	☐	Hand Delivery
Boise, Idaho 83720-0044	☐	Facsimile

MCBRIDE & ROBERTS, ATTORNEYS

By: _____
Michael R. McBride

CLAIMANT: Maria Gomez

DATE OF INJURY: 7/24/09

CLAIM NO.: 200908703

SOCIAL SECURITY NO.: [redacted]

INSURANCE CARRIER: State Insurance Fund

CLAIMANTS WORK STATUS IS:

A. X Not able to return to work at this time. She has a herniated disc at L4-L5. (Lumbar Spine)

B. Return appointment is scheduled for July-22-10 12:PM

C. ____ May return to light duty work for ____ hours per day and _____ days per week and _____ weeks per month.

D. Work restrictions are as follows:_____

_____

_____

E. _____ May return to full work duty.

F. Provide dates released from work:

Starting date: _____

Ending date: _____

G. Other _____

_____

_____

Gary D. Myers PA-C
Physicians Signature

6/23/10
Date

EXHIBIT 17

CLAIMANT: Maria Gomez

DATE OF INJURY: 7/24/09

CLAIM NO.: 20090870J

SOCIAL SECURITY NO.: 608-26-6779

INSURANCE CARRIER: State Insurance Fund

CLAIMANTS WORK STATUS IS:

A. X **Not able to return to work at this time.**

B. **Return appointment is scheduled for** ~~Apr~~ May 2010.

C. ~~X~~ **May return to light duty work for** ___ **hours per day and** ___ **days per week and** ___ **weeks per month.**

D. **Work restrictions are as follows:** Needs to Complete Treatment Plan.

E. ___ **May return to full work duty.**

F. **Provide dates released from work:**

Starting date: From Now until She is

Ending date: Better.

G. **Other** ___

4/22/10

Physicians Signature **Date**

JAKE POULTER, MD
DEA # FP0964420

JAKE POULTER, MD
DEA # FP0964420

EXHIBIT 2

Account Statement

Customer Service Information

Write To: IBM Lender Business Process Services, Inc.
P.O. Box 4121
Beaverton, OR 97076-4121

Business Hours: Mon-Thu 5am to 9pm; Fri 5am to 6pm
Sat 6am to 12pm; Sun 11am to 5pm PT

For Information: Call: 866.570.5277
Fax: 866.578.5277

OR Visit Us Online: www.lbps.com

See reverse side for additional important information

0-769-00208-0005457-002-1-000-000-000-000

GOMEZ, MARIA D
1225 W 90 S
BLACKFOOT ID 83221-6009

Borrower Information

Phone - Home:
Phone - Work: 208-684-5239

Property Address: 1225 W 90 S
BLACKFOOT, ID 83221-6009

Account Information

Loan Number: 7931739

Statement Date: 06/16/10
Interest Rate: 8.250%

Payment Breakdown:

Principal & Interest:	$	712.21
Escrow:	$	90.25
Other:	$	0.00
Total:	$	802.46

Year To Date Interest Paid	Year To Date Late Charges Paid	Year To Date Taxes Paid	Year To Date Principal Paid
0.00	0.00	332.19	0.00
New Principal Balance*	**New Escrow Balance**	**New Interest Arrearage Balance**	**New Escrow Arrearage Balance**
92,761.72	-545.53	0.00	0.00

**This is not a payoff figure. It does not include interest, fees, and costs.*

Activity Since Your Last Statement

Date	Description	Principal	Interest	Escrow	Late Charge/ Other Fees	Other	Suspense	Total
/25/10	ESCROW - TAXES	.00	.00	-332.19	.00	.00	.00	-332.19

Important Messages

NOTICE - CHECK PAYMENTS PROCESSED AS ELECTRONIC FUND TRANSFERS
When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.

EXHIBIT 3

Account Information

Loan Number: 7931739

Statement Date:	06/16/10
Interest Rate:	8.250%

Payment Breakdown:

Principal & Interest:	$	712.21
Escrow:	$	90.25
Other:	$	0.00
Total:	$	802.46

Year To Date Interest Paid	Year To Date Late Charges Paid	Year To Date Taxes Paid	Year To Date Principal Paid
0.00	0.00	332.19	0.00
New Principal Balance*	**New Escrow Balance**	**New Interest Arrearage Balance**	**New Escrow Arrearage Balance**
92,761.72	-545.53	0.00	0.00

**This is not a payoff figure. It does not include interest, fees, and costs.*

Activity Since Your Last Statement

Date	Description	Principal	Interest	Escrow	Late Charge/ Other Fees	Other	Suspense	Total
5/25/10	ESCROW - TAXES	.00	.00	-332.19	.00	.00	.00	-332.19

LBPS™

Important Messages

NOTICE - CHECK PAYMENTS PROCESSED AS ELECTRONIC FUND TRANSFERS
When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.

Please visit our website at www.lbps.com

Please return this coupon with your payment and include your loan number on your payment.

LBPS™

GOMEZ, MARIA D

Loan #: 7931739-3

☐ Please check this box if you have provided us with any information on the reverse side of this coupon:

LENDER BUSINESS PROCESS SERVICES
P.O. BOX 7162
PASADENA, CA 91109-7162

Payment Coupon

Payment Due Date		07/01/10
Current Payment	$	802.46
Past Due Payment(s)	$	3,209.84
Other Charges	$	50.61
Prior Unpaid Interest	$	0.00
Suspense (credit)	$	0.00
TOTAL AMOUNT DUE	$	4,062.91
AFTER 07/16/10 (Includes late charge)	$	4,098.52

Any additional funds remitted will be applied to amounts due as of the date received and thereafter to the principal balance.

TOTAL ENCLOSED $

If payment is made through *MortgageDirect*, this bill is for information only.

000080246 000406291 000409852 0079317393 0001 7

Idaho State Insurance Fund

IDAHO STATE INSURANCE FUND
1215 West State Street
P.O. Box 83720
Boise, Idaho 83720-0044

CLAIMANT
MARIA GOMEZ

LAST check from work compensation

CLAIM NUMBER
200908703

DATE
03/30/2010

CHECK NUMBER
1646289

1646289

MARIA GOMEZ
1225 W 90 S
BLACKFOOT, ID 83221

NOTICE: If you returned to work BEFORE the ending date of the Temporary Total Benefits on this check, you are not entitled to this payment. If you have returned to work, please enter the date, sign and return this slip with the enclosed check to us, and we will forward a corrected check.

Date returned to work _____ **Signature** _____

Acceptance of this check is illegal if you returned to work before the ending date on this check.

Compensation Type	Payment Type	From	Through	Days	Amount
TEMPORARY TOTAL	REGULAR	03/17/2010	03/18/2010	2	$ 118.69

COPY S

Gross Check Amount	Overpay Reduction	Garnishment	Net Check Amount
$ 118.69	$ 0.00	$ 0.00	$ 118.69

EXHIBIT 4 21

ORIGINAL

APPENDIX III

Send Original To: Industrial Commission, Judicial Division, 700 S. Clearwater Lane, Boise, Idaho 83712 IC1003 (Rev. 11/91

ANSWER TO COMPLAINT

I.C. NO. 2009-018797 **INJURY DATE** 07/24/2009

_X_ 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	CLAIMANT'S ATTORNEY'S NAME AND ADDRESS
Maria Gomez 1225 W. 90 S. Blackfoot, ID 83221	Michael R. McBride McBride & Roberts, Attorneys 1495 East 17th Street Idaho Falls, ID 83404
EMPLOYER'S NAME AND ADDRESS	WORKERS' COMPENSATION INSURANCE CARRIER'S (NOT ADJUSTOR'S) NAME AND ADDRESS
Dura Mark, Inc. P.O. Box 885 Blackfoot, ID 83221	State Insurance Fund P. O. Box 83720 Boise, ID 83720-0044
ATTORNEY REPRESENTING EMPLOYER OR EMPLOYER/SURETY (NAME AND ADDRESS)	ATTORNEY REPRESENTING INDUSTRIAL SPECIAL INDEMNITY FUND (NAME AND ADDRESS)
Paul J. Augustine Augustine Law Offices, PLLC P.O. Box 1521 Boise, ID 83701	

RECEIVED
INDUSTRIAL COMMISSION
2009 JUL 12 P 3:38

IT IS: (Check One)		
Admitted	Denied	
X		1. That the accident alleged in the Complaint actually occurred on or about the time claimed.
X		2. That the employer/employee relationship existed.
X		3. That the parties were subject to the provisions of the Idaho Workers' Compensation Act.
	X	4. That the condition for which benefits are claimed was caused entirely by an accident arising out of and in the course of Claimant's employment.
NA	NA	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.
X		6. That 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.
	X	7. That the rate of wages claimed is correct. If denied, state the average weekly wage pursuant to Idaho Code, § 72-419: $
X		8. That the alleged employer was insured or permissibly self-insured under the Idaho Workers' Compensation Act.

12. What benefits, if any, do you concede are due Claimant?
None.

22

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

See Exhibit "A" attached hereto.

Under the Commission rules, you have 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 3.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. _X_YES __NO

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	July 12, 2010	
$00.00	$10,563.03	$9,706.29		

PLEASE COMPLETE

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of July, 2010 I caused to be served a true and correct copy of the foregoing ANSWER upon:

CLAIMANT'S NAME AND ADDRESS	EMPLOYER AND SURETY'S NAME AND ADDRESS	INDUSTRIAL SPECIAL INDEMNITY FUND (if applicable)
Maria Gomez c/o Michael R. McBride McBride &l Roberts, Attorneys	State Insurance Fund	
1495 East 17th Street	1215 W. State Street	
Idaho Falls, ID 83404	Boise, ID 83720	
Via: __ personal service of process X regular U.S. Mail	Via: ___ personal service of process X regular U.S. Mail	Via: ___ personal service of process ___ regular U.S. Mail

Signature

23

Exhibit A

Affirmative Defenses

1. Defendants deny each and every allegation of the Complaint not specifically admitted herein.

2. Defendants contend that the condition of which Claimant complains is attributable, in whole or in part, to a pre-existing injury, infirmity or condition such that Claimant's permanent disability, if any, is subject to apportionment pursuant to the provisions of Idaho Code Section 72-406.

3. Defendants deny that they have acted unreasonably and Claimant is therefore not entitled to an award of attorney fees pursuant to the provisions of Idaho Code Section 72-804.

ORIGINAL

APPENDIX III

Send Original To: Industrial Commission, Judicial Division, 700 S. Clearwater Lane, Boise, Idaho 83712 IC1003 (Rev. 11/91

AMENDED ANSWER TO COMPLAINT

I.C. NO. 2009-018790 **INJURY DATE 07/24/2009**

_X_ 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	CLAIMANT'S ATTORNEY'S NAME AND ADDRESS
Maria Gomez 1225 W. 90 S. Blackfoot, ID 83221	Michael R. McBride McBride & Roberts, Attorneys 1495 East 17th Street Idaho Falls, ID 83404
EMPLOYER'S NAME AND ADDRESS	WORKERS' COMPENSATION INSURANCE CARRIER'S (NOT ADJUSTOR'S) NAME AND ADDRESS
Dura Mark, Inc. P.O. Box 885 Blackfoot, ID 83221	State Insurance Fund P. O. Box 83720 Boise, ID 83720-0044
ATTORNEY REPRESENTING EMPLOYER OR EMPLOYER/SURETY (NAME AND ADDRESS) Paul J. Augustine Augustine Law Offices, PLLC P.O. Box 1521 Boise, ID 83701	ATTORNEY REPRESENTING INDUSTRIAL SPECIAL INDEMNITY FUND (NAME AND ADDRESS)

RECEIVED
INDUSTRIAL COMMISSION
2010 JUL 19 A 8:08

IT IS: (Check One)		
Admitted	Denied	
X		1. That the accident alleged in the Complaint actually occurred on or about the time claimed.
X		2. That the employer/employee relationship existed.
X		3. That the parties were subject to the provisions of the Idaho Workers' Compensation Act.
	X	4. That the condition for which benefits are claimed was caused entirely by an accident arising out of and in the course of Claimant's employment.
NA	NA	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.
X		6. That 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.
	X	7. That the rate of wages claimed is correct. If denied, state the average weekly wage pursuant to Idaho Code, § 72-419: $
X		8. That the alleged employer was insured or permissibly self-insured under the Idaho Workers' Compensation Act.

12. What benefits, if any, do you concede are due Claimant?
None.

25

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

See Exhibit "A" attached hereto.

Under the Commission rules, you have 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 3.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.** _X_YES __NO

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	July 16th 2010	
$00.00	$10,563.03	$9,706.29		

PLEASE COMPLETE

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of July, 2010 I caused to be served a true and correct copy of the foregoing ANSWER upon:

CLAIMANT'S NAME AND ADDRESS	EMPLOYER AND SURETY'S NAME AND ADDRESS	INDUSTRIAL SPECIAL INDEMNITY FUND (if applicable)
Maria Gomez c/o Michael R. McBride McBride &l Roberts, Attorneys	State Insurance Fund	
1495 East 17th Street	1215 W. State Street	
Idaho Falls, ID 83404	Boise, ID 83720	
Via: __ personal service of process X regular U.S. Mail	Via: ___ personal service of process regular U.S. Mail	Via: ___ personal service of process ___ regular U.S. Mail

Signature

26

Exhibit A

Affirmative Defenses

1. Defendants deny each and every allegation of the Complaint not specifically admitted herein.

2. Defendants contend that the condition of which Claimant complains is attributable, in whole or in part, to a pre-existing injury, infirmity or condition such that Claimant's permanent disability, if any, is subject to apportionment pursuant to the provisions of Idaho Code Section 72-406.

3. Defendants deny that they have acted unreasonably and Claimant is therefore not entitled to an award of attorney fees pursuant to the provisions of Idaho Code Section 72-804.

ORIGINAL

PAUL J. AUGUSTINE ISB 4608
AUGUSTINE LAW OFFICES, PLLC
1004 W. Fort Street
Post Office Box 1521
Boise, ID 83701
Telephone: (208) 367-9400
Facsimile: (208) 947-0014

Attorneys for Employer/Surety

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARIA GOMEZ,

Claimant,

vs.

BLACKFOOT BRASS,

Employer,

and

STATE INSURANCE FUND,

Surety,

Defendants.

I.C. No. No. 2009-018790

DEFENDANTS' RESPONSE TO CLAIMANT'S REQUEST FOR AN EMERGENCY HEARING

Defendants, by and through their counsel of record, oppose the Claimant's Request for an Emergency Hearing on the grounds that she failed to present evidence of an emergency. No emergency circumstances exist upon which to grant her motion. First, the Claimant is now alleging that she is entitled to additional medical care and is thus entitled to TTD benefits. However, an examination of the exhibits submitted by the Claimant, demonstrates that she does not require surgical intervention at this time. Specifically, Dr. Hunneycutt's records contained in Exhibit 2, page 2 of her request indicate that she may need surgery in the future. However, he specifically declines

to relate her condition to her industrial accident stating "I have made no statement in reference to causality. I made it clear to the patient that I would defer her to a physical medicine specialist in the determination of causality or disability determination."

In this regard, the Defendants had the Claimant examined by a physical medicine specialist, specifically Dr. Simon, a board certified physical rehabilitation physician. On February 16, 2010 he reviewed the Claimant's records including her x-rays and an MRI of her lumbar spine. He diagnosed the Claimant with back and right leg pain and felt the Claimant may have had a strain injury but that it has "likely resolved and the cause of her current symptoms is unable to be determined." (See Exhibit "A" which is a true and correct copy of Dr. Simon's reports and letters.) He opined that the Claimant's physical examination was inconsistent with her pain being related to a disc herniation and radiculopathy, including her exaggerated pain behaviors. (Id.)

Based upon Dr. Simon's opinion that the Claimant was able to return to work, the Idaho State Insurance Fund terminated her TTD benefits. Thereafter, the Claimant was offered light duty work by her employer, which she declined. Although the Claimant's treating physician Dr. Poulter disagreed with Dr. Simon's findings, Dr. Simon specifically addressed his concerns in a letter dated April 27, 2010. (See Exhibit "A") Dr. Simon's review of the MRI film did not see any neuroforaminial stenosis and he refuted Dr. Poulter's opinion that "she had an acute L4-5 disc rupture with right neuroforaminial stenosis in contact with the exiting nerve root at this level. He also indicated that the Claimant had a chronic disc protrusion and that there was no evidence on the MRI to show an acute disc rupture caused by her 2009 accident.

Furthermore, the Claimant is still employed by her employer with a bona fide offer of employment to perform light duty work to earn income and she has employer-paid health insurance available for her to pay her medical expenses. As such, there is no emergency situation that requires a hearing in this case. Rather, this is situation which typically occurs in most worker's compensation cases, i.e., a disagreement over the termination of TTD benefits based upon medical evidence. Defendants will be ready for a hearing on these issues but not within 30 days as Defendants may

have her MRI reviewed by a neurosurgeon to confirm Dr. Simon's opinions.

Therefore for the foregoing reasons Defendants respectfully request that the Commission deny the Claimant's request and schedule a hearing later than 30 days from now.

DATED this 26th day of July, 2010.

AUGUSTINE LAW OFFICES, PLLC

By _____
Paul J. Augustine - Of the Firm
Attorneys for Employer/Surety

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of July, 2010, I caused to be served a true copy of the foregoing DEFENDANTS' RESPONSE TO CLAIMANT'S REQUEST FOR AN EMERGENCY HEARING by the method indicated below, and addressed to each of the following:

Michael R. McBride
McBride & Roberts, Attorneys
1495 East 17th Street
Idaho Falls, ID 83404

Attorneys for Claimant

X U.S. Mail, Postage Prepaid
___Hand Delivered
___Overnight Mail
___Telecopy

Paul J. Augustine

IDAHO FALLS
PHYSICAL
MEDICINE &
REHABILITATION

David C. Simon, M.D. • Board Certified
2850 Channing Way, Suite 213 • Idaho Falls, ID 83404 • (208) 535-4420

Neurological

Rehabilitation

Stroke, head injury,

spinal cord injury,

Multiple Sclerosis

Musculoskeletal

Problems:

back and neck pain,

urban rehabilitation

sports medicine,

occupational injuries

Electromyography

(EMG/NCS)

Independent Medical

Evaluations (IME)

Examinee: Maria Gomez
Claim Number: 200908703
Date of Birth: [redacted]
Date of Injury: 07/24/2009

Date of Examination: 02/16/2010
Examining Physician: David C. Simon, M.D.

Client: State Insurance Fund

INTRODUCTION

This 42-year-old female was referred for an independent medical evaluation (IME) by the above client. The independent medical examination process was explained to the examinee, and she understands that no patient/treating physician relationship was established. Ms. Gomez was advised that the information provided would not be confidential and a report will be sent to the requesting client.

Ms. Gomez was cooperative. The history was obtained from the examinee (who was a vague historian) and from the medical records that had been provided. The information she provided was not always consistent with the medical records provided. A questionnaire and pain inventories were completed by the examinee. Ms. Gomez reported no new difficulties occurring during the examination.

HISTORY

Preexisting Status

She denies any previous problems or injuries, including any other work- or liability-related injuries. Ms. Gomez also denies having any difficulties similar to those she is now experiencing until the injury. She specifically denied any prior problems with her low back. I reviewed medical records dating back to 2002.

On 4/29/02, she was evaluated by Curtis Galke, D.O. She was complaining of low back pain after lifting something heavy at work. She was diagnosed with a musculoskeletal strain. When re-evaluated on 6/7/02, it was noted that she was pain free.

EXHIBIT
tabbies A

In 2003, she was treated by a chiropractor after injuring her neck and back lifting patterns. The chiropractor's note indicates that she was having low back and leg pain and he was concerned about disc involvement of the lower back. The chiropractor's report refers to a previous low back injury in March of 2002.

On 5/10/06, she was evaluated for neck pain. It was noted that the day prior she had been hurt at work. She was diagnosed with a cervical strain.

She was re-evaluated on 8/14/06. She was complaining of neck pain, upper and lower back pain, and left shoulder pain. Physical therapy was recommended.

She was re-evaluated on 10/9/06. It was noted that she had initially improved and had gone back to work but was having recurrent right-sided neck and shoulder pain.

She was re-evaluated on 11/2/06. She was referred to an orthopedic surgeon.

On 11/9/06, she was evaluated by Robert Lee, M.D. She was complaining of problems with her neck and right arm. His assessment was "Long-standing neck pain with subjective radicular symptoms on the right". An MRI of the cervical spine was recommended.

An MRI of the cervical spine was done on 11/25/06. This showed mild degenerative disc disease at C5-6 without a focal disc protrusion.

She was evaluated by a spine surgeon, Benjamin Blair, M.D., on 12/6/06. His impression was "Degenerative disc disease, exacerbated by a work injury". She was prescribed Celebrex. Ms. Gomez reported that chiropractic treatment in the past had helped and so Dr. Blair recommended more chiropractic treatment.

She was re-evaluated 1/10/07. It was noted that she had improved significantly.

She returned to see him on 2/26/07. Her pain had slowly recurred. She wanted more chiropractic treatment.

She was re-evaluated on 4/18/07. It was noted that since the chiropractic treatment had stopped, the pain had recurred. She was also having headaches. A CT scan of the head was done on 4/20/07 and this was normal.

On 5/4/07, she underwent a C5-6 epidural steroid injection. It was noted that she had no pain before the procedure or after procedure.

Injury

She reports she was injured while lifting 60 pound molds at work. She states that after doing that she had a very painful feeling in her back and significant pain in her right leg. She reported it to her boss.

Clinical History

On 7/24/09, she was evaluated by a chiropractor. It was noted that the problem had started on that day at work. She was complaining of lumbosacral and gluteal pain after lifting a box at work. She underwent about 10 chiropractic treatments over the next few weeks.

On 9/16/09, she was evaluated by a nurse practitioner, Gus Grimmett. Ms. Gomez was reporting low back pain radiating to her right calf. She was prescribed a Medrol Dose Pack and Flexeril. X-ray of the lumbar spine was normal. An MRI was recommended.

She was re-evaluated on 9/28/09. The MRI had not been approved yet. There was no improvement in her symptoms.

The MRI of the lumbar spine was done on 10/10/09. This showed a shallow midline posterior disc protrusion at L4-5 and a small annular tear at L5-S1 with shallow posterior disc bulging.

On 11/11/09, she was evaluated by a neurosurgeon, Scott Huneycutt, M.D. He felt that the MRI showed evidence of a herniation of the disc at L4-5 with impingement of the exiting nerve root on the right side with resultant neuroforaminal stenosis. It was also noted that there was desiccation and collapse of the disc at L5-S1. Surgical versus non-surgical treatments were discussed. It was noted that Ms. Gomez elected to pursue pain management and possible spine injection therapy.

On 12/7/09, she was evaluated by Jake Poulter, M.D. An epidural steroid injection was recommended. This was done on 12/14/09.

On 12/29/09, physical therapy started. The therapy report indicated that she was having difficulty doing the exercises.

On 1/18/10, Dr. Poulter indicated that she still needed to be off work.

Today, Ms. Gomez reports that she finished physical therapy last week. She states that she only does a little bit of her home exercise program because it hurts. She indicates that her injection with Dr. Poulter did not help. She states that her last appointment with him was cancelled because he was sick.

Current Status

She reports continued pain in her back and right leg, down to the upper calf. She also reports that she has pain radiating into her neck when her back pain is really bad. She also reports that she has intermittent numbness in her fingers since the injury. She states that her pain is frequent but not constant. It is made worse by activities and made better by relaxing or with medication. On a scale from 0 (no pain) to 10 (excruciating pain), the examinee reports the pain now is an 8. During the past month the pain averaged 7, with a high of 9 and a low of 7.

Occupational History

At the time of the injury she had been employed by Blackfoot Brass and had been working there for almost nine years in the packing and shipping department. She states this job involved inspecting all products. She states that she has not worked since October and she has restrictions of no lifting, bending, or twisting.

Social History

The examinee lives in Blackfoot with her three daughters. She denies performing any work activities or vigorous recreational pursuits. The examinee does not smoke.

Past Medical History

Medical:	She denies any other chronic medical problems.
Surgery:	Negative.
Medication:	She takes a pain pill prescribed by Dr. Poulter.

PHYSICAL EXAMINATION

General Observations

The examinee is a mildly overweight but otherwise healthy-appearing female.

Behavioral Observations

The examinee was pleasant, cooperative and attentive. Affect was normal. During the visit, she appeared mildly uncomfortable and had exaggerated pain behaviors.

Gait

Normal and non-antalgic. No assistive device is used.

Musculoskeletal

No gross deformities are noted. The shoulders and pelvis are level; there is no scoliosis. There is no muscle atrophy or asymmetry noted. There is tenderness to even light palpation of the low back. Straight leg raise is negative. Patrick's test is negative.

Range of Motion

Lumbar spine range-of-motion is markedly restricted with complaints of pain, extension more than flexion. She also reports pain with hip range-of-motion.

Neurological

Coordination is normal. Deep tendon reflexes are 2+ at bilateral knees and 1+ at bilateral ankles. Manual muscle testing was performed; there was give-way weakness throughout the right lower extremity. Mental status is grossly intact. Affect is normal.

PAIN STATUS INVENTORIES

Pain Drawing

The examinee completed a pain drawing, using symbols to describe sensations. This drawing did not reveal findings suggestive of symptom magnification.

Short Form McGill Pain Questionnaire

The McGill Pain Questionnaire specifies 15 potential pain descriptors. The examinee rates the intensity of each descriptor on a scale of 0 to 3. The total of all descriptors was 39. The total of the 11 somatic descriptors was 29, averaging 2.6 and the total of the 4 affective descriptors was 10, averaging 2.5. This indicates a significant affective component to her pain.

DIAGNOSTIC STUDIES/ X-RAY EXAMINATION

X-rays of the lumbar spine, dated 9/16/09, were reviewed. There is straightening of the normal lordotic curve, otherwise no abnormalities are appreciated.

MRI of the lumbar spine, dated 10/10/09, was reviewed. There is desiccation of the L4-5 and L5-S1 discs. There is a small protrusion of the L4-5 disc.

CONCLUSIONS

Diagnoses

1. Back and right leg pain. She may have had a strain injury last summer but this has likely resolved and the cause of her current symptoms is unable to be determined. Her physical examination is not consistent with this being related to a disc herniation and radiculopathy. She has exaggerated pain behaviors and inconsistent findings on examination. The subjective symptoms outweigh the objective findings.

2. Previous low back injuries and problems despite her denying to me that she ever had any work injuries or any prior back problems. She is not a credible historian.

Causation

Based upon the available information, to a reasonable degree of medical probability, there is no causal relationship between the examinee's current complaints and the injury reported.

Maximum Medical Improvement

The examinee has achieved maximum medical improvement. MMI is defined as the date after which further recovery and restoration of function can no longer be anticipated, based upon a reasonable degree of medical probability.

Answers to Specific Questions:

1. What is your diagnosis of Ms. Gomez's current complaints?

   Please see above. Because of the inconsistent and non-physiologic findings on examination and her lack of credibility as a historian, her subjective symptoms need to be discounted.

2. Is any further treatment necessary in relationship to the July 24, 2009 industrial incident? If so, what are your specific treatment recommendations?

   No, no further treatment is necessary in relationship to the July 24, 2009 industrial incident.

3. Is Ms. Gomez capable of returning to work without restrictions? If not, what are her current restrictions, and are they permanent or temporary in nature?

   No restrictions are necessary as a result of the July 24, 2009 industrial incident.

4. If Ms. Gomez is not being recommended for any additional treatment at this time, has she currently reached maximum medical improvement? If so, has she sustained any permanent partial impairment attributed to her industrial injury of July 24, 2009? Please apportion any permanent partial impairment to pre-existing conditions if appropriate.

   The examinee has achieved maximum medical improvement. MMI is defined as the date after which further recovery and restoration of function can no longer be anticipated, based upon a reasonable degree of medical probability. There is no objective evidence for permanent impairment attributable to the industrial incident of July 24, 2009.

The above analysis is based upon the available information at this time, including the history given by the examinee, the medical records and tests provided, the results of pain status inventories, and the physical findings. It is assumed that the material provided is correct. If more information becomes available at a later date, an additional report may be requested. Such information may or may not change the opinions rendered in this evaluation.

The examiner's opinions are based upon reasonable medical probability and are totally independent of the client. Medicine is both an art and a science, and although an individual may appear to be fit for work activity, there is no guarantee that the person will not be re-injured or suffer additional injury. The opinions on work capacity are to facilitate job placement, and do not necessarily reflect an in depth direct threat analysis. Comments on appropriateness of care are professional opinions based upon the specifics of the case, and should not be generalized, nor necessarily be considered supportive or critical of, the involved providers or disciplines. Any medical recommendations offered are provided as guidance, and not as medical orders.

Thank you for asking me to see this examinee in consultation. If you have any further questions, please do not hesitate to contact me.

Sincerely,

David C. Simon, M.D.

IDAHO FALLS
PHYSICAL
MEDICINE &
REHABILITATION

David C. Simon, M D • Board Certified
2860 Channing Way, Suite 213 • Idaho Falls, ID 83404 • (208) 535-4420

Neurological

Rehabilitation

stroke, head injury,

spinal cord injury

Multiple Sclerosis

Musculoskeletal

Problems

back and neck pain,

arthritis rehabilitation,

sports medicine

occupational injuries

Electromyography

(EMG/NCS)

Independent Medical

Evaluation (IME)

5404302010010

April 27, 2010

Angie Prescott
State Insurance Fund
PO Box 83720
Boise ID 83720

Re	CLAIM#	200908703
	CLAIMANT	Maria Gomez
	EMPLOYER	Dura Mark, Inc
	DOI	07/24/2009

Dear Ms Prescott,

This is in response to your letter dated April 23, 2010 I reviewed the report from Dr Poulter As a treating physician, Dr Poulter appears to admirably be advocating for his patient However, from an objective standpoint, I stand by my opinions as expressed in the IME report Part of our difference of opinions may be related to our different understanding of what the MRI shows

Dr Poulter indicates that "on her MRI she had an acute L4-5 disc rupture with right neuroforaminal stenosis and contact with the exiting nerve root at this level" I reviewed the radiology report for the MRI done on 10/10/09 and I also reviewed the actual MRI study I did not appreciate any neuroforaminal stenosis plus the radiology report indicates that at L4-5 "the neural foramen are widely patent" Furthermore, at the L5-S1 level they also noted that there "is no central or neuroforaminal compromise"

I am uncertain as to why Dr Poulter now indicates that he feels that the MRI showed an "acute" L4-5 disc rupture In 2003, her chiropractor was concerned about her low back and leg pain being caused by disc involvement of the lower back It is possible that this disc protrusion at the L4-5 level is chronic I do not see any evidence on the MRI to show that it is an acute disc rupture

I am also uncertain as to which nerve root Dr Poulter feels is causing Ms Gomez's symptoms He indicates that he finds a subtle difference in her reflexes bilaterally and I would assume that he means the patellar and ankle reflexes which would be indicative of problems with the L4 and S1 nerve roots However, if she did have an L4-5 disc resulting in

neuroforaminal stenosis, this would be expected to affect the L5 nerve root I am uncertain as to whether Dr Poulter feels that she has involvement of three different nerve roots in the lumbosacral region I do not feel that this is the case and clearly the MRI does not show any objective evidence of that

In summary, I stand by my previously expressed opinions in the IME report dated 2/16/10 Dr Poulter's letter alludes to the fact that I work for the Worker's Compensation Fund This is not accurate My role is to provide objective opinions and I believe that when this case is looked at objectively (as opposed to being looked at as a patient advocate), the only conclusions that can be reached are the ones that are expressed in my IME report

If I can be of any further assistance please let me know

Sincerely

David C Simon, M D

S40430201011

ORIGINAL

PAUL J. AUGUSTINE ISB 4608
AUGUSTINE LAW OFFICES, PLLC
1004 W. Fort Street
Post Office Box 1521
Boise, ID 83701
Telephone: (208) 367-9400
Facsimile: (208) 947-0014

Attorneys for Employer/Surety

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARIA GOMEZ,

Claimant,

vs.

BLACKFOOT BRASS,

Employer,

and

STATE INSURANCE FUND,

Surety,

Defendants.

I.C. No. No. 2009-018790

AFFIDAVIT OF JOSH SCOTT IN OPPOSITION TO CLAIMANT'S REQUEST FOR AN EMERGENCY HEARING

STATE OF IDAHO)
)ss
County of ADA)

Josh Scott, being first duly sworn upon oath, deposes and states:

1) I am the Manager of Dura Mark, Inc., doing business as Blackfoot Brass. Maria Gomez has worked for Dura Mark since 2001 as a shipping clerk. As such I am familiar with her employment, her worker's compensation claim and state all the facts herein based upon my personal

belief.

2) Over the years I have known and worked with Ms. Gomez, on at least two occasions prior to her accident of July 24, 2009 which is the subject of her current claim, Ms. Gomez has injured her low back at work. In May 2006 she injured her neck, mid and low back and her shoulder. I have attached a copy of her return to work status report filled out by her doctor in 2006 demonstrating a diagnosis of thoracic and lumbar pain as Exhibit "A" to this Affidavit.

3) On February 26, 2008 Ms. Gomez also injured her low back while moving boxes at work. A true and correct copy of her accident report dated February 26, 2008 is attached hereto as Exhibit "B".

4) Following her accident of July 24, 2009, Blackfoot Brass has kept Ms. Gomez on its payroll as an employee of the company. While she has not been receiving regular pay since she has been off work, she has received and has accumulated holiday pay even though she did not work. In addition, she has maintained her company provided health insurance through Blue Shield. Blackfoot Brass pays 100% of her premium for this insurance as well 50% of her dependents and 100% of dental, life and long term disability. I have attached hereto as Exhibit "C" a true and correct copy of her Blue Shield health analysis of 2010, which shows that she has received $496 in holiday pay despite not working and has been covered by Blackfoot Brass' health insurance.

5) On May 27, 2010 in an effort to accommodate Ms. Gomez and allow her to return to work and receive income, I wrote her a letter informing her that Blackfoot Brass would provide her with temporary light duty work, which included no lifting over 15 pounds and a limited work schedule of 4 hour work days from 7 a.m. to 11 a.m. A true and correct copy of this letter is attached hereto as Exhibit "D".

6) Maria has been and continues to be employed by Blackfoot Brass. I understand that she has been released to return to work by Dr. Simon and was released to return to work in the past by her chiropractor. I intend to keep her on the payroll and provide her with health insurance on Blackfoot Brass' plan.

FURTHER YOUR AFFIANT SAYETH NOT.

DATED this 22 day of July 2010.

JOSH SCOTT

SUBSCRIBED AND SWORN TO before me this 22nd day of July 2010.

Notary Public for Idaho
Commission expires 08-29-2014

LEAH K. RIGBY NOTARY PUBLIC STATE OF IDAHO

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the _____ day of July, 2010, I caused to be served a true copy of

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of July, 2010, I caused to be served a true copy of the foregoing AFFIDAVIT OF JOSH SCOTT IN OPPOSITION TO CLAIMANT'S REQUEST FOR AN EMERGENCY HEARING by the method indicated below, and addressed to each of the following:

Michael R. McBride
McBride & Roberts, Attorneys
1495 East 17th Street
Idaho Falls, ID 83404

Attorneys for Claimant

X U.S. Mail, Postage Prepaid
___Hand Delivered
___Overnight Mail
___Telecopy

Paul J. Augustine

Blackfoot Medical Center
1441 Parkway Dr.
Blackfoot, ID 83221
208-785-2600

RETURN TO WORK STATUS REPORT

☐ Initial Visit ☐ Follow Up

Patient: Maria Del C. Gomez SSN: ______

DOB: [redacted] Employer: Blackfoot Brass

Date of Injury: May 9th or 10th Date of Visit: 8/14/06

Surety ______

Diagnosis: Neck, Thoracic + Lumbar, ® Shoulder Pain

Treatment/Meds: Ice, Heat, Ibuprofen, Tylenol, Tramadol 50mg

Referral to/for: i-ii po q 8° prn, Vicodin 5/500 i-ii po q HS

Work Status: PT eval + TX 3x wk / 4 wks

____ Return to Work WITHOUT Restrictions (effective date): ______

X Return to Work WITH THE FOLLOWING RESTRICTIONS (effective date): ______

X No lifting, pushing, or pulling over 10 lbs.

____ No repetitive twisting, bending, or stooping

X No overhead reaching or lifting with
- X Left Arm
- X Right Arm

____ No repetitive movements/high force gripping with
- ____ Left Hand
- ____ Right Hand

X Avoid repetitive movement of head/neck

____ Utilize
- ____ Crutches
- ____ Cast
- ____ Splint
- ____ Brace
- ____ Sling

____ Limit working hours to ____ per day

X Position changes as needed

____ No
- ____ Sitting
- ____ Standing (sedentary work only)
- ____ Squatting/Kneeling
- ____ Walking on uneven surfaces
- ____ Jumping

____ Avoid
- ____ Unprotected heights
- ____ Dust/fumes/gases

____ No
- ____ Driving
- ____ Machinery operation

____ Keep wound/dressing clean and dry

____ Other (please specify): ______

☐ Final Visit X Follow up visit (date and time): 2wks

Medical Provider's signature: [signature] Date: 8/14/06

Patient's Signature: Maria Del Carmen [signature] Date: 8/14/06

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EXHIBIT A

ACCIDENT REPORT – BLACKFOOT BRASS

NAME OF EMPLOYEE Maria Gomez

LOCATION OF ACCIDENT 591 West 100 North

DATE OF ACCIDENT 2-26-2008 TIME 2:00 AM ☒ PM X

DATE SUPERVISOR NOTIFIED 2-26-2008 TIME 2:05 AM ___ PM X

WAS EMPLOYEE ON DUTY AT TIME OF ACCIDENT? Yes

HOW DID ACCIDENT HAPPEN Moving Boxes full of Bronze parts and pulled muscle in back

FIRST AID ACTION TAKEN No

FURTHER TREATMENT NEEDED? ?

NAME OF WITNESS Victor

NATURE OF INJURY Back Injury (Pulled Muscle)

PART OF BODY Back middle to lower

SAFETY EQUIPMENT IN PLACE? In

WAS EMPLOYEE USING THEM? Yes

WAS ACCIDENT CAUSED BY FAULTY EQUIPMENT? No

45

EXHIBIT B

MARIA GOMEZ
BLUE SHIELD HEALTH INSURANCE
ANALYSIS 2010

TOTAL HEALTH INSURANCE PREMIUM	BB PAYS MARIA'S PREMIUM	DEPENDENTS' PREMIUM	BB PAYS 50% DEPENDENTS' PREMIUM	MARIA PAYS 50% DEPENDENTS' PREMIUM	MARIA'S PER P/R DEDUCTION FOR DEPENDENTS' PREMIUM
647.00	275.00	372.00	186.00	186.00	85.85

PAYROLL DATE	HOLIDAY	HOLIDAY PAY (8 HRS)	PREMIUM DEDUCTED	ACTUAL PREMIUM	MARIA OWES BB
1/13/2010	1/1/2010	$124.00	$50.14	$85.85	-$35.71
1/27/2010				$85.85	-$85.85
2/10/2010				$85.85	-$85.85
2/24/2010	2/15/2010	$124.00	$50.14	$85.85	-$35.71
3/10/2010				$85.85	-$85.85
3/24/2010				$85.85	-$85.85
4/7/2010				$85.85	-$85.85
4/21/2010				$85.85	-$85.85
5/5/2010				$85.85	-$85.85
5/19/2010				$85.85	-$85.85
6/2/2010				$85.85	-$85.85
6/16/2010	5/24/2010	$124.00	$113.51	$85.85	$27.66
6/30/2010				$85.85	-$85.85
7/14/2010	7/4/2010	$124.00	$113.52	$85.85	$27.67
7/28/2010				$85.85	-$85.85
TOTAL		**$496.00**	**$327.31**	**$1,287.75**	**-$960.44**

EXHIBIT
tabbies
C

Date: May 27, 2010

Maria Gomez
1225 West 90 South
Blackfoot, Idaho 83221

Dear, Maria

I am writing this letter to inform you upon your return to work on 6/01/2010 you will be placed on a 90 day probationary period. The following will explain to you the conditions of probation required on your part for continued employment with Blackfoot Brass.

1. No heavy lifting - 15 lbs or less

2. No more than three instances in attendance (including late for work)

3. Limited work schedule 4 (four) hour work days. 7 a.m. to 11 a.m.

As we discussed, prior to your injury excessive attendance problems are unacceptable and will not be permitted by the company. Accordingly, I am placing you on disciplinary notice for a period of ninety days beginning June 1, 2010. During this period, I will carefully monitor your attendance.

Any further incidents or breaches of the company attendance policy observed during this period that are contrary to acceptable standards of behavior could result in further discipline up to and including termination.

We all want to see you succeed here, and we hope that your acknowledgment of this probation period will have a positive result on your future at the company. If you need any clarification or other help, please see me immediately.

Sincerely,

Josh Scott
Manager

I Maria Gomez understand and agree to the terms of this probation. _____ Date:_____

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EXHIBIT
tabbies
D

Michael R. McBride
McBRIDE & ROBERTS, ATTORNEYS
Signature Law Group, P.L.L.C.
1495 East 17th Street
Idaho Falls, Idaho 83404
Telephone: (208) 525-2552
Facsimile: (208) 525-5288
ISB License No: 3037

Attorney for Claimant

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARIA GOMEZ, Claimant, v. BLACKFOOT BRASS, Employer, and IDAHO STATE INSURANCE FUND, Surety, Defendants.	I.C. No.: 09-018790 AFFIDAVIT IN SUPPORT OF REQUEST FOR AN EMERGENCY HEARING FILED AUG 02 2010 INDUSTRIAL COMMISSION

STATE OF IDAHO)
:ss.
County of Bonneville)

COMES NOW Wendy Henman and hereby affirms and swears:

1. That I am a legal assistant to Mr. McBride.

2. That on July 6, 2010, a Request for Motion for Emergency Hearing was filed with the Industrial Commission.

3. That on July 29, 2010 I received the attached medical records from Dr. Poulter, Claimant's treating physician. (Exhibit 1).

4. That these medical records are being supplemented to be included in Claimant's Request Motion for Emergency Hearing.

DATED this 2 day of August, 2010.

Wendy Henman

SUBSCRIBED AND SWORN to before me this 2 day of August, 2010.

MICHAEL R. McBRIDE NOTARY PUBLIC STATE OF IDAHO

NOTARY PUBLIC FOR IDAHO
Residing at: Idaho Falls
My Commission Expires: 7-14

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 this 2 day of August, 2010, I caused a true and correct copy of the foregoing document to be served upon the person(s) listed below either by mailing, overnight delivery, hand delivery or facsimile:

Paul J. Augustine
AUGUSTINE LAW OFFICES, PLLC
P.O. Box 1521
Boise, Idaho 83701

- ☐ Mail
- ☐ Overnight Delivery
- ☐ Hand Delivery
- ☑ Facsimile

McBRIDE & ROBERTS, ATTORNEYS

By: Michael R. McBride

GOMEZ, MARIA

NO PICTURE AVAILABLE FOR THIS PATIENT

DOB: 11/9/1967

MR#: GOMMAR0006

Main diagnosis: Lumbar radiculitis

Comorbidities

ALL	
OTHER MEDS	
PAIN MEDS	
PREVIOUS RX	
SOAPP	

Initial evaluation

42 yo woman with HD at L45 level which pushes on exiting nerve root on the R.

Plan
TF ESI
PT to follow
Norco continued.

Encounters

7/22/2010	ESTABLISHED, INT.	POULTER, Jake
6/23/2010	ESTABLISHED BRIEF	POULTER, Jake
5/12/2010	PRESCRIPTION ONLY	POULTER, Jake
4/22/2010	NOTE	POULTER, Jake
4/8/2010	ESTABLISHED, INT.	POULTER, Jake
4/8/2010	NOTE	POULTER, Jake
3/10/2010	PRESCRIPTION ONLY	POULTER, Jake
2/23/2010	ESTABLISHED, EXTENDED	POULTER, Jake
12/28/2009	ESTABLISHED, INT.	POULTER, Jake
12/14/2009	L45 right and left TRANSFORAMINAL EPIDURAL STEROID INJECTION WITH FLUOROSCOPY AND SEDATION	POULTER, Jake
12/8/2009	CONSULTATION, INT.	POULTER, Jake

Medication history

7/22/2010	Cymbalta 30 mg	1 -2	PO	qd	60	*Refill on*	Tuesday, January 18, 2011
7/22/2010	gabepentin 300 mg	1	PO	tid	90	*Refill on*	Tuesday, January 18, 2011
7/22/2010	Norco 7.5/325	1	PO	q 4-6	180	*Refill on*	Saturday, August 21, 2010
6/23/2010	Norco 7.5/325	1	PO	q 4-6	180	*Refill on*	Friday, July 23, 2010
5/12/2010	Norco 7.5/325	1	PO	q 4-6	180	*Refill on*	Friday, June 11, 2010
4/8/2010	gabepentin 300 mg	1	PO	tid	90	*Refill on*	Wednesday, July 07, 2010
3/10/2010	Norco 7.5/325	1	PO	q 4-6	180	*Refill on*	Friday, April 09, 2010
12/28/2009	Norco 7.5/325	1	PO	q 4-6	180	*Refill on*	Wednesday, January 27, 2010
12/8/2009	Norco 10/325	1	PO	qid	100	*Refill on*	Tuesday, December 29, 2009

EXHIBIT 50

Actions requested

12/14/2009	PT	EVALUATION AND TREATMENT	POULTER, Jake
2/23/2010	Schedule procedure	R L45 TF ESI	POULTER, Jake
7/22/2010	Schedule procedure	R L45 TF ESI	POULTER, Jake

Tuesday, December 08, 2009 POULTER, Jake

CONSULTATION, INT.

Pain level:

IPG

see dictation
Patient return: 30 days for refill only (Brief visit)

Medication given:

12/8/2009	Norco 10/325	1	PO	qid	100	*Refill on*	Tuesday, December 29, 2009

Monday, December 14, 2009 POULTER, Jake

L45 right and left TRANSFORAMINAL EPIDURAL STEROID INJECTION WITH FLUOROSCOPY AND SEDATION

Pain level:

see dictation

no pain in RR. Referral to PT given to pt.

Medication given:

Monday, December 28, 2009 POULTER, Jake

ESTABLISHED, INT.

Pain level:

see dictation.

30% better

Plan
PT
Consider repeat TF ESI R L45 - pt to call if she wants to do it. She requested to try PT for a while
refill meds

Medication given:

12/28/2009	Norco 7.5/325	1	PO	q 4-6	180	*Refill on*	Wednesday, January 27, 2010

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Idaho Pain Group (208)-782-3701

Tuesday, February 23, 2010 POULTER, Jake

ESTABLISHED, EXTENDED

Pain level:

see dictation

will repeat R L45 TF ESI and likely send to neurosurgery for evaluation. Will introduce gabepentin 300 mg tid. Patient return: 30 days for refill only (Brief visit)

Medication given:

Wednesday, March 10, 2010 POULTER, Jake

PRESCRIPTION ONLY

Pain level:

Medication given:

3/10/2010	Norco 7.5/325	1	PO	q 4-6	180	*Refill on* Friday, April 09, 2010

Tuesday, April 06, 2010 POULTER, Jake

NOTE

Pain level:

called by her boss josh at blackfoot brace. He states that she has been released by workmans comp to return to work. He is unsure if we knew about this. She has an appt with us on Thursday. He will fax a copy of her latest workmans comp letter to him. We have not been involved in this discussion at all. I had intended to do another injection and anticipated sending her for a NSG consult.

Medication given:

Idaho Pain Group (208)-762-3701

Thursday, April 08, 2010 POULTER, Jake

ESTABLISHED, INT.

Chief complaint for this visit: Follow Up

Height	inches		centimeters	BMI:
Weight	pounds		kilograms	
Resp	/ mn	SaO2	%	
BP	118 / 74	Pulse		
Temp	F	C		
Immun.:	[redacted]	Tetanus	[redacted]	LMP [redacted]

Pain level: 8

see dictated letter.

Need to schedule for R L4-5 TFESI with insurance approval. May need NSG Fu with Honeycutt. Introduced gabepentin today. Will call for norco refills when due. Her employer Josh was contacted and told that I disagree with workmans comp about her returning to work.
Patient return: 30 days for refill only (Brief visit)

Medication given:

4/8/2010	gabepentin 300 mg	1	PO	tid	90	*Refill on*	Wednesday, July 07, 2010

Thursday, April 22, 2010 POULTER, Jake

NOTE

Pain level:

pt will drop off lawyer form.

Medication given:

Idaho Pain Group (208)-782-3701

Wednesday, May 12, 2010 POULTER, Jake

PRESCRIPTION ONLY

Pain level:

Called to Walmart in Blackfoot spoke with Trina. AMV

Medication given:

5/12/2010	Norco 7.5/325	1	PO	q 4-6	180	*Refill on*	Friday, June 11, 2010

Idaho Pain Group (208)-782-8701

Wednesday, June 23, 2010 POULTER, Jake MYERS, G

ESTABLISHED BRIEF

Chief complaint for this visit: follow up

Height:	inches		centimeters	
Weight	pounds		kilograms	BMI:
Resp	/ mn	SaO2	98 %	
BP	112 / 76	Pulse	64	
Temp	F	C		
Immun.: [redacted]	Tetanus [redacted]		LMP [redacted]	

Pain level: 7

The patient returns for follow up visit.
Patient was seen for 20mn and counseled for 15mn

ANALGESIA: Pain is 7/10 today. She is still having lower back pain, with RT LE radiculopathy and weakness. She ran out of Norco last week and her LBP is worse without it.
ACTIVITIES OF DAILY LIVING: capable of ADL, otherwise limited. She can't perform her regular job duties which requires to repetitivley lift, bend, and twist. She has a lawyer for her workers comp case.
ADVERSE EFFECTS: none reported
ABERRANT DRUG BEHAVIOR: none observed
MOOD: Grieving over her husbands death.
SLEEP: varies
FAMILY LIFE: Her 62yo husband passed away due to a MI this past month.

MEDICAL HISTORY: no change
REVIEW OF SYSTEM: no change
PHYSICAL EXAM: no new finding

ASSESMENT:
Herniated disc L4-5.
Grieving.
PLAN:
Continue the same, she is not able to perform her regular duties at work, and according to her there is no light duty.
Form completed for her work status for her lawyer.
F/U with Dr. Poulter next month.
Patient return: 30 days

Medication given:

6/23/2010	Norco 7.5/325	1	PO	q 4-6	180	*Refill on* Friday, July 23, 2010

Idaho Pain Group (208)-782-3701

Thursday, July 22, 2010 POULTER, Jake

ESTABLISHED, INT.

Chief complaint for this visit: Follow Up

Height:	inches	centimeters	
Weight	pounds	kilograms	BMI:
Resp	/ mn	SaO2 90 %	
BP	119 / 84	Pulse 102	
Temp	F	C	
Immun.:	[redacted]	Tetanus [redacted]	LMP [redacted]

Pain level: 8

Still has NT signs on R to SLR.

Medication given:

7/22/2010	Cymbalta 30 mg	1 -2	PO	qd	60	*Refill on*	Tuesday, January 18, 2011
7/22/2010	gabapentin 300 mg	1	PO	tid	90	*Refill on*	Tuesday, January 18, 2011
7/22/2010	Norco 7.5/325	1	PO	q 4-6	180	*Refill on*	Saturday, August 21, 2010

End of report Idaho Pain Group (208)-782-3701

Printed Thursday, July 29, 2010

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARIA GOMEZ, Claimant, v. DURA MARK, dba BLACKFOOT BRASS, Employer, and STATE INSURANCE FUND, Surety, Defendants.	**IC 2009-018790** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** FILED JAN 31 2011 INDUSTRIAL COMMISSION

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Michael E. Powers, who conducted an emergency hearing in Idaho Falls on October 6, 2010. Claimant was present and represented by Michael R. McBride of Idaho Falls. Paul J. Augustine of Boise represented Employer/Surety. Oral and documentary evidence was presented. The record remained open for the taking of one post-hearing deposition. This matter then came under advisement on December 28, 2010.

ISSUES

Per the August 3, 2010, Notice of Hearing, the issues to be decided are as follows:

1. Whether Claimant is entitled to reasonable and necessary medical care as provided for by Idaho Code § 72-432, and the extent thereof; and
2. Whether Claimant is entitled to Temporary Partial and/or Total Disability (PTD;TD) Benefits, and the extent thereof.

CONTENTIONS OF THE PARTIES

Claimant contends that her physical condition has improved with additional medical treatment since her benefits were terminated by Surety as the result of an IME it arranged. Surety should be held accountable for medical benefits post-IME because the treatment was required by her treating physician and was reasonable under the *Sprague* criteria. Claimant also seeks TTD benefits post-IME until her treating physician declares her at MMI.

Defendants contend that their IME physician was correct when he concluded that Claimant was at MMI as of February 16, 2010. Based on that opinion, Defendants were justified in terminating Claimant's medical and income benefits. Further, all the credible medical evidence establishes that Claimant does not have a herniated lumbar disk that is pushing on an exiting nerve root. Therefore, her right leg symptoms are inconsistent with MRI findings and have no organic/anatomic basis, and are not industrially related. Because there is no objective medical evidence supporting Claimant's alleged need for continuing medical care, her treating physician must rely on Claimant's credibility and she is not credible. Claimant is not entitled to any additional TTD benefits based on her medical stability, coupled with the fact that she was offered light-duty work within her restrictions, which she declined. Finally, Claimant's treating physician has been a "patient advocate" and has relied on Claimant's non-credible subjective complaints of pain with no anatomical basis, and his treatment regimen based thereon is not necessary or reasonable under the *Sprague* standard.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant and Employer's foundry manager Josh Scott taken at the hearing.

2. Claimant's Exhibits 1-9 admitted at the hearing.

3. Defendants' Exhibits A-C admitted at the hearing.

4. The post-hearing deposition of David C. Simon, M.D., taken by Defendants on November 2, 2010.

The objections made during the taking of Dr. Simon's deposition are overruled.

FINDINGS OF FACT

1. Claimant was 43 years of age and had resided in Blackfoot for 20 years at the time of the hearing. She was born in Mexico and completed the 6th grade there. Before commencing employment at Employer's foundry in 2001, Claimant worked in convenience stores as a cashier and deli manager. Claimant was a packaging inspector for Employer. She testified at hearing that she enjoyed her job, was paid well, and planned on continuing working there.[1]

2. Claimant suffered a work-related accident while working for Employer in 2002 when she hurt her back while lifting. After a course of physical therapy, Claimant was eventually released to return to work without restrictions.

3. In 2006, Claimant injured her neck and right shoulder in another work-related accident. She again participated in physical therapy and was eventually able to return to full-duty work without restrictions.

Dr. Huneycutt

4. Claimant suffered the subject industrial accident on July 24, 2009. At that time she injured her back while lifting a 60-65 pound box. Her injury occurred at about belt-line level

[1] At the time of the hearing, Claimant was still employed by Employer, continued to be provided private health insurance, and received holiday pay even though she has not returned to work after her injury.

and radiated from her right buttocks down her right leg. At the recommendation of Gus Grimmett, FNP, Claimant underwent MRI evaluation of the lumbar spine on October 10, 2009. That study was read in pertinent part as follows:

> L4-L5: There is a broad-based central disc protrusion which causes effacement of the anterior protion of the thecal sac. There is a mild bilateral lateral recess narrowing. The neural foramen are widely patent. There is no significant central stenosis.
>
> L5-S1: There is mild posterior disc bulging. There is a tear of the annulus fibrosis. There is no central or neutral foraminal compromise.
>
> IMPRESSION:
> 1. Shallow midline posterior disc protrustion at L4-L5 with mild bilateral lateral recess narrowing.
> 2. Small annular tear at L5-S1 with shallow posterior disc bulging.
> 3. No evidence of significant central or neural foraminal compromise.

Defendants' Exhibit C., p. 5.

After seeing a chiropractor, a family nurse practitioner, a physical therapist and undergoing a trial of medications, Claimant came under the care of W. Scott Huneycutt, M.D., a neurosurgeon, who she first saw on November 11, 2009. Dr. Huneycutt noted, "She reports that prior to this date [July 24, 2009], she was doing quite well, although she has a distant history of low back pain following a previous industrial incident, perhaps three years previous." Claimant's Exhibit 2, p. 28. Claimant informed Dr. Huneycutt that she was experiencing pain, weakness, and numbness in her right leg as well as low back pain. Reviewing Claimant's MRI, Dr. Huneycutt stated:

> The radiology is reviewed. The patient presents with a recent lumbar MRI. This imaging study reveals incidence of herniation of the disk at L4-5 with impingement of the exiting nerve root on the right side and resultant neural foraminal stenosis. Note, there is desiccation and collapse of the disk at L5-S1 as well.
>
> Claimant's Exhibit. 2, p. 29.

Based on an October 2009 lumbar MRI, Dr. Huneycutt diagnosed a herniated lumber disk with radiculopathy and low back pain. After discussing treatment options, including surgery, Claimant opted to pursue pain management and possible spine injection therapy. Regarding causation, Dr. Huneycutt indicated, "I have made no statement in reference to causality. I made it clear to the patient that I would defer to a physical medicine specialist in the determination of causality or disability determinations." *Id.*, p. 29. Dr. Huneycutt referred Claimant to Jake Poulter, M.D., a physiatrist and pain management specialist.

Dr. Poulter

5. Claimant first saw Dr. Poulter on December 7, 2009, with chief complaints of back pain with right lower extremity radiation. Dr. Poulter noted, "MRI report from a study dated October 10, 2009, was reviewed in the clinic today. This study reveals a disc protrusion at the L4-L5 level with a bilateral lateral recess narrowing. She also has a small disc bulge at the L5-S1 level. There is impingement of the exiting nerve root on the L4-L5 level on the right side due to the neuroforaminal stenosis produced by the disc bulge." Defendants' Exhibit C, p. 92. Dr. Poulter further commented, "She has an MRI that nicely matches the pain distribution of the nerve root that has been impinged at the L4-L5 level." *Id.* Claimant's treatment with Dr. Poulter consisted of epidural steroid injections and physical therapy referral.

DISCUSSION AND FURTHER FINDINGS

Idaho Code § 72-432(1) obligates an employer to provide an injured employee reasonable medical care as may be required by his or her physician immediately following an injury and for a 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). **A claimant bears the burden of proving that medical expenses and**

treatment were incurred as a result of an industrial injury and must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability. *Langley v. State, Industrial Special Indemnity Fund*, 126 Idaho 781, 890 P.2d 732 (1995). (Emphasis added). "Probable" is defined as "having more evidence for than against." *Fisher v. Bunker Hill Company*, 96 Idaho 341, 344, 528 P.2d 903, 906 (1974). No "magic" words are necessary where a physician plainly and unequivocally conveys his or her conviction that events are causally related. *Paulson v. Idaho forest Industries, Inc*, 99 Idaho 896, 901, 591 P.2d 143, 148 (1979). A physician's oral testimony is not required in every case, but his or her medical records may be utilized to provide "medical testimony." *Jones v. Emmett Manor*, 134 Idaho 160, 997 P.2d 621 (2000).

Claimant is correct in arguing that under the *Sprague, Id.*, criteria, the appropriate inquiry is not whether the treatment is necessary, but whether the treatment is reasonable. The treatment is reasonable when three criteria are met: 1) the claimant made gradual improvement from the treatment received, 2) the treatment was required by the claimant's physician, 3) the treatment received was within the physician's standard of practice, and the charges were fair, reasonable, and similar to charges in the same profession. *Id.*, at 722-723, 397-398. However, the issue in this case, as noticed, is whether Claimant is entitled to reasonable and necessary medical treatment, and if so, the extent thereof. Before *Sprague* comes into play, Claimant must first show that there is a causal relationship between the accident and the injuries for which she claims benefits. Claimant bears the burden of adducing medical proof to prove her claim for compensation to a reasonable degree of medical probability. She must show that it is more likely than not that her need for treatment is causally related to the subject accident.

Causation:

Dr. Simon

6. At Defendants' request, David C. Simon, M.D., a physiatrist, conducted an Independent Medical Evaluation (IME) of Claimant on February 16, 2010. He examined Claimant and reviewed medical records. He prepared a report and was deposed. Dr. Simon reported that Claimant ". . . specifically denied any prior problems with her low back." Defendants' Exhibit A., p. 1. By the time of his examination, Claimant had completed the physical therapy prescribed by Dr. Poulter. She informed Dr. Simon that she limits her home exercises due to pain, and that the injection Dr. Poulter administered did not help. Dr. Simon labeled Claimant as an unreliable historian based on her failing to disclose her prior low back problems, and therefore, he discounted her subjective complaints. While Dr. Simon observed exaggerated pain behaviors, he did not find any evidence of symptom magnification on Claimant's pain diagram.

7. Dr. Simon concluded that Claimant's back strain had resolved and the cause of her current complaints could not be determined. Claimant's physical examination (including a negative straight leg raise) was not consistent with her symptoms being related to a disk herniation and radiculopathy. She is at MMI, needs no further treatment, has no permanent physical impairment, and can return to work without restrictions regarding her work-related low back injury.

8. Claimant returned to Dr. Poulter on February 23, 2010, complaining of persistent pain that prevented her from returning to work. Contrary to what Dr. Simon reported, Dr. Poulter indicated that Claimant told him that she had experienced a 30-40% improvement with the epidural steroid injection; however, Claimant chose to pursue physical therapy rather than

undergo another injection. Because Claimant's physical therapy had not been proven to be effectual, Dr. Poulter recommended, and Claimant agreed to, another injection to be scheduled later.

9. In an April 8, 2010, letter to the Idaho Falls office of the Industrial Commission Rehabilitation Division, Dr. Poulter wrote, *inter alia*:

> It is my opinion that the patient has a persistent disc bulge which continues to be symptomatic. I do not feel like she is ready to return to work. We had a previous treatment plan in place, but unfortunately this has been halted secondary to a recent workman's compensation evaluation. I do not agree with Dr. Simons [sic] findings. I find that the patient continues to have neural tension signs on physical examination and findings in her right lower extremity which are concerning for ongoing neural tension and neurological changes.

Claimant's Exhibit 1, p. 2.

10. On April 7, 2010, Dr. Simon authored a letter to a claims examiner for Surety regarding his opinion of Dr. Poulter's letter mentioned above. Dr. Simon begins by stating that, "As a treating physician, Dr. Poulter appears to admirably be advocating for his patient." Defendants' Exhibit A, p. 8. He believes their differences of opinion stem from their respective interpretations of the October 2009 lumbar MRI. Dr. Simon reviewed the radiologist's report as well as the MRI study itself. Dr. Simon did not appreciate any neuroforaminal stenosis nor did the radiologist. Dr. Simon also disagrees that there is an "acute" herniation at L4-L5 based on a 2003 chiropractic record indicating that Claimant was then experiencing low back and leg pain. This would indicate a chronic protrusion, as Dr. Simon saw no evidence of an acute herniation on the MRI. Dr. Simon also questions which nerve root Dr. Poulter suspects is causing Claimant's symptoms. If, as Dr. Poulter found, there is a discrepancy in Claimant's reflexes bilaterally, he must mean the patellar and ankle reflexes. If so, that would be indicative of problems with the L4 and S1 nerve roots. If Claimant did have an L4-L5 disk herniation

resulting in neuroforaminal stenosis, that would involve the L5 nerve root. Dr. Simon saw no evidence of neuroforaminal stenosis at this level, nor did the radiologist, "The neural foramen [at L4-L5] are widely patent." Defendants' Exhibit C, p. 5. Dr. Simon is unsure whether Dr. Poulter is implicating three separate nerve roots; however, the MRI does not show any objective evidence of that being the case. Finally, Dr. Simon opines that if this matter is looked at objectively (as opposed to being the patient's advocate),[2] the only conclusions that can be reached are as stated in his IME report.

Dr. Montalbano

11. At Defendants' request, Paul Montalbano, M.D., a neurosurgeon, reviewed Claimant's medical records including the lumbar MRI scan and x-rays, Dr. Simon's IME, and the two letters written by Dr. Poulter. In a letter to Defendants' counsel dated August 12, 2010, Dr. Montalbano, after having personally reviewed the actual MRI scan, agrees with Dr. Simon's opinions as expressed in his IME report and subsequent letter. Dr. Montalbano found no evidence of significant canal/foraminal stenosis or any instability. He also found no evidence of any acute herniation at any lumbar level. He believes Claimant is at MMI and needs no further treatment for her work-related lumbar strain.

Dr. Simon's deposition testimony

12. Dr. Simon has been board certified in physical medicine and rehabilitation since 1997 and practices in Idaho Falls. He is the medical director at the rehabilitation unit at Eastern Idaho Regional Medical Center where he sees patients and conducts electrodiagnostic testing.

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[2]Judging by the number of IMEs performed by Dr. Simon between 2007 and 2009, the argument could be made that he is a "surety advocate." *See,* Exhibits 2-4 to Dr. Simon's deposition. However, the Referee sees no purpose in "name calling" when addressing legitimate differences of medical opinion.

He also has an office practice where he treats patients and performs IMEs, which for the last couple of years have constituted more than half of his income.

13. Dr. Simon saw Claimant for an IME at Surety's request on February 16, 2010. His IME report was admitted into evidence and is referenced in findings numbers 6 and 7 above. Dr. Simon testified as follows regarding his take on the lumbar MRI:

> Q. (By Mr. Augustine): All right. And your independent review of the MRI of the lumbar spine, what did you see that was significant to you in diagnosing the cause of her problems, if anything?
>
> A. Well, I think I would answer that more by saying what I didn't find that was significant. I mean, one of the concerns given her complaints and potentially the exam findings would be a nerve being pinched, you know, particularly nerves going down the right leg. And I didn't see any nerves being pinched.
>
> You know, what I did see was some desiccation of the bottom of two discs which is just a, you know, a phenomenon which some would call degenerative disc disease which isn't really a disease, but just a normal part of aging, and so she had some of that. And there was a small protrusion of the L4-5 disc, but I didn't see it pinching any nerves or creating any stenoses, is what we call it.

Dr. Simon Deposition, pp. 17-18.

14. Dr. Simon reached two diagnoses. The first was back and right leg pain, based solely on Claimant's subjective view of her symptoms. The second was that the cause of her current symptoms cannot be determined. He opined that even if what Dr. Poulter claims he identified on the MRI was true, it still would not provide an anatomical basis for Claimant's symptoms. Because Claimant's subjective complaints outweighed her objective symptoms and because she was not forthright with him regarding her prior low back problems,[3] Dr. Simon discounted any subjective complaints that she was reporting. Based thereon, as well as his, the radiologists, and Dr. Montalbano's interpretation of the MRI, Dr. Simon concluded that there

[3] It is unknown why Claimant had earlier informed Dr. Huneycutt of her prior back problems but did not so inform Dr. Simon.

was no relationship between the symptoms reported by Claimant and her industrial accident and low back strain.

15. One of the puzzling aspects of this case is the significant difference of opinion over the interpretation of Claimant's MRI study. Drs. Biddulph, Simon and Montalbano, all had the opportunity to review the films. Dr. Biddulph, the radiologist who initially read the study, failed to see in it any evidence of significant, central canal, or neuroforaminal compromise. In other words, the MRI did not reveal any anatomic changes that might explain the seeming radicular component to Claimant's pain. This interpretation of the study was shared by Drs. Montalbano and Simon, who, as well, had the opportunity to review the actual films.

On the other hand, Drs. Huneycutt and Poulter reviewed the identical study, and came to a much different conclusion. Those physicians felt that the study revealed evidence of a disk herniation at L4-5 with impingement on the exiting nerve root on the right. Per Dr. Poulter, the MRI study correlated well with Claimant's clinical exam; her right-sided lower extremity discomfort was consistent with the L5 nerve root lesion.

In resolving this conflict, the Referee is more persuaded by the opinions expressed by Drs. Simon, Montalbano and Biddulph, than those of Drs. Poulter and Huneycutt, regarding the etiology of the condition which required Claimant to receive on-going treatment from Dr. Poulter following Dr. Simon's February 16, 2009, IME.

Dr. Poulter's treatment both before and after Dr. Simon's IME was ostensibly directed at Claimant's L4-L5 nerve root and alleged right leg radiculopathy. However, the MRI report itself is clear that there is no nerve root impingement at that level, and is so read by Drs. Simon and Montalbano, as well as the radiologist. While Dr. Poulter may well have also been treating some myofascial pain and whatever pain may have arisen from the annular fibrosis tear at L5-S1, there

is nothing in the record in that regard. Further, the record does not reveal the bases for Drs. Huneycutt's or Poulter's reading of the MRI in the manner they do.

16. The Referee recognizes that Claimant reported improvement from the therapy she received following Dr. Simon's IME. The Referee would note that Claimant is not a very reliable historian when it comes to describing the efficacy of the conservative therapies that she has received. At hearing, Claimant denied that the first epidural steroid injection provided any relief from her symptoms. In fact, she stated that it sent her to bed for a period of days due to increased discomfort. She also evidently told Dr. Simon that the first epidural steroid injection was not effective. However, Dr. Poulter reported that Claimant gave him a history of having experienced 38-40% improvement in symptomology as a result of the first epidural steroid injection. However, even if it be accepted that Claimant did make significant improvement as a result of the medical treatment provided following the independent medical examination, this fact, standing along, in insufficient to support the claim for medical benefits where Claimant has failed to demonstrate the condition for which the treatment was received is causally related to the subject accident. It is important to remember that even if it be assumed that the subject accident did cause a disk herniation thought to compromise an exiting nerve root, Claimant's clinical exam by Dr. Simon demonstrated that Claimant's symptoms are not in the distribution that one would expect from a right-sided L5 nerve root lesion. Whatever else might be the cause of Claimant's symptoms, the alleged L4-5 work related nerve root lesion is not the cause. The Referee finds that Claimant has failed to prove that the medical benefits she seeks were incurred for conditions related to her industrial accident and injury. Therefore, a *Sprague* analysis is unnecessary.

17. All other issues are moot.

CONCLUSIONS OF LAW

1. Claimant has failed to prove that the medical treatment she received after Dr. Simon's February 16, 2010, IME is related to her industrial accident and injury.

2. All other issues are moot.

RECOMMENDATION

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

DATED this 11th day of January, 2011.

INDUSTRIAL COMMISSION

Michael E. Powers, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of January, 2011, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

MICHAEL R MCBRIDE
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PAUL J AUGUSTINE
PO BOX 1521
BOISE ID 83701

ge

Gina Espinosa

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARIA GOMEZ, Claimant, v. DURA MARK, dba BLACKFOOT BRASS, Employer, and STATE INSURANCE FUND, Surety, Defendants.	**IC 2009-018790** **ORDER** FILED JAN 31 2011 INDUSTRIAL COMMISSION

Pursuant to Idaho Code § 72-717, Referee Michael E. Powers submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusions of law to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendation of the Referee. The Commission concurs with this recommendation. 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 that the medical treatment she received after Dr. Simon's February 16, 2010, IME is related to her industrial accident and injury.

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 31st day of January, 2011.

INDUSTRIAL COMMISSION

Thomas E. Limbaugh, Chairman

Thomas P. Baskin, Commissioner

PARTICIPATED BUT DID NOT SIGN.
R. D. Maynard, Commissioner

ATTEST:

Gina Espinoza
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of January 2011, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

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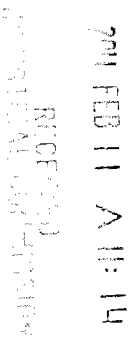
Attorney for Claimant

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARIA GOMEZ, Claimant, v. DURA MARK, INC., Employer, and STATE INSURANCE FUND, Surety, Defendants.	I.C. No.: 09-018790 CLAIMANT'S MOTION FOR RECONSIDERATION TO REOPEN THE RECORD FOR THE TAKING OF ADDITIONAL EVIDENCE ON THE ISSUE OF CAUSATION



I.
INTRODUCTION

A hearing in the above-entitled matter was held on October 6, 2010, in Idaho Falls with Referee Michael E. Powers, officiating.

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In keeping with Idaho Code § 72-713 a status conference was held by the Commission and the parties. In its notice filed August 3, 2010, the issues to be determined were two-fold:

1. Whether Claimant is entitled to reasonable and necessary medical care as provided by Idaho Code § 72-432 and the extent thereof; and

2. Whether Claimant is entitled to temporary partial and/or temporary total disability benefits and the extent thereof.

At the start of the Industrial Commission hearing on October 6, 2010, Referee Powers confirmed those issues. He said: "I understand that the issues that we are to be dealing with as a result of this hearing are simply medicals and perhaps TTDs; is that correct Mr. McBride?"

Mr. McBride: "That's right."

Mr. Augustine: "That's correct." (Tr. 1).

There were no other issues that were raised or agreed to during the hearing process.

II.
ARGUMENT

A. The Commission erred by addressing the causation issue which was not procedurally agreed to or set before the Industrial Commission.

In the Commission's Finding under the Paragraph titled "Discussions and Further Findings," the Commission wrote (addressing reasonable medical care): . . . "Before *Sprague* comes into play, Claimant must **first** show that there is a **casual relationship** between the accident and the injuries for which she claims benefits. Claimant bears the burden of adducing medical proof to prove her claim for compensation to a reasonable degree of medical probability. She must show that it is more likely than not that her need for treatment is causally related to this accident." (p. 6).

The causation issue was never before the Industrial Commission as Claimant never agreed or acquiesced that it be addressed, and Claimant did not prepare its proofs or evidence with this issue

in mind. (See McBride Affidavit attached hereto). Perhaps the Commission thought it inherent that before it could decide whether treatment was reasonable, Claimant must first establish causation, but that is not Claimant's take on this matter. Claimant assumed that causation had been already established because neither party raised it as an issue in the prehearing conference or at the hearing. Also, both parties knew that Defendant paid all medical expenses for Claimant's treatment and TTD benefits through the date of Claimant's IME with Dr. Simon. Notwithstanding this fact, the Commission devoted its entire analysis to causation commencing on page 7-12 of its "Findings." On page 12 the Commission summarily wrote: ". . . even if it be accepted the Claimant did make significant improvement as a result of the medical treatment provided following the independent medical examination, this fact, standing along (sic), in (sic) insufficient to support the claim for medical benefits where Claimant has failed to demonstrate the condition for which the treatment was received is causally related to the subject accident . . . The Referee finds that Claimant has failed to prove that the medical benefits she seeks were incurred for conditions related to the industrial accident and injury. **Therefore, a *Sprague* analysis is unnecessary**." (Emphasis added).

Like two ships passing side by side at night, Claimant was unaware that causation was required by the Commission and thus she took no opportunity to place factual proofs into evidence or to address that specific issue. Indeed, in reviewing Claimant's Post Hearing Brief under issues to be addressed, causation is not there:

1. Whether Claimant's medical treatment after February 16, 2010, is reasonable;

2. Whether Claimant is entitled to TTD benefits until she reaches medical stability. (P. 2).

Defendants likewise concurred, and in its Brief stated the issues as:

1. Whether Claimant is entitled to reasonable and necessary medical care as provided for by Idaho Code § 72-432 and the extent thereof; and

2. Whether Claimant is entitled to temporary partial and/or temporary total disability benefits and the extent thereof. (Defendant's Brief, p. 2).

In rereading both Claimant and Defendant's briefs, there is no reference to causation and facts related thereto. This proves at face value that neither party addressed causation nor requested the Commission to address that issue. In fact, Claimant spent time addressing the narrow distinction between the issues of "reasonableness" and "necessity." (Claimant's Brief, p. 6).

B. Without having the opportunity to put on evidence regarding the issue of causation, Claimant's constitutional rights to due process of law have been violated.

Claimant petitions the Commission for an opportunity for hearing on the issue of causation since they obviously deem it of paramount importance, and a precursor to the issue of reasonable treatment. In keeping with Article I § 13 the constitutional provisions of due process, Idaho Code § 72-708 provides that "process and procedure under this law shall be as summary and simple as reasonably may be and as far as possible in accordance with the rules of equity."

Case precedent fully supports the notion that issues should be decided on their merits rather than through procedural technicalities and in this case, Claimant argues there was a procedural defect because the Commission issued a decision on an issue not raised by the parties. It is a principal of equity that one must be heard before his rights are adjudged is applicable in proceedings before administrative bodies. Duggan v. Potlatch, Forest, Inc., 1968 92 Idaho 262 441 P.2d 172. Due process requires meaningful notice and opportunity to be heard before a court may enter an order. State v. Doe, 2009 211 P.3d 787 147 Idaho 542. Due process demands an opportunity to be heard

at a meaningful time and in a meaningful manner. State v. Bettwieser, 2006 149 P.3d 857, 143, Idaho 582. Claims for compensation should be decided on its merits. Hattenburg v. Blanks, 98 Idaho 485, 567 P.2d 829 (1997). If the Industrial Commission injects new evidence or for that matter raises new issues then all parties have the right to dispute or challenge or prove or disprove those issues and evidence. Mapusaga v. Red Lion, 113 Idaho 842, 748 P.2d 1372 (1987).

Accordingly, Claimant requests that the Commission vacate its Order dated January 31, 2011 and set a status conference so that a new hearing can be reset which will permit both parties the opportunity to submit evidence as it relates to the issue of causation.

RESPECTFULLY SUBMITTED this 9 day of February, 2011.

MCBRIDE & ROBERTS, ATTORNEYS

Michael R. McBride
Attorney for Claimant

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 this 9 day of February, 2011, I caused a true and correct copy of the foregoing document to be served upon the person(s) listed below either by mailing, overnight delivery, hand delivery or facsimile:

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Boise, Idaho 83701

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- ☐ Hand Delivery
- ☐ Facsimile

MCBRIDE & ROBERTS, ATTORNEYS

By: _____
Michael R. McBride

ORIGINAL

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Attorneys for Employer/Surety

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARIA GOMEZ,

Claimant,

vs.

BLACKFOOT BRASS,

Employer,

and

STATE INSURANCE FUND,

Surety,

Defendants.

I.C. No. No. 2009-018790

DEFENDANTS' RESPONSE TO CLAIMANT'S MOTION FOR RECONSIDERATION

Defendants, by and through their counsel of record, Paul J. Augustine of the firm Augustine Law Offices, PLLC, hereby oppose the Claimant's Motion for Reconsideration to reopen the record for the taking of additional evidence on the issue of causation on the grounds identified below.

Claimant alleges in her motion that medical causation was not an issue to be addressed at the hearing. Pursuant to the Notice of Hearing the issues was whether the claimant "is entitled to reasonable and necessary medical care as provided by Idaho Code § 72-432, and the extent thereof." See Notice of Hearing dated August 3, 2010. Claimant argues that the issue of medical causation

was not subsumed within the issue of reasonable and necessary medical care identified by the Commission. Clearly, under well-settled Idaho law and Idaho Code § 72-432, it is the claimant's burden to prove that the medical care they are claiming is reasonable and necessary is actually related to the injury they suffered in their industrial accident. Medical care which is not related to injuries caused by an industrial accident cannot be medically necessary pursuant to Idaho Code § 72-432. Since the Commission found that claimant did not meet her burden, she should not be given a second opportunity to present evidence which should have been presented at hearing.

STANDARD OF REVIEW

Under Idaho Code § 72-718 a decision of the Commission, in the absence of fraud, shall be final and conclusive as to all matters adjudicated; provided within twenty days for the date of filing the decision any party may move for reconsideration or rehearing of the decision. "It is axiomatic that a Claimant must present to the Commission new reasons factually and legally to support a hearing on her Motion for Rehearing/Reconsideration rather than rehashing evidence previously presented." *Curtis v. M.H. King Co., 142 Idaho 383, 388, 128 P.3d 920 (2005).* Here the claimant presents no factual or legal basis for her motion.

THE REQUIREMENT THAT CLAIMANT PROVE CAUSATION IS INHERENT IN IDAHO CODE § 72-432

Claimant argues that she and her attorney thought the only issues to be heard at hearing were whether her medical care was "reasonable" and "necessary" and, that as a result, he was not prepared to establish medical causation. This argument lacks credibility and demonstrates a fundamental misunderstanding of what the claimant is required to prove under Idaho Code § 72-432.

Idaho Code § 72-432 obligates an employer to provide medical treatment necessitated by an industrial accident. The Commission properly noted that the issue was whether the claimant was entitled to reasonable and necessary medical care as provided by Idaho Code § 72-432 and the extent thereof. Inherent in claimant's burden under Idaho Code § 72-432 is that the claimant establish that

the medical care was caused by her industrial accident, otherwise it is not reasonable or necessary. An 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).* It is well established that a claimant must prove not only that she suffered an injury, but also the injury was result of an accident arising out of the course of her employment. *Seamans v. Maaco Auto Painting, 128 Idaho 747, 751, 918 P.2d 1192 (1996).* It is axiomatic that if a claimant's medical treatment is not for an injury caused by her industrial accident, then the medical treatment is neither reasonable nor necessary.

The claimant was well aware that Dr. Simon opined that the claimant's need for continuing medical care following his IME of February 16, 2010 was not medically necessary as it was his opinion that it was not related to the injury suffered in her accident. It is also clear that the main issue to be decided was whether the claimant's medical care following this IME was reasonable and necessary pursuant to Idaho Code § 72-432, i.e., whether this medical treatment was for an injury caused by her industrial accident.

It was also clear that the medical dispute centered on Dr. Poulter's continual treatment of what he identified as a herniated disc impinging on a nerve root resulting in leg pain and numbness. Defendants argued that Dr. Poulter's medical care of the claimant after February 16, 2010 was not medically necessary or reasonable because it was not related to an injury she suffered in her accident. The factual basis of this argument was that several medical doctors noted that claimant's MRI did not show any impingement on an exiting nerve root. Dr. Poulter, on the other hand, thought it did. The Commission agreed with Drs. Simon and Montalbano and found that the claimant's post-IME medical treatment was not elated to her injuries suffered in her industrial accident.

Following the Commission's decision that claimant did not establish that the medical treatment she received following Dr. Simon's IME was reasonable and necessary pursuant to Idaho Code § 72-432, she seeks to reopen the case to introduce evidence that was available to her before the hearing. Since the Commission's decision was conclusive as to all matters adjudicated and

claimant cannot offer any new evidence, the claimant's Motion for Reconsideration should be denied.

DATED this 14th day of February, 2011.

AUGUSTINE LAW OFFICES, PLLC

By _____
Paul J. Augustine - Of the Firm
Attorneys for Employer/Surety

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of February, 2011, I caused to be served a true copy of the foregoing DEFENDANTS' RESPONSE TO CLAIMANT'S REQUEST FOR RECONSIDERATION by the method indicated below, and addressed to each of the following:

Michael R. McBride
McBride & Roberts, Attorneys
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Attorneys for Claimant

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___ Hand Delivered
___ Overnight Mail
___ Telecopy

_____
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Attorney for Claimant

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARIA GOMEZ, Claimant, v. DURA MARK, INC., Employer, and STATE INSURANCE FUND, Surety, Defendants.	I.C. No.: 09-018790 AFFIDAVIT OF MICHAEL R. MCBRIDE

STATE OF IDAHO)
:ss.
County of Bonneville)

COMES NOW Michael R. McBride and hereby and affirms and swears that:

1. I am an attorney currently licensed to practice law in the State of Idaho.

2. That I represent Claimant above named.

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3. That I reviewed the Industrial Commission's Findings and Conclusions of Law dated January 31, 2011.

4. That I was surprised to learn that the Commission had elected to insert a new issue in the hearing, one that had not been agreed to by stipulation between the parties, that is one of causation.

5. That it never occurred to me that the issue of causation was in dispute at the time the parties agreed to argue the case on the narrow issue of reasonableness of medical care.

6. That I did not prepare the case with causation in mind.

7. That had I known causation was to be an issue, I would have presented the case differently in the following respects; 1) secured written causation opinions from Drs. Huneycutt, Poulter or others such as a radiologist; 2) I would have taken post-hearing depositions of Dr. Huneycutt, Dr. Poulter or other physicians, so that the issues of causation could be addressed in a testimonial light; 3) I would cross examine the opinions and findings of Dr. Simon and Dr. Montalbano as to cause and; 4) elicite rebuttal opinion if needed from Claimant's experts.

8. That my case presentation was prejudiced because I did not have notice that the Commission wished to address the issue of causation, nor was I permitted the opportunity to provide evidence to prove it.

9. Further, your affiant saith naught.

DATED this 9 day of February, 2011.

Michael R. McBride

SUBSCRIBED AND SWORN to before me this 9 day of February, 2011.

WENDY R. HENMAN NOTARY PUBLIC STATE OF IDAHO

NOTARY PUBLIC FOR IDAHO
Residing at: Idaho Falls
My Commission Expires: 8-14-16

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 this 9 day of February, 2011, I caused a true and correct copy of the foregoing document to be served upon the person(s) listed below either by mailing, overnight delivery, hand delivery or facsimile:

Paul J. Augustine
AUGUSTINE LAW OFFICES, PLLC
P.O. Box 1521
Boise, Idaho 83701

- ☑ Mail
- ☐ Overnight Delivery
- ☐ Hand Delivery
- ☐ Facsimile

MCBRIDE & ROBERTS, ATTORNEYS

By: _____
Michael R. McBride

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARIA GOMEZ, Claimant, v. DURA MARK, INC., Employer, and STATE INSURANCE FUND.	**IC # 2009-018790** **ORDER DENYING RECONSIDERATION** FILED APR - 7 2011 INDUSTRIAL COMMISSION

On February 11, 2011, Claimant filed a motion for reconsideration of the Commission's order in the underlying case, and attached a supporting affidavit from Claimant's attorney. The Commission found that Claimant had failed to prove that the medical treatment she received after Dr. Simon's February 16, 2010, IME is related to her industrial accident and injury, and that all other issues were moot.

Claimant argues the Commission inappropriately based its decision on a non-noticed issue—causation. Claimant presents that she assumed that causation had already been established because neither party raised it as an issue in the prehearing conference or at the hearing. Claimant argues that medical causation is distinct from the issue of reasonable and necessary medical care under Idaho Code § 72-432, and the case should have been limited to the latter issue. Claimant contends that the Commission violated her constitutional right to due process by including causation as an issue, which prejudiced her case. Claimant requests that the Commission vacate its Order dated January 31, 2011, and set a status conference for a new hearing so that both parties may reopen the record for additional evidence on causation.

Claimant's attorney submitted an affidavit in support of Claimant's request for reconsideration. The affidavit expresses that Claimant's attorney was unfairly surprised by the Commission's inclusion of causation in the case. Claimant's attorney admits that his case preparations did not cover the causation issue, and had he known causation was at issue, he would have presented the case differently. Further, Claimant's attorney states that he was prejudiced due to lack of notice on the issue of causation, and denied the opportunity to provide evidence to prove on this issue.

Defendants filed a response to the motion for reconsideration on February 14, 2011. Defendants argue that the issue of causation was encompassed in the first of the two noticed issues: "whether the claimant is entitled to reasonable and necessary medical care as provided by Idaho Code § 72-432, and the extent thereof." Defendants contend that medical care which is not related to injuries caused by an industrial accident cannot be medically necessary or reasonable under Idaho Code § 72-432. Thus, it is axiomatic that Claimant show that the requested medical treatment is causally related to her industrial accident. Further, Defendants argue it is clear that medical causation was contested in the case, given their contention that Dr. Poulter's medical care was not medically necessary or reasonable because it was not related to an injury she suffered in her accident. Defendants rely on Drs. Simon's and Montalbano's conclusions that Claimant's post-IME medical treatment was not related to her injuries suffered in her industrial accident. Further, Defendants argue that Claimant was well aware that Dr. Simon opined that Claimant's need for continuing medical care was not medically necessary, as it was not related to the injury suffered in the accident. Defendants ask the Commission to deny Claimant's request for reconsideration, as Claimant is simply attempting to reopen the case to introduce evidence that was available to her before the hearing.

Claimant did not file a reply to Defendants' response.

Under Idaho Code § 72-718, a decision of the Commission, in the absence of fraud, shall be final and conclusive as to all matters adjudicated; provided, within twenty (20) days from the date of filing the decision any party may move for reconsideration or rehearing of the decision. In any such event, the decision shall be final upon denial of a motion for rehearing or reconsideration, or the filing of the decision on rehearing or reconsideration. J.R.P. 3(f) states that a motion to reconsider "shall be supported by a brief filed with the motion." Generally, greater leniency is afforded to *pro se* claimants. However, "it is axiomatic that a claimant must present to the Commission new reasons factually and legally to support a hearing on her Motion for Rehearing/Reconsideration rather than rehashing evidence previously presented." Curtis v. M.H. King Co., 142 Idaho 383, 388, 128 P.3d 920 (2005). On reconsideration, the Commission will examine the evidence in the case, and determine whether the evidence presented supports the legal conclusions. The Commission is not compelled to make findings on the facts of the case during a reconsideration. Davison v. H.H. Keim Co., Ltd., 110 Idaho 758, 718 P.2d 1196. The Commission may reverse its decision upon a motion for reconsideration, or rehearing of the decision in question, based on the arguments presented, or upon its own motion provided that it acts within the time frame established in Idaho Code § 72-718. *See*, Dennis v. School District No. 91, 135 Idaho 94, 15 P.3d 329 (2000) (*citing* Kindred v. Amalgamated Sugar Co., 114 Idaho 284, 756 P.2d 410 (1988)).

Claimant is correct that the Commission based its decision on causation, and did not reach the question of whether the care required by Claimant's treating physician was reasonable. Specifically, the Commission found that Claimant failed to prove that the medical treatment after Dr. Simon's February 15, 2010, Independent Medical Exam (IME) was related

to her industrial accident and injury. Therefore, the Commission found the Sprague v. Caldwell Transportation analysis unnecessary. 116 Idaho 720, 779 P.2d 395 (1989). The Commission's approach is consistent with the Idaho Supreme Court's analysis in Henderson v. McCain Foods, Inc., 142 Idaho 559, 130 P.2d 1097 (2006), and the expert testimony presented by the parties.

As in the instant matter, the claimant in Henderson, supra, argued that she had been denied due process as a result of the Commission's denial of a request for medical treatment on the non-noticed issue of causation. Henderson pursued her claim for benefits at two separate hearings before the Commission. Id. Following the first hearing, the Commission found that Henderson suffered an industrial accident which injured to her neck, and awarded reasonable future medical care as deemed necessary by her treating physician. Henderson, 142 Idaho 559 at 562. At some point after the first hearing, Claimant underwent neck surgery which she contended was needed as a result of the subject accident. The compensability of this surgery was addressed at a second hearing, and at that hearing, the Commission found Henderson had failed to prove her entitlement to neck surgery because she had not shown a causal relationship between her industrial accident and her industrial injury. Id. On appeal, Henderson argued that she was not on notice that she would have to prove a causal connection between her industrial accident and her neck surgery, and that the Commission applied the incorrect legal standard when deciding reasonable medical care under Idaho Code § 72-432 based on the Court's holding in Sprague v. Caldwell Transportation Inc., 116 Idaho 720, 779 P.2d 395 (1989). Id. at 562-565.

The Court found Henderson had notice she would have to establish a causal connection between her industrial accident and her requested medical treatment as a fundamental

prerequisite to her request for further reasonable and necessary treatment under Idaho Code § 72-432.

> Our prior decisions have made it clear that an employee seeking compensation for medical care must prove that there is a causal relationship between the industrial accident and the need for the medical care. The Commission did not address at the first hearing whether the Claimant was entitled to medical benefits for her neck surgery because it had not occurred by the time of that hearing. One of the issues to be addressed in the second hearing was whether the Claimant was entitled to benefits for her medical expenses related to that surgery. In order to recover, she was required to prove a causal connection between her industrial accident and the need for the surgery. *Because the Claimant put causation at issue by virtue of her claim for additional medical benefits, she was not denied due process by the Referee's failure to expressly state that causation was one of the facts Claimant must prove in order to recover those medical benefits.* Hernandez v. Phillips, 141 Idaho 779, 118 P.3d 111 (2005). (*Emphasis added*).
>
> Henderson v. McCain Foods, Inc., 142 Idaho 559 at 564.

The Court noted that "a worker's compensation claimant has the burden of proving, by a preponderance of the evidence, all the facts essential to recovery." Henderson, 142 Idaho 559 at 563, *citing* Evans v. Hara's, Inc., 123 Idaho 473, 479, 849 P.2d 934, 940 (1993). Because an employer is *only* liable for medical expenses incurred as a result of an injury, a causal connection between the requested medical care and the industrial accident is an essential element for a claimant to prove. Id. Thus, Henderson was effectively on notice she would have to prove causation when she brought her claim for additional medical benefits, even though the Referee failed to expressly state that causation was at issue in the case. Id. at 565, *citing* Hernandez v. Phillips, 141 Idaho 779, 118 P.3d 111 (2005).

Further, the Court found that the Commission did not err in requiring the claimant to prove a causal connection between her industrial accident and the need for her requested neck surgery under the legal standard for Idaho Code § 72-432. Id. at 565. The Court elaborated on the appropriate legal standard for evaluating reasonable medical care under Idaho Code § 72-432. Id. Claimant argued that under the Sprague v. Caldwell Transportation Inc., 116 Idaho

720, 779 P.2d 395 (1989), and Idaho Code § 72-432(1), the correct legal standard is whether the requested medical care is reasonable under the Sprague three-part test.[1] Id. While the issue of whether or not certain medical care is reasonable is a separate issue from whether or not the need for such care was caused by the industrial accident, reasonable medical care must be causally related to the accident in order to be compensable. Id. However, the Court held that Idaho Code § 72-432 does not eliminate the need to show causation, as an employer can only be held liable for medical expenses related to any on-the-job accident or occupational disease. Henderson, 142 Idaho at 565. Therefore, the Court held that the legal standard for requested medical care under Idaho Code § 72-432 requires a claimant to show that the medical care is reasonable under the three-part Sprague test *and* causally related to the industrial accident to be compensable. Id. at 565.

Claimant's arguments in the instant matter are similar to those raised in Henderson v. McCain Foods, supra. Claimant focused her attention in the underlying briefing on the three-part test the Court identified in Sprague v. Caldwell Transportation to prove "reasonable" medical care under Idaho Code § 72-432. Claimant argued she did not address causation because she was unaware it was at issue and because Defendants had conceded causation in the case. However, although Claimant needed to establish she met the requirements in Sprague v. Caldwell Transportation, she was also on notice that she was required to establish causation as a crucial element of her request for additional medical benefits. Sprague does not abrogate this requirement. For reasons discussed above, the Commission is not persuaded by Claimant's arguments regarding notice and the appropriate legal standard for evaluating "reasonable"

[1] The Sprague v. Caldwell Transportation three-part test for reasonable medical care as follows: (1) the employee made gradual improvement from the treatment received; (2) the treatment was required by the employee's physician; and (3) the treatment was within the physician's standard of practice and the charges for the treatment were fair, reasonable, and similar to charges in the same profession. 116 Idaho 720, 779 P.2d 395 (1989).

medical care under Idaho Code § 72-432. This leaves the remaining issue in Claimant's request for reconsideration of whether Defendants had conceded causation in this case.

The Commission is persuaded that Defendants had not conceded the causation element of the claim. Throughout the proceedings, the parties' experts disagreed about whether Claimant's purported symptoms were caused by her industrial accident, and the type of treatment that would appropriately address her symptoms. Claimant was well aware of the dispute between the experts in this case on causation, and marshaled expert testimony in support of her case. As discussed below, the fight between the experts was centered on explaining whether there was an anatomic cause of Claimant's symptoms, and if so, whether that anatomic condition was causally related to the work accident.

Claimant's industrial accident occurred on July 24, 2009, when she was lifting a 60-65 pound box. On November 11, 2009, Claimant sought treatment with Dr. Honeycutt based on her complaints of pain, weakness, and numbness in her right leg as well as low back pain. Dr. Honeycutt diagnosed a herniated lumbar disk with radiculopathy and low back pain. With respect to causation, Dr. Honeycutt first deferred to a physical medicine specialist and referred Claimant to Dr. Poulter. Dr. Poulter opined that Claimant's MRI matched the pain distribution of the impinged nerve root at the L4-L5 level.

The expert testimony presented by Defendants, specifically that of Dr. Simon, challenged the causal relationship between Claimant's complaints and her industrial accident, and the appropriate treatment for Claimant's symptoms. As the case developed, Drs. Montalbano and Biddulph concurred with Simon's interpretation of Claimant's MRIs and his conclusions.

Dr. Simon conducted an IME of Claimant on February 16, 2010. Dr. Simon opined that

Claimant's physical examination results and pain complaints were inconsistent with a disk herniation and radiculopathy, and that even if what Dr. Poulter claimed he identified on the MRI were true, it still would not provide an anatomical basis for Claimant's symptoms. Dr. Simon remarks clearly challenge Dr. Poulter's conclusions about the causal relationship between Claimant's symptoms and the objective findings, the cause of Claimant's symptoms (whether acute or chronic), the interpretation of Claimant's MRI records, and the existence of neuroforaminal stenosis.

Dr. Simon disagreed with the finding that there was an "acute" herniation of L4-L5 based on Claimant's prior medical records and his evaluation, indicating that Claimant's complaints could be due to a chronic protrusion. Dr. Simon noted that Claimant failed to disclose her prior low back problems, and believed Claimant had exaggerated pain behaviors. Dr. Simon found Claimant at MMI without any further need for treatment. Dr. Simon concluded that there was *no relationship* between the symptoms reported by Claimant and her industrial accident, noting that even if it be assumed that Claimant suffered from a work-caused L4-5 lesion, Claimant's symptoms are in an anatomic distribution inconsistent with such a lesion, necessarily compelling the conclusion that the symptoms for which Claimant seeks treatment are unrelated to an alleged work-related injury to the L4-5 disk.

Based upon the foregoing reasons, Claimant's request for reconsideration is hereby DENIED.

IT IS SO ORDERED.

DATED this 7th day of April, 2011.

INDUSTRIAL COMMISSION

Thomas E. Limbaugh, Chairman

Thomas P. Baskin, Commissioner

participated but did not sign
R.D. Maynard, Commissioner

ATTEST:

Assistant Commission Secretary

INDUSTRIAL COMMISSION SEAL STATE OF IDAHO

CERTIFICATE OF SERVICE

I hereby certify that on 7th day of April, 2011 a true and correct copy of the foregoing **ORDER DENYING RECONSIDERATION** was served by regular United States mail upon each of the following:

MICHAEL MCBRIDE
1495 EAST 17TH ST
IDAHO FALLS ID 83404

PAUL J AUGUSTINE
PO BOX 1521
BOISE ID 83701

cs-m/

Michael R. McBride
McBRIDE & ROBERTS, ATTORNEYS
Signature Law Group, P.L.L.C.
1495 East 17th Street
Idaho Falls, Idaho 83404
Telephone: (208) 525-2552
Facsimile: (208) 525-5288
ISB License No: 3037

Attorney for Claimant/Respondent

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARIA GOMEZ, Claimant/Appellant, v. DURA MARK, INC., Employer/Respondent, and STATE INSURANCE FUND, Surety, Defendants/Respondents.	I.C. No.: 09-018790 NOTICE OF APPEAL Fee: $86.00

TO: THE ABOVE NAMED RESPONDENT, STATE INSURANCE FUND, AND THEIR ATTORNEY, PAUL J. AUGUSTINE, ESQ, AND THE IDAHO INDUSTRIAL COMMISSION:

NOTICE is hereby given:

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1. The above-named Appellant, Maria Gomez, appeals against the above-named Respondent, State Insurance Fund, to the Idaho Supreme Court from the Idaho Industrial Commission's Findings of Fact, Conclusions of Law, and Recommendation dated January 31, 2011 denying Claimant's request for reasonable medical care and Order Denying Reconsideration dated April 7, 2011.

2. That the Claimant/Appellant has a right to appeal to the Idaho Supreme Court, and the Orders described in Paragraph 1 above are appealable Orders pursuant to Rule 11(d).

3. Issues on appeal are:

   1. Whether the Industrial Commission erred in its Order Denying Claimant's Request for Reconsideration and to reopen the hearing to take additional evidence for lack of notice that causation was an issue at the Industrial Commission Hearing.

   2. Whether Claimant/Appellant's constitutional rights were violated by lack of notice that causation was an issue at Claimant's hearing.

   3. Whether Idaho Code § 72-432 mandates that the issue of causation be addressed before reasonable medical treatment is provided.

4. Has an Order been entered sealing all or any portion of the record? "No." If so, what portion? "None."

5. (a) Is a reporter's transcript requested? "No."

6. The Appellant requests the following documents to be included in the Clerk's (agency's) record in addition to those automatically included under Rule 28, I.A.R.

   1. Industrial Commission Findings of Fact, Conclusions of Law, and Reconsideration dated January 31, 2011.

   2. Industrial Commission Order dated January 31, 2011.

   3. Industrial Commission Order Denying Reconsideration dated April 7, 2011;

4. Claimant's Post-Hearing Brief dated December 27, 2010.

5. Defendant's Post-Hearing Brief dated December 28, 2010.

6. Claimant's Motion for Reconsideration dated February 9, 2011.

7. Affidavit of Michael R. McBride dated February 9, 2011.

8. Defendant's Response to Claimant's Motion for Reconsideration dated February 14, 2011.

9. Hearing Transcript dated October 6, 2010.

7. I certify:

c) That the estimated fee for preparation of the Clerk's or agency's records has been paid.

d)(1) That the Appellant filing fee has been paid.

e) The service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 10 day of May, 2011.

McBride & Roberts, Attorneys

Michael R. McBride
Attorney for Claimant

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 this 10 day of May, 2011, I caused a true and correct copy of the foregoing document to be served upon the person(s) listed below either by mailing, overnight delivery, hand delivery or facsimile:

Paul J. Augustine
AUGUSTINE LAW OFFICES, PLLC
P.O. Box 1521
Boise, Idaho 83701

- ☐ Mail
- ☒ Overnight Delivery
- ☐ Hand Delivery
- ☐ Facsimile

MCBRIDE & ROBERTS, ATTORNEYS

By: _____
Michael R. McBride

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

2011 MAY 18 A 9:22

MARIA GOMEZ, Claimant/Appellant, v. DURA MARK, INC., Employer, and STATE INSURANCE FUND, Surety, Defendants/Respondents.	**SUPREME COURT NO.** 38809 **CERTIFICATE OF APPEAL**

Appeal From:	Industrial Commission, Chairman, R.D. Maynard, presiding.
Case Number:	IC 2009-018790
Order Appealed from:	Findings of Fact, Conclusions of Law, and Recommendation, filed January 31, 2011; and Order, filed January 31, 2011, and Order Denying Reconsideration, filed April 7, 2011.
Attorney for Appellant:	MICHAEL R MCBRIDE 1495 EAST 17TH ST IDAHO FALLS ID 83404
Attorney for Respondents:	PAUL J AUGUSTINE PO BOX 1521 BOISE ID 83701
Appealed By:	Employer/Surety, Defendants
Appealed Against:	Claimant
Notice of Appeal Filed:	May 13, 2011
Appellate Fee Paid:	$86.00

FILED - ORIGINAL

MAY 18 2011

Supreme Court Court of Appeals
Entered on ATS

CERTIFICATE OF APPEAL (GOMEZ) - 1

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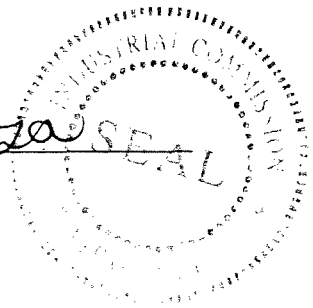
Name of Reporter:	Sandra Beebe
Transcript Requested:	Standard transcript has been requested. Transcript has been prepared and filed with the Commission.
Dated:	May 17, 2011

Gina Espinoza
Assistant Commission Secretary



CERTIFICATION

I, Gina Espinosa, the undersigned Assistant Commission 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, Order Denying Reconsideration, and the whole thereof, in IC case number 2009-018790 for Maria Gomez.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Commission this 17th day of May, 2011.

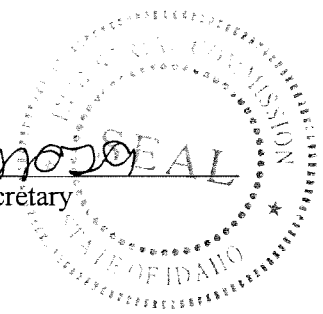
Gina Espinosa
Assistant Commission Secretary

CERTIFICATION OF RECORD

I, Gina Espinosa, the undersigned Assistant Commission 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 Agency's Record Supreme Court No. 38809 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 Certificate of Exhibits (i). Said exhibits will be lodged with the Supreme Court upon settlement of the Reporter's Transcript and Record herein.

DATED this 21st day of June, 2011.



Gina Espinosa
Assistant Commission Secretary

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

MARIA GOMEZ, Claimant/Appellant, v. DURA MARK, INC., Employer, and STATE INSURANCE FUND, Surety, Defendants/Respondents.	)	**SUPREME COURT NO. 38809** **NOTICE OF COMPLETION**

TO: STEPHEN W. KENYON, Clerk of the Courts; and
Michael R McBride, for the Appellant; and
Paul J Augustine, for the Respondents.

YOU ARE HEREBY NOTIFIED that the Agency'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:

MICHAEL R MCBRIDE
1495 EAST 17TH ST
IDAHO FALLS ID 83404

PAUL J AUGUSTINE
PO BOX 1521
BOISE ID 83701

YOU ARE FURTHER NOTIFIED that pursuant to Rule 29(a), Idaho Appellate Rules, all parties have twenty-eight days from this date in which to file objections to the Record, including requests for corrections, additions or deletions. In the event no objections to the Agency's Record are filed within the twenty-eight day period, the Record shall be deemed settled.

DATED this 21st day of June, 2011

Gina Espinoza
Assistant Commission Secretary

SEAL