

JOSEPHINE GREGORY, Claimant,

v.

SCHWABS SCREW MACHINES, Employer,

and

LIBERTY NORTHWEST INSURANCE CORPORATION, Surety, Defendants.

No. IC 2006-505221

Idaho Workers Compensation

Before the Industrial Commission of the State of Idaho

October 3, 2008

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION

James F. Kile, Chairman

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Michael E. Powers, who conducted a hearing in Lewiston on February 15, 2008. Michael Kessinger of Lewiston represented Claimant. E. Scott Harmon of Boise represented Defendants. The parties submitted oral and documentary evidence. The record remained open for the taking of one post-hearing deposition and the parties submitted post-hearing briefs. The matter came under advisement on June 6, 2008, and is now ready for decision.

ISSUES

By agreement of the parties at hearing, the bifurcated issues to be decided are:

1. Whether the industrial accident of February 21, 2006 caused the conditions for which Claimant seeks treatment;
2. Whether Claimant has reached medical stability;
3. Whether and to what extent Claimant is entitled to additional medical care; and
4. Whether and to what extent Claimant is entitled to total temporary disability benefits (TTDs).

CONTENTIONS OF THE PARTIES

Claimant sustained an industrial injury to her lower back on February 21, 2006 as the result of lifting a pan of machine parts. She contends that Defendants prematurely terminated her medical benefits in May 2006 and she had to pursue medical treatment on her own. She asserts that she is in need of additional treatment including epidural steroid injections, a discogram and possible lumbar surgery. Claimant maintains that she has not reached medical stability for her industrial injury and seeks TTD benefits from November 30, 2007, until she reaches medical stability. Claimant relies on multiple medical opinions, including those of Robert C. Coleman, M.D., Gregory D. Dietrich, M.D., and Greg Flinder, M.D. Claimant points out that Defendants failed to obtain an independent medical evaluation (IME) when initially suggested by Claimant's treating doctor, William R. England, M.D. Although Defendants eventually obtained an IME with J. Craig Stevens, M.D., the opinions of Dr. Stevens should not be relied upon because of blatant inconsistencies.

Defendants contend that Dr. England correctly determined that Claimant was medically stable as of May 2006 for her lumbar sprain injury. Other physicians who have evaluated Claimant were not referrals of Dr. England for the purpose of treating the industrial injury. Defendants stand by the second evaluation and report by Dr. Stevens in which he documented that Claimant displayed pain behaviors that were inconsistent with objective findings. Defendants maintain that the final opinions of Dr. Stevens differ from those in his initial report because he gave Claimant the benefit of doubt during the first evaluation, partly because of Claimant's advanced stage of pregnancy. Defendants assert that Claimant's industrial injury is limited to a temporary aggravation of her pre-existing degenerative disc disease; that Claimant requires no

additional medical care; that past medical benefits outside of referral for the industrial injury are not owed; and that Claimant has reached maximum medical improvement from her injury without restrictions or impairment.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant taken at hearing;
2. Claimant's Exhibits A through D admitted at hearing;
3. Defendants' Exhibits A through I admitted at hearing;
4. The pre-hearing deposition of Robert C. Colburn, M.D., taken by Claimant on February 14, 2008; and
5. The post-hearing deposition of J. Craig Stevens, M.D., taken by Defendants on March 5, 2008.

All objections made during the depositions of Drs. Colburn and Stevens are overruled.

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

FINDINGS OF FACT

1. Claimant was 34 years of age and resided in Lewiston at the time of hearing. Claimant was born in the Philippines where she graduated from high school in 1990. Claimant moved to the United States in 1993 and obtained citizenship in 1998. Claimant began working as a machine operator for Employer in 1999, where her duties included setting up and running machines that milled various types of metal.
2. On February 21, 2006, Claimant injured her back as the result of lifting a pan of parts weighing approximately 20 pounds. Claimant reported the injury to her supervisor and completed her shift. Claimant did not have pre-existing back problems and there is no indication that Claimant sought treatment or evaluation for back problems prior to her industrial injury. *Dr. England*
3. On February 22, 2006, Claimant sought treatment at Valley Medical Center (VMC) with William R. England, M.D., at the referral of Employer. Dr. England provided work restrictions (20-pound maximum lift, only half of shift on feet and no stooping/squatting) and recommended Ibuprofen. Claimant returned for a follow-up visit on February 26, 2006 and indicated that she was still "achy" with pain radiating into her left thigh. Dr. England continued with the same work restrictions, prescribed Lodine, and referred Claimant to physical therapy. (Defendants' Exhibit C, p. 13). As of March 2, 2006, Claimant continued to tolerate modified duty work but had not yet started physical therapy. Restrictions and medications were unchanged. On March 12, 2006, Claimant reported lumbar radiculopathy and was prescribed Vicodin for nighttime use.¹
4. On March 16, 2006, Claimant reported "tingliness" into her left hip and leg. Dr. England recommended a lumbar MRI to rule out radiculopathy. He commented that Claimant's mechanism of injury did not involve "significant" lifting but that it was possible to have a disc injury in the absence of such a trigger. Claimant's sit/stand restriction was lifted but the 20-pound lifting restriction remained in place. (Defendants' Exhibit C, p. 18).
5. Claimant underwent a lumbar MRI on March 27, 2006, which revealed degenerative disc disease at L2-3 and L5-S1; a broad based bulge at L2-3; and a small focal disc herniation at L5-S1, without nerve encroachment. Dr. England described the findings as "reassuring" and felt that the findings would not account for significant radiculopathy.
6. On March 30, 2006, Claimant reported intermittent tingling paresthesias in both legs. Dr. England suggested that the leg symptoms might be related to underlying diabetes.² He increased her lifting restriction from 20 pounds to 35 pounds and requested that Claimant follow-up in two weeks. On April 12, 2006, Dr. England indicated that Claimant's back pain appeared to be muscular and that he did not have a good explanation for Claimant's neurological symptoms, based on the MRI findings. Claimant was instructed to continue with physical therapy.
7. On April 18, 2006, Surety issued a denial letter indicating that treatment past March 30, 2006 would not be covered through workers' compensation since Dr. England attributed Claimant's current symptoms to diabetes and not "the minor 2/21/06 occupational accident." (Claimant's Exhibit A, p. 1). Dr. England promptly responded to the denial indicating that the Surety's denial of further physical therapy and

treatment based on his brief mention of diabetes was "silly." He explained that the leg paresthesias was "bemusing" and might be related to diabetes, but that Claimant's continued back pain resulted from the industrial injury. (Defendants' Exhibit C, p. 26). Surety reinstated treatment.

8. On April 26, 2006, Dr. England noted persistent lumbar pain and dropped Claimant's lifting restriction back to 20 pounds. He recommended continued physical therapy and indicated that it may be appropriate to obtain an independent medical evaluation (IME) in late May or early June.

9. On May 3, 2006, Dr. England indicated that Claimant had plateaued with regard to physical therapy and not made significant improvement. He explained that Claimant's two disc herniations did not appear to be causing nerve impingement and felt that Claimant's continued complaints may be non-anatomic. He certified maximum medical improvement, but recommended an IME; kept Claimant's restrictions and medications the same; and requested that Claimant return in two weeks.

10. On May 11, 2006, Surety issued a denial letter indicating that medical treatment after May 3, 2006, would not be authorized because Claimant had been "released" at maximum medical improvement by Dr. England. (Claimant's Exhibit A, p. 2).

11. On May 22, 2006, Dr. England reiterated that Claimant had reached maximum medical improvement, but stated that Claimant needed additional treatment. He indicated that:

I am somewhat surprised that Workman's Comp promptly closed [Claimant's] claim after my last visit with her...[S]he continues to have pain and symptoms and I think an IME would be prudent, both as I would appreciate a second opinion as to any other therapeutic interventions we might offer her and also for a disability determination. I do not do Workman's Comp Disability determinations in my practice. She continues to have pain and paresthesias...She has seen Dr. Willis in the interim and will be seeing her for primary care, I note that I still had her on duty restrictions with an eight hr per day limit and normally I want a pt released back to their work unrestricted before I would consider closing their claim.

I suggested to [Claimant] that she discuss this with the Idaho Industrial Commission. If this is unsatisfactory and they wish to pursue it further, then I suggest the [sic] might consider legal counsel.

I will be glad to see her back for this should her claim be reopened. Outside of Workman's Comp, I would have her continue to follow with Dr. Willis...

(Defendants' Exhibit C, p. 33).

Dr. Willis

12. Claimant was evaluated by Charla Willis, M.D., on May 9, 2006 for continued low back pain.

Dr. Dietrich

13. Dr. Willis and/or Dr. England referred Claimant to orthopedic surgeon Gregory D. Dietrich, M.D, who evaluated Claimant on July 18, 2006. Dr. Dietrich reviewed Claimant's lumbar MRI scan and determined that it showed an L5-S1 acute annular tear with disc protrusion but no real neural compression. He concluded that Claimant's pain generator was probably the L5-S1 level and that Claimant may have a component of chemical neuritis causing nerve root irritation. Dr. Dietrich recommended that Claimant continue with conservative treatment; read the book *Pain free*; and undergo epidural steroid injections. He felt that a discogram and disc arthroplasty were appropriate treatment options if Claimant failed to improve with conservative treatment.

Dr. Colburn

14. On October 19, 2006, Claimant underwent an IME with Robert Colburn, M.D., at the referral of her attorney. Dr. Colburn is a board certified orthopedic surgeon who has retired and limits his current practice to IMEs. He estimates that two-thirds of his IMEs are performed at the request of plaintiffs. He determined that Claimant had not reached medical stability and that her symptoms were more persistent over time. He did not think that Claimant exhibited pain behaviors. Dr. Colburn recommended a repeat MRI with consideration of discography and surgery. He did not feel that additional physical therapy would likely change Claimant's condition.

Pregnancy

15. Claimant became pregnant in August 2006 and returned to Dr. Willis on November 3, 2006, for right-sided pain associated with pregnancy. Claimant treated with other health care providers for her pregnancy and did not have significant complications. She delivered a healthy baby on May 10, 2007. Claimant's

treatment for her industrial injury was essentially put on hold during her pregnancy.

Dr. Stevens

16. On March 13, 2007, Claimant underwent an IME with J. Craig Stevens, M.D., at the request of Surety. Dr. Stevens' specialty is physical medicine and rehabilitation. He performed between 400 and 600 IMEs in 2007, with approximately 70 to 80 percent at the request of insurance companies. Dr. Stevens made diagnoses and findings of:

- a. Lumbar degenerative disk disease- preexisting her date of injury of February 21, 2006, but lowering the threshold of what would cause an injury and permanent disk aggravation.
- b. She did sustain on her date of injury a permanent aggravation of her lumbar degenerative disk disease with development of left lumbar radiculopathy.
- c. Advanced state of pregnancy is also contributing to her low back pain and slowing her recovery.
- d. Non insulin dependent diabetes is likely a factor in her mild distal sensory loss of the legs, but her left leg pain and numbness is due separately to lumbar radiculopathy from disc protrusion.

(Defendants' Exhibit F, p. 64).

17. Dr. Stevens deferred a determination of medical stability at the time of his initial evaluation because of Claimant's pregnancy. He opined that no additional treatment would be needed if Claimant's radicular complaints subsided, but that Claimant may eventually require a lumbar discectomy and fusion if her symptoms failed to resolve.

18. Claimant underwent a repeat lumbar MRI on July 10, 2007, which revealed a small disc bulge at L5-S1 associated with annular tearing. No contact with neural elements was identified.

19. Dr. Stevens re-evaluated Claimant on August 14, 2007. He concluded that Claimant's industrial injury was limited to a temporary exacerbation of lumbar degenerative disc disease. Dr. Stevens identified a "profound degree of inconsistency" on physical examination and a lack of corroborating features on Claimant's MRI. He opined that Claimant reached maximum medical stability with no permanent impairment or work restrictions as a result of her injury. (Defendants' Exhibit F, pp. 67-70).

20. Dr. Stevens reviewed MRI films from March 2006 and July 2007 and concluded that there was essentially no change in findings. He had the initial MRI for review at the time of his March 2007 evaluation of Claimant and had both films available at the August 2007 evaluation. In his August 14, 2007 report, Dr. Stevens stated that the most important reason he reached his ultimate conclusions was that Claimant's MRI demonstrated minimal bulges as opposed to a lumbar disc herniation.

Dr. Baldeck

21. On April 17, 2007, Claimant saw Michael J. Baldeck, D.O., to establish a relationship with a family physician in anticipation of her delivery and because she experienced continued back pain. Dr. Baldeck documented that her back pain was associated with a work injury and explained to Claimant that his practice was not accepting new workers' compensation patients.

22. Claimant returned to Dr. Baldeck on July 9, 2007 with complaints of continued lower back pain. In spite of Dr. Baldeck's efforts to limit his role to that of a primary care physician, he continued to provide treatment relating to Claimant's lower back pain and continued to indicate that Claimant's back problems were associated with a pending workers' compensation case. Dr. Baldeck requested the lumbar MRI of July 2007. He felt that Claimant needed a discogram to determine whether the annular tear was the cause of her problems. Dr. Baldeck referred Claimant to pain doctor Craig Flinders, M.D.

Dr. Flinders

23. Dr. Flinders evaluated Claimant on September 27, 2007. He documented the mechanism of Claimant's industrial injury and reviewed Claimant's past treatment. Dr. Flinders reviewed the July 2007 MRI and recommended discography and endoscopic decompressive surgery with annuloplasty.

Back to Dr. England

24. Although Dr. England did not examine Claimant after May 2006, he was provided with copies of Dr. Stevens' reports. On April 7, 2007, Dr. England noted:

I received an IME today on [Claimant] which I have reviewed. The conclusions were tentative due

to her pregnancy and it appears a [follow up] IME would be planned after she has delivered and stabilized. I would concur with the IME as presented in the report dated 3-27-07. Thirty minutes spent on review of IME and [Claimant's] records.

(Defendants' Exhibit C, p. 36). On September 5, 2007, Dr. England reported that:

I received a second IME for Ms. Gregory today. This was performed on August 14, 2007. I have not seen her since the previous IME earlier this year. I would agree with the findings and conclusion, which are quite similar to the previous IME.

(Defendants' Exhibit C, p. 40).

Claimant's Work Status

25. Claimant did not initially lose time from work because of her injury. Employer considered her to be a key employee and was willing to modify Claimant's pre-injury position to limit lifting to ten pounds.³ Claimant worked in this capacity from February 2006 through April 2007. Claimant was off of work in May 2007 following the birth of her baby and returned to work on August 30, 2007. Claimant was laid off on November 30, 2007, along with other employees, due to a slowdown in business.

26. In April 2007, Dr. Baldeck took Claimant off of work due to back pain. On July 26, 2007, Dr. Baldeck released Claimant to "Return to work. Light duty. L5-S1 disc bulge with annular tear." (Claimant's Exhibit C, p. 8). He noted that "[Claimant] will return to work in an attempt; I doubt she will make it more than a few weeks before pain becomes unbearable." (Claimant's Exhibit C, p. 7).

27. Claimant contacted the Industrial Commission Rehabilitation Division (ICRD) on September 7, 2007, to report that her back was still "killing her" and that she was having difficulty at work when she was required to bend over to perform set-up tasks. Claimant explained that she was working voluntary overtime because of financial concerns. Claimant inquired about retraining and expressed an interest in work as an accounting clerk.

28. At the time Claimant was laid off by Employer, her restrictions from Dr. Baldeck were to avoid bending, squatting, and lifting more than 20 pounds. These restrictions have not been lifted.

DISCUSSION AND FURTHER FINDINGS

Causation

A claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability. *Langley v. State, Industrial Special Indemnity Fund*, 126 Idaho 781, 785, 890 P.2d 732, 736 (1995). "Probable" is defined as "having more evidence for than against." *Fisher v. Bunker Hill Company*, 96 Idaho 341, 344, 528 P.2d 903, 906 (1974). Magic words are not necessary to show a doctor's opinion is held to a reasonable degree of medical probability, only their plain and unequivocal testimony conveying a conviction that events are causally related. *See, Jensen v. City of Pocatello*, 135 Idaho 406, 412-413, 18 P.3d 211, 217-218 (2001). An employee may be compensated for the aggravation or acceleration of a pre-existing condition, but only if the aggravation results from an industrial accident as defined by Idaho Code § 72-102(17). *See, Nelson v. Ponsness-Warren Idgas Enterprises*, 126 Idaho 129, 132, 879 P.2d 592, 595 (1994). A physician's testimony is not required in every case, but his or her medical records may be utilized to provide "medical testimony." *See, Jones v. Emmett Manor*, 134 Idaho 160, 997 P.2d 621 (2000).

29. Claimant did not have pre-existing back problems beyond asymptomatic degenerative changes. Claimant has not sustained an intervening injury to her back. Claimant's pregnancy delayed recovery of her symptoms, but did not cause additional injury to her spine.

30. Dr. England felt that Claimant's lower extremity symptoms were not consistent with the MRI findings and might not be related to Claimant's industrial injury. However, Drs. Dietrich, Colburn, Baldeck and Flinders attribute Claimant's symptoms to her industrial injury and most likely to the MRI findings at L5-S1. Although Dr. England surmised that Claimant's radicular symptoms might be related to diabetic neuropathy, the medical evidence fails to establish that Claimant has ongoing diabetes. Claimant had gestational diabetes during pregnancy.

31. Dr. Stevens' report of March 2007 reflects materially different opinions from his report of August 2007 regarding causation, extent of injury, need for treatment, maximum medical improvement, and work restrictions. Dr. Stevens took Claimant's reported symptoms at face value during his first evaluation but felt Claimant's presentation of symptoms was staged or at least exaggerated at the time of his second evaluation. Dr. Stevens agrees that Claimant's lumbar MRI findings of March 2006 and July 2007 are essentially the same.

32. Dr. Stevens referenced Claimant's MRI findings as the most important reason that he reached his final conclusions. It would be understandable if Dr. Stevens altered his opinion regarding limitations and permanent impairment based on his perception of Claimant's inconsistent presentation. However, it makes no sense that Dr. Stevens' opinions regarding causation and the severity of MRI findings changed based on a new MRI that showed essentially the same findings as the previous MRI.

33. Dr. England's comments regarding the two IME reports from Dr. Stevens are contradictory. Dr. England documented review of Dr. Stevens' initial report and expressed agreement with his findings. Dr. England subsequently expressed agreement with Dr. Stevens' second report which he described as "quite similar." (Defendants' Exhibit C, p. 40). Dr. England's concurrence with Dr. Stevens' report of August 2007 is confusing since Dr. Stevens' findings and conclusions in that report are not similar with his previous opinions and, on some issues, are actually opposite.

34. The opinions of Dr. Stevens in his report of August 2007 are not credible or persuasive. Dr. England's concurrence with Dr. Stevens' August 2007 report is inconsistent with Dr. England's previous opinions and is not given any weight.

35. Claimant has met her burden of proof to establish that her industrial accident caused the conditions for which she seeks treatment.

Medical Stability

A determination of medical stability or maximum medical improvement (MMI) is significant in Idaho workers' compensation cases because it impacts a claimant's eligibility to receive temporary disability benefits and some types of medical treatment. The Idaho Workers' Compensation Act does not provide a definition for "medical stability." The definition for "maximum medical improvement" as articulated in the *AMA Guides to the Evaluation of Permanent Impairment* is similar to statutory language in other states' workers' compensation statutes and has been adopted by the Idaho Supreme Court. "Maximum medical improvement" means the date on which no further material improvement would reasonably be anticipated either from medical treatment or the passage of time. *McGee v. J.D. Lumber*, 135 Idaho 328,332, 17 P.3d 272, 276 (2000).

36. Dr. England certified maximum medical improvement on May 3, 2006. He effectively rescinded this certification by concurring with Dr. Stevens' initial report which reflected that Claimant had not reached MMI by March 2007. Further, Dr. England's report of May 22, 2006, reflects that Dr. England's understanding of the definition of MMI might be different from the one articulated above. Dr. England reiterated that Claimant had reached MMI at the same time he expressed that Claimant's case should not be closed because she needed additional treatment and had not been released to return to work without restrictions. In May 2006, Dr. England anticipated that Claimant would require additional treatment and was interested in getting an independent medical opinion about therapeutic interventions that might improve Claimant's condition.

37. Multiple physicians have recommended that Claimant undergo additional diagnostic evaluation and treatment. The opinion of Dr. Colburn that Claimant has not reached MMI is adopted over the opinion of Dr. Stevens set out in his August 2007 report.

38. Claimant has met her burden to prove that she has not reached medical stability and that she remains in a period of recovery.

Medical Treatment

Idaho Code § 72-432(1) obligates an employer to provide an injured employee reasonable medical care as may be required by his or her physician immediately following an injury and for a reasonable time thereafter. It is for the physician, not the Commission, to decide whether the treatment is required. The only review the Commission is entitled to make is whether the treatment was reasonable. *See, Sprague v. Caldwell Transportation, Inc.*, 116 Idaho 720, 779 P.2d 395 (1989). Idaho Code § 72-432(1) further permits an injured employee to obtain treatment on their own, at the expense of the employer, if the employer fails to provide reasonable medical treatment for the industrial injury.

39. In the present case, Dr. England did not release Claimant from care for any reason other than the fact that Surety closed its case and declined to pay for additional treatment. Dr. England remained willing to offer additional treatment and wanted a second opinion as to additional therapeutic modalities that might be warranted. He referred Claimant to alternate physicians within his practice to provide primary care, partly because Claimant wanted to establish a relationship with a family doctor and partly because Claimant required additional care for her back that was not authorized by Surety.

40. Defendants failed to provide reasonable medical care after May 3, 2006 and are liable for past medical treatment related to the industrial injury sought by Claimant at the direction of Drs. England, Willis,

Dietrich, Colburn, Baldeck, and Flinders. Defendants are not liable for treatment received on November 3, 2006 from Dr. Willis related to Claimant's pregnancy, or any other treatment not related to the lower back.

41. Defendants are liable for future medical treatment pursuant to Idaho Code § 72-432, including a discogram as recommended by multiple physicians. It is premature to determine what other specific treatment is reasonably required to treat the industrial injury.

Temporary Total Disability

Idaho Code § 72-408 provides that income benefits for total and partial disability shall be paid to disabled employees "during the period of recovery." The burden is on a claimant to present evidence of the extent and duration of the disability in order to recover income benefits for such disability. *Sykes v. C.P. Clare and Company*, 100 Idaho 761, 605 P.2d 939 (1980). Once a claimant establishes by medical evidence that she is still within the period of recovery from the original industrial accident, she is entitled to temporary disability benefits unless and until such evidence is presented that she has been released for work, or light duty work and the employer makes light duty work available to her. *Malueg v. Pierson Enterprises*, 111 Idaho 789, 727 P.2d 1217 (1986).

42. At the time Claimant was laid off by Employer in November 2007, Employer was making accommodations for Claimant so that she could perform her job without lifting more than ten pounds. Claimant established that she continued to be in a period of recovery and under light duty restrictions. The only medical opinion to the contrary is contained in the August 2007 report of Dr. Stevens and is disregarded in favor of the medical opinion of Dr. Baldeck, who provided work restrictions and noted that he would be surprised if Claimant was able to continue working.

43. Employer was able to accommodate Claimant's light duty restrictions through November 30, 2007, but not thereafter. Defendants did not present evidence that employment continued to be available in the general labor market within Claimant's restrictions that Claimant had a reasonable opportunity of securing. Pursuant to *Maluag*, Claimant is entitled to TTDs as of December 1, 2007 and continuing in accordance with the Idaho Workers' Compensation Act. 111 Idaho 789, 791-792, 727 P.2d 1217, 1219-1220.

CONCLUSIONS OF LAW

1. The industrial accident of February 21, 2006 caused the conditions for which Claimant seeks treatment.
2. Claimant has not reached medical stability.
3. Claimant is entitled to past medical care related to her industrial injury at the direction of Drs. England, Willis, Dietrich, Baldeck, and Flinders that has not previously been reimbursed. Claimant is entitled to future medical benefits, including a discogram.
4. Claimant is entitled to temporary total disability benefits from December 1, 2007 and continuing in accordance with Title 72 of the Idaho Code.

RECOMMENDATION

The Referee recommends that the Commission adopt the foregoing findings of fact and conclusions of law and issue an appropriate final order.

INDUSTRIAL COMMISSION

Michael E. Powers, Referee

ORDER

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. The industrial accident of February 21, 2006 caused the conditions for which Claimant seeks treatment.
2. Claimant has not reached medical stability.

3. Claimant is entitled to past medical care related to her industrial injury at the direction of Drs. England, Willis, Dietrich, Baldeck, and Flinders that has not previously been reimbursed. Claimant is entitled to future medical benefits, including a discogram.

4. Claimant is entitled to temporary total disability benefits from December 1, 2007 and continuing in accordance with Title 72 of the Idaho Code.

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

INDUSTRIAL COMMISSION

R.D. Maynard, Commissioner, Thomas E. Limbaugh, Commissioner

Notes:

[1] Claimant was evaluated at VMC by Sherry D. Stoutin, M.D., instead of Dr. English on this visit.

[2] There is factually conflicting evidence as to whether Claimant had long-standing or ongoing diabetes as opposed to temporary symptoms due to fertility medication and/or pregnancy.

[3] The ten-pound lifting restriction appears to have been assigned by Sara A. Berg, M.D. on January 7, 2007. Records from Dr. Berg are not in evidence, but Claimant's personnel file includes Dr. Berg's work release.
