

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2014 MTWCC 19

WCC No. 2013-3112

TIMOTHY J. MYLES

Petitioner

vs.

SPARTA INSURANCE COMPANY

Respondent/Insurer.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

Summary: Petitioner claims he injured his right hip at work when he stepped up onto a semi-truck. Respondent counters that Petitioner failed to prove that it is more probable than not he suffered a hip injury at work.

Held: The evidence supports Petitioner's contention that he suffered a torn labrum in his right-hip socket at work. He is therefore entitled to coverage for treatment of his right-hip condition.

Topics:

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-407. The opinions of two treating physicians that Petitioner's hip condition resulted from a work-related injury were more persuasive than the opinion of the IME physician who never asked Petitioner about the onset of symptoms but relied instead on a review of Petitioner's medical records. Although these records consistently referred to a popping sound and sudden onset of hip pain from stepping up into a semi-truck, the IME physician never referenced this history in his report and concluded Petitioner's hip condition was not a result of a work-related injury.

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-119. The opinions of two treating

physicians that Petitioner's hip condition resulted from a work-related injury were more persuasive than the opinion of the IME physician who never asked Petitioner about the onset of symptoms but relied instead on a review of Petitioner's medical records. Although these records consistently referred to a popping sound and sudden onset of hip pain from stepping up into a semi-truck, the IME physician never referenced this history in his report and concluded Petitioner's hip condition was not a result of a work-related injury.

Physicians: Treating Physician: Weight of Opinions. The opinions of two treating physicians that Petitioner's hip condition resulted from a work-related injury were more persuasive than the opinion of the IME physician who never asked Petitioner about the onset of symptoms but relied instead on a review of Petitioner's medical records. Although these records consistently referred to a popping sound and sudden onset of hip pain from stepping up into a semi-truck, the IME physician never referenced this history in his report and concluded Petitioner's hip condition was not a result of a work-related injury.

Medical Condition (By Specific Condition): Torn Labrum. The Court was unpersuaded by the IME physician's conclusion that Petitioner's labral tear was coincidental and not an industrial injury after the IME physician's research did not uncover an incident similar to Petitioner's - stepping up into semi-truck, hearing his hip pop followed by extreme pain, resulting in a torn labrum - in light of the fact that Petitioner's treating physicians both opined that the described incident caused Petitioner's torn labrum.

¶ 1 Trial in this matter was held on April 3, 2014, at the Wills Law Firm, P.C., 323 West Pine Street, Missoula, Montana. Timothy J. Myles was present and represented by Margaret Dufrechou. Larry W. Jones represented Sparta Insurance Company (Sparta).

¶ 2 Exhibits: I admitted Exhibits 1 through 20 and 22 through 24 without objection. I overruled Petitioner's relevancy objection and admitted Exhibit 21.

¶ 3 Stipulations: The parties stipulated that the 2009 version of the Workers' Compensation Act (WCA) is applicable to this case.

¶ 4 Witnesses and Depositions: Myles and John C. Schumpert, M.D., were sworn and testified.

¶ 5 Issue Presented: The Pretrial Order sets forth the following issue:¹

Issue One: Whether Petitioner is entitled to coverage of treatment for his right-hip condition under the claim.

FINDINGS OF FACT

¶ 6 On or about August 7, 2010, Myles suffered an industrial injury arising out of and in the course of his employment with Watkins Shepherd in Helena, Lewis and Clark County, Montana. Liability for a low-back injury was accepted by Sparta.²

¶ 7 A dispute exists between the parties concerning the nature of the injury sustained by Myles in the industrial accident.³

¶ 8 Myles testified at trial. I found Myles to be a credible witness. On August 7, 2010, Myles was employed as a trailer mechanic for Watkins Shepard. While trying to remove a 150-pound inside dually tire on a trailer, Myles felt his back pop. The pain in his low back was very sharp and went into his hip and down his leg.⁴

¶ 9 Myles testified that he went to the medicine cabinet in the bathroom at work and took some ibuprofen, then went back to work on the tire. When he had finished with the tire, Myles testified that he needed to climb into the cab of the semi-truck. When he stepped up with his right foot onto the step and pulled himself up by the vertical handle next to the door of the cab, he heard a loud “pop” in his right hip.⁵

¶ 10 Myles testified that after hearing the pop in his hip, he was in too much pain to continue working and he was barely able to make it to his truck and drive home. Myles described feeling as if the ball had popped out of the socket of his hip. Prior to the incident, Myles testified that he never had any problems with his hip. After the incident, the pain in his hip has been constant. He described the

¹ Pretrial Order, Docket Item No. 32, at 2.

² *Id.*

³ *Id.*

⁴ Trial Test.

⁵ Trial Test.

pain as a dull, burning sensation that goes down into his right leg to his foot. Myles testified he has not had a pain-free day since the incident and he has had no other injuries to his hip since August 7, 2010.⁶

¶ 11 Myles clarified that he incurred two injuries on August 7, 2010: the first was to his low back trying to remove the inside dually tire when he heard the pop in his right-lower spine; the second injury occurred when he attempted to step up into the cab of the semi-truck, when he heard the pop in his right hip.⁷

¶ 12 During his testimony, Myles marked an anatomical drawing showing his hip pain going across the top of his right buttock, around his right hip and down into his groin.⁸ Myles testified that this has been the location of his hip pain since the onset of his symptoms on the day of the accident.⁹

¶ 13 In the Work Related Injury Investigation Report completed six days after Myles' injury, Myles wrote: "I was stepping up into yard truck and my back popped real[l]y bad, I worked the rest of the day limping around in pain then Sunday put ice and heating pad on it."¹⁰ Myles' coworker, Derrick Wallace, wrote that Myles "felt [his] hip pop" while lifting a tire. Myles explained that he must have told Wallace about his hip injury after it happened because Wallace saw him limping around afterwards. Myles testified that his boss required them to fill out the report when Myles reported he could not work anymore.¹¹

¶ 14 Myles testified that he could not recall filing any other workers' compensation claims; however, Sparta introduced an exhibit that showed Myles filed multiple claims while employed with his family's ranch back in the 1980s and early 1990s.¹² Myles did recall seeing a chiropractor but thought his care was covered under the ranch's health insurance. Myles also testified that if there were workers' compensation claims filed back then, they were probably filed by his mother.¹³

⁶ Trial Test.

⁷ Trial Test.

⁸ Ex. 20.

⁹ Trial Test.

¹⁰ Ex. 2 at 3.

¹¹ Trial Test.

¹² Ex. 21.

¹³ Trial Test.

¶ 15 John C. Schumpert, M.D., testified at trial. I found Dr. Schumpert to be a credible witness. Dr. Schumpert is a licensed Montana physician, board certified in occupational medicine.¹⁴

¶ 16 Dr. Schumpert performed an independent medical examination (IME) of Myles on December 18, 2012, and supplemented his evaluation with two additional reports.¹⁵ All of his opinions contained in his reports were given on a more-probable-than-not basis.¹⁶

¶ 17 Dr. Schumpert explained that the condition Myles suffers from is called femoral acetabular impingement, or FAI, which is a congenital condition resulting in a lack of adequate space in the socket joint. Dr. Schumpert testified that Myles' condition caused a labral tear, which is a tear in the cartilage that lines the hip socket.¹⁷

¶ 18 Dr. Schumpert stated that since his injury, Myles also has had a diskectomy at the L4-5 level of his lumbar spine. The surgery was performed by B. Max Iverson, M.D., and Dr. Schumpert reviewed Dr. Iverson's medical records in preparation for his IME report. Dr. Schumpert opined that, on a more-probable-than-not basis, Myles suffered a disk herniation lifting the truck tire on August 7, 2010, that required surgery by Dr. Iverson to relieve pressure on the L5 nerve root on the right side.¹⁸

¶ 19 Dr. Schumpert testified that impingement on the L5 nerve root on the right can cause pain and numbness in the right hip and buttock down into the right leg. It was Dr. Schumpert's opinion that Myles' hip pain is actually caused by the L5 nerve root and not a torn labrum in the acetabulum.¹⁹

¶ 20 Dr. Schumpert testified that, based on articles he had read and the mechanism of Myles' injury – stepping up with his right foot then exerting pressure down – this was not the type of activity that would cause a labral tear.²⁰ Dr. Schumpert explained that labral tears are usually related to repetitive athletic

¹⁴ Trial Test.

¹⁵ Ex. 11.

¹⁶ Trial Test.

¹⁷ Trial Test; See Ex. 23, which depicts the femoral head in the acetabulum (hip-socket) surrounded by the labrum.

¹⁸ Trial Test.

¹⁹ Trial Test.

²⁰ Trial Test.

activity such as golfing, tennis, ballet, or martial arts, where the participants are constantly twisting and turning their hips.²¹

¶ 21 Dr. Schumpert discussed the fact that Myles' hip complaints and right big toe numbness are easily explained as related to the right-L5 nerve root distribution.²²

¶ 22 Dr. Schumpert testified that it was not unusual for someone who went through a diskectomy to continue to experience pain and numbness in the distribution of the nerve root. Dr. Schumpert said this was caused by the formation of scar tissue as part of the healing process to repair the area where the surgery occurred.²³

¶ 23 Dr. Schumpert agreed that Myles undoubtedly sustained a labral tear. After conducting further research on the cause of labral tears, he learned of a study in Japan where three individuals were doing nothing other than shopping when they suffered torn labrums. Dr. Schumpert explained that there are any number of hip conditions that can predispose someone to a labral tear.²⁴

¶ 24 In regards to the Japanese study, there was no medical history done on any of the three shoppers to determine if they had a predisposition to labral tears. Dr. Schumpert then concluded that the activity of shopping was simply coincidental to the three Japanese shoppers suffering sudden labral tears.²⁵

¶ 25 Dr. Schumpert testified that he believed it was coincidental that Myles felt hip pain as he stepped up onto the step of the semi-truck, and the activity was not the cause of Myles' labral tear.²⁶

¶ 26 Dr. Schumpert agreed that a labral tear is painful when it occurs. He also agreed that if a person who suffers a labral tear heard a pop in his hip, it might indicate that the tear occurred at that moment. Dr. Schumpert testified that it was very relevant for the purposes of diagnosis to ask about the onset of symptoms, and that if Myles heard his hip pop as he was stepping up onto the semi-truck,

²¹ Trial Test.

²² Trial Test.; Ex. 24.

²³ Trial Test.

²⁴ Trial Test.

²⁵ Trial Test.

²⁶ Trial Test.

that might be the instant he suffered the labral tear. However, according to Dr. Schumpert, that was not his understanding of what happened.²⁷

¶ 27 Dr. Schumpert did not ask Myles about the onset of his symptoms, but relied instead on a review of Myles' medical records to understand the mechanism of his injury. Dr. Schumpert recalled that Myles heard a pop while lifting the heavy tire, and testified that if Myles heard a pop in his hip while stepping up onto the step of the semi-truck, it could merely indicate popping facet joints.²⁸

¶ 28 During an office visit on March 31, 2011, M. Brooke Hunter, M.D., took a history from Myles regarding the onset of his hip pain. Dr. Hunter wrote in her history: "Soon after [straining his low back changing a tire] he was stepping up about 2 feet into the semi-, we [sic] put all the weight on his leg he felt his hip pop. He had quite a bit of pain then"²⁹

¶ 29 Dr. Schumpert's IME report references his review of Dr. Hunter's initial examination during Myles' visit on March 31, 2011.³⁰ Dr. Schumpert's report does not reference Dr. Hunter's notes of Myles experiencing his "hip pop" followed by "quite a bit of pain" as he stepped up into the semi-truck.

¶ 30 Gregg Singer, M.D., performed an IME of Myles on January 27, 2011, at the request of Health Corps and Intermountain Claims Inc.³¹ Dr. Singer's history of the injury taken from Myles was that, two hours after Myles felt his low back pop while removing a tire from a trailer, "he stepped up onto a step and felt a pop in his hip. This was an excruciating discomfort that he describes as involving his lateral hip and groin." Myles described the pain as located in the ball and socket.³²

¶ 31 Dr. Schumpert's IME report references his review of Dr. Singer's IME of January 27, 2011. Dr. Schumpert's report makes no reference to Myles'

²⁷ Trial Test.

²⁸ Trial Test.

²⁹ Ex. 6 at 1.

³⁰ Ex. 11 at 4; Ex. 6 at 1-3.

³¹ Ex. 12.

³² Ex 12 at 4.

description of the onset of his hip complaints: the “pop in his hip” or the “excruciating discomfort” that followed.³³

¶ 32 Dr. Hunter referred Myles to Allen M. Weinert, Jr., M.D., who noted in his initial examination report of May 4, 2011, under “HISTORY OF PRESENT ILLNESS,” that Myles’ hip complaints started “when he stepped onto a step on a semi-[]at work and felt a pop in his right hip with severe pain in the right low back into the right hip”³⁴

¶ 33 Dr. Schumpert’s IME report references his review of Dr. Weinert’s initial examination and history of illness. Dr. Schumpert’s report makes no reference to the onset of Myles’ symptoms or the “pop in his right hip with severe pain” that Myles related to Dr. Weinert.³⁵

¶ 34 The MRI that Myles underwent on December 16, 2010, because of right-hip pain was “suggestive of right hip femoral acetabular impingement.”³⁶ Dr. Schumpert explained that it would have been helpful if contrast had been used in the MRI, like the one taken on December 26, 2012, that clearly showed a labral tear in Myles’ right hip.³⁷ As it was, Dr. Schumpert said that all the 2010 MRI showed was that Myles was experiencing pain in his right buttock.³⁸

¶ 35 Dr. Schumpert explained that if the labral tear had been acute when the first MRI was taken, contrast would not have been needed since bone marrow edema would show up. It would take one to two months for the edema to develop and be visible. Then, Dr. Schumpert said, the edema would have resolved after about three months.³⁹

¶ 36 Dr. Schumpert testified that most people who develop labral tears have some abnormality in their hips, either FAI, hip dysplasia, or capsular problems. Dr. Schumpert explained that Myles has a posterior labral tear, unusual in that

³³ Ex. 11 at 3.

³⁴ Ex. 16 at 7.

³⁵ Ex. 11 at 4.

³⁶ Trial Test.; Ex. 14 at 1.

³⁷ Trial Test.; Ex. 14 at 9.

³⁸ Trial Test.

³⁹ Trial Test; See Ex. 14 at 1.

most are anterior labral tears where there is less blood supply. The three shoppers in the Japanese study had anterior labral tears.⁴⁰

¶ 37 While Myles was predisposed to a tear in his labrum due to his FAI, Dr. Schumpert felt it was unlikely that Myles would suffer a torn labrum simply from stepping up two feet. Dr. Schumpert related that he had recently read a Danish article that attributed hip degeneration to repeated heavy lifting. Dr. Schumpert testified that if Myles had been jumping out of tractors his entire life, like a study showed of farmers suffering from hip degeneration, or repeatedly lifting heavy objects measured in tons per year, then those activities could account for Myles' labral tear. However, Dr. Schumpert believed that a single event was unlikely to cause that type of injury.⁴¹

¶ 38 According to the studies Dr. Schumpert reviewed, 87% of people with a labral tear had FAI. However, the doctor admitted he could not determine whether Myles' hip pain was a result of his right-hip labral tear or the L4-5 herniated disk. Dr. Schumpert believes that most of Myles' symptoms can be traced to the lumbar herniated disk and are mostly, but not entirely, inconsistent with a labral tear.⁴²

¶ 39 In response to written questions posed by Elias Harman, Senior Claims Adjuster for Intermountain Claims Inc., Dr. Schumpert wrote that traumatic events were the leading cause of labral tears, either from an isolated event or from repetitive trauma.⁴³ In response to Harman's question as to whether Myles' limping due to his back injury caused an aggravation of his FAI, Dr. Schumpert wrote that he could find no literature on the effect on FAI due to an abnormal gait.⁴⁴

¶ 40 Dr. Iverson became Myles' treating physician on August 26, 2010. Dr. Iverson's note of that date, under "History of Present Illness," stated that "[p]atient [complains of] pain in his right hip down his leg when he tried to step up into his semi."⁴⁵ Dr. Iverson diagnosed a herniated disk at L4-5 with L5 radiculopathy of the right lower extremity.⁴⁶ The doctor recommended an

⁴⁰ Trial Test.

⁴¹ Trial Test.

⁴² Trial Test.

⁴³ Ex. 11 at 27.

⁴⁴ Ex. 11 at 29.

⁴⁵ Ex. 7 at 17.

⁴⁶ Ex. 7 at 18.

epidural steroid injection, and discussed the possibility of surgery involving microlaminotomy and disk excision, which Dr. Iverson recommended when the epidural gave Myles no relief.⁴⁷

¶ 41 Dr. Iverson operated on Myles on October 11, 2010, performing a microlaminotomy and disk excision at L4-5.⁴⁸ In a post-surgery letter to Intermountain Claims Inc. dated January 4, 2011, Dr. Iverson wrote that Myles' back pain and radicular right-leg pain was doing better, but that he "continued to have persistent complaints about the right hip."⁴⁹ Dr. Iverson noted: "More probably than not the patient sustained trauma to the right hip when he had the workers compensation accident on August 7, 2010 that has resulted and [sic] ongoing complaints of the right hip. I have, therefore, referred the patient to Dr. Hunter, who has expertise in . . . dealing with hip problems"⁵⁰

¶ 42 As a part of Dr. Singer's IME of January 27, 2011, at the request of Health Corps and Intermountain Claims Inc., the question was posed whether Myles' "current right hip pain and probable impingement symptoms are related, beyond a medically more probable than not basis, to his 08/07/10 work injury of lifting a tire, stepping into his truck?"⁵¹ Dr. Singer responded: "His current complaints are related to the injury. . . . It is my understanding the femoral acetabular impingement (FAI) is not usually associated with trauma; however, it is possible that an aggravation of the preexisting condition could cause FAI to become symptomatic."⁵²

¶ 43 Dr. Singer went on to write that it was his "understanding that FAI is the result of an anatomical variant and if, indeed, he does have that variant, it is possible that FAI could be aggravated by activity." Dr. Singer suggested a referral to an orthopedic hip specialist once a thorough evaluation was completed on Myles' lower extremity weakness.⁵³ Dr. Singer also found that Myles "presents as a reliable historian."⁵⁴

⁴⁷ Ex. 7 at 18, 21, 23.

⁴⁸ Ex. 7 at 27.

⁴⁹ Ex. 7 at 43.

⁵⁰ *Id.*

⁵¹ Ex. 12 at 7.

⁵² Ex. 12 at 8.

⁵³ *Id.*

⁵⁴ Ex. 12 at 9.

¶ 44 Upon Dr. Iverson's referral, Dr. Hunter saw Myles on March 31, 2011.⁵⁵ Despite the December 2010 MRI being done without contrast, Dr. Hunter was the first physician to diagnose Myles with a "right low labral tear."⁵⁶ On April 28, 2011, Dr. Hunter referred Myles to Dr. Weinert.⁵⁷

¶ 45 Dr. Weinert took over Myles' treatment on May 4, 2011.⁵⁸ On November 29, 2011, Dr. Weinert wrote to Harman at Intermountain Claims Inc., stating that Myles' FAI "likely is aggravated by his low back symptoms." However, the doctor's letter went on to state that he could not relate Myles' right hip symptoms to a work-related injury.⁵⁹

¶ 46 On June 3, 2013, Dr. Weinert wrote back to Harman, stating that Myles had related to him that on August 7, 2010, Myles had stepped into a semi-truck "and felt a pop in his right hip with extreme low back and right hip pain."⁶⁰ Dr. Weinert further wrote that "[t]he presumptive trauma would be a posterior labral tear of the right hip as identified on MRI arthrogram secondary to right hip flexion necessary to step into a high step vehicle which probably also treated a component of [FAI] with associated camming which may have contributed to the tear."⁶¹

¶ 47 On June 10, 2013, Dr. Weinert wrote to Myles' attorney, relating Myles' disability to events that occurred on August 7, 2010.⁶² Dr. Weinert's letter stated his belief that Myles' labral tear was contributing to his right-hip pain, and that although Myles' FAI would not be considered a work injury, "the patient's labral tear would be considered a work injury secondary to the August 7, 2010 work injury." Dr. Weinert went on to write that the lumbar disk herniation and persistent radicular symptoms that caused him to limp "certainly may have aggravated his right hip condition on a medically more probable than not basis."⁶³

⁵⁵ Ex. 6 at 1-3.

⁵⁶ Ex. 6 at 2.

⁵⁷ Ex. 6 at 5-6.

⁵⁸ Ex. 16 at 7-11.

⁵⁹ Ex. 16 at 50.

⁶⁰ Ex. 16 at 92.

⁶¹ *Id.*

⁶² Ex. 16 at 93.

⁶³ *Id.*

CONCLUSIONS OF LAW

¶ 48 This case is governed by the 2009 version of the WCA since that was the law in effect at the time of Myles' industrial accident.⁶⁴

Issue One: Whether Petitioner is entitled to coverage of treatment for his right-hip condition under the claim.

¶ 49 Myles bears the burden of proving by a preponderance of the evidence that he is entitled to the benefits he seeks.⁶⁵ I conclude that Myles has met his burden.

¶ 50 Section 39-71-407(2), MCA, reads in relevant part:

(a) An insurer is liable for an injury, as defined in 39-71-119, if the injury is established by objective medical findings and if the claimant establishes that it is more probable than not that:

- (i) a claimed injury has occurred; or
- (ii) a claimed injury aggravated a preexisting condition.

(b) Proof that it was medically possible that a claimed injury occurred or that the claimed injury aggravated a preexisting condition is not sufficient to establish liability.

¶ 51 Sparta points out, "Dr. Weinert provided significant medical care directed to [Myles'] low back injury . . ."⁶⁶ Sparta then goes on to state that "[t]he labral tear was first diagnosed by Dr. Weinert in his January 24, 2013 examination report."⁶⁷ This is incorrect. Dr. Hunter first diagnosed the labral tear in Myles' right hip in her initial exam of March 31, 2011. Dr. Hunter then recommended steroid injections in Myles' hip.⁶⁸ When the injection proved of little help, Dr. Hunter referred Myles to Dr. Weinert and regularly deferred thereafter to Dr. Weinert's opinion regarding maximum medical improvement and causation of Myles' hip condition.⁶⁹

⁶⁴ *Ford v. Sentry Cas. Co.*, 2012 MT 156, ¶ 32, 365 Mont. 405, 282 P.3d 687 (citing *Fleming v. International Paper Co.*, 2008 MT 327, ¶ 26, 346 Mont. 141, 194 P.3d 77); § 1-2-201, MCA.

⁶⁵ *Ricks v. Teslow Consol.*, 162 Mont. 469, 512 P.2d 1304 (1973); *Dumont v. Wickens Bros. Constr. Co.*, 183 Mont. 190, 598 P.2d 1099 (1979).

⁶⁶ Response Trial Brief (Respondent's Trial Brief), Docket Item No. 31, at 3.

⁶⁷ Respondent's Trial Brief at 4.

⁶⁸ Ex. 6 at 2.

⁶⁹ Ex. 6 at 5-6; Ex 6 at 8A; Ex. 6 at 14.

¶ 52 On November 29, 2011, Dr. Weinert wrote to Harman, stating that Myles has FAI “which likely is aggravated by his low back symptoms.”⁷⁰

¶ 53 On June 3, 2013, Dr. Weinert wrote to Harman stating that Myles had related to him stepping into a semi-truck on August 7, 2010, and feeling “a pop in his right hip with extreme low back and right hip pain. . . . The presumptive trauma would be a posterior labral tear of the right hip as identified on MRI arthrogram secondary to right hip flexion necessary to step into a high step vehicle which probably also treated a component of [FAI] with associated camming which may have contributed to the tear.”⁷¹

¶ 54 Several days later, Dr. Weinert wrote to Myles’ attorney stating that Myles’ disability was a result of injuries sustained on August 7, 2010, that Myles’ labral tear was contributing to his right-hip pain, and that although his FAI preexisted his work injury, “the patient’s labral tear would be considered a work injury secondary to the August 7, 2010 work injury.” Dr. Weinert also wrote that Myles’ limp caused by the herniated disk in his low back “certainly may have aggravated his right hip condition on a medically more probable than not basis.”⁷²

¶ 55 Proof that it was medically possible that a claimed injury occurred, or that the claimed injury aggravated a preexisting condition, is insufficient to establish liability.⁷³ In *Ford v. Sentry Cas. Co.*, the Montana Supreme Court held:

Section 39-71-119, MCA, provides the controlling definitions with regard to the injury itself and the requisite causal connection. An “injury” may take the form of internal or external physical harm to the body, damage to prosthetic devices or appliances, or death. Section 39–71–119(1), MCA. By definition, an “injury” is “caused by” an “accident,” i.e., by “an unexpected traumatic incident or unusual strain; identifiable by time and place of occurrence; identifiable by member or part of the body affected; and caused by a specific event on a single day or during a single work shift.” Section 39–71–119(2), MCA. Thus, to be compensable, “there

⁷⁰ Ex. 16 at 50.

⁷¹ Ex. 16 at 92.

⁷² Ex. 16 at 93.

⁷³ § 39-71-407(2)(b).

must be an ‘injury’ and an ‘accident,’ and the injury must be ‘caused by’ the accident.”⁷⁴

¶ 56 *Ford* went on to hold that, “the claimant’s burden to establish an accident, an injury or aggravation of a preexisting condition, and a causal connection between the accident and the injury/aggravation is ‘more probable than not.’”⁷⁵

¶ 57 Myles testified credibly regarding the circumstances of his accident, and Myles’ account of his hip injury has remained consistent with all of his medical providers throughout his treatment. While stepping up onto the semi-truck, Myles heard his hip pop, and felt the onset of severe pain which has persisted since that day. This is further substantiated by Myles’ coworker, Wallace, who wrote “felt hip pop” on the accident report.⁷⁶

¶ 58 Myles’ treating surgeon, Dr. Iverson wrote that, “[m]ore probably than not the patient sustained trauma to the right hip when he had the workers compensation accident on August 7, 2010 that has resulted and [sic] ongoing complaints of the right hip.”⁷⁷

¶ 59 To counter the opinions of Myles’ treating physicians, Sparta offered the testimony of Dr. Schumpert. Although I found Dr. Schumpert’s testimony credible, I find it less persuasive because he seems to have overlooked the medical records that related Myles’ onset of symptoms – the audible pop followed by a terrible pain in his right hip – when Myles stepped up onto the semi-truck.

¶ 60 Moreover, although Dr. Schumpert testified about his extensive research of peer-reviewed articles, trying to determine how and when Myles’ labral tear occurred, he did not ask Myles about the onset of his symptoms; a question he agreed was relevant to diagnosing a patient’s condition.

¶ 61 I find it difficult to agree with Dr. Schumpert’s opinion that, if Myles injured his hip at work on August 7, 2010, it was simply coincidental and had nothing to do with his lifting a heavy tire or stepping up onto a semi-truck in an already compromised state, having just herniated a lumbar disk. The fact that Dr. Schumpert could not find an incident similar to Myles’ resulting in a labral tear

⁷⁴ *Ford*, ¶ 37. (Citations omitted.)

⁷⁵ *Ford*, ¶ 38. (Citation omitted.)

⁷⁶ Ex. 2 at 1.

⁷⁷ Ex. 7 at 43.

is not persuasive, when held up to the opinions of Dr. Iverson and Dr. Weinert who both opined that Myles' hip condition resulted from a work-related injury.

¶ 62 I conclude that Myles, more probably than not, suffered a torn labrum on August 7, 2010, from an unusual strain in the course and scope of his employment, and he is therefore entitled to care and treatment for his right hip.

JUDGMENT

¶ 63 Petitioner is entitled to coverage for treatment of his right-hip condition suffered in the course and scope of his employment.

¶ 64 Pursuant to ARM 24.5.348(2), this Judgment is certified as final and, for purposes of appeal, shall be considered as a notice of entry of judgment.

DATED in Helena, Montana, this 30th day of May, 2014.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Margaret Dufrechou
Larry W. Jones

Submitted: April 14, 2014