BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

NICHOLE SNIFFEN, Claimant, v. KC CONSTRUCTION, INC., Employer, and LIBERTY NORTHWEST INSURANCE CORPORATION, Surety, Defendants.	)	**IC 2003-010104** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** Filed: February 26, 2009

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Rinda Just, who conducted a hearing in Coeur d'Alene, Idaho, on October 17, 2008. Starr Kelso of Coeur d'Alene represented Claimant. Monte R. Whittier of Boise represented Defendants. The parties submitted oral and documentary evidence. Two post-hearing depositions were taken and the parties submitted post-hearing briefs. The matter came under advisement on January 13, 2009, and is now ready for decision.

ISSUES

By stipulation of the parties, the issues to be decided are:

1. Whether the condition for which Claimant seeks benefits was caused by the industrial accident; and

2. Whether and to what extent Claimant is entitled to additional medical care.

All other issues were reserved.

CONTENTIONS OF THE PARTIES

Claimant asserts that she remains symptomatic from the industrial right knee injury she sustained on August 16, 2003, but Defendants have denied the additional medical treatment (diagnostic MRI and diagnostic arthroscopy) that her treating physician recommended. Claimant seeks an MRI and/or a diagnostic arthroscopy so that she can either get her knee fixed, or be certain that nothing more can be done.

Defendants contend that Claimant's 2003 right knee injury was a temporary exacerbation of a congenital condition, for which she received treatment and recovered. Nearly three years later, Claimant sought additional treatment for her right knee, and received a considerable amount of additional medical care, despite an absence of objective evidence of a continuing problem. Defendants point out that Claimant has already sought second opinions from two orthopedic surgeons, neither of whom recommended a right knee arthroscopy. Finally, Defendants argue that it is not reasonable, five years post-injury, to require Defendants to provide treatment for a congenital condition that is aggravated by Claimant's daily activities.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant, taken at hearing;

2. Joint exhibits A through N, admitted at hearing;

3. Claimant's exhibits 1 through 8, admitted at hearing;

4. Post-hearing depositions of J. Craig Stevens, M.D., taken October 29, 2008, and William F. Sims, M.D., taken October 22, 2008.

Defendants' objections at pages 24 and 42 of Dr. Sims' deposition are sustained. All other objections 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

INJURY/MEDICAL CARE

1. On Saturday, August 16, 2003, Claimant was working for Employer as a laborer. While attempting to pry up a railroad tie with a shovel, her foot slipped off the shovel and she felt a sharp pain in her right knee. Claimant reported the injury immediately. Employer told her to finish out the day raking yards, and then to see how the knee fared over the weekend.

2. Claimant returned to work on Monday, August 18, and reported that her knee was still hurting. Employer directed her to go to the emergency room at Kootenai Medical Center (KMC) to have her knee checked.

KMC

3. At KMC, Claimant described her knee injury as follows:

> She felt sort [of] like the pop of a joint in her knuckles without severe pain or swelling. This pain subsequently gradually worsened since yesterday and the swelling was prominent last night. It has improved today with some ice.

Ex. D., p. 8. On exam, Claimant reported tenderness medial to the knee, but the exam was otherwise unremarkable. Claimant was diagnosed with a knee sprain and advised to use a knee immobilizing brace for the next two days, and then use an Ace wrap as tolerated over the next week. She was advised to avoid stooping, bending and twisting, and to use Naprosyn and Lortab for pain. A follow-up appointment was scheduled for August 31.

4. Claimant returned to KMC on August 20, seeking to extend her release from work

until August 24. The work release was extended and Claimant was scheduled for follow up on September 1.

5. Claimant returned to KMC on August 23, complaining of continuing knee pain. Chart notes indicate Claimant was in no acute distress, and was wearing a knee brace. X-rays were taken, and were reported as negative for fracture. Claimant was advised to continue using the knee brace and crutches, and an MRI was scheduled for August 28.

6. On August 27, Claimant returned to KMC complaining that elevating her leg at work caused it to go to sleep. She also complained of cramping in her right thigh. The chart note describes Claimant as "in no acute distress," with normal circulation and sensation. No swelling was observed. *Id.,* p. 26. Claimant was taken off work for two days, told to get the MRI, and return to the clinic on August 30.

7. Claimant returned to KMC on August 29, complaining of continuing pain in her knee. The results of the MRI, showing no internal derangement of the knee, were discussed with Claimant. On exam, Claimant complained of tenderness over the anterior knee in the infrapatellar region and stiffness in the joint. No effusion was noted. Her diagnosis of knee strain was reiterated along with patellar tendonitis. Claimant was advised to stop using the knee brace. She was released to deskwork, referred to physical therapy starting that day, and scheduled for follow up on September 5.

8. On September 2, Claimant returned to KMC complaining of continuing knee pain and discomfort and swelling in her right thigh and calf. On exam, the right knee was unremarkable except for reported tenderness in the anterior medial aspect, the popliteal aspect and in parts of her thigh and calf. A Doppler scan of her right leg was negative for deep vein thrombosis. Claimant had not started physical therapy, and was encouraged to do so. Claimant's

work restrictions were continued, she was given a referral to the orthopedic department, and was told to return in two weeks or follow up with orthopedics.

9. Claimant attended a physical therapy initial evaluation on September 3, but did not follow through with scheduling any therapy appointments.

DR. SIMS—SEPTEMBER 10, 2003 THROUGH OCTOBER 28, 2003

10. Claimant first saw Dr. Sims, an orthopedist, on September 10, 2003. On exam, Dr. Sims found Claimant's knee to be stable in all planes, with normal range of motion. There was no swelling noted, although Claimant reported some tenderness around the medial and lateral joint line and near the medial plica.[1] Dr. Sims diagnosed impingement of the plica, which he believed could be improved with hamstring stretching and immobilization of the patella. He prescribed a neoprene sleeve to immobilize the patella, continued Claimant on light duty, referred her to physical therapy, and told her to return in four to six weeks.

11. Four days later, on September 14, Claimant presented at KMC complaining of a sharp pain over the top of the patella and extending down the medial aspect of the leg. On exam, no swelling was observed, and the knee moved normally. Claimant could stand and ambulate with a slight limp. She was diagnosed with patellar tendinitis and given a short course of prednisone.

12. On September 16, 2003, Claimant was involved in a serious motor vehicle accident (MVA). She was treated for head, neck, and shoulder pain at Sacred Heart Medical Center in Spokane and Post Falls Family Medicine from the date of injury through September 2004.

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[1] Drs. Sims and Stevens described a plica as an anatomical variation—tissue that ordinarily disappears as individuals develop. When the tissue does not disappear completely, what remains is a plica. Both doctors were clear that Claimant's injury did not *cause* the plica, but that when an individual has a plica, it can be irritated or inflamed as a result of an injury.

13. Claimant returned to Dr. Sims on October 3 seeking a work release. She advised that she had not been using the neoprene sleeve and had not attended physical therapy. Nevertheless, she reported that she was doing quite well. Claimant did report some numbness and tingling in her right leg, which prompted Dr. Sims to order a neurological consult. Claimant did not tell Dr. Sims about the MVA, and she subsequently attributed the numbness and tingling in the right leg to the MVA. On exam, Dr. Sims noted that the knee was stable, had good range of motion, and only minimal tenderness when palpated over the medial and lateral joint line. Dr. Sims diagnosed right knee plica syndrome with hamstring contracture, improved. Claimant was eager to return to work, and Dr. Sims saw nothing that would contraindicate a return to work, pending confirmation of a negative neurological consult. Dr. Sims continued to recommend that Claimant pursue physical therapy to learn some hamstring stretches and some quadriceps isometric exercises.

14. On October 8, Dr. Sims contacted Claimant to advise her that her neurological workup was negative and she was cleared for full duty with no restrictions. He advised her to return to the clinic on November 21. On October 28, Dr. Sims advised Surety that Claimant was at maximum medical improvement as of October 9, and that she sustained no permanent impairment as a result of her industrial injury.

15. Claimant did not return to Dr. Sims until May 18, 2006, some two years and eight months later. In the meantime, at least through September 2004, she received regular treatment for the injuries she sustained in the MVA. During this course of treatment, she made no complaint about her knee.

DR. SIMS—MAY 18, 2006 THROUGH JANUARY 16, 2007

16. When Claimant returned to Dr. Sims in mid-May, 2006, she told him that she had

"tweaked" her knee multiple times in the months since she had last seen him. She also told him about the MVA, which she described as "recent." Ex. F, p. 127. Claimant reported sharp pain medially together with grinding and popping. On exam, Claimant reported tenderness in the medial plica area and medial joint line, but otherwise, her knee was stable with normal range of motion. Dr. Sims diagnosed right medial knee pain with mechanical symptoms, and ordered an MRI. Claimant was directed to return to the clinic following the MRI.

17. Claimant did not return to Dr. Sims until November 2, 2006. She reported that her knee pain was worse (8 or 9 out of 10), that sitting aggravated the knee, and that she had experienced instances of the knee giving way. The exam showed a knee that had full range of motion, was stable, and showed no sign of swelling. The MRI was unremarkable but for findings consistent with the existence of a lateral patellar plica. Dr. Sims offered Claimant a diagnostic corticosteroid injection, to which she agreed. Dr. Sims performed the injection without difficulty, reviewed some hamstring stretching exercises that Claimant was advised to perform "multiple times during the day," and advised Claimant to return in four weeks for follow up. *Id.*, p. 128.

18. Two days later, on November 4, Claimant presented at KMC reporting that she had a bad reaction to the injection. She reported a lot of pain at the time of the injection and pain presently in her calf. Claimant was screened for deep vein thrombosis, which screening was negative.

19. Claimant returned to Dr. Sims on November 30, 2006, and reported that the corticosteroid injection made her knee worse. On exam, she was mildly tender over the medial joint line. There was no tenderness laterally, and the knee was stable. Dr. Sims opined that because of Claimant's poor result with the diagnostic injection, he "would be very slow to

recommend any type of operative intervention." *Id.*, at p. 130. He advised Claimant that he had nothing more to offer her that would be likely to resolve her symptoms. Again, Dr. Sims recommended that Claimant consider a course of physical therapy.[2]

20. Claimant returned to Dr. Sims on January 16, 2007, reporting that physical therapy did not help her knee. Dr. Sims again told Claimant that he did not believe she was a surgical candidate. He suggested that she obtain a second opinion.

DR. KING

21. On January 31, 2007, Claimant saw Jonathan S. King, M.D., an orthopedist, for a second opinion about her right knee. Dr. King ordered some new x-rays, and reviewed the 2006 MRI. The x-rays showed no abnormalities and a normal patellofemoral joint. Dr. King noted the lateral patellar plica, and either some mild degenerative changes or a developmental variation of the tib/fib articulation on the MRI. On exam, Claimant demonstrated normal gait, normal alignment, normal strength, and normal range of motion in her right lower extremity. Testing for meniscus injury was negative, as was testing for patellar tendon and quad tendon defect. Dr. King diagnosed right knee patellofemoral chondromalacia, patellar tendonitis, and tight quad tendon and some mild atrophy of the right quadriceps.

22. Dr. King's chart note provides a concise overview of Claimant's condition and treatment:

> I discussed with the patient that I agree with all of the excellent care Dr. Sims has rendered. He has done exactly what I would have recommended which was bracing, physical therapy, cortisone injection and anti-inflammatories. I did reiterate to her what Dr. Sims has already told her and that is that patellofemoral surgery is unpredictable, especially with normal MRI scans and a fairly

[2] Claimant did attend seven physical therapy sessions between December 4, 2006 and January 10, 2007. On her last visit, she complained that her knee was swollen and bruised. Chart notes indicate that the knee appeared swollen, but comparative measurements do not support such a finding.

> inconsistent physical exam. With most of her pain in the medial patellar facet but with a tight retinaculum and lateral structures, she should have more pain laterally at the patellofemoral joint but regardless, I think that at this point I would recommend that she continue physical therapy and maybe pursue another physical therapist to try to get another outlook on her patellofemoral problem concentrating on stretching of the IT band and quads, patellofemoral protocol and modalities to decrease inflammation as well as at the patellofemoral joint and the patellar tendon. I also recommend continued anti-inflammatory treatment. If she continues to fail conservative modalities, she may be a candidate for a diagnostic right knee arthroscopy with possible lateral release. She has a normal Q angle so I do not think that a bony tubercle osteotomy would be necessary. At this point, I will refer her back to Dr. Sims and I will see her back PRN. Again, I explained to her that if Dr. Sims did decide to do a diagnostic arthroscopy with possible lateral release, this would be an unpredictable surgery and may or may not help her symptoms.

Ex. M., p. 170.

DR. MCNULTY

23. On March 19, 2007, Claimant saw John M. McNulty, M.D., an orthopedic surgeon with offices in Kellogg, Idaho. Dr. McNulty's exam demonstrated that Claimant walked with a normal gait, and had normal range of motion in her right knee. The knee was stable, with no evidence of swelling. Dr. McNulty did detect moderate crepitus in the patellofemoral joint. Dr. McNulty reviewed Claimant's 2006 MRI, noting a possible lateral plica, but no evidence of a meniscal injury. Dr. McNulty concluded:

> Her symptoms appear to be coming from her patellofemoral joint. She has moderate crepitus present and most likely has interarticular findings consistent with chondromalacia.
>
> * * *
>
> The patient had some questions concerning whether or not surgery was indicated for her. In my opinion, a diagnostic arthroscopy would have a low yield for improving her symptoms. I do not believe it would significantly benefit her overall condition.

Ex. L, p. 167.

DR. SIMS—AUGUST 28, 2007 THROUGH OCTOBER 8, 2007

24. Claimant returned to see Dr. Sims on August 28, 2007, complaining of

anterolateral knee pain.[3] She attributed the increased pain to having driven a long distance about a month previous. Claimant stated that she was having trouble sitting or standing for long periods of time because of the knee pain, and it was also affecting her sleep. At times, Claimant told Dr. Sims, the pain was so severe that she had difficulty functioning. On exam, Dr. Sims found that Claimant had full range of motion in the knee, strength and sensation were symmetric bilaterally, and the knee was stable. Claimant reported tenderness to palpation on the lateral and medial joint line as well as the medial and lateral patellar plica areas. Dr. Sims recommended a diagnostic injection of anesthetic and a repeat MRI to see if an explanation for Claimant's continuing knee pain could be found. Claimant agreed to the injection, which was done during the visit. Claimant was advised to call the office within forty-eight hours to report on the efficacy of the injection, and to return after the MRI was performed.

25. Claimant had a repeat MRI on September 22, and returned to see Dr. Sims on October 8, 2007. The MRI was normal. Claimant told Dr. Sims that the anesthetic injection had helped, but she still had a baseline pain that remained. On exam, the knee was stable, with normal range of motion, and no evidence of swelling. Claimant reported no tenderness or pain with palpation at the medial and lateral joint line or the patella. Dr. Sims discussed the potential of a diagnostic arthroscopy, but reiterated that he did not believe that Claimant was a surgical candidate. He discussed the risks of an arthroscopic surgery and clearly conveyed his opinion that he could not recommend surgical intervention in her case in light of the potential risks and benefits. Dr. Sims suggested to Claimant that she might always have some anterior knee pain, and that he would continue to see her PRN. He recommended that Claimant undergo an independent medical evaluation (IME) to assist in winding up her claim.

[3] Initially, Claimant's pain had been primarily anterior and medial to the knee.

DR. STEVENS

26. Claimant was scheduled to see Dr. Stevens for an IME on November 7, 2007. On November 6, she drove to the Tri-Cities looking for a car hauler. Claimant testified that during the course of the six-hour drive, her knee became so swollen that her leg became numb and cold. Upon returning home, Claimant presented at North Idaho Immediate Care, where she was diagnosed with a right knee strain with follow up to rule out a possible meniscus tear.[4] In the meantime, Claimant was told to immobilize the knee and take Advil for inflammation.

27. On November 7, Claimant presented for her IME with Dr. Stevens. Dr. Stevens had the opportunity to review the x-rays and MRIs previously obtained during the course of Claimant's treatment. In addition, he reviewed the medical records pertaining to her right knee injury from August 2003, including records related to her MVA.

28. When asked to estimate her baseline pain level, Claimant advised that it was "9 on a scale of 1 to 10." Ex. J p. 162. Claimant localized the pain to the medial aspect of her right knee. Claimant stated that she was not taking any pain medication for her knee pain, but would occasionally use an OTC anti-inflammatory. Claimant told Dr. Stevens that she was not subject to any physician-imposed work restrictions, but nonetheless was only able to work twenty to twenty-five hours per week because of the knee pain caused by sitting and standing.

29. On examination, Dr. Stevens noted "absolutely no externally apparent physical abnormalities of the right knee when compared with the opposite left." *Id.* He found no evidence of swelling or atrophy, and noted bilateral symmetry in contour, temperature, strength, and sensation. Testing for instability and internal joint pathology was negative. Claimant's gait was normal, and she demonstrated no evidence of minimized weight-bearing on the affected leg.

[4] The chart note reflects that Claimant had a long history of knee complaints and numerous MRIs, but the treating physician did not have access to her medical records or imaging studies.

30. Dr. Stevens concluded by opining that he could find no objective evidence of any abnormality that could explain Claimant's continuing complaints of severe disabling knee pain. Dr. Stevens noted the possible finding of a lateral plica, but dismissed the finding because the purported plica only appeared in one of the many MRI images produced as a result of Claimant's three MRIs. Dr. Stevens did not believe that Claimant's knee condition was caused in any part by her industrial accident. Additionally, he opined that Claimant was fixed and stable, could return to work without restrictions, needed no further treatment, and sustained no permanent impairment.

DR. SIMS—NOVEMBER 19, 2007 THROUGH AUGUST 5, 2008

31. In mid-November 2007, Dr. Sims received a copy of Dr. Stevens' IME report for review and comment. On November 28, he advised Surety, "I read the IME and agree." Ex. F, p. 135.

32. On January 21, 2008, Claimant returned to Dr. Sims for further evaluation of her right knee. She told him that about a month previous she stood up from a seated position and felt pain in her knee and noted almost immediate bruising. She had sought treatment at KMC.[5] Since that incident, Claimant stated that she has trouble moving from sitting to standing position and vice versa, as well as trouble ambulating.

33. At hearing, Claimant related that she had been vacuuming the house on Christmas Eve preparatory to hosting a family gathering. When she bent down to pick up something that she did not want the vacuum to suck up, her knee popped and she fell on the stairs in pain. Claimant iced the knee and within minutes bruises began to appear around her knee and down her leg. She was so incapacitated that her mother had to come over and prepare the holiday

[5] There are no medical records of Claimant's December 30, 2007 visit to KMC, although Claimant's ex. 1 is a work status record from that date.

meal. Finally, on December 30, she went to KMC to have the knee looked at.

34. On exam, Dr. Sims found the knee to be grossly normal with normal range of motion and no effusion. Once again he advised Claimant that he had nothing to offer her except a repeat MRI, and that she may wish to obtain a second opinion. This was Claimant's last visit with Dr. Sims.

35. By letter dated August 5, 2008, Surety again sent Dr. Sims a copy of Dr. Stevens' IME report and asked whether he agreed with Dr. Stevens' findings and conclusions. Once again, Dr. Sims marked "yes," signing and dating the form on August 6, 2008.

DISCUSSION AND FURTHER FINDINGS

36. There are only two issues before the Referee in this proceeding—causation and medical care. Ordinarily, the analysis would not reach the medical care issue until the causation issue had been resolved. In this particular proceeding, however, the two issues are inextricably entwined. Claimant believes that if she is given additional medical care, in particular diagnostic imaging and or diagnostic arthroscopy, it will prove what she has believed all along—that she sustained an acute industrial injury to the structure of her knee on August 16, 2003.

37. The burden of proof in an industrial accident case is on the claimant.

> The claimant carries the burden of proof that to a reasonable degree of medical probability the injury for which benefits are claimed is causally related to an accident occurring in the course of employment. Proof of a possible causal link is insufficient to satisfy the burden. The issue of causation must be proved by expert medical testimony.

Hart v. Kaman Bearing & Supply, 130 Idaho 296, 299, 939 P.2d 1375, 1378 (1997) (internal citations omitted). "In this regard, 'probable' is defined as 'having more evidence for than against.'" *Soto v. Simplot*, 126 Idaho 536, 540, 887 P.2d 1043, 1047 (1994).

38. Defendants do not dispute that Claimant sustained some sort of injury to her knee

on August 16, 2003. They accepted her claim and paid for her initial medical care until Claimant advised Dr. Sims that her knee was fine and she wanted a full work release. When Claimant sought additional treatment nearly three years later, Defendants picked up the cost of additional MRIs, injections, physical therapy, and doctor visits, despite accumulating evidence that Claimant's knee complaints were chronic, congenital, and untreatable.

39. By the time that Defendants denied Dr. Sims' request for an MRI in January 2008, there was a serious question as to whether Claimant's on-going complaints could even be related back to her initial injury in August of 2003. Claimant had been declared stable in October 2003, she requested a full work release, and did not seek medical care for her knee for almost three years. When she first returned to Dr. Sims in 2006, she reported numerous incidents in which she "tweaked" her knee, but still no pathology could be identified on imaging or by exam that would explain her ongoing complaints.

40. Claimant persisted in her pursuit for additional care, seeking second opinions from Drs. King and McNulty. Neither doctor found any pathology that would explain her complaints, nor did they believe that arthroscopy would be beneficial. She saw Dr. Stevens for an IME, and he found nothing that related her current condition back to her original injury.[6]

41. Claimant has failed to provide any expert medical testimony that relates her current symptoms to her initial injury. Claimant has had three MRIs over a four-year period, all negative for an acute injury. Claimant has sought medical care specifically for her knee approximately twenty-one times (nine visits to KMC, nine visits to Dr. Sims, and one visit each to Drs. King, and McNulty, and one visit to North Idaho Immediate Care). No objective evidence of injury was noted on those visits—no swelling, no instability, no range-of-motion

[6] In fact, Dr. Stevens disputed the initial injury. But his opinion on the original injury is overreaching and not relevant to this proceeding.

deficits, and no deficits in strength and sensation when compared with the left knee. No physician has been able to identify any pathology that would account for Claimant's pain complaints. The medical evidence supports a finding that Claimant has a congenital condition in her knee that became symptomatic as a result of her work injury. There was no evidence of physical damage to the structure of her knee, and the inflammation of her congenital plica resolved within two months. Even assuming for purposes of argument that Claimant now has an identifiable physical injury to the structure of her knee, it is not possible to relate a contemporaneous condition to the original injury because Claimant has subsequently "tweaked" her knee on numerous occasions. Any new finding would have to overcome the presumption of three negative MRIs, numerous subsequent events, and four intervening years.

42. Idaho Code § 72-432 requires only that the employer of an injured worker provide *reasonable* medical treatment. At hearing, Claimant pleaded for the arthroscopy so she could be certain that she had done everything she could to get better and to relieve some of the guilt she felt for not being able to provide for her family. Of the three orthopedic surgeons Claimant consulted, none believed that Claimant would benefit from the procedure. Dr. Sims was steadfast in his belief that Claimant would not benefit from surgical intervention, and repeatedly advised Claimant of his opinion on every visit. Dr. King described the procedure as "unpredictable," and noted that it "may or may not help" Claimant's condition. Dr. McNulty opined that diagnostic arthroscopy would have "a low yield for improving her symptoms," and would not significantly help her overall condition. Acknowledging that diagnostic arthroscopy is a treatment option is not the same as recommending that a patient pursue that option. In this proceeding, there is rare unanimity between and among every medical professional involved in Claimant's treatment. To accede to Claimant's wishes for diagnostic arthroscopy when no

physician has recommended it is inherently unreasonable.

CONCLUSIONS OF LAW

1. Claimant has failed to carry her burden of proving that the condition for which she seeks benefits was caused by the industrial accident; and

2. Claimant is not entitled to additional medical care, in particular diagnostic arthroscopy, relating to her August 16, 2003 industrial injury.

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 19 day of February, 2009.

INDUSTRIAL COMMISSION

/s/_____
Rinda Just, Referee

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

NICHOLE SNIFFEN, Claimant, v. KC CONSTRUCTION, INC., Employer, and LIBERTY NORTHWEST INSURANCE CORPORATION, Surety, Defendants.	)	**IC 2003-010104** **ORDER** Filed: February 26, 2009

Pursuant to Idaho Code § 72-717, Referee Rinda Just submitted the record in the above-entitled matter, together with her proposed 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 carry her burden of proving that the condition for which she seeks benefits was caused by the industrial accident; and

2. Claimant is not entitled to additional medical care, in particular diagnostic arthroscopy, relating to her August 16, 2003 industrial injury.

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

DATED this 19 day of February, 2009.

INDUSTRIAL COMMISSION

/s/_____
R.D. Maynard, Chairman

/s/_____
Thomas E. Limbaugh, Commissioner

/s/_____
James F. Kile, Commissioner

ATTEST:

/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 19 day of February, 2009, a true and correct copy of the foregoing **FINDINGS, CONCLUSIONS,** and **ORDER** were served by regular United States Mail upon each of the following persons:

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djb /s/_____