BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

PARRISH CRIDDLE, Claimant, v. YOUNT ENTERPRISES, Employer/Defendant.	**IC 2015-032646** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** **FILED February 25, 2022**

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Michael Powers, who conducted a hearing on November 7, 2018. Claimant, Parrish Criddle, was represented by Robert Beck of Idaho Falls. Jared Allen of Idaho Falls represented Defendant. The parties presented oral and documentary evidence. Thereafter, Referee Powers retired. By letter dated July 23, 2019, Claimant requested a new hearing per the holding in *Ayala v. Robert J. Meyers Farms Inc*, 165 Idaho 355, 445 P.3d 164 (2019) to allow a referee to judge the credibility of the witnesses in person. Referee Sonnet Robinson was assigned the matter and conducted a second hearing on July 7, 2021. The parties presented additional oral and documentary evidence. The matter came under advisement on September 28, 2021 and is ready for decision.

ISSUES

The noticed issues to be decided by the Commission as a result of the bifurcated hearing are:

1. Does the Industrial Commission have jurisdiction to hear and decide this matter?
2. Has the Claimant complied with the notice limitations set forth in Idaho Code § 72-701

through § 72-706; and are there any limitations tolled pursuant to Idaho Code § 72-604 (or any other sections of Idaho Code that apply)?

CONTENTIONS OF THE PARTIES

Claimant contends Idaho has jurisdiction of this claim because Defendant's business is in Idaho and only operated in North Dakota on a temporary basis. Defendant's trucks are licensed in Idaho, Defendant is incorporated in Idaho, and Claimant was paid from an Idaho bank. There is no issue of notice.

Defendant contends Claimant's work was principally located in North Dakota and that Claimant worked 99% of the time in North Dakota. Claimant was eligible for, but declined, to pursue North Dakota workers' compensation benefits for his injury. Claimant did not provide notice to Defendant, nor submit a timely claim; further, the Defendant was unaware of the injury until August 2015.

Claimant responds that it does not matter how much time the Claimant spent in North Dakota, because Defendant's business was and always has been in Idaho. Further, the Defendant is not disputing that Claimant was attempting to pursue his claim in Idaho during the time frame in question.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. The testimony of Claimant, Parrish Criddle, Patrick Hurley, Joshua Yount, and Tiffany Haley taken at hearing on November 7, 2018;
3. Defendant's Exhibits (DE) 1-12, admitted at hearing on November 7, 2018;
4. Claimant's Exhibits (CE) A-G admitted at hearing on November 7, 2018;

5. The testimony of Claimant, Parrish Criddle, and Joshua Yount, taken at hearing on July 7, 2021;

6. Defendant's Exhibits (DE) 1-51, admitted at hearing on July 7, 2021;

7. The deposition of Vickie Sargent, taken May 22, 2020.

All outstanding objections are overruled.

After having considered the above evidence and the arguments of the parties, the Referee submitted a proposed decision. The undersigned Commissioners have reviewed the proposed decision and, although they agree with the Referee's ultimate conclusion, have chosen not to adopt the Referee's recommendation and hereby issue their own findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. Claimant applied to be a water truck driver for Employer in April of 2012. DE 1:3. Claimant wrote on his application he had left his last employment to "pursue trucking in North Dakota" and testified he understood he would be working in North Dakota while working for Employer. *Id.* at 2; 2021 Tr. 17:2-4. At the time of his application, Claimant had an Idaho driver's license, had resided in Idaho for 24 years, and his DOT physical was completed by an Idaho physician. *Id.* at 2; DE 3:6, 17; CE C:6; 2018 Tr. 12:10-11. Claimant was hired almost immediately in May of 2012. 2018 Tr. 19:19-24. He acknowledged that he was hired in Idaho to work in the North Dakota/Montana oil fields. 2021 Tr. 21:25-22:5; 32:25-33:3. Claimant had no discussions with Employer at the time of hire concerning workers' compensation, and specifically, no discussion or agreement with Employer about which state's workers' compensations laws would apply to claims for work injury.

2. Joshua Yount is the owner of Yount Enterprises, Employer/Defendant. Defendant has been incorporated in Idaho and located in Idaho Falls, Idaho at all times relevant to these proceedings. 2021 Tr. 44:8-23, 45:19-20; 47:21-23. Defendant's trucks were licensed and registered in Idaho and were primarily repaired in Idaho. *Id.* at 46:23-25; 63:7-13.

3. Claimant generally worked a 'two weeks on, two weeks off' schedule for Employer, performing the lion's share of his work in North Dakota during his two weeks "on", but also performing some tasks in Idaho, such as finding/gathering parts, during his two weeks "off". 2018 Tr. 48:15-21; 2021 Tr. 22:13-18. A typical two weeks 'on' commenced with the gathering of the crew at the Idaho Falls office, loading up in a rental vehicle, traveling to North Dakota, and working out of a lot Employer rented. Employer's trucks were stored on the lot when not delivering water, and the lot had a trailer with storage for Employer's spare parts, and a shower for employees. 2021 Tr. 28:17-32:5. Claimant estimated he spent "95 percent, 90 percent" of his time working in North Dakota and Montana for Employer. *Id.* at 17:19-22; 2018 Tr. 21:7-10.

4. Employer and Claimant disagreed about how often Claimant would gather parts during his two weeks "off "in Idaho. Employer estimated his crew spent about 1% of their time working in Idaho gathering and running parts; "occasionally… three or four hours for them." 2018 Tr. 84:20-24; 89:12-13. Employer estimated Claimant ran parts once or twice a month. 2021 Tr. 61:15-20. Claimant estimated "maybe I would work three or four hours maybe two or three times in that two-week period." 2021 Tr. 22:13-18.

5. Defendant's exhibits 13-47 are Claimant's time sheets and water receipts for Employer. In 2012, Claimant trained at the Idaho office for approximately seven days for an unknown number of hours from May 2nd to May 8th. DE 13:124-125. Claimant also worked five hours at an hourly rate, presumably in Idaho. DE 19:528. In 2013, Claimant's pay structure

changed and instead of a commission, allowance, and per diem paid via paycheck, Claimant was paid a certain percentage of invoiced work, which varied greatly depending on how much water Claimant hauled. See DE 23-47. There are time sheets that record when Claimant had no work hauling water in North Dakota instead, he gathered parts and repaired trucks; there is no indication he returned to Idaho to perform this work. DE 25:796, 27:878, 30:975, 31:1012, 34:1200, 39:1376, 40:1529, 41:1582, 42:1642, 45:1710. There are two entries that document Claimant gathering parts in Idaho. DE 41:1581, 46:1772.

6. Employer testified his business had an Idaho workers' compensation policy with SIF in 2011 when it was incorporated, but he was instructed to get a North Dakota workers' compensation policy because that is where his employees "physically worked" and Idaho would not reciprocate with North Dakota regarding workers' compensation coverage. 2018 Tr. 84:6; 86:11-88:24. On January 25, 2012, Employer received the following letter from his insurance agent:

> Dear Josh:
>
> North Dakota has changed their work comp requirements. If you are in ND for more than 6 months OR if the driver makes more than 25% of his salary from ND work, ND is requiring that you purchase a ND work comp policy. Since they are a monopolistic state, you have to purchase the WC directly from the state of ND… They are no longer accepting reciprocity agreements on out of state policies, therefore we will not be renewing the reciprocity agreement that expired on 1/13/12.
>
> It is my recommendation that you also maintain an Idaho minimum work comp policy to pick up any Idaho exposure you may have. Please contact North Dakota and let me know when you have a policy established and we can then make changes to your existing policy with Idaho.

DE 48:1792. Two days later Employer applied for and received North Dakota workers' compensation coverage. See DE 51:1795; 49:1793.

7. On June 12, 2013, North Dakota Workforce Safety and Insurance (WSI) wrote a letter to the Idaho Industrial Commission (IIC) regarding Employer's North Dakota workers' compensation policy which stated in part:

> Territorial coverage is extended to the North Dakota employees of this employer who, incidental to their North Dakota employment, will be working in your state. **It is understood that should the employer hire workers in your state, they must be insured under your laws.** Extraterritorial coverage is extended provided the employer continues to be subject to the provisions of the North Dakota Workers Compensation Act. (emphasis in original).

DE 49:1793. WSI requested the IIC stamp and return the letter to both Employer and WSI acknowledging receipt. *Id.* There is an IIC stamp dated June 17, 2013 appearing on the letter indicating it was approved. *Id.* The IIC also sent a letter to Employer when it approved the extraterritorial coverage and wrote:

> Enclosed is a copy of [an] approved certificate of extraterritorial coverage for your North Dakota State resident employees, working temporarily in Idaho but not specifically hired for Idaho work. Any employee(s) hired specifically for work in the State of Idaho must be covered by Idaho workers' compensation insurance policy. This certificate is approved for a period not to exceed six months without further notice.

DE 50:1794.

8. On or about December 1, 2014, Claimant was working in North Dakota; the ground was covered with ice and Claimant slipped and fell onto his back and landed "twisted." 2018 Tr. 24:1-24. Claimant called Employer and told him he slipped and hurt his back; Employer told Claimant to pack up and to come back to Idaho. *Id.* at 25:9-26:21. Employer recalled Claimant calling him and telling him about the injury. 2021 Tr. 65:21-66:2.

9. Defendant's Exhibit 12 reveals the following text exchanges:

December 2, 2014 08:02AM		Hey man how are you feeling today?

December 2, 2014 10:28AM	I'm screwed up. I'm going to head to williston I guess. This trip is over for me.	

...

December 3, 2014 07:57AM	Got Dr appt. At 8:40 then I will unload truck and bring to you	
December 3, 2014 9:49AM		Okay ok

...

December 3, 2014 09:55AM	Is it in [sic] to bring the truck in later? Doc straitened me out but said stay down for a while.	

Claimant returned to Idaho, treated with a chiropractor/naturopath, and was back to work within two weeks. 2018 Tr. 27:21-28:8. However, Claimant later quit working for Employer in the spring of 2015 because of his back and because he was going to work for Knife River. *Id.* at 28:22-29:5; 52:24-53:9. However, the contemporaneous text message of April 20, 2015 only reflects the following:

> I'm quitting you. I've got other work now. Send your address and I will mail your card to you. Thanks.

DE 12:116.

10. On August 12, 2015, Claimant sent Employer the following text:

> Hey Josh, when I fell on the ice on that frac [sic] last winter it caused more damage than I thought. Not only have I been seeing a chiropractor but now I'm in physical therapy. I've missed a lot of work and I'm out thousands of dollars. We need to get your workers compensation involved or whatever. I can't afford the bills for an injury that happened on the job. Thanks. Please text me your reply as I am not allowed to talk on phone in the truck as per D.O.T. rules and knife river policy.

DE 12:116. After a series of texts, Employer emailed Claimant's wife a North Dakota workers' compensation first report of injury (FROI). DE 12:116-118. Claimant filled out and signed the form but declined to send it back to Employer because it was for North Dakota workers' compensation. 2018 Tr. 59:2-60:7; CE A:1.

11. More texts relating to the claim were exchanged between Employer and Claimant, until Employer filed a North Dakota FROI on November 25, 2015, without Claimant's treating doctor's information and without Claimant's signature. CE G:17-18; 2018 Tr. 60:10-64:16. Claimant received a letter from WSI on December 16, 2015, requesting that a signed FROI be submitted within seven days of the date of the letter. DE 8:69. Claimant's North Dakota claim was denied by letter of December 24, 2015, for failure to complete a signed claim form. DE 9:72. Explaining his refusal to take the steps necessary to initiate a North Dakota claim for his injuries of December 1, 2014, Claimant testified:

> Q. [by Mr. Beck] When did you first become aware that this might be a North Dakota work comp claim?
>
> A. When Josh sent me workers' compensation form, and it said from the state of North Dakota, and it said I had to abide by – I had to sign it and abide by North Dakota law and whatnot, and I wasn't going to sign it because I am not in North Dakota, and I don't know anything about it.

2021 Tr. 25:5-12. However, from the text messages collected at Defendant's Exhibit 12 it does not appear that Claimant ever apprised Defendant of his belief that he was entitled to pursue compensation in the state of Idaho, instead of the state of North Dakota. Claimant appears to have first signified his intent to pursue benefits in the state of Idaho with the filing of a complaint with the Idaho Industrial Commission on December 4, 2015.

12. Claimant has worked continuously at Knife River since he left his employment with Defendant. 2021 Tr. 33:4-9.

13. Vickie Sargent was deposed on May 22, 2020. Ms. Sargent did payroll for Yount Enterprises and another entity owned by Joshua Yount for approximately a year from 2011 until 2012, and came in about once a week. Sargent Depo. 8:2-9;19:8-10;27:1-4.

14. **Credibility.** The Referee found that Claimant and Employer both testified credibly. The Commission finds no reason to disturb the Referee's findings and observations on both Claimant's and Employer's presentation or credibility.

DISCUSSION AND FURTHER FINDINGS

15. **Jurisdiction.** The statutes relevant to the determination of the jurisdiction of the Idaho Industrial Commission over this claim are Idaho Code §§ 72-217, 72-220, and 72-221. These provisions were adopted as part of the 1971 recodification of the Idaho Workers' Compensation laws and have not been amended since. Claimant referenced Idaho Code § 72-221 in his 2019 brief but did not argue it in his 2021 brief. See Clt's 2019 Brief, p. 10. In its 2019 reply, Defendant argued that Idaho Code § 72-221 is more general than Idaho Code § 72-217; further, that when statutes conflict, the more specific statute controls, in this case, Idaho Code § 72-217. Def's 2019 Brief, p. 6.

16. In Idaho, statutory interpretation can be summarized as follows:

> The object of statutory interpretation is to derive legislative intent. Interpretation of a statute begins with the statute's literal words. The statute should be considered as a whole, and words should be given their plain, usual, and ordinary meanings. The Court must give effect to all the words and provisions of the statute so that none will be void, superfluous, or redundant. When the statutory language is unambiguous, courts must give effect to the legislature's clearly expressed intent without engaging in statutory construction.

Saint Alphonsus Reg'l Med. Ctr. v. Gooding Cty., 159 Idaho 84, 86–87, 356 P.3d 377, 379–80 (2015) (internal citations omitted). "This Court interprets statutes according to their plain, express meaning and resorts to judicial construction only if the statute is ambiguous, incomplete, absurd,

or arguably in conflict with other laws." *State, Dep't of Transp. v. HJ Grathol*, 153 Idaho 87, 91, 278 P.3d 957, 961 (2012).

17. Further, "[e]ach section of the workers' compensation law is interpreted 'in *pari materia*.' Therefore, the statutes should be taken together and construed as one system, and the object is to carry into effect the intention. For the purpose of learning the intention, all statutes relating to the same subject are to be compared, and ... brought into harmony by interpretation." *Gomez v. Crookham Co.*, 166 Idaho 249, 254, 457 P.3d 901, 906 (2020) (ellipsis in original; internal citations omitted). However, as discussed *infra*, the Commission ultimately concludes that Idaho Code § 72-221 does not conflict with the provisions of Idaho Code §§ 72-217 or 72-220.

18. Lastly, "[t]his Court liberally construes Idaho's workers' compensation statutes in favor of finding compensation for employees. … [D]oubtful cases should be resolved in favor of compensation[;] ... the humane purposes which these acts seek to serve leave no room for narrow technical construction." *Marquez v. Pierce Painting, Inc.*, 164 Idaho 59, 63, 423 P.3d 1011, 1015 (2018) (internal citations omitted).

19. This case involves a threshold determination as to whether Idaho may exercise extraterritorial jurisdiction over an accident occurring in North Dakota, and invites analysis of the facts of this case under the provisions of Idaho Code §§ 72-217 and 72-220.

20. Idaho Code § 72-217 provides:

> EXTRATERRITORIAL COVERAGE. If an employee, while working outside the territorial limits of this state, suffers an injury or an occupational disease on account of which he, or in the event of death, his dependents, would have been entitled to the benefits provided by this law had such occurred within this state, such employee, or, in the event of his death resulting from such injury or disease, his dependents, shall be entitled to the benefits provided by this law, provided that at the time of the accident causing such injury, or at the time of manifestation of such disease:
>
> (1) His employment is principally localized in this state; or

(2) He is working under a contract of hire made in this state in employment not principally localized in any state; or

(3) He is working under a contract of hire made in this state in employment principally localized in another state, the workmen's compensation law of which is not applicable to his employer; or

(4) He is working under a contract of hire made in this state for employment outside the United States and Canada.

Idaho Code § 72-217.

21. This section applies to an injury which occurs outside Idaho that would be compensable had it occurred in Idaho and one of the four following conditions are met: (1) the claimant's employment is "principally localized" in Idaho; (2) the contract for hire was made in Idaho and the work was not "principally localized" in any state; (3) the contract for hire was made in Idaho for work "principally localized" in another state, the workers' compensation laws of which are not applicable to employer; or (4) the contract for hire was made in Idaho and the claimant works outside the United States and Canada.

22. Since it is necessary to understand the principal locale of Claimant's employment in order to fully analyze the extraterritorial application of Idaho workers' compensation law under Idaho Code § 72-217, a detour to the provisions of Idaho Code § 72-220, which defines when employment is "principally localized" in this or some other state, is called for. That section provides:

LOCALE OF EMPLOYMENT. (1) A person's employment is principally localized in this or another state when:

(a) His employer has a place of business in this or such other state and he regularly works at or from such place of business; or
(b) He is domiciled and spends a substantial part of his working time in the service of his employer in this or such other state.

(2) An employee whose duties require him to travel regularly in the service of his

> employer in this and one or more other states may, by written agreement with his employer, provide that his employment is principally localized in this or another such state, and, unless such other state refuses jurisdiction, such agreement shall be given effect under this law.

Idaho Code § 72-220.

23. Under Idaho Code § 72-220(1)(a) Employer has a place of business in Idaho, but it is not immediately clear that Claimant "regularly" worked at or from the Idaho location. In this context "regularly" means that the work Claimant did at or from the Idaho location must have recurred at fixed, normal, or uniform intervals. See *Merriam-Webster.com Dictionary*, Merriam Webster, https://www.merriam-webster.com/dictionary/regular Definition 2a "recurring, attending, or functioning at fixed, uniform, or normal intervals" (accessed Feb. 22, 2022). Here, it appears that every two weeks Claimant and his co-workers gathered at Employer's Idaho location to commence the journey to North Dakota in order to resume work. These trips were regular in the sense that they took place every two weeks. However, can it be said that in using the Idaho location as a convenient mustering point, Claimant was working "at or from" the Idaho location? Compare these facts to those before the Commission in *Marler v. Croman Corp.*, IC 96-023757 (Idaho Ind. Comm. August 31, 1998).

24. In *Marler*, the claimant was hired by a logging contractor. He initially worked in the vicinity of Idaho City, before being transferred to California, and then to Washington state. He had worked five days in Washington at the time of his injury. California initially accepted the claim, but eventually denied further medical care. Thereafter, the claimant filed his complaint in Idaho. The Commission determined that Idaho could exercise jurisdiction over the claim under the provisions of Idaho Code § 72-217(1) and Idaho Code § 72-220(1)(a). The employer maintained a place of business in Idaho, and at the end of each job the claimant's crew would report back to the Boise office to receive their next work assignment. Therefore, it was clear to the Commission

that the claimant regularly worked "from" such place of business, thus satisfying the prerequisites of Idaho jurisdiction. The Idaho location was not merely a place to meet; employees returned to the Idaho location to receive their next work assignment.

25. Here, too, the Idaho location was not just a mustering point. Any supplies or parts that had been gathered during the two weeks "off" in Idaho were stored at the Idaho location for eventual transport to North Dakota with the next crew. 2021 Tr. 30:1-40:16. Claimant testified that the crew returning to North Dakota for a two-week shift would leave from the Idaho location and take with them the supplies and parts that had been gathered over the prior two weeks. Sometimes these were transported in a personal vehicle, sometimes in a vehicle provided by Employer. Employer's Idaho location was not solely a convenient mustering point. Reading Idaho Code § 72-220(1)(a) in light of *Marler*, Claimant "regularly" worked "from" the Idaho location. Therefore, under this section, Claimant's employment could be said to have been principally localized in Idaho.

26. However, Employer also had a place of business in North Dakota in the form of the lot it rented on which to store trucks and keep a parts/supply trailer. Employees had access to showers at this location, as well. Claimant regularly worked at or from this lot during his two weeks "on" duty in North Dakota, and had more contact with this location than he did with the Idaho location since, by his own testimony, 90% to 95% of his work took place in North Dakota. 2018 Tr. 21:7-10. Under Idaho Code § 72-220(1)(a), Claimant's employment is more convincingly localized in North Dakota.

27. *Kirkpatrick v. Transtector Systems*, 114 Idaho 559, 759 P.2d 65 (1988) provides that an employee's employment may not be principally localized in more than one jurisdiction at a time. There, it was held that once an employee's employment is principally localized in a state,

it remains localized in that state until it becomes principally localized in another. We conclude that as between Idaho and North Dakota, at the time of the accident leading to this claim, Claimant's employment was principally localized in North Dakota.

28. From the foregoing we conclude that for purposes of Idaho Code § 72-220(1)(a) Claimant's employment was "principally localized" in North Dakota.

29. However, the balance of Idaho Code § 72-220 must also be considered in evaluating the locale of Claimant's employment. Application of Idaho Code § 72-220(1)(b) may lead to a conclusion that Claimant's employment is yet principally localized in Idaho, notwithstanding our conclusion that his employment is principally localized in North Dakota under (1)(a). Under (1)(b), if a claimant is domiciled in Idaho and spends a "substantial" part of his employment in Idaho, his employment is principally localized in Idaho. Here, it is undisputed that at all times relevant hereto Claimant retained his domicile in Idaho. The question is whether it can be said that a "substantial" part of his work was performed in Idaho. Certainly, some of Claimant's work was performed in this state. The ordinary meaning of "substantial" in this context is "considerable in quantity, significantly great" *Merriam-Webster.com Dictionary*, Merriam Webster, https://www.merriam-webster.com/dictionary/substantial Definition 3b (accessed Feb. 22, 2022). Viewing the evidence in a light most favorable to Claimant, 90% to 95% of his work was undertaken in North Dakota. We cannot conclude that the work he did to acquire parts in Idaho was a "substantial" part of his employment.[1] However, under (1)(b) neither can it be said that

[1] We find nothing in our treatment and application of this term that is inconsistent with our holding in *Barnhart v. Haney Truck Line LLC*, IC 2016-011958 (Idaho Ind. Comm. Sept. 13, 2017). *Barnhart* involved a truck driver whose driving took him to six states. He spent 31% of his total driving time in Idaho, and of the six states in which he operated, time spent driving in Idaho was second only to one other state. On this evidence and employing the same definition of "substantial" the Commission ruled that the claimant spent a substantial amount of his working time in Idaho. The facts of *Barnhart* are factually dissimilar from those at bar. Claimant cannot reasonably be said to have spent a substantial part of his time working for Employer in the state of Idaho.

Claimant's employment is principally localized in North Dakota, since he was not domiciled in North Dakota at the time of the accident.

30. Finally, Idaho Code § 72-220(2) is inapplicable to the facts of this case. First, it may be conceded that Claimant's employment regularly required travel in both this state (parts hunting) and North Dakota (truck driving). However, since it is undisputed that Claimant and his employer entered into no agreement, written or otherwise, defining the state in which his employment would be "principally localized", subsection (2) does not provide a means by which the principal locale of Claimant's employment may be established. We will, however, return to this subsection in connection with discussion of Idaho Code § 72-221.

31. Therefore, under the provisions of Idaho Code § 72-220, we conclude that by the only applicable subsection, (1)(a), Claimant's employment is principally localized in North Dakota.

32. Returning to the provisions of Idaho Code § 72-217, the determination that Claimant's employment is principally localized in North Dakota means that Idaho may not exercise jurisdiction over this claim under subsections (1), (2) or (4). Subsection (3), however, is more problematic. To reiterate, Idaho may exercise jurisdiction over this out of state accident under subsection (3) if the contract of hire was made in this state (it was), Claimant's employment was principally localized in another state (it was), and the workers' compensation laws of that other state are "not applicable" to Employer. In *Jensen v. Great Salt Lake Electric, Inc.*, IC 2011-018477 (Idaho Ind. Comm. Sept. 4, 2012), it was determined that Wyoming law was inapplicable to the employer involved in a similar extraterritorial coverage dispute because workers' compensation coverage was not compulsory in Wyoming for the particular employment in question. Here, the Commission is unaware of any provision of North Dakota law that would render it inapplicable to

Employer. Indeed, Employer obtained a policy of coverage in North Dakota because it had been told that an Idaho policy would not afford coverage for employees hired to work in North Dakota. The Commission takes judicial notice of the May 14, 1979, Reciprocity Agreement between North Dakota and Idaho (See Exhibit A, hereto). That agreement appears to explain why a North Dakota policy was required for the employees of Employer who were hired to work in North Dakota. The agreement is intended to recognize the extraterritorial application of Idaho law to Idaho employees of an Idaho employer who suffer injuries in North Dakota "while working temporarily" in that state. Here, Claimant was specifically hired to work in North Dakota; he was not temporarily working in North Dakota.

33. Like Idaho, North Dakota maintains certain requirements relating to the giving of notice and the filing of a claim for benefits. The claim in this case appears to have been dismissed, owing to Claimant's failure to sign the claim as required by North Dakota law. See N.D. Cent. Code § 65-05-02. However, this failure does not render North Dakota law "inapplicable"; it merely means Claimant did not comply with one of the requirements necessary to pursue his claim.

34. From the foregoing, it would seem that, pursuant to Idaho Code § 72-217(3), Idaho may not exercise jurisdiction over this accident occurring in North Dakota, since our review of the provisions of North Dakota law do not suggest any reason why that law would not be applicable to Employer under these facts.

35. However, our conclusions concerning the applicability of Idaho Code § 72-217 must be examined in light of the provisions of Idaho Code § 72-221. That section provides:

> 72-221. COVERAGE FOR INJURIES OR OCCUPATIONAL DISEASES OUTSIDE STATE PRESUMED. An employer who hires workmen within this state to work outside the state may agree with such workmen that the remedies under this act shall be exclusive as to injuries received and occupational diseases contracted outside this state arising out of and in the course of such employment, and all contracts of hiring

in this state shall be presumed to include such an agreement.

36. The facts of the instant matter fall within those contemplated by Idaho Code § 72-221; Employer hired Claimant within the state of Idaho, to perform work in North Dakota. The accident giving rise to this claim occurred in North Dakota. The contract of hire is silent on the topic of workers' compensation. Therefore, by operation of the statute, the contract of hire is presumed to contain the agreement of the parties that the "act", i.e., the provisions of Title 72 of the Idaho Code, provides Claimant's exclusive remedy for this injury.

37. Ordinarily, the term "exclusive remedy" refers to the fact that workplace injuries have been withdrawn from civil controversy and replaced with a statutory remedy which provides the exclusive remedy for such injuries. The exclusive remedy rule is articulated at Idaho Code §§ 72-209(1) and 72-211, and was recently summarized in *Gomez v. Crookham Co.*, 166 Idaho 249, 457 P.3d 901 (2020), as follows:

> In sum, Idaho Code section 72-211 specifies that worker's compensation benefits are an employee's exclusive remedy where the employee is entitled to such benefits, and Idaho Code section 72-209(1) reinforces this remedy by requiring an employer to provide benefits even where another party is also liable to the employee. Idaho Code section 72-209(1) also limits the employer's liability for claims covered under the law to worker's compensation benefits. When read *in pari materia* , it is clear that these statutes were intended to operate in harmony—"[b]oth provisions state that if an employer is liable under the worker's compensation law then all other liability is excluded." *Roe*, 141 Idaho at 530, 112 P.3d at 818.

Crookham, 166 Idaho at 254, 457 P.3d at 906. Therefore, so long as an injured worker is entitled to benefits under Idaho's workers' compensation laws, that law provides the sole remedy for such injuries. It is difficult to understand why it would be necessary to reiterate the "exclusive remedy rule" in Idaho Code § 72-221 when it is plainly stated in the provisions of Idaho Code §§ 72-201, 72-209(1), and 72-211. There is nothing about an extraterritorial fact

pattern like the one before us which suggests that instead of workers' compensation, a claimant has a possible right to pursue his remedy against an employer at common law. Rather, as between Idaho and North Dakota, the question is in which jurisdiction must Claimant pursue his claim for workers' compensation benefits. We conclude that the terms "remedies" and "exclusive" are used in a different sense in Idaho Code § 72-221 and mean something different in the context of that statute than they do in Idaho Code §§ 72-209(1) and 72-211. Idaho Code § 72-221 is not about the removal of claims for work injury from civil controversy. Rather it is about specifying that in a particular multi-state fact pattern, it is presumed that the workers' compensation laws of Idaho, as opposed to the workers' compensation laws of some other state, shall apply to govern an injured worker's entitlement to workers compensation. The statute is just as significant for what it does not say, but clearly implies; under these facts North Dakota law cannot apply to govern Claimant's entitlement to workers' compensation, because by the contract of hire, the parties are presumed to have agreed that Idaho law shall provide Claimant's exclusive remedy for workers' compensation.

38. As noted, our analysis of the facts suggests no reason to believe that North Dakota law would not otherwise apply to Employer. Therefore, narrowly viewing the facts through the lens of Idaho Code § 72-217(3), it would appear that Idaho may not exercise extraterritorial jurisdiction over this claim because North Dakota law seems to be applicable to Employer. However, pursuant to Idaho Code § 72-221, North Dakota law cannot apply to Employer because the parties are presumed to have agreed that it cannot. Per Idaho Code § 72-221, the parties are presumed to have agreed that as between Idaho and North Dakota, Idaho workers' compensation law provides Claimant's exclusive remedy. This presumption renders North Dakota law inapplicable to Employer, and therefore, pursuant to Idaho Code § 72-

217(3), Idaho may exercise extraterritorial jurisdiction over this work injury. Idaho Code § 72-221 does not conflict with Idaho Code § 72-217(3); the peculiar facts of this case simply require a finding that Idaho law is presumed to apply under Idaho Code § 72-221, thus making North Dakota law inapplicable under Idaho Code § 72-217(3). We conclude that Idaho has jurisdiction over Claimant's claim. There remains to consider whether Claimant's claim is otherwise timely.

39. **Notice and Statute of Limitations.** Defendant argues that Claimant failed to provide written notice as required by Idaho Code § 72-701 within 60 days of the accident and is barred from pursuing his claim under Idaho Code § § 72-701 – 706. Defendant is correct that Claimant did not provide written notice in the form required by Idaho Code § 72-702. However, Idaho Code § 72-704 provides that a notice given under the provisions of section 72-701 "shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place, nature or cause of the injury…unless it is shown by the employer that he was in fact prejudiced thereby." As developed *infra*, the Commission concludes that Claimant's text messages of December 2 and 3rd 2014 constitute writings, and as such, we conclude that written notice was given, albeit not in the form required by Idaho Code § 72-702. However, pursuant to the portion of Idaho Code § 72-704 quoted above, inaccurate notice will be forgiven absent proof of prejudice by employer. No such proof has been adduced. Moreover, even were we to conclude that notice was not given, Idaho Code § 72-704 next provides that "[w]ant of notice or delay in giving notice shall not be a bar to proceedings under this law if it is shown that the employer, his agent or representative had knowledge of the injury or occupational disease." Oral notice to the employer may provide the employer with actual knowledge of an injury, thus obviating the necessity of a written notice. *McCoy v. Sunshine Mining Co.*, 97 Idaho 675, 677, 551 P.2d 630, 632 (1976). It is undisputed that

Claimant provided oral notice to Employer. Employer testified that Claimant told him about the injury after it happened.

40. Pursuant to Idaho Code § 72-701, a claim for compensation must be made within one year after the date of accident. The making of such claim will be excused if payments of compensation have been voluntarily made. Here, the record demonstrates that Claimant returned to Idaho very shortly after the subject accident and sought and received chiropractic care in Idaho for his injuries. The record does not reflect that Employer paid for this care. Therefore, the Commission is aware of no evidence excusing the need to make a claim.

41. Per Idaho Code § 72-702 the claim shall be in writing. However, unlike the notice, the contents of a proper claim are not delineated at Idaho Code § 72-702. Per Idaho Code § 72-703 the claim shall be given by delivering it to employer at his last known residence or place of business, or by sending the claim by certified or registered mail to employer at his last known residence or place of business. Idaho Code §§ 72-702 and Idaho Code 72-703 were adopted in 1971 and have not been amended since. These provisions did not anticipate the development of various modes of electronic communication that are now commonplace in business, including email, and more recently, text messaging. Defendant's Exhibit 12 consists of a printout of text messages between Claimant and Defendant between November 29, 2014, and February 15, 2016. We must first consider whether the text messages constitute "writings" as anticipated by Idaho Code § 72-702. The messages were not delivered by registered or certified mail, and they were not physically delivered to Employer at his residence or place of business, but they were electronically delivered to Employer, and may have been received while Employer was at his residence or place of work. As the evidence before the Commission demonstrates, text messaging leaves a record that can be retrieved for future reference. Moreover, email and text messaging are both means of

communication that rely on written language, just as a letter written on paper, papyrus or clay tablet would. We can think of no reason why the conveyance of information via the medium of text messaging does not constitute a "writing" sufficient to satisfy the written claim requirements of Idaho Code § 72-702.

42. Next, we must consider the substance of the various text messages and reach some conclusion as to which of them, if any, first state a claim for benefits. On December 3, 2014, Claimant notified Defendant he had a doctor's appointment scheduled for that day. Later that same day, Claimant notified Defendant that he (Claimant) had been treated and that his doctor had advised him to "stay down for a while." The record reflects that Claimant did not return to work for two weeks. The next entry referencing Claimant's injuries is from August 12, 2015. This entry references Claimant's ongoing need for medical care, his inability to pay for the same and his request to get workers' compensation involved. The August 12, 2015, text clearly communicates a demand for compensation, while the December 3rd communications are more ambiguous, even though Employer knew an accident had occurred and that Claimant had received medical care.

43. *Tonahill v. LeGrand Johnson Const. Co.*, 131 Idaho 737, 963 P.2d 1174 (1998) bears some interesting similarities to this case. In *Tonahill*, the claimant suffered a low back injury on August 3, 1993. She received medical treatment on August 17. The employer learned of the alleged injury, and on August 23, without the claimant's knowledge, prepared and filed with the Commission a "notice of injury and claim for benefits". The document was filed with the Commission on August 25. On August 26, claimant's attorney wrote a letter to surety advising surety that he had been retained by claimant and referencing the accident and claimant's claim. That letter was received by surety on September 2, 1993. A complaint was filed with the Commission on August 26, 1994. The Commission found that the claim was made with the filing

of the "Form 1" by employer on August 25, 1993, making the complaint one day late under Idaho Code § 72-706(1). On appeal, the Court observed that under Idaho Code §§ 72-701 – 703, the claim must be made by claimant and given to employer. Therefore, employer's unilateral filing of a claim with the Commission did not constitute a valid claim. The Court found that a valid claim was actually made on September 2, 1993, the date on which surety received the letter from claimant's counsel which put employer/surety on notice that claimant was pursuing her legal rights to compensation. Since that letter was received well within one year following the accident, it was a timely claim. Moreover, since the complaint was filed within one year following the making of the claim, the complaint, too, was timely under Idaho Code § 72-706(1).

44. Unlike the attorney's letter in *Tonahill*, which evidently stated claimant's intention to pursue a claim for benefits, we cannot conclude that the text messages from Claimant of December 3, 2014, are sufficient to articulate a claim for workers' compensation benefits, or that Employer should have recognized them as such. Therefore, we conclude that Claimant's claim was not made until August 12, 2015, still well within one year following the subject accident. Therefore, the claim is timely made.

45. There remains for consideration the question of whether the complaint filed on December 4, 2015, is timely. Claimant had one year following the making of the claim within which to make and file his complaint with the Commission, i.e., by August 11, 2016. See Idaho Code § 72-706(1). The complaint filed with the commission on December 4, 2015, is therefore timely filed.

CONCLUSIONS OF LAW AND ORDER

1. Idaho has jurisdiction over this claim pursuant to Idaho Code §§ 72-221 and 72-217(3);

2. Written notice is sufficient or excused under Idaho Code § 72-704;

3. Claimant made a timely written claim pursuant to Idaho Code §§ 72-701, 702, and 703;

4. Claimant's complaint is timely filed;

5. All other issues are reserved;

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

DATED this 25th day of February, 2022.

INDUSTRIAL COMMISSION

Aaron White, Chairman

Thomas E. Limbaugh, Commissioner

Thomas P. Baskin, Commissioner

ATTEST:

Paul Jeffries
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of February, 2022, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** was served by regular United States Mail and ***E-mail transmission*** upon each of the following:

ROBERT BECK
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EXHIBIT A

EXTRATERRITORIAL RECIPROCITY AGREEMENT BETWEEN
THE WORKMEN'S COMPENSATION BUREAU OF THE STATE OF NORTH DAKOTA
AND THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

WHEREAS, the Workmen's Compensation Law of the State of North Dakota authorizes the North Dakota Workmen's Compensation Bureau to enter into agreements of reciprocity for workmen's compensation purposes with other states; and

WHEREAS, the Workmen's Compensation Law of the State of Idaho authorizes the Industrial Commission to enter into agreements of reciprocity for workmen's compensation purposes with other states; and

WHEREAS, the employers who conduct operations in the State of North Dakota are required, on occasion, to have North Dakota employees employed or performing services in the State of Idaho; and

WHEREAS, the employers who conduct operations in the State of Idaho are required, on occasion, to have Idaho employees employed or performing services in the State of North Dakota; and

WHEREAS, the Workmen's Compensation Bureau of the State of North Dakota and the Industrial Commission of the State of Idaho are desirous of entering into an agreement whereby the employers and workmen of each of the respective states may continue to be entitled to the protection and benefits provided by the Workmen's Compensation Laws of their respective home states;

IT IS HEREBY AGREED that, for the purpose of this agreement of reciprocity, a North Dakota employer is an employer domiciled in the State of North Dakota, and an Idaho employer is an employer domiciled in the State of Idaho.

IT IS FURTHER AGREED that, for the purpose of this agreement of reciprocity, a North Dakota employee is a person hired in the State of North Dakota, and an Idaho employee is a person hired in the State of Idaho.

IT IS FURTHER AGREED BETWEEN the Workmen's Compensation Bureau of the State of North Dakota and the Industrial Commission of the State of Idaho:

That the Workmen's Compensation Bureau of the State of North Dakota, in keeping with the provisions of the North Dakota Workmen's Compensation Law, will provide protection for any North Dakota employer under its jurisdiction and benefits to any of his North Dakota employees who may be injured in the course of employment while working temporarily in the State of Idaho. In the event of injury to one of these employees, his exclusive remedy would be that provided by the Workmen's Compensation Law of the State of North Dakota;

That the Industrial Commission of the State of Idaho, in keeping with the provisions of the Idaho Workmen's Compensation Law, will provide protection for any Idaho employer under his jurisdiction and benefits to any of his Idaho employees who may be injured in the course of employment while working temporarily in the State of North Dakota. In the event of injury to one of these employees, his exclusive remedy would be that provided by the Workmen's Compensation Law of the State of Idaho;

That the Workmen's Compensation Bureau of the State of North Dakota will, upon receipt and on behalf of the North Dakota employer, issue a certificate of extraterritorial coverage to the Industrial Commission of the State of Idaho, and that the Industrial Commission of the State of Idaho will, upon request and on behalf of the Idaho employer, issue a certificate of extraterritorial coverage to the Workmen's Compensation Bureau of the State of North Dakota;

That these certificates of extraterritorial coverage shall be issued, or canceled, at the discretion of the North Dakota Workmen's Compensation Bureau or the Idaho Industrial Commission;

That the North Dakota employer while performing work in the State of Idaho will be subject to the safety codes of the State of Idaho and that the Idaho employer while performing work in the State of North Dakota will be subject to the safety codes of the State of North Dakota.

IT IS MUTUALLY UNDERSTOOD that this agreement will not apply to Idaho employees of the North Dakota employer while working in the State of Idaho nor to the North Dakota employees of the Idaho employer working in the State of North Dakota.

IT IS ALSO MUTUALLY UNDERSTOOD that premium payments on the earnings of North Dakota employees while working in the State of Idaho will be made to the Workmen's Compensation Bureau of the State of North Dakota, and that premium payments on the earnings of Idaho employees while working in the State of North Dakota will be made payable to the respective employers' insurance carriers.

IT IS FURTHER AGREED that this agreement of extraterritorial reciprocity shall become effective on the 4th day of May, 1979, and further that this agreement shall remain in full force and effect until superseded or modified by the parties to this agreement.

Signed this 4th day of May, 1979, at Bismarck, North Dakota.

Arthur A. Link
Governor of North Dakota

NORTH DAKOTA WORKMEN'S COMPENSATION BUREAU

Bronald Thompson, Chairman

Quentin Retterath, Commissioner

Loretta Jennings, Commissioner

Signed this 14th day of May, 1979, at Boise, Idaho.

Governor of Idaho

IDAHO INDUSTRIAL COMMISSION