

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

GAYDENE SCHOFIELD,)	
)	
Claimant,)	IC 04-508538
)	
v.)	
)	Filed February 18, 2005
LAST CHANCE TEXACO,)	
)	
Employer,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Defendant.)	AND RECOMMENDATION
_____)	

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Michael E. Powers, who conducted a default hearing in Idaho Falls, Idaho, on January 26, 2005. Claimant was present and represented by her attorney, Michael R. McBride of Idaho Falls. Employer/Defendant, Last Chance Texaco, was not present or represented at the hearing. Oral and documentary evidence was presented. Claimant did not take any post-hearing depositions and waived the opportunity to submit a post-hearing brief. This matter came under advisement on February 9, 2005, and is now ready for decision.

ISSUES

The issues to be decided as the result of the hearing are:

1. Whether Claimant has presented a *prima facie* case in support of a Judgment of Default pursuant to Rule 6 (B), J.R.P.; and,
2. Whether and to what extent Claimant is entitled to the following benefits:
 - a. reasonable and necessary medical care;
 - b. temporary partial and/or temporary total disability (TPD/TTD) benefits;
 - c. mileage reimbursement; and,
 - d. statutory penalties pursuant to Idaho Code § 72-210.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. Claimant's testimony presented at hearing;
2. Claimant's Exhibits 1-2 admitted at hearing; and,
3. Claimant's Exhibit 3 admitted post-hearing.

Procedural History:

Claimant filed her Complaint on August 16, 2004. No Answer to Claimant's Complaint was filed. On September 21, 2004, Claimant duly served Employer with a Notice of Intent to Take Default along with a copy of the Complaint. When no response from Employer was received, on October 29, 2004, Claimant filed and served her Motion for Entry of Default and Request for Hearing. On December 22, 2004, the Commission filed its Order Entering Default.

FINDINGS OF FACT

1. Claimant was 51 years of age at the time of the hearing. She began working for Employer's gas station/convenience store in Island Park in October of 2003. Her duties included cashiering, stocking, cooking fast foods, and cleaning. Claimant worked 20 hours a week and earned \$6.50 an hour.
2. On February 22, 2004, Claimant was helping a customer work the gas pump when she slipped on some ice and fell on her back/hip. She felt immediate pain in her low back. Claimant was unable to finish her shift and had a friend take her to Madison Memorial Hospital in Rexburg where she was diagnosed with low back pain. An x-ray revealed "no acute process." She was prescribed medication and sent home.
3. Claimant notified her supervisor of her accident on the day of its occurrence.

4. Claimant returned to Madison Memorial on February 24, 2004, complaining of more severe back/leg pain. A lumbar spine MRI revealed no acute process and no nerve root entrapment. She was diagnosed with acute sciatica, medicated for pain, and sent home.

5. On March 4, 2004, Claimant presented to the Ashton Family Medical Center where she was again complaining of low back pain with radiculopathy. Kim Brock, FNP, prescribed physical therapy and a referral to a pain clinic and took Claimant off work pending a physical therapy evaluation.

6. Claimant presented to Spine & Sport Physical Therapy on March 10, 2004; she participated in physical therapy with “significant improvement” until her last treatment on June 2, 2004.

7. On July 7, 2004, Roxanna Holmes, ARNP, at Ashton Family Medical Center gave Claimant the following restrictions: No lifting over 10 pounds, no sitting more than 20 minutes, no bending, no prolonged standing more than 10 minutes. Claimant was also excused from work from February 22, 2004, to June 17, 2004. Employer was unable to accommodate Claimant’s restrictions.

8. On June 18, 2004, Claimant went to work for a resort at Island Park part-time at \$8.00 an hour. She worked until August 30, 2004, when she was terminated for poor job performance. Claimant testified that the resort was not honoring her work restrictions and that resulted in her being in pain and not being able to concentrate.

9. Claimant returned to work at the resort on December 1, 2004, as there was a new manager who was willing to work with her. At the time of the hearing, Claimant was still employed by the resort for 20 hours a week at \$8.00 an hour.

10. Claimant wants to get the treatment recommended by ARNP Holmes, but cannot afford to.

DISCUSSION AND FURTHER FINDINGS

Idaho Code § 72-432(1) obligates an employer to provide an injured employee reasonable medical care as may be required by his or her physician immediately following an injury and for a reasonable time thereafter. It is for the physician, not the Commission, to decide whether the treatment is required. The only review the Commission is entitled to make is whether the treatment was reasonable. *See, Sprague v. Caldwell Transportation, Inc.*, 116 Idaho 720, 779 P.2d 395 (1989). A claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability. *Langley v. State, Industrial Special Indemnity Fund*, 126 Idaho 781, 890 P.2d 732 (1995). “Probable” is defined as “having more evidence for than against.” *Fisher v. Bunker Hill Company*, 96 Idaho 341, 344, 528 P.2d 903, 906 (1974). No “magic” words are necessary where a physician plainly and unequivocally conveys his or her conviction that events are causally related. *Paulson v. Idaho Forest Industries, Inc.*, 99 Idaho 896, 901, 591 P.2d 143, 148 (1979). A physician’s oral testimony is not required in every case, but his or her medical records may be utilized to provide “medical testimony.” *Jones v. Emmett Manor*, 134 Idaho 160, 997 P.2d 621 (2000).

11. Claimant has incurred medical expenses for medical care, imaging, physical therapy, and prescriptions in the total amount of \$4,734.60. Exhibit 2. ARNP Holmes has opined that all the medical treatment, including physical therapy, imaging studies, and prescriptions were related to her industrial accident to a reasonable degree of medical probability and the Referee so finds. Exhibit 3.

Mileage Reimbursement:

Idaho Code § 72-432(12) provides for mileage reimbursement of necessary travel for medical care at the rate allowed to state employees, or 37.5 cents per mile except for the first 15 miles of any round trip.

12. According to Claimant’s hearing testimony, the distance between her home in Island Park and Madison Memorial is 130 miles round trip and Claimant made the trip three times.

Therefore, she is entitled to \$129.38 ($130-15 = 115 \times 3 = 345 \times .375 = \129.375 rounded up = \$129.38).

13. The distance between Claimant's home and Ashton Family Medical Clinic is 80 miles round trip and she made the trip three times. Therefore, she is entitled to \$73.13 ($80-15 = 65 \times 3 = 195 \times .375 = \73.125 rounded up = \$73.13).

14. The distance between Claimant's home and Spine & Sport Physical Therapy is 80 miles round trip and she made the trip 20 times. Therefore, she is entitled to \$487.50 ($80-15 = 65 \times 20 = 1300 \times .375 = \487.50).

Temporary Total Disability (TTD) Benefits:

Idaho Code § 72-408 provides for income benefits for total and partial disability during an injured worker's period of recovery. "In workmen's [sic] compensation cases, the burden is on the claimant to present expert medical opinion evidence of the extent and duration of the disability in order to recover income benefits for such disability." *Sykes v. C.P. Clare and Company*, 100 Idaho 761, 763, 605 P.2d 939, 941 (1980); *Malueg v. Pierson Enterprises*, 111 Idaho 789, 791, 727 P.2d 1217, 1220 (1986). Once a claimant is medically stable, he or she is no longer in the period of recovery, and total temporary disability benefits cease. *Jarvis v. Rexburg Nursing Center*, 136 Idaho 579, 586, 38 P.3d 614, 621 (2001) (citations omitted).

Once a claimant establishes by medical evidence that he or she is still within the period of recovery from the original industrial accident, he or she is entitled to total temporary disability benefits unless and until evidence is presented that he or she has been medically released for light work and that (1) his or her former employer has made a reasonable and legitimate offer of employment to him or her which he or she is capable of performing under the terms of his or her light duty work release and which employment is likely to continue throughout his or her period of recovery, or that (2) there is employment available in the general labor market which the claimant has a reasonable opportunity of

securing and which employment is consistent with the terms of his or her light duty work release.

Malueg, Id.

15. Claimant was taken off work from February 22, 2004, through June 17, 2004, for a period of 16 weeks and 5 days. Her compensation rate is \$117.00 per week (average weekly wage = \$130.00 x 90% = \$117.00). Therefore, Claimant is entitled to \$1,955.57 in TTD benefits for this period. Claimant was also off work from August 30, 2004, through December 1, 2004, as the result of Employer not complying with her work restrictions for a period of 13 weeks and 3 days. Under *Malueg* she is entitled to \$1,571.14 in TTD benefits for this period for a total of \$3,526.71 in TTD benefits.

16. At the time of Claimant's February 22, 2004, industrial accident, the Referee takes notice that Employer was uninsured for workers' compensation purposes thus invoking the penalties set forth in Idaho Code § 72-210. That section provides for a penalty of 10% of the total amount of compensation awarded, plus costs, if any, and reasonable attorney's fees. Here, the total amount of compensation awarded is \$8,951.32. Therefore, Claimant is entitled to a penalty of \$895.13.

17. Claimant was required to hire an attorney to prosecute her claim. Idaho Code § 72-803 vests in the Industrial Commission the authority to approve attorney fees. IDAPA 17.02.08.033 is the rule governing the approval of attorney's fees in workers' compensation cases. IDAPA 17.02.08.01 (e) (ii) provides that 30% of available funds shall be presumed reasonable where a hearing has been held and briefs submitted (or waived). The Referee finds that the sum of \$2,685.40 (30% of \$8,951.32) to be a reasonable attorney's fee in this matter.

CONCLUSIONS OF LAW

1. Claimant has established a *prima facie* case in support of her Application for Judgment of Default pursuant to Rule 6 (b), J.R.P.

2. Claimant is entitled to payment of or reimbursement for medical benefits in the amount of \$4,734.60.
3. Claimant is entitled to the treatment recommended by ARNP Holmes.
4. Claimant is entitled to TTD benefits in the amount of \$3,526.71.
5. Claimant is entitled to mileage reimbursement in the amount of \$690.01.
6. Claimant is entitled to a statutory penalty of \$895.13.
7. Claimant is entitled to an award of attorney's fees in the amount of \$2,685.40.

RECOMMENDATION

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

DATED this __11th__ day of __February____, 2005.

INDUSTRIAL COMMISSION

_____/s/_____
Michael E. Powers, Referee

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __18th__ day of __February____, 2005, a true and correct copy of the **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

MICHAEL R MCBRIDE
1495 E 17TH ST
IDAHO FALLS ID 83404-6236

LAST CHANCE TEXACO
3370 HIGHWAY 20
ISLAND PARK ID 83429

_____/s/_____

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BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

GAYDENE SCHOFIELD,)
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 Claimant,)
)
 v.)
)
 LAST CHANCE TEXACO,)
)
 Employer,)
)
 Defendant.)
 _____)

IC 04-508538

ORDER

Filed February 18, 2005

Pursuant to Idaho Code § 72-717, Referee Michael E. Powers submitted the record in the above-entitled matter, together with his 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 recommendations of the Referee. The Commission concurs with these recommendations. 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 established a *prima facie* case in support of her Application for Judgment of Default pursuant to Rule 6 (b), J.R.P.
2. Claimant is entitled to payment of or reimbursement for medical benefits in the amount of \$4,734.60.
3. Claimant is entitled to the treatment recommended by ARNP Holmes.
4. Claimant is entitled to TTD benefits in the amount of \$3,526.71.
5. Claimant is entitled to mileage reimbursement in the amount of \$690.01.
6. Claimant is entitled to a statutory penalty of \$895.13.

7. Claimant is entitled to an award of attorney's fees in the amount of \$2,685.40.

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

DATED this __18th__ day of ____February____, 2005.

INDUSTRIAL COMMISSION

____/s/_____
Thomas E. Limbaugh, Chairman

____/s/_____
James F. Kile, Commissioner

____/s/_____
R. D. Maynard, Commissioner

ATTEST:

____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __18th__ day of ____February____, 2005, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following persons:

MICHAEL R MCBRIDE
1495 E 17TH ST
IDAHO FALLS ID 83404-6236

LAST CHANCE TEXACO
3370 HIGHWAY 20
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