



2. Whether Claimant suffers from a compensable occupational disease;
3. Whether Claimant has complied with the notice and claim limitations set forth in Idaho Code § 72-448;
4. Whether Claimant suffered a psychological accident and injury as delineated in Idaho Code § 72-451; and
5. Whether and to what extent Claimant is entitled to the following benefits:
  - A. Medical care;
  - B. Temporary total disability or temporary partial disability benefits (TTD/TPD);
  - C. Permanent partial impairment (PPI); and
  - D. Disability in excess of impairment.

### **CONTENTIONS OF THE PARTIES**

Claimant contends that his diagnosed psychiatric disorders, which include recurrent major depression, anxiety, panic and phobic symptoms, and his subsequent diagnoses of Parkinson's disease and dementia, were all the result of the severe chronic stress he suffered while working for Employer. Claimant asserts that as a result of his work-related psychiatric and organic disorders he can no longer work and is entitled to benefits under the workers' compensation system including medical care, time-loss, impairment, and disability.

Defendants raise a multi-pronged defense to Claimant's assertions. First, Defendants argue that Claimant's failure to file a timely notice of claim pursuant to Idaho Code § 72-448 bars his claim in its entirety. In the event that Defendants' notice defense fails, they assert that Claimant has failed to establish a causal relationship between his organic brain disease and work-

induced stress. Defendants further argue that Claimant failed to establish that he suffered a compensable *psychological injury* pursuant to Idaho Code § 72-451.

### **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. Testimony of Claimant, Charles C. Novak, M.D., Craig W. Beaver, Ph.D., Terry Hasselbring, Rick Palmer, and Patricia Myers, offered at hearing;
2. Claimant's exhibits 1, 2, 3 (to the extent that it is consistent with Claimant's sworn testimony), 4, 5, 6, 10, 11, 13, 16 (with dollar amounts redacted), 17 and 18 (excluding Claimant's hand-written addenda) and 20, admitted at hearing;
3. Defendants' exhibits 1 through 20 admitted at hearing; and
4. Post-hearing depositions of William A. Pogue, M.D., and Dave Sanford, Ph.D.

On September 20, 2005, following the filing of Claimant's opening brief, Defendants filed a Motion to Strike portions of Claimant's brief. Defendants objected to the inclusion of factual statements that were not part of the record, but did not identify particular passages that were improper. Claimant filed his Response to Motion to Strike on September 23, 2005, noting that it was difficult for him to respond to the Motion absent identification of particular objectionable material. Both Defendants and Claimant make valid points.

In Commission proceedings, the parties are given the opportunity to argue the legal issues in light of the testimonial and documentary evidence adduced at hearing. While briefs are a part of the Commission's file in the case, they are not part of the factual record. In fact, the Commission file in this proceeding is jam-packed with materials that were filed by Claimant but were not offered or admitted into evidence and are not a part of the record. Decisions of the Commission are based upon findings of fact drawn from the specific evidence identified as part

of the record—exhibits that are admitted into the record, testimony given under oath, depositions, and the like. In light of the difficulty of extracting inappropriate material from Claimant’s brief, together with the limited role that briefing plays in Commission proceedings, the Referee declines to strike any portion of Claimant’s brief, but does not consider the brief to be evidence, and bases no findings on facts asserted in the brief.

After having considered the evidence enumerated in items one through four above, 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**

### ***THE CLAIMANT***

1. At the time of the hearing in this proceeding, Claimant was 59 years of age. He resided in Boise with his wife of 38 years. Claimant is the father of three adult children.

2. Claimant was a long-time employee of Employer and its predecessors at various locations throughout the mountain west including Casper, Wyoming, and Denver, Colorado, before coming to Boise in 1993.

3. In Boise, Claimant worked for Employer as a network technician. Claimant installed, maintained, and repaired residential and business telecommunication lines. Claimant was a valued and productive worker, and his supervisors spoke highly of both his work and his work ethic.

### ***THE CLAIM***

4. While at work on February 9, 1998, Claimant became anxious and experienced shortness-of-breath. He left work and never returned. He first sought medical care the following day, and related to Dr. Pogue that he had experienced progressively-worse panic symptoms over

the past three to four weeks. Claimant also related to Dr. Pogue that he had similar symptoms approximately twenty years previously. Dr. Pogue diagnosed “depression anxiety [with] panic symptoms—severe.” Defendants’ Ex. 3, p. 24.

5. Dr. Pogue referred Claimant to Dr. Novak, a psychiatrist, for specialized care. Claimant saw Dr. Novak in late March 1998 for the first of what was to become an epic treatment history. Dr. Novak’s new patient intake documents indicate that Claimant had been experiencing sleep disturbances for two years and that he had suffered from anxiety, perhaps his entire life. Defendants’ Ex. 6, p. 130. Dr. Novak initially diagnosed “[m]ajor [d]epression with secondary panic and beginning poly phobic and agoraphobic symptoms.” *Id.*, at p. 136. It soon became evident that Claimant also suffered from extreme anxiety and a severe sleep disorder.

6. Dr. Novak, together with counselors Dave Sanford and Mahavash Avaregan, treated Claimant for his psychological problems, with only moderate success, between February 1998 and February 2001. Dr. Novak tried a number of drug trials, singly and in combination, over this period in an attempt to control Claimant’s anxiety and panic symptoms while at the same time helping with his depression and sleep problems. Dr. Novak found Claimant’s symptoms particularly intransigent. Claimant’s condition required frequent changes in medication, and intermittent in-patient care, as well as frequent periods of intensive out-patient care. A course of electro-convulsive therapy (ECT) was recommended and Claimant began the treatment, but discharged himself against medical advice after just two treatments.

7. In December 1999, Claimant was diagnosed with mild Parkinson’s disease or Parkinsonism by neurologist Allen C. Han, M.D. Dr. Han thought that some of Claimant’s Parkinsonian symptoms might be due to his psychotropic medications.

8. In December 2000, Dr. Han diagnosed Claimant with dementia. Dr. Han was

unable to determine whether Claimant's dementia was idiopathic or related to his Parkinson's disease.

9. Claimant saw Karin M. Lindholm, D.O., a neurologist, for a consultation in August 2001. Dr. Lindholm diagnosed "[a]typical Parkinson [sic] disease, missing the cardinal features of idiopathic Parkinson disease." Defendants' Ex. 13, p. 953. Dr. Lindholm went on to note that Claimant also had dementia and she questioned whether there was a temporal relationship between the dementia and Claimant's movement disorder. By July 2004, Dr. Lindholm strongly suspected Claimant had Lewy Body disease—a degenerative dementia with some features of Alzheimers, Parkinson's or both. Lewy Body disease can only be conclusively diagnosed post-mortem. *Id.*, at p. 967.

10. Following a panel independent medical examination in July 2003, Craig W. Beaver, clinical neuropsychologist, Michael E. Estess, M.D., psychiatrist, and James M. Herrold, M.D., neurologist, opined as follows:

Following examination, there was also evidence of Parkinsonian-type symptoms. Therefore, the conclusion of the panel is that [Claimant], on a more-probable-than-not basis, evidences Parkinsonian symptoms. As has been noted by other treatment providers, and was noted in our IME valuation, [Claimant] does not present with classic idiopathic Parkinson's disease but may well have a Parkinsonian variant. He has evidenced a mild response to Sinemet. However, again, it is important to note that his Parkinsonian-type symptoms, while they may reflect a Parkinsonian-type disease, could also be reflective of pseudo-Parkinsonian symptoms secondary to his medications and underlying depression.

Defendants' Ex. 15, p. 1043.

11. The record is silent regarding any specific job-related mishap, accident, occurrence, or sudden and extraordinary event that precipitated the February 1998 onset of Claimant's psychological illness. Claimant and his wife both testified that the February 1998 breakdown resulted from chronic stress related to daily work demands. Two of Claimant's

supervisors testified and neither was aware of any single precipitating event or sudden change in Claimant's workload.

12. In contrast to Claimant's impassioned testimony, the record as a whole reflects that the network technician positions were not unduly demanding. Claimant's supervisors had not received complaints about job stress from other network technicians under their supervision. Both supervisors that testified observed that Claimant was unusually and chronically concerned about his job performance—requiring frequent reassurance that his performance was satisfactory. Employer even modified the way in which Claimant was dispatched in an effort to assuage Claimant's anxiety about the amount of work he was expected to perform each day.<sup>1</sup> The modified dispatch system did not appreciably improve Claimant's perception that his work demands were impossible.

13. Claimant has Parkinsonian-type symptoms. All of the medical professionals are in agreement in this regard. As discussed by the IME panel, Dr. Lindholm, and Dr. Novak, Parkinsonian-type symptoms can be caused by Parkinson's disease itself, depression, the use of psychotropic medication, Lewy Body disease, or arise from some other cause.

14. Claimant has some form of dementia. The medical evidence identifies a number of possible causes of dementia, including depression, use of psychotropic drugs, Parkinson's disease, Lewy Body disease, or some other independent cause.

15. There is no medical evidence that either Parkinson's disease or dementia is caused by stress. As the IME panel noted in its first report:

More specifically, as it relates to his Parkinson's-like symptoms, we would note that there is no evidence in the medical literature that situational stress results in

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<sup>1</sup> Instead of receiving a complete list of the day's jobs at the start of the day (bulk dispatch), Claimant was dispatched to one job at a time—calling in after completing each work order to be dispatched to the next job (dynamic dispatch).

the onset of neurologically-based Parkinson's Disease. Additionally, mild dementia, that can accompany Parkinson's Disease, is also not linked to situational stressors. Therefore, in that regard, the panel does not conclude that [Claimant's] Parkinson's Disease variant and probable mild dementia, are a direct result of his job stress.

*Id.*, at p. 1043-1044. In their 2004 follow-up evaluation, the panel doctors reconfirmed their position:

Medical literature does not identify stress or psychiatric problems as the predominant cause of atypical Parkinsons-like [sic] disease with dementia and/or Lewy Body disease.

*Id.*, at p. 1048.

### ***NOTICE/CLAIM***

16. Claimant and his wife were both of the opinion, as early as February 1998, that Claimant's anxiety, sleep disturbances, and depression were caused by the demands of Claimant's work and the unremitting stress of his work environment. At hearing, Claimant testified in response to a question posed by counsel for Defendants:

Q. Isn't it true, Mr. Myers, that, at the time you last worked in February of 1998, that you recognized that the reason you could no longer work was because of job stress?

A. Yeah. I'd say that's true.

Q. In fact, in your deposition, you told me that, on your last day of work, you told Diane Ard that you were unable to work because of job stress, that job stress had made you sick.

A. I couldn't even breathe.

Q. Didn't you tell her that, though?

A. I don't recall. But I probably did.

Tr., p. 201. Similarly, Claimant's wife testified:

Q. Okay. Ms. Myers, you also testified in your deposition to the fact that, even before your husband left work, you and he were aware that stress was causing his problems.

A. We figured that was it, yes.

*Id.*, at p. 245.

17. Claimant never filed a claim for workers' compensation benefits with Employer. At hearing, Claimant's wife affirmed her deposition testimony where she stated that the reason no claim was filed was because she "[n]ever thought that you could file on stress." Tr., p. 247. Instead, sometime in early February 2001, Claimant sent a hand-written note to Employer stating in part that he became sick on the job. Employer liberally construed the note as suggesting Claimant suffered from some work-related illness, and the document eventually made its way to the workers' compensation program manager for Employer who initiated a claim on March 16, 2001.

18. On March 12, 2001, Dr. Novak wrote:

I have been requested by [Claimant] and his wife to write this letter acknowledging that it is indeed my medical opinion that [Claimant's] psychiatric illness, symptoms and disorder were primarily precipitated by and worsened because of job related stressors.

*Id.*, at p. 210. This statement from Dr. Novak, which Claimant requested only after sending his hand-written note to Employer, was clearly not intended to be a diagnosis of an occupational disease. Instead, it was an attempt to bolster some causal relationship between Claimant's work situation and his illness.

### ***CREDIBILITY***

19. Due to the very nature of his illnesses, Claimant is not a reliable historian, though he is certainly an honest and truthful gentleman. In the context of this proceeding, being truthful and honest is not the same thing as being reliable. Some honest and truthful people, possessed of

all their faculties, are notoriously unreliable historians. Memory is a malleable thing even in individuals who are psychologically and physically healthy. While it is in Claimant's nature to want to be a trustworthy witness, his psychological illnesses and his organic brain diseases have made that impossible. The general unreliability of Claimant's testimony is particularly evident in the divergence of Claimant's testimony and the medical records on particular issues. Claimant's medical records are voluminous, and several issues appear consistently throughout the records. One such example concerns Claimant's being subject to unwanted sexual advances when he was a young boy. References to these events appear in virtually every medical history taken by virtually every medical professional that has seen or treated Claimant. Information in medical histories is not fabricated—it is provided by the patient or members of the patient's family. At hearing, Claimant vociferously denied that he had ever been sexually molested or subject to unwanted sexual advances as a young boy—yet he could not explain how this particular bit of information entered into and permeated his medical records.

## **DISCUSSION AND FURTHER FINDINGS**

### ***PREFACE***

20. Although a number of issues are extant in this proceeding, four of the substantive issues could each be dispositive of the matter. Ordinarily, once an issue that is dispositive of the case has been decided, there is no need to consider any remaining pivotal issues. This matter is unusual because of the complexity of the medical and legal issues presented and Claimant's appearance *pro se*. Because of the atypical nature of this case, it is the considered opinion of the Referee that a full analysis of each of the substantive issues is required in the interest of both decisional clarity and judicial economy.

## ***ON THE ROAD TO COMPENSABILITY***

21. In the Idaho workers' compensation scheme, there are two main roads that can lead to a compensable claim. The most-traveled route begins with an "accident" arising out of employment that results in an "injury" to a worker. Idaho Code § 72-102(17)(b) defines an "accident" to mean:

. . . an unexpected, undesigned, and unlooked for mishap, or untoward event, connected with the industry in which it occurs, and which can be reasonably located as to time when and place where it occurred, causing an injury.

"Injury" is defined by Idaho Code § 72-102(17)(a) and (c):

(a) "Injury" means a personal injury caused by an accident arising out of and in the course of any employment covered by worker's [sic] compensation law.

\* \* \*

(c) "Injury" and "personal injury" shall be construed to include only an injury caused by an accident, which results in violence to the physical structure of the body. The terms shall in no case be construed to include an occupational disease and only such nonoccupational diseases as result directly from an injury.

The second path to a compensable claim is via the route known as an "occupational disease." An occupational disease is defined as:

. . . a disease due to the nature of an employment in which the hazards of such disease actually exist, are characteristic of, and peculiar to the trade, occupation, process, or employment, but shall not include psychological injuries, disorders or conditions unless the conditions set forth in section 72-451, Idaho Code, are met.

Idaho Code § 72-102(21)(a).

Claimant repeatedly and specifically denied, as did his wife, that he suffered any "unexpected, undesigned, and unlooked for mishap, or untoward event" arising out of his employment that resulted in "violence to the physical structure" of his body. Having denied the existence of an accident, Claimant by default finds himself on the road less traveled—seeking to arrive at compensability via the occupational disease route.

22. Just as there are two main roads to compensability in general, there are two different ways to approach an occupational disease claim. The first path is relatively straightforward and requires that a Claimant prove that he suffers from a physiological disease that is characteristic of and peculiar to his employment. The second, and more difficult approach is via Idaho Code § 72-451, which strictly limits the compensability of psychological claims. Idaho Code § 72-451 is the single-lane winding dirt track over the mountain pass on the road to workers' compensation compensability.

### ***PHYSIOLOGICAL CLAIMS—DEMENTIA AND PARKINSON'S***

23. There is no dispute that at the time of hearing Claimant had some form of dementia as well as symptoms that were clearly Parkinsonian in nature. Both of these disorders involve physiological organic changes to an individual's brain. In order to establish that one or both of these disorders are compensable occupational diseases, Claimant must prove that:

- One or both diseases are due to the nature of his employment as a network technician for Employer; **and**
- It is possible to contract one or both of these diseases as a result of the type of work the Claimant was engaged in; **and**
- One or both diseases are characteristic of Claimant's work, **or** peculiar to Claimant's work.

While Claimant may believe that his dementia and his Parkinsonian symptoms were a direct result of his employment, the record is devoid of any evidence, medical or epidemiological, to support such a position.

Proving the existence of an occupational disease is essentially a matter of proving causation both generally and specifically: Is there some connection between certain occupations

and certain diseases? Can a particular occupational disease be contracted as a result of a particular occupation? Is a particular occupational disease typical or characteristic of a particular occupation? There is no evidence in the record of a general causal relationship between the type of work that Claimant performed and either dementia or Parkinsonian symptoms. With regard to a more specific causal relationship, the record specifically discounts any such relationship. While there is general agreement among the medical professionals involved in his care that work stress could precipitate Claimant's psychological breakdown, they are equally in agreement that there is no evidence that stress can cause organic disorders such as dementia or Parkinsonian symptoms. The Referee finds that on the record before the Commission, Claimant has failed to establish that either his dementia or his Parkinsonianism is a compensable occupational disease.

24. Having failed to reach compensability via the physiological occupational disease route, Claimant must pursue his journey to compensability along the narrow winding track that is Idaho Code § 72-451.

#### ***PSYCHOLOGICAL CLAIMS—IDAHO CODE § 72-451***

25. Psychological claims can be compensable under limited circumstances. In *Luttrell v. Clearwater County Sheriff's Office*, 140 Idaho 581, 584, 97 P.3d 448, 451 (2004), the Idaho Supreme Court outlined the conditions under which psychological claims are compensable:

According to I.C. § 72-451, physical-mental injuries are compensable, but they must meet the following conditions paraphrased as:

- 1) The injury was caused by an accident and physical injury or occupational disease or psychological mishap accompanied by resultant physical injury;
- 2) The injury did not arise from conditions generally inherent in every working situation or from a personnel related action;

- 3) Such accident and injury must be the predominant cause as compared to all other causes combined of any consequence;
- 4) The causes or injuries must exist in a real and objective sense;
- 5) The condition must be one which constitutes a diagnosis under the American Psychiatric Association's most recent diagnostic and statistics manual, and must be diagnosed by a psychologist or psychiatrist licensed in the jurisdiction in which treatment is rendered.

In addition, it must be proven by clear and convincing evidence that the psychological injuries arose out of and in the course of the employment from an accident or occupational disease. I.C. § 72-451(6). "Clear and convincing evidence means a degree of proof greater than a mere preponderance." *In the Matter of Gordon W. Jenkins*, 120 Idaho 379, 383, 816 P.2d 335, 339 (1991). Further, the statute provides that it should not "be construed as allowing compensation for psychological injuries from psychological causes without accompanying physical injury." I.C. § 72-451. A "mental-mental" claim is one in which a mental stimulus or impact results in a psychological condition. *See* 3 ARTHUR LARSON, ET AL., *LARSON'S WORKERS' COMPENSATION LAW*, § 56.06[3] (2003).

26. There is no dispute that at the time of hearing Claimant had serious psychological problems, including severe recurrent depression and anxiety with panic component. The medical records establish that during the course of these proceedings Claimant's psychological problems have also included poly-phobic tendencies.

27. Mental-Mental Claims. As discussed in *Luttrell*, claims for psychological injuries from psychological causes without accompanying physical injury are specifically not compensable. The court calls these types of claims "mental-mental" and observes that these claims arise when a mental stimulus results in a psychological condition. Claimant's psychological illnesses, standing alone, are classic examples of a non-compensable "mental-mental" claim—a mental stimulus, in this case stress, results in psychological conditions including depression, anxiety, phobias, and panic attacks.

28. Mental-Physical Claims. If Claimant can establish that the medications he took to

treat his psychological illnesses caused an injury to his brain resulting in dementia and Parkinson's-like symptoms, then he has an arguable mental-physical claim under Idaho Code § 72-451. Under this theory of his claim, Claimant still has to meet all the requirements of Idaho Code § 72-451, and this he has failed to do.

The most obvious obstacle that Claimant encounters on this path is the same barrier that precluded an accident/injury claim in the first place. As paraphrased in *Luttrell*, the Claimant must prove that his injury “was caused by an accident and physical injury **or** occupational disease **or** psychological mishap . . .” *Luttrell*, 140 Idaho at 584, 97 P.3d at 451 (emphasis added). As discussed previously, Claimant denies an accident and physical injury, and cannot prove a physiological occupational disease. This leaves a “psychological mishap” as a condition precedent to any physical injury. The record is clear that Claimant’s initial breakdown was brought about by chronic stress, not a sudden and extraordinary event or “mishap.”

The second obstacle that Claimant encounters on the road to a compensable mental-physical claim under Idaho Code § 72-451 is that the physical injury cannot arise from conditions that are generally inherent in every working situation. The record establishes that the perceived stress that precipitated Claimant’s breakdown was largely self-imposed. There is no evidence, apart from Claimant’s testimony, that Employer’s expectations were in any way unreasonable. Rather, Claimant took ordinary expectations and turned them into impossible demands that he could not possibly meet.

The third barrier that Claimant confronts is again one of causation, and is akin to the requirement in an injury/accident case that it be proven that the injury was caused by the accident. Here, the question is: Were Claimant’s dementia and Parkinsonian symptoms caused predominantly by the psychotropic medications prescribed to treat his psychological illnesses?

Claimant has not established that either his dementia or his Parkinson's-like symptoms were caused in any part or portion by the psychotropic medications used to treat his psychological illness. Only if the treatment for the psychological illness was the *predominant* medical cause of the physiological changes can a compensable psychological claim be pursued on these facts.

As discussed in the initial findings, Parkinsonian symptoms can be caused by Parkinson's disease, depression, Lewy Body disease, the use of psychotropic medication, or arise from other idiopathic causes. Similarly, the record identifies a number of possible causes of dementia, including depression, use of psychotropic drugs, Parkinson's disease, Lewy Body disease, and other idiopathic causes.

Dr. Novak, the IME panel, and Dr. Lindholm all opined that it was not possible, at this stage of Claimant's treatment history, to establish the cause of his physiological injuries on a more probable than not basis. Claimant was not diagnosed with the physiological brain diseases until after he had begun treating his psychological illness with psychotropic drugs, and as Dr. Novak testified at hearing, the physiological changes caused by psychotropic drugs can be permanent. As was also noted in the medical record, it is possible that Claimant had undiagnosed dementia or undiagnosed Parkinson's or a Parkinson's like disease, possibly Lewy Body disease, prior to his psychological breakdown in February 1998. The which-came-first conundrum—whether treatment for the psychological problems caused the organic problems or the organic problems caused the psychological problems—is insoluble on the facts in this record. The medical professionals who have seen and treated Claimant cannot identify any one cause of Claimant's physiological injuries on a more probable than not basis; therefore, there can be no finding of a predominant cause as required by Idaho Code § 72-451.

29. The Referee finds that Claimant's breakdown in February 1998 was a purely psychological response to what he perceived to be a stressful work environment. It was not precipitated by any sudden or extraordinary event that could be considered a psychological mishap. Further, Claimant has failed to establish a predominant causal connection between his psychological breakdown and his ultimate diagnosis of dementia and Parkinson's-like symptoms. Claimant has failed to establish a compensable psychological injury claim under Idaho Code § 72-451.

### ***NOTICE AND CLAIM***

30. Defendants assert that Claimant's claim is barred for failure to provide statutory notice and claim as required pursuant to Idaho Code §§ 72-701-706 and 72-448. Claimant did not address the notice issue except to testify that he told his supervisor he was sick and could not return to work on February 9, 1998. This oral notice neither met the requirements for written notice and claim filing, nor did it toll the provisions of Idaho Code § 72-604, which stop the running of the statute when an Employer willfully refuses to file a claim.

31. Idaho Code §§ 72-701-706. The notice requirements of Idaho Code §§ 72-701-706 are applicable *only* to the filing of claims for injuries resulting from accidents that arise out of and in the course of employment. *Bainbridge v. Boise Cascade Plywood Mill*, 111 Idaho 79, 721 P.2d 179 (1986). In this proceeding, Claimant has repeatedly and specifically disclaimed that his psychological and organic illnesses resulted from any workplace accident. For this reason, the Referee finds the provisions of Idaho Code §§ 72-701-706 inapplicable in this case.

32. Idaho Code § 72-448. In some respects, occupational disease claims are treated differently under the Idaho workers' compensation statutes than are injuries resulting from accidents.

The requirements for providing notice of and filing claims for occupational diseases are set out at Idaho Code § 72-448, which provides in pertinent part:

(1) Unless written notice of the manifestation of an occupational disease is given to the employer within sixty (60) days after its first manifestation, or to the industrial commission if the employer cannot be reasonably located within ninety (90) days after the first manifestation, and unless claim for worker's [sic] compensation benefits for an occupational disease is filed with the industrial commission within one (1) year after the first manifestation, all rights of the employee to worker's [sic] compensation due to the occupational disease shall be forever barred.

This section poses two basic requirements for pursuing an occupational disease claim where the employer is easily located: First, that the employer be given *written notice* within sixty days of the first manifestation of the occupational disease; and second, the worker must *file a claim* for benefits within one year of the first manifestation of the occupational disease. The meaning of “manifestation” is crucial in applying this section. According to Idaho Code § 72-102(18), manifestation means:

. . . the time when an employee knows that he has an occupational disease, or whenever a qualified physician shall inform the injured worker that he has an occupational disease.

An important aspect of this definition is that no diagnosis by a medical professional is required in order to fix a manifestation date for an occupational disease. On the facts of this case, the Referee finds that the manifestation date of Claimant's psychological illness was February 9, 1998. Claimant believed that his psychological injuries were an occupational disease by the time he broke down and left work that day. He did not employ the terms of art used in the statutory definitions of “occupational disease” or “manifestation,” yet it is clear that Claimant believed he fell ill because of circumstances unique to his work for Employer—in particular, long-term chronic stress created by impossible expectations.

Using a manifestation date of February 9, 1998, Claimant was required to give written

notice to Employer not later than April 10, 1998. Claimant's notice was not timely when his first written contact with Employer regarding his claim occurred in early February 2001. Secondly, Claimant was required to file a claim for benefits within one year of February 9, 1998. Employer received a document from Claimant, which Employer interpreted to be a claim, in early February 2001, nearly a year after the claim-filing deadline.

Claimant's occupational disease claim is barred for failure to provide written notice within sixty days of the date of manifestation and his failure to file a claim within one year of the date of manifestation.

### ***CLAIMANT'S ENTITLEMENT TO BENEFITS***

33. Claimant has failed to prove that he has a compensable workers' compensation claim; therefore, any discussion of Claimant's entitlement to workers' compensation benefits is a moot issue.

### **CONCLUSIONS OF LAW**

1. Claimant has failed to prove that he has a physical occupational disease pursuant to Idaho Code § 72-102(21)(a);

2. Claimant has failed to prove that he has a psychological injury pursuant to Idaho Code § 72-451;

3. The notice requirements of Idaho Code §§ 72-701 through 72-706 are inapplicable where Claimant denies the occurrence of an accident as defined by Idaho Code § 71-102(17)(a) and (c);

4. Claimant failed to comply with the notice and claim requirements for an occupational disease as set out at Idaho Code § 72-448, and thus his occupational disease claim is barred; and

5. All other issues are moot.

**RECOMMENDATION**

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

DATED this 8 day of December, 2005.

INDUSTRIAL COMMISSION

/s/ \_\_\_\_\_  
Rinda Just, Referee

ATTEST:

/s/ \_\_\_\_\_  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the 29 day of December, 2005 a true and correct copy of **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon:

ARTHUR MYERS  
3620 N PEPPERWOOD  
BOISE ID 83704

THOMAS P BASKIN  
PO BOX 6756  
BOISE ID 83707-6756

djb

/s/ \_\_\_\_\_

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

ARTHUR MYERS,	)	
	)	
Claimant,	)	
	)	
v.	)	<b>IC 01-008270</b>
	)	
QWEST,	)	
	)	
Employer,	)	<b>ORDER</b>
	)	
and	)	Filed Dec. 29, 2005
	)	
RELIANCE NATIONAL INDEMNITY CO.,	)	
	)	
Surety,	)	
Defendants.	)	
_____	)	

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. The Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law only as they pertain to the issues of whether Claimant has complied with the applicable notice requirements.

Claimant's occupational disease claim is barred for failure to provide oral or written notice within sixty days of the date of manifestation and his failure to file a claim within one year of the date of manifestation. Any discussion and/or analysis of other issues is purely for Claimant's benefit and is not adopted by the Commission.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. The notice requirements of Idaho Code §§ 72-701 through 72-706 are inapplicable where Claimant denies the occurrence of an accident as defined by Idaho Code § 71-102(17)(a) and (c).

2. Claimant failed to comply with the notice and claim requirements for an occupational disease as set out at Idaho Code § 72-448, and thus his occupational disease claim is barred.

3. All other issues are moot.

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

DATED this 29th day of December, 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 29 day of December, 2005, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following persons:

ARTHUR MYERS  
3620 N PEPPERWOOD  
BOISE ID 83704

THOMAS P BASKIN  
PO BOX 6756  
BOISE ID 83707-6756

djb

/s/