

ISSUES

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

1. Whether Claimant suffered an injury caused by an accident arising out of and in the course of employment;
2. Whether and to what extent Claimant is entitled to:
 - a. Medical care;
 - b. Temporary partial and/or temporary total disability benefits (TPD/TTD);
 - c. Permanent partial impairment (PPI);
 - d. Disability in excess of impairment; and
3. Whether Claimant is entitled to attorney fees pursuant to Idaho Code § 72-804.

The parties agreed at hearing that the primary issues for resolution were compensability and attorney fees.

CONTENTIONS OF THE PARTIES

Claimant contends that she suffered an accident arising out of and in the course of her employment. Claimant's accident occurred when she left her upstairs apartment, located on Employer's premises, and slipped on some ice on the way to her car. Claimant further argues that her claim for compensation was contested without reasonable grounds. Therefore, Claimant claims entitlement to attorney fees pursuant to Idaho Code § 72-804.

Defendants contend that Claimant's accident and injury did not arise out of and in the course of her employment because Claimant's residence at Employer's premises was permitted but not required, and Claimant's activities at the time of the accident had nothing to do with her employment. Defendants aver that because Claimant's accident did not arise out

of and in the course of her employment, Defendants are not liable for any benefits or attorney fees.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Idaho Industrial Commission legal file;
2. Oral testimony at hearing by Claimant, Doug Reinke, and Dennis Beverlin;
3. Claimant's Exhibit 1-36 admitted at hearing; and
4. Defendants' Exhibits 1-7 admitted at hearing.

After having considered all the above evidence and the briefs of the parties, the Commission issues the following findings of fact, conclusions, and order.

FINDINGS OF FACT

1. At the time of the hearing Claimant was 49 years old. Claimant was raised in California, and throughout her career she has held various positions with banking institutions, as well as a job as an executive secretary.

2. In February 2001, Claimant began working for Bonney Watson Washington Memorial Park, in western Washington, selling prearrangement funeral plans. Dennis Beverlin was Claimant's supervisor at Memorial Park. Tr., pp. 14, 29.

3. In October 2004, Mr. Beverlin began working for Employer, Carriage Services, as the sales manager. Carriage Services owns several businesses including Dakan Funeral Chapel in Caldwell, Chapel of the Chimes in Meridian, Relyea Funeral Chapel in Boise, Alsip and Persons Funeral Home in Nampa, Cremation Society of Idaho in Boise, and Hillcrest Memorial Gardens in Caldwell. Tr., p. 16.

4. Mr. Beverlin asked Claimant to move to Idaho and work for Employer as a

sales representative selling prepaid funeral plans. Tr., p. 16. At the time Claimant was living in Washington. Mr. Beverlin told Claimant that he made arrangements for her to stay at the apartment located above the Dakan Funeral Chapel in Caldwell, Idaho. Tr., pp. 17, 36.

5. Dakan Funeral Chapel's upstairs apartment had not been occupied for several years prior to October 2004. No employee was obligated to reside in the apartment. Tr., p. 66.

6. Claimant accepted the job with Employer and signed an employment contract. The contract did not mention the apartment. Claimant was not assigned income for the use of the apartment, nor did she pay rent. Tr., pp. 33, 66. Claimant was not required to reside in the apartment nor was she required to live within a certain proximity from the funeral home. Tr., p. 82.

7. Claimant began working for Employer in Idaho on November 1, 2004. She worked selling prepaid funeral plans and resided in the upstairs apartment that Mr. Beverlin offered to her. The sales position Claimant held paid a straight sales commission. Claimant did not have a set number of hours she had to work per day, nor set office hours. Tr., p. 86.

8. Sunday, January 2, 2005 was Claimant's day off of work. She had no cold calls or sales scheduled for that day. Tr., p. 38. Claimant woke up that morning, dressed, and spent 15 minutes filing prearranged funeral plans downstairs. Claimant then walked from the upstairs apartment to her car. Claimant was going to the gym to participate in an indoor cycling class for her own enjoyment and pleasure. On the way to her car, Claimant slipped on ice, fell, and broke her ankle. Tr., p. 23.

9. Claimant immediately called Lisa Kerrick, another employee of Dakan Funeral Chapel, to assist her. Claimant sat down and packed her ankle with ice and snow while she

waited for Ms. Kerrick to arrive. Tr., p. 24.

10. Ms. Kerrick took Claimant to West Valley Regional Medical Center. Claimant was seen by Robert Hansen, M.D., who diagnosed a right ankle fracture. The same day, Dr. Hansen performed surgery on Claimant's ankle. Defendants' Ex. 2. Claimant returned to light duty work on February 7, 2005 and resumed her previous position. Tr., p. 40.

11. In the spring of 2005, while still working for Employer, Claimant moved out of the apartment above the Dakan Funeral Chapel. Claimant's pay did not increase because she found her own apartment. Claimant did not receive any additional housing allotment when she found her own apartment. Tr., p. 91. In May of 2006, Claimant left her employment with Dakan Funeral Chapel. Tr., p. 40.

DISCUSSION

12. The provisions of the Workers' Compensation Law are to be liberally construed *in favor* of the employee. *Sprague v. Caldwell Transportation, Inc.*, 116 Idaho 720, 721, 779 P.2d 395, 396 (1989). The humane purposes which it serves leaves no room for narrow, technical construction. *Ogden v. Thompson*, 128 Idaho 87, 88, 910 P.2d 759, 760 (1966). Facts, however, need not be construed liberally in favor of the worker when evidence is conflicting. *Aldrich v. Lamb-Weston, Inc.*, 122 Idaho 361, 363, 834 P.2d 878, 880 (1992).

The bunkhouse rule

13. Claimant first argues that she is entitled to compensation because she suffered an accident and injury in the scope and course of her employment, pursuant to the bunkhouse rule.

14. While Idaho has not made extensive use of the bunkhouse rule, the Idaho Supreme Court set forth the rule in *Totton v. Long Lake Lumber Co.* "The general rule under

the authorities is that when the contract of employment contemplates that the employee shall sleep upon the premises of the employer, the employee under such circumstances is considered to be performing services growing out of and incidental to such employment during the time he is on the premises of the employer.” *Totton v. Long Lake Lumber Co.*, 61 Idaho 74, 80, 97 P.2d 596, 598 (1939) (citing *Holt Lumber Co. v. Industrial Commission*, 168 Wis. 381, 170 N.W. 366, 367 (1919)) (citations omitted).

15. In *Totton*, the Idaho Supreme Court allowed benefits to a worker who was hurt when he fell out of the upper bunk of a double-decker bed. The employer in *Totton* maintained a camp about twenty-five miles northwest of Sandpoint, Idaho. It is also important to note that the year was 1938. There were no other rooming accommodations within a radius of twenty to twenty-five miles, and the employees accepting the facilities were charged \$1.30 a day for the accommodations. *Id.* at 76, 97 P.2d at 597. The Court found that the circumstances of the injured worker’s employment made it necessary for him to occupy the bunk which his employer furnished him, pursuant to his employment agreement. Therefore, his injury, falling from the bunk, arose out of and in the course of his employment and he was entitled to compensation. *Id.* at 80, 97 P.2d at 598.

16. The bunkhouse rule is a method of proving that an accident arose out of and occurred in the course of employment. As stated in *Totton*, the general rule applies when the contract of employment contemplates the employee sleeping on the premises. In the present case, Claimant’s employment contract did not require that she sleep on the premises. Claimant’s position as a sales representative was not contingent on her ability to reside on Employer’s premises, nor was she required to live nearby. Claimant was not on call, nor was Employer’s place of business located in such a remote or secluded location that Claimant

could not find other housing. The use of the apartment was a personal convenience for Claimant, but it was not demanded by the terms of her employment.

17. The Commission finds that Claimant was not required to live on Employer's premises, either by the contract of employment, or by the nature of the employment. Therefore, the bunkhouse rule does not apply to Claimant's circumstances.

Arising out of and in the course of employment

18. Claimant further argues that under the standard analysis, she suffered an accident and injury arising out of and in the course of employment.

19. Injury is defined as a personal injury caused by an accident arising out of and in the course of employment. Idaho Code § 72-102(18)(a). Accident means an unexpected, undesigned, and unlooked for mishap, or untoward event, connected with the industry in which it occurs causing an injury. Idaho Code § 72-102(18)(b). A claimant bears the burden of establishing, by a preponderance of the evidence, that an accident occurred within the course and scope of employment. *Painter v. Potlatch Corp.*, 138 Idaho 309, 63 P.3d 435 (2003).

20. The Idaho Supreme Court has said that proving an injury was caused by an accident arising out of and in the course of any employment is a two prong test. An employee incurs an accident in the course of employment, "if the worker is doing the duty that the worker is employed to perform." *Kessler ex. rel. Kessler v. Payette County*, 129 Idaho 855, 859, 934 P.2d 28, 32 (1997). "An injury is considered to arise out of employment when a causal connection exists between the circumstances under which the work must be performed and the injury of which claimant complains." *Id.* at 860, 934 P.2d at 33.

21. Claimant argues that she suffered an accident arising out of and in the course

of her employment when she left the upstairs apartment where she was living, located on Employer's premises, and slipped on some ice on the way to her car. Defendants contend that Claimant's accident and injury did not arise out of and in the course of her employment because Claimant's residence at Employer's premises was permitted but not required, and Claimant's activities at the time of the accident had nothing to do with her employment.

22. Claimant also argues that because the accident occurred on Employer's premises, a presumption arises that the accident arose out of and in the course of employment. The fact that an injury occurs on the employer's premises is not an exclusive test for compensability, but rather is only one factor to be considered. *Dinius v. Loving Care and More, Inc.*, 133 Idaho 572, 575, 990 P.2d 738, 704 (1999).

23. There is no dispute that Claimant's accident occurred on Employer's premises. The record indicates that Claimant left the apartment on a Sunday to go to the gym for personal reasons. The accident did not take place during a workday, and it did not take place while Claimant was reasonably fulfilling the duties of employment. Claimant was walking out to her car, on her day off, to attend an indoor cycling class at her gym. The Commission finds that Claimant's accident did not arise in the course of her employment. The accident and subsequent injuries sustained by Claimant were the result of a factor personal to Claimant and were not causally related to her employment.

24. Claimant also avers that Claimant's accident is compensable pursuant to an exception to the going and coming rule. The going and coming rule states that an employee is not in the course of employment while traveling to and from work unless an exception applies. *Clark v. Daniel Morine Construction Co.*, 98 Idaho 114, 559 P.2d 293 (1977). The exceptions to this rule, that Claimant argues apply to her situation and make her claim

compensable, are where an employee is utilizing the only means of ingress or egress and where the employee is injured on the employer's premises. *Pitkin v. Western Construction*, 112 Idaho 506, 507, 733 P.2d 727 (1987).

25. As discussed above, Claimant's residence at Employer's apartment was not required and the accident occurred on her day off. Claimant was not performing her job, she was going to the gym. The going and coming rule is not applicable in the present case, because Claimant was not traveling to or from work. Claimant was leaving her residence and going to attend a personal event.

CONCLUSIONS OF LAW

1. Claimant established that she was injured on Employer's premises, but she failed to prove the accident and injury arose out of and in the course of her employment. As such, Claimant is not entitled to compensation from Defendants for her injuries.

2. The remaining issues are moot.

ORDER

Based on the foregoing, IT IS HEREBY ORDERED That:

1. Claimant failed to prove she suffered an accident and injury arising out of and in the course of employment.

2. The remaining issues are moot.

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

DATED this ___12th___ day of ___April_____, 2007.

INDUSTRIAL COMMISSION

/s/ _____
James F. Kile, Chairman

/s/ R.D. Maynard, Commissioner

/s/ Thomas E. Limbaugh, Commissioner

ATTEST:

/s/ Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of April, 2007, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS, AND ORDER** was served by regular United States Mail upon each of the following:

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sjt

/s/