



he is entitled in Florida, and if so, whether Surety is responsible for arranging for reasonably necessary medical care, including such financial arrangements as might be required for payment; and,

3. Whether Claimant is entitled to attorney fees pursuant to Idaho Code § 72-804 for Defendants' wrongful denial of reasonably necessary medical care.

### **CONTENTIONS OF THE PARTIES**

Claimant, who moved to Florida following his industrial accident, asserts he is entitled to additional reimbursement from Surety for travel expenses incurred during three trips to Boise for medical care and/or evaluations. In addition, it is Surety's responsibility to find him physicians in Florida, and provide treatment in both Boise and Florida. Given his incapacitation, Surety has a heightened responsibility to provide him special protections and assistance. Lastly, Surety unreasonably denied and delayed medical care and Claimant should be awarded attorney fees.

Defendants contend they have paid all necessary travel expenses for Claimant's trips to Boise and taken all reasonable and necessary steps to provide appropriate medical care. Claimant can receive the treatment he requires near his home and does not need to travel to Boise to receive care. It is Claimant's own abusive and inappropriate behavior that has impeded his ability to obtain medical treatment. Defendants have not unreasonably denied or delayed any medical treatment and Claimant is not entitled to attorney fees.

### **EVIDENCE CONSIDERED**

The record in the present matter consists of the following:

1. The hearing testimony of Claimant, Jasen Carrier, Dawn Best, Paulette Boyle, Hollie Kurtz, Deborah Coursey, Julie Cooper, and Vicki Baer;

2. Joint Exhibits 1 through 9 admitted at hearing and in post-hearing proceedings<sup>1</sup> and Claimant's Exhibit A admitted at hearing; and,

3. The post-hearing depositions of Barbara F.<sup>2</sup> taken on March 2, 2006, Dominic Gross, M.D., taken on April 18, 2006, and Alexander Jungreis, M.D., taken on April 21, 2006.

After considering all of the evidence and arguments of the parties, the Referee submits the following Findings of Fact and Conclusions of Law for review by the Commission.

### **FINDINGS OF FACT**

1. At the time of hearing, Claimant was approximately<sup>3</sup> 60 years of age. On May 7, 2002, he sustained multiple injuries, including but not limited to facial, rib, scapular, and upper and lower extremity fractures, and liver laceration, resulting from a motor vehicle accident while working as a long haul truck driver for Employer. He went by Life Flight to Magic Valley Regional Medical Center and then to St. Alphonsus Regional Medical Center's (SARMC) trauma center. Life Flight records describe a large, scalping-type laceration to the top of his head with the initial impact point appearing to be just above the bridge of his nose, and notable complaints of back and right wrist pain. By the time he reached SARMC, Claimant was agitated, nearly combative, and wanted to get off the backboard and pull off his neck collar; he had to be intubated shortly after arriving.

2. While at SARMC, Claimant received evaluation and care from several physicians, including orthopedic surgeons Ronald Kristensen, M.D., and Dominic Gross, M.D. During his initial evaluation, Dr. Kristensen identified the following orthopedic issues: fracture/dislocation of the right wrist; possible ulnar styloid of the left wrist; first metacarpal

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<sup>1</sup> The parties agreed at hearing to leave the record open for the inclusion of certain additional medical records.

<sup>2</sup> This deponent requested that her last name not be provided. No objection was made to the request.

<sup>3</sup> The record is replete with different dates of birth and ages for Claimant.

fracture on the right; questionable dislocation of left proximal interphalangeal joint of the hand; and, pronated right tibial plateau fracture. Dr. Kristensen planned to surgically address the right knee (tibial plateau) injury and Dr. Gross, the consulting hand surgeon, described the right hand/wrist injuries (distal radius, ulnar styloid, and right thumb fractures) as severe. Dr. Gross recommended surgery and noted a “[v]ery high risk for arthritis, painful stiff wrist, and limited range of motion.” Exhibit 9, p. 561.

3. On May 10, 2002, Claimant underwent surgery on his right knee (open reduction and internal fixation of right tibial plateau using femoral distractor and four-hole AOT plate) and right hand/wrist (open reduction and internal fixation of distal radius fracture with bone grafting and plate and screws; open reduction and internal fixation of ulnar styloid fracture; and, pinning of right thumb metacarpal fracture). Dr. Gross noted the wrist might later need to be fused.

4. Following surgery, Claimant was noted to have some confusion and, on May 15, Rodde Cox, M.D., examined him. Dr. Cox assessed a closed head injury with a period of amnesia following the accident. He noted Claimant was “a bit odd” and had decreased self-care skills. He concluded Claimant would likely need inpatient rehabilitation once cleared medically. Subsequent records noted the possibility of a traumatic brain injury, while others indicate Claimant sustained a skull fracture but no brain injury<sup>4</sup>.

5. On May 16, 2002, Claimant underwent surgery to address his facial fractures and scalp laceration. This involved the placement of plates and screws and was noted to involve multiple plastic surgery procedures by Mark Wigod, M.D.

6. On May 22, 2002, Claimant was transferred to inpatient rehabilitation under the

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<sup>4</sup> CT scans on May 7, 2002 (two scans – one at Magic Valley RMC and one at SARMC) and July 1, 2002, showed no evidence of acute intracranial hemorrhage, parenchymal contusions, brain swelling, or other acute intracranial abnormality.

primary supervision of Dr. Cox. Rehabilitation Team notes describe Claimant as initially non-compliant and then cooperative at times, but angry at other times. Nonetheless, when he was discharged on June 5, hospital records describe his wounds as healing well and his cognitive functioning likely back to baseline. He was released to the home of an acquaintance since he had no family in the area. He received home health visits for two weeks and further non-compliant behavior was noted.

7. In mid-June, Claimant moved to a hotel due to dissatisfaction with his living situation. He continued to follow up with Drs. Kristensen and Gross and also received assessment by a social worker. Based on the social worker's recommendations, Surety paid for Claimant's lodging since he had no other acceptable living arrangements and planned to live out of his van. The social worker noted Claimant's plan was "not appropriate for many reasons but in the least puts him at great risk for medical complications." Ex. 9, p. 619. Claimant had to change hotels at least once to find one that allowed his dog to stay with him.

8. In July, Claimant moved to the Missoula, Montana area to be near family. He received medical treatment in Montana and also returned to Boise to receive follow-up evaluations with Drs. Kristensen and Gross. Surety helped Claimant find medical providers in Missoula and paid for the medical bills incurred in both locations. It also paid travel expenses for Claimant to return to Boise for follow-up appointments. On at least one occasion, Claimant traveled by commercial aircraft during these trips. Also in July, Claimant retained an attorney (Attorney Greenfield) to represent him in his workers' compensation claim.

9. On or about August 29, 2002, Dr. Gross requested authorization for surgery to fuse Claimant's right wrist, remove hardware and perform an iliac crest graft. Surety authorized the surgery on September 4. Also on August 29, Dr. Kristensen released Claimant from care for

his right knee but noted he was at risk for development of arthritis.

10. On October 1, 2002, Mark Rotar, M.D., of Missoula, examined Claimant and recommended right wrist fusion and additional tests to assess Claimant's right shoulder, left knee, low back, and cervical spine pain and headaches. He noted Claimant's intentions were to have his ongoing medical care provided in Montana. Surety gave authorization for MRIs and referrals to be made by Dr. Rotar to address these issues.

11. On referral by Dr. Rotar, Claimant saw P.A. Puckett, M.D., on October 23, to examine his right wrist. Dr. Puckett described Claimant as flustered, animated, and needing counseling to cool down. He agreed Claimant's wrist should be fused, but felt Claimant needed to quit smoking first. Claimant did not complete scheduled MRIs because of discomfort.

12. On October 28, 2002, Dr. Rotar noted the following:

I spoke with Ms. Hertz [*sic*] today about Lee Jones. I explained to her that he was quite difficult to deal with when he was in Dr. Puckett's office the other day, and she understands that. I guess he has acted that way in the past. I also told her that I had spoken with him yesterday, and I agree that he needs some pain medicine perhaps for his MRI because he simply cannot lay still long enough to do that. I gave him a prescription yesterday for Lortab 6 tablets and Valium 6 tablets and he can take one of each before his MRIs and perhaps 1 after if needed. I talked with her about the nicotine patches. It was his understanding that those had not been approved, whereas she actually had approved these several days before. I think one of the problems with Mr. Jones may be that if he is disruptive and abusive in the physician's offices, it may very well be that no one will opt to take care of him.

Exhibit 9, p. 669. On October 29, 2002, Claimant altered the prescription written by Dr. Rotar, adding zeros to the 6 Valium and 6 Lortab for a total of 60 each. As a result, Drs. Rotar and Puckett indicated they would no longer treat Claimant.

13. Thereafter, Claimant decided to pursue settlement of his claim and declined further treatment. From November 8 to December 20, 2002, Surety paid travel and lodging to have Claimant evaluated in Boise by his treating physicians to determine his medical status,

future medical needs, and permanent partial impairment. He saw Drs. Gross, Kristensen, and Cox, and psychologist Robert Calhoun, Ph.D.

14. Dr. Gross' examination notes indicated Claimant would benefit from the right wrist fusion as well as subacromial decompression and evaluation of his rotator cuff on the right. He concluded Claimant had reached maximum medical improvement since he declined further surgery. Dr. Gross provided restrictions and impairment ratings for Claimant's right upper extremity injuries. He also wrote, "He is pursuing lawsuits against the hospital and treating physicians, which is what he said to me before he left the office." *Id.* at 674.

15. Dr. Kristensen described good resolution of right leg issues with the possibility of hardware removal in the future if Claimant wanted it. He provided restrictions and an impairment rating for Claimant's right knee injury. Regarding Claimant's left knee complaints, Dr. Kristensen identified posterior sag that suggested a posterior cruciate ligament injury. He noted such injuries are generally treated conservatively and it appeared Claimant was adamant about not having additional surgeries anyhow. According to Dr. Kristensen's notes, Claimant told him he had obtained an attorney and wanted to sue everybody.

16. Dr. Cox listed a multitude of complaints including chronic headaches, cognitive difficulties, right shoulder and upper extremity pain, and bilateral lower extremity pain. Dr. Cox provided impairment ratings for Claimant's facial scar, metatarsal fracture, and right tibial plateau fracture. Given Claimant's left knee complaints, he requested a left knee MRI, which showed a diffuse tear of the posterior cruciate ligament. He also requested a formal neuropsychology evaluation to determine the extent of any neurocognitive impairment.

17. Dr. Calhoun, who had also treated Claimant at SARMC, provided the neuropsychology evaluation. He noted in pertinent part:

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Emotionally, Mr. Jones states he is having difficulty accepting his physical limitations. Mr. Jones stated he is not interested in further medical or physical therapy treatment. Regarding the treatment thus far, Mr. Jones stated, "I have a bad taste in my mouth." Mr. Jones expressed anger towards Dr. Kristensen and Gross stating they did not tell him his left leg was "messed up" as well as his right shoulder. Mr. Jones stated that he was disgruntled with his worker's compensation carrier. Mr. Jones states that he does need to use a walker for ambulation. He states he is not open to any further invasive medical procedure of any kind.

*Id.* at 683. Dr. Calhoun's "Clinical Synthesis" and "Considerations/Recommendations" at pp. 691-692 of the exhibits, while too long to include here, provide helpful and credible insight into Claimant's psychological issues. Dr. Calhoun concluded Claimant's "schizoid personality, anger, hostility, depression, somatization tendencies, and heightened anxiety continue to impact him functionally in terms of interfering with his ability to rehabilitate maximally," and, he "shows antisocial personality trends which has [*sic*] resulted in some aberrant behavior over the course of his medical care, which will also make it difficult for him to remain maximally motivated and honest if further medical treatment were provided." *Id.* at 692. Dr. Calhoun provided an impairment rating of 25% of the whole person for mental and behavioral disorders, 18% of which was apportioned to his pre-existing schizoid personality and 7% of which was due to ongoing depression and anxiety related to the industrial accident. He opined further invasive medical procedures should be avoided unless emergent.

18. In a December 19, 2002 letter to Surety, Attorney Greenfield described his understanding of Claimant's benefit status: "With Dr. Calhoun's examination tomorrow, Mr. Jones TTD will come to an end. Moreover, it is my understanding that the State Insurance Fund will no longer be covering his living expenses as of tomorrow." Exhibit 5, p. 135. Surety then provided Claimant with at least two advances to be taken out of the final settlement amount.

19. On February 21, 2003, Claimant settled his claim, with future medical benefits

remaining open<sup>5</sup>, for \$103,500.00. He then moved to Florida to live with his deceased brother's wife, Carolyn. Surety's claims notepad shows no further contacts on the claim until June 2003.

20. In June 2003, Claimant began seeing a physician in Florida (Dr. McKay). Dr. McKay's office and Surety communicated back and forth on several occasions until mid-July when, according to Claimant, he "fired" Dr. McKay.

21. From July 2003 through March 2004, Claimant and Surety maintained consistent contact by telephone. During his calls with Surety representatives, Claimant was usually noted to be angry, loud and verbally abusive. Surety also maintained consistent contact with Claimant's medical providers. In late July, Surety found Claimant a new treating physician in Florida, pain management specialist Alexander Jungreis, M.D. Surety also authorized a pain program, cervical facet injections, a neurosurgical consultation, and new dentures, among other things. Surety's claims notepad entries during this time also show the following notable events:

- In August, Claimant, without his attorney, made Surety an offer to settle the medical portion of his claim and "waive" the Medicare set-aside. In light of this, Attorney Greenfield clarified he no longer represented Claimant and warned against such a settlement.

- In December, Claimant told a Surety representative he was coming to Idaho in January to "get what he deserves," and "heads are going to roll." Exhibit 3, p. 72. Claimant did not show up in January; he started driving but the weather was too bad and he turned back.

- In January, Claimant indicated he had a flight to come to Boise on February 15 and Surety better be ready to talk; he needed four surgeries and Surety better take care of it. Claimant did not show up in February.

- In March, Claimant went to the dentist in Florida to have his dentures fitted. He

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<sup>5</sup> Apparently, Medicare set-aside issues played a significant role in the decision to leave medical benefits open.

became angry and walked out during the examination. The dentist's office returned the check Surety sent for the dentures and noted it would not reset the appointment.

22. On April 22, 2004, Claimant appeared at Surety's office in Boise stating he wanted to be fixed and demanding mileage reimbursement. In response, Surety's claims examiner called Dr. Kristensen's office, advised Claimant was in town, and authorized treatment. "Doris" at Boise Orthopedic Clinic said Dr. Kristensen would see Claimant for hardware removal and will have Claimant's other physical problems addressed as well. Exhibit 3, p. 76.

23. On April 23, 2004, Surety received a call from an Industrial Commission compensation consultant and the following conversation ensued:

[Entry from Surety's claims notepad] Spoke with Sharon DeLanoy at IC. Clmt is at her office stating that he needs further treatment for his injuries. Sharon reviewed her file and noted that clmt settled the disability portion of claim and left meds open. I explained that was ture [sic] and I met with clmt in our office yesterday morning. I explained to clmt that I would contact Dr. Kristensen's office to give them a heads up about clmt needing further treatment. Kristensen's office asked that clmt call and schedule an appt. I explained that clmt was supposed to stop by our office yesterday afternoon to obtain this info, but failed to do so. Sharon understood and will tell clmt to call Dr. Kristensen's office to schedule an appt. Sharon asked if we were paying mileage to and from Florida for clmt's treatment. I explained that if it is determined that further treatment is needed, we will fly clmt to Boise from Florida. We will not pay mileage to and from Florida. Sharon understood and will notify clmt to contact Boise Ortho at 323-2600 to schedule an appt with Dr. Kristensen.

Exhibit 3, p. 77. Later that same day, the claims examiner spoke with Claimant's then prospective attorney (Attorney Rose) and again advised that Claimant needed to make an appointment with Dr. Kristensen. As to whether or not Surety would pay Claimant's lodging, the examiner explained, "at this point, we would like to see clmt schedule an appt with Dr. Kristensen and if he follows through with that, we can examine the possibility of providing lodging if clmt will be here for the extent of treatment." *Id.* Claimant did not make appointments or follow up. He did, however, retain his present attorney, and returned to Florida.

24. On May 11, 2004, Surety received a call from Dr. Jungreis' office indicating Claimant had continually been verbally abusive to staff and had recently assaulted a pharmacist when she refused to provide him with medication. This incident had occurred just prior to Claimant's trip to Boise and, in a letter dated April 21, 2004, Dr. Jungreis terminated treatment.

25. In April and May 2004, Attorney Rose and Surety's claims examiner discussed the possibility of settling the medical portion of Claimant's claim. Surety agreed to have Claimant evaluated by physicians of his choice in Boise to determine his medical needs and cost of future care. It also agreed to pay travel expenses "provided that the visits are completed within a reasonable timeframe."<sup>6</sup> Claimant was scheduled to arrive in July and Surety offered to pay the cost of a flight for him to come to Boise (\$385.00 roundtrip). Claimant insisted on driving, indicating he was afraid to fly, and demanded full mileage reimbursement plus three days and two nights lodging and meals each way (\$2,400.00 roundtrip). Ultimately, the parties reached an interim compromise that exceeded the cost of a flight, but was less than full mileage; Claimant reserved the right to raise the issue at a later date.

26. From July 12 through August 19, 2004, Claimant attended numerous medical evaluations in Boise. He also received new dentures. Of particular note, Claimant saw D. Peter Reedy, M.D., a physician he had selected for neurosurgical consultation related to his cervical and lumbar spine. Dr. Reedy explained he had good news and bad news for Claimant:

The good news in my opinion is that surgical intervention is not going to be necessary for him. The bad news is unfortunately I do not have any magic answer for his back and neck pain. He became fairly unhappy with that answer and even quite hostile again and even said that he knows the pain is coming from his neck and back and that even if the surgery got rid of even 25-50% of it, he would need less pain medication and be happy with his results. I told him that unfortunately I cannot guarantee that he will get any benefit from surgery and never mind 25-50%. He started on the litany on his other aches and pains and complaints with

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<sup>6</sup> The timeframe discussed was 2 weeks.

attorneys, worker's comp, doctors etc etc and I told him I really can't answer those issues for him. He basically stood up very angry and stormed out of the office saying there was no sense for him to move to Idaho since nobody is going to help him anyway!!

I tried to explain to him that there are other treatment forms besides surgery but he was really not in any mood to listen to it. As he finally left, I told him that he is certainly entitled to get another opinion if he likes and I told him I am quite certain that he can get an operation on his spine if he asks around long enough.

Exhibit 9, p. 812.

27. As Claimant's evaluations progressed, treatment options emerged and Claimant requested Surety provide a primary treating physician in Boise. Surety described its position on paying further living expenses beyond the authorized evaluation period:

I explained to [Attorney Rose] that we brought clmt. up here to determine where he's at medically and to determine what type of treatment was necessary at the current time for Mr. Jones. SIF doesn't have a preference where clmt. is going to treat. If Clmt. goes home with the medical recommendations from here and treat in Florida, we'll work with that. If clmt. decides to treat in Idaho, we're not going to continue to pay for lodging/meals/travel to stay in Idaho to treat; since he lives in Florida. [Attorney Rose] indicated I was denying treatment to the clmt. I advised [Attorney Rose] I wasn't denying treatment, we are just having him evaluated by numerous physicians at this point and then we'll go from there. But clmt. needs to decide if he's going to stay in Florida and continue to treat and [sic] move to Idaho to treat. But we're not going to pay to have clmt. live here during any treatment.

Exhibit 3, p. 87. Claimant returned to Florida on or about August 20, 2004.

28. After August 2004, communications between Claimant and Surety became sporadic. In January 2005, Attorney Rose notified Surety Claimant would be "back in Boise this May" for treatment and requested pre-authorization of the treatment. Exhibit 5, p. 292. Surety responded by letter on February 7, 2005, indicating it would authorize requested treatment for Claimant's leg, hands and wrists and he could receive it in Florida, or if he planned to be in Boise, he could receive it in Boise. Surety unequivocally declined to pay for Claimant's travel from Florida to Idaho, or for meals and lodging while in Idaho for treatment.

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29. Attorney Rose responded by letter on February 10, 2005, stating that Surety “will pay for [Claimant’s] mileage, lodging, and meals, as well as any other medical expenses related to his treatment in Idaho for his industrial injuries in accordance with Idaho statutes whether it agrees to or not.” *Id.* at 295. Attorney Rose cited three reasons for Claimant seeking treatment in Idaho: Drs. Kristensen and Lamey<sup>7</sup> are his treating physicians; Florida physicians are not interested in taking out of state workers’ compensation patients; and, even if Florida physicians were interested in taking such patients, they would require payment in advance, which Surety will not do. Claimant filed the present Complaint shortly thereafter.

30. In April 2005, Claimant underwent an anterior cervical discectomy and fusion at C5-6 in Florida. Medicare paid the associated expenses and it does not appear that Claimant notified Surety prior to receiving the treatment. Subsequent medical records describe ongoing complaints of severe neck, shoulder, head, and bilateral upper extremity pain, with Claimant rating his pain level at 9 and 10 out of 10 (with 10 being “pain as bad as could be”). Exhibit 9, p. 831. Claimant did not come to Boise in May 2005.

31. Claimant drove to Boise in early October 2005. He began receiving care from Drs. Gross and Kristensen, as well as other physicians. On October 25, Dr. Kristensen discontinued his treatment of Claimant due to “inappropriate conduct” at the clinic that led to the office manager requesting a security officer. *Id.* at 844.

32. As of the final hearing date in this matter, Claimant was still in Boise and had undergone several surgical procedures, most of which were performed by Dr. Gross and all of which Surety authorized and paid.

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<sup>7</sup> Dr. Lamey had seen Claimant for a second opinion in August 2002. When Surety scheduled an appointment with him at Claimant’s request for the July 2004 trip to Boise, Dr. Lamey cancelled the appointment indicating he had already given his opinion and did not want to assume treatment of Claimant.

33. It is difficult to find medical providers in Florida who will accept patients covered by out-of-state workers' compensation insurance.

### **DISCUSSION AND FURTHER FINDINGS**

**Medical Treatment and Related Benefits.** An employer shall provide for an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital service, medicines, crutches and apparatus, as may be required by the employee's physician or needed immediately after an injury, and for a reasonable time thereafter. If the employer fails to provide the same, the injured employee may do so at the expense of the employer. Idaho Code § 72-432(1). It is for the physician, not the Commission, to decide whether the treatment was required. The only review the Commission is entitled to make of the physician's decision is whether the treatment was reasonable. Sprague v. Caldwell Transportation, Inc., 116 Idaho 720, 779 P.2d 395 (1989).

An injured employee shall be reimbursed for his expenses of necessary travel in obtaining medical care under this section. Reimbursement for transportation expenses, if the employee utilizes a private vehicle, shall be at the mileage rate allowed by the state board of examiners for state employees; provided however, that the employee shall not be reimbursed for the first fifteen (15) miles of any round trip, nor for traveling any round trip of fifteen (15) miles or less. Such distance shall be calculated by the shortest practical route of travel. Idaho Code § 72-432(13).

An employee who leaves the locality where employed at the time of the industrial accident, or the locality in which the employee is currently receiving medical treatment for the injury, shall give timely notice to the employer and surety of the employee's leaving the locality. The employer or surety may require the claimant to report to the treating physician for

examination prior to leaving the locality, if practical. If an examination by the treating physician is not practical prior to leaving the locality, the employer or surety may assist in arranging an examination by an appropriate physician in the new locality. After receiving notice of relocation, the employer or surety shall have the same responsibility to furnish care as set forth in subsection (1) of this section. Idaho Code § 72-432(14).

After an injury and during the period of disability the employee, if requested by the employer or ordered by the commission, shall submit himself for examination at reasonable times and places to a duly qualified physician or surgeon. The employee shall be reimbursed for his expenses of necessary travel and subsistence in submitting himself for any such examination and for loss of wages, if any. Idaho Code § 72-433(1).

1. Travel expenses.

Claimant contends he is entitled to additional reimbursement from Surety for travel to and from Boise in April 2004, July/August 2004, and October 2005 (with indefinite departure). Surety alleges it has paid all necessary expenses, and then some. The Referee finds Claimant is not entitled to further reimbursement.

a. April 2004. There is no evidence Claimant actually sought or received medical treatment in Boise in April 2004, despite Surety authorizing it and informing him he needed to make an appointment. He is not entitled to any travel reimbursement for his trip.

b. July/August 2004. Prior to his arrival in July 2004, Surety agreed to bring Claimant to Boise and have him evaluated by physicians of his choice to review his medical status and needs. Surety offered to pay for a flight for Claimant or reimburse him the cost of a flight, but Claimant chose to drive. Claimant now requests the Commission order Defendants to pay full mileage, lodging, and meals for his cross-country trek from Florida to Idaho, and back again – a trip that

took at least three days each way; a trip that would have taken several hours each way by plane. Claimant asserts he is afraid to fly and it is uncomfortable and extremely painful for him.

Under Idaho's workers' compensation law, the standard for what an employer/surety must provide in the realm of medical benefits is what is "reasonable." In that vein, Claimant is only entitled to payment of expenses of necessary (not most comfortable and/or most personally convenient) travel in obtaining medical care. Just as a claimant cannot demand an employer/surety provide treatment at the Mayo Clinic because he thinks it offers the best medical care (*see* Koegler v. C.F. Davidson Co., 69 Idaho 416, 209 P.2d 728 (1949)) or demand payment for personal items or extended medical services to accommodate personal convenience (*see* Idaho Code § 72-432(7)), a claimant cannot demand an employer/surety pay the most expensive, least practical means of travel to obtain medical care, absent a showing of necessity.

Claimant failed to present any medical opinion that would establish his inability to travel by plane. Moreover, Dr. Gross testified he did not see a reason why Claimant could not travel by plane and Dr. Jungreis testified that, in Claimant's case, it would be a "completely self-limiting phenomenon." Jungreis depo., p. 11. Claimant has traveled by plane at least once during this case in July 2002. Following his flight from Montana to Boise on July 24, 2002, Claimant met with Attorney Greenfield the same day he arrived, bringing in travel receipts. He then saw Dr. Gross the morning of July 25 and Dr. Kristensen that afternoon. Nothing in the accompanying records suggests difficulties with the flight or an inability to function due to increased pain or discomfort.<sup>8</sup>

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<sup>8</sup> In an affidavit signed July 16, 2004, Claimant stated that, when he "attempted a short flight from Montana to Idaho," he had to "spend eight days in bed recovering from the flight." Exhibit 5, p. 252.

Lastly, it appears to this Referee that Surety essentially volunteered to bring Claimant, at his request, to Boise and have him evaluated by physicians of his choice. This scenario does not necessarily reflect either Surety requested examinations or necessary medical care in Boise (i.e., medical care required/requested by a treating physician) and a strong argument can be made that Surety, absent its offer to do so, did not have to pay Claimant's travel expenses at all. Regardless, Surety has already paid reasonable travel expenses for Claimant's trip, and he is not entitled to further reimbursement based on his personal decision to drive.

c. October 2005, and thereafter. In January 2005, Claimant advised Surety he would be in Boise later that year seeking medical care and requested pre-authorization for treatment. Surety authorized treatment and indicated Claimant could get it in Florida or Boise, wherever he chose, but declined to pay travel expenses to Boise. Undeterred, Claimant drove 2,600 miles in October 2005, checked into a hotel, and has remained in Boise indefinitely while receiving treatment. He asserts Defendants should be responsible for his travel and living expenses.

At the time of injury, Claimant lived in Nampa, Idaho and worked for a company from the same city. After his lump sum settlement, Claimant voluntarily relocated to Florida, where he has lived since 2003. Given his long-term relocation, it is nothing but absurd for Claimant to keep returning to Boise for medical treatment, particularly if he insists on driving. In light of the serious and ongoing nature of his injuries and treatment, his medical care needs to be obtained where he resides (or at least much closer than Boise, Idaho<sup>9</sup>).

Given the nonsensical proposition of a 2,600 mile drive (one way) to see a physician, the Referee cannot find Claimant's travel to Boise for medical care "necessary" in any sense of the word. The treatment sought is not provided exclusively in Boise and, in fact, orthopedic

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<sup>9</sup> It begs the question: what about Georgia?

surgeons throughout the country routinely perform shoulder decompressions, wrist fusions, and hardware removal. While the evidence does, as asserted by Claimant, show that Florida physicians generally decline to treat out-of-state workers' compensation patients, Claimant himself found one that he "fired," and Surety found one for him who terminated treatment based on Claimant's abusive behavior. Claimant bemoans his "catch-22" situation, but fails to acknowledge that his plight stems in large part from his own decisions and behaviors following his truly tragic industrial accident. Claimant is certainly entitled to reasonable and necessary medical treatment, but Surety is not responsible for his travel to Boise to obtain that care.

d. Cost of "Caregiver." On at least one trip to Boise, Carolyn accompanied Claimant. He contends she was a necessary caregiver and seeks to have her travel expenses paid by Surety. Even if Carolyn qualified as a caregiver or "attendant" (see § 72-432(3)), there is no medical requirement for such an individual to attend to and/or accompany Claimant. He is not entitled to reimbursement for her travel expenses.

## 2. Medical treatment in Florida.

The parties pose the issue of whether Defendants can require Claimant to receive his medical treatment in Florida. At the outset, the Referee notes that Defendants do not appear to be asserting such a requirement since they are presently paying for his medical treatment. As stated earlier, Claimant is entitled to reasonable and necessary medical care and such care, given its persistent and ongoing nature, needs to be found within reasonable proximity to his home. What is reasonable? Under the facts of this case, Claimant may have to drive several hours to another city in Florida, or in all seriousness it may be across the state line in Georgia. Claimant's decision to reside in Florida, or anywhere for that matter, is not within Defendants' control.

As for the associated travel, Defendants would be responsible to pay expenses of necessary travel in accordance with the law and commission regulations. And, in fact, that is precisely what Defendants did for nine months while Claimant saw Dr. Jungreis, whose office was a two-hour drive from his residence. Surety also took necessary steps, such as preauthorizing treatment as required by Dr. Jungreis' office, to ensure Claimant's continued receipt of services. If and when Claimant finds a physician close to home, Surety would similarly be required to take reasonable measures to provide Claimant with reasonable treatment.

Claimant argues it is Surety's responsibility to find him physicians in Florida. When a claimant relocates, employer or surety *may* assist in arranging an examination by an appropriate physician in the new locality. Idaho Code § 72-432(14), emphasis added. Defendants did so by finding Dr. Jungreis. Surety is not under an ongoing obligation to keep finding physicians as Claimant burns his bridges with inappropriate behavior. Despite the challenges of his personality disorder, the evidence suggests Claimant can control himself when he puts forth the effort. Surety remains responsible for paying for reasonable and necessary medical care and, as it has done in the past, taking reasonable and necessary steps to promote Claimant's ability to obtain such care. Their responsibility is not "heightened" because Claimant acts up.

Regarding Claimant's proposition that Surety has a heightened responsibility to him, the Referee notes that one example he gives is that he has a 5<sup>th</sup> grade education and cannot read or write and, as such, it was unreasonable for Surety to expect him to fill out travel reimbursement forms. However, long before this argument was ever made, Claimant had been filling out forms and had also written a rather lengthy letter to Surety without complaining of an inability to read or write. The complaints noted in the record suggest Claimant simply did not want the hassle of filling out the forms.

**Attorney Fees.** Attorney fees may be recovered for unreasonable denial, delay in payment, or discontinuance of benefits pursuant to Idaho Code § 72-804. Claimant seeks attorney fees for countless actions and inactions by Surety. However, after review, and re-review, of the almost 2000 pages in the record, the Referee can only conclude that Surety acted diligently and reasonably in handling this complex case. Unfortunately, Claimant sustained very serious injuries requiring extensive and ongoing care. Complicating matters are the facts that he moved to Florida and has continually engaged in inappropriate and abusive behavior. Nonetheless, with only a few exceptions, Surety provided all medical benefits Claimant requested and those that it did not provide were denied with reasonable basis. Moreover, Surety generally authorized treatment and services immediately or within days of a physician's request. When it took longer, Surety was usually awaiting medical documentation. Did Surety's representatives act flawlessly? No, but they did act reasonably, especially in light of the substantial challenges presented. Claimant is not entitled to attorney fees.

### **CONCLUSIONS OF LAW**

1. Claimant is not entitled to additional reimbursement for his previous trips to Idaho for medical care and/or evaluations. Claimant is entitled to reasonable and necessary medical treatment, but Surety is not responsible for his travel to Idaho to obtain that care.
2. Claimant is entitled to reasonable and necessary medical treatment and such treatment, given its persistent and ongoing nature, needs to be found within reasonable proximity to his home. Surety remains responsible for paying for reasonable and necessary medical care and taking reasonable and necessary steps to promote Claimant's ability to obtain such care.
3. Claimant is not entitled to attorney fees.



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

LEE JONES, )  
 )  
 Claimant, ) **IC 2002-508902**  
 )  
 v. )  
 )  
 STAR FALLS )  
 TRANSPORTATION, INC., )  
 )  
 Employer, )  
 ) **ORDER**  
 )  
 STATE INSURANCE FUND, )  
 )  
 Surety, ) April 12, 2007  
 )  
 Defendants. )  
 \_\_\_\_\_ )

Pursuant to Idaho Code § 72-717, Referee Lora Rainey Breen 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 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 is not entitled to additional reimbursement for his previous trips to Idaho for medical care and/or evaluations. Claimant is entitled to reasonable and necessary medical treatment, but Surety is not responsible for his travel to Idaho to obtain that care.
2. Claimant is entitled to reasonable and necessary medical treatment and such treatment, given its persistent and ongoing nature, needs to be found within reasonable proximity

to his home. Surety remains responsible for paying for reasonable and necessary medical care and taking reasonable and necessary steps to promote Claimant's ability to obtain such care.

3. Claimant is not entitled to attorney fees.

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

DATED this \_\_12\_\_ 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 12 day of April, 2007, a true and correct copy of the foregoing **Order** was served by regular United States Mail upon each of the following persons:

SCOTT ROSE  
300 W MAIN ST STE 153  
BOISE ID 83702

MAX M SHEILS JR  
P O BOX 388  
BOISE ID 83701

jkc

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