

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

CLYDE S. JESSOP,	)	
	)	
Claimant,	)	<b>IC 2005-006791</b>
	)	
v.	)	
	)	
DAVID A. JONES, dba,	)	<b>FINDINGS OF FACT,</b>
CENTENNIAL CARPET CLEANERS,	)	<b>CONCLUSIONS OF LAW,</b>
	)	<b>AND RECOMMENDATION</b>
	)	
Employer,	)	filed May 14, 2007
	)	
Defendant.	)	
_____	)	

**INTRODUCTION**

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Alan Taylor, who conducted a hearing in Boise on September 5, 2006. Claimant, Clyde S. Jessop, was present and represented by John F. Greenfield of Boise. Defendant Employer, David A. Jones, dba Centennial Carpet Cleaners (Employer), was present pro se. The parties presented oral and documentary evidence. This matter was then continued for a post-hearing deposition and the opportunity to file briefs. The parties waived briefing and the matter subsequently came under advisement on January 23, 2007.

**ISSUES**

As agreed by the parties, the issues to be resolved are:

1. Whether Claimant suffered an acute industrial injury by virtue of repetitive motion to the right upper extremity in the course and scope of his employment, which manifested when Claimant’s physician first diagnosed the injury and tied it to Claimant’s repetitive motion job on

May 11, 2005;

2. Whether, and to what extent, Claimant is entitled to medical benefits;
3. Whether Employer was insured for workers' compensation liability; and
4. Whether Employer is liable for penalties as set forth in Idaho Code § 72-210 for failing to insure workers' compensation liability.

### **ARGUMENTS OF THE PARTIES**

Claimant argued at hearing that he suffered an acute industrial injury in that his carpet cleaning work for Employer caused him to develop acute carpal tunnel syndrome in his right hand. At hearing Claimant also argued he is entitled to benefits because his carpal tunnel syndrome constitutes an acute occupational disease manifesting on May 11, 2005. He seeks medical benefits and the statutory penalties provided by Idaho Code § 72-210.

Employer asserts that Claimant had symptoms of carpal tunnel syndrome prior to the alleged date of manifestation, the development of his symptoms was not acute, and he is entitled to no benefits.

### **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. The testimony of Claimant and David Jones taken at hearing; and
2. Claimant's Exhibits A through D admitted at hearing.<sup>1</sup>

After having considered the above evidence, and the arguments of the parties, the Referee submits the following Findings of Fact and Conclusions of Law.

### **FINDINGS OF FACT**

---

<sup>1</sup> Employer's Exhibits 1 through 3 were denied admission as they were not provided to

1. Employer operates a carpet cleaning business in the Boise area. Claimant began working full-time for Employer in November 2004. For approximately 75% of each work day, Claimant used a carpet cleaning wand in his right hand, which required sustained gripping and pushing, while depressing the wand's trigger with his right index finger. The rest of his work day consisted of moving furniture before and after cleaning carpets, and traveling to customer locations.

2. Claimant worked for Employer until March 31, 2005, when he ceased working due to issues about compensation, unrelenting work schedules, and use of his personal vehicle. His decision to leave Employer was unrelated to any personal physical condition.

3. On April 4, 2005, Claimant returned to work for Employer and resumed carpet cleaning full-time.

4. Approximately two to three weeks prior to May 11, 2005, Claimant noticed the onset of right hand pain. This progressed to where Claimant experienced extreme hand pain and numbness at night immediately prior to May 11, 2005.

5. On May 11, 2005, Claimant presented to George A. Nicola, M.D., who recorded complaints of significant pain, numbness, and tingling in a median nerve distribution. Dr. Nicola diagnosed continuous carpal tunnel syndrome, and noted that Claimant had been using a carpet cleaning wand which required his right hand to assume an abnormal position for sustained periods, producing significant right hand discomfort.

6. Employer testified that Claimant first mentioned hand symptoms in mid-May 2005, at which time Claimant indicated he believed he was suffering from tendonitis in his fingers and had experienced it for a long time. Claimant testified that Employer responded that carpet cleaners

---

Claimant prior to hearing as required by JRP 10.

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 3**

commonly experienced such symptoms. At hearing Employer denied this response.

7. On June 13, 2005, Claimant ceased working for Employer.

8. On June 23, 2005, Dr. Nicola performed a right carpal tunnel release and Claimant's symptoms subsequently resolved. On August 8, 2005, Dr. Nicola found Claimant had reached maximum medical improvement, had no permanent impairment, and discharged Claimant from further care.

9. Claimant requested Employer pay \$1,500 of the costs of his carpal tunnel surgery. Employer declined. Claimant then retained an attorney and filed the Complaint herein.

10. At the time of hearing, Claimant was employed at a building supply business.

11. The Referee finds Claimant to be a credible witness.

#### **DISCUSSION AND FURTHER FINDINGS**

12. The provisions of the Workers' Compensation Law are to be liberally construed in favor of the employee. Haldiman v. American Fine Foods, 117 Idaho 955, 793 P.2d 187 (1990). The humane purposes which it serves leave no room for narrow, technical construction. Ogden v. Thompson, 128 Idaho 87, 910 P.2d 759 (1996).

13. **Acute industrial injury.** Claimant first alleges he suffered an acute industrial injury due to repetitive motion. Idaho Code § 72-102(18) provides in relevant part:

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

(b) "Accident" means 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.

(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.

#### **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 4**

14. In the present case, Dr. Nicola testified that “the carpal tunnel [Claimant] saw me for in May appeared to be a fairly acute onset” and was causally related to Claimant’s activities in sustained gripping while pushing and pulling a carpet cleaning wand at work. Nicola Deposition, p. 6, L. 11; p. 8, L. 13. Employer alleged that when Claimant first complained of hand pain in May 2005, he indicated the pain had commenced in January or February 2005. Claimant testified that his carpal tunnel symptoms came on over a course of two or three weeks. Employer correctly observed that this does not comport to an acute injury caused by an accident. While carpal tunnel syndrome may arise as an injury resulting from an accident, three weeks of sustained use of a carpet cleaning wand does not constitute a specific untoward event.

15. The record does not establish the occurrence of a specific mishap or event which caused Claimant’s condition. His carpal tunnel syndrome is not compensable as an injury resulting from a work-related accident.

16. **Occupational disease.** Claimant also alleges his entitlement to benefits because his carpal tunnel syndrome constitutes an acute occupational disease. The Supreme Court has held that carpal tunnel syndrome can be an occupational disease pursuant to Idaho Code § 72-102. Kinney v. Tupperware Co., 117 Idaho 765, 768, 792 P.2d 330, 333 (1990).

17. The applicable Idaho Workers’ Compensation Law defines an “occupational disease” 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.” Idaho Code § 72-102(21)(a). The law further provides that:

[w]hen an employee of an employer suffers an occupational disease and is thereby disabled from performing his work in the last occupation in which he was injuriously exposed to the hazards of such disease, . . . and the disease was due to the nature of

an occupation or process in which he was employed within the period previous to his disablement as hereinafter limited, the employee, . . . shall be entitled to compensation.

Idaho Code § 72-437.

18. “Disablement” means “the event of an employee’s becoming actually and totally incapacitated because of an occupational disease from performing his work in the last occupation in which injuriously exposed to the hazards of such disease,” and “disability means the state of being so incapacitated.” Idaho Code § 72-102(21)(c). Idaho Code § 72-439 limits the liability of an employer for any compensation for an occupational disease to cases where (1) “such disease is actually incurred in the employer’s employment,” and (2) for a nonacute occupational disease, where “the employee was exposed to the hazard of such disease for a period of 60 days for the same employer.” The 60 day period of exposure required by Idaho Code § 72-439 need not be a single continuous period. Jones v. Morrison-Knudsen Co., Inc., 98 Idaho 458, 567 P.2d 3 (1977).

19. Thus, under the statutory scheme, a claimant must demonstrate (1) that they were afflicted by a disease; (2) that the hazards of such disease actually exist, are characteristic of, and peculiar to the trade, occupation, process, or employment in which they were engaged; (3) that they were exposed to the hazards of such nonacute disease for a period of 60 days with the same employer; (4) that the disease was incurred in, or arose out of and in the course of their employment, and (5) that as a consequence of such disease, they become actually and totally incapacitated from performing their work in the last occupation in which they were injuriously exposed to the hazards of such disease. In addition, a claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability. Langley v. State, Industrial Special Indemnity Fund, 126 Idaho 781, 890 P.2d 732 (1995). “Probable” is defined as “having more

evidence for than against.” Fisher v. Bunker Hill Co., 96 Idaho 341, 528 P.2d 903 (1974).

20. In the present case, Claimant began working for Employer in November 2004. By January or February 2005, according to Employer’s testimony, or by May 2005, according to Claimant’s testimony, he began experiencing hand pain. The evidence establishes that Claimant’s condition is the result of repetitive motion over a period of from three weeks to four months and progressed to the point that Claimant ceased his carpet cleaning activities by June 13, 2005. Dr. Nicola described Claimant’s right carpal tunnel syndrome as acute and expressly attributed his condition to his work cleaning carpets. Claimant was exposed to the hazards of carpal tunnel syndrome for more than 60 days while working for Employer. Thus, whether Claimant’s condition is deemed acute, as opined by Dr. Nicola, or nonacute, as apparently perceived by Employer, is inconsequential.

21. The Referee concludes that Claimant contracted and incurred the occupational disease of right carpal tunnel syndrome during and as a result of his work as a carpet cleaner for Employer, and that the hazards of the disease were present in his occupation as a carpet cleaner.

22. **Medical benefits.** Claimant asserts entitlement to reasonable medical expenses. Idaho Code § 72-432(1) provides:

Subject to the provisions of section 72-706, Idaho Code, the employer shall provide for an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital services, medicines, crutches and apparatus, as may be reasonably required by the employee's physician or needed immediately after an injury or manifestation of an occupational disease, 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.

23. As a result of his right carpal tunnel syndrome, Claimant underwent release surgery and incurred medical expenses as follows:

## **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 7**

West Idaho Orthopedic (Dr. Nicola)	\$1,517.00
St. Lukes Regional Medical Center	\$1,327.00
Anesthesia Associates of Boise, P.A.	\$411.00
Total	\$3,255.00

24. The Referee finds the above medical expenses reasonable and required by Claimant's treating physician. Claimant has proven he is entitled to medical benefits from Employer of \$3,255.00.

25. **Whether Employer was insured.** The next issue is whether Employer was insured for workers' compensation liability. Claimant testified that Employer was not insured. Employer provided no evidence he was insured and has not contested Claimant's assertion. The Referee finds that Employer was not insured for his obligations under the Idaho workers' compensation laws during the time in question.

26. **Idaho Code § 72-210.** Claimant asserts Employer is liable for costs, fees, and a 10% statutory penalty. Section 72-210 provides:

If an employer fails to secure payment of compensation as required by this act, an injured employee, or one contracting an occupational disease, or his dependents or legal representative in case death results from the injury or disease, may claim compensation under this law and shall be awarded, in addition to compensation, an amount equal to ten per cent (10%) of the total amount of his compensation together with costs, if any, and reasonable attorney's fees if he has retained counsel.

27. In the present case, Claimant's total compensation is \$3,255.00. He is entitled to a 10% penalty of \$325.50, in addition to costs and reasonable attorney's fees.

### CONCLUSIONS OF LAW

1. Claimant has not proven he suffered an acute industrial accident.

2. Claimant has proven that he contracted and incurred an occupational disease of right carpal tunnel syndrome in the course of his employment with Employer and that he is entitled to medical benefits therefor in the amount of \$3,255.00.

3. Claimant has proven that Employer was not insured for workers' compensation liability during the time in question.

4. Claimant is entitled to a 10% penalty as set forth in Idaho Code § 72-210, in the amount of \$325.50, plus costs and reasonable attorney's fees.

### **RECOMMENDATION**

The Referee recommends that the Commission adopt the foregoing Findings of Fact and Conclusions of Law as its own, and issue an appropriate final order.

DATED this 27<sup>th</sup> day of April, 2007.

INDUSTRIAL COMMISSION

\_\_\_\_\_/s/\_\_\_\_\_  
Alan Reed Taylor, Referee

ATTEST:

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



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

CLYDE S. JESSOP,	)	
	)	
Claimant,	)	<b>IC 2005-006791</b>
	)	
v.	)	
	)	
DAVID A. JONES, dba,	)	<b>ORDER</b>
CENTENNIAL CARPET CLEANERS,	)	filed May 14, 2007
	)	
Employer,	)	
	)	
Defendant.	)	
_____	)	

Pursuant to Idaho Code § 72-717, Referee Alan Reed Taylor submitted the record in the above-entitled matter, together with his proposed Findings of Fact and Conclusions of Law to the members of the Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed Findings of Fact and Conclusions of Law as its own.

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

1. Claimant has not proven he suffered an acute industrial accident.
2. Claimant has proven that he contracted and incurred an occupational disease of right carpal tunnel syndrome in the course of his employment with Employer and that he is entitled to medical benefits therefore in the amount of \$3,255.00.
3. Claimant has proven that Employer was not insured for workers' compensation liability during the time in question.
4. Claimant is entitled to a 10% penalty as set forth in Idaho Code § 72-210, in the amount of \$325.50, plus costs and reasonable attorney's fees.

5. Claimant is entitled to attorney's fees from Defendants pursuant to Idaho Code § 72-805. Unless the parties can agree on an amount for reasonable attorney fees, Claimant's counsel shall, within twenty-one (21) days of the entry of the Commission's decision, file with the Commission a memorandum setting forth the amount and basis for attorney fees requested in this case on a contingent fee and/or hourly basis. Counsel shall also provide a copy of the fee agreement executed by Claimant and his attorney, and an affidavit in support of the claim for fees. The memorandum shall be submitted for the purpose of assisting the Commission in discharging its responsibility to determine reasonable attorney fees in this matter. Within fourteen (14) days of the filing of such documentation, Defendant may file a response to Claimant's information. If Defendant objects to any representation made by Claimant's counsel, the objection must be set forth with particularity. Within seven (7) days after Defendant's counsel files the above-referenced response, Claimant's counsel may file a reply. The Commission, upon receipt of the foregoing pleadings, will review the matter and issue an order determining attorney fees.

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

DATED this 14<sup>th</sup> day of May, 2007.

INDUSTRIAL COMMISSION

\_\_\_\_\_  
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 14<sup>th</sup> day of May, 2007, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

JOHN F GREENFIELD  
P O BOX 854  
BOISE ID 83701-0854

DAVID A JONES  
CENTENNIAL CARPET CLEANERS  
1247 E FAIRVIEW AVE  
MERIDIAN ID 83642

lbs

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

**ORDER - 3**