

Idaho Code § 72-604 or other equitable means, the limitation of Idaho Code § 72-706 was tolled.

Defendants contend Claimant was not misled because Surety sent an appropriate denial letter. Claimant's Complaint was filed more than one year after the claim.

EVIDENCE CONSIDERED

The record in the instant case consists of the following:

1. Hearing testimony of Claimant and a supervisor, Carol Beckstead;
2. Claimant's Exhibits 1 – 46; and
3. Defendants' Exhibits A – L.

After considering the record, the Referee submits the following findings of fact, conclusions of law, and recommendation for review by the Commission.

FINDINGS OF FACT

1. Claimant was hired by Employer on March 14, 2005. On April 25, 2005, Claimant began working as a lock installer. This job required frequent twisting of his wrist as he inserted screws to fasten the locks onto safes.

2. Born July 18, 1979, Claimant was 25 years old when this claim began.

3. On May 2, 2005, Claimant notified Employer of a wrist problem. Employer's records variously report the pain began April 28, 30, or May 2, 2005. He complained of right wrist pain arising from the repetitive motion. He speculated that he suffered carpal tunnel syndrome.

4. Claimant first sought treatment on May 2, 2005. Physician's assistant Brett Smith diagnosed carpal tunnel syndrome and restricted Claimant from using a manual screwdriver. An X-ray showed a normal right wrist.

RECOMMENDATION - 2

5. On May 4, 2005, Surety sent correspondence denying the claim. Surety did not pay and has not paid any compensation to Claimant.

6. On May 10, 2005, an MRI showed mild fraying of the triangular fibrocartilage complex without a tear. The radiologist suggested consideration of a vascular cause based upon Claimant's report of "tingling" and the absence of clinically significant findings on MRI.

7. On May 20, 2005, Claimant was examined by K.E. Newhouse, M.D. Claimant's history included numbness, tingling, coldness, and swelling, in addition to the pain alone which he had previously reported to physicians. Dr. Newhouse tentatively diagnosed possible vasospasm secondary to overuse vs. possible reflex sympathetic dystrophy.

8. A May 23, 2005 EMG and nerve conduction velocity study showed no abnormalities.

9. On May 27, 2005, a magnetic resonance angiography failed to indicate a vascular component to Claimant's complaints.

10. On May 30, 2005, Claimant sent a letter to Surety. He denied that his injury was a carpal tunnel syndrome and affirmed that his physicians related the injury – whatever it may be called in diagnosis – to his work. He requested the Surety again review its decision.

11. Claimant continued to seek treatment and eventually underwent surgery.

12. Claimant filed a Complaint in this matter on May 31, 2007, more than two years after any potential date for the accident or manifestation of an occupational disease.

DISCUSSION AND FURTHER FINDINGS OF FACT

13. **Statutes of Limitation.** Idaho Code § 72-706(1) provides a one-year limit on the filing of a Complaint where no compensation has been paid. Where some compensation has been paid and thereafter discontinued, Idaho Code § 72-706(2) provides a five-year limit.

RECOMMENDATION - 3

14. Here, Claimant alleges alternatively that Employer somehow provided compensation by authorizing medical treatment or, failing that, the authorization misled him in such a manner as to invoke the tolling statute, Idaho Code § 72-604. Analyzing the latter argument first, Idaho Code § 72-604 applies where an employer “willfully fails or refuses to file” a notice of injury or change of status report. Neither condition has occurred; A Form 1 was filed and a denial letter was sent. Idaho Code § 72-604 does not toll the statute in this matter.

15. Nothing in Employer’s actions reasonably served to mislead Claimant about eligibility for workers’ compensation benefits. The belief or expectations about payment held by Claimant’s treaters do not establish that Claimant was misled. Neither Claimant’s nor any physician’s hopes or expectations of payment can alter the Idaho Workers’ Compensation Law. Below are three reasons why.

16. First, Claimant received a denial letter. His subsequent request for a review does not legally require further response from Defendants. Claimant does not allege that any oral promises were made which may have misled Claimant after he received the denial letter.

17. Second, nothing about Employer’s alleged actions in assisting Claimant to see the first physician have created a liability for Defendants. An employer has the right to choose a treating physician whenever the Idaho Workers’ Compensation Law may apply. *See*, Idaho Code § 72-435. The designation of an initial physician does not create any liability on Defendants’ part. Questions of causation can only be answered by a physician. The speculations of an employee or an employer do not establish a causal link between physical complaints and eligibility under Idaho Workers’ Compensation Law. 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).

RECOMMENDATION - 4

18. Third, Employer's actions which occurred before Surety's denial letter do not negate the clear expression of the denial of liability expressed therein. In their respective roles, a surety would be expected to have more familiarity with the law than would an employer. A surety, in large part, is primarily engaged in administering claims and benefits according to the law. A business, in large part, is primarily engaged in making and selling a product or service. Thus, by their expected roles, by the clear express wording of the denial letter, and by the fact that the "last word" on the matter came through the denial letter, no reasonable person could have been misled by Employer's alleged statements or actions which occurred upon and immediately after receiving notice of a claimed injury or occupational disease.

19. The Referee finds Claimant was not actually misled into thinking he need not file a timely Complaint.

20. Claimant's alternative argument – that treatment somehow constitutes "compensation" – is unpersuasive. The limitation statute is based upon *payment*. Idaho code § 72-706. By relevant statutory definition, "compensation" equates with "payment of medical benefits." Idaho code § 72-102(7); Bainbridge v. Boise Cascade Plywood Mill, 111 Idaho 79, 721 P2d. 179 (1986). Even Claimant's cited case, Park v. Mountain Valley Timber, 200 WL 2799942 (2000), supports the proposition. In Park, compensation was "paid" because Employer acquiesced to Claimant's self-help method of reimbursement for medical bills. In Park, the receipt of treatment did not trigger the five-year statute; the payment for medical bills incurred did.

21. Eventually, Claimant's argument would lead to the conclusion that every time an employer designated a physician to check out a potential workers'-compensation-related injury or occupational disease, its surety would be automatically liable for benefits regardless

RECOMMENDATION - 5

of whether the potential injury or disease met the other statutory requirements as determined by the Idaho Legislature.

22. Claimant failed to show any basis for the application of the five-year statute, Idaho Code § 72-706(2). Thus, the one-year statute, Idaho Code § 72-706(1) applies.

23. Claimant failed to file his Complaint within the time prescribed by Idaho Code § 72-706(1). Claimant failed to show a basis upon which Idaho Code § 72-604 or any other statute or equitable doctrine should be applied to toll the limitation statute or to excuse by some other theory his untimely filing of the Complaint in this matter. Claimant's claim should be dismissed.

CONCLUSION OF LAW

Claimant's Complaint for income benefits was not timely filed. His Complaint should be dismissed.

RECOMMENDATION

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

DATED this 2ND day of October, 2008.

INDUSTRIAL COMMISSION

/S/ _____
Douglas A. Donohue, Referee

ATTEST:

/S/ _____
Assistant Commission Secretary

db

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

DATED this 10TH day of OCTOBER, 2008.

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 10TH day of OCTOBER, 2008 a true and correct copy of **FINDINGS, CONCLUSIONS, AND ORDER** were served by regular United States Mail upon each of the following:

Kent A. Higgins
P.O. Box 991
Pocatello, ID 83204-0991

E. Scott Harmon
P.O. Box 6358
Boise, ID 83707

db

/S/ _____

ORDER - 2