

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

GERARDO PEDRAZA,)	
)	
Claimant,)	IC 2002-008871
)	IC 2006-004316
v.)	IC 2007-017675
)	IC 2007-030296
)	
THE AMALGAMATED SUGAR CO.,)	
)	
Self-Insured,)	FINDINGS OF FACT,
Employer,)	CONCLUSION OF LAW,
)	AND RECOMMENDATION
Defendant.)	
_____)	Filed: February 23, 2009

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 Twin Falls on September 2, 2008. Claimant, Gerardo Pedraza, was present in person and represented by Emil Pike, of Twin Falls. Defendant self-insured Employer, The Amalgamated Sugar Co. (Amalgamated), was represented by Lora Rainey Breen, of Boise. The parties presented oral and documentary evidence and later submitted briefs. The matter came under advisement on November 28, 2008.

ISSUE

The issues to be resolved were bifurcated and further narrowed by agreement of the parties at hearing. The sole issue presented is whether Claimant’s Complaints filed May 18, 2007, and May 23, 2007, comply with the five-year statute of limitations set forth in Idaho Code § 72-706.¹

¹ In his briefing, Claimant requests attorney fees. This issue was not raised in calendaring, nor set forth in the Notice of Hearing. Idaho Code § 72-713 precludes its consideration herein.

RECOMMENDATION - 1

ARGUMENTS OF THE PARTIES

Claimant suffered an industrial accident on May 17, 2002, and allegedly suffered another industrial accident on May 22, 2002. Defendant acknowledged the May 17, 2002, accident and attributed the causation of Claimant's back injury to that event. Defendant paid medical and other benefits pursuant to the May 17, 2002, claim. Claimant filed Complaints on May 18, 2007, and May 23, 2007, seeking additional non-medical benefits. He asserts that his Complaints are timely. Defendant argues that Claimant's Complaints are untimely as not having been filed within five years of the industrial accident which caused his injury.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant and Gary Pool taken at the September 2, 2008, hearing;
2. Claimant's Exhibits 1, 3, and 4 admitted at the hearing;
3. Defendant's Exhibits 3 through 17 admitted at the hearing; and
4. The deposition of Cindy Weigel taken August 28, 2008.

The objections posed during Cindy Weigel's deposition are sustained.

After having considered the above evidence and the arguments of the parties, the Referee submits the following findings of fact and conclusion of law for review by the Commission.

FINDINGS OF FACT

1. Claimant was born in 1955 and was 53 years old at the time of the hearing. In approximately 1979, Claimant commenced working for Amalgamated. His duties required routine lifting of over 100 pounds.

2. On May 17, 2002, while working at Amalgamated, Claimant and a co-worker were

lifting a heavy gearbox when the co-worker abruptly dropped his end of the gearbox, wrenching Claimant's low back. Claimant gave timely notice of his injury. He managed to "walk off" his immediate back pain and continued working.

3. On May 22, 2002, while working, Claimant jumped down from a chute, a distance of approximately 16 inches, and experienced increased low back pain. Claimant completed an accident report and sought medical attention. He alleges continued low back pain since that time. Claimant's medical providers have apparently related his back condition to his May 17, 2002, accident. Defendant provided medical benefits, time loss benefits, and permanent impairment benefits of 5% of the whole person all pursuant to the claim for the May 17, 2002, accident. All non-medical benefit payments from Defendant ceased in 2004.

4. After the accident, Amalgamated changed Claimant's work duties to eliminate any responsibility for heavy lifting. At the time of the hearing Claimant had been working as a knife filer for approximately five years. Defendant employed various knife filers, of whom Claimant was one, to perform a necessary and valuable service for Defendant.²

5. Claimant acknowledged that he was advised by his nurse case manager and other friends of the five-year limitation period and that he would lose valuable rights under workers' compensation law if he failed to "file papers" before May 17, 2007.

6. May 17, 2007, was a Thursday.

7. On May 18, 2007, Claimant filed a Complaint asserting entitlement to additional non-medical benefits for his May 17, 2002, industrial accident.

² At the commencement of the hearing, Claimant alleged that his current position as a knife filer with Amalgamated was a "make work" position and should be deemed on-going payment of non-medical benefits, thus extending the statute of limitations. Claimant does not so assert in his briefing and the facts established at hearing do not support such an allegation.

8. May 22, 2007, was a Tuesday.

9. On May 23, 2007, Claimant filed a Complaint asserting entitlement to additional non-medical benefits for his alleged May 22, 2002, industrial accident.

10. Having observed Claimant at hearing and carefully examined the record herein, the Referee finds Claimant is a credible witness.

DISCUSSION AND FURTHER FINDINGS

11. 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, 956, 793 P.2d 187, 188 (1990). The humane purposes which it serves leave no room for narrow, technical construction. Ogden v. Thompson, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996). 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).

12. The parties agree that Idaho Code § 72-706(2) is pivotal to resolving their controversy. Section 72-706(2) provides:

(2) When compensation discontinued. When payments of compensation have been made and thereafter discontinued, the claimant shall have five (5) years from the date of the accident causing the injury or date of first manifestation of an occupational disease within which to make and file with the commission an application requesting a hearing for further compensation and award.

13. The parties also agree that Page v. McCain Foods, Inc., 145 Idaho 302, 179 P.3d 265 (2008), controls the present case. In Page, the Supreme Court found that Page's motion to reconsider was timely filed explaining:

Motions to reconsider must be made within twenty days from the date of filing the decision. I.C. § 72-718. Nonetheless, Page concedes she did not mail her motion to reconsider until the twenty-first day following the Commission's order. The twentieth day following the order was July 4th.

RECOMMENDATION - 4

[T]he computation of time in I.C. § 72-718 is controlled by I.C. § 73-109 which provides that “[t]he time in which any act provided by law is to be done is computed by excluding the first day, and including the last unless the last is a holiday and then it is also excluded.” Therefore, because July 4th is a holiday, I.C. § 73-108, and it was twenty days from the date of the filing of the Commission's decision, it is excluded from the computation of time consequently, the last day on which Page could move for reconsideration was July 5th. Page complied with this requirement.

Page, 145 Idaho at 311, 179 P.3d at 274.

14. The Page decision clearly applies Idaho Code § 73-109 to workers' compensation limitation periods. Claimant argues that Idaho Code § 73-109 serves to make his filing on May 18, 2007, timely, as being five years and one day from his industrial accident. However, Defendant contends that the decision of McCabe v. Craven, 145 Idaho 954, 188 P.3d 896 (2008), explains more fully the application of Idaho Code § 73-109 and establishes that Claimant's Complaints are not timely.

15. In McCabe, the Court demonstrated the operation of Idaho Code § 73-109 with a two-year statute of limitations period. McCabe filed his complaint by mail on March 7, 2005. The Court noted: “the statute of limitations did not begin to run against McCabe's cause of action until ... March 7, 2003. Since the claim was filed exactly two years later,² the § 1983 claim was timely” McCabe, 145 Idaho at 958, 188 P.3d at 900. The Court's footnote explained:

² The claim literally was filed two years and one day later, as two years elapsed on March 6, 2005. March 7, 2005 was the day after two years had elapsed. However, Idaho Code § 73-109 states that time is computed as follows: “The time in which any act provided by law is to be done is computed by excluding the first day, and including the last unless the last is a holiday and then it is also excluded.” The claim therefore was legally filed within two years, though not within two years in the ordinary sense.

McCabe, 145 Idaho at 958, 188 P.3d at 900 (footnote 2).

16. Claimant herein had five years from the date of his accident within which to file his

Complaint. Applying the Supreme Court's analysis in McCabe, the five-year limitation period for Claimant's May 17, 2002, industrial accident elapsed on May 16, 2007. Filing on May 17, 2007, would have been one day after five years had elapsed, but by operation of Idaho Code § 73-109 would have been considered timely. However, Claimant's Complaint was not filed until May 18, 2007—two days after five years had elapsed, and one day beyond the period allowed by operation of Idaho Code § 73-109. Claimant's Complaint for further non-medical benefits due to his May 17, 2002, accident is not timely and his claim is barred by Idaho Code § 72-706(2).

17. By similar analysis, Claimant's Complaint filed May 23, 2007, for benefits due to his May 22, 2002, accident is not timely and his claim is barred by Idaho Code § 72-706(2).

CONCLUSION OF LAW

Claimant's Complaints filed May 18, 2007, and May 23, 2007, are not timely and his claims are barred by Idaho Code § 72-706(2).

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 13th day of February 2009.

INDUSTRIAL COMMISSION

/s/ _____
Alan Reed Taylor, Referee

/s/
Thomas E. Limbaugh, Commissioner

/s/
James F. Kile, Commissioner

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of February, 2009 a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

EMIL F PIKE
PO BOX 302
TWIN FALLS ID 83303

LORA RAINEY BREEN
PO BOX 2528
BOISE ID 83701-2528

sc

/s/