

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JOSHUA J. BUTLER,)
)
 Claimant,) **IC 2008-022198**
 v.)
)
 CH2M HILL, INC.,) **FINDINGS OF FACT,**
) **CONCLUSIONS OF LAW,**
 Employer,) **AND RECOMMENDATION**
 and)
)
 ZURICH AMERICAN INSURANCE COMPANY,) **FILED MAR 23 2009**
)
 Surety,)
 Defendants.)
 _____)

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned this matter to Referee Douglas A. Donohue. He conducted a hearing in Boise on February 12, 2009. Claimant Joshua Butler appeared *pro se*. Max Sheils represented Defendants. The parties presented oral and documentary evidence. The case came under advisement on March 4, 2009. It is now ready for decision.

ISSUES

According to the notice of hearing, the issues to be resolved are:

1. Whether Claimant has complied with the notice and limitations requirements set forth in Idaho Code § 72-701 through Idaho Code § 72-706, and whether these limitations are tolled pursuant to Idaho Code § 72-604;
2. Whether Claimant suffered an injury caused by an accident arising out of an in the course of employment;
3. Whether the condition for which Claimant seeks benefits was caused by the alleged industrial accident; and
4. Whether and to what extent Claimant is entitled to medical care.

RECOMMENDATION - 1

CONTENTIONS OF THE PARTIES

Claimant contends he injured his upper back when he struck his head and jammed it while in a car at work. He self-treated for a while, hoping the pain would subside. It did not. He eventually reported the accident and injury to Employer. He seeks benefits for medical treatment to date and into the future to resolve the problem.

Defendants contend Claimant failed to report his accident and injury timely. As a result, the opportunity for prompt, curative treatment has been lost. Under Idaho Worker's Compensation Law, Claimant forfeited his opportunity for benefits by failing to give notice as required by law.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. Hearing testimony of Claimant;
2. Claimant's exhibits 1 through 5; and
3. Defendants' exhibits, designated pages 1-32.

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

FINDINGS OF FACT

1. Claimant worked for Employer as an engineer. His work involved travel and field work.
2. On January 24, 2008, Claimant quickly turned in the passenger seat of a rental vehicle to view a geologic feature out the driver's side window. He struck and jammed his head against the top of the vehicle.
3. The driver was a co-worker, not a supervisor. Claimant did not report the accident immediately.

RECOMMENDATION - 2

4. Though sore, the pain subsided somewhat after a few days. Claimant considered the amount of pain unimportant for several weeks.

5. The pain gradually exacerbated until it affected his sleep. On April 20, 2008, he bought a new mattress, thinking it would help. He also began obtaining occasional therapeutic massages. He made an appointment for a chiropractic visit.

6. On May 29, 2008, the day before his first chiropractic visit, Claimant notified Employer of the January 24, 2008 accident.

7. Claimant received chiropractic treatment. He was referred to Michael Gibson, M.D. He first visited Dr. Gibson for this problem on June 18, 2008.

8. Claimant's injury had not resolved as of the date of hearing.

DISCUSSION AND FURTHER FINDINGS

9. Idaho Code § 72-701 is mandatory and unequivocal: "No proceedings under this law shall be maintained unless a notice of the accident shall have been given to the employer as soon as practicable but not later than sixty (60) days after the happening thereof."

10. With an accident on January 24 and notice first being given on May 29, the sixty-day period had clearly expired.

11. Rarely—and never in this Referee's experience—has a *pro se* Claimant presented such a well-organized and well-articulated case. However, Claimant's suggestion that perhaps his condition could be seen as not having "manifested" itself until later is inconsistent with the fact that he noted some immediate symptoms. It is inconsistent with the law in which the date of manifestation is relevant only to occupational diseases, not to accident and injury cases.

12. Claimant's suggestion that Employer perhaps was not prejudiced by the late notice similarly fails to carry the day. Claimant's failure to obtain prompt medical care

and his failure to give Employer opportunity to insist he obtain prompt medical care may well be factors which explain why Claimant's injury failed to resolve. Thus, the record shows Employer likely was prejudiced by the late notice. Moreover, Claimant bears the burden of establishing the absence of prejudice in such a situation. *Jackson v. JST Manufacturing*, 142 Idaho 836, 136 P.3d 307 (2006). He failed to do so here.

13. Finally, Claimant failed to show it likely the notice statute should be extended by application of Idaho Code § 72-604. The record shows this claim is not compensable by application of Idaho Code § 72-701.

CONCLUSIONS OF LAW

1. Claimant's claim should be dismissed for failure to notify Defendants of his alleged accident within the statutory time limit;

2. All other issues are rendered moot by the failure of timely notice.

RECOMMENDATION

The Referee recommends that the Commission adopt the foregoing findings of fact and conclusion of law and issue an appropriate final order.

DATED this 16th day of MARCH, 2009.

INDUSTRIAL COMMISSION

/S/_____
Douglas A. Donohue, Referee

ATTEST:

/S/_____
Assistant Commission Secretary

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2. All other issues are rendered moot by the failure of timely notice.

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

DATED this 23rd day of MARCH, 2009.

INDUSTRIAL COMMISSION

/S/ _____
R. D. Maynard, Chairman

/S/ _____
Thomas E. Limbaugh, Commissioner

ATTEST:

/S/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of MARCH, 2009, a true and correct copy of **FINDINGS, CONCLUSIONS, AND ORDER** were served by regular United States Mail upon each of the following:

Joshua J. Butler
5172 Bainbridge Drive
Boise, ID 83703

Max M. Sheils Jr.
P.O. Box 388
Boise, ID 83701

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/S/ _____

ORDER - 2