

one or another manager has required he obtain expensive medical care to repeat that these restrictions are permanent. He seeks, *inter alia*, an order prohibiting Employer from requiring him to obtain such repetitive confirmations at his own expense.

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; and
2. Defendants' exhibits A – F.

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

FINDINGS OF FACT

1. Claimant worked for Employer on May 9, 2003. His duties included loading and unloading railcars. On that day, Claimant slipped on a wet floor of a railcar and struck his face on a door handle. He took a 15 minute break and returned to work. Claimant testified he notified his supervisor of the accident at that time and that she made a written note of it. That note is not included of record here.

2. Claimant sought medical attention on May 14, 2003 for flu-like symptoms.

3. Claimant suffered a heart attack at home on May 25, 2003.

4. No medical record of either of these visits was included as evidence. There is no documentary evidence of record which supports Claimant's testimony that he sought

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medical attention for the alleged scrape on his face or any other work-related medical condition. There is no documentary evidence of record which indicates that any physician opined Claimant was injured or treated as a result of the May 9, 2003 accident.

5. Claimant first notified Employer on May 19, 2004 that he had sought medical care related to the May 9, 2003 accident. Claimant testified he saw a Dr. Crane on May 6, 2004. This notification coincides generally with Claimant's anticipation of back surgery which was originally scheduled for June 10, 2004.

6. Claimant is restricted from working more than an eight-hour day as a result of a back surgery.

7. Claimant filed a Complaint on June 27, 2005. The Commission dismissed the Complaint without prejudice on March 17, 2006 for failure to prosecute.

8. Claimant filed a new Complaint on September 25, 2008.

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, and unless a claim for compensation with respect thereto shall have been made within one (1) year after the date of the accident."

10. By the plain language of the statute, a notice of accident and a claim for compensation are two different things. Assuming, *arguendo*, that Claimant gave prompt notice of the accident on the date that it occurred, the question of whether he made a timely claim for compensation remains at issue. It seems neither Claimant nor the supervisor believed the accident to have caused an injury that day. Claimant missed no work time;

he did not seek medical attention. At no time between that notice and May 19, 2004 – more than one year later – did Claimant do anything that might constitute a claim for compensation. There is no evidence that any medical provider did so on Claimant’s behalf. *A fortiori*, there is no evidence any physician linked any medical visit to the accident other than Claimant’s hearsay assertions of what he recalls a physician may have said.

11. Moreover, Claimant failed to show a basis for application of Idaho Code § 72-604 to extend the statute. Idaho Code § 72-604 requires that an employer have notice of an “injury” rather than an accident. Again, on May 9, 2003, Claimant did not assert he was injured; he merely reported an “accident.”

12. Even if an “accident” and “injury” were deemed equivalent in this context, Claimant failed to show that Employer willfully failed or refused to file a Form 1 as required by the statute. Claimant failed to show he informed Employer he was seeking medical care for which he claimed compensation until more than a year later. Without lost work time and without any known expense for medical care, there is no basis for Employer to file a Form 1. Neither the Idaho Workers’ Compensation Law nor the Industrial Commission requires an employer to document every *de minimus* accident in which no worker was hurt. On the date of the accident, Claimant did not notify employer he was “seeking compensation” as that phrase is used in Idaho Code § 72-604.

13. Finally, Claimant bears the burden of establishing the absence of prejudice to Employer by his alleged oral notice of accident on May 9, 2003 and/or by his belated notice of claim for compensation on May 19, 2004. *Jackson v. JST Manufacturing*, 142 Idaho 836, 136 P.3d 307 (2006). Claimant failed to establish the absence of prejudice.

14. Claimant honestly believes his heart attack, a broken rib, and his back problems are related to the accident. However, he did not make Employer aware of that belief until after the limitation set forth in Idaho Code § 72-701 had expired.

15. One additional note: Claimant's request that the Commission prohibit Employer from requiring future medical examinations and opinions at Claimant's expense cannot be granted in this context. Claimant has no compensable claim upon which we can determine the extent of any entitlement under the Idaho Workers' Compensation Law.

CONCLUSION OF LAW

Claimant's claim should be dismissed for failure to make a claim for compensation regarding his alleged accident within the statutory time limit.

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 7TH day of April, 2009.

INDUSTRIAL COMMISSION

/S/ _____
Douglas A. Donohue, Referee

ATTEST:

/S/ _____
Assistant Commission Secretary

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

DATED this 9TH day of APRIL, 2009.

INDUSTRIAL COMMISSION

/S/ _____
R. D. Maynard, Chairman

/S/ _____
Thomas E. Limbaugh, Commissioner

/S/ _____
Thomas P. Baskin, Commissioner

ATTEST:

/S/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 9TH day of APRIL, 2009, a true and correct copy of **FINDINGS, CONCLUSIONS, AND ORDER** were served by regular United States Mail upon each of the following:

Salvador Valle
1435 Elba Avenue
Burley, ID 83318

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

db

/S/ _____