

2. Whether the condition for which Claimant seeks benefits was caused by the alleged industrial accident;

3. Whether and to what extent Claimant is entitled to reasonable and necessary medical care as provided for by Idaho Code § 72-432;

4. Whether and to what extent Claimant is entitled to temporary partial and/or temporary total disability (TPD/TTD) benefits;

5. Whether and to what extent Claimant is entitled to permanent partial impairment (PPI); and

6. Whether and to what extent Claimant is entitled to permanent partial or permanent total disability (PPD/PTD) in excess of permanent impairment, including whether Claimant is entitled to permanent total disability pursuant to the odd-lot doctrine.

EVIDENCE CONSIDERED

No evidence was submitted by Defendants in light of the fact that Claimant failed to appear and put forth evidence. Defense witnesses Brent Graham and Adrian Sanchez were present pursuant to subpoena. The Industrial Commission's legal file was relied upon to establish the chronology of procedural events.

FINDINGS OF FACT

1. On September 30, 2008, Claimant filed a Complaint with the Industrial Commission alleging an industrial injury of January 21, 2008 while working for Employer. On that same day, Claimant was sent a "pro-se packet" and information letter from the Industrial Commission. The information letter advised Claimant that the entire burden of proving and prosecuting his claim fell upon him; that he was permitted to hire an attorney; and that if he did

not wish to hire an attorney, he would need to comply with the procedures described in the Judicial Rules. A copy of the Commission's Judicial Rules of Practice and Procedure was included in the packet.

2. In his Complaint, Claimant identified his address as 319 E. Belmont St., Caldwell, Idaho 83605 and his phone number as 208-453-5110. Claimant has not notified the Industrial Commission of a change in contact information.

3. On February 4, 2009, the Industrial Commission sent the parties notices for a pre-hearing teleconference on April 27, 2009 and a hearing on May 28, 2009. Both notices indicated that the parties should be ready to proceed with the conference/hearing and that sanctions may be imposed against any party not prepared or not attending. The notice of teleconference requested, in Spanish, that Claimant contact the Industrial Commission to provide a phone number where he could be reached.

4. A pre-hearing teleconference was attempted on April 27, 2009. Mr. Sheils appeared on behalf of Defendants. The Referee attempted to contact Claimant at 208-453-5110 but reached a recording that the number had been disconnected. Claimant did not contact the Industrial Commission to provide an alternate phone number, nor did he contact the Industrial Commission by any manner to explain his failure to participate in the conference.

5. On April 28, 2009, the Referee sent a letter to Claimant advising him of the missed teleconference; reminding him of the date, time and location of the hearing; advising that a Spanish/English interpreter was scheduled to attend the hearing at no cost to him; and reminding him that failure to attend the hearing may result in sanctions, including the dismissal of his case. Claimant was referred to the information sent to him on September 30, 2008 regarding pursuit of his case.

6. Claimant failed to appear for his hearing on May 28, 2009 and failed to contact the Industrial Commission in any manner to request a continuance or otherwise explain his absence.

7. Defendants appeared for hearing and were prepared to present evidence, if necessary, in support of their denial of the claim. Defendants incurred litigation costs associated with the preparation for hearing.

8. The Industrial Commission arranged for the presence of a court reporter and Spanish/English interpreter at hearing for the benefit of Claimant. The Industrial Commission incurred litigation and administrative costs to conduct the hearing.

DISCUSSION AND FURTHER FINDINGS

9. A claimant must prove that he or she was injured as the result of an accident arising out of and in the course of employment. *Seamans v. Maaco Auto Painting*, 128 Idaho 747, 918 P.2d 1192 (1996). A claimant is not required to establish a specific time and place of injury. *Hazen v. Gen. Store*, 111 Idaho 972, 729 P.2d 1035 (1986). Rather, an accident need only be reasonably located as to the time when and the place where it occurred. *Spivey v. Novartis Seed, Inc.*, 137 Idaho 29, 43 P.3d 788 (2002). To prevail on a worker's compensation claim, a claimant must establish that an accident happened by a preponderance of the evidence. *Stevens-McAtee v. Potlatch Corp.*, 145 Idaho 325, 179 P.3d 288 (2008). The claimant must prove to a reasonable degree of medical probability that the injury for which benefits are claimed is causally related to an accident occurring in the course of employment. *Id.* Probable is defined as "having more evidence for than against." *Id.*

10. Claimant failed to appear and present any evidence to meet his burden to prove that he sustained an industrial injury. All other noticed issues regarding benefits are moot in the absence of a finding of a compensable injury.

11. Pursuant to Rule 16 of the Judicial Rules of Practice and Procedure under the Idaho Workers' Compensation Law, the Commission retains power to impose appropriate sanctions for any violation or abuse of its rules or procedures. Claimant's failure to appear for the pre-hearing teleconference on April 27, 2009 and the hearing of May 28, 2009 constitutes sufficient violation of the Commission's rules and procedures to warrant a dismissal of his case, with prejudice, as to all issues noticed for hearing.

12. Defendants have not initiated compensation for the alleged injury and a dismissal without prejudice would have the same ultimate effect as a dismissal with prejudice pursuant to Idaho Code § 72-706(1).

CONCLUSIONS OF LAW

1. Claimant did not suffer an injury on or about January 21, 2008 caused by an accident arising out of and in the course of employment.

2. All other issues are moot.

3. Claimant's case is dismissed with prejudice as a sanction for failure to appear at hearing.

RECOMMENDATION

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

DATED this 28 day of May 2009.

INDUSTRIAL COMMISSION

 /s/
Susan Veltman, Referee

ATTEST:

 /s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 5 day of June a true and correct copy of **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon:

SALVADOR ZAVALA-RODRIGUEZ
319 E. BELMONT ST.,
CALDWELL, IDAHO 83605

MAX M SHEILS JR
P O BOX 388
BOISE ID 83701

jc

 /s/

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

SALVADOR ZAVALA-RODRIGUEZ,)
)
 Claimant,) **IC 2008-021132**
)
 v.)
)
 QUALITY TRAILER SALES,)
)
 Employer,)
) **ORDER**
)
)
 ADVANTAGE WORKERS)
 COMPENSATION INSURANCE)
 COMPANY,) June 5, 2009
)
 Surety,)
)
 Defendants.)
 _____)

Pursuant to Idaho Code § 72-717, Referee Susan Veltman submitted the record in the above-entitled matter, together with her proposed findings of fact and conclusions of law to the members of the Idaho 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 did not suffer an injury on or about January 21, 2008 caused by an accident arising out of and in the course of employment.
2. All other issues are moot.
3. Claimant's case is dismissed with prejudice as a sanction for failure to appear at hearing.

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

DATED this 5 day of June, 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 5 day of June, 2009, a true and correct copy of the foregoing **Order** was served by regular United States Mail upon each of the following persons:

SALVADOR ZAVALA-RODRIGUEZ
319 E BELMONT ST
CALDWELL ID 83605

MAX M SHEILS JR
P O BOX 388
BOISE ID 83701

jkc

/s/ _____