

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

DANIEL B. BROWN,)
)
 Claimant,)
)
 v.)
)
 TRANSCONTINENTAL TRANSPORT,)
)
 Employer,)
)
 and)
)
 LIBERTY NORTHWEST INSURANCE)
 CORPORATION,)
)
 Surety,)
)
 Defendants.)
 _____)

IC 2007-016829

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

filed December 4, 2009

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Michael E. Powers, who conducted a hearing in Boise on July 21, 2009. Claimant was present and represented by Darin G. Monroe of Boise. Kent W. Day, also of Boise, represented Defendants. Oral and documentary evidence was presented, and the parties submitted post-hearing briefs. The matter came under advisement on October 16, 2009 and is now ready for decision. The undersigned Commissioners have chosen not to adopt the Referee’s recommendation and hereby issue their own findings of fact and conclusions of law.

ISSUES

The issues to be decided are:

1. Whether Claimant has complied with the notice and limitations requirements set forth in Idaho Code §§ 72-701 through 72-706; and

2. Whether those limitations are tolled pursuant to Idaho Code § 72-604.

CONTENTIONS OF THE PARTIES

It is undisputed that Claimant was injured in an industrial accident on May 2, 2007. He reported the accident to Employer on May 3, 2007, and a claim for workers' compensation was accepted by Defendants. Claimant received medical treatment for an injury to his left arm and shoulder.

Several months after the accident, Claimant began to experience pain in his right shoulder as well. In July 2008, more than one year following the accident, Claimant's physician related Claimant's right shoulder injury to the accident.

Claimant contends that he is entitled to workers' compensation benefits for his right shoulder injury. He timely gave notice of his accident to Employer and timely made a claim for workers' compensation. He was not required to give notice of each body part injured in the accident, as he was not aware of the right shoulder injury at the time he made his claim. The real issue here is not whether his notice was timely, but whether his notice was sufficient to cover his right shoulder injury.

Defendants contend that Claimant's original claim covered only his left shoulder injury, and that his right shoulder injury constitutes a new claim that was not timely filed. Claimant's right shoulder claim is barred by the provisions of Idaho Code §§ 72-701 through 72-706.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The hearing testimony of Claimant, Darlene Brown, Claimant's wife; and Patricia Ramsey, Employer's director of safety and human resources;
2. Claimant's Exhibits 1-4; and

3. Defendants' Exhibits A-E.

After having considered the evidence and the briefs of the parties, the undersigned Commissioners make the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. At the time of hearing, Claimant was 58 years old and resided in Nampa. He has worked as a truck driver for more than 35 years. He worked for Employer as a flatbed truck driver at the time of his industrial accident. His duties included covering his loads with a tarp.

2. On May 2, 2007, Claimant was attempting to position a tarp on the top of his load of plastic-wrapped lumber when he slipped on the wet plastic surface of the load. As he fell, he held on to the tarp, which weighed between 100-120 pounds. The weight of the tarp pulled Claimant to his left. He heard a loud snapping sound and experienced immediate pain in his left shoulder area. The pain radiated down his left arm to his fingertips.

3. The next day, Claimant called Patricia Ramsey, Employer's human resources director, and informed her of the accident and the injury to his left shoulder. Claimant then presented to Saint Alphonsus Occupational Medicine, where Michael Gibson, M.D., diagnosed a torn left biceps. Claimant did not mention an injury to his right shoulder to either Dr. Gibson or Ms. Ramsey. Ms. Ramsey prepared and filed a First Report of Injury or Illness on May 3, 2007. Defendants accepted the workers' compensation claim.

4. Claimant's left shoulder injury was treated by Gregory Schweiger, M.D., an orthopedic surgeon. Dr. Schweiger released Claimant to work full duty on May 16, 2007. On August 1, 2007, Dr. Schweiger declared that Claimant had attained maximum medical improvement with no permanent partial impairment. Claimant believes he told Dr. Schweiger about his right shoulder pain; however, Dr. Schweiger's notes do not mention it.

5. Claimant then began treating with his personal physician, Bayo Crownson, M.D. On September 25, 2007, Dr. Crownson's physician's assistant reported that Claimant had "developed quite a bit of pain involving his right shoulder over the last several weeks." On February 18, 2008, Dr. Crownson noted severe degenerative joint disease in Claimant's shoulders. Dr. Crownson further noted that Claimant's job required him to frequently lift when loading and off-loading trucks.

6. On May 23, 2008, bilateral shoulder x-rays taken on Claimant revealed significant degenerative joint disease. Dr. Crownson referred Claimant to Roman Schwartsman, M.D., an orthopedic surgeon who specializes in shoulder problems.

7. Claimant met with Dr. Schwartsman on June 5, 2008 to address Claimant's bilateral shoulder pain, right greater than left. Dr. Schwartsman ordered MRIs of both shoulders and sought Surety's approval for those tests. Up until that time, the treatment for Claimant's right shoulder had been paid for by Claimant's personal health insurance policy.

8. On July 1, 2008, after the results of the MRI revealed a full thickness tear in the supraspinatus tendon and a tear in the superior labrum, Dr. Schwartsman opined that Claimant's right shoulder injury occurred at the time of the May 2, 2007 accident.

9. On August 20, 2008, Dr. Schwartsman performed a left shoulder arthroscopy rotator cuff repair and labral debridement.

10. On November 21, 2008, Dr. Schwartsman performed a right shoulder arthroscopy rotator cuff and labral repair with subacromial decompression.

DISCUSSION, FURTHER FINDINGS, AND CONCLUSIONS OF LAW

The issues before the Commission are legal ones that require statutory interpretation. Claimant believes his right shoulder injury is part of the claim filed the day after the industrial

accident. Defendants believe the right shoulder injury is a new claim barred by the provisions of Idaho Code §§ 72-701 through 72-706.

The objective of statutory interpretation is to derive legislative intent. *Robison v. Bateman-Hall, Inc.*, 139 Idaho 207, 210, 76 P.3d 951, 954 (2003). To determine legislative intent, we must first look to the literal language of the statute. *Id.* Statutes should be interpreted according to their plain, express meaning. *Sandpoint Independent Highway Dist. v. Bd. of County Commissioners*, 138 Idaho 887, 890, 71 P.3d 1034, 1037 (2003). Where the language of the statute is unambiguous, the clear, expressed intent of the Legislature must be given effect. *Ada County Assessor v. Roman Catholic Diocese of Boise*, 123 Idaho 425, 428, 849 P.2d 98, 101 (1993). Only where the statute is ambiguous, incomplete, absurd, or arguably in conflict with other laws should statutory construction occur. *Sandpoint Independent Highway Dist.*, 138 Idaho at 890, 71 P.3d at 1037. Moreover, the provisions of the workers' compensation law should be liberally construed in favor of a claimant. *Tonahill v. LeGrand Johnson Construction Co.*, 131 Idaho 737, 740, 963 P.2d 1174, 1177 (1998). The humane purpose the law serves leaves no room for narrow, technical construction. *Hattenburg v. Blanks*, 98 Idaho 485, 567 P.2d 829 (1977).

11. Idaho Code § 72-701 provides, in pertinent part:

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....

(emphasis added).

Defendants acknowledge that Claimant gave timely notice of his accident, but they argue that notice of the accident and a claim for compensation are two different things. The key question in this case, according to Defendants, is whether Claimant made a timely claim for

compensation under Idaho Code § 72-701. Claimant's claim for compensation, filed on May 3, 2007, made no mention of a right shoulder injury. Defendants were not aware that Claimant was claiming a right shoulder injury until more than one year after the accident.

12. Defendants are correct that notice of an accident and a claim for compensation are different. Idaho Code § 72-702 establishes the information that shall be contained in the notice: the name and address of the employee, and the "time, place, nature and cause of the injury." The notice may include the claim, but the purpose of the notice is informative: to describe, "in ordinary language," the nature of the accident and the injury. *See* Idaho Code § 72-702.

In contrast, the purpose of the claim is to notify an employer that an employee is asserting his entitlement to workers' compensation. *Tonahill*, 131 Idaho at 740, 963 P.2d at 1177. The statutes are all but silent on the information that must be included in the claim. *See Hattenburg*, 98 Idaho at 485, 567 P.2d at 829. Section 72-701 requires that the claim for compensation be made "with respect" to the accident detailed in the notice. Section 72-702 requires that the claim be made in writing.

If we interpret Sections 72-701 and 72-702 in relation to each other, it becomes clear that the notice, not the claim, is the instrument that details the circumstances of the accident and the resultant injuries. The claim is merely an assertion of a right to workers' compensation relating to a particular accident. Had the Legislature intended the notice and the claim to include identical information, it could have imposed that requirement in the statute. It did not. Under Section 72-701, a claim is asserted "with respect" to an *accident*, not to a specific *injury*. The word "injury" is not even used in Section 72-701, and the words "accident" and "injury" are not synonymous. *See Moody v. State Highway Dept.*, 56 Idaho 21, 48 P.2d 1108 (1935).

13. Thus, in light of the canons of statutory interpretation, we find that a claim for compensation is made in reference to an accident, not an injury. In this case, Claimant made his claim for compensation one day after his accident. This was well within the one-year filing period established by Idaho Code § 72-701. Claimant's claim was timely.

14. Because it is the notice, not the claim, that details the accident and injury, the key question in this case is not whether Claimant's claim was timely, but whether Claimant's notice was sufficient. It is undisputed that Claimant's First Notice of Injury or Illness did not detail a right shoulder injury. However, under the provisions of Idaho Code § 72-704, a notice made pursuant to Idaho Code § 72-701 "shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place [or] *nature ... of the injury ... unless it is shown by the employer that he was in fact prejudiced thereby*" (emphasis added).

15. Claimant's notice, in retrospect, was inaccurate in that it did not fully state the nature of Claimant's injuries. Defendants argue that Claimant has the burden of proving that Defendants were not prejudiced. This would be true if Claimant failed to give notice, or if Claimant gave notice more than sixty days after his accident. The authority Defendants cite to support their argument, *Jackson v. JST Manufacturing*, 142 Idaho 836, 136 P.3d 307 (2006), involves such a situation.

Here, however, Defendants concede that Claimant timely gave notice of his accident. The question is whether the notice was sufficient to cover the right shoulder injury. By statutory command, a timely but inaccurate notice shall not be held insufficient unless the *employer* demonstrates prejudice. The statute clearly, expressly puts the burden to prove prejudice on the employer. Defendants have made no showing of prejudice. They have not shown that they were hampered in their ability to investigate the extent and degree of Claimant's injuries flowing from

the accident, of which they plainly had notice. Defendants could have undertaken a more thorough investigation in order to satisfy themselves that Claimant's injuries were not more extensive than Claimant supposed. This, they chose not to do, perhaps for reasons that seemed valid at the time. However, the adverse consequences of the manner in which Defendants conducted their investigation should not be visited upon Claimant. Defendants have failed to carry their burden of proof. Therefore, we hold that Claimant's notice was sufficient with regard to his right shoulder injury.

16. Defendants finally argue that Claimant's claim is barred by Idaho Code § 72-706(1). Under that section, a claimant has one year, from the date of making claim, within which to file a complaint with the Commission. However, that section applies only in cases where no compensation has been paid on a claim. In this case, Defendants have paid compensation on the claim. Though they refused to pay medical care benefits for Claimant's right shoulder injury, Defendants did pay medical care benefits for Claimant's left shoulder injury. The two injuries are part of the same claim.

In cases where compensation has been paid on a claim, the claimant shall have five years from the date of the accident to file a complaint. Idaho Code § 72-706(2). Claimant's complaint was filed on October 17, 2008. This was within the five-year period allotted by the statute. Claimant's complaint was timely filed.

17. We are compelled to observe that in this case, Claimant did everything he was supposed to do in order to preserve his claim. He reported his accident one day after it occurred. He made his claim for compensation one day after the accident occurred. Defendants accepted the claim, and Claimant underwent medical treatment for his left shoulder injury.

When Claimant was made aware that his right shoulder injury could be related to his industrial accident, he informed Defendants. Defendants refused to pay for that part of the claim. There may be meritorious reasons for the refusal, but the merits of this case are not presently before the Commission. The issue before the Commission is whether Claimant's right shoulder injury constitutes a separate claim that is barred by the notice and limitations requirements of Idaho Code §§ 72-701 through 72-706. We find that it is not. We decline to interpret the statutes in a manner contrary to their plain meaning and wholly contrary to the humane purposes of the Workers' Compensation Law. A claimant cannot possibly be expected to know or anticipate all the physical consequences of an industrial accident within days or weeks after the accident. He can only report that he was hurt in an accident, and give his employer the opportunity to investigate and make determinations about the validity of the claim. To hold otherwise would cause a harsh and unjust result. We do not believe the Legislature intended such a result when it adopted the statutes at issue in this case.

18. Because we conclude that Claimant's claim is not barred by the limitations requirements of Idaho Code §§ 72-701 and 72-706, we need not address the issue concerning Idaho Code § 72-604.

ORDER

Based on the foregoing analysis, IT IS HEREBY ORDERED That:

1. Claimant's claim for compensation is not barred by Idaho Code §§ 72-701 through 72-706.
2. The issue of whether the limitations requirements of Idaho Code §§ 72-701 and 72-706 are tolled pursuant to Idaho Code § 72-604 is moot.

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

DATED this __4th__ day of December, 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 __4th__ day of December, 2009, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** was served by regular United States Mail upon each of the following:

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eb/cjh

/s/