

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARIA D. JUAREZ, aka)
MARIA D. JUAREZ CASTRO,)
)
Claimant,)
)
v.)
)
WOODGRAIN MILLWORK,)
)
Self-Insured Employer,)
)
Defendant.)
_____)

IC 2009-006840

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

Filed: August 27, 2010

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Rinda Just, who conducted the hearing in Boise on March 31, 2010. Claimant, Maria D. Juarez, was present in person and represented by James M. Runsvold, of Caldwell, Idaho. The Defendant, Woodgrain Millwork, self-insured employer (Employer), was represented by Max M. Sheils, Jr., of Boise, Idaho. The parties presented oral and documentary evidence. Post-hearing briefs were later submitted. The matter came under advisement on August 9, 2010.

ISSUES

The issues to be decided by the Commission were narrowed at hearing and include the following:

1. Whether Claimant has complied with the statutory limitations set forth in Idaho Code § 72-701 through Idaho Code § 72- 706;
2. Whether Claimant suffered an injury caused by an accident arising out of and in the course of employment; and

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

CONTENTIONS OF THE PARTIES

Claimant contends she suffered a back injury while pushing a heavy unit of wood on rollers alongside the resaw machine on May 14, 2008. She admits she did not advise Employer that she had suffered a workplace injury until July 23, 2008, and that she did not apprise Employer that her industrial injury occurred on May 14, 2008, until the hearing date. Claimant argues that any deficiencies in her notice, including untimeliness, should not render the notice insufficient because Employer was not prejudiced. As a result, Employer is liable for her reasonable and necessary medical care related to her back injury.

Employer contends that Claimant failed to timely report her workplace accident, if any. Consequently, Employer was unable to properly investigate and act upon Claimant's allegations, and was thereby prejudiced. Employer seeks a determination that Claimant's notice was insufficient, that Claimant did not suffer a workplace accident, and that Claimant is not entitled to workers' compensation coverage for her medical care to treat her back injury.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. The pre-hearing deposition testimony of Claimant, taken on July 9, 2009;
3. The testimony of Claimant, taken at the March 31, 2010 hearing; and
4. Defendant's Exhibits 1 through 10, combined at the hearing with Claimant's Exhibit 26, and referred to herein as Joint Exhibits 1-11.

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

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 2

FINDINGS OF FACT

1. Claimant was 28 years of age at the time of the hearing and residing in Payette. She finished some high school education in Payette and Kuna, but she did not graduate. She does not hold a G.E.D. Claimant speaks and writes English better than Spanish, but admits that her writing skills are not very strong. She testified with the aid of an interpreter at the hearing; however, she communicated in English, without an interpreter, at her deposition. Claimant confirmed at the hearing that she understood the questions put to her at the deposition.

2. In 2003, Claimant began working for Employer's facility in Fruitland. She alternated between the automizing plant, the window plant and the wrap plant. Claimant left early due to back and leg pain on July 17, 2008. She never returned to active work for Employer because of her back condition. At the time, Claimant was pregnant with a child who was born in February 2009.

3. On July 17, 2008, Claimant's last day, she notified her supervisor, Randy Folden, that she had back and leg pain and needed to leave. However, she did not tell Mr. Folden that she had hurt herself at work. She told him only that she was not feeling well and could not stand up anymore. Mr. Folden directed Claimant to Judy Wise, Employer's human resources manager.

4. Claimant reported to Ms. Wise, as Mr. Folden instructed, on July 17, 2008. Claimant told Ms. Wise that her back hurt and that she needed to leave. She did not tell Ms. Wise that she had injured herself at work. Claimant does not recall whether Ms. Wise specifically asked for this information; however, Ms. Wise testified persuasively that she did. Ms. Wise explained that safety procedure enforcement is within her job duties and, pursuant to that responsibility, she investigates every potential workplace injury and teaches plant supervisors to do the same. Ms. Wise recalled:

...I really sat with her for quite a long time talking about, well, how could that—

you know, did you hurt yourself here, where do you think it might have happened. I really don't know. I don't know if it was here. I don't know if it was – if it's because of my pregnancy, I just don't know. And I kept pressing her and she says, well, you know, the only thing I can think of is back in January of '06, remember when I jumped across the belt and I sprained my ankle I said, yeah, I remember that and she said, well, I don't know, maybe I could have tweaked my back at that time and I said, well, okay, you know, if you think you tweaked your back and you want to go back against that old claim, which was a near miss, but we still have it on file and we can use that to go forward with this if you want to claim a work comp against that. Well, I don't know.

Tr., p. 136. Claimant did not identify a new workplace accident, so Ms. Wise did not file a report.

5. On August 15, 2008, Claimant met with Jeannie Maloney, who works for Ms. Wise in Employer's human resources department. Together, they filled out a workers' compensation form. Consistent with Ms. Wise's recollection, the form indicates that Claimant's back pain symptoms resulted from a workplace injury on January 5, 2006. At the hearing, Claimant explained that she did not understand what information the form was seeking and, further, that Ms. Maloney assisted her with the form and could have made a mistake.

6. Claimant hand-wrote "'06 injury" on the accompanying Employer's Report of Accident for Bodily Injury/Illness form, with an arrow pointing to the blank where she was supposed to provide the date of the current injury. Defendant's Exh. 7, p. 58. On the same form, she described her current injury in her own writing:

...carring [sic] lineal [sic] from the resaw, stacking (window)...maybey [sic] stacking to [sic] high overhead and I...and pushing big units out...my back staring [sic] to heart [sic] and it got worse by the days so I went to the doctor and I have a strain in my back.

Id. This description is different than the description of the 2006 injury she referenced elsewhere on the form, where she indicated "'06 injury". Claimant testified that she was confused about what information was requested, where. She admitted at the hearing that she did not know the date she sustained her current injury when she completed this form

on August 15, 2008.

7. At her deposition on July 9, 2009, Claimant testified that she did not know the exact date she got hurt, but it was sometime in March 2008 when her back and leg pain began. She also testified that, on or about July 23, she first told Ms. Wise that she had hurt herself by the resaw machine.

8. Contradicting her deposition testimony, Claimant testified at the hearing, on March 31, 2010, that her back and leg pain began when she suffered an industrial accident and injury to her back at the end of the day on May 14, 2008. Claimant testified she felt a sudden pain while pushing a heavy unit of wood, the last unit of the day, along rollers by the resaw machine. She went home that day without telling anyone at Employer's that she had injured herself.

9. Claimant also testified at the hearing, for the first time, that she took the next two days, May 15 and 16, 2008, off. She testified that she did not tell anyone at Employer's that she had sustained an industrial injury when requesting the two-day leave, testifying that she only conveyed that she didn't feel good and needed time off. After her days off, Claimant testified, she returned to work and continued her regular duties until July 14, 2008, when her physician issued a lifting limit of 20 pounds because she was pregnant. Then, on July 17, she left due to back and leg pain and did not return, as described above.

10. Claimant admitted that she knew she should have told Employer about the accident when it happened and that she had reported accidents in the past as per Employer's policy. She explained that she was afraid of losing her job if she reported another accident. Although she knew Employer's policy on reporting accidents, Claimant believed reporting another one would jeopardize her employment, even though no authority figure at Employer's had told her this. In addition, Claimant did not want to forfeit the safety bonus paid to

employees who were accident-free.

11. Employer's records indicate that Claimant could not have been injured as she described, working alongside the resaw machine on May 14, 2008, because she was working in the wrap plant that day. Further, Employer's records indicate Claimant worked 10.5 hours on May 15, 2008 and 8.5 hours on May 16, 2008, contradicting Claimant's testimony that she took those days off to recuperate from her injury. Claimant could not explain the discrepancy between her testimony and Employer's records.

12. Claimant's testimony suffers a credibility deficit due to inconsistency and memory gaps. Her difficulty with language and writing skills play a part, but the extent of this effect cannot be determined.

DISCUSSION AND FURTHER FINDINGS

13. 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).

Notice requirement.

14. 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...

15. Idaho Code § 72-702 requires that the notice must be in writing. However, notice required under Idaho Code § 72-701 is sufficient, even if the formal requirements are not met, so

long as “...the employer, his agent or representative had knowledge of the injury or occupational disease or...the employer has not been prejudiced by such delay or want of notice.” I.C. § 72-704.

16. Claimant provided Employer with written notice of her industrial accident on August 15, 2008. The notice was presented ninety-seven days after May 14, 2008, the date on which Claimant alleged at the hearing that she was injured at work. This notice was untimely and, thus, insufficient.

Actual knowledge.

17. If Employer had actual knowledge of Claimant’s industrial accident within 60 days, then her claim remains viable under Idaho Code § 72-704. That statute provides “actual knowledge” is imputed to the employer if the employer or its agent or representative had “knowledge of the injury.”

18. Claimant admits that she did not notify Employer she had suffered a workplace injury until July 23, 2008, when she told Ms. Wise she injured herself pushing a heavy unit of wood by the resaw machine. May 14 precedes July 23 by seventy-three days.

19. There is insufficient evidence in the record to establish that Employer was aware of any facts, from Claimant or any other source, concerning an industrial accident or injury she may have suffered, within sixty days after May 14, 2008. The Referee finds Employer did not have actual notice of Claimant’s industrial injury within sixty days.

Prejudice to employer.

20. If Claimant proves Employer was not prejudiced, her untimely notice will be deemed sufficient. In order to demonstrate that Employer was not prejudiced by failure or delay in giving notice, Claimant must affirmatively prove that Employer was not prejudiced by the lack of timely notice. *Jackson v. JST Manufacturing*, 142 Idaho 836, 136 P.3d 307 (2006).

Proof that the employer would not have done anything differently or that the medical treatment would have been the same, had timely notice been provided, is not dispositive. *Kennedy v. Evergreen Logging Co.*, 97 Idaho 270, 272, 543 P.2d 495, 497 (1975); *Dick v. Amalgamated Sugar Co.*, 100 Idaho 742, 744, 605 P.2d 506, 508 (1980).

21. The Commission has previously acknowledged, in a similar case, that the claimant bears a difficult burden to prove a negative when compelled to establish that an employer was not prejudiced. *Mora v. Pheasant Ridge Development, Inc.*, 2008 IIC 0548. In that case, the Commission held that the claimant failed to prove his employer was not prejudiced by a 5-month reporting delay because, although the defendant may not have suffered actual prejudice, he did not affirmatively establish that employer was not prejudiced. *Id.* The Commission based its holding on findings that 1) employer was unable to timely investigate the validity of the claim, 2) the delay “arguably hampered defendant’s ability to provide reasonable medical treatment,” and 3) claimant’s ability to work may have been compromised during the delay, by an intervening incident or otherwise, potentially exposing defendant to greater liability. *Id.*

22. The earliest date on which Claimant could possibly establish that Employer was first notified of her industrial accident was July 23, 2008, seventy-three days after it occurred.

23. The Claimant in this case finds herself in a difficult position similar to the claimant in *Mora*. Employer was unable to investigate the validity of the claim until two-and-a-half months after Claimant’s alleged workplace accident. In short, there is inadequate evidence from which to determine that Employer would not have obtained more accurate and complete material information, had it been able to investigate sooner.

24. In addition, Claimant's reporting delay may have interfered with Employer's ability to provide reasonable medical treatment. Earlier treatment may have prevented Claimant's condition from advancing to the point where she could not return to work.

25. Further, Claimant's ability to work may have been compromised by other intervening causes during the delay. The possibility that some non-occupational cause may have intervened to exacerbate or even create the condition for which Claimant seeks benefits during the delay cannot be ruled out because Employer did not have the opportunity to make a "baseline" assessment of Claimant's injuries during the statutory period.

26. The Referee finds that Claimant has failed to meet her burden of proving Employer was not prejudiced by her delay of at least seventy-three days in reporting her alleged industrial accident.

27. All other issues are moot.

CONCLUSIONS OF LAW

1. Claimant has failed to prove she complied with the notice limitations set forth in Idaho Code § 72-701 through Idaho Code § 72-706.

2. Claimant's Complaint is dismissed with prejudice.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Referee recommends that the Commission adopt such findings and conclusions as its own and issue an appropriate final order.

DATED this 20 day of August, 2010.

INDUSTRIAL COMMISSION

/s/ _____
Rinda Just, Referee

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WOODGRAIN MILLWORK,)
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Defendant.)
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IC 2009-006840

ORDER

Filed: August 27, 2010

Pursuant to Idaho Code § 72-717, Referee Rinda Just 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 recommendation of the Referee. The Commission concurs with this recommendation. 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 has failed to prove she complied with the notice limitations set forth in Idaho Code § 72-701 through Idaho Code § 72-706.
2. Claimant's Complaint is dismissed with prejudice.
3. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 27 day of August, 2010.

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 27 day of August, 2010, a true and correct copy of the foregoing **FINDINGS, CONCLUSIONS, and ORDER** were served by regular United States Mail upon each of the following persons:

JAMES M RUNSVOLD
PO BOX 917
CALDWELL ID 83606-0917

MAX M SHEILS JR
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djb

/s/_____