BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JULIE ANN YOST, Claimant, v. COMMUNITY COUNCIL OF IDAHO, INC., Employer, and STATE INSURANCE FUND, Surety, Defendants.	))))

2. Whether Claimant suffered an injury from an accident arising out of and in the course of employment;

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

4. Whether Claimant's condition is due in whole or in part to pre-existing and/or subsequent injury/conditions;

5. Whether and to what extent Claimant is entitled to the following benefits:

a. Medical care;

b. Temporary partial and/or temporary total disability benefits (TPD/TTD);

c. Permanent partial impairment (PPI);

d. Permanent partial disability in excess of impairment; and

6. Whether apportionment for a pre-existing or subsequent condition pursuant to Idaho Code § 72-406 is appropriate.

CONTENTIONS OF THE PARTIES

From reviewing her Complaint, Claimant's primary contention is her entitlement to medical care for a cervical condition and three and a half weeks of TTD benefits.

From reviewing their Answer and Requests for Calendaring, Defendants contend that Claimant did not suffer an accident arising out of and in the course of her employment. Further, Claimant did not comply with Idaho Code § 72-706(1) regarding filing an application for hearing (Complaint) within one year of making her claim.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;

2. Defendants' Exhibits A-H.

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

PROCEDURAL BACKGROUND

Claimant filed her Complaint on July 14, 2010. Pursuant to Defendants' Request for Calendaring, this matter was set for hearing on March 23, 2011. Claimant participated in a Pre-Hearing Conference on March 2, 2011 wherein the Referee informed her of the hearing procedure, her burden of proof, etc. She was also sent another copy of the JRP. Two days before the scheduled hearing, Claimant requested a continuance so that she could obtain an attorney. Defendants objected. On March 22, 2011, Referee Taylor signed an order vacating the hearing. Pursuant to Defendants' Third Request for Calendaring, this matter was again set for hearing, this time on April 19, 2011. Claimant did not appear at the hearing and has not notified the Commission concerning any reason(s) that may excuse her failure to appear.

FINDINGS OF FACT AND DISCUSSION

1. Claimant's Complaint alleges an injury occurring on June 17, 2009 when she injured her neck while grabbing a falling child. Her Complaint further indicates that she notified Employer of her accident on the date of its occurrence.

2. Defendants filed their Answer on August 13, 2010 denying that the accident occurred and asserting the affirmative defense of Claimant's failure to abide by Idaho Code § 72-706 which provides that a Complaint must be filed within one year of the making of a claim or her claim is barred.

3. Employer completed a First Report of Injury (FROI) on June 29, 2009 based on information received from Claimant, although Claimant did not sign the document. Attached to

the Commission's copy of the FROI is an e-mail generated on July 2, 2009 from Employer's Human Resources Manager questioning Claimant's claim. From these two documents it can reasonably be inferred that Claimant made her claim by at least July 2, 2009. Therefore, pursuant to Idaho Code § 72-706, she had until July 2, 2010 to file her Complaint.[1]

4. Claimant's Complaint was filed on July 14, 2010, over one year from the making of her claim and her claim is thus barred. Claimant has offered no evidence that her failure to timely file her Complaint was due to her being misled by Defendants and the Referee finds that she was not.

5. Even if her claim is not barred by the provisions of Idaho Code § 72-706, her claim must still fail because Claimant has produced absolutely no evidence in support of awarding any of the benefits she may be seeking.

CONCLUSIONS OF LAW

1. Claimant's Complaint is time barred pursuant to Idaho Code § 72-706 and should be dismissed with prejudice.

2. All other issues are moot.

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.

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[1] Surety paid no benefits to Claimant. See Defendants' Exhibit A.

RECOMMENDATION

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

DATED this 13 day of May, 2011.

INDUSTRIAL COMMISSION

/s/_____
Rinda Just, Referee