

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JOCK JOHNSON,)
)
 Claimant,)
)
 v.)
)
 PARADISE VALLEY FIRE DIST.,)
)
 Employer,)
)
 and)
)
 STATE INSURANCE FUND,)
)
 Surety,)
)
 Defendants.)
 _____)

IC 2010-005195
FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

Filed June 7, 2011

Pursuant to Idaho Code § 72-506, the Industrial Commission assigned this matter to LaDawn Marsters. On August 12, 2010, the matter was re-assigned to the Commissioners. The Commissioners conducted the November 4, 2010, hearing in Coeur D’Alene, Idaho. Claimant was represented by Stephen J. Nemeč. James Magnuson represented Employer and Surety. The parties presented oral and documentary evidence at the hearing, and subsequently submitted post-hearing briefs. The case came under advisement on April 21, 2011. It is now ready for decision.

ISSUES

After due notice and by agreement of the parties at hearing the issues were:

1. Whether the events of February 23¹, 2010 actually occurred, and whether those events are sufficient to constitute an accident under Idaho workers' compensation law;
2. Whether there was an injury, and, if so, the extent and degree to which the injury is referable to the events of February 23, 2010; Whether Claimant's injury was the result of an accident arising out of and in the course of employment;
3. Whether Claimant's claim is barred by the provisions of Idaho Code § 72-451; and,
4. Whether Idaho Code §72-209(3) applies.

CONTENTIONS OF THE PARTIES

Claimant argues that he suffered a compensable mental/physical claim under Idaho Code § 72-451. Claimant contends that he had a heated discussion with Mr. Holifield on February 22, 2010, over employment practices. On the following day, Claimant sought medical attention at the Kootenai Medical Center. Claimant contends that the medical testimony supports that his angina, chest palpitations, chest pain, vascular-type headache, and other symptoms are all related to the events on February 22, 2010.

Defendants argue that Claimant has failed to carry his burden of demonstrating physical injury connected to his February 22, 2010, conversation with Mr. Holifield. Further, Defendants contend that Idaho Code § 72-451 bars Claimant's claim.

EVIDENCE CONSIDERED

The Record in this instant case consists of the following:

1. Oral Testimony by at hearing from Claimant, Cody Pulis, Douglas Ladely, Jr., Thomas Bennett, and Bradford Holifield;
2. Claimant's Exhibits A through F admitted at hearing;

¹ The parties' briefs use February 22, 2010 as the date of the conversation between Claimant and Mr. Holifield, with Claimant's hospital admission as February 23, 2010, but the parties are inconsistent throughout the record. This does not materially change the case outcome or the effectiveness of the expert testimony.

3. Defendant's Exhibits 1 through 17;
4. Post-hearing Depositions from Dr. Ligeia Reinhardt and Dr. Craig W. Beaver;
5. The Commission's legal file.

After having fully considered the above evidence and arguments of the parties, the Industrial Commission hereby issues its decision in this matter.

FINDINGS OF FACTS

1. Claimant was forty-nine years old at the time of hearing. Claimant began work as a volunteer firefighter for Paradise Valley Fire Association ("Fire Association") in 2005. In October 2007, Claimant became the fire chief.

2. At the beginning of his employment relationship, Claimant enjoyed his work environment, and felt well-respected. Claimant and Mr. Holifield, then Claimant's co-worker, were friends. In November 2008, the Paradise Valley Fire Association became the Paradise Valley Fire District or a taxing district. Three Commissioners, who happened to be selected from the Fire Association's previous seven-member board, oversaw the formation of the Paradise Valley Fire District. In 2009, three parties, including Mr. Holifield, campaigned to be commissioners of the Paradise Valley Fire District "Fire District." Claimant's enjoyment of his work environment took a precipitous decline during this political campaign, because he felt subjected to greater than usual work stress due to the campaign of the three prospective Commissioners, and their critical appraisal of the activities of the Fire District.

3. In November 2009, voters elected three new Commissioners, including Bradford Holifield, to serve on the board overseeing the operation of the Fire District. The new Commissioners, eager to fulfill their promised agenda of change, intended to re-vamp the organization and operation of the Fire District. Claimant did not welcome these changes.

4. In February 2010, Claimant sought treatment for depression. The medical notes from Dr. Ligeia Reinhardt indicated that Claimant had been “stressed out last four months.” Dr. Reinhardt prescribed Prednisone.

5. On February 22, 2010, Claimant and Mr. Holifield discussed issues pertinent to the operation of the Fire District, specifically, the ability to pump water and the training needed by firefighters to perform this work. Mr. Holifield approached Claimant about the Fire Department’s 50% failure rate on engaging pumps on fire scenes. Hr.Tr. p., 118. The failure rate on engaging pumps on fire scenes was a critical issue to Mr. Holifield, as he did not want constituents watching their homes burn down while firefighters tried to figure out how to engage the pumps for water. The parties began the conversation in Claimant’s office. After some time, the parties continued their conversation in the training room area. The conversation quickly became heated, and Claimant sensed that Mr. Holifield was aggressive in his posture and tone. The parties were both yelling at each other.

6. Claimant testified he was fearful Mr. Holifield would become physically violent. Mr. Holifield never physically touched Claimant. Although Claimant felt some saliva spray from Mr. Holifield’s mouth, there was no intentional spitting. Claimant believed Mr. Holifield closed in on him and thereby prevented him from leaving the area.

7. Mr. Holifield denied preventing Claimant from leaving the area or threatening Claimant. According to Defendants, Claimant became defensive during the conversation, and accused Mr. Holifield of harassing him. Mr. Holifield indicated that his back was against the door, but that he did not prevent Claimant from leaving the area. Hr. Tr. p. 120. Mr. Holifield thought Claimant was trying to provoke a physical altercation. Id. Claimant testified that the training room had two exits, and that he was able to leave the area.

(Mr. Magnuson) Q. Okay. Let's go back here. I'm a little unclear on one thing. When this incident happened, you testified that you wanted to leave the room, but Holifield's presence there or something was prohibiting you from leaving the room. He wouldn't let you out of the room?

(Claimant) A. Through the front door. That's correct.

Q. Is (sic) there multiple exits?

A. That would be correct.

Q. How many exits are there?

A. One in the apparatus bay and one back in my office.

Q. So how did he prohibit you from leaving out the front door?

A. Standing in front of me.

Q. Okay. When he came through the door and this conversation, incident started, did he move around the room or was he—this all happened in front of your front door?

A. We were in my office when it first started.

Q. Okay. And so at some point, he left your office and went out by the front door?

A. I left my office and went out to the front training room.

Q. Okay. And where were you going at that time?

A. To the front training room.

Q. Okay. And is that where the front door is?

A. Correct.

Q. Okay. And what was your intention upon leaving your office and going to the front training room?

A. My office is too small.

Q. Okay. So you were going to carry on this discussion in the training room. Is that right?

A. Correct.

Q. Okay. And then how did that lead to where he was preventing you from getting out the front door?

A. He stood in front of it.

Q. So he positioned his body in front of the door?

A. That would be a correct statement of yours.

Q. So you couldn't exit through the front door?

A. Correct.

Q. But you could exit through the other doors at that time?

A. Correct.

Q. You could turn around and go wherever you wanted to go.

A. That's correct. And I chose the bigger thing, to back away from him, so that I would not get physically assaulted like I thought he was going to.

D. Exh. 9, pp. 316-317.

8. The training room area had two exits—a front door and a back door. Mr. Holifield did not prevent Claimant from leaving. Once Mr. Holifield asked Claimant to get out of his personal space, Claimant left the area. Hr. Tr., p. 120. Claimant could have left through the other doors at any time, and, in fact, Claimant did leave the area without any physical restraint from Mr. Holifield.

9. Cody Pulis, a co-worker, overheard the confrontation between Mr. Holifield and Claimant. Mr. Pulis testified that the parties were yelling at each other. Mr. Pulis did not observe the parties during the argument, and left before the conversation concluded.

10. After his confrontation with Mr. Holifield, Claimant called Douglas Ladely, Jr., Deputy Chief of the Firefighters, and indicated he was upset and could not take his work environment anymore. Hr. Tr., p. 46/8-9. Mr. Ladely was not present for the confrontation

between Mr. Holifield and Claimant. After learning of the confrontation through Claimant's phone call, Mr. Ladely hurried to the station to calm his friend down.

11. When Mr. Ladely arrived at the station, he found Claimant, Mr. Holifield and Orrin Everhart. Mr. Everhart and Mr. Ladely attempted to reduce the tension between the parties. Mr. Ladely testified that Claimant was extremely upset after his interaction with Mr. Holifield. Mr. Holifield felt remorse for the situation with Claimant, and presented an apology note at the next board meeting.

12. Mr. Ladely drove Claimant home, because he thought Claimant was too upset to drive home. Later that evening, Claimant taught a driver's training class. Claimant reported having difficulties with his vision, and right eye twitching. Claimant testified that he developed a headache. Mr. Ladely corroborated Claimant's testimony that Claimant's eye was twitching.

13. Mr. Ladely acknowledged that it was reasonably within Mr. Holifield's obligations as a Commissioner to make inquiries about whether training is being appropriately conducted.

14. After reporting to work the next day, Claimant asked Thomas Bennett to take him to the Boundary County Community Hospital. Mr. Bennett heard of Claimant's confrontation with Mr. Holifield through the grapevine. Mr. Bennett agreed that Claimant had a lot of stress during the transition of the Fire Association to a Fire Department. Mr. Bennett drove Claimant to the Boundary Community Hospital.

15. At Boundary Community Hospital, Claimant reported chest pain, severe headaches and numbness. Claimant was treated with nitrates which resolved his chest pain. Claimant was transported to Kootenai Medical Center via MedStar helicopter for further cardiac care. Ronald Fritz, D.O., cardiology, treated Claimant at Kootenai Medical center with James

Lea, M.D., neurology. Dr. Fritz's results showed noncardiac chest pain with no evidence of acute myocardial infarction, a stress cardiolute study showing normal perfusion with normal left ventricular function, coronary artery disease, dyslipidemia, severe headache, hypertension, and recent upper respiratory infection. Claimant was discharged on February 26, 2010.

16. Per Dr. Fritz's notes, Claimant's history was as follows:

The patient presented to Boundary County Hospital with complaints of chest discomfort and headache that began after a very stressful meeting the previous day. There was no evidence of acute injury by electrocardiogram or cardiac markers. The patient was flown to Kootenai Medical Center for further evaluation. It should be noted that the patient underwent intensive neurological evaluation while in Bonners Ferry including a CT of his head as well as MRI and MRA, all of which were unremarkable.

D. Exh. 3, pg. 118

Dr. Lea gave the following assessment:

I suspect that this gentleman has experienced a vascular-like headache in the context of significant stress. I suspect that the whole sequence of events could very well be explained by significant stress, both the chest pain as well as the headache. There are no additional neurodiagnostic studies that are necessary. I would treat him symptomatically currently with Fiorinal pending the cardiac catheterization results tomorrow. Hopefully, we can reassure him that there appears to be no significant medical problem at this time.

D. Exh. 3, p. 136.

17. Dr. Fritz opined that Claimant's stress was causally related to the February 22, 2010, incident. In his May 1, 2010, opinion letter, Dr. Fritz stated that Claimant's symptoms of anginal discomfort could be explained by emotional stress, and that Claimant mentioned multiple times that he had a stressful work encounter the day preceding his admittance to the hospital.

18. Dr. Fritz released Claimant to work without restrictions effective March 9, 2010.

19. The Paradise Valley Fire District Commissioners terminated Claimant from his position as fire chief around mid-April 2010.

20. Ligeia Reinhardt, M.D., a practicing family physician, treated Claimant before and after the February 22, 2010, incident. Dr. Reinhardt issued a causation letter on July 14, 2010, which stated, in part:

It is the opinion of his cardiologist, Dr. Fritze (sic) that his condition was caused by *emotional stress* triggered by a confrontation between my patient and his commissioner. Having known Jock well for three years, I concur with the cardiologist, and it is my opinion that the stress my patient experienced at work caused his angina.

Claimant's Exh. A. (emphasis added).

21. The parties deposed Dr. Reinhardt on November 2, 2010. Dr. Reinhardt testified that the Claimant's symptoms as stated by Dr. Fritz and Dr. Lea, are related, on a more probable than not basis, to the February 23, 2010, event.

22. Craig W. Beaver, Ph.D., licensed psychologist, also provided testimony. Dr. Beaver's credentials and experience are well-known to the Industrial Commission. Dr. Beaver reviewed Claimant's medical records and treatment records before and after the events of February 23, 2010. Dr. Beaver also interviewed Claimant about his history, present difficulties, the February 23, 2010, event, and Claimant's medical care and treatment. Claimant completed several psychological tests—the MMPI, the PAI, and the Trauma Symptom Inventory.

23. Dr. Beaver determined that there were certain stressors affecting Claimant prior to the February 23, 2010, event, including difficulties with his knee, and difficulties with the changes in his work environment. As discussed above, Claimant reportedly worked well with the Commissioners during the formation of the taxing district for the fire department. Thereafter, Claimant clashed with three newly elected Commissioners, including the Commissioner who would be overseeing the Claimant (Mr. Holifield).

24. Dr. Beaver determined that nothing indicated Claimant suffered any type of physical injury, and that there were no permanent changes in Claimant's physical condition.

From a mental health perspective, I don't see him having any new residual condition as you would define it under the DSM rules for defined mental health disorders. As I think I said before, I think he's had an adjustment disorder with anxious mood, and that the intensity of that has varied depending—but I think that was there before, is there now. I did not see any evidence of a new disorder that came about from this event, i.e., post-traumatic stress disorder, for example.

Now, I don't have any reason to doubt the statement, though, to me—which really doesn't fall under a formal diagnosable mental health condition—you know, he does talk about some of his trust issues and perceptions in some of his working relationships he felt were changed negatively by this experience. And I don't have any reason to doubt his integrity in talking about that. But that's different than rising to a clinical diagnosis of a mental health condition. That's more his perceptions and feelings about some things in the world rather than a diagnosable mental health disorder.

Beaver Depo. p. 19/19-20/13.

25. Claimant is seeking reimbursement for the hospital expenses incurred and not for any TTDS, PPI or PPD at this time.

DISCUSSION

Idaho Code § 72-451 Psychological Accidents and Injuries

26. In 1994, the Idaho State Legislature adopted Idaho Code § 72-451, treating the compensability of certain types of psychological injuries. Generally, the statute recognizes the compensability of so called "physical/mental" and "mental/physical" injuries, yet forecloses claims for "mental/mental" injuries. Compensable psychological claims, because of their subjectivity, must meet certain elements to be recognized.

27. Idaho Code § 72-451 outlines the requirements for a compensable "physical/mental" injury as follows:

- a. The injury was caused by an accident and physical injury or occupational disease or psychological mishap accompanied by resultant physical injury;
- b. The injury did not arise from conditions generally inherent in every working situation or from a personnel related action;
- c. Such accident and injury must be the predominant cause as compared to all other causes combined of any consequence;
- d. The causes or injuries must exist in a real and objective sense;
- e. The condition must be one which constitutes a diagnosis under the American Psychiatric Association's most recent diagnostic and statistics manual, and must be diagnosed by a psychologist or psychiatrist licensed in the jurisdiction in which treatment is rendered.
- f. It must be proven by clear and convincing evidence that the psychological injury arose out of and in the course of employment from an accident or occupational disease.

See, Idaho Code § 72-451, Luttrell v. Clearwater County Sheriff's Office, 140 Idaho 581, 97 P. 3d 448 (2004).

Mental/Physical Claims

28. In addition, so-called "mental/physical" claims must meet the requirements contained in Idaho Code § 72-451(1). A psychological mishap or event may, in itself, constitute an "accident" where: (1) the event results in a resultant physical injury, so long as the psychological mishap or event meets the other criteria of Idaho Code § 72-451; (2) it is readily recognized and identifiable as having occurred in the workplace; and (3) it is the product of a sudden and extraordinary event.

29. The Industrial Commission concludes that the facts of this case are best characterized as a “mental/physical” injury, and evaluates the claim pursuant to the criteria for such injuries.² Appropriately viewed as a “mental/physical” claim, the provisions of Idaho Code § 72-451 create a number of obstacles to a finding of compensability.

30. First, as one of the specific requirements for a “mental/physical” claim, Claimant must demonstrate that his argument with Mr. Holifield resulted in physical injury. It is Claimant’s contention that the chest pain and headaches he developed following the subject event satisfies the requirements of the provisions of Idaho Code § 72-451(1). This case bears some similarities to the facts at issue in *Luttrell v. Clearwater County Sheriff’s Office*, 140 Idaho 581, 97 P.3d 448 (2004). Luttrell was employed as a dispatcher for the Clearwater County Sheriff’s Office. In August 1999, she received a 911 emergency call regarding a person who had stopped breathing. As she was instructing the caller about how to give CPR to the victim, Luttrell suffered a psychological reaction to the situation, and was unable to continue her duties. She was transported to the hospital and diagnosed as having anxiety and depression. At the hospital she was also noted to be suffering from sinus tachycardia. Subsequently, Luttrell was diagnosed as having suffered a nervous breakdown as the result of an acute anxiety disorder, job related stress and underlying depression. Luttrell filed a claim for Workers’ Compensation benefits, but her claim was denied by the Industrial Commission as a classic “mental/mental” condition not compensable under the provisions of Idaho Code § 72-451. On appeal, Luttrell argued that her diagnosis of sinus tachycardia qualified her claim as a “physical/mental” claim.

² Claimant does not allege any facts which would support an analysis of this claim as a “physical/mental” injury. Although Claimant does allege that the argument between he and Mr. Holifield was so heated that he was sprayed with bits of spittle as Mr. Holifield yelled at him, there is no contention that this physical contact caused any injury to Claimant such as would allow treatment of that incident as an “accident/injury.” Rather, the gravamen of Claimant’s claim is that his encounter with Mr. Holifield caused severe mental stress which, in turn, resulted in chest and headache pain.

Evidently, claimant argued that her sinus tachycardia constituted a work-related accident which, in turn, caused her to suffer a nervous breakdown, anxiety and depression. The Court ruled that the Industrial Commission appropriately rejected this argument, concluding that the evidence established that claimant's diagnosis of sinus tachycardia was a physiological reaction to stress and a symptom of a psychological disorder, rather than a physical injury which caused a psychological disorder. However, if claimant's sinus tachycardia was a "physiological reaction" to the stress of taking the 911 call, it might be argued that claimant's claim was better characterized as a "mental/physical" injury. However, the Industrial Commission did not evaluate this road to compensability, possibly because there was no evidence that claimant's episode of sinus tachycardia could be said to constitute a physical injury. In this regard, the Court noted that claimant's heart rate returned to normal after she was removed from the stressful situation. Further, the Court cited with approval the Industrial Commission's determination that Luttrell had failed to demonstrate that her diagnosis of sinus tachycardia constituted a physical injury.

31. The facts of the instant matter are not dissimilar from those at issue in Luttrell. Here, Claimant alleges that his stressful interaction with Mr. Holifield caused him to suffer headaches and chest pain, which would satisfy the requirement of showing resultant physical injury per Idaho Code § 72-451(1).

32. Claimant's medical expert, Dr. Reinhardt, testified to a reasonable degree of medical certainty that Claimant's emotional stress may have triggered his anginal discomfort—which was described as chest pain and pressure. Claimant did not have a heart attack, and does not have a heart defect. Further, Claimant cannot show any physical evidence of his vascular spasm.

Q. (Defense Counsel): Okay. Does that tell you whether there was anything physiological that was found that precipitated the incident?

A. (Dr. Reinhardt): By definition, they could not find a defect of the heart; either damage as it may be evidence by cardiac enzymes or recurrent symptoms with a physiological stress test. By definition, a vascular spasm such as potentially occurred in his brain as well as in his heart, leaves no physical evidence after the spasm is finished.

Q. Just like any kind of muscle spasm, something tightens up and it goes back to normal?

A. Exactly. Yes.

Dr. Reinhardt Depo, p. 20/1-13.

Claimant's medical exam results were unremarkable—a suspected vascular headache, no evidence of acute myocardial infarction, no heart attack, and normal MRIs and CT scans. Claimant's diagnosis of non-cardiac chest pain, including angina and "vascular spasms" leave no physical evidence. It is understandable that Claimant's physicians wished to keep him in the hospital, due to his complaints of chest pain. The Industrial Commission does not doubt that Claimant experienced some pain, but the Court has long held that pain alone is not compensable because it does not cause violence to the physical structure of the body. *See, Bush v. Bonners Ferry School D. No. 101*, 102 Idaho 620, 621, 636, P.2d 175 (1981).

33. Defendants' expert, Dr. Beaver, testified that nothing indicated Claimant suffered any type of physical injury, and that there were no permanent changes in Claimant's physical condition.

Q. (By Counsel) Did you form an opinion as to whether Mr. Johnson incurred any physical injury in connection with the events of February 23, 2010?

A. (Dr. Beaver) Yes, I formed an opinion.

Q. And can you tell me what that opinion is?

A. Well, based on reviewing the records and the rather extensive evaluation that he had done after February 23, 2010, I didn't see anything indicated in the record that he had suffered any type of physical injury.

Q. And do you have anything further to explain that opinion?

A. Well, I mean, they did a—you know, obviously, they had an initial concern about cardiac issues, and that's one of the reasons they—I'm assuming, looking at the records—they sent him down to Kootenai Medical Center. And then he underwent additional evaluation.

And, ultimately, in that evaluation they didn't find any significant physical problems to speak of, other than some longer standing mild difficulties with one aspect of this cardiac status.

And even the headaches that he had—'cause Dr. Lee, I think the neurologist, had taken a look at him related to headaches and everything, you know, improved. You know, he clear pretty—it looked like pretty reasonably over a couple of days with the symptoms that he was having and he was discharged.

Q. Is there any permanent change in his condition as a result of anything that occurred in February 2010?

A. I'm not aware of any permanent change in his physical condition. From a mental health perspective, I don't see him having any new residual condition as you would define it under the DSM rules for defined mental health disorders.

As I think I said before, I think he's had an adjustment disorder with anxious mood, and that the intensity of that has varied depending—but I think that was there before, is there now. I did not see any evidence of a new disorder that came about from this event, i.e., post-traumatic stress disorder, for example. Now, I don't have any reason to doubt the statement, though, to me—which really doesn't fall under a formal diagnosable mental health condition—you know, he does talk about some of his trust issues and perceptions in some of his working relationships he felt were changed negatively by this experience. And I don't have any reason to doubt his integrity in talking about that.

But that's different than rising to a clinical diagnosis of a mental health condition. That's more his perceptions and feelings about some things in the world rather than a diagnosable mental health disorder.

Dr. Beaver Depo., p. 18/7-20/13.

34. The Industrial Commission is persuaded by the medical evidence discussed above that Claimant did not suffer a resultant physical injury, as that term is used in Idaho Code § 72-

451(1). The Industrial Commission declines to extend the definition of a resultant physical injury to Claimant's "flight-or-fight" response. Claimant has failed to show that his conversation with Mr. Holifield, however unpleasant, has caused him resultant physical injury under Idaho Code § 72-451(1).

35. Next, Claimant argues that this stressful conversation was a "sudden and extraordinary event." Idaho distinguishes between a "sudden and extraordinary event" or sudden stimulus and a gradual stimulus, limiting compensability to the former. *See*, Idaho Code § 72-451.

36. The Industrial Commission is not persuaded that the event in question—Claimant's stressful conversation with Commissioner Holifield was sudden or extraordinary. First, Mr. Holifield approached Claimant to discuss a work-related matter—the 50% failure rate on engaging pumps on fire scenes. Claimant disagreed with the Commissioners' views on training the firefighters. As a Paradise Valley Fire District Commissioner, it can be expected that Mr. Holifield would be concerned about the firefighters' water pump failure rate. A disagreement about appropriate training for the firefighters is not extraordinary, and conversations about work performance are also not extraordinary. Differences of opinion are to be expected in the workplace. While unfortunate that the parties were yelling at each other, a tense conversation of about ten minutes is not extraordinary. That Claimant may have gotten along with his previous supervisors more than his current supervisors, does not make his work situation unusual or prove that the particular conversation was egregious or outrageous. Claimant's position required working with the elected Commissioners—the failure of the parties to have a good working relationship is unfortunate, but not grounds for compensation.

37. Further, Claimant's stressful reaction cannot be considered sudden. Claimant had struggled with the new group of Commissioners for months, and disagreed with their political campaign for change. Claimant had previously sought treatment for his work-related stress, and had been very unhappy about his work environment with the new Commissioners. In turn, the Commissioners were unhappy with Claimant's performance, and eventually fired him. The Industrial Commission has no avenue to remedy Claimant's disappointment with the political election of three new Commissioners.

Mr. Holifield's apology letter does not establish that his behavior was egregious. Should the Industrial Commission find that a stressful conversation with a supervisor was a compensable injury, the system would be overburdened with complaints on these stress cases.

38. Next, and relatedly, Idaho Code § 72-451(2) excludes from compensability injuries related to changes in duty, job evaluation and employment termination or other actions generally inherent in every working situation. Mr. Holifield was unimpressed with Claimant's training of the firefighters, and wanted changes. Claimant's position, with responsibility for the public safety, can reasonably be expected to adapt to the type of feedback Mr. Holifield gave about adequate training, just like employees in other fields must reasonably adapt to feedback from their supervisors.

39. The Industrial Commission finds that Claimant's alleged injury arises from conditions generally inherent in every working situation. No employee can expect working conditions completely free of friction or stress. It is optimal when parties working together are friendly and pleasant to each other, but it is not realistic or required. Again, the Industrial Commission cannot remedy Claimant's job dissatisfaction or his dissatisfaction with the results of the political election.

40. Finally, there is no evidence that Claimant's interaction with Holifield caused him to develop psychological condition that constitutes a diagnosis under the American Psychiatric Association's current edition of the *Diagnostics and Statistics Manual*. See Beaver Depo p. 19/19-20/13.

41. Based on the foregoing reasons, the Industrial Commission finds that Idaho Code § 72-451 bars Claimant's claim for compensation.

Idaho Code 72-209 (3)

42. Idaho workers' compensation law balances the need to grant "sure and certain" relief to injured workers with its no-fault approach to compensability with corresponding limitations on an employer's liability. Generally, a claimant is unable to pursue other civil causes of action against the employer and all officers, agents, servants and employees of the employer for injuries covered by workers' compensation law. However, an employee is not forced to relinquish the filing of a workers' compensation claim in order to sue his employer for "willful or unprovoked physical aggression." *Id. See*, Idaho Code § 72-209(3).

43. Claimant cites *Dominguez v. Evergreen Resources, Inc.*, for the proposition that injury in the course of employment and injury as the result of an intentional act are not mutually exclusive." 142 Idaho 7, 121 P. 3d 938 (2005). The Industrial Commission agrees with Claimant's legal assertion. As stated above, Idaho Code § 72-209 allows claimants to pursue civil litigation against employers or employers' agents in particular circumstances. While cognizant of the exception to the exclusive remedy rule, the Industrial Commission is not persuaded that the case warrants an exemption from the exclusive remedy of workers' compensation laws.

44. In *Dominguez*, the employer assigned two employees the task of cleaning out sludge that had accumulated in a large steel tank. Unbeknownst to the employees, the steel tank contained hazardous materials, specifically a cyanide-laced sludge. Employer failed to warn the employees of the danger, failed to provide training or appropriate safety equipment, failed to obtain the appropriate permits, and failed to follow ordinary precautions for handling hazardous materials. Tragically, the employees entered the steel tank and were overcome by the poisonous hydrogen cyanide gas—one employee escaped, leaving Dominguez trapped in the steel tank. Employer was uncooperative with rescue and medical workers. Dominguez miraculously survived the accident, but was left with severe and irreversible brain damage.

45. Dominguez pursued legal action against employer before the Industrial Commission and in the District Court of the Sixth Judicial District, which found that claimant met the Idaho Code § 72-209 exception. Employer's workers' compensation surety paid benefits to Dominguez. The district court awarded Dominguez a large judgment, which the employer challenged in the appeal. The Court held that Dominguez's receipt of workers' compensation benefits did not preclude his tort claim before the district court, because the Industrial Commission had not addressed the Idaho Code § 72-209 issue. Further, the Court commented that either tribunal—district court or the Industrial Commission—had the authority to decide on whether the Idaho Code § 72-209 exception applies.³

46. The Industrial Commission analysis of whether the Idaho Code § 72-209 exception applies is necessarily fact-based. As guidance, the Court has held that to prove

³ Either a court or the Industrial Commission may determine whether a worker is eligible for worker's compensation, and either tribunal may determine whether willful or unprovoked physical aggression actually took place. *See Anderson*, 97 Idaho at 824, 555 P.2d at 154. But regardless of whether a claimant is found eligible for workers' compensation benefits, if either tribunal rules that the Idaho Code § 72-209(3) exception applies, any resulting tort suit would be outside the workers' compensation system and therefore jurisdiction over the tort action would rest with the courts. *Dominguez v. Evergreen Resources, Inc.*, 142 Idaho 7, 121 P. 3d 938 (2005).

aggression there must be evidence of some offensive action or hostile act. *Kearney v. Denker*, 114 Idaho 755, 760 P. 2d 1171 (1988). It is not sufficient to prove that the alleged aggressor committed negligent acts that made it substantially certain that injury would occur. In applying this approach, an employer's failure to install certain safety devices on a lawn mower (*Kearney*), an employer's request that employees remove material suspected to be asbestos without providing adequate protective gear (*DeMoss v. City of Coeur d'Alene*, 118 Idaho 176, 795 P. 2d 875 (1990)) did not meet the exception of Idaho Code § 72-209(3).

47. In this case, Claimant and Mr. Holifield had a spirited disagreement over training in the workplace. Mr. Holifield did not strike Claimant, and the Industrial Commission is not persuaded that Mr. Holifield trapped Claimant in the area. Although Claimant points to a deterioration of the work environment during a political campaign and the election of new Commissioners, including Mr. Holifield, there is nothing exceptional or outrageous about a difference of opinion in the workplace. No employee can expect working conditions completely free of friction or stress, and the vicissitudes of the political process may, and often, change the work environment for those working with appointed or elected officials. While the circumstances of that conversations were certainly far from ideal, and the tone of both parties were unprofessional, Claimant has failed to show willful or unprovoked physical aggression as contemplated by Idaho Code § 72-209(3).

CONCLUSIONS OF LAW

1. Claimant has not shown he suffered an accident/injury as result of the incidents of February 23, 2010, and Idaho Code § 72-451 bars Claimant's claim;
2. Claimant has failed to show willful or unprovoked physical aggression as contemplated by Idaho Code § 72-209(3);

3. All other issues are moot.

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ORDER

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

1. Claimant has not shown he suffered an accident/injury as result of the incidents of February 23, 2010, and Idaho Code § 72-451 bars Claimant’s claim;
2. Claimant has failed to show willful or unprovoked physical aggression as contemplated by Idaho Code § 72-209(3);
3. All other issues are moot.
4. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all issues adjudicated.

IT IS SO ORDERED.

DATED this _7th_____ day of _June____, 2011.

INDUSTRIAL COMMISSION

/s/ Thomas E. Limbaugh, Chairman

/s/ Thomas P. Baskin, Commissioner

R.D. Maynard, Commissioner

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of June , 2011 a true and correct copy of **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** was served by regular United States Mail upon:

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_____/s/_____