

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

ALAN KUYKENDALL,

Claimant,

v.

PACIFIC HIDE & FUR,

Employer,

and

SENTRY INSURANCE A MUTUAL  
COMPANY,

Surety,  
Defendants.

**IC 2010-000477**

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

**Filed November 2, 2012**

**INTRODUCTION**

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Alan Taylor, who conducted a hearing in Boise, Idaho on May 24, 2012. Claimant, Alan Kuykendall, was present in person and represented himself. Defendant Employer, Pacific Hide & Fur, and Defendant Surety, Sentry Insurance A Mutual Company, were represented by Susan Veltman, of Boise, Idaho. The parties presented oral and documentary evidence. No post-hearing depositions were taken and briefs were later submitted. The matter came under advisement on August 20, 2012.

**ISSUES**

The issues to be decided by the Commission are:

1. Whether the October 2009 lump sum settlement precludes Claimant's claims; and
2. Whether the statute of limitations bars Claimant's present claims.

## **CONTENTIONS OF THE PARTIES**

All parties acknowledge that Claimant sustained an industrial accident necessitating surgery in 2006. The parties settled the workers' compensation case arising from the 2006 accident via lump sum settlement approved by the Commission in 2009. Claimant herein asserts a claim for a new back injury in 2008. He claims to have reported the 2008 injury to his supervisor. Defendants assert that Claimant's claim is precluded by the 2009 lump sum settlement agreement and also barred by the statute of limitations.

## **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. The pre-hearing deposition of Claimant, taken April 23, 2012, and admitted into evidence as Defendants' Exhibit 12;
3. The testimony of Claimant, Alan Gardner, and Russell W. Taylor, taken at the May 24, 2012 hearing; and
4. Defendants' Exhibits 1-18, admitted at the hearing.

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**

1. Claimant was born in 1960 and was 52 years old at the time of the hearing. He attended school through the tenth grade and received his GED in 1981. In 1988 he graduated from a police training academy in Oregon. In 1997, he moved from Oregon to Idaho. In 2005, Claimant began working for Pacific Hide & Fur (Pacific).

2. On September 18, 2006, Claimant injured his back while working for Pacific. He underwent surgery in November 2006 and recovered sufficiently to return to work at Pacific with a lifting restriction. He filed a Complaint seeking workers' compensation benefits for his 2006 injury.

3. Claimant's condition continued without significant change from the time of his recovery from surgery in 2006, until 2008. Sometime in 2008, Claimant noticed gradually increasing back symptoms. The symptoms increased slowly until they became significant. A November 2008 MRI revealed recurrent lumbar disc herniation. Claimant affirmed repeatedly that there was no single inciting event that caused the onset of his back symptoms in 2008. He reported his increasing back pain to his supervisor, Russ Taylor, at Pacific. Neither Claimant nor his supervisor completed any new report of injury in 2008, because Claimant did not report any specific event causing the onset of his back pain.

4. In March 2009, Claimant's back pain worsened significantly and he sought further medical care from David Jensen, D.O. Dr. Jensen opined it was possible that Claimant's back symptoms resulted from progressive degenerative changes. Thereafter both Claimant and Defendants, through counsel, negotiated a settlement of their dispute.

5. In September 2009, Claimant and his attorney signed a lump sum settlement agreement resolving his 2006 claim. Defendants paid Claimant \$39,382.45 pursuant to his 2006 claim, including the cost of medical treatment for his ongoing back symptoms rendered in 2008 and 2009. Pursuant to the settlement agreement, approved by the Commission in October 2009, Defendants paid Claimant an additional \$35,000.00 for his 2006 injury, including ongoing back symptoms in 2008 and 2009.

6. In January 2010, Claimant completed a First Report of Injury, alleging a new back injury at Pacific in February 2008. Defendants received Claimant's report and also completed a First Report of Injury in February 2010. On September 22, 2011, Claimant, acting pro se, filed his Complaint herein, alleging a new back injury while working at Pacific in mid-2008, but not describing any specific inciting event.

7. At hearing, Claimant reaffirmed that he developed increasing back pain in 2008, without any triggering event. He never reported a specific accident occurring in 2008 to anyone at Pacific. However, Claimant apparently did report his increasing back pain in 2008 to his supervisor at Pacific.

8. Claimant also testified at hearing that he was never misled or otherwise influenced by Defendants to not file a claim more promptly for his 2008 back complaints. Defendants consistently denied coverage for Claimant's 2008 back complaints until the settlement agreement was executed in 2009.

#### **DISCUSSION AND FURTHER FINDINGS**

9. The provisions of the Idaho 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).

10. **The 2009 lump sum settlement agreement.** In the present case, the 2009 settlement agreement, resolving Claimant's 2006 claim, is dispositive of Claimant's allegations herein. The 2009 agreement documents that at the time of its execution, Claimant asserted that

his 2008 onset of back symptoms was related to his 2006 accident, while Defendants asserted that his 2008 onset constituted a new injury. The settlement agreement provided in part:

Claimant contends and states [to] the Commission that he continues to have difficulties in [sic] fears he may have further medical care. .... Claimant therefore believes he has a significant disability and is entitled to future medical care. Claimant states that all difficulties from 2008 on were in fact related to the 2006 injury.

....

Defendant's [sic] contend and state to the Commission that Claimant had recovered from his initial injury in 2006. He had a spontaneous onset in 2008, and further exacerbation by further spontaneous difficulties in 2009. These are not related to the injury. Because of these factors, any future medical care or disability would not be compensable. Defendant's [sic] further state that as a consequence to the injury, Claimant was able to return to work and did work continuously without complaint until the new onset. Defendants further state that in order to compromise any issues surrounding compensability, this settlement is appropriate.

....

The disputes which the parties wish to compromise in this matter are as follows:

....

5. Relationship of any benefits claimed from 2008 to [sic] on to the original injury in 2006 is a significant issue.

Defendants' Exhibit 8, pp. 61-62 (emphasis provided).

11. Examination of the 2009 lump sum settlement agreement signed by Claimant and his counsel, and approved by the Industrial Commission, clearly reveals that the parties expressly considered and compromised the issue of the causation of Claimant's 2008 onset of back symptoms—specifically whether his 2008 symptoms constituted a new condition or whether they related to his 2006 industrial accident. The settlement agreement adjudicated all matters recited therein and fully discharged Defendants from “all past, present and future liability and responsibility to Claimant under the Idaho Workers' Compensation Law arising from the alleged

injuries or occupational diseases, whether or not pending before the Industrial Commission.” Defendants’ Exhibit 8, p. 71. The identical parties in the instant proceeding resolved their actual controversy through the 2009 lump sum settlement agreement. The 2009 agreement constituted a final judgment on the merits for purposes of collateral estoppel. Jackman v. Industrial Special Indemnity Fund, 129, Idaho 689, 931 P.2d 1207 (1997). Claimant is collaterally estopped from now re-litigating the issue of the causation of his 2008 back symptoms in the instant proceeding. See generally Magic Valley Radiology, P.A., v. Kolouch, 123 Idaho 434, 849 P.2d 107 (1993).

12. Furthermore, in the 2009 settlement agreement Claimant asserted that his 2008 back symptoms related to his 2006 accident. Pursuant to, and in reliance upon, the terms of the 2009 settlement agreement, Defendants paid Claimant \$35,000.00 for the compromise of his 2006 claim—which included his 2008 back symptoms—and also paid Claimant for the medical treatment for his back symptoms that he received in 2008 and 2009. Allowing Claimant’s presently asserted reversal of his position on the issue of causation, and his current demand for additional compensation for his 2008 back symptoms, would be unconscionable and is precluded by quasi-estoppel. See generally Atwood v. Smith, 143 Idaho 110, 138 P.2d 310 (2006).

13. Claimant’s instant claim of a recurrent or new injury in 2008 is precluded by the 2009 lump sum settlement agreement.

14. All other issues are moot.

### **CONCLUSIONS OF LAW**

1. Claimant’s instant claim is precluded by the 2009 lump sum settlement agreement.

2. All other issues are moot.

**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 \_\_23<sup>rd</sup>\_\_ day of October, 2012.

INDUSTRIAL COMMISSION

\_\_\_\_\_/s/\_\_\_\_\_  
Alan Reed Taylor, Referee

ATTEST:

\_\_\_\_\_/s/\_\_\_\_\_  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_2<sup>nd</sup>\_\_ day of \_\_November\_\_, 2012, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

ALAN DALE KUYKENDALL  
2819 S GEORGIA AVE #54  
CALDWELL ID 83605

SUSAN VELTMAN  
1703 W HILL ROAD  
BOISE ID 83702

sb

\_\_\_\_\_/s/\_\_\_\_\_

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SENTRY INSURANCE A MUTUAL  
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**ORDER**

**Filed November 2, 2012**

Pursuant to Idaho Code § 72-717, Referee Alan Taylor submitted the record in the above-entitled matter, together with his recommended 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's instant claim is precluded by the 2009 lump sum settlement agreement.
2. All other issues are moot.
3. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this   2<sup>nd</sup>   day of   November  , 2012.

INDUSTRIAL COMMISSION

  /s/    
Thomas E. Limbaugh, Chairman

  /s/    
Thomas P. Baskin, Commissioner

  /s/    
R.D. Maynard, Commissioner

ATTEST:

  /s/    
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the   2<sup>nd</sup>   day of   November  , 2012, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

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