

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

LISA PALADINI,

Claimant/Respondent,

v.

DOUBLE C FARMS,

Employer,

and

LIBERTY NORTHWEST INSURANCE
CORPORATION,

Surety,

Defendants/Petitioners.

**IC 2005-501771
(15-000098)**

DECLARATORY RULING

Filed August 5, 2013

Pursuant to J.R.P. 15, Defendants Employer and Surety (“Defendants”) filed a petition for declaratory ruling on May 6, 2013. Defendants seek clarification of Idaho Code § 72-706(2) and its application to this case. Claimant suffered an industrial injury on February 29, 2008 — Leap Day — and filed a workers’ compensation complaint on March 1, 2013.

The parties dispute whether the complaint was timely filed. Defendants argue that the five-year period within which to file the complaint expired on February 28, 2013. Claimant avers that the period did not expire until March 1, 2013. Based on the analysis below, we find that the complaint was timely filed and may therefore proceed.

I.

ISSUE PRESENTED

In their petition, Defendants identify the issue before us as the “construction of [Idaho Code] § 72-706(2) as it relates to I.R.C.P. 6(a) regarding the computation of time periods that are specifically designated by statute.” Employer/Surety’s Petition for Declaratory Ruling, p. 1. Claimant correctly notes that I.R.C.P. 6(a) has no application in workers’ compensation cases.

See Page v. McCain Foods, 145 Idaho 302, 311, 179 P.3d 265, 274 (2008) (“The Idaho Rules of Civil Procedure govern in the district courts and the magistrate’s division of the district courts...[the] Industrial Commission is not a division of the district court”). The computation of time in workers’ compensation cases is “controlled by [Idaho Code] § 73-109.” *Id.*

We therefore amend, *sua sponte*, the issue presented to the following:

1. Pursuant to Idaho Code §§ 72-706(2) and 73-109, what was the last day on which a complaint could timely be filed for an accident that occurred on February 29, 2008?

II.

ANALYSIS

The parties agree that Section 72-706(2) is the applicable statute of limitations in this case. It provides:

When payments of compensation have been made and thereafter discontinued, the claimant shall have five (5) years from the date of the accident causing the injury...within which to make and file [a complaint] with the commission.

At issue here is how, precisely, the limitations period should be measured when the accident occurred on Leap Day and there is no February 29 in the year when the limitations period ends.

As mentioned above, computation of time is controlled by Idaho Code § 73-109, which states that the “time in which any act provided by law is to be done is computed by excluding the first day and including the last.” Thus, the “first day,” or the day of Claimant’s accident — February 29, 2008 — is excluded; her five-year limitations period commenced on March 1, 2008. This leaves the question of whether the “last day” was February 28, 2013 or March 1, 2013. Various jurisdictions have split on the issue of what constitutes a year for purposes of time computation. For example, under the rationale adopted by the Ninth Circuit in a case cited by Defendants, the answer would be February 28:

How long is a year?...*Black’s Law Dictionary* 1609 (7th ed. 1999) defines a year as “[t]welve calendar months beginning January 1

and ending December 31,” or as “[t]welve calendar months beginning at any point.” With only *Black’s* as our guide, it would be plain that the period from May 14, 1987, to May 13, 1988, constituted one year (and so that from May 14, 1987, to May 13, 1997, ten). *See also, e.g., Bailey v. Faux*, 704 F.Supp. 1051, 1053 (D. Utah 1989) (“[A] calendar method of calculating a one year period from any given date results in termination of that period in the next calendar year on the date one day prior to the starting date.”); *Bd. of Educ. v. Raubinger*, 78 N.J.Super. 90, 187 A.2d 614, 620 (1963) (holding that employment beginning July 1, 1959, and lasting through June 30, 1962, was for exactly three years). . . . [We hold] that a year runs from one date to the prior date in the next year — 365 days, the equivalent of the period from January 1 to December 31, and *not* that from January 1 to the next January 1, which would be 366 days, or a year and a day.

Lagandaon v. Ashcroft, 383 F.3d 983, 985, 991-992 (9th Cir. 2004). However, other jurisdictions, including other federal circuits, have held that “when a statute of limitations is measured in years, the last day for instituting the action is the anniversary date of the start of the limitations period.” *Ross v. Artuz*, 150 F.3d 97, 103 (2d Cir. 1998). *See also e.g. CJS TIME* § 30; *Rogers v. USA*, 180 F.3d 349 (1st Cir. 1999). Applying this rule, the “last day” in our case would be March 1, 2013, because the start of the limitations period in Claimant’s case was March 1, 2008.

Though Idaho has no case directly on point, our Supreme Court has indicated that the latter rule prevails here. In *McCabe v. Craven*, 145 Idaho 954, 188 P.3d 896 (2008), the plaintiff brought a false imprisonment claim against several state employees. Finding that the two-year statute of limitations began to run on March 7, 2003, the Court held that the plaintiff’s claim, filed on March 7, 2005, was timely. The Court observed:

The claim literally was filed two years and one day later, as two years elapsed on March 6, 2005. March 7, 2005 was the day after two years had elapsed. However, Idaho Code § 73-109 states that time is computed as follows: “The time in which any act provided by law is to be done is computed by excluding the first day, and including the last” The claim therefore was legally filed within two years, though not within two years in the ordinary sense.

McCabe, 145 Idaho at 958 fn 2, 188 P.3d at 900 fn 2.

Relying on this, we find that the “last day” of the Section 72-706(2) limitations period is

the *five-year anniversary of the day after the accident*. This holding is consistent not only with *McCabe*, but also with the edict that the workers' compensation statutes should be "liberally construed in favor of the employee." *Haldiman v. American Fine Foods*, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990). Here, the last day of the limitations period was March 1, 2013. Because Claimant may file her complaint on the last day, her complaint was timely filed and will therefore be allowed to proceed.

IT IS SO ORDERED.

DATED this 5th day of August, 2013.

INDUSTRIAL COMMISSION

/s/ _____
Thomas P. Baskin, Chairman

/s/ _____
R.D. Maynard, Commissioner

/s/ _____
Thomas E. Limbaugh, Commissioner

ATTEST:

/s/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of August, 2013, a true and correct copy of the foregoing **DECLARATORY RULING** was served by regular United States mail upon each of the following:

J SCOTT ANDREW
PO BOX 207
TWIN FALLS ID 83303-0207

JOSEPH M WAGER
PO BOX 6358
BOISE ID 83707-6358

eb

/s/ _____