

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

DEBRA K. SEMANCIK,

Claimant,

v.

CONTRACT FLOORS, INC.,

Employer,

and

LIBERTY NORTHWEST INSURANCE
CORPORATION,

Surety,

Defendants.

IC 2012-016550

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

Filed December 20, 2013

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Michael E. Powers who conducted a hearing in Boise on August 13, 2013. Claimant was present and represented herself. Joseph M. Wager of Meridian represented Employer/Surety. Oral and documentary evidence was presented. The parties then submitted post-hearing briefs and this matter came under advisement on October 15, 2013.

ISSUES

The sole issue to be decided as the result of the hearing is whether Employer willfully failed to file a First Report of Injury or Illness (FROI) thus tolling the statutes of limitation found in Idaho Code §§ 72-701 and 706.

CONTENTIONS OF THE PARTIES

Claimant contends that Employer, with knowledge of her accident and injury, willfully failed or refused to file a FROI and such failure tolled the applicable statutes of limitation such that the otherwise untimely filing of her Complaint is forgiven.

Employer/Surety contend that Claimant missed no work and it was not aware that Claimant received medical treatment as a result of her admitted accident; therefore, Idaho Code § 72-602(1) is not implicated and Employer was not required to file a FROI. Employer was aware that Claimant refused treatment from responding paramedics and did not receive any bills from medical providers that would have triggered an inquiry regarding the nature of those bills.

Claimant responds that Employer was aware that the paramedics gave Claimant the choice of riding to the ER with them or riding with her husband (the choice she ultimately made). Therefore, there is no truth to Employer's assertion that she "refused" treatment by them.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant and Daniel A. Neef, Employer's Human Resources Manager, adduced at the hearing.
2. Claimant's Exhibits 1-2, admitted at the hearing.
3. Defendants' Exhibits A-H, admitted at the hearing.

After having considered all the above evidence and the briefs 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 employed by Employer as an accounts payable manager. On July 22, 2009, Claimant, in her private vehicle, was on her way to do some banking for Employer. While still on Employer's premises, Claimant's vehicle (1999 Chevy Blazer) was struck by another vehicle with such force as to knock Claimant's Blazer over and onto its roof.

2. Claimant was able to exit her vehicle with the aid of a co-worker. She then proceeded to Employer's office to await the arrival of paramedics. Claimant informed the investigating police officer that she was not injured in the crash. She called her husband who drove to the scene and eventually transported Claimant to the ER at St. Alphonsus where she was x-rayed and told to follow-up with her primary physician.

3. Claimant contends she suffered neck and right shoulder injuries in the subject accident. She did not report her accident as a workers' compensation claim because she believed that the other driver was at fault and he (or his insurance company) would take care of her injuries and property damage. After learning that she may have a viable workers' compensation claim, Claimant filed a FROI on or about June 16, 2012 and her Complaint on January 7, 2013.

4. Employer/Surety have paid no benefits on this claim.

DISCUSSION AND FURTHER FINDINGS

Idaho Code § 72-602(1) provides that as soon as possible but no later than 10 days after the occurrence of an injury **requiring treatment by a physician or resulting in absence from work for one day or more** a report thereof shall be made in writing (FROI) by the employer to the Commission.

Idaho Code § 72-604 provides that when an employer has knowledge of an injury and **willfully fails or refuses** to file a FROI, the limitations set forth in Idaho Code §§ 72-701 and 706 shall not run against a claimant until the FROI is filed.

Idaho Code § 72-701 provides for notice of an injury to employer within 60 days of its happening and a claim for compensation must be made within one year of the date of the accident.

Idaho Code § 72-706 provides in pertinent part:

Limitation on time on application for hearing. – (1) When **no compensation paid**. When a claim for compensation has been made and no compensation has been paid thereon, the Claimant has, **unless misled to his prejudice by employer or surety**, shall have **one (1) year** from the date of **making claim** within which to **make and file** with the commission an application requesting a hearing and an award under such claim.

(6) Relief barred. In the event an application is not made and filed as in this section provided, relief on any such claim **shall be forever barred**.

Emphasis added.

5. **Daniel A. Neef** is Employer's Human Relations Manager and has handled its workers' compensation claims for the past 12 years.¹ He testified at hearing that while he had knowledge of Claimant's accident, he was not aware that she went to the ER or received any medical treatment until approximately three years later. He was aware that Claimant missed no work as a result of her accident. Mr. Neef testified that Claimant never complained to him about any injuries allegedly sustained in her accident. Finally, Mr. Neef testified that he did not intentionally fail to file a FROI in this matter.

6. Under cross examination, Mr. Neef testified that he was aware that paramedics were on the scene and examined Claimant. He was not aware until much later

¹ Mr. Neef was a law clerk at the Commission for three years and is well acquainted with its processes and procedures.

that Claimant was claiming the physical therapy she attended was related to the subject accident. He related the following as the reason he did not file the FROI:

The reason I - - the reason I didn't file wasn't whether it was in the scope of your work, it was much more whether or not it was a reportable injury. Typically what you're looking for is whether there was [sic] medications prescribed, whether there was some sort of treatment formed and things like that. I did know you refused treatment from the paramedics² and, therefore, I was unaware that you had followed through with any other treatment. We were never presented with any bills³ or any other way of knowing that there was medical treatment provided and so it had nothing to do with the scope of work, it had everything to do with whether it was a reportable injury.

Hearing Transcript, pp. 17-18.

7. **Debbie Leach** is Employer's payroll administrator and has worked with Claimant for about 18 years. She did not testify in this matter but provided a recorded statement to Surety's adjustor on January 4, 2003. She stated that she knew Claimant was being treated by a physician post-accident, but did not know for how long. Ms. Leach never informed Mr. Neef that Claimant was being treated for injuries sustained in her motor vehicle accident.

8. Claimant contends that it was "common knowledge" at Employer's that she was receiving medical treatment and physical therapy as a result of her accident. However, she called no witnesses to testify under oath regarding the extent, if any, of that knowledge. Mr. Neef credibly testified that he did not know that Claimant had sought medical treatment for her injuries until some three years later. Ms. Leach did not testify and was

² The paramedics' records are not in evidence, so it is unknown just what treatment Claimant was offered that she allegedly refused. Claimant did "refuse" to accompany paramedics to the ER, but chose to ride with her husband instead.

³ The fact that Claimant apparently did not initially pursue this matter as a workers' compensation claim and the fact that the other driver's insurance covered her medical treatment corroborates Mr. Neef's testimony in this regard.

not subject to cross-examination. She did not indicate for what condition(s) Claimant was being treated. Ms. Leach did not indicate what role she played in 2009 regarding handling workers' compensation matters. She did not indicate why she did not tell Mr. Neef (or anyone else) that Claimant was being treated by a physician.

9. Giving Claimant the benefit of the doubt regarding Employer's knowledge of her medical treatment, Claimant must still show that Employer willfully failed or refused to file the FROI. The Idaho Supreme Court has held that the word "willful" implies a purpose or willingness to commit the act or make the omission referred to. While it does not require an intent to violate the law in the sense of having an evil or corrupt motive or intent, it does imply a conscious wrong. It is more nearly synonymous with "intentionally," "designedly," "without lawful excuse," and, therefore, not accidental. It refers to those who purposely, intentionally, consciously or knowingly fail to report, not those whose omission is accidental because of negligence, misunderstanding or other cause. See, *Meyer v. Skyline Mobile Homes*, 99 Idaho 754, 589 P.2d 1240 (1079). See also, *Bainbridge v. Boise Cascade Plywood Mill*, 111 Idaho 79, 721 P.2d 179 (1986)

10. The Referee finds that Mr. Neef had no duty to file a FROI as he knew that Claimant had missed no work as a result of her accident and did not know that Claimant was allegedly being treated by a physician for any work-related injuries.

11. The Referee further finds that, assuming Employer had a duty to file a FROI because of Ms. Leach's knowledge; its failure to do so is nowhere near "willful." The Referee finds that Employer's failure to file the FROI was, at best, accidental or negligent.

12. Based on the above finding, the Referee further finds that Claimant's claim is barred by Idaho Code § 72-706(1) and (6) and should be dismissed with prejudice.

CONCLUSIONS OF LAW

1. Claimant has failed to prove that Employer/Surety willfully failed to file a First Report of Illness or Injury.
2. Claimant's Complaint should be dismissed with prejudice.

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 11th day of December, 2013.

INDUSTRIAL COMMISSION

/s/ _____
Michael E. Powers, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of December, 2013, 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:

DEBRA K SEMANCIK
9340 W HALSTEAD DR
BOISE ID 83704

JOSEPH M WAGER
PO BOX 6358
BOISE ID 83707-6358

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ORDER

Filed December 20, 2013

Pursuant to Idaho Code § 72-717, Referee Michael E. Powers 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 recommendation 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 has failed to prove that Employer/Surety willfully failed to file a First Report of Illness or Injury.
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 20th day of December, 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 20th day of December 2013, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

DEBRA K SEMANCIK
9340 W HALSTEAD DR
BOISE ID 83704

JOSEPH M WAGER
PO BOX 6358
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