

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MATTHEW DEROUCHE,

Claimant,

v.

BLACK DIAMOND PAVING,

Uninsured Employer,

Defendant.

IC 2011-024892

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

Filed July 28, 2014

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Brian Harper. Claimant filed his Complaint on June 14, 2012, through James C. Arnold, Idaho Falls, Idaho. On October 22, 2012, Claimant filed his Notice of Intent to Take Default, and on May 6, 2013, he filed his Motion for Entry of Default with supporting documentation. Receiving nothing from Defendant, on May 24, 2013, the Commission entered default against Defendant Black Diamond Paving.

On April 11, 2014, Claimant filed his Affidavit, and Evidence in Support of Prima Facie Case for Default Judgment with supporting exhibits. Technical errors in the affidavit and Exhibits, primarily in the form of medical records and billings delayed the proceedings. The matter was deemed under advisement on July 17, 2014, when Claimant requested a decision on the existing record.

ISSUE

The sole issue to be decided is whether Claimant is entitled to benefits from Defendant pursuant to Idaho Code Title 72 and the amount thereof, including penalties and attorney fees.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. Claimant's Exhibits A and B, submitted with the Affidavit of Matthew Deroche.

After having considered the above evidence, the Referee submits the following Findings of Fact and Conclusions of Law for review by the Commission.

FINDINGS OF FACT

1. Claimant was hired by Defendant on May 23, 2003.
2. On October 3, 2011, Claimant had an accident while working for Defendant. He slipped while exiting the bed of a truck while in the course and scope of his employment with Defendant. Claimant suffered an injury as the result of a covered industrial accident.
3. The accident resulted in a broken bone injury to Claimant's right ankle.
4. Claimant's injury led to an open reduction, internal fixation ankle surgery, and post-surgery medical care.
5. As the result of Claimant's ankle surgery, he accrued medical bills from the following providers and in the following amounts¹;

Northwest Emergency Physicians	\$ 463.00
Bingham Memorial Hospital	\$ 20,715.78
Blackfoot Anesthesia Services	\$ 1,470.00
D.J. Marc Cardinal, M.D., Radiologist	\$ 289.00
Blackfoot Physical Therapy	<u>\$ 705.00</u>
Total	\$ 23,642.78

¹ While the hospital and Radiologist charges were not included in Claimant's Exhibit A, which purported to represent his accident-related medical bills, the Referee was able to locate and verify those billings in Claimant's Exhibit B, which purported to be Claimant's medical records.

DISCUSSION AND FURTHER FINDINGS

6. Claimant gave notice of the accident and injury to Defendant, and on October 14, 2011 a First Report of Injury was filed with the Industrial Commission. The First Report of Injury disclosed no Surety.

7. Idaho Code § 72-432(1) mandates that an employer shall provide for an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital service, medicines, crutches, and apparatus, as may be reasonably required by the employee's physician or needed immediately after an injury and for a reasonable time thereafter. If the employer fails to provide the same, the injured employee may do so at the expense of the employer. The above-listed medical charges were reasonable in amount, and actually incurred in the course of treating Claimant for his industrial injury. Claimant has met his burden of proving, pursuant to Idaho Code § 72-432, that the medical care he received, was reasonable and necessary to treat his industrial right ankle injury.

8. Defendant has not provided any medical benefits pursuant to Idaho Code Title 72-432. Claimant is entitled to recover from Defendant the sum of \$23,642.78 for past medical benefits related to the October 3, 2011 industrial accident.

9. At the time of Claimant's industrial accident, Defendant had failed to insure its liability under the Idaho Workers' Compensation Laws. Idaho Code § 72-210 provides for a penalty of 10% of the total compensation awarded as a penalty for failing to carry required coverage, along with the award of costs and reasonable attorney fees. Claimant is entitled to the statutory penalty, as well as costs and reasonable attorney fees. While Claimant's counsel specifically did not request attorney fees, an award of the 10% penalty, costs and reasonable attorney fees, is mandatory upon a finding of an uninsured employer. *See, e.g., Smith v. McCord*, 2007 IIC 0966, December 28, 2007.

10. Evaluating the factors enumerated in *Hogaboom v. Economy Mattress*, 107 Idaho 13, 684 P.2 990 (1984), given the anticipated time, effort, and issues involved in proceeding against an uninsured employer, the fees customarily charged for workers' compensation matters, the possible recovery, the time constraints imposed, the length of the attorney-client relationship, Claimant's counsel's extensive experience, Claimant's limited ability to pay for legal services, and the risk of no recovery given an uninsured employer, a fee of 25% of the recovery is deemed reasonable.

11. The record herein establishes workers' compensation benefits due to Claimant, the 10% penalty, and attorney fees and costs owing pursuant to Idaho Code § 72-210 are as calculated below.

Amount owing pursuant to Idaho Code §§ 72-432:

Medical expenses	\$ 23,642.78
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Amounts owing pursuant to Idaho Code § 72-210:

10% penalty	\$ 2,364.28	
Attorney fees	\$ 5,910.70	
Costs	<u>\$ 29.60</u>	
		\$ 8,304.58

Total		<u>\$ 31,947.36</u>
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12. The total amount of workers' compensation medical benefits, attorney fees, costs, and penalties due and owing to Claimant from Defendant is \$31,947.36.

CONCLUSIONS OF LAW

1. Claimant has proven he suffered a compensable industrial accident on October 3, 2011.

2. Claimant has proven he is entitled to reasonable medical benefits for his October 3, 2011 industrial injury in the amount of \$23,642.78.

3. Claimant has proven he is presently entitled to attorney fees, costs, and a 10% penalty pursuant to Idaho Code § 72-210 in the amount of \$8,304.58.

4. The total amount of workers' compensation medical benefits, attorney fees, and penalties presently due and owing to Claimant from Defendant is \$31,947.36.

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 21st day of July, 2014.

INDUSTRIAL COMMISSION

/s/
Brian Harper, Referee

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of July, 2014, 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:

JAMES ARNOLD
PO BOX 1645
IDAHO FALLS ID 83403

BLACK DIAMOND PAVING
12 N 580 W
BLACKFOOT ID 83221

/s/

penalties presently due and owing to Claimant from Defendant is \$31,947.36.

DATED this 28th day of July, 2014.

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 28th day of July, 2014, a true and correct copy of the foregoing **ORDER** was served by regular United States mail upon each of the following:

JAMES ARNOLD
PO BOX 1645
IDAHO FALLS ID 83403

BLACK DIAMOND PAVING
12 N 580 W
BLACKFOOT ID 83221

jsk

/s/