

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JENNIFER SEDLACEK,

Claimant,

v.

MICRON TECHNOLOGIES,

Employer,

and

LIBERTY NORTHWEST
INSURANCE CORPORATION,

Surety,
Defendants.

IC 2013-010082

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

Filed October 22, 2014

INTRODUCTION

Pursuant to Idaho Code § 72-506, the above-entitled matter was assigned to Referee Douglas A. Donohue, who conducted a hearing in Boise on June 26, 2014. Claimant represented herself, *pro se*. Lea Kear represented Defendants. The parties presented documentary evidence and testimony. They submitted briefs. Although Claimant's briefs were received out of order, they are accepted for consideration. This matter came under advisement on September 15, 2014. The undersigned Commissioners have chosen not to adopt the Referee's recommendation and hereby issue their own findings of fact, conclusions of law and order.

ISSUES

Pursuant to the Notice of Hearing, the issues are as follows:

1. Whether Claimant has complied with the notice and limitations requirements set forth in Idaho Code § 72-701 through Idaho Code § 72-706, and whether these limitations are tolled pursuant to Idaho Code § 72-604;
2. Whether and to what extent Claimant is entitled to:
 - a. Temporary disability;
 - b. Permanent partial impairment;

- c. Permanent disability in excess of PPI; and
 - d. Medical care; and
3. Whether Claimant's entitlement to benefits should be affected by application of Idaho Code § 72-451.

CONTENTIONS OF THE PARTIES

Claimant contends stress at work and one or more specific work incidents caused or lighted up her mental health issues.

Defendants contend Claimant stopped working for Employer in May 1998. She filed a complaint in April 2013. She gave untimely notice. She filed an untimely claim. She suffered no physical injury working for Employer and incurred no accident. She has failed to show by competent medical evidence that her mental condition is likely causally linked to her work for Employer. Compensation for her mental condition is precluded by Idaho Code § 72-451.

EVIDENCE CONSIDERED

The record in this matter consists of:

1. Hearing testimony of Claimant and her friend Lana Hoch;
2. Claimant's exhibit 1; and
3. Defendants' exhibits A through E.

With a brief, Claimant included two photocopied pages from WebMD.com. These are not admitted as substantive evidence, but are reviewed as an explanatory basis for Claimant's arguments in her briefs.

FINDINGS OF FACT

1. Claimant worked for Employer from April 22, 1997 through May 13, 1998. Claimant testified that on her first day of work a coworker playfully jumped on her back in front of a supervisor. She did not suffer immediate physical injury. No Form 1 was filed. Claimant did not seek medical care at that time.

2. Claimant testified about other incidents at work, including intentional actions by coworkers. She did not suffer immediate physical injury. No Form 1 was filed. Claimant did not seek medical care at that time.

3. Claimant testified that she developed paranoid thoughts and experienced psychotic events while employed there. She did not suffer immediate physical injury. No Form 1 was filed. Claimant did not seek medical care at that time.

4. Upon separating from Employer, Claimant worked for McDonald's part-time until she was hospitalized at the end of September 1999.

5. The first medical record in evidence is an ER visit dated September 16, 1999. Claimant asserted then that she thought Employer was monitoring her through her TV. She reported having seen six or seven psychiatrists "over the last several years." The evidence does not confirm or deny this assertion. She was released after 48 hours.

6. Claimant became an inpatient on September 30, 1999. She received inpatient treatment for 10 days. Diagnosed with: 1) Acute psychotic episode, 2) Possible schizoaffective disorder, and 3) Possible schizophreniform disorder, no physician connected her conditions to her work at Micron.

7. Medical records thereafter do not mention work for Employer until November 2012. At this point Claimant resurrected memories of working in 1997 and 1998.

8. A progress note dated February 20, 2013 also noted that Claimant mentioned Employer. A March 13, 2013 note by Eva LaRocque, M.D., indicates Claimant was considering looking into workers' compensation benefits as follows: "She reports that the onset of her psychotic symptoms occurred when she was working at Micron and I believe this may qualify her for some benefits." Dr. LaRocque did not express an opinion about causation.

9. The next relevant progress note in which Claimant is reported to have mentioned Employer is dated March 5, 2014 and refers to an upcoming workers' compensation hearing.

10. Other medical records in evidence do not materially provide evidence to support a basis for compensability of workers' compensation benefits.

11. Claimant admitted her condition is entirely psychological, not physical.

12. Claimant signed a Form 1 on May 9, 2013 and made a claim for benefits relating to her employment with Employer.

DISCUSSION AND FURTHER FINDINGS

13. The provisions of the 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).

14. Pursuant to Idaho Code § 72-701, a claimant must give notice of an accident within 60 days and make her claim for compensation within one year. Notice must be in writing, but may be excused where it is demonstrated that employer had knowledge of the accident within 60 days of the occurrence of the same. *See* Idaho Code § 72-704. An employer who has knowledge of an accident requiring treatment by a physician, or resulting in absence of firm work for one day or more, must file an employer's first report of accident within 10 days following the accident. *See* Idaho Code § 72-602. Where employer "willfully fails or refuses" to file such report the limitations prescribed in Idaho Code § 72-701 and Idaho Code § 72-706 are tolled until such report is filed. *See* Idaho Code § 72-604.

15. Here, Claimant alleges without contradiction that Employer was aware of the events she described. She described one event as occurring on or about her first day of work, but could not reasonably locate the time of occurrence of the other events. However, these events must necessarily have occurred prior to her separation from Employer in May of 1998. Claimant did not give timely notice in the form required by the provisions of Idaho Code § 72-701 through 703. Nor is it disputed that Claimant failed to file timely claims. However, Employer's knowledge of the occurrence of the events would excuse the necessity for written notice pursuant to the provisions of Idaho Code § 72-704. Moreover, if Employer had knowledge of the events, yet failed to file the report required by Idaho Code § 72-602, then the provisions of Idaho Code § 72-604 might apply to toll the limitations of Idaho Code § 72-701 and Idaho Code § 72-706. However, Idaho Code § 72-602 makes it clear that the employer's obligation to file an employer's first report only arises where, as a result of the accident, claimant required treatment by a physician or missed at least one day of work. There is no evidence that Claimant missed work or required the care of a physician for any of the alleged accidents during the period of her employment by Employer. Therefore, the tolling provisions of Idaho Code § 72-604 do not apply. While Employer's knowledge of the mishaps/events would excuse the need for written notice, the requirement that Claimant make her claim within one year following the date of the alleged accident or accidents is not excused. Claimant's failure to file timely claims for the alleged accidents, and each of them, bars further proceedings.

16. Even were we to conclude that Claimant's claim is not time-barred, she has failed to demonstrate that the mishaps/events at issue caused any damage to the physical structure of her body. Claimant has altogether failed to demonstrate that the mishaps/events in question

produced any “injury.” Therefore, she has failed to demonstrate that she suffered a compensable accident/injury as defined by Idaho Code § 72-102(18).

17. Claimant compared her psychological condition to mesothelioma in her briefs. This suggested an occupational disease theory of compensability. An occupational disease “shall not include psychological injuries, disorders or conditions unless the conditions set forth in section 72-451, Idaho Code, are met.” Idaho Code § 72-102(22)(a). Pursuant to Idaho Code § 72-451, psychological injuries shall not be compensated unless caused by an accident/injury as defined in Idaho Code § 72-102(18).¹ Therefore, any claim for benefits under Idaho Code § 72-451 fails in this case for the simple reason that Claimant has failed to identify any physical injury emanating from the mishaps/events she described as occurring during her brief employment with employer. Moreover, in order to recover benefits for psychological injury under Idaho Code § 72-451, Claimant must demonstrate that the alleged accident/injuries are the predominate cause, as compared to all other causes combined, of the psychological condition. *See* Idaho Code § 72-451(3). Finally, Claimant must prove, by clear and convincing evidence, that her alleged psychological condition is related to the claimed accidents. *See* Idaho Code § 72-451(6).

18. Claimant has wholly failed to satisfy the elements of Idaho Code § 72-451(3) and (6). Dr. LaRocque’s comment is insufficient to satisfy the requirements of the statute.

CONCLUSIONS OF LAW AND ORDER

1. Claimant has failed to give timely notice and claim as anticipated by Idaho Code § 72-701.

¹ Claimant has not alleged that her condition is compensable by the path of demonstrating that she suffered a psychological mishap that should be treated as an accident. *See* Idaho Code § 72-451(1). However, Claimant could not meet the elements of compensability for such a mishap. Among other things, there is no proof of resultant physical injury or that the psychological mishap was the product of a “sudden and extraordinary event.”

2. Written notice to employer is excused by the provisions of Idaho Code § 72-704.

3. Employer was not required to file an employer's first report pursuant to the provisions of Idaho Code § 72-602 and therefore, Claimant's obligation to make a claim within one year following the date of her alleged accidents is not tolled.

4. Claimant's failure to make a timely claim for her alleged accidents, and each of them, bars further proceedings.

5. Claimant has also failed to demonstrate that she suffered damage to the physical structure of her body such as to constitute an "injury" as defined by Idaho Code § 72-102(18). Therefore, Claimant has not demonstrated that she has suffered a compensable accident/injury under Idaho law.

6. Claimant's claim is also barred under the provisions of Idaho Code § 72-451(1), (3) and (6).

7. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this ___22nd___ day of __October_____, 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 22nd day of October, 2014, a true and correct copy of FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER was served by regular United States Mail upon each of the following:

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/s/ _____