

Idaho Industrial Commission

June, 2012

Dear Certification Course Attendees,

We have some updates for you!

- Tips and reminders regarding claim adjusting
- A review of recent Industrial Commission and Supreme Court Decisions and the effect they may have
- Current mileage reimbursement rates and the Average Weekly Wage and Benefit Rate table for 2012
- Certification Course information

Hope you find these updates useful.

Best wishes,

Kim Takagi, Benefits Analyst, Administrative Supervisor, CIWCS Developer and Lead Instructor
Claims and Benefits Department, Idaho Industrial Commission

Tips /Reminders

- All adjusting decisions on Idaho claims must be made by licensed, in-state adjusters, or by the appointed in-state employees of the surety. The Commission, beyond just the Claims and Benefits Department, is carefully scrutinizing compliance with this requirement. In June, the Commission will conduct a hearing on this issue where a surety will be given the opportunity to show cause why their authority to write workers' compensation in Idaho should not be revoked.
- We are unaware of any basis upon which to cease income benefits, most commonly in the form of PPI payments, due to settlement negotiations or pending review of a settlement agreement by the Commission.
- The Malueg decision, as well as other recent decisions of the Commission, should be carefully reviewed when determining whether income benefits can be ceased. Malueg stands for the proposition that an employer is required to make a reasonable offer of light duty work after each medical release to light duty work while in the period of recovery, or show that there is work available to the injured worker in the general labor market, even when the injured worker has been terminated for cause.
- When preparing a Summary of Payments to submit to the Industrial Commission for claim closure, always make sure to list the actual dates and amounts of benefits paid. If an overpayment has been made, include a note explaining what benefits were overpaid and the amount of these benefits. Make sure to supply documentation of the Average Weekly Wage, first day of disability, return to work dates, and include the final medical report you are using to close the claim. Medical reports documenting permanent impairment ratings must also be included. When using correspondence replies or check-box forms for medical documentation, make sure to include the last written medical report also; our Claims personnel need the detail on that report, and often it may be the only descriptive medical note received at the IC.
- Please remember the Commission now requires only the last four digits of the Social Security number, in addition to the date of injury, on Change of Status Notices.



It is important to keep up-to-date on decisions that are being issued by the Industrial Commission and the Idaho Supreme Court.

Any number of these decisions could have an impact on the way you view and handle a specific workers' compensation matter.

Questions should be directed to your legal representative.

Hammon v. Continental Steel, Inc. and State Insurance Fund

Industrial Commission Decision: 2010 IIC 0150 - File Date: 03/03/2010

The record established that claimant earned \$22.69 per hour and worked an average of 31 hours per week at the time of his accident. His average weekly wage was no less than \$703.39. He also received a per diem at the average rate of \$76.00 per week. Per diem may be considered part of an employee's average weekly wage rather than a special expense, pursuant to Idaho Code § 72-102(32)[now (33)], where the employer requires no receipts documenting how the per diem is spent and the employee may use the per diem as he or she chooses. Day v. Brown Brothers, 2001 IIC 0452. There is no evidence that Continental required claimant to provide receipts documenting his expenditure of his per diem. Pursuant to Day, claimant's per diem should be included in his average weekly wage.

Prado v. Appleton Produce Co. and Liberty Northwest Ins. Co.

Industrial Commission Decision: 2007 IIC 0649.1 - File Date: 09/07/2007

Claimant was offered work by the employer, which he did his best to perform. However, the work the employer offered was not within the claimant's work restrictions. The employer allowed the claimant to work as many hours as he could, and leave early if necessary. The claimant was also documented to leave early for multiple medical appointments. The surety refused to pay TPD benefits for the hours the employee left work early, or the time he missed for medical appointments. The surety was ordered to recalculate TPD benefits based on the hours the claimant worked, with no deduction for going home early, or leaving early for medical appointments. This decision states that since the claimant was still "in the period of recovery" and in fact, could show a decrease in wage-earning capacity, the surety was found to be liable for the claimant's attorney fees in this decision for their unreasonable denial of TPD benefits.

Harkins v. Harris Moran Seed Co. and Employers Insurance Co. of Wausau

Industrial Commission Decision: 2011 IIC 0069.1 - File Date: 09/26/2011

Claimant alleged his knee was injured as a result of compensating for his conceded work comp ankle injury, and that his continuing knee pain was a result of aggravation of pre-existing arthritis, resulting in a need for a total knee replacement (TKR). Claimant underwent a right knee arthroscopy. The surgeon observed significant degenerative changes, and went on to opine that, while a TKR was indicated, it would not be due to the work injury. The IC decision found that the surety was liable for the TKR, in large part because, despite the significant pre-existing condition, the work injury did result in aggravation of the pre-existing condition, and claimant was asymptomatic before the work injury.

Williams v. Blue Cross of Idaho

Decision and Order on Petition for Declaratory Relief

Industrial Commission Decision: 2010 IIC 0064.1 - File Date: 02/03/2010

Idaho Supreme Court Decision: No. 37623-SC2 IIC 1301 – File Date: 09/02/2011

Blue Cross of Idaho, a third-party medical insurer, paid some portion of the medical bills incurred by claimant in connection with his disputed work injury. Claimant reached a mediated settlement with the workers' compensation surety, State Insurance Fund, which was approved by the Commission on March 21, 2008. In this settlement agreement, \$0 was listed under the section itemizing outstanding medicals to be paid by the claimant. Claimant did not repay Blue Cross the money it had paid for medical treatment. Blue Cross then Petitioned the Commission to allow assertion of a claim against the settlement monies. The Commission issued an order on 8/5/09, ruling that it had jurisdiction to consider whether or not the provisions of Idaho Code 72-802 prohibit Blue Cross, or an entity similarly situated, from asserting a claim against the proceeds of a Lump Sum Settlement. The Commission considered Blue Cross to be a subrogee, rather than a "creditor" and 72-802 would not apply. However, the Commission could not award benefits to Blue Cross as it was not the "employee", "employer", or "surety". Blue Cross could, however, file suit against the claimant in civil or federal court to recover these medical expenses for the same reason. The claimant should not double-recover, nor should the claimant jeopardize other claimants' ability to use third-party medical insurers when a claim has been denied by denying their right to recovery. All petitioners for lump sum settlements should be aware of this situation to avoid having a settlement be considered "not in the best interest of the parties" because the claims of medical insurers and medical providers have not been resolved contemporaneous with the proposed settlement.

As a result of this decision, Attorneys representing injured workers, and Pro Se injured workers now need to address the following questions in regard to all lump sum settlements:

1. Will claimant possibly be faced with any bills/claims from medical providers/third-party payors (who may have paid some bills, but now want reimbursement) or in regard to any disputed medical treatment, or from other parties (loan advances)?
2. If there are already claims for unpaid medical bills, or outstanding loans, how much are they and will you pay these from proceeds in your trust account, or will claimant be responsible for paying?
3. If a third-party has paid any medical bills, we'll need your written statement that you've spoken with such payor, advised of this pending settlement, and that they have no interest in pursuing reimbursement. If they intend to pursue reimbursement, we'll need the outcome of such claim.

Mileage Reimbursement Rates in 2012

Since 10-1-09, the mileage reimbursement rates have stayed steady at 45.5 cents per mile. You can check the current state mileage reimbursement rate at <http://www.sco.idaho.gov/web/sbe/sbeweb.nsf/pages/trvlpolicy.htm> under appendix "A".

1-1-08	50.5 cents private vehicle/aircraft	\$30.00	\$39.00 or Federal Rate
7-1-08	58.5 cents private vehicle/aircraft	\$30.00	\$39.00 or Federal Rate
1-1-09	45.5 cents private vehicle/aircraft	\$30.00	\$39.00 or Federal Rate
10-1-09 (Approved on 12-15-09)	45.5 cents private vehicle/aircraft	\$30.00	\$46.00 or Federal Rate

2012 Idaho Workers' Compensation Benefit Rates

	2005	2006	2007	2008	2009	2010	2011	2012
AVERAGE STATE WAGE (ASW)	543.00	565.00	584.00	618.00	636.00	643.00	646.00	661.00
55% ASW (PPI)	298.65	310.75	321.20	339.90	349.80	353.65	355.30	363.55
MINIMUM 45% ASW (unless over 90% AWW)	244.35	254.25	262.80	278.10	286.20	289.35	290.70	297.45
45% INCREASE	4.05	9.90	8.55	15.30	8.10	3.15	1.35	6.75
60% ASW	325.80	339.00	350.40	370.80	381.60	385.80	387.60	396.60
- Increase from Last Year	5.40	13.20	11.40	20.40	10.80	4.20	1.80	9.00
67% ASW	363.81	378.55	391.28	414.06	426.12	430.81	432.82	442.87
- Increase from Last Year	6.03	14.74	12.73	22.78	12.06	4.69	2.01	10.05
90% ASW MAXIMUM	488.70	508.50	525.60	556.20	572.40	578.70	581.40	594.90
- Increase from Last Year	8.10	19.80	17.10	30.60	16.20	6.30	2.70	13.50
15% ASW MINIMUM*	81.45	84.75	87.60	92.70	95.40	96.45	96.90	99.15
-Increase from Last Year	1.35	3.30	2.85	5.10	2.70	1.05	0.45	2.25

Certification courses, co-sponsors, and upcoming courses

The Claims and Benefits Department of the Idaho Industrial Commission offered three courses in Boise in 2011, and with the help of Premier Urgent Care, a service provided by Northwest Specialty Hospital, a course was presented in Post Falls in August of 2011. Thanks again to Arista Strait, the Director of Work Med and Vaughn Ward, CEO, for their assistance with arrangements for this course.

Since the first CIWCS course was offered in January of 2002, the Industrial Commission has presented 44 Workers' Compensation Certification Courses to 856 attendees with 556 Idaho Workers' Compensation Specialist Certifications issued as of March, 2012.

Courses scheduled for 2012:

Idaho Falls - May 22, 23, and 24, 2012, co-sponsored by **Mountain View Occupational Health Solutions and Battelle Energy Alliance – Legal Department**

Boise - June 6, 13, and 20, 2012 **and** November 13, 14, and 15, 2012

A special note of appreciation to **Cheryl Asin and St. Al's Medical Group** for their strong continuing support.

Previous course co-sponsors include:

Occupational Health Solutions
 CH2M-WG Idaho LLC
 Clearwater Paper Corporation
 St. Joseph Regional Medical Center
 Bonner General Hospital
 Gritman Medical Center
 Active Hand and Rehab
 David Christensen, M.D.
 North Idaho Immediate Care
 Kootenai Medical Center
 St. Luke's Idaho Elks Rehabilitation