

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MICHAEL C. ANDERSON,

Claimant,

v.

ADVANCED CUSTOM CABINETS,

Employer,

and

LIBERTY NORTHWEST INSURANCE
CORP.,

Surety,

Defendants.

IC 2013-004877

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

Filed August 26, 2014

Pursuant to Idaho Code § 72-506, the above-entitled matter was assigned to Referee LaDawn Marsters, who conducted a hearing on April 10, 2014 in Coeur d'Alene, Idaho. Claimant was present in person and represented by Starr Kelso of Coeur d'Alene. Employer ("ACC") and Surety (collectively, "Defendants") were represented by Joseph M. Wager of Boise. Oral and documentary evidence was admitted at the hearing. No depositions were taken. The matter was briefed and came under advisement on August 1, 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.

ISSUE

Pursuant to the parties' stipulation at the hearing, the sole issue to be decided is whether Claimant incurred the puncture wound to his left third finger at work on October 9, 2012.

CONTENTIONS OF THE PARTIES

It is undisputed that Claimant sustained a puncture wound to his left third finger, for which he first sought treatment on October 12, 2012. He subsequently developed a bacterial infection of the tendon sheath requiring a long course of treatment, including surgery. The parties stipulated at the hearing that the medical care Claimant received related to his finger injury and its complicating conditions was reasonable and necessary. They disagree, however, as to whether Claimant's injury was related to his work at ACC.

Claimant contends that he shot himself in the finger with a nail gun on October 9, 2012, while fabricating a countertop at work and, therefore, he is entitled to benefits. He did not tell his supervisor, at first, because he thought it was a minor injury and was embarrassed that he shot himself. When he did tell his supervisor (Wayne Dehnert), on October 12, 2012, he said that he hurt himself on a side job because he was afraid of being fired for having an industrial injury. However, the next day he had a change of heart and told Mr. Dehnert what he now contends is the truth, that he hurt himself at ACC. Claimant relies upon his own testimony, as well as the testimony of Karen Cameron regarding a side job, to establish that his finger injury most likely occurred at ACC.

Defendants counter that Claimant's inconsistent testimony renders it not credible and, therefore, it cannot be relied upon to establish, on a more-likely-than-not basis, that he injured himself at ACC. They assert that Claimant's earlier version of events, that he hurt

himself on a side job, is more likely and, therefore, Claimant is not entitled to benefits. Defendants rely upon the testimony of Mr. Dehnert and Joe McCormick, owner of ACC.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. Claimant's Exhibits (CE) "1" through "10" admitted at the hearing;
2. Defendants' Exhibits (DE) "1" through "5" admitted at the hearing¹;
and
3. The testimony of Claimant, Karen Cameron, Wayne Dehnert, and Joe McCormick at the hearing.

FINDINGS OF FACT

The Commission, having evaluated all evidence of record, submits the following findings of fact and conclusions of law.

BACKGROUND

1. Claimant, a finish carpenter for approximately 30 years, was 61 years of age at the time of the hearing and residing in Post Falls. He was employed by ACC as a cabinetmaker, fabricating custom countertops, when he sustained a puncture wound to the volar (palm side) of his left middle finger. Previously, he had been fired by a different employer for incurring an industrial injury. Due to that experience, his observations at ACC, and his interpretation of a conversation with Joe McCormick, owner of ACC, in or around the first part of October 2012, Claimant believed he would be at risk of losing his job if he were to incur a work-related injury that might increase ACC's workers' compensation insurance premiums.

¹ Defendants' Exhibits 3 and 4 were admitted for the limited purpose of demonstrating Defendants investigated Claimant's claim.

2. Mr. McCormick is concerned about maintaining a safe workplace at ACC and keeping his employees free from preventable injuries. He did not work closely with Claimant, and had little recall of the details of conversations he had with Claimant before his industrial injury. Mr. McCormick testified that he does not terminate employees for being injured and he could not think of any instance when he may have insinuated the same to Claimant.

3. Claimant began a side job, adding soffits to an older house, on the weekend days of October 6 and 7, 2012. He worked about six hours each day, mostly lining out the job and stocking it with materials and tools. Karen Cameron, known by Claimant through playing pool, was the caretaker for the homeowner. She put Claimant in touch with the homeowner such that he was awarded the job. Ms. Cameron is not a close friend of Claimant's. She did not see a nail gun, and Claimant testified that he did not use one that weekend. When he left on Sunday, Claimant advised Ms. Cameron that he would return either on Wednesday evening (October 9) or on the following weekend (October 13 and 14) to continue work on the job. Ms. Cameron did not see Claimant again until October 13 (see below), and Claimant testified that he never worked on this job again.

CLAIMANT'S INJURY REPORTS

4. Claimant worked at ACC October 8-10, 2012, and had Thursday the 11th off. He returned to work at ACC on Friday, October 12.

5. Upon arrival, Claimant met with his supervisor, Wayne Dehnert, and then left, without performing any work, to obtain medical treatment for pain and swelling from a puncture wound to his left third finger. Claimant had awakened in the wee hours with these symptoms. Mr. Dehnert and Claimant both observed that the wound was obviously

infected and in need of medical attention.

6. Claimant told Mr. Dehnert that he hurt himself on a side job. He testified:

A. [Claimant] ... And I said, "I'm not going to say it happened here."

And he goes, "Well, what happened? Where did it happen?"

And I said, "Well, last weekend on a side job," and that was basically the job where I was at Karen's. And I said that so fast because it was the quickest thing that came in my mind. I didn't want to get in trouble for having an accident there.

Q. [Mr. Kelso] Tell me about that. You say you didn't want to get in trouble for having an accident there, why did you think you would get in trouble?

A. Because I would become a liability, and if you have a liability or - - in my opinion the way things were done there, if I became a liability and cost them money I would be let go.

TR, 45-46. Mr. Dehnert recalled that Claimant had reported injuring himself on a side job the night before.

7. After Claimant left to seek treatment, Mr. Dehnert told Mr. McCormick. He also recalled that he set about conducting an "investigation" to find out what Claimant told other employees about his injury. He explained that he and Mr. McCormick "gathered up all the people for witnesses...." TR-88. Mr. McCormick, however, did not remember participating in an investigation on October 12th and believed that there would be no reason to investigate at that time, since Claimant had reported he did not hurt himself at ACC.

8. Claimant went straight to the clinic. After being seen briefly, he was sent to the emergency department at Kootenai Medical Center ("KMC"), where he was administered intravenous antibiotics for what was later diagnosed as suppurative flexor tenosynovitis, a bacterial infection of a tendon in his left hand. According to the chart note, "This is a 59-year-old gentleman, who poked a nail into his left middle finger a week

ago at work. He was fine until this morning when the left middle finger now was swollen, red and painful.” CE-1. According to a literal read of this note, then, Claimant reported he incurred his injury on Friday, October 5.

9. On October 13, 2012, Claimant was unable to work on the soffit job, as he had intended, because he had to keep his left hand elevated above his heart. He drove to the job site and notified Ms. Cameron that he would not be able to work that day. Claimant told Ms. Cameron that he had injured himself at ACC and that he had not told his supervisor because he was afraid of being fired. She believed him. Claimant ultimately found someone else to finish the job.

10. Also on October 13, Claimant was reevaluated at KMC. Claimant’s symptoms persisted, and there was some spread of erythema. Again, intravenous antibiotics were administered. The chart note does not address etiology.

11. Claimant telephoned Mr. Dehnert from KMC on October 13 and told him that his injury actually occurred at ACC. According to Mr. Dehnert, he told Claimant, “No, it didn’t.” TR-89. Mr. Dehnert explained, “He never notified me that he was hurt on the job, nobody around him ever notified me. He never filled out a workman’s [*sic*] comp form, and he told me straight up that it happened on a side job.” *Id.* Claimant apologized and explained that he hadn’t reported it earlier because he thought it was an insignificant wound and did not want to risk losing his job. But then, “...I questioned myself why did I - - was I afraid to say something, and I felt the best thing to do is just call them and tell them the actual truth. I was afraid when I said the other thing, you know?” TR-77.

12. Mr. Dehnert advised Claimant that he would not have lost his job for reporting the injury, and testified that employees report injuries regularly without losing

their jobs. He did not provide Claimant with workers' compensation forms because, in Mr. Dehnert's mind, Claimant had not hurt himself at ACC.

13. Claimant described at the hearing how he injured himself at ACC with a nail gun while attaching the lip and front edge to a wood countertop:

Q. [By Mr. Kelso] So take us through what you were doing when you were putting the front and sides on this and using the air gun, and explain how this nail went into your finger.

A. I was on the last piece on the front and I was in the middle of it, the center. There is a nail on each end and in the middle. I was on the middle nail and I was just holding it.

Q. Describe how you were holding it.

A. Well, I was holding the wood, or I had my hand down on the counter.

Q. On the top of the counter?

A. Yeah, because you are pushing on the counter.

Q. Can you demonstrate that?

A. Yeah. Here is the counter, it's on saw horses so it is not very large, so if you push the nail gun on it the counter will scoot, you know, so you hold it down.

Q. So you are holding it down?

A. You are holding it down and you are holding the wood up so it is not too high or too low, it has got to be flush with the top, the countertop. So you are holding it up and you are keeping it from scooting, and you just - - you shoot it, and in this case it slipped up off the edge when I was shooting.

Q. What is the - -

A. The front of the gun where the safety would be, and I was shooting it. As it came up it slipped up and it shot, shot through the top of the little piece of wood, and my hand was here. And I was getting out of the way, and as I did it obviously shot, and it just stuck right in there.

Q. So you shot, the nail went through at an angle after the gun slipped and projected up instead of straight in?

A. Right, yes.

Q. So what did you do with the nail in your finger?

A. Quickly pulled it out.

Q. And what then?

A. A little drop of blood and just a kinky hole, and it was like nothing. I licked it and I looked around and went back to work.

...

[Claimant explains that the nail hit him in the second segment of his left third finger.]

...

Q. So demonstrate where your finger was on that table and how it came through up on that.

A. It happened quick. I guess I would be - - it would be up here a little higher, but I was holding the top down and holding the piece in.

Q. What, with your thumb?

A. The thumb, because this side was already shot, and so the next one was there. When I shot it in either I came up a little bit and it slipped up and it went off and it hit into the wood, but the top edge of the wood instead of down. And when it went off, it just - - you know, you move to go away, you move out of the way, and as it went up it must have went about six inches in the air and just got me like a dart right there.

TR, 37-40. In his Answer No. 6 to Defendants interrogatories, Claimant asserts that he “was working when a nail gun discharged a nail, the nail ricocheted and struck Claimant’s left middle finger.” DE-159.

14. On October 14, 2012, Claimant’s finger was again evaluated at KMC. “This 59-year-old right-handed male had a nail puncture to his left 3rd finger a little over a week ago and subsequently developed a hand cellulitis and tenosynovitis.” CE-8. As in the

October 12 chart note, Claimant's injury is estimated to have occurred on or around October 5.

15. On October 15, 2012, Claimant was again examined. "Seven or 8 days ago he accidentally shot himself with an 18-penny nail in the left middle finger. Four days ago he started having increasing pain and swelling...." CE-30. Surgery was recommended. This chart note locates the time of injury to October 7 or 8, and his pain and swelling onset to October 11.

16. Also on October 15, Mr. McCormick recalls gathering the employees together to determine if anyone witnessed Claimant injure himself at work. Nobody responded that they had. Thereafter, he hired a company to interview each employee regarding the matter and document their responses. Mr. McCormick does not recall speaking with Claimant on this day, but Claimant recalled that he went to ACC and they discussed his injury. Claimant recalls that he suggested to Mr. McCormick he might be able to get county assistance. He reasoned, "...the only other option was to file for county assistance and pretend it didn't happen at work and just go on with life." TR-79. "...Basically I told him, I said maybe I could file for county assistance and just say it didn't happen there." TR-60. Claimant eventually did apply for county assistance, alleging that the injury occurred at ACC. His application was held up, pending the outcome of his workers' compensation claim.

17. On October 16, 2012, Claimant underwent surgery to incise and drain his wound. Claimant was released back to work, as tolerated, as of November 5, 2012. Claimant had near full extension of his fingers, no cellulitis, and no pain on passive stretch.

A chart note related to examination on this date indicates Claimant's condition had resolved.

18. Claimant went back to ACC on November 13, 2012, to work. However, he was discharged upon arrival. Another employee had already been hired to replace him. Mr. Dehnert and Mr. McCormick testified that Claimant was terminated for poor work performance and lying about his injury.

19. No First Report of Injury was ever filed by ACC. Claimant filed one, himself, on December 5, 2012.

20. Claimant was unemployed until April 1, 2013. He was denied unemployment insurance benefits because his termination from ACC was for misconduct in connection with his employment due to lying about his injury. As a result, Claimant was required to sell many of his belongings, including carpentry equipment, to get by. Following April 1 and through the time of hearing he remained unemployed.

DISCUSSION AND FURTHER FINDINGS

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).

21. The Idaho Workers' Compensation Act places an emphasis on the element of causation in determining whether a worker is entitled to compensation. In order to obtain workers' compensation benefits, a claimant's disability must result from an injury, which was

caused by an accident arising out of and in the course of employment. *Green v. Columbia Foods, Inc.*, 104 Idaho 204, 657 P.2d 1072 (1983); *Tipton v. Jannson*, 91 Idaho 904, 435 P.2d 244 (1967). Claimant asserts that his time-of-hearing symptomatology was caused by the February 2012 industrial injury.

22. The claimant has the burden of proving the condition for which compensation is sought is causally related to an industrial accident. *Callantine v. Blue Ribbon Supply*, 103 Idaho 734, 653 P.2d 455 (1982). Further, there must be medical testimony supporting the claim for compensation to a reasonable degree of medical probability. A claimant is required to establish a probable, not merely a possible, connection between cause and effect to support his or her contention. *Dean v. Dravo Corporation*, 95 Idaho 558, 560-561, 511 P.2d 1334, 1336-1337 (1973), *overruled on other grounds by Jones v. Emmett Manor*, 134 Idaho 160, 997 P.2d 621 (2000).

23. The Idaho Supreme Court has held that no special formula is necessary when medical opinion evidence plainly and unequivocally conveys a doctor's conviction that the events of an industrial accident and injury are causally related. *Paulson v. Idaho Forest Industries, Inc.*, 99 Idaho 896, 591 P.2d 143 (1979); *Roberts v. Kit Manufacturing Company, Inc.*, 124 Idaho 946, 866 P.2d 969 (1993).

24. There is no dispute that Claimant suffered a puncture wound to the volar side of his left third finger that required treatment beginning October 12, 2012 and culminated in surgery on October 16. The question is whether the evidence of record establishes that Claimant's puncture wound most likely occurred at ACC.

25. **Claimant's testimony.** The evidence establishes that on October 12, Claimant initially advised Employer that his injury occurred while performing a "side job" and not while

performing work for Employer. While Claimant acknowledges making this statement he testified that it was inaccurate, and that he really suffered his accident on October 9 while working for Employer. Claimant testified that he was worried for his job, worried that if he told Employer what actually happened, he would be regarded as a liability by Employer, and would go the way of other employees of his acquaintance who had suffered injuries.

26. On October 13, however, Claimant had a change of heart, and called Employer from the hospital to say that he had actually hurt himself while working for Employer. Explaining his earlier conflicting statement of October 12, Claimant said that he initially didn't feel he was hurt at the time the accident occurred. However, it will be recalled that when Claimant spoke to Employer on October 12 his symptoms were bad enough to keep him from working, and of sufficient concern to lead him to seek medical treatment.

27. Claimant's testimony does not sufficiently explain why he felt compelled to dissemble the truth on October 12, and what made him decide to come clean on October 13. It is also worth noting that Claimant seems willing to make untrue statements when he thinks it will suit his purposes. Claimant admitted to discussing with Employer whether he should apply for county assistance, even though this would mean that he would have to assert that the accident was not work-related.

28. Claimant's testimony is insufficient to support the proposition that his injury happened at ACC.

29. **Karen Cameron's testimony.** Ms. Cameron's testimony is credible, and supports parts of Claimant's testimony. It establishes that, more likely than not, Claimant did not use a nail gun on the side job she helped him procure. It does not rule out some other type of puncture wound from a nail.

30. **Wayne Dehnert's testimony.** Mr. Dehnert's testimony was generally sincere and consistent with the remainder of the record, although it appears he may have mistaken the date of the employee gathering/investigation. Mr. Dehnert's testimony lacks credibility, however. His flat rejection of the possibility that Claimant could have injured himself at ACC before any investigation took place demonstrates he prejudged the situation and was not an objective witness.

31. **Joe McCormick's testimony.** Mr. McCormick was a generally credible witness, though it appears he was likely mistaken about speaking with Claimant on October 13, 2012. More likely, Mr. Dehnert called on that day to tell him Claimant was now asserting his injury occurred at ACC. Mr. McCormick had no firsthand knowledge of Claimant's injury, and his testimony, on balance, neither endorses nor refutes grounds for Claimants' fear of being fired due to a workplace injury. In any event, Mr. McCormick's testimony is insufficient to establish Claimant's injury likely occurred at ACC.

32. **Unemployment Appeal Decision.** That case has no precedential effect on this case, and it does not establish that Claimant testified inconsistently with these proceedings, in those. This evidence is of little value in determining the issue at bar.

33. **Medical evidence.** Unfortunately, no physician testified regarding Claimant's injury, the incubation period for his infection, or any other matter that may establish any particular onset period or cause as more likely than another.

34. The chart notes related to Claimant's treatment, where they mention etiology, are consistent in mentioning that the injury occurred "at work." Unfortunately, this is not helpful because the activities Claimant performed at the side job and ACC could all accurately be characterized as "work." Also, the October 12 (first) note states Claimant "poked a nail into his

left middle finger a week ago at work.” CE-1. The injury description mentions nothing about a nail gun, failing to distinguish it from any other nail puncture, such as might support Claimant’s position. Further, had the injury occurred on the preceding Tuesday, as Claimant asserts, it is difficult to reconcile why the note locates the injury in time to the previous week. Whether or not Claimant lied to his employer to save his job, there is insufficient persuasive evidence in the record to explain why he would also lie to his physician about facts necessary to obtain proper care. The next Kootenai Medical Center record authored by Dr. Shaw, and dated October 14, 2012, references a nail puncture occurring “a little over a week ago”, i.e. on or about October 6 or 7, which is, again, inconsistent with Claimant’s current assertions.

35. It is understood that chart notes can contain mistaken historical information. In this case, however, there is no evidence that any error was actually made in transcribing Claimant’s report.

36. On October 15, 2012, for the first time, Claimant’s medical records describe a nail gun injury, but describe it as having occurred seven to eight days earlier, i.e. on October 7 or 8.

37. The medical evidence fails to establish that Claimant’s puncture wound happened at ACC, and it fails to establish that Claimant suffered an injury on October 9, 2012.

38. Claimant’s position is not completely lacking in support. There is some persuasive evidence indicating that ACC’s response to Claimant’s injury could reasonably be interpreted as intimidating, lending some credence to Claimant’s interpretations of his observations of behavior and comments about other injured employees at ACC in the past. However, even if Claimant’s fear of termination was legitimate, it would still be insufficient to overcome the evidence in the record establishing that he was not believable. Claimant has failed to establish sufficient independent support for his current version of the accident and injury to

persuade us that it is the likely cause of his left third finger puncture.

39. Claimant has failed to prove by a preponderance of evidence that he is entitled to any benefits related to his left middle finger puncture wound.

CONCLUSIONS OF LAW

1. Claimant has failed to establish that he is entitled to any benefits related to his left middle finger puncture wound.

2. Claimant's Complaint should be dismissed with prejudice.

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

DATED this __26th__ day of August, 2014.

INDUSTRIAL COMMISSION

/s/ _____
Thomas P. Baskin, Chairman

R.D. Maynard, Commissioner

/s/ _____
Thomas E. Limbaugh, Commissioner

ATTEST:

/s/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of August, 2014, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** was served by regular United States Mail upon each of the following:

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