

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

SOHAR CHAVEZ,

Claimant,

v.

KEVIN STOKES,

Employer,

Defendant.

**IC 2012-025814**

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

Filed September 26, 2014

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**INTRODUCTION**

Pursuant to Idaho Code § 72-506, the Industrial Commission assigned the above-entitled matter to Referee Michael E. Powers, who conducted a hearing in Boise on October 30, 2013. Claimant was not present but was represented by Richard S. Owen of Nampa who appeared on Claimant’s behalf. R. Daniel Bowen of Boise represented uninsured Employer, Kevin Stokes, who was also present. Oral and documentary evidence was presented. No post-hearing depositions were taken. The parties were asked to submit post-hearing briefs. This matter came under advisement on May 15, 2014 and is now ready for decision.

Due to the unusual procedural facts present in this case, the Commissioners hereby issue their own findings of fact, conclusions of law, and order.

**ISSUE**

The sole issue to be decided is whether the transport of Claimant by St. Alphonsus Life Flight (“Life Flight”) constituted reasonable treatment pursuant to Idaho Code § 72-432.

**CONTENTIONS OF THE PARTIES**

Claimant contends that the Commission should stay the proceedings and order the medical provider Life Flight be brought into the proceedings. Employer contends that the Life

Flight transport charge is unreasonable under the circumstances of Claimant's injury and that Employer should not be required to cover the cost of the transport. He relies on the opinions of Mark C. Clawson, M.D. and Paul C. Collins, M.D.

### **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. The testimony of Employer, Kevin Stokes, taken at the hearing;
2. Claimant's Exhibits A and B, admitted at hearing; and
3. Employer's Exhibits 1-10, admitted at the hearing.

### **FINDINGS OF FACT**

1. Employer testified that he owns a farm in Fruitland and employed Claimant as a part-time irrigator. Hearing Transcript, pp. 17-18.

2. On September 8, 2012, Employer received a call from Payette County Dispatch that Claimant had been injured. Hearing Transcript p. 19.

3. On September 8, 2012, Claimant suffered a partial amputation of his small finger when his left hand slipped into the chain of a motor on the irrigation line he was moving on one of Employer's properties in the Payette/Fruitland area. Hearing Transcript, pg. 18; Defendant's Exhibits 2 and 4.

4. Claimant drove himself to the home of an off-duty Payette County Police Officer, who called 911. Defendant's Exhibit 2.

5. Payette County Paramedics EMTs arrived at the scene of Claimant's accident. Claimant was "writhing and moaning and appear[ed] in considerable pain." Claimant had also "vomited once". It was determined that Claimant's small finger was salvageable. Defendant's Exhibit 2.

6. Life Flight was called and transported Claimant to St. Alphonsus Regional Medical Center in Boise. Defendant's Exhibit 3.

7. The tip of Claimant's finger could not be reattached and a revision amputation was performed on his left small finger at the distal portion of the proximal phalanx. Defendant's Exhibit 5.

8. Life Flight sent Claimant a statement on September 12, 2012 with a due balance of \$21,201.00 for the transport. Defendant's Exhibit 8.

9. Employer is not insured for workers' compensation purposes on the advice of his accountant. Hearing Transcript, p. 19, ll. 1-19.

10. The only bill for Claimant's treatment not paid by Employer is the bill at issue from Life Flight. Hearing Transcript, p.6, ll.7-13.

#### **DISCUSSION AND FURTHER FINDINGS**

11. The provisions of the Idaho 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).

#### ***REASONABLENESS OF CLAIMANT'S TREATMENT.***

12. Idaho Code § 72-432(1) requires an employer to provide for an injured employee such reasonable medical, surgical, or other attendance or treatment, nurse and hospital services, medicines, crutches and apparatus, as may be reasonably required by the employee's physician

or needed immediately after an injury.<sup>1</sup> If the employer fails to provide the same, the injured employee may do so at the expense of the employer.

13. For the purposes of Idaho Code § 72-432(1), medical treatment is reasonable if the employee's physician requires the treatment and it is for the physician to decide whether the treatment is required. *Mulder v. Liberty Northwest Insurance Company*, 135 Idaho 52, 58, 14 P.3d 372, 402, 408 (2000).

14. The only review the Commission is entitled to make of the physician's decision is whether the treatment was reasonable. *Sprague v. Caldwell Transportation Inc.*, 116 Idaho 720, 722, 779 P.2d 395, 397 (1989).

15. Idaho Code § 72-102 (25) defines a physician as "medical physicians and surgeons, ophthalmologists, otorhinolaryngologists, dentists, osteopaths, osteopathic physicians and surgeons, optometrists, podiatrists, chiropractic physicians, and members of any other healing profession licensed or authorized by the statutes of this state to practice such profession within the scope of their practice as defined by the statutes of this state and as authorized by their licenses."

16. Idaho Code §56-1012 (14) defines an "emergency medical technician" as "a person who has met the qualifications for licensure as set forth in sections 56-1011 through 56-1023, Idaho Code, is licensed by the EMS bureau under sections 56-1011 through 56-1023, Idaho Code, carries out the practice of emergency care within the scope of practice determined

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<sup>1</sup> As we have noted in the past, Employer's obligation to provide treatment under Idaho Code § 72-432(1) is stated in the disjunctive. *Richan v. Arlo G. Lott Trucking Inc.*, 2011 IIC 0008.4 (Feb. 7, 2011). Because we find that the care in question was ordered by Claimant's "physician" we need not consider whether the helicopter ride would also qualify as "reasonable" care "needed" immediately after the industrial accident. However, based on our conclusion that the care required by Claimant's "physician" was reasonable, we think it likely that the care would also be found "reasonable" and "needed" under the second part of the disjunctive.

by the [Idaho emergency medical services physician] commission and practices under the supervision of an Idaho licensed physician.”

17. The Idaho Code defines “paramedic” as a “person who has met the qualifications for licensure as set forth in sections 56-1011 through 56-1023, Idaho code” who “is licensed by the EMS bureau under sections 56-1011 through 56-1023, Idaho Code, carries out the practice of emergency care within the scope of practice determined by the [Idaho emergency medical services physician] commission and practices under the supervision of an Idaho licensed physician.” Idaho Code § 56-1012 (19).

18. The record does not clarify if the responders to Claimant’s injury were paramedics or EMTs. For the purposes of our analysis, it is sufficient that both are licensed by the state of Idaho.

19. The distinction between state licensing and non-licensing for purposes of establishing who qualifies as a “physician” was discussed in *Oliveros v. Rule Steel Tanks, Inc.*, 2012 IIC 0094.6 (Nov. 2, 2012). In *Oliveros*, Claimant sought payment for prosthetic fingers via a prosthetist although his primary physician opined they were not functional, only cosmetic. We held that because the “state of Idaho does not license prosthetists and has no statutory framework that authorizes the profession within the meaning of Idaho Code §72-102 (25) [...] it is clear that [Claimant’s prosthetist] cannot, in the first place, even qualify as a ‘physician’ for the purpose of requiring certain treatment for Claimant.” As both paramedics and EMTs are authorized and licensed by the State of Idaho, we are persuaded that the Payette County Paramedics EMTs who responded to Claimant’s injury meet the definition of a “physician” for purposes of Idaho Code § 72-102 (25).

20. Claimant's accident happened on or about 5:00 p.m. Defendant's Exhibit 2.

Upon his arrival, Employer observed three Payette County paramedics EMTs and a deputy Sheriff. Employer testified as follows:

Q (By Mr. Bowen): When you got there, what was Mr. Chavez's situation?

A (By Mr. Stokes): He was sitting on a bench on the deck of the sheriff deputy's house. One of the paramedics had his hand up in the air, had Mr. Chavez's hand up in the air, elevated. It was bandaged. You know, I talked to him briefly, Mr. Chavez, asked, you know, how he was, and then tried to talk to the paramedics, you know, what's happening, you know, what are we doing now. They didn't respond to me, basically brushed me off, but eventually one of the paramedics who was brand new on the job said she didn't know what was happening, so . . .

Q: The reason you were inquiring was you were wondering why he wasn't already being taken to Holy Rosary?<sup>2</sup>

A. Exactly. You know, like I said, they had him already bandaged and, you know, their ambulance was sitting there, you know, five, ten yards away and, you know, doors open and I thought, well, let's get him going, you know, and like I said, no one would answer me. I asked the sheriff's deputy and he said the bird was on its way, and that's when I asked, you know, why and not one would answer that. I got nothing from anyone after that.

Hearing Transcript, pp. 20-21.

21. According to the Prehospital Care Report, "Off duty Payette County Paramedics EMT land-lines Medic 20 and advises finger may be able to be surgically fixed. Life Flight Network is requested to launch." Defendant's Exhibit 2.<sup>3</sup>

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<sup>2</sup> "Holy Rosary" Medical Center as used throughout the records refers to the previous name of St. Alphonsus Medical Center – Ontario.

<sup>3</sup> The record leaves us unable to determine whether it was "Medic 20" or the onsite paramedic EMT who actually ordered that Claimant be flown to Boise. Nor do we know anything about who or what Medic 20 may be. However, since the onsite paramedic EMT sought medical approval from Medic 20, it stands to reason that Medic 20 is a "physician" with equal or greater credentials than the onsite paramedic EMT.

22. Claimant was taken by Life Flight to the St. Alphonsus - Boise emergency department. Hand specialist Mark Clawson, M.D. took over his treatment once Claimant arrived. Dr. Clawson deemed Claimant's severed finger irreparable and performed a revision amputation. Defendant's Exhibit 5.

23. Defendant contends that because Claimant's industrial injury occurred approximately 15 minutes from St. Alphonsus - Ontario in Oregon, it was not reasonable to fly Claimant to St. Alphonsus - Boise. However, the Commission is disinclined to join Defendant in that conclusion. As was elucidated in *Sprague*, "I.C. § 72-432(1) obligates the employer to provide treatment, if the employee's physician requires the treatment and if the treatment is reasonable. It is for the physician, not the Commission, to decide whether the treatment is required." *Sprague* at 722. Both the paramedic EMT on the scene of the industrial injury and Medic 20 had the authority to call for Life Flight under the terms of their respective licenses and Life Flight responded accordingly.

24. Reasonableness may be established via three factors established by the Idaho Supreme Court: 1) The claimant made gradual improvement from the treatment received; 2) The treatment was required by the claimant's physician, and 3) The treatment received was within the physician's standard of practice, the charges for which were fair, reasonable, and similar to charges in the same profession. *Sprague* at 722-723, 397-398.

25. In the instant case, Claimant did indeed lose the end of his pinky finger, but the quality of the amputation performed by Dr. Clawson is not under dispute. The flight to St. Alphonsus - Boise resulted in a "well healed and contoured" small finger. Defendant's Exhibit 5. Defendant does not question if the amputation was reasonable, his focus is instead on the reasonableness of the transport itself. Finally, the record provides no persuasive evidence

that the cost of the flight as called was unfair or unreasonable. Under the conditions of *Sprague*, Claimant's transport was a reasonable part of his treatment of his industrial injury.

26. Defendant further contends that because the tip of Claimant's finger was not ultimately viable for reattachment, the decision to call for Life Flight was not reasonable. This argument ignores that following the injury, a trained paramedic EMT or similarly licensed person within the EMS chain of authority established by the Idaho Code, i.e. Claimant's "physician", made the determination that it was possible to reattach the tip of Claimant's finger and that taking him to St. Alphonsus - Boise was Claimant's best chance of success for the procedure. Neither the type of injury nor the quality of the treatment Claimant received at St. Alphonsus - Boise is at issue.

27. As we discussed in *Page v. McCain Foods, Inc.*, "*Sprague* and its progeny have not created a rule that medical care is compensable only when it is successful. [...] [M]edical care does not always work. That does not mean the claimant must bear the costs of failed treatment." 2009 IIC 0424.7 (Sept. 8, 2009). If the finger had been reattached successfully, would Defendant be so adamantly opposed to covering Claimant's Life Flight expenses? According to Idaho Workers' Compensation law precedent, the ultimate outcome of the treatment is neither the only nor an infallible indicator of reasonable treatment, but one factor in a more comprehensive analysis. We reiterate the language used in *Campagni v. The Disney Store*, "The evaluation of an injured worker's entitlement to medical treatment should not be made on the basis of retrospective analysis of whether the treatment proved efficacious." 2013 IIC 0029.27 (April 12, 2013).

28. Defendant also claims that "[s]omeone involved in the LifeFlight [sic] operation made a mistake, and that should remain their problem." Defendant's post-hearing brief, p. 15.

There is no evidence in the record that the call for transport was a mistake. The mere fact that Defendant does not want to pay for the service is insufficient to establish that a mistake was made.

29. Paul C. Collins, M.D., an orthopedic surgeon practicing in Boise, opined in an April 9, 2013 letter to Employer's counsel:

Having reviewed the case and specifically, as an example, the x-ray report of 09/08/12, it is evident that this is a 5<sup>th</sup> finger crushing/tearing type injury that was not in any way, shape, or form, life critical. For that reason I do not understand why Life Flight was called or addressed in the first place, and why the case was not taken to Holy Rosary. Indeed, it is extremely reasonable that the patient would be taken physically to Holy Rosary Hospital. Had there been an incident which may in some way benefitted from a vascular reconstruction, then the patient could be transferred to St. Alphonsus or St. Lukes. Indeed, this was in no way necessary.

Defendant's Exhibit 6, p.55. According to Defendant's post-hearing brief, "Dr. Collins clearly believes that the LifeFlight [sic] trip to Boise was unreasonable and unnecessary." P. 15. Dr. Collins was not Claimant's physician, nor was he present or involved in Claimant's treatment. Under the particular facts of this case, we find the on-site Payette County Paramedics EMT and Medic 20's emergency treatment decision more persuasive than the opinion of Dr. Collins on the issue of reasonableness of the call for Claimant's transport.

30. The Commission is not unsympathetic to the peculiar facts present in this case. As Defendant points out in his Post-Hearing Brief, "[t]here is no explanation in the record as to why Claimant could not have been taken to St. Alphonsus in Ontario and worked up, and even if it turned out transportation to St. Alphonsus in Boise was necessary in order to attempt revascularization of the finger, why that assessment could not have been made at St. Alphonsus in Ontario." P.16. The Commission agrees that record before us is sparse. However, the statutes that bind the Commission ask if the treatment was "reasonably required by the employee's

physician or needed immediately after an injury.” Idaho Code § 72-432(1). Through the record before us, we find that the transport of Claimant was reasonable.

***CLAIMANT’S REQUEST TO STAY PROCEEDINGS.***

31. In his supplemental brief, Claimant requests the Commission to stay the proceedings and order that Life Flight be brought in as a party. Based on the evidence submitted by the parties, we believe to further stay the proceedings would be inappropriate. We therefore decline to rule on this issue as per our discretionary power to grant a joint hearing “analogous to IRCP 42(a)”. *Hipwell v. Challenger Pallet and Supply*, 124 Idaho 294, 299, 859 P.2d 330, 335 (1993).

**CONCLUSIONS OF LAW AND ORDER**

Based on the forgoing reasons, IT IS HEREBY ORDERED that:

1. The treatment Claimant received from Life Flight following his industrial accident on September 8, 2012 was reasonable under Idaho Code § 72-432(1).
2. Pursuant to Idaho Code § 72-718, this Decision is final and conclusive as to all matters adjudicated.

Dated this   26th   day of  September , 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 26th day of September, 2014, a true and correct copy of the forgoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** was served by regular United States Mail upon each of the following:

RICHARD S. OWEN  
PO BOX 278  
NAMPA, ID 83653

R DANIEL BOWEN  
PO BOX 1007  
BOISE, ID 83701-1007

ka

/s/ \_\_\_\_\_