

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

RYAN ROCK,

Claimant,

v.

MODERN WELDING & MACHINE,

Employer,
Defendant.

IC 2014-015461

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

Filed December 23, 2014

INTRODUCTION

The Idaho Industrial Commission assigned this matter to Referee Douglas A. Donohue. Claimant appeared *pro se*. Employer failed to answer Claimant's complaint. Default was entered. Claimant presented his *prima facie* case via testimony at a hearing conducted on December 5, 2014 in Boise, and by supporting documentation admitted at the hearing. The case is ready for decision.

CLAIMANT'S CONTENTIONS

Claimant contends that he incurred medical bills and time loss when a partial sheet of ¾ inch metal fell on his foot while working for Employer. Employer was not insured.

EVIDENCE CONSIDERED

The record in this matter consists of:

1. The testimony of Claimant presented at the hearing; and
2. Claimant's Exhibits 1 and 2 admitted at the hearing.

After having fully considered all of the above evidence, the Referee submits the following findings of fact and conclusions of law for review by the Commission and recommends it adopt the same.

FINDINGS OF FACT

1. Claimant injured his right great toe in a compensable accident on March 19, 2014. A partial sheet of $\frac{3}{4}$ inch metal fell on his foot. He immediately reported the accident to Employer's owner, Lloyd Killingbeck. A co-worker drove Claimant to Primary Health then on to St. Luke's ER.

2. Claimant suffered an open tuft fracture and laceration, including loss of the entire toenail, which required medical treatment.

3. Claimant's Exhibit 2 shows medical bills total \$1,668.74 as follows: \$181.00 Primary Health treatment; \$679.74 ER and the OR at St. Lukes; \$524.00 physician's charges relating to surgery; \$222.00 follow-up office visit and X-ray; \$62.00 Boise Radiology charges for X-rays on March 25 and April 11, 2014. This medical care was reasonable and related to the accident and injury.

4. Claimant was released to light duty effective April 6, 2014.

5. Claimant returned to work for about one hour. Mr. Killingbeck sent Claimant home because no suitable work was available. Claimant did not receive a wage for that hour.

6. Although scheduled by physicians, the record does not show Claimant attended the follow-up medical visits after April 11, 2014. After a total of three and one-half weeks, Claimant returned to work. Claimant returned to full-duty work without any physician expressly lifting the temporary restrictions.

7. At the time of injury, Claimant's weekly wage was \$500.00.

8. Mr. Killingbeck acknowledged to Claimant that Modern Welding and Machine did not then currently possess Worker's Compensation insurance as required by Idaho Law. Also to Claimant, Mr. Killingbeck orally acknowledged personal liability for Claimant's medical bills. Employer's office manager, "E'Lisa" confirmed these acknowledgements to Claimant.

DISCUSSION AND FURTHER FINDINGS

9. The provisions of the Worker's Compensation law are to be liberally construed in favor of the employee. *Sprague v. Caldwell Transportation, Inc.*, 116 Idaho 720, 779 P.2d 395 (1989). The humane purposes which it serves leave no room for narrow, technical construction. *Ogden v. Thompson*, 128 Idaho 87, 910 P.2d 759 (1996).

10. An "accident" is an unexpected, undesigned, and unlooked for mishap, or untoward event, connected with the industry in which it occurs, and which can be reasonably located as to time when and place where it occurred, causing an injury. Idaho Code § 72-102(18)(b). An "injury" is construed to include only an injury caused by an accident, which results in violence to the physical structure of the body. Idaho Code § 72-102(18)(c).

11. A claimant must prove not only that he or she was injured, but also that the injury was the result of an accident arising out of and in the course of employment. *Seamans v. Maaco Auto Painting*, 128 Idaho 747, 918 P.2d 1192 (1996). Proof of a possible causal link is not sufficient to satisfy this burden. *Beardsley v. Idaho Forest Industries*, 127 Idaho 404, 901 P.2d 511 (1995). A claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability. *Langley v. State, Industrial Special Indemnity Fund*, 126 Idaho 781, 890 P.2d 732 (1995).

12. A claimant's burden of establishing a *prima facie* case by probable, not merely possible evidence should not be disregarded simply because the uninsured employer was defaulted by order of the Commission. *See, State v. Adams*, 22 Idaho 485, 126 P. 401 (1912).

13. Claimant's testimony and documentary evidence establishes a *prima facie* case for entitlement to medical care and temporary disability benefits.

14. Idaho Code § 72-432(1) obligates an employer to provide an injured employee reasonable medical care as may be required by his or her physician immediately following

an injury and for a reasonable time thereafter.

15. *Neel v. Western Construction*, 147 Idaho 146, 206 P.3d 852 (2009), provides that a claimant is entitled to reimbursement of the full invoiced amount for reasonable medical costs incurred following a denial of further treatment. *Neel* bases this outcome, in part, on the proposition that one should not benefit from contractual arrangements inherent in an insurance policy when, in fact, the denial repudiates the applicability of that contract. Despite the absence of a formal denial, Employer's failure to obtain insurance and to pay Claimant's claim is deemed a denial. Consistent with *Neel*, Claimant is entitled to payment of the full invoiced amount of his reasonable medical expenses related to treatment of his industrial injury in the amount of \$1,668.74.

Temporary Disability

16. Idaho Code § 72-408 provides that income benefits for total and partial disability shall be paid to disabled employees during the period of recovery. The burden is on a claimant to present evidence of the extent and duration of the disability in order to recover income benefits for such disability. *Sykes v. C.P. Clare and Company*, 100 Idaho 761, 605 P.2d 939 (1980).

17. The medical records show Claimant returned to work before he was fully released to do so. He is entitled to three and one-half weeks of TTD, which benefit amounts to \$1,172.50

Attorney Fees and Costs

18. Idaho Code § 72-210 imposes upon an uninsured employer an additional 10% penalty, plus costs and attorney fees. Claimant had not retained an attorney at the time of hearing, but may be required to retain one and to incur costs in order to obtain and enforce a judgment against Employer. The 10% penalty amounts to \$284.12.

Defendants' Liability

20. Lloyd Killingbeck, as owner of Modern Welding and Machine, personally agreed to pay benefits due Claimant as a result of this accident. By authority of Idaho Code § 72-714(3), an investigation by the Referee shows Modern Welding and Machine, LLC, filed an annual report form with the Idaho Secretary of State. E'Lisa Worrell signed as "Controller." The report identified Cindy Killingbeck as "manager" of the entity. All pertinent addresses were the same as the address to which the Complaint in this matter was served.

21. Modern Welding and Machine acted in contravention of Idaho Workers' Compensation Law by failing to secure compensation. Idaho Code § 72-319 authorizes joint and several liability.

22. Modern Welding and Machine, Lloyd Killingbeck, and Cindy Killingbeck are jointly and severally liable for payment of benefits due Claimant.

CONCLUSIONS OF LAW

1. Claimant has established a *prima facie* case to support his application for a default judgment;

2. Claimant has proven he is entitled to medical care benefits in the amount of \$1,668.74;

3. Claimant has proven he is entitled to temporary total disability benefits in the amount of \$1,172.50;

4. Claimant has proven he is entitled to recover a penalty for failure to insure in the amount of \$284.12;

5. Claimant is entitled under Idaho Code § 72-210 to costs and attorney fees, if any, required to prosecute and obtain the above-enumerated benefits;

6. Modern Welding and Machine, LLC; Lloyd Killingbeck and Cindy Killingbeck are jointly and severally liable for payment of these benefits.

RECOMMENDATION

The Referee recommends that the Commission adopt the foregoing Findings of Fact and Conclusions of Law as its own and issue an appropriate final order.

DATED this 17th day of DECEMBER, 2014.

INDUSTRIAL COMMISSION

/s/
Douglas A. Donohue, Referee

ATTEST:

/s/
Assistant Commission Secretary dkb

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of December, 2014, a true and correct copy of **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** were served by regular United States Mail upon each of the following:

RYAN ROCK
3750 HIGH GROVE LANE
NAMPA, ID 83687

MODERN WELDING & MACHINE
1249 BOEING STREET
BOISE, ID 83705

dkb

/s/

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

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ORDER

Filed December 23, 2014

Pursuant to Idaho Code § 72-717, Referee Douglas A. Donohue submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusions of law to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant has established a *prima facie* case to support his application for a default judgment.
2. Claimant has proven he is entitled to medical care benefits in the amount of \$1,668.74.
3. Claimant has proven he is entitled to temporary total disability benefits in the amount of \$1,172.50.
4. Claimant has proven he is entitled to recover a penalty for failure to insure in the amount of \$284.12.
5. Claimant is entitled under Idaho Code § 72-210 to costs and attorney fees, if any, required to prosecute and obtain the above-enumerated benefits.

6. Modern Welding and Machine, LLC; Lloyd Killingbeck and Cindy Killingbeck are jointly and severally liable for payment of these benefits.

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

DATED this 23rd day of December, 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 23rd day of December, 2014, a true and correct copy of **ORDER** were served by regular United States Mail upon each of the following:

RYAN ROCK
3750 HIGH GROVE LANE
NAMPA, ID 83687

MODERN WELDING & MACHINE
1249 BOEING STREET
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