BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

DAN A. DORAMUS, Claimant, v. CITY OF KOOSKIA, Employer, and IDAHO STATE INSURANCE FUND, Surety, Defendants.	**IC 2011-011073** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** **Filed September 18, 2013**

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Alan Taylor, who conducted a hearing in Lewiston on March 21, 2013. Claimant, Dan Doramus, was present and represented by Anthony Anegon of Lewiston. Defendant Employer, City of Kooskia (City), and Defendant Surety, Idaho State Insurance Fund, were represented by Wynn Mosman of Moscow. The parties presented oral and documentary evidence. No post-hearing depositions were taken. Briefs were submitted and the matter came under advisement on May 28, 2013. 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

1. By agreement of the parties, the issues to be decided include: (1) the date of manifestation of Claimant's occupational disease; (2) whether Claimant gave timely notice of his

occupational disease to Defendants as required by I.C. § 72-448; and (3) whether a Complaint was timely filed pursuant to I.C. § 72-706. All other issues are reserved.

CONTENTIONS OF THE PARTIES

Claimant alleges that he is entitled to benefits for an occupational disease resulting from hydrogen sulfide gas (H_2S) and/or chlorine gas exposure from his work in the City's wastewater treatment plant. Defendants assert that Claimant did not give timely notice of his alleged occupational disease nor file a timely Complaint.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission's legal file;
2. The testimony of Claimant taken at the March 21, 2013 hearing;
3. Exhibits 1, 1A, and 2 through 13 admitted at hearing.

PRELIMINARY MATTERS

The Complaint in this case, filed March 23, 2012, impermissibly raises two separate claims, the first for an accident of January 13, 2011, and the second for an occupational disease arising out of Claimant's long term exposure to industrial irritants. Under J.R.P. 3(B), separate Complaints are required for each alleged accident or occupational disease. The conflation of these claims presents a number of challenges to their eventual resolution. Claimant is directed to file two amended Complaints, one treating the occurrence of the industrial accident, and the other treating the occurrence of the alleged occupational disease.

Next, the Commission notes that there may be some dispute over the extent and degree to which Claimant's injuries are referable to the alleged occupational exposure versus the industrial accident or some other cause. For example, Andrew Jones, M.D., appears to place most of the

blame for Claimant's current complaints on long term occupational exposure. However, Claimant has testified that following the industrial accident of January 13, 2011, he experienced a significant change in symptomatology as compared to the complaints from which he had previously suffered. (Transcript 25/19 – 27/19). Because of the way the issues are articulated, the Commission does not address this potential causation dispute in this decision. At first blush, it may appear necessary to consider whether Claimant's current complaints are causally related to his long term occupational exposure in order to determine the date of the manifestation of Claimant's alleged occupational disease. As developed below, manifestation is the date on which a claimant knows, or has been told by qualified medical authority that he suffers from a condition that is related to the demands of his employment. However, the date of manifestation is relevant only to defining the time frame within which a claimant must give notice and make claim for his occupational disease; it should not be confused with Claimant's burden of proving that his condition is causally related to the demands of his employment. Even if it is undisputed that an injured worker gave notice and made claim within the time prescribed following the date of manifestation, this would never excuse Claimant's obligation to prove causation as a *prima facie* element of his occupational disease claim. Therefore, though we address the issue of manifestation and its impact on Claimant's obligations under I.C. § 72-448, nothing in this opinion should be construed to address the issue of the cause of Claimant's condition.

FINDINGS OF FACT

1. **Background.** Claimant was born in 1958. He was 54 years old and resided in Stites at the time of the hearing. In 1977, he graduated from Kooskia High School. He has received no other formal training. After high school, Claimant worked installing sprinklers, landscaping, and logging. Prior to 1997, he never worked around sewers or in any job exposing

him to noxious gasses.

2. **Alleged occupational exposure and treatment.** In 1997, Claimant began working full-time in the City's maintenance department. His duties included working in the City's wastewater treatment facility where solid sewage was filtered into bags in a screening building. Claimant spent from 30 minutes to two hours each day in the screening building, changing bags of raw sewage and cleaning sewage from screens. At that time, the City used chlorine to disinfect raw sewage. This work exposed him to chlorine and hydrogen sulfide gas (H_2S), a by-product of raw sewage. He was not provided a protective mask when working in the screening building.

3. After commencing work in the City's wastewater treatment facility, Claimant periodically contracted conjunctivitis and sinusitis. In February 2001, he developed Bells Palsy. He received medical treatment and recovered completely.

4. In approximately 2005, the City began using ultraviolet light, rather than chlorine, to disinfect raw sewage in its wastewater treatment facilities.

5. On August 10, 2009, Claimant sought treatment from Brenda Hewlett, CFNP, for a sinus infection. Claimant had been at work cleaning a water channel with liquid bleach and developed breathing trouble and flu-like symptoms. Claimant reported to Ms. Hewlett that he was exposed to bleach or chlorine bleach. He testified at hearing that he did not tell his medical providers in 2009 that he was exposed to chlorine because the City had ceased using chlorine to disinfect raw sewage and was then using ultraviolet light. Claimant wondered whether he was having trouble with gasses from the raw sewage, hydrogen sulfide, or bleach. Ms. Hewlett assessed chronic sinusitis and ordered a CT sinus scan that revealed an opacified right maxillary sinus as well as ethmoid sinusitis on the right side. She suggested Claimant consider sinus

surgery. Claimant testified that Ms. Hewlett did not advise him that he had a work-related disease at that time.

6. On September 15, 2009, Claimant underwent sinus surgery by Jeffrey Burry, D.O. Claimant testified that Dr. Burry did not advise him that he had a work-related disease at that time. Post-surgery, Claimant experienced less frequent sinus infections. He continued his usual wastewater treatment duties.

7. On January 13, 2011, Claimant was at work sweeping raw sewage from an ultraviolet light channel when his supervisor sprayed the channel with water, causing some of the raw fecal material to splatter onto Claimant's face. Claimant immediately washed his face; however, by the next day he had a headache, facial pain and swelling, and felt as if he had the flu. Thereafter, he noticed recurring debilitating headaches and facial pain, especially after cleaning raw sewage from the screens. Claimant continued to work during the following several weeks in spite of facial pain and headaches. He testified that his recurring headaches were sharper than the sinus headaches he had experienced previously. He also discovered that light aggravated his headaches, whereas it had not previously. He sought medical treatment from several physicians, including Dr. Burry.

8. On April 13, 2011, Claimant presented to Andrew Jones, D.O., complaining of persistent left and right facial pain, swelling, and tingling. Dr. Jones recorded Claimant's account that he was splashed in the face with raw sewage and then obtained a face mask from the fire department. Dr. Jones advised Claimant that he was suffering from sick work site syndrome, noting: "I think contributing to his problem are the noxious fumes that he's inhaling, i.e. chlorine gas as well as hydrogen sulfide gasses." Exhibit 3, p. 77. Claimant testified this was the first time any health care provider had told him that his symptoms were work-related.

9. On April 19, 2011, Claimant presented to ophthalmologist Mark Eggleston, M.D., who noted changes in low contrast sensitivity and color vision. On May 6, 2011, Dr. Eggleston wrote that Claimant "should not be around noxious fumes, as it is causing recurring ocular health issues." Exhibit 6, p. 8. Thereafter, Claimant ceased work in the screening building. On April 29, 2011, Claimant presented to neurologist Mark Keane, M.D. Dr. Keane noted Claimant's facial pain and swelling had improved since he had not been working in the screening building for several days.

10. On May 8, 2011, Claimant prepared the first report of injury and claim. Surety acknowledged receipt of the claim by letter dated May 11, 2011. This first report was date stamped received by the Industrial Commission on March 23, 2012. Attached to the first report is a five page synopsis prepared by Claimant detailing the occurrence of an accident on January 13, 2011, as well as identifying a date (April 13, 2011) on which Dr. Jones told him he was suffering from sick workplace syndrome.

11. On May 10, 2011, Claimant presented to Amy Baruch, M.D., with migraine headache, chronic sinusitis, tremors, and unsteady gait. Dr. Baruch noted Claimant's exposure to hydrogen sulfide gas. On May 16, 2011, Dr. Jones released Claimant from work for possible work-related chronic occupational exposure. On May 18, 2011, Dr. Jones authored a letter opining that Claimant's job site exposures to noxious chemicals, including chlorine and hydrogen sulfide gas, would have to stop in order for his condition to improve.

12. On June 9, 2011, the City terminated Claimant's employment, as it could not accommodate his medical restrictions. Claimant's symptoms improved somewhat, but continued even after his employment ended. He noted ongoing headaches, with particularly sharp pains in his temples and eyes.

13. On July 18, 2011, Claimant presented to Arthur Jones, III, M.D., with complaints of migraine headaches and left facial pain and swelling. Dr. Jones recorded Claimant's account of being splashed in the face with raw sewage and confirmed hemifacial swelling and tenderness. Dr. Jones diagnosed chronic rhinosinusitis and left-sided migraine with olfactory triggers. He ultimately diagnosed neuropathy and referred Claimant to neurosurgeon John Demakas, M.D.

14. On February 27, 2012, Claimant presented to Dr. Demakas in Spokane. Dr. Demakas diagnosed atypical facial pain with facial nerve involvement and referred Claimant to neurologist Wade Steeves, M.D., of Spokane.

15. On March 23, 2012, Claimant filed his Complaint herein.

16. In an amended answer filed October 1, 2012, Defendants admitted that timely notice was given with respect to the accident on January 13, 2011, but denied that notice was timely for the alleged occupational disease.

17. On April 14, 2012, Dr. Steeves examined Claimant, diagnosed trigeminal neuralgia, and prescribed medication.

18. On May 29, 2012, Claimant presented to occupational physician Howard Shoemaker, M.D., at the Saltzer Medical Group in Boise. Dr. Shoemaker recorded:

> Patient appears to have droopiness of his left eye with episodes of what appears to be excruciating pain around the left eye and left temple which occurred once during the approximately 60 minute evaluation. The patient has a baseline tremor at rest of both upper extremities. He has apparent weakness of grip with some evidence of muscle wasting in the distal upper extremities.
>
> ….
>
> Based on the examination and finding, medical record review and literature search, there does appear to be a basis for a work related neurologic condition. There is no information provided from the employer regarding exposure or MSDS sheets. According to the patient's history, there was exposure to hydrogen sulfide, chlorine gas and fecal material. In addition, the patient gives a history that he worked in that environment for the past 13 years. Given his work

> environment, this could be summarized as "sewer gas" exposure which could additionally include methane. There also could be micro-toxins and possibly other chemical exposures such as trichloroethylene, etc.
>
> Literature indicates the above mentioned agents are, to some degree, known to be neurotoxins. Trichloroethylene and micro-toxins have been shown to be causes of trigeminal neuralgia. Hydrogen sulfide gas has been associated with neuropsychological and neuronal functional abnormalities due to its affect on the basal ganglia.

Exhibit 12, pp. 1-2.

19. In approximately September 2012, Surety ceased paying for Claimant's medical care and he lacked the means to obtain further treatment. Because of the way the claims have been conflated, it is not entirely clear whether benefits were paid on one or both claims. However, the accounting provided by Defendants reflects that benefits were paid for the January 13, 2011 accident (*See* Claimant's Exhibit 13).

20. At the time of the hearing, Claimant continued to experience debilitating symptoms and was unable to find suitable employment.

21. **Claimant's credibility.** Defendants attack Claimant's credibility by noting his hearing testimony that he first saw Dr. Andrew Jones on April 13, 2011, whereas the record discloses that Claimant also saw Dr. Andrew Jones on June 28, 2010; September 20, 2010; and October 7, 2010. However, the record establishes that Claimant's June 28, 2010 visit was prompted by a cough and resulted in a discussion about rheumatoid arthritis; his September 20, 2010 visit was prompted by shoulder and abdominal pain and hypertension; and his October 7, 2010 visit was for a colonoscopy. None of Claimant's visits to Dr. Andrew Jones prior to April 2011 pertained to Claimant's facial pain or headaches.

22. Having observed Claimant at hearing, and reviewed the evidence, the Referee found that Claimant is a credible witness. The Commission finds no reason to disturb the

Referee's findings and observations on Claimant's presentation or credibility

DISCUSSION AND FURTHER FINDINGS

23. 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).

24. **Timely Notice of Manifestation Under I.C. § 72-448.** The pivotal issue is whether the occupational disease claim is barred by Idaho Code § 72-448 for Claimant's failure to give timely notice to his Employer of an occupational disease within 60 days after its first manifestation, or failure to timely file a Complaint with the Industrial Commission within one year after its first manifestation.

25. The timeliness of Claimant's notice to the City on May 11, 2011, depends on the date of the manifestation of his alleged occupational disease. Under Sundquist v. Precision Steel and Gypsum, Inc., 141 Idaho 450, 111 P. 3d 135 (2005), an occupational disease exists for the purposes of the Workers' Compensation Law when it first manifests. "Manifestation," of course, is a term of art under our law, and is defined at I.C. § 72-102(19) as follows:

> "**Manifestation**" means the time when an employee knows that he has an occupational disease, or whenever a qualified physician shall inform the injured worker that he has an occupational disease.

The definition is stated in the disjunctive. Manifestation can occur either when the Claimant "knows" that he suffers from an occupational disease or when he is so advised by competent medical authority.

26. **Informed by a qualified physician.** Defendants assert that Brenda Hewlett's chart notes document that she opined Claimant suffered from a work-related condition on August 10, 2009, and so informed Claimant. Claimant denied that Ms. Hewlett informed him that he suffered from an occupational disease in 2009. Ms. Hewlett's chart notes do not indicate she advised him that he suffered from an occupational disease. Moreover, review of her August 10, 2009 note, emphasized by Defendants, reveals that while she understood Claimant was exposed to noxious gasses at work, she did not opine as to the causation of his sinusitis. Her note states: "A/P: Chronic Sinusitis. There may be an irritant component to his chronic sinus infection. He is frequently exposed to chlorine and H_2S. He does not wear a protective mask. Consider consult with OSHA. Will schedule him for a CT scan of the sinuses without contrast." Exhibit 3, p. 41 (emphasis supplied). Although precise words are not necessary to establish that a medical opinion is held to the required legal standard, Ms. Hewlett's speculation that "there may be an irritant component" to Claimant's condition, falls short of the reasonable medical probability standard required to establish causation. Jensen v. City of Pocatello, 135 Idaho 406, 18 P.3d 211 (2000).

27. The record provides several other indications that Ms. Hewlett did not draw a definitive causal relationship between Claimant's sinus symptoms and his work. Ms. Hewlett did not diagnose or assess an occupational disease. There is no indication Ms. Hewlett cautioned, let alone restricted, Claimant from working in wastewater treatment. Furthermore, there is no indication that Ms. Hewlett encouraged Claimant to wear a face mask or take any specific measures to protect himself from chlorine or hydrogen sulfide exposure. Claimant was not wearing a face mask on January 13, 2011, when his supervisor splashed raw sewage into his face. According to Dr. Andrew Jones' April 13, 2011 chart note, Claimant did not obtain a face

mask until later. This is consistent with the speculative tenor of Ms. Hewlett's note that there "may be" an irritant component to his sinus infection. Her notes simply do not establish that she formulated an opinion as to the cause of Claimant's sinus complaints; neither do her notes indicate that she informed Claimant that his work exposure caused his sinus complaints.

28. The case of Boyd v. Potlatch Corporation, 117 Idaho 960, 793 P. 2d 192 (1990), though decided prior to the adoption of the current statutory definition of manifestation found at I.C. § 72-102(19), is instructive. Boyd was employed at Potlatch's lumber production facility. In 1984 he began to experience worsening respiratory complaints. On October 31, 1984, Boyd consulted with Dr. Mannschreck, who felt that Boyd's respiratory complaints might be related to exposure to cedar dust. Dr. Mannschreck also felt it was possible that Boyd's complaints might be related to exposure to some other allergen. On February 26, 1985 Dr. Mannschreck advised Boyd to seek employment that did not involve exposure to cedar dust. On June 10, 1985 Boyd underwent a cedar dust challenge test which demonstrated that his respiratory complaints were, in fact, related to exposure to cedar dust. Boyd filed a Notice of Injury and Claim for Benefits on March 25, 1986. Potlatch contended that notice and claim were untimely because they were not filed within the time prescribed following the date of manifestation of the Boyd's disease. Potlatch contended that the date of manifestation was February 26, 1985, the date on which Dr. Mannschreck recommended that Boyd no longer work around cedar dust. The Commission ruled that while Dr. Mannschreck suspected that cedar was an allergen as early as October 31, 1984, Dr. Mannschreck did not, and could not, clearly identify cedar dust as being the cause of Boyd's condition until after the cedar dust challenge test of June 10, 1985 positively identified cedar dust as the culprit. It was only at that time that other suspected allergens were ruled out. Upholding the Industrial Commission, the Court stated:

> We therefore hold that for the purposes of notice and filing requirements of I.C. § 72-448, a disease is not manifest until its cause has been clearly identified by competent medical authority as related to the employer's work and that information has been communicated to the employee.

29. Although the decision predates the statutory definition of manifestation, the Court's test is altogether consistent with the legislative definition. At no time before his consultation with Dr. Jones in April of 2011 did any physician ever identify the claimant's work as the cause of his complaints. As in Boyd, Ms. Hewlett's notes fall short of establishing that she had concluded that Claimant's condition was the cause of his complaints, much less that she so informed Claimant.

30. Claimant credibly testified at hearing that he was never informed by any medical practitioner that he had an occupational disease until April 13, 2011, when Dr. Andrew Jones so advised him. The Commission finds that no medical practitioner informed Claimant he had an occupational disease prior to April 13, 2011.

31. **When Claimant knew he had an occupational disease.** Defendants argue that Claimant was aware of recurring symptoms from at least 2009 onward and realized that his work caused his symptoms. Defendants assert Claimant therefore knew that he had an occupational disease well prior to 2011.

32. In Sundquist v. Precision Steel & Gypsum, Inc., 141 Idaho 450, 111 P.3d 135 (2005), the Court stated:

> Precision argues that because Sundquist suffered from pain prior to coming to work for Precision, the Industrial Commission was wrong to find that Sundquist's occupational disease was not a preexisting condition. ….
>
> An occupational disease exists for the purposes of the worker's compensation law when it first manifests. ….
>
> …. [M]anifestation … is defined as "the time when an employee knows that he has an occupational disease, or whenever a qualified physician shall inform the

> injured worker that he has an occupational disease." Ch. 274, § 1, 1997 Idaho Sess. Laws 799, 802. This definition is subjective. The employee must know that he has an occupational disease or have been so informed by a qualified physician. In addition, the knowledge required is that he has an occupational disease, not that he has symptoms that are later diagnosed as being an occupational disease. Knowledge of symptoms is not synonymous with knowledge the symptoms are caused by an occupational disease. Boyd v. Potlatch Corp., 117 Idaho 960, 793 P.2d 192 (1990).

Sundquist, 141 Idaho 453-454, 111 P.3d 138-139.

33. In the present case, Claimant acknowledged he was aware of ongoing symptoms commencing shortly after his employment with the City. Defendants assert that Claimant's own testimony establishes that he knew he had an occupational disease prior to 2011.

34. Defendants first cite Claimant's testimony regarding swollen gums as establishing that he knew he had an occupational disease shortly after commencing work with the City:

> Q. (by Mr. Mosman) Okay. And you also recall that in your deposition that you testified that right after the first month you knew you were having problems, that your gums were swollen?
>
> A. (by Claimant) I knew that there was a problem whether it was with the gas for sure, I wasn't for sure. I'm not a doctor.
>
> Q. Okay. You have never had that problem before, swollen gums?
>
> A. No.

Transcript, p. 44, l. 21 through p. 45, l. 5. This testimony establishes Claimant's knowledge of symptoms—swollen gums—but not his knowledge that his symptoms were caused by an occupational disease.

35. Defendants next cite Claimant's testimony about his frequent bouts of conjunctivitis as establishing that he knew he had an occupational disease prior to 2011:

> Q. (by Mr. Mosman) And when is it that you yourself went to the fire department and requested that mask?

A. (by Claimant) After I probably—after I got pink eye for I don't know how many times I had had pink eye.

Q. When was that?

A. I'm not for sure, sir. I know that when they were constructing the building out there, the gentlemen [sic] that was doing the construction, the sewer blew up in his face, the next day he had pink eye in both eyes.

Q. Okay. And those sorts of events alerted you to a problem?

A. Alerted me that when I have pink eye that I should be trying to cover my face up. Like I said, like I told Mr. Anegon, when I first started I could tell that there was a problem there with the sewer, not with the gas. I knew that—when you flush the toilet, and this is a proven fact, you flush a toilet and you don't put the lid down, the spray comes up six feet towards you out of the toilet.

Q. Liquid?

A. Yes. If you leave the toilet lid open, you flush the toilet lid [sic], that spray will come towards you even though it's a mist.

Q. Okay.

A. Even H_2S gas—when you go to the bathroom, H_2S gas it omitted [sic].

Q. Okay. And that's omitted [sic] from a toilet and certainly from a sewage facility?

A. Yes. That's why I was trying to protect my eyes.

Q. Okay. By getting a mask?

A. By getting a mask because I had had pink eye so many times.

Q. When did you do that?

A. I don't know, sir. I don't know exactly what day it was.

Q. But you did that prior to 2011?

A. Yes.

Transcript, pp. 47, l. 10 - 48, l. 24.

36. From this, we conclude the following: (1) Claimant independently came to the conclusion that his periodic problems with conjunctivitis (pink eye) were related to exposures he encountered in his employment and (2) he came to this conclusion prior to 2011. From this, we further conclude that to the extend Claimant's occupational disease claim incorporates a claim for recovery of benefits related to conjunctivitis (pink eye), that element of his claim is barred by the provisions of I.C. § 72-448.[1] However, it does not follow that his claims for work caused sinusitis, trigeminal neuralgia or other occupationally induced conditions are barred by the provisions of I.C. § 72-448. Defendants cite Ewing v. Holton, 135 Idaho 792, 25 P.3d 105 (2001) for the proposition that knowledge by an injured worker that he is suffering from a work caused condition is sufficient to establish a date of manifestation, even though the worker may be mistaken about the diagnosis of the condition. In Ewing, Claimant developed upper extremity symptoms while working as a dental hygienist. She was originally (and incorrectly) diagnosed as suffering from carpal tunnel syndrome. She filed a timely notice of injury on November 17, 1997. Surety denied the claim, and time passed. Eventually Claimant took up treatment with another physician, who determined that Claimant had been misdiagnosed. Claimant's new physician eventually diagnosed her as suffering from reflex sympathetic dystrophy. On January 6, 1999, Claimant's attorney filed a notice of injury/claim, and Complaint with the Commission alleging that Claimant suffered from a compensable occupational disease (RSD), and alleging December 7, 1998 as the date of injury. December 7, 1998 was the date on which Claimant's new physician first diagnosed her as suffering from reflex sympathetic dystrophy. The issue before the Industrial Commission was whether Claimant filed a timely Complaint under I.C. §

[1] It is not clear whether Claimant is requesting benefits for conjunctivitis specifically. The Referee presumed that Claimant was not requesting such benefits, as conjunctivitis is not Claimant's purportedly disabling condition.

72-706. The Commission concluded that the nature of Claimant's injury never changed; she always suffered from the same upper extremity complaints regardless of whether she was carrying a diagnosis of carpel tunnel syndrome or reflex sympathetic dystrophy. The Commission found that Ewing's December 1998 upper extremity diagnosis arose from the same set of facts as her October 1997 upper extremity symptoms and therefore the Complaint was untimely. The Idaho Supreme Court affirmed holding that:

> In both of her claims, Ewing stated that a repetitive motion she performed as part of her employment caused her injuries. Thus Ewing was aware in November of 1997 that she was suffering an ailment and that the cause of the ailment was work related.

37. In Ewing, although Claimant was given a number of diagnoses for her condition, she suffered from one and only one symptom complex. Here, Claimant suffers from a number of different problems of which conjunctivitis (pink eye) is only one. The facts of this case demonstrate that although Claimant knew that his eye condition was causally related to the demands of his employment prior to 2011, he had come to no such conclusion about his other several and diverse physical ailments, such as sinusitis and trigeminal neuralgia. In Ewing, one disease/condition was at issue. In this case, there is more than one type of illness at issue, and Claimant's disease is not manifest until he "knows" that a particular condition from which he is suffering is causally related to the demands of his employment. Though a layman, Claimant may have guessed, speculated, or even harbored a strong suspicion that his sinusitis and other complaints were causally related to the demands of his employment well before he met with Dr. Jones in the spring of 2011. However, the question that is presented is whether these suspicions amount to evidence that Claimant "knew" that his condition was related to the demands of his employment prior to 2011. To "know" is to perceive or understand as fact or truth; to apprehend clearly and with certainty. See Gardner v. Magic Valley Business Systems, 2013 IIC 0030

(2013). Other than with respect to his ocular issues, we cannot say that Claimant independently knew that his various complaints were related to the demands of his employment until he was so advised by Dr. Jones in April of 2011.

38. Except to the extent Claimant purports to pursue conjunctivitis as an occupational disease, Claimant gave timely notice to Employer of his occupational disease on or about May 8, 2011.

39. **Timely Complaint Under I.C. § 72-706.** Idaho Code § 72-706 governs the timeliness of Claimant's March 23, 2012 Complaint. Even if it be assumed that Defendants have paid no benefits for Claimant's occupational disease claim, and that all benefits have been paid on the January 13, 2011 accident claim, it is nevertheless clear that under I.C. § 72-706(1), the Complaint of March 23, 2012 is timely since it was filed within one year following the filing of the May 8, 2011 notice of injury and claim for benefits.

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CONCLUSIONS OF LAW AND ORDER

Based on the foregoing, the Commission ORDERS the following:

1. Except to the extent Claimant purports to pursue conjunctivitis as an occupational disease, Claimant has proven that his occupational disease first manifested on April 13, 2011, when he was informed by a competent physician.

2. Except to the extent Claimant purports to pursue conjunctivitis as an occupational disease, Claimant gave Employer timely notice of his occupational disease on May 11, 2011, , as required by Idaho Code § 72-448, and timely filed his Complaint on March 23, 2012, as required by Idaho Code § 72-706.

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

DATED this 18th day of September, 2013.

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 18th day of September 2013, 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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_/s/_____