

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

DAVE GRANGER, )  
 )  
 Claimant, )  
 )  
 v. )  
 )  
 BLUE CROSS OF IDAHO HEALTH )  
 SERVICE, INC., )  
 )  
 Employer, )  
 )  
 and )  
 )  
 LIBERTY NORTHWEST INSURANCE )  
 CORPORATION, )  
 )  
 Surety, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

**IC 2008-015484**

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

Filed: July 19, 2010

**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 Boise on June 29, 2010. Claimant, David A. Granger, was present in person and represented by Todd M. Joyner, of Nampa. Defendant Employer, Blue Cross of Idaho Health Service, Inc. (Blue Cross), and Defendant Surety, Liberty Northwest Insurance Corporation, were represented by Kimberly A. Doyle, of Boise. The parties presented oral and documentary evidence. No post-hearing depositions were taken, and the parties offered closing arguments on the record in lieu of briefing. The matter came under advisement on June 30, 2010, upon receipt of the hearing transcript.

**ISSUE**

The issues to be decided were narrowed at hearing to the sole issue of whether, and to what extent, Claimant is entitled to temporary partial and/or temporary total disability benefits.

## **CONTENTIONS OF THE PARTIES**

Claimant suffered an industrial accident wherein he sustained severe chemical burns to his hands. He asserts entitlement to temporary disability benefits for a period of approximately three weeks. Defendants acknowledge the industrial accident and have accepted responsibility for medical benefits related thereto. However, Defendants maintain that Claimant is not entitled to temporary disability benefits because he was paid his usual wages during the time in question.

## **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. The pre-hearing deposition testimony of Claimant, taken May 12, 2010, and admitted into evidence as Joint Exhibit J;
3. The testimony of Claimant, taken at the June 29, 2010 hearing; and
4. Joint Exhibits A through L, admitted at the hearing.

After having considered the above evidence and the arguments of the parties, the Referee submits the following findings of fact and conclusion of law for review by the Commission.

## **FINDINGS OF FACT**

1. Claimant was born in 1963 and was 46 years old at the time of the hearing. He is diabetic and right hand dominant. In March and December 1999, Claimant experienced episodes of eczema and dermatitis on his hands, for which he received medical treatment.

2. In September 2007, Claimant began working as a janitor for Blue Cross. His duties included cleaning bathrooms and hallways. He frequently used strong cleaning chemicals in his work, including industrial strength 409, Lysol, and ice melt. He wore latex gloves.

3. On approximately May 2, 2008, while working at Blue Cross, Claimant suffered chemical burns to both hands. At the time of the accident, he was earning \$9.50 per hour and working 30 hours per week. He was diagnosed with contact dermatitis and cellulitis and

received medical treatment for his hands. He was subsequently released to modified work, with no chemical or water contact and no lifting in excess of ten pounds. He returned to modified work. By May 7, 2008, his cellulitis had resolved, but he continued to have significant eczema and was referred to the Center for Wound Healing and Hyperbaric Medicine (Wound Center).

4. On May 7, 2008, Claimant was examined by Raymond Otto, M.D., at the Wound Center. Dr. Otto noted chemical burns to Claimant's hands bilaterally and continued his work restrictions of no exposure to chemicals and no lifting of more than ten pounds. Claimant continued his modified work. He was treated at the Wound Center on May 14, 21, and 28, 2008. On May 29, 2008, Claimant received physical therapy at the Intermountain Orthopedics Hand & Wrist Center. He received further treatment at the Wound Center on June 11 and 30, 2008. On June 30, 2008, Alison Beck, PA-C, and Margaret Doucette, D.O., found that Claimant had reached maximum medical improvement from his contact dermatitis and assessed a zero percent permanent impairment rating.

5. In late June 2008, Claimant struck his left shoulder on a box at work, fracturing his left first rib. This fracture was not fully diagnosed until approximately July 23, 2008. He continued to work.

6. On August 28, 2008, Claimant was examined by David Snyderman, PA-C and requested a doctor's note to be off work due to continued left upper chest, shoulder, and neck pain from his left first rib fracture. No work release in the record appears to correspond to this visit or his rib fracture. He continued to work.

7. On September 9, 2008, Claimant presented to dermatologist Warren Miller, M.D., who recorded that after initial treatment of his chemical burns at the wound center, Claimant experienced additional problems with his left hand and had not been able to work. Dr. Miller diagnosed atopic dermatitis, contact dermatitis, and vitiligo. He indicated that Claimant should

not return to work until the eruptions on his hand cleared. There is no subsequent medical release to work in the record.

8. Claimant was on FMLA for his hands in August and September 2008. He testified that thereafter, he ran out of FMLA time but could not go back to work because of his hands and his shoulder, and that he obtained a doctor's excuse but was eventually laid off. Claimant's Deposition, pp. 28-29.

9. Blue Cross terminated Claimant's employment in November 2008.

10. Claimant suffers dermatitis, but has no permanent impairment therefrom. He now uses a combination of cotton and non-latex outer protective gloves when working with cleaning chemicals, but otherwise has no restrictions. As a result of his May 2008 chemical burns, Claimant received medical treatment totaling \$3,306.20, for which Defendants have accepted responsibility.

11. Having observed Claimant at hearing, the Referee finds that Claimant is generally a credible witness, however his memory is imperfect.

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

12. 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).

13. **Temporary disability.** Idaho Code § 72-102 (10) defines "disability," for the purpose of determining total or partial temporary disability income benefits, as a decrease in wage-earning capacity due to injury or occupational disease, as such capacity is affected by the medical factor of physical impairment and by pertinent nonmedical factors as provided for in

Idaho Code § 72-430. Idaho Code § 72-408 further 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 medical 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).

14. In the present case, Claimant earned \$9.50 per hour and worked 30 hours per week, thereby earning an average of \$285.00 per week. His wage records establish that he was paid his regular wage from the time of his industrial accident through September 15, 2008. Dermatologist Warren Miller, M.D., examined Claimant on September 9, 2008, at Defendants’ request. Dr. Miller’s notes document a flare up in Claimant’s dermatitis, attributable to his work with chemicals as a janitor, that prevented him from working at that time:

This gentleman has worked at Blue Cross of Idaho as a custodian since September 2007. The patient developed a pruritic eruption on the hands that eventually became severe and he was referred to the Center for Wound Healing and Hyperbaric Medicine last May and was treated with various topical agents and released in June. Since then he has had more problems with these hands and particularly lately with his left hand and has not been able to work.

....

He had considerable erythema and excoriations and lichenification on the left hand and left forearm and milder areas of dermatitis were present on the dorsum of the right hand and right forearm.

....

I think the patient almost certainly has atopic dermatitis that has been aggravated by an irritant contact situation working as a janitor handling various irritating preparations. .... The patient should not return to work and tell [sic] his eruption has cleared.

Joint Exhibit G, pp. 75-76 (emphasis supplied). The record contains no subsequent medical release to return to work.

15. In Malueg v. Pierson Enterprises, 111 Idaho 789, 791-92, 727 P.2d 1217, 1219-20 (1986), the Supreme Court noted:

[O]nce a claimant establishes by medical evidence that he is still within the period of recovery from the original industrial accident, he is entitled to total temporary disability benefits unless and until evidence is presented that he has been medically released for light work *and* that (1) his former employer has made a reasonable and legitimate offer of employment to him which he is capable of performing under the terms of his light work release and which employment is likely to continue throughout his period of recovery *or* that (2) there is employment available in the general labor market which claimant has a reasonable opportunity of securing and which employment is consistent with the terms of his light duty work release.

16. In the present case, Joint Exhibit I indicates that Blue Cross paid Claimant twice monthly, on the 15<sup>th</sup> and on the last day of each month. From September 15, 2007, through September 15, 2008, his median paycheck was \$579.50. However, Blue Cross paid Claimant only \$135.38 for the period of September 16-30, 2008, \$228.00 for the period of October 1-15, 2008, and \$401.38 for the period of October 16-31, 2008. Blue Cross terminated Claimant's employment in November 2008.

17. Claimant testified at hearing that he was not paid for a total of approximately three weeks of time—spread over a longer period—during which he could not work because of his dermatitis. Although he believed this occurred within approximately five weeks of his initial chemical burns, he was unable to recall which days. Except for these three weeks, Claimant acknowledged that after his chemical burns, he was placed on light-duty work and was paid his regular wage. The wage records indicate that these three weeks occurred after September 16, 2008, which coincides closely with Dr. Miller's September 9, 2008 note concluding that Claimant could not return to work until his dermatitis eruption had cleared. There is no subsequent medical release or showing that suitable light-duty work was available to Claimant.

18. Claimant has proven that he is entitled to three weeks of temporary disability benefits pursuant to Idaho Code § 72-408. Inasmuch as his period of disability exceeds two weeks, the five-day waiting period of Idaho Code § 72-402 is not applicable.

## CONCLUSION OF LAW

Claimant has proven his entitlement to three weeks of temporary disability benefits.

## RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusion of Law, the Referee recommends that the Commission adopt such findings and conclusion as its own and issue an appropriate final order.

DATED this 9<sup>th</sup> day of July, 2010.

INDUSTRIAL COMMISSION

/s/  
Alan Reed Taylor, Referee

ATTEST:

/s/  
Assistant Commission Secretary

## CERTIFICATE OF SERVICE

I hereby certify that on the 19<sup>th</sup> day of July, 2010, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

TODD M JOYNER  
1226 E KARCHER RD  
NAMPA ID 83687-3075

KIMBERLY A DOYLE  
PO BOX 6358  
BOISE ID 83707-6358

sc

/s/

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

DAVE GRANGER, )  
 )  
 Claimant, )  
 )  
 v. )  
 )  
 BLUE CROSS OF IDAHO HEALTH )  
 SERVICE, INC., )  
 )  
 Employer, )  
 )  
 and )  
 )  
 LIBERTY NORTHWEST INSURANCE )  
 CORPORATION, )  
 )  
 Surety, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

**IC 2008-015484**

**ORDER**

Filed: July 19, 2010

Pursuant to Idaho Code § 72-717, Referee Alan Taylor 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 conclusion of law as its own.

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

1. Claimant is entitled to three weeks of temporary disability benefits.
2. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 19<sup>th</sup> day of July, 2010.

INDUSTRIAL COMMISSION

/s/  
\_\_\_\_\_  
R.D. Maynard, Chairman



/s/  
Thomas E. Limbaugh, Commissioner

/s/  
Thomas P. Baskin, Commissioner

ATTEST:

/s/  
Assistant Commission Secretary

### CERTIFICATE OF SERVICE

I hereby certify that on the 19<sup>th</sup> day of July, 2010, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

TODD M JOYNER  
1226 E KARCHER RD  
NAMPA ID 83687-3075

KIMBERLY A DOYLE  
PO BOX 6358  
BOISE ID 83707-6358

sc

/s/