

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

ANDREW L. KOPYDLOWSKI,)	
)	
Claimant,)	IC 2009-008132
v.)	
)	
DOUG ANDRUS DISTRIBUTING, LLC,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Employer,)	AND RECOMMENDATION
and)	
)	
AMERICAN CASUALTY COMPANY)	FILED OCT 3 2011
OF READING PENNSYLVANIA,)	
)	
Surety,)	
Defendants.)	
_____)	

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned this matter to Referee Douglas A. Donohue. Keith Hutchinson represented Claimant. Alan Gardner represented Defendants. The parties submitted a stipulation of facts and attendant documents in lieu of hearing. The parties filed briefs. The case came under advisement on August 8, 2011. It is now ready for decision.

ISSUES

The issues to be resolved as agreed upon by the parties are:

1. Whether Claimant's Complaint is valid; and
2. Whether claimant's Complaint is barred by the statute of limitations set forth in Idaho Code § 72-706(1).

Other issues are reserved.

CONTENTIONS OF THE PARTIES

Claimant contends his Complaint should be deemed valid and timely filed within the statutes of limitation. He orally asked his brother to complete and sign the Complaint because

Claimant was on the road in his job as a long-haul trucker. He had previously given his brother a written authorization to obtain medical records on his behalf. Claimant contends the ratified signature of his brother on filing the Complaint prevents the statute of limitation, Idaho Code § 72-706, from running where Claimant was unavailable because of his job.

Defendants contend the fact that neither Claimant nor a licensed attorney signed a timely Complaint is dispositive.

EVIDENCE CONSIDERED

The record in the instant case consists of the following:

1. Stipulated facts and attendant documents submitted by the parties.
The documents are:
 - a) The original Complaint signed by Claimant's brother, Certificate of Service of Workers' Compensation Complaint, and Letter of Record;
 - b) The Amended Complaint signed by Claimant's brother; Certificate of Service of Amended Workers' Compensation Complaint, and Letter of Record;
 - c) Excerpt of Claimant's deposition;
 - d) Claimant's affidavit;
 - e) A second Complaint signed by Claimant's attorney Keith Hutchinson;
 - f) A second Amended Complaint signed by Keith Hutchinson; and
2. The Industrial Commission legal file pertaining to this claim.

Defendants do not concede the accuracy of statements made in Claimant's affidavit.

After considering the record, the Referee submits the following findings of fact, conclusions of law, and recommendation for review by the Commission.

STIPULATED FINDINGS OF FACT

1. Claimant alleges he sustained an industrial accident on March 20, 2009.
2. On May 19, 2009, Claimant executed an authorization allowing his brother Anthony John Kopydlowski to obtain medical records pertaining to his "injury/illness."

3. In late April or early May of 2009, after returning home from the hospital in Salt Lake, Mr. Kopydlowski retained services of an Idaho law firm [name redacted by Referee] in regards to this matter.

4. On February 22, 2010, Mr. Kopydlowski received a letter from an attorney in that firm [name redacted by Referee] indicating that they were withdrawing from representation on this case.

5. They had not filed a Complaint at that point; however, they did send Mr. Kopydlowski a copy of the Complaint to be filed.

6. On March 2, 2010, the Commission served Doug Andrus Distributing LLC and American Casualty Company of Reading Pennsylvania a copy of the Complaint regarding Claimant's alleged March 20, 2009, industrial accident. The Complaint does not contain Claimant's signature. It is signed by Claimant's brother Anthony Kopydlowski and following his printed name it states: "Medical Power of Attorney for Andrew." Claimant was sent a copy of the Certificate of Service.

7. On March 9, 2010, the Commission served Doug Andrus Distributing LLC and American Casualty Company of Reading Pennsylvania a copy of the Amended Complaint in this matter. The Amended Complaint does not contain Claimant's signature. It is signed by Claimant's brother Anthony Kopydlowski and following his printed name it states: "Medical Power of Attorney for Andrew." Claimant was sent a copy of the Certificate of Service.

8. On or about May 18, 2010, attorney Keith Hutchinson filed a Notice of Appearance in this matter on Claimant's behalf.

9. Claimant's deposition took place on August 9, 2010. At that time, the following conversation took place:

- Q. You filed an original – here, I have a copy of it right here – original Complaint in this matter. And then I have a copy of the Amended Complaint.
- A. Okay.
- Q. Does this look familiar?
- A. No, it doesn't.
- Q. I wanted to clarify. This is what the Commission has on file. And so I just want to clarify. You crossed this out.
- A. You know, I had my sister-in-law fill those out. Because I was out on the trucks. And I honestly do not recall any of that.
- Q. So just to clarify whose signature that is.
- A. I don't have a clue.
- Q. Does it say underneath there?
- A. Anthony Kopydlowski. So, that would be my brother Tony.
- Q. So, as far as you know, was he the one that filled this out for you?
- MR. HUTCHINSON: If you know.
- THE WITNESS: I honestly couldn't say.

(Deposition, pp. 6 at 16-25, 7 at 1-11).

10. On August 11, 2010, Defendants filed a Motion to Bifurcate on the following issues:

- a. Whether claimant's Complaint is valid; and
- b. Whether claimant's Complaint is barred by the statute of limitations set forth in Idaho Code § 72-706(1).

11. On August 25, 2010, Keith Hutchinson served Doug Andrus and Broadspire a copy of a Complaint regarding Claimant's alleged March 20, 2009, industrial accident. Mr. Hutchinson's signature is on the Complaint.

12. On August 31, 2010, Keith Hutchinson served Doug Andrus and Intermountain Claims a copy of an Amended Complaint. Mr. Hutchinson's signature is on the Amended Complaint.

DISCUSSION AND FURTHER FINDINGS OF FACT

13. The foregoing stipulated findings of fact are accepted and adopted by the Commission. Also, although not enumerated among the stipulated facts, the arguments of the parties make it clear that this is a claim on which no workers' compensation benefits have been paid. Otherwise, the provisions of Idaho Code § 72-706(1) would not be at issue, and the discussion would instead center on the provisions of Idaho Code § 72-706(2).

14. The Idaho Legislature enacted Idaho Code § 72-706(1) limits the time within which a claimant may file an application for hearing ("Complaint") to one year after making a claim for compensation. That section provides:

72-706. Limitation on time on application for hearing. (1) When no compensation paid. When a claim for compensation has been made and no compensation has been paid thereon, the claimant, unless misled to his prejudice by the employer or surety, shall have one (1) year from the date of making claim within which to make and file with the commission an application requesting a hearing and an award under such claim.

15. Therefore, where no workers' compensation benefits have been paid in a case, in order to determine whether a complaint is timely filed, it is not the date of accident that is relevant, but rather, the date of the making of the claim. Under Idaho Code § 72-701, Claimant has one year from the date of accident within which to make a timely claim. Under Idaho Code § 72-706(1), Claimant has one year from the date of making his claim within which to file his Complaint. Therefore, the Complaints filed by Mr. Hutchinson on Claimant's behalf are potentially timely, depending entirely on when Claimant actually made his claim for benefits. As with the question of whether benefits were paid on this claim, the stipulation is silent as to the date on which Claimant made his claim for benefits under Idaho Code § 72-701. However, the Commission's legal file, which is part of the record in this matter, reflects that on March 24,

2009, Employer was notified of the Claim and prepared a Notice of Injury and Claim for Benefits, later filed with the Commission on March 26, 2009.

16. Therefore, Claimant was required to file his complaint within one year following the date on which he made his claim with employer, i.e. March 24, 2009.

17. Industrial Commission Judicial Rules of Practice and Procedure (“JRP”) Rule 3(D) states:

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one licensed attorney of record of the State of Idaho, in the attorney’s individual name. A party who is not represented by an attorney shall sign the pleading, motion, or other paper. The signature of any party to an action, or the party’s attorney, shall constitute a certification that said party, or the party’s attorney, has read the pleading, motion, or other paper; that to the best of his or her knowledge, information and belief after reasonable inquiry there are sufficient grounds to support it; and that it is not submitted for delay or any other improper purpose.

18. The Commission acknowledges and treats with sober consideration the proposition that “sure and certain relief” is a purpose of the Idaho Workers’ Compensation Law, Idaho Code § 72-201, and that process and procedure should be “as summary and simple as reasonably may be and as far as possible in accordance with the rules of equity,” Idaho Code § 72-708; JRP Rule 1(A).

19. Claimant cites the case of *Hattenburg v. Blanks*, 98 Idaho 485, 567 P.2d 829 (1977). In *Hattenburg*, the claimant timely filed a form entitled “Application for Hearing.” Defendants moved to dismiss and the Commission granted dismissal on the argument that this document was not a “claim” for compensation. The Court reversed and remanded. It noted the only statutory requirement for a “claim” was that it be in writing. It held the “Application for Hearing” included sufficient information to constitute a “claim.” From it, *Blanks, et.al.* “realized that he was demanding compensation for his injury.” *Id.*, at 486. The Court stated:

“The whole idea is to get away from cumbersome procedures and technicalities of pleading so that, to the greatest extent possible, claims for compensation can be decided on their merits.” *Id.*

20. The facts in Claimant’s circumstance do not address JRP Rule 3(A) which prescribes a form for a Complaint. Rather, Claimant’s circumstance asks the Commission to deem a document not filed by him or a licensed attorney on his behalf to override the Legislative mandate of Idaho Code § 72-706.

21. Claimant’s reference to *Hagler v. Micron*, 118 Idaho 596, 798 P.2d 55 (1990) is apposite only for dicta about the Commission’s relaxed rules of evidence. In *Hagler*, the Court affirmed the Commission’s determination that claimant failed to prove causation with medical testimony. It called “harmless error” the Commission’s refusal to allow a *pro se* claimant to admit a medical treatise into evidence without proper foundation. It noted standards should be relaxed as an accommodation to a *pro se* claimant. *Hagler* does not further a position, *arguendo*, that a statute of limitation can be ignored or circumvented in the name of “relaxed standards.”

22. Like *Hagler* for Claimant, Defendants’ citation to *Aldrich v. Lamb-Weston, Inc.*, 122 Idaho 361, 834 P.2d 878 (1992), is not much help. In *Aldrich*, the Court stated, “the Commission is not required to construe facts liberally in favor of the worker when evidence is conflicting.” *Id.*, at 363 (Court affirmed Commission finding that claimant failed to establish condition was caused by exposure at work). Here, the focus is exactly upon how strictly to construe statutes and rules, not whether one set of facts is to be found over another.

23. No case cited by the parties is squarely on point. The nearest is *Black v. Ameritel Inns, Inc.*, 139 Idaho 511, 81 P.3d 416 (2003). In *Black*, an attorney licensed in

Washington but not in Idaho signed and filed a Complaint with the Idaho Commission on Human Rights (“ICHR”). After due procedural process through ICHR, District Court, the Court of Appeals, and the Idaho Supreme Court, the Idaho Supreme Court held: “pursuant to the signature requirements of IRCP Rule 11(a)(1), an agent cannot sign a Complaint for unrepresented parties. The Court distinguished between an inadvertent error and this instance where the Washington attorney signed the Complaint “so that it would be filed in time.” It further held that a subsequent Amended Complaint could not relate back to the date of filing the invalidly-signed original Complaint.

24. JRP Rule 3(D) is less restrictive than Idaho Rules of Civil Procedure (“IRCP”) Rule 11(a)(1). It allows a more “summary and simple” requirement for signing. However, the *Black* Court in rejecting the attorney’s signature because he was not licensed in Idaho, identified that the purpose of making the invalid signature was to avoid running afoul of a statute of limitation. This purpose was exactly why Claimant’s brother signed the Complaint in Mr. Kopydlowski’s claim.

25. Here, Claimant’s candor under oath in deposition demonstrated that he did not recall being aware that a Complaint had been filed on his behalf or who filed it. His recollection then – that he had asked his sister-in-law to file it – is inconsistent with his later affidavit that he had asked his brother to file it.

26. Regardless of whom he asked to file the Complaint, since neither his brother nor his sister-in-law are attorneys licensed to practice in Idaho, the signature of either would be invalid under JRP Rule 3(D). To find otherwise would require the Commission to accept a Complaint signed by any third party on the chance that a claimant might have given oral authorization to that third party to file it.

27. In this technological era where the Commission accepts filings by facsimile machine (*see*, JRP Rule 3(A)(1)), Claimant's assertion that, because he was driving truck, he was "unavailable" to sign a Complaint between February 22 and March 20, 2010, is tenuous at best.

28. The Commission does not favor a case being decided upon grounds other than a full examination of the merits. However, the Legislature has spoken with a specific statute of limitation, Idaho Code § 72-706, and the mere fact that Claimant was out of state on a job does not constitute an adequate basis to ignore the statute or the provisions of JRP Rule 3(D). Commission procedure allows remote filing by mail or by fax.

29. Having found that the two Complaints filed on Claimant's behalf by his brother are not valid Complaints under Idaho Code § 72-706(1), and JRP Rule 3(D), it is next necessary to consider whether the two subsequent Complaints filed on Claimant's behalf by Mr. Hutchinson are timely. Based on our finding that Claimant's claim was made no later than March 24, 2009, Claimant was required to file his valid Complaint no later than one year following March 24, 2009. Both of the Complaints filed on Claimant's behalf by Mr. Hutchinson were filed in August 2010. Therefore, under Idaho Code § 72-706(1), both of these Complaints are untimely.

CONCLUSIONS OF LAW

1. The document filed March 1, 2010 ("Complaint") and/or the document filed March 8, 2010 ("Amended Complaint") signed by Claimant's brother do not constitute a valid Complaint; and

2. The subsequent Complaints filed on Claimant's behalf by Mr. Hutchinson are untimely pursuant to Idaho Code § 72-706(1).

RECOMMENDATION

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

DATED this 14TH day of SEPTEMBER, 2011.

INDUSTRIAL COMMISSION

/S/ _____
Douglas A. Donohue, Referee

ATTEST:

/S/ _____
Assistant Commission Secretary db

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

ANDREW L. KOPYDLOWSKI,)
)
 Claimant,) **IC 2009-008132**
 v.)
)
 DOUG ANDRUS DISTRIBUTING LLC,) **ORDER**
)
 Employer,)
 and) FILED OCT 3 2011
)
 AMERICAN CASUALTY COMPANY)
 OF READING PENNSYLVANIA,)
)
 Surety,)
 Defendants.)
 _____)

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. The document filed March 1, 2010 (“Complaint”) and/or the document filed March 8, 2010 (“Amended Complaint”) signed by Claimant’s brother do not constitute a valid Complaint; and
2. The subsequent Complaints filed on Claimant’s behalf by Mr. Hutchinson are untimely pursuant to Idaho Code § 72-706(1).

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

DATED this 3RD day of OCTOBER, 2011.

INDUSTRIAL COMMISSION

/S/ _____
Thomas E. Limbaugh, Chairman

/S/ _____
Thomas P. Baskin, Commissioner

R. D. Maynard, Commissioner

ATTEST:

/S/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 3RD day of OCTOBER, 2011, a true and correct copy of **FINDINGS, CONCLUSIONS, AND ORDER** were served by regular United States Mail upon each of the following:

KEITH E. HUTCHINSON
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TWIN FALLS, ID 83303-0207

ALAN R. GARDNER
P.O. BOX 2528
BOISE, ID 83701-2528

db

/S/ _____