

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

ALLEN MITCHELL,

Claimant,

v.

IDAHO DEPARTMENT OF CORRECTION,

Employer,

and

STATE INSURANCE FUND,

Surety,

and

STATE OF IDAHO, INDUSTRIAL SPECIAL
INDEMNITY FUND,

Defendants.

IC 2005-528356

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

Filed August 16, 2013

Pursuant to Idaho Code § 72-506, the Commission assigned this matter to Referee LaDawn Marsters. Employer/Surety entered into a lump sum settlement agreement with Claimant on September 3, 2011. Referee Marsters scheduled a hearing in Boise on February 4, 2013. Claimant and the State of Idaho, Industrial Special Indemnity Fund (ISIF) stipulated to vacate and bifurcate the February 4, 2013 hearing to address whether Claimant's claims against the ISIF were barred by the applicable statutes of limitation. In lieu of hearing, the parties submitted stipulated facts and post-hearing briefs. Clinton Miner represented Claimant. Paul Augustine represented State of Idaho, Industrial Special Indemnity Fund (ISIF). The case came under advisement on May 22, 2013. The case was reassigned to the Commissioners on May 23, 2013. It is now ready for decision.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER - 1

ISSUE

After due notice and by agreement of the parties the issue to be decided is:

1. Whether Claimant's claims against the ISIF are barred by applicable statutes of limitations. All other issues are reserved.

CONTENTIONS OF THE PARTIES

Claimant filed a complaint against the ISIF on February 14, 2012. Claimant argues that his complaint is not barred by any applicable statutes of limitation. Claimant disputes that Idaho Code Section 72-706(3) applies to the ISIF. Even so, Claimant contends that the Commission's analysis in Morton v. ISIF, 2011 IIC 0098 (December 23, 2011), does not bar his complaint. Claimant, as stipulated by the parties, received compensation for disputed medical and disability benefits on September 3, 2011, through lump sum settlement (LSS). Claimant argues that the LSS payment was an income benefit under Section 72-706(3), giving him until September 2, 2013 to file his ISIF complaint. Claimant filed his notice of intent to file a workers' compensation complaint against the ISIF on November 8, 2011, and his complaint on February 14, 2012, well within the one year provision of Idaho Code Section 72-706(3). The Commission should find Claimant's complaint timely.

ISIF argues that Claimant's complaint is barred by Idaho Code Sections 72-706(3) and 72-719. In Morton v. ISIF, 2011 IIC 0098 (December 23, 2011), the Commission held that the limitation provisions of Idaho Code § 72-706 apply to claims against the ISIF. Employer's gratuitous LSS consideration with Claimant does not extend the statute of limitations under Section 72-719, and the consideration is not an income benefit under Section 72-706(3). Section 72-719 independently governs all LSS statute of limitation issues, and Claimant cannot transform his LSS proceeds into income benefits under Section 72-706(3) to take advantage of

that statute of limitation. Because Claimant did not file his complaint within the five year statute of limitations provided in Idaho Code Section 72-706(2), and he received no income payments under Section 72-706(3), his complaint is untimely and should be dismissed with prejudice.

EVIDENCE CONSIDERED

The record in this instant case consists of the following:

1. The Commission's legal file.

After having fully considered the above evidence and arguments of the parties, the Commission hereby issues its decision in this matter.

FINDINGS OF FACTS

1. On December 6, 2005, while employed as a correctional officer by the Idaho Department of Correction ("IDOC" or "Employer"), the Claimant, Allen Mitchell, suffered an accident arising out of and in the course of his employment.

2. As a result of his December 6, 2005 accident, Claimant suffered an injury to his neck and low back.

3. The Claimant gave timely notice to his Employer and its Surety, the Idaho State Insurance Fund ("State Fund") of his accident.

4. At the time of his injury, Claimant was fifty-five years of age and he worked forty (40) hours per week earning \$12.84 per hour.

5. As a result of his December 6, 2005 accident, the State Fund paid Claimant TTD benefits from January 10, 2006 through March 27, 2007, in the amount of \$23,450.23.

6. On April 4, 2007, Dr. Robert Friedman found that Claimant was at maximum medical improvement and rated Claimant's permanent partial impairment at 6% of the whole

person, of which 50% was due to Claimant's pre-existing spinal degenerative arthritis and 50% due to his industrial injury.

7. The State Fund paid Claimant 3% of the whole person permanent and partial impairment of fifteen weeks at \$298.65 per week, beginning in May 2007, for a total of \$4,479.75.

8. On September 3, 2011, the Claimant, IDOC, and the State Fund, entered into a modified lump sum agreement whereby the State Fund agreed to pay Claimant an additional \$69,000 for disputed medical and disability benefits. The parties agreed to keep medical benefits open, but disputed.

9. On September 23, 2011, the Claimant, IDOC, and the State Fund, entered into a stipulation for dismissal of Claimant's claims with prejudice, except as to reasonable future medical benefits resulting from Claimant's accident of December 6, 2005. On September 30, 2011, the Commission ordered that Claimant's case, I.C., 2005-528356, be dismissed with prejudice except regarding future medical benefits.

10. On September 30, 2011, the Commission entered an Order approving the modified lump sum agreement. In the order, the Commission discharged and released IDOC and the State Fund from any and all liability on account of the Claimant's accident and injury, with the exception of reasonable future medical benefits.

11. On November 8, 2011, Claimant served a Notice of Intent to File a Workers' Compensation Complaint against the Industrial Special Indemnity Fund ("ISIF").

12. On or about February 14, 2012, Claimant filed a workers' compensation complaint against the ISIF alleging a date of injury of December 6, 2005.

DISCUSSION

1. Should Claimant's complaint against the ISIF be barred by the LSS between Employer/Surety and Claimant under Morton v. ISIF, 2011 IIC 0098 (December 23, 2011)?

2. Should a LSS from Employer/Surety to Claimant be characterized as an indemnity payment, so as to trigger Idaho Code § 72-706(3)?

3. The parties agree that the Commission's holding in Morton v. ISIF, 2011 IIC 0098 (December 23, 2011), applies statute of limitation provisions to ISIF complaints. While Claimant disagrees with Morton, supra, Claimant argues that Morton allows his ISIF complaint, because Employer/Surety's payment of disputed disability benefits on September 3, 2011, should be treated as "income benefits" under Section 72-706(3), giving Claimant one year after that payment within which to file an ISIF complaint. Because Claimant filed his complaint against ISIF on February 14, 2012, within one year of the last payment, his complaint is timely.

4. ISIF argues that the LSS consideration for "disputed" disability benefits is not an "income benefit" under the Section 72-706(3) statute of limitation. ISIF argues that Section 72-719 governs the LSS as a final award. Claimant received the "disputed disability" as LSS consideration, not as a separate income payment for permanent disability. Absent fraud, Claimant had (20) twenty days under Section 72-719 from the Commission's approval of the LSS on September 30, 2011, to modify the LSS, or file a complaint against ISIF. Claimant chose not to do so. No claim against the Employer/Surety for indemnity benefits is pending, or could still be filed, before the Commission. Because Claimant did not file until February 14, 2012, the Commission should dismiss Claimant's complaint as untimely.

5. Idaho Code Section 72-706 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.

(2) When compensation discontinued. When payments of compensation have been made and thereafter discontinued, the claimant shall have five (5) years from the date of the accident causing the injury or date of first manifestation of an occupational disease within which to make and file with the commission an application requesting a hearing for further compensation and award.

(3) When income benefits discontinued. If income benefits have been paid and discontinued more than four (4) years from the date of the accident causing the injury or the date of first manifestation of an occupational disease, the claimant shall have one (1) year from the date of the last payment of income benefits within which to make and file with the commission an application requesting a hearing for additional income benefits.

(4) Medical benefits. The payment of medical benefits beyond five (5) years from the date of the accident causing the injury or the date of first manifestation of an occupational disease shall not extend the time for filing a claim or an application requesting a hearing for additional income benefits as provided in this section.

(5) Right to medical benefits not affected. Except under circumstances provided in subsection (1) of this section, the claimant's right to medical benefits under the provisions of section 72-432(1), Idaho Code, shall not otherwise be barred by this section.

(6) Relief barred. In the event an application is not made and filed as in this section provided, relief on any such claim shall be forever barred.

6. The Commission recently addressed the limitation provisions of the statute against the ISIF in Morton v. ISIF, 2011 IIC 0098 (December 2011). In Morton, we observed that the statute does not define a period of limitation based on who has paid compensation, but rather on whether, and when compensation has been paid. What matters is not the identity of the party paying compensation. Rather, it is whether compensation has been paid and when it was discontinued. In determining whether a Complaint is time barred, we concluded that the Commission must first consider whether it has ongoing jurisdiction over a case. If it does, a

Complaint against the ISIF may be filed. If it does not, we must next consider whether a Complaint can still be timely filed under Section 72-706. For example, assume that Claimant files a timely Complaint against Employer/Surety just before the running of the five year period of limitation referenced at Section 72-706(2). The Commission will have jurisdiction over the matter until it is resolved either following a hearing, or the settlement of the parties. Typically, the Commission will no longer have jurisdiction over such a case once the settlement or decision becomes final. In some cases, however, the Commission specifically determines that it is appropriate to retain jurisdiction due to concerns over a likely change in the extent and degree of an injured worker's disability. Per Morton, a Complaint may be filed against the ISIF by Claimant where the Commission has continuing jurisdiction over the claim.¹

7. Where the Commission no longer has jurisdiction over a claim against the employer/surety, an injured worker may file a Complaint against the ISIF where a Complaint against the ISIF would still be timely under Section 72-706. For example, assume that benefits have been paid to a claimant in a particular case where claimant and employer/surety reach a final settlement on the second anniversary of the accident, claimant could nevertheless file a timely Complaint against the ISIF up until the fifth anniversary of the claim as anticipated by Section § 72-706, notwithstanding that the Commission had no continuing jurisdiction over the claim brought by claimant against employer/surety.

8. As applied to the facts of the instant matter, it is first clear that as of the date of the filing of the Complaint against the ISIF, the Industrial Commission no longer had jurisdiction over the Complaint filed by Claimant against Employer/Surety. The record demonstrates that Claimant and Employer/Surety resolved their dispute via lump sum settlement, which was

¹ To the extent that Morton can be read to suggest a more limited test, the Commission hereby clarifies the test as detailed above.

approved by the Industrial Commission by order dated September 30, 2011, more than five years following the December 6, 2005 accident. Pursuant to Section § 72-718 Claimant had twenty days from the date of that order within which to file a motion for reconsideration. This he failed to do. Thereafter, the order became a final order of the Commission, conclusive as to all matters adjudicated therein. The Commission's jurisdiction over the Complaint ceased at that time. Therefore, the Complaint subsequently filed by Claimant against the ISIF was not filed during the period of time that the Industrial Commission had jurisdiction over the Complaint filed by Claimant against Employer/Surety.

9. However, Claimant argues that his Complaint is nevertheless timely under the provisions of Section 72-706 because it was filed within one year within the last payment of "income benefits" pursuant to Section 72-706(3). Claimant argues that since the lump sum settlement agreement contemplates that the settlement was paid, in part, to compromise Employer/Surety's exposure for the payment of disability benefits, the payment of the settlement is the payment of an income benefit which implicates the provisions of Section 72-706(3). We agree, and believe that this outcome is consistent with the analysis we employed in Morton, supra. Notwithstanding that the payment of the lump sum settlement resolved the claim against Employer/Surety, from the standpoint of Section 72-706, that payment nevertheless constituted the payment of income benefits which makes the Complaint against the ISIF timely under Section 72-706(3). Vis-à-vis the ISIF, income benefits were paid to Claimant after the fourth anniversary of the claim, and a Complaint against the ISIF would therefore be timely if filed within one year of the date of those payments.

10. The Complaint against the ISIF was, therefore, timely filed and is not barred by the provisions of Section § 72-706.

ORDER

Based on the foregoing analysis, IT IS HEREBY ORDERED That:

- 1. Claimant’s complaint against the ISIF is timely.
- 2. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all issues adjudicated.

IT IS SO ORDERED.

DATED this 16th day of August, 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 16th day of August, 2013 a true and correct copy of **FINDINGS, CONCLUSIONS, AND ORDER** was served by regular United States Mail upon:

CLINTON MINER
4850 N. ROSEPOINT WAY, SUITE 104
BOISE ID 83713

PAUL AUGUSTINE
PO BOX 1521
BOISE ID 83701

cs-m

/s/ _____