

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JOEL PINON-MEDINA,

Claimant,

v.

HOOPEES ENTERPRISES, INC., f/k/a/
HOOPEES FARMS, INC.,
HOOPEES FARMS, LLC,
ROGER J. HOOPEES,
J. TYLER HOOPEES,

Employer,
Defendants.

IC 2010-029379

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

FILED 07/19/2012

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Alan Taylor. Claimant filed his Complaint pro se on May 2, 2011. On July 13, 2011, Claimant filed his Amended Complaint through Craig M. Young of Lewiston, Idaho. On August 15, 2011, Claimant filed his Notice of Seeking Entry of Default. On October 11, 2011, Claimant filed his Notice of Intent to Seek Entry of Default. On January 20, 2012, Claimant filed his Motion for Entry of Default. Defendants Hoopes Enterprises, Inc. f/k/a Hoopes Farms, Inc., Hoopes Farms, LLC, Roger Hoopes, and J. Tyler Hoopes did not respond at any time. On February 27, 2012, the Commission entered default against Defendants.

On June 25, 2012, Claimant filed his Application for Award or Judgment of Default Pursuant to J.R.P. 6(B) and the matter came under advisement on June 26, 2012.

ISSUES

The issues to be decided are:

1. Claimant's entitlement to medical care;

2. Claimant's entitlement to temporary partial and/or temporary total disability benefits;
3. Claimant's entitlement to permanent partial impairment benefits;
4. Claimant's entitlement to penalties against Defendants pursuant to Idaho Code § 72-210.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. Claimant's Exhibits A-J submitted with the Application for Award or Judgment of Default.

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

FINDINGS OF FACT

1. On September 28, 2010, Claimant was an employee of Hoopes Enterprises, Inc., Hoopes Farms, Inc., Hoopes Farms LLC, Roger J. Hoopes, and J. Tyler Hoopes.
2. In the course of Claimant's employment on September 28, 2010, in Teton County, Idaho, Claimant suffered an accident and sustained injuries when his right hand was mangled in a potato auger, causing amputation of his right index, long, and ring fingers at the metacarpophalangeal joint, together with multiple extensor tendon injuries.
3. Claimant's above-stated injuries were caused entirely by his accident arising out of and in the course of his employment with Defendants.
4. Employer Roger Hoopes was personally present on September 28, 2010, and transported Claimant to the hospital, thus actual notice was timely given to Employer as soon as practical and less than 60 days after the accident occurred.
5. On September 28, 2010, Claimant's average weekly wage was \$498.75.

6. Claimant received extensive medical treatment and hand therapy concluding on January 25, 2011. Claimant was unable to work from the time of his accident through at least January 25, 2011.

DISCUSSION AND FURTHER FINDINGS

7. 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).

8. **Medical care.** Idaho Code § 72-432(1) mandates that an employer shall provide for an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital service, medicines, crutches, and apparatus, as may be reasonably required by the employee's physician or needed immediately after an injury and for a reasonable time thereafter. If the employer fails to provide the same, the injured employee may do so at the expense of the employer. Idaho Code § 72-432(1) obligates an employer to provide treatment if the employee's physician requires the treatment and if the treatment is reasonable. Sprague v. Caldwell Transportation, Inc., 116 Idaho 720, 779 P.2d 395 (1989). For the purposes of Idaho Code § 72-432(1), medical treatment is reasonable if the employee's physician requires the treatment and it is for the physician to decide whether the treatment is required. Mulder v. Liberty Northwest Insurance Company, 135 Idaho 52, 58, 14 P.3d 372, 402, 408 (2000).

9. As a result of Claimant's September 28, 2010, industrial accident, he incurred reasonable and necessary medical expenses as set forth below:

Madison Ambulance	\$ 913.80
Madison Memorial Hospital	1,574.90
University of Utah Medical Center	57,986.36
<u>Teton Hand Therapy</u>	<u>2,016.50</u>
Total	\$62,491.56

10. The total amount due and owing to Claimant from Defendants for medical benefits pursuant to Idaho Code § 72-432 is \$62,491.56.

11. **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).

[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.

Malueg v. Pierson Enterprises, 111 Idaho 789, 791-92, 727 P.2d 1217, 1219-20 (1986).

12. In the present case, Claimant’s average weekly wage at the time of the accident was \$498.75 (which equates to a total temporary disability benefit weekly rate of \$334.16, and a daily rate of \$47.74.) Claimant was in a period of recovery from his industrial accident and is

entitled to total temporary disability benefits from September 28, 2010, until January 25, 2011, a period of 17 weeks and one day, in the total amount of \$5,728.46.

13. The total amount due and owing to Claimant from Defendants for temporary disability benefits pursuant to Idaho Code § 72-408 is \$5,728.46.

14. **Permanent partial impairment.** Permanent impairment is any anatomic or functional abnormality or loss after maximal medical rehabilitation has been achieved and which abnormality or loss is considered stable at the time of evaluation. Idaho Code § 72-422. When determining impairment, the opinions of physicians are advisory only. The Commission is the ultimate evaluator of impairment. Urry v. Walker & Fox Masonry Contractors, 115 Idaho 750, 755, 769 P.2d 1122, 1127 (1989).

15. In the present case, permanent partial impairment due to amputation is provided for by Idaho Code § 72-428 as follows:

Amputation of index finger at metacarpophalangeal joint	70 weeks
Amputation of middle finger at metacarpophalangeal joint	55 weeks
<u>Amputation of ring finger at metacarpophalangeal joint</u>	<u>25 weeks</u>
Total	150 weeks

16. Claimant has established his entitlement to 150 weeks of permanent impairment benefits at 55% of the average weekly state wage (\$353.65 x 150) in the amount of \$53,047.50.

17. **Idaho Code § 72-210 penalties.** Idaho Code § 72-210 allows Claimant to collect reasonable attorney fees, costs, and a statutory penalty equal to 10% of the compensation awarded from an uninsured employer. At the time of Claimant's industrial accident, Defendants had failed to insure their liability under the Idaho Workers' Compensation Laws.

18. Pursuant to IDAPA 17.02.08.033 *et seq*, Claimant's counsel may merit attorney fees of 25% of any amounts recovered without necessity of a hearing and 30% of any amounts recovered or awarded by the Commission after hearing. In the present case, 25% is reasonable

as evaluated by the factors enumerated in Hogaboom v. Economy Mattress, 107 Idaho 13, 684 P.2 990 (1984), given the anticipated time, effort, and issues involved in proceeding against an uninsured employer, the fees customarily charged for workers' compensation matters, the possible recovery, the time constraints imposed, the length of the attorney-client relationship, Claimant's counsel's extensive experience, Claimant's limited ability to pay for legal services, and the risk of no recovery given an uninsured employer.

19. The record herein establishes workers' compensation benefits owing to Claimant, the 10% penalty, and attorney fees and costs owing pursuant to Idaho Code § 72-210 as set forth below:

Amounts owing pursuant to Idaho Code §§ 72-432, 408, and 428:

Medical expenses	\$ 62,491.56
Temporary disability benefits	5,728.46
<u>Permanent partial impairment benefits</u>	<u>53,047.50</u>
Total	\$121,267.52

Amounts owing pursuant to Idaho Code § 72-210:

10% penalty	\$ 12,126.75
<u>Attorney fees (25%) and costs</u>	<u>30,316.88</u>
Total	\$ 42,443.63

20. The total amount of attorney fees, costs, and penalty due and owing to Claimant from Defendants pursuant to Idaho Code § 72-210 is \$42,443.63.

21. **Total compensation, attorney fees, and penalties.** The total amount of workers' compensation benefits, attorney fees, costs, and penalties due and owing to Claimant from Defendants is \$163,711.15.

CONCLUSIONS OF LAW

1. Claimant has proven he is entitled to reasonable medical benefits for his September 28, 2010 industrial injury in the amount of \$62,491.56.
2. Claimant has proven he is entitled to temporary total disability benefits due to his September 28, 2010 industrial accident in the amount of \$5,728.46.
3. Claimant has proven he is entitled to permanent impairment benefits due to his September 28, 2010 industrial accident in the amount of \$53,047.50.
4. Claimant has proven he is entitled to attorney fees, costs, and a 10% penalty pursuant to Idaho Code § 72-210 in the amount of \$42,443.63.
5. The total amount of workers' compensation benefits, attorney fees, costs, and penalties due and owing to Claimant from Defendants is \$163,711.15.

RECOMMENDATION

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

DATED this 11th day of July, 2012.

INDUSTRIAL COMMISSION

/s/
Alan Reed Taylor, Referee

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of July, 2012, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

CRAIG M YOUNG
PO BOX 287
LEWISTON ID 83501-0287

HOOPEES ENTERPRISES INC
762 N 940 W
PO BOX 240
TETONIA ID 83452-0240

HOOPEES FARMS, LLC
ROGER J. HOOPEES
J. TYLER HOOPEES
PO BOX 240
760 N 940 W
TETONIA ID 83452

sb

_____/s/_____

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ORDER

FILED 07/19/2012

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

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

1. Claimant has proven he is entitled to reasonable medical benefits for his September 28, 2010 industrial injury in the amount of \$62,491.56.
2. Claimant has proven he is entitled to temporary total disability benefits due to his September 28, 2010 industrial accident in the amount of \$5,728.46.
3. Claimant has proven he is entitled to permanent impairment benefits due to his September 28, 2010 industrial accident in the amount of \$53,047.50.

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of July, 2012, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

CRAIG M YOUNG
PO BOX 287
LEWISTON ID 83501-0287

HOOPEES ENTERPRISES INC
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/s/ _____