BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARK ROSA, Claimant, v. AMALGAMATED SUGAR COMPANY LLC, Employer, Self-Insured, Defendant.	)	**IC 2004-003586** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** FILED NOV 19 2010

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned this matter to Referee Douglas A. Donohue. He conducted a hearing in Twin Falls on September 29, 2010. Claimant appeared *pro se*. Alan R. Gardner represented Defendant. The parties presented oral and documentary evidence. They waived briefs. The case came under advisement on November 8, 2010. It is now ready for decision.

ISSUES

The issues to be resolved according to the amended notice of hearing are:

1. Whether and to what extent Claimant is entitled to:

    a) Permanent partial impairment (PPI);
    b) Disability in excess of impairment, and
    c) Medical care benefits.

Claimant stated repeatedly at hearing that he seeks no benefits at this time. Rather, he seeks time to prove his alleged symptoms are caused by chemicals at work – and to discover what those chemicals are. Essentially, he asks the Commission to retain jurisdiction.

CONTENTIONS OF THE PARTIES

Claimant contends he suffered burns from a caustic chemical in an incident at work on March 20, 2004. He admits he received medical treatment benefits at the time. However,

he alleges that four years later additional symptoms developed. He admits that no doctor has opined the existence of a causal connection between the incident and these belated symptoms. He requests time to discover whether some other industrial chemical may be related to his symptoms.

Defendants contend Claimant was paid in full for medical benefits related to the incident. He has failed to prove he is entitled to further benefits. He has failed to prove his current symptoms are related to any work accident.

EVIDENCE CONSIDERED

The record in the instant case consists of the following:

1. Hearing testimony of Claimant;

2. Claimant's Exhibits 1 and 2, excluding MSDS sheets for chemicals not relevant to the accident; and

3. Defendant's Exhibits 1 through 7, 9, 10, and Supplemental Exhibit 1.

Having examined the evidence, the Referee submits the following findings of fact, conclusions of law, and recommendation for review by the Commission.

FINDINGS OF FACT

1. Claimant worked for Employer. On March 20, 2004, droplets of caustic chemical sprayed in his face. He visited the emergency department of Cassia Regional Medical Center the next day. Claimant received medical attention for chemical burns to his face and an incisor tooth. The medical records describe several small lesions, each about one millimeter in diameter, which were treated. These burns left no scars visible from social distance. Medical records do not mention the presence of chemical burn scars.

2. On April 13, 2004, Allen J. Sinclair, M.D., noted that Claimant complained of headaches and some sinus symptoms. Claimant reported that some caustic liquid got into

his left nostril during the industrial accident. Dr. Sinclair found no abnormalities related to the chemical exposure on examination, but noted it possible – he used the word "perhaps" – that Claimant's sinus symptoms, now resolved, had related to a sinus injury caused by the chemical exposure. Claimant did not require follow-up care for his headaches or sinus symptoms. He next visited Dr. Sinclair for management of his longstanding Crohn's disease in October 2004.

3. Also on April 13, 2004, Claimant visited Douglas Stagg, M.D., at Magic Valley Regional Medical Center. Dr. Stagg examined Claimant and noted the sinus complaints. He consulted with the poison control center and reassured Claimant that his other complaints of memory loss and headache were unrelated to exposure to caustic chemicals. He referred Claimant for dental care to treat a brown spot on an incisor caused by a drop of the chemical. After a follow-up visit on April 21, 2004, Claimant did not return to Dr. Stagg for treatment for chemical exposure.

4. The last medical treatment for chemical burn (on his tooth) occurred April 19, 2004. He had no further problems with his tooth.

5. A December 19, 2006, CT scan of Claimant's paranasal sinus was negative.

6. In 2008, Claimant noticed a patch of hair loss in an oval distribution at his left lower jawline. Claimant reports he sought medical attention then, but the record does not contain any report that confirms a physician saw this patch of hair loss. Claimant testified that no physician would opine it likely that this symptom was related to the 2004 industrial accident.

7. On February 19, 2009, Claimant visited Warren Dopson, M.D. Claimant reported he was exposed to muriatic acid fumes at work on January 9. He complained of shortness of breath and fatigue since. Upon examination, Dr. Dopson noted no abnormalities.

He diagnosed asthma and prescribed a tapering dose of prednisone by inhaler. The alleged January 9, 2009 incident is not a part of Claimant's claim here.

DISCUSSION AND FURTHER FINDINGS OF FACT

8. Claimant is generally credible. However, his memory is vague and inconsistent with medical records when discussing symptoms and treatment received in 2004 and 2008. The contemporaneously made medical records receive more weight as evidence than his memory at hearing.

9. **Accident and Injury.** "'Accident' means an unexpected, undesigned, and unlooked for mishap, or untoward event, . . . which can be reasonably located as to time when and place where it occurred, causing an injury." Idaho Code 72-102(18)(b). The onset of 2008 symptoms described by Claimant did not involve a mishap or untoward event. Claimant's physicians have not opined these symptoms are related to the 2004 accident.

10. Where the injury can be reasonably located in time and place, an accident may be found to have occurred. *See*, *Page v. McCain Foods, Inc.*, 141 Idaho 342, 109 P.3d 1084 (2005); *Wynn v. J.R. Simplot Co.*, 105 Idaho 102, 666 P.2d 629 (1983). In both *Page* and *Wynn*, the injury was immediately apparent. Both claimants felt immediate pain – Ms. Page felt knee pain as she arose from a seated position and Mr. Wynn felt back pain as the equipment he was operating bounced. Here, Claimant's accident occurred March 20,2009. Unlike *Page* and *Winn*, however, the issue in this case is whether the complaints first noted by Claimant in 2008 are causally related to the subject accident.

11. **Causation**. A claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability. *Langley v. State, Industrial Special Indemnity Fund*, 126 Idaho 781, 785, 890 P.2d 732, 736 (1995). Magic words are not required. *Jensen v. City of Pocatello*, 135 Idaho 406, 18 P.3d 211 (2000). "Probable" is defined as

"having more evidence for than against." *Fisher v. Bunker Hill Company*, 96 Idaho 341, 344, 528 P.2d 903, 906 (1974).

12. The medical records do not present a *prima facie* case for a causal relationship between Claimant's belated symptoms and the 2004 accident. Claimant does not dispute that Defendant paid all benefits due him for treatment in 2004.

13. The symptoms began, according to Claimant, in 2008. The hearing was in September 2010. Claimant has had the benefit of two years to link his symptoms to the compensable industrial claim of 2004. Having failed to do so – and facing the express opinions of his physicians to the contrary – Claimant has failed to show a reasonable basis for extending his claim beyond the statute of limitations.

CONCLUSIONS OF LAW

1. Claimant failed to show his 2008 symptoms are related to a compensable industrial accident;

2. Claimant failed to show a basis for retaining jurisdiction beyond the statute of limitations; and

3. All other issues are moot.

RECOMMENDATION

The Referee recommends that the Commission adopt the foregoing Findings of Fact and Conclusions of Law as its own and issue an appropriate final order.

DATED this 12TH day of November, 2010.

INDUSTRIAL COMMISSION

/S/_____
Douglas A. Donohue, Referee

ATTEST:

/S/_____
Assistant Commission Secretary

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARK ROSA, Claimant, v. AMALGAMATED SUGAR COMPANY LLC, Employer, Self-Insured, Defendant.	)	**IC 2004-003586** **ORDER** FILED NOV 19 2010

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. Claimant failed to show his 2008 symptoms are related to a compensable industrial accident.

2. Claimant failed to show a basis for retaining jurisdiction beyond the statute of limitations.

3. All other issues are moot.

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

DATED this 19th day of NOVEMBER, 2010.

INDUSTRIAL COMMISSION

unavailable for signature
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 19TH day of NOVEMBER, 2010, a true and correct copy of **FINDINGS, CONCLUSIONS, AND ORDER** were served by regular United States Mail upon each of the following:

Mark Rosa
P.O. Box 634
Heyburn, ID 83336

Alan R. Gardner
P.O. Box 2528
Boise, ID 83701-2528

db

/S/