

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

DELORES TRIMBLE, )  
 )  
 Claimant, )  
 )  
 v. )  
 )  
 BATTELLE ENERGY ALLIANCE, )  
 )  
 Employer, )  
 )  
 and )  
 )  
 EMPLOYERS INSURANCE COMPANY )  
 OF WAUSAU, )  
 )  
 Surety, )  
 )  
 Defendants. )  
 )  
 \_\_\_\_\_ )

**IC 2009-008093**

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

Filed May 20, 2010

**INTRODUCTION**

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above entitled matter to Referee Michael E. Powers, who conducted a hearing in Idaho Falls on April 21, 2010. Claimant was not present.<sup>1</sup> Susan R. Veltman of Boise represented Employer/Surety. Oral and documentary evidence was presented. No post-hearing depositions were taken and no post-hearing briefs were submitted. This matter came under advisement on April 29, 2010.

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<sup>1</sup> Claimant, who is appearing *pro se*, objected to this matter being set for hearing because, *inter alia*, “Claimant has limited travel medical abilities and cannot attend a thirty minutes hearing.” No medical evidence regarding her inability to attend the hearing was submitted with Claimant’s objection. Before the hearing, Claimant had moved to Dallas, Texas. A telephone conference was held on March 1, 2010 to discuss Claimant’s concerns and to offer to submit the matter by stipulated facts or to participate in the hearing telephonically. Claimant declined and refused to participate further in the conference. An Order Overruling Claimant’s Objection to Calendaring was entered on March 3, 2010. On April 19, Carol Haight, Office Services Supervisor at the Industrial Commission, telephoned Claimant to renew the Referee’s offer to participate in the hearing telephonically. Claimant stated she did not want to be bothered any more and hung up.

## **ISSUE**

Based on Defendants' Motion to Bifurcate and over Claimant's objection, the sole issue to be decided as the result of the hearing is whether or not Claimant's duration of employment with Employer pursuant to Idaho Code § 72-439(2) bars her claim for benefits for an alleged occupational disease.

## **CONTENTIONS OF THE PARTIES**

Claimant contends that she became sick after breathing contaminated air and/or drinking contaminated water at Employer's premises. As Claimant submitted no evidence or argument, it is unclear how she responds to Defendants' affirmative defense that she has not complied with Idaho Code § 72-439(2) regarding duration of employment.

## **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. The testimony of Employer's Peril Supervisor, Brett Robbins, taken at the hearing.
2. Defendants' Exhibits 1-6, admitted at the hearing.

## **FINDINGS OF FACT**

1. Claimant worked for Employer in the planning and financial controls area. She alleges that between February 20 and 23, 2009, she was exposed to certain unknown chemicals that made her sick and resulted in her hospitalization. *See* Defendants' Exhibit 2, p. 3.
2. Claimant began her employment with Employer on December 15, 2008. *See* testimony of Mr. Robbins and Defendants' Exhibits 5 and 6.
3. Claimant's last day of work was March 11, 2009. *Id.*
4. Between December 15, 2008 and March 11, 2009, Claimant worked a total of 44 calendar days. *Id.*

## **DISCUSSION AND FURTHER FINDINGS**

Idaho Code § 72-439(2) provides: An employer shall not be liable for any compensation for a nonacute occupational disease unless the employee was exposed to the hazard of such disease for a period of sixty (60) days for the same employer.

5. The evidence is unrefuted that Claimant only actually worked 44 days, rather than the 60 days required to trigger Defendants' liability. Only Claimant's actual work days of exposure to the hazard are to be counted. See *Bint v. Creative Forest Products*, 108 Idaho 116, 697 P.2d 818 (1985).

6. There are no medical records in evidence regarding the nature, type, and duration of Claimant's "exposure" to certain unknown substances. In order for Claimant to avoid the 60-day exposure requirement, she must show that her alleged occupational disease is "acute." This Claimant has failed to do.

## **CONCLUSIONS OF LAW**

1. Claimant's duration of employment with Employer consisted of 44 days of actual work.
2. Claimant has failed to meet the requirement of Idaho Code § 72-439(2).
3. Claimant's Complaint should be dismissed with prejudice.

## **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 \_\_11<sup>th</sup>\_\_ day of May, 2010.

INDUSTRIAL COMMISSION

\_\_\_\_\_  
/s/  
Michael E. Powers, Referee

ATTEST:

/s/  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the 20<sup>th</sup> day of May, 2010, 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:

DELORES TRIMBLE  
3130 WEBB CHAPEL EXT 322  
DALLAS TX 75220

SUSAN R VELTMAN  
PO BOX 2528  
BOISE ID 83701

ge

*Gina Espinoza*

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**IC 2009-008093**

**ORDER**

Filed May 20, 2010

Pursuant to Idaho Code § 72-717, Referee Michael E. Powers 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 recommendation of the Referee. The Commission concurs with this recommendation. 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’s duration of employment with Employer consisted of 44 days of actual work.
2. Claimant has failed to meet the requirement of Idaho Code § 72-439(2).
3. Claimant’s Complaint is dismissed with prejudice.

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

DATED this \_\_20<sup>th</sup>\_\_ day of \_\_May\_\_, 2010.

INDUSTRIAL COMMISSION

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

\_\_\_\_\_/s/\_\_\_\_\_  
Thomas E. Limbaugh, Commissioner

\_\_\_\_\_  
Thomas P. Baskin, Commissioner

ATTEST:

\_\_\_\_\_/s/\_\_\_\_\_  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_20<sup>th</sup>\_\_ day of \_\_May\_\_ 2010, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

DELORES TRIMBLE  
3130 WEBB CHAPEL EXT 322  
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*Gina Espinosa*

**ORDER - 2**