

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

CHRISTINE C. WOLD,)
)
 Claimant,)
)
 v.)
)
 BASIC AMERICAN, INC.,)
)
 Employer,)
)
 and)
)
 ZURICH AMERICAN INSURANCE)
 COMPANY,)
)
 Surety,)
)
 Defendants.)
 _____)

IC 2002-002263

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

Filed November 24, 2010

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Alan Taylor, who conducted a hearing in Idaho Falls on June 10, 2010. Claimant, Christine C. Wold, of Idaho Falls, was present in person and represented herself. Defendant Employer, Basic American, Inc. (Basic American), and Defendant Surety, Zurich American Insurance Company, were represented by David P. Gardner, of Pocatello. The parties presented oral and documentary evidence. No post-hearing depositions were taken. Claimant filed no brief whatsoever. Defendants filed a brief and the matter came under advisement on September 17, 2010. The undersigned Commissioners have chosen not to adopt the Referee's recommendation and hereby issue their own findings of fact, conclusions of law and order.

ISSUE

The sole issue to be decided by the Commission is whether Claimant has complied with the notice and limitations set forth in Idaho Codes §§ 72-701 – 72-706, and whether those limitations are tolled pursuant to Idaho Code Sections §§ 72-602 – 72-604. Importantly, the instant decision does not address the issue of whether Claimant’s left hand condition is a natural and probable consequence of the February 6, 2002 accident or, instead, a separate occupational disease requiring the filing a separate Notice of Injury, Claim for Benefits, and Complaint.

CONTENTIONS OF THE PARTIES

Claimant asserts entitlement to “lost wages” due to her 2002 industrial accident. Defendants maintain that Claimant’s Complaint filed in 2009, requesting additional income benefits, is barred by the statute of limitations contained in Idaho Code § 72-706.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. The testimony of Sandra Christiansen, Judy C. Hadley, Darcey L. Withrow, and Claimant, taken at the June 10, 2010 hearing; and
3. Defendants’ Exhibits 1 through 3, admitted at the hearing.

Claimant offered Claimant’s Exhibits 1 through 6 into evidence, but they were denied admission into evidence pursuant to Defendants’ objection on the grounds that Claimant’s proposed Exhibit 1 constituted an inadmissible offer of settlement by Defendants and Claimant’s proposed Exhibits 2-6 were photographs of Claimant’s injured hand, none of which were relevant to the statute of limitations issue to be decided.

FINDINGS OF FACT

1. Claimant was born in 1947 and was 62 years old at the time of the hearing. She is right hand dominant and was raised in Idaho Falls. In 1980, she began working at RT French

Company. The company underwent several name and ownership changes over the years and, by 1999, became known as Basic American. Claimant continued working there as a case packer and packager. She ultimately became a machine operator at Basic American.

2. On February 6, 2002, Claimant was working on a machine at Basic American when a safety bar crushed her right hand, including her index and ring fingers. She was treated by Gregory West, M.D., and underwent nerve block injections and physical therapy. Claimant ultimately developed carpal tunnel syndrome and underwent surgery. She developed a significant infection post-surgery and was hospitalized for five days.

3. As a result of Claimant's industrial accident, Defendants paid medical benefits of \$44,238.00, temporary disability benefits of \$942.00, and permanent partial impairment benefits of \$31,823.00.

4. With respect to the payment of income benefits, Defendant's Exhibit #2 reflects that Claimant received TTD benefits from January 31, 2003 through February 19, 2003. The payment of PPI benefits commenced on October 23, 2003 and concluded December 1, 2005. Notably, for most of this period Claimant received PPI payments once every four weeks, in the amount of \$1,157.20. However, for the period April 8, 2005 through December 1, 2005, Claimant received one check in the amount of \$9,836.20. The record is unclear, however, as to when Claimant received this last check. At hearing, Claimant seemed to acknowledge that she received her last check on or around December 1, 2005. (*See*, Transcript, p. 36/13-25.) However, certain comments of Counsel suggest that the Claimant's last payment was actually received sometime in April of 2005. (*See*, Transcript, p. 37/1-9.) As well, the payment summary contains information suggesting that the Claimant's last check may have been issued sometime in late April 2005. However, although it is somewhat difficult to understand when, during the period April 8, 2005 through December 1, 2005 Claimant received her last PPI check, it is clear from Claimant's testimony that she did not receive the payment of any income benefits

subsequent to December 1, 2005.

5. Claimant had a poor outcome following her right hand surgery. In her Complaint, she alleged that during her recovery from the February 6, 2002 accident she returned to work, but in order to perform her work she was required to use her left hand for most of her work tasks. She contends that she developed left carpal tunnel syndrome as a consequence of overusing her left hand to compensate for her inability to use her right. The record tends to suggest that Claimant's left hand treatment was not paid under the instant claim, but was, instead, paid under Employer's non-occupational medical plan. Regardless, the record clearly establishes that no income benefits were paid after December 1, 2005, at the latest. The gravamen of Claimant's complaint, as supported by certain portions of her testimony at hearing, is that she believes her left hand condition is a compensable consequence of the original accident of February 6, 2002. However, certain other aspects of Claimant's testimony suggest that she put employer on notice of her left upper extremity difficulties. She also testified to having seen a separate Notice of Injury and Claim for Benefits for the left hand. (*See*, Transcript, pp. 32/14-33/5.)

6. On November 4, 2009, Claimant filed her Complaint herein with the Industrial Commission. She claimed entitlement to lost wages of approximately \$3.99 per hour because she allegedly lost an operator's job in June 2005 due to the residual limitations caused by her 2002 work accident.

7. At the time of hearing, Claimant was still working ten-hour days at Basic American.

8. Having observed Claimant at hearing and compared her testimony to the other evidence of record, the Referee found that Claimant is an honest and credible witness. The Commission finds no reason to disturb the Referee's findings on credibility.

DISCUSSION AND FURTHER FINDINGS

9. 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).

10. The crux of the instant dispute is whether Claimant's Complaint for additional income benefits is barred by the applicable statute of limitations. Idaho Code § 72-706 provides:

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 be otherwise 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.

11. Since compensation was clearly paid on this claim, the provisions of Idaho Code §

72-706(1) are inapplicable. To determine whether the instant Complaint is timely filed, the Commission must determine whether this case is controlled by the provisions of Idaho Code § 72-706(2) or Idaho Code § 72-706(3).

For purposes of deciding which of these two subsections apply, it is important to recognize that the fourth anniversary of the accident is February 6, 2006. Idaho Code § 72-706(3) applies where the payment of income benefits is “discontinued” more than four years following the date of accident. Since the payment of income benefits in this matter was discontinued prior to the fourth anniversary of the claim, it is the provisions of Idaho Code § 72-706(2) that control in this case. Under that subsection, Claimant had until February 6, 2007 within which to file her complaint. This she failed to do, and her complaint for additional time loss benefits for the accident of February 6, 2002 is time barred.

12. When an employer willfully fails to file a required report or notice of change status, Idaho Code § 72-604 may toll the limitations prescribed in Idaho Code § 72-706. In the instant case, Claimant acknowledged receipt of the Notice of Claim status in 2005 advising her that her income benefits were entirely paid. There is no evidence that Idaho Code § 72-604 has application herein.

13. The record indicates that Claimant is a credible, honest, and hard-working individual. She was unaware of the applicable statute of limitations period. However, this does not alter the application of the statute of limitations contained in Idaho Code § 72-706. Claimant’s Complaint was filed long after the allowed statutory time frames, and her claim for additional income benefits due to her 2002 industrial accident is barred.

14. Defendants have proven that Claimant's claim for additional income benefits for her 2002 industrial accident is barred by Idaho Code § 72-706.

CONCLUSIONS OF LAW

1. Defendants have proven that Claimant's claim for additional income benefits due to her 2002 industrial accident is barred by Idaho Code § 72-706.

2. Claimant's Complaint for additional income benefits due to her 2002 industrial accident should be dismissed.

ORDER

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

1. Defendants have proven that Claimant's claim for additional income benefits due to her 2002 industrial accident is barred by Idaho Code § 72-706.

2. Claimant's Complaint for additional income benefits due to her 2002 industrial accident should be dismissed.

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

DATED this 24th day of November, 2010.

INDUSTRIAL COMMISSION

/s/ _____
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 24th day of November, 2010, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** was served by regular United States Mail upon each of the following:

CHRISTINE WOLD
2885 MARY DR
IDAHO FALLS ID 83402-5787

DAVID P GARDNER
PO BOX 817
POCATELLO ID 83204-0817

amw

/s/ _____