

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JASSON STRYKER,

Claimant,

v.

IDAHO PACIFIC HOLDINGS, INC,

Employer,

and

GENERAL CASUALTY COMPANY OF
WISCONSIN,

Surety,
Defendants.

IC 2023-012738

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

FILED

DEC 11 2023

INDUSTRIAL COMMISSION

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Sonnet Robinson. Claimant requested an emergency hearing, which was conducted on August 15, 2023. Claimant, Jasson Stryker, was represented by Jonathan Harris of Blackfoot. Eric Bailey of Boise represented Defendants. The matter came under advisement on October 24, 2023, and is ready for decision.

ISSUES

1. Whether Claimant is entitled to:
 - a. Medical care;
 - b. Temporary partial or temporary total disability benefits;
 - c. Attorney's fees;
2. Whether Claimant is engaged in injurious practices per Idaho Code § 72-435;

- a. If Claimant is engaged in injurious practices, whether his benefits should be suspended;
3. Whether Claimant refused suitable work within the meaning of Idaho Code § 72-403.

CONTENTIONS OF THE PARTIES

Claimant contends that he suffered a compensable forearm injury for which he needs physical therapy and possibly surgery. Claimant did not engage in injurious practices, persist in injurious practices, or imperil his recovery and is entitled to temporary disability benefits during his period of recovery; Defendants' offer of light duty work was unreasonable. Claimant is entitled to attorney's fees for Defendants' denial of TTDs and denial of medical care.

Defendants respond that Claimant persisted in injurious practices by continually refusing to be admitted for IV antibiotic treatment which increased the cost of his medical care and increased the required time to pay TTDs; Claimant's benefits should be reduced by at least 50%. Claimant declined a reasonable job offer and is not entitled to TTDs. Defendants acted reasonably and Claimant is not entitled to attorney's fees.

Claimant replies that he was just following medical advice on May 17 when he was not admitted. Further, Idaho Code § 72-403 allows Defendants to deny TTD benefits, not medical care, and Defendants have failed to meet their burden of showing a legitimate offer of light duty employment. Defendants should be ordered to pay TTD benefits, medical care, and attorney's fees.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. Joint exhibits 1-10¹;

¹ Joint exhibits 1-9 were admitted at hearing and retained by the Referee; the record was held open for the parties to submit an additional record from an appointment held August 8, which is exhibit 10.

3. The hearing testimony of Jasson Stryker, Claimant and Wendi Cunningham, his fiancé;

4. The pre-hearing deposition of Jade Woodall, MD, taken by Claimant.

All outstanding objections are OVERRULED.

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

FINDINGS OF FACT

1. On May 8, 2023, Claimant was holding a pipe with his left arm and drilled through the pipe, putting the drill bit into his left forearm. JE 1:1; Tr. 19:14-20:21. Claimant's supervisor drove him to the Rigby Clinic, where staff told Claimant he needed to go to the hospital. Claimant presented to the Idaho Falls Community Hospital. Tr. 21:20-22:19; JE 4.

2. Justin Thompson, DO, examined Claimant. JE 4:22. Claimant reported a loss of feeling in his fingers and there was swelling around the wound. *Id.* Claimant's wound was stitched, he was prescribed antibiotics, and was instructed to follow-up with Jonathan Olson, DO, a hand surgeon. *Id.* at 23. Claimant's supervisor, Brad Dennis, filled out the paperwork and included that it was a workers compensation injury. Tr. 45:6-13. Claimant described that when Mr. Dennis drove him home from the hospital, he told Claimant a story about another employee who got injured and then run off by Employer; "they didn't want loss time accidents." Tr. 27:23-29:12.

3. On May 10, 2023, Dr. Olson took Claimant off work until he was evaluated at his first appointment. JE 6:450.

4. On May 11, 2023, Claimant presented to the Eastern Idaho Regional Medical Center (EIRMC) to see Dr. Olson. JE 5:101. Claimant's left wrist laceration was swollen, with cellulitis. Dr. Olson recorded weakness, numbness, tingling, swelling, redness, and warmth and instructed

Claimant to present to the ER for wound evaluation. *Id.* at 102.

5. Claimant presented to the ER and was evaluated by Dr. Thompson and a plastic surgeon, Jhade Woodall, MD. JE 5:107. Dr. Thompson “felt that we may want to consider admitting the patient” for an ultrasound and blood cultures, along with antibiotics. *Id.* Claimant declined due to obligations at home, but explained he would be back later that night to complete those recommendations. *Id.* Dr. Thompson wrote: “I have discouraged him from leaving but he insists on leaving and did sign AMA [sic-against medical advice] paperwork. Patient did not receive any pain medications, antibiotics, fluids, imaging, or labs while here.” *Id.* at 107, 112. Dr. Woodall “emphasized to him the possibility of permanent hand dysfunction due to worsening of infection without appropriate treatment.” *Id.* at 117.

6. At hearing, Claimant stated he declined to be admitted because he was not sure if he was fully covered: “I had no workman’s comp. I had no bosses calling me. I kept calling work and workman’s comp since - - since after the 9th... every day I’d call continuously. No one ever returned the phone call.” Tr. 26:5-13. Claimant explained he was calling Tim Leonard, his boss, and Danni Howard, the adjuster. *Id.* at 25:14-18. Claimant was also scared of losing his job. *Id.* at 28:24-29:1.

7. Claimant returned to EIRMC Burn, Trauma, and Wound Clinic on May 16, 2023. JE 5:142. Claimant’s left upper extremity was swollen and red, and Claimant had numbness in his hand; however, Claimant’s cellulitis had improved from May 11. *Id.* at 155. Claimant’s wound was cleaned. *Id.* at 157. Claimant was “very nervous about treatment.” *Id.* at 154-155. Dr. Woodall discussed admitting Claimant to the hospital; Claimant explained he needed to give his girlfriend (Wendi) a ride home. Dr. Woodall wrote “I discussed with him that when he comes back to the hospital he will need to present to the emergency dep[artment].” *Id.* at 156. In a patient communication log, Kathy Crowder recorded the following:

Verbal communication with patient during wound care appointment. Doctor stated that patient needed to be admitted to hospital for treatment. Patient agreed to be admitted but wanted to leave and come back later. Patient stated his wife did not drive and she had no way of getting home. Patient stated he wanted to take her home and have his brother bring him back. Patient was told that he could not come back to the clinic to be admitted to the hospital as the clinic is closing. Patient stated he would come back through the ER. I left the patient in the room to discuss the options with his wife. When I came back into the room they asked if the wife could spend the night in the patient's room with him. I told him I do not know the hospital's policy about family staying the night and he would have to ask them when he was on the floor. The patient's wife was visibly upset and said she would just sleep in the car, that he needed to be admitted. The patient then decided he needed to take her home and would come back to the ER later. I explained to him that he cannot check in at the ER and tell them he is there to be admitted. I explained that he would have to go through the whole ER process again. Patient stated he understood and left with his wife. Provider notified.

JE 5:142. The note continues that Claimant left AMA with no dressing on his wound. *Id.* at 144.

8. At hearing, Claimant explained he declined admission again because he was unsure of his coverage, still hadn't heard from anyone, and he needed to drive his wife home; Claimant's fiancé does not drive and is not able. Tr. 29:12-31:19.

9. Claimant presented the EIRMC ER on May 17, 2023. JE 5:171. The notes read:

53-year-old male presents emergency room for reevaluation of his left forearm wound. A week ago he had puncture wounds by a drill bit into his distal anterior forearm. Initially at that time hand surgeon Dr. Woodall did see him and advised admission but the patient decided to leave against medical advice. He did follow up and was given antibiotics but he says he just started taking them. Did he did [sic] follow-up with Dr. Woodall yesterday. He says the pain is improving and he would like him to continue on the antibiotic and follow up with him next week. Patient has scheduled this appointment. He was told to come back in a week for reevaluation. No other complaints at this time.

...

The patient's history, exam, diagnostic testing, and current condition do not suggest any other acute medical condition, besides presenting complaint, or other significant pathology that would warrant further testing, continued ED treatment, admission, or other specialist evaluation...[he] will be discharged home.

JE 5:173. Claimant was to remain off work. *Id.* at 180. At hearing, Claimant said he had presented on May 17 to be admitted, but the ER doctor sent him home for another week. Tr. 31:23-32:13.

10. On May 23, 2023, Claimant returned to the wound clinic. JE 5:184. RN Mickelson recorded:

per ER record, patient said that "the pain is improving and [Dr. Woodall] would like him to continue on antibiotic and follow up with him next week" despite patient having been advised for direct admit... At today's visit patient reports he told the ER that he was at hospital to be admitted and the ER told him to go home.

Id. Claimant reported numbness, shooting pain, and pain 8/10 during the day, 10/10 at night. *Id.* Dr. Woodall wrote "I have seen patient multiple times for infection in left arm. I have recommended admission, IV abx, and MRI each time. Each time he disregarded the recommendation. Today he returns to the clinic with worsening numbness in the ulnar distribution and progressive pain." *Id.* at 192. NP Cook recorded "increasing signs and symptoms of infection" and "new loss of sensation" in Claimant's forearm. *Id.* at 211. Claimant was admitted later that day. *Id.* at 213.

11. At the wound clinic, Claimant requested copies of his medical records for his boss for workers compensation. JE 5:205. Nurse Davies explained that the workers compensation case manager would request the records, but Claimant explained he had had no contact from workers compensation, had not received a claim number, and requested the nurse (RN Davies) speak to his boss, Tim. *Id.* RN Davies recorded that Tim explained Claimant had never given them (Employer) a work restriction, which they had been requesting, so they can change his claim from pending to open, and that they were unaware he had received care from anywhere other than the Idaho Falls Community Hospital "where patient had gone originally despite being instructed to go to Redicare." *Id.* A work restriction was faxed to Employer, who then provided a claim number. *Id.* Claimant's work restriction noted he was to "remain off work" as he was being admitted, but also noted no use

of the left hand/arm. *Id.* at 222.

12. Once admitted, Claimant explained to Dr. Shearen:

he sought medical advice with Dr. Woodall ... however due to lack of medical insurance and paperwork for his workman's comp he left AMA. He sought [a] second opinion from Dr. Olson who recommended he go back to Dr. Woodall. He did so however again leaving AMA due to the aforementioned reasons. Once he had his paperwork completed, he presents now seeking definitive management.

JE 5:236. Dr. Shearen also spoke to Claimant's daughter, who explained Claimant was afraid of medical attention and she was afraid he would leave before receiving his surgery, so she was traveling tomorrow to be there with him and calling him intermittently to reassure him until then. *Id.* at 237.

13. After admission, Claimant underwent a left upper extremity MRI and IV antibiotic therapy. See JE 5. Claimant was improved by May 24, 2023. JE 5:230. On May 25, Dr. Woodall wrote "due to severity of infection, delay in treatment, and still mildly elevated white count would like to keep patient one more day for iv abx," with no plans for surgical intervention. *Id.* at 331. Claimant was discharged on May 26. JE 5:276.

14. On June 2, 2023, Claimant's claim was accepted. JE 2:10(a).

15. On June 6, 2023, Claimant returned to the wound clinic. JE 5:416. Claimant's wound was cleaned, and Claimant was to remain off work for an additional four weeks, and "if patient needs to return to work, dressing would need to stay c/d/I with no use of left arm." *Id.* However, Claimant's work release stated "off work" until his four-week follow-up. *Id.* at 417.

16. Defendants filed a complaint on June 6, 2023, alleging injurious practices and refusal of modified duty work.² See IIC Legal File.

² Defendants' complaint was filed pursuant to a now-withdrawn policy memorandum regarding injurious practices. The policy memorandum was replaced by JRP 22, which created a new injurious practices procedure on September 6, 2023.

17. On June 8, 2023, Defendants made an offer of light duty work with a start date of June 16, 2023, in a modified inspection table position, with attached job description. JE 3:17. Claimant had until June 14, 2023, to accept this offer per the terms of the letter. *Id.* The letter noted that this job offer was based on a work release of May 23.

18. On June 13, 2023, Claimant's counsel wrote Defendants a letter requesting an explanation for the lack of temporary disability benefits and attached two work releases, the first from May 23, which noted Claimant was off work and the second from June 6, which also noted Claimant was to remain off work. JE 9:465-468.

19. On June 27, 2023, Dr. Woodall recommended surgical intervention to repair the tendon laceration of his left ring finger and noted he was to remain off work until after the recommended surgery. JE 5:445. On June 28, Dr. Woodall's office faxed a request for authorization of surgery with attached office notes. The request reads in pertinent part "we need to schedule the patient for exploration of left forearm with tendon and nerve repair as soon as possible." JE 7:454. The attached office notes include the fact that Claimant was to remain off work until after the surgery. *Id.* at 456.

20. On July 20, 2023, Defendants made another offer of light duty work which noted they had received Claimant's counsel's letter with attached off work documentation but were not able to confirm his restrictions. Defendants re-offered the modified inspection table position, and explained if that exceeded his restrictions, there was also a sedentary position as a document coordinator was available; there was no job description attached for the document coordinator position. JE 3:18. The offer explained doctors' appointments and physical therapy appointments were to be scheduled around work hours. Claimant had until July 25 to accept this offer. *Id.* at 19.

21. On July 25, 2023, Claimant was paid temporary total disability benefits for the time

period from May 14, 2023 to June 8, 2023 in the amount of \$2,675.07.³ JE 2:10(b). The letter explained Claimant's benefits would be stopped June 8, 2023, because Claimant received a written offer to accommodate his light duty restrictions. *Id.*

22. Dr. Woodall was deposed on July 31, 2023. Dr. Woodall is a plastic surgeon, and fellowship trained in hand surgery; he completed his fellowship in September of 2022. Woodall Depo. 5:20-6:9. Dr. Woodall confirmed that Claimant did not have abscess when he was admitted, just swelling. *Id.* at 12:4-11. When asked whether the delay in treatment caused permanent damage to the nerve in Claimant's hand, Dr. Woodall said it was hard to say, but he did not think so; it would be something he would explore during surgery. *Id.* at 13:12-14:20. Dr. Woodall confirmed the wound was already infected when he saw Claimant on May 11. *Id.* 14:23-15:12. Dr. Woodall explained he was now not sure if surgery was indicated, he needed to examine Claimant again. *Id.* at 15:22-16:8. Dr. Woodall confirmed Claimant was off work on June 6. *Id.* at 26:20-24. However, if Claimant had not wanted the surgery on June 27, Dr. Woodall would have told him he could go back to work. *Id.* at 26:3-5, see discussion 26:1-29:4.

23. On cross-examination, Dr. Woodall opined that Claimant was "not really" a compliant patient. *Id.* 30:7-11. Defense counsel asked:

Q: [Mr. Bailey] You indicated here in some documents that he should not use his left hand and arm. This is back in May, '23, in return to employment. Would there have been any contraindication to him going back to work in some type of a job where he did not use his left arm at all?

A: No. I mean, if he's not using his left arm, that's fine.

Id. at 31:12-21. Regarding whether Claimant's refusal to be admitted on May 11 impeded his healing, Dr. Woodall testified "the sooner he could have gotten IV antibiotics the better... his

³ Defendants erroneously recite these benefits were from March 9, through July 8, 2023 in their briefing. Def's Brief, p. 12.

whole care...was delayed because of the infection... I wasn't going to operate on him with an active infection." *Id.* at 32:25-33:7. Regarding future care, Dr. Woodall noted if Claimant's tendon was intact, he would order an EMG to see what Claimant's nerve function was like if he continued to have issues. *Id.* at 34:10-23. A sensory nerve dysfunction could take a year plus to heal, which was "his only real dysfunction." *Id.* at 36:3-15.

24. On August 8, 2023, Claimant returned to Dr. Woodall. JE 10:470. Dr. Woodall wrote that the surgery was delayed due to the issues with workers compensation, however, he no longer recommended surgery as Claimant's condition had improved and all his tendons were intact; he recommended an EMG to evaluate for carpal or cubital tunnel syndrome and hand therapy. *Id.* at 472, 474. Dr. Woodall wrote that he thought the stiffness Claimant had in his hand was due to the weeks of infection he had. *Id.* Dr. Woodall did not record any change in work restrictions.

25. **Condition at Hearing.** At the time of hearing on August 15, 2023, Claimant still could not make a proper fist and described numbness and lack of grip strength. Tr. 23:21-24:14.

DISCUSSION

26. A worker's compensation claimant has the burden of proving, by a preponderance of the evidence, all the facts essential to recovery. *Evans v. Hara's, Inc.*, 123 Idaho 473, 849 P.2d 934 (1993). Claimant must adduce medical proof in support of his claim, and he must prove his claim to a reasonable degree of medical probability. *Dean v. Dravo Corporation*, 95 Idaho 558, 511 P.2d 1334 (1973).

27. The Industrial Commission, as the fact finder, is free to determine the weight to be given to the testimony of a medical expert. *Rivas v. K.C. Logging*, 134 Idaho 603, 608, 7 P.3d 212, 217 (2000). "When deciding the weight to be given an expert opinion, the Commission can certainly consider whether the expert's reasoning and methodology has been sufficiently disclosed and

whether or not the opinion takes into consideration all relevant facts.” *Eacret v. Clearwater Forest Industries*, 136 Idaho 733, 737, 40 P.3d 91, 95 (2002).

28. **Injurious Practices.** Idaho Code § 72-435 provides: “If an injured employee persists in unsanitary or unreasonable practices which tend to imperil or retard his recovery the commission may order the compensation of such employee to be suspended or reduced.” Prior to suspending benefits, a defendant must have an order from the Industrial Commission: “[Idaho Code § 72-435] clearly specifies that the Commission may order the suspension of benefits, and vests Surety with no authority to undertake this suspension without first having obtained an order from the Commission.” *Fomichev v. Lynch*, IC 2005-522775 (Issued October 27, 2012).

29. The first question is whether Claimant has persisted in unsanitary or unreasonable practices which tended to imperil or retard his recovery such that his compensation should be reduced or suspended. Defendants argue Claimant’s repeated refusal to be admitted against medical advice has prolonged his medical recovery, and therefore increased his temporary disability benefits and medical costs, such that his benefits should be reduced by 50%. Claimant argues that he did not engage in injurious practices, did not persist in injurious practices, and did not imperil or retard his recovery.

30. The first question is whether Claimant engaged in injurious practices by unreasonably refusing to be admitted. Claimant gave two overlapping reasons why he did not want to be admitted. The first was for the May 16 visit, when he had to drive his fiancé home because she does not drive. The clinic employee Claimant spoke to could not confirm whether his fiancé could stay overnight with him at the hospital. Claimant did not want his fiancé to spend the night in the car when he had an undetermined-length stay in the hospital and, per his testimony, he had

no other way to get his fiancé home. Claimant explained it was a 45-minute drive from the hospital to his home, which may explain why an Uber or taxi was not considered an option.

31. Claimant cites *Escobedo v. AG Services*, IC 2000-024135 (issued June 12, 2003). In *Escobedo*, the claimant traveled to California for three months to care for a sick relative and only missed one appointment. In that case, defendants argued they should not have to pay for three months of TTDs due to his travel out of state. The Commission found that traveling to take care of a sick relative was not unreasonable. Similar to *Escobedo*, Claimant's conduct was not unreasonable. Claimant's and his fiancé's testimony that she cannot drive is uncontradicted. It was reasonable for Claimant to drive her home, thereby delaying his care by one day.

32. The second reason Claimant gave for his refusal to be admitted on May 11 and May 16 is that he was unsure of his coverage for an extended stay in the hospital. Further Claimant was afraid of losing his job. Claimant explained at the clinic, at the hospital, and at hearing that he was unsure what coverage he had, and this is why he declined to be admitted. Claimant testified he called his work and the adjustor multiple times with no response. Claimant did not get his workers' compensation claim number until he put his boss on the phone with a nurse at the clinic on May 23. Claimant then promptly sought care and was admitted.

33. Defendants argue that Claimant should have just used his health insurance to get care. Claimant cites *Ewers v. Kit Manufacturing Co.*, IC 1993-827082 (Issued June 20, 1996), which holds in pertinent part:

The Referee declines to hold that the current provisions of Idaho Code § 72-435, impose a duty upon an injured worker to take affirmative action, in the form of pursuing and obtaining alternative financing for needed medical treatment, while his or her workers' compensation claim is pending due to litigation. The reality is that virtually all injured workers will likely be highly motivated to pursue any available options to obtain medical treatment they believe is needed. However, if such a duty is imposed, it may readily be used against them. For example, more denials of workers' compensation claims could result by defendants hoping that the

claims might "go away" if the claimants find other resources to pay their medical bills.

Claimant was under no obligation to utilize his health insurance for care that Defendants were obligated to provide. Defendants had not denied the claim ("This is not a situation where the accident itself was denied or the nature of the original injury was questioned. It was pretty obvious that Claimant drilled a hole in his arm and that would constitute a compensable accident" Def's Brief, p. 13.) Further, Defendants did not communicate with Claimant. Claimant did not know how or who would pay for his inpatient hospital stay. It was not unreasonable for Claimant to decline to be admitted in such a situation.

34. Defendants argue that Claimant's fear of being medically treated was the reason he declined to be admitted. Defendants cite two records: one where Claimant was "very nervous" about treatment on May 16, and one where Claimant's daughter reported he was afraid of treatment on May 23. Despite Claimant's apparent fear, he sought care prior to his scheduled May 17 appointment on May 11 due to signs of infection, and sought care on May 16, May 17, and May 23. After his hospitalization, Claimant continued to seek care, both for his industrial injury and other conditions. Claimant sought care for his infection but declined an inpatient hospital stay until he was sure it would be covered by worker's compensation. Defendants proffered evidence of Claimant's fear of treatment is overcome by Claimant's demonstrated, repeated visits to the wound clinic and the ER, and his subsequent seeking of medical care after hospitalization. Defendants have not proven Claimant's conduct was due to his fear of medical treatment as opposed to a concern he could not afford to pay for the treatment. Defendants have not proven Claimant's conduct was unreasonable on May 11 or May 16.

35. On May 17, Claimant returned to the ER. The ER physician recorded: "he did follow-up with Dr. Woodall yesterday. He says the pain is improving and he would like him to

continue on the antibiotic and follow up with him next week. Patient has scheduled this appointment. He was told to come back in a week for reevaluation.” JE 5:171. Claimant’s records from the May 16 appointment do note he was instructed to set a follow-up appointment. JE 5:166. On May 23, Claimant told Dr. Woodall he had explained to the ER physician he was there to be admitted and testified to the same at hearing.

36. Defendants argue that Claimant misrepresented the situation to the ER physician: essentially, Claimant should have clearly explained he needed to be admitted based on Dr. Woodall’s instructions the previous day and instead made it sound like Dr. Woodall just wanted him to follow-up on May 23. However, the evidence is not clear that Claimant misrepresented the situation intentionally. Rather, Claimant may have misunderstood or did not clearly explain he needed to be admitted per Dr. Woodall’s instructions. Claimant reported at the time and at hearing that he did say he needed to be admitted. The records show that the ER physician was aware Claimant had a previous recommendation to be admitted by Dr. Woodall, and that the ER physician considered admission but wrote that it was not indicated at that time. The evidence does not support that Claimant intentionally misrepresented the situation to avoid admission to the hospital by a preponderance of the evidence. It was reasonable for Claimant to rely on the ER physician’s opinion that Claimant could follow-up in a week instead of being admitted that day, especially as he was feeling better by May 17 and still did not know if he had worker’s compensation coverage.

37. If Claimant’s conduct was unreasonable, there is some evidence Claimant’s recovery was prolonged by his repeated (“persistent”) refusal to be admitted. Specifically, when Dr. Woodall wrote: “due to severity of infection, delay in treatment, and still mildly elevated white count would like to keep patient one more day for iv abx.” JE 5:331. Dr. Woodall testified that he

would not operate until the infection was cleared, which was delayed by Claimant's refusal to treat the infection.

38. However, Dr. Woodall confirmed that Claimant's infection was already present on May 11. There is no evidence that Claimant's unreasonable or unsanitary practices caused the infection. Further, Claimant's hospitalization being extended by one day is not so egregious that his compensation should be suspended or reduced by 50% as argued by Defendants. At most, Defendants obligation to pay for one day of hospitalization and one day of TTDs could be reduced (or perhaps six days of TTDs based on the May 17 ER appointment). But per Dr. Woodall's testimony, Claimant was going to be hospitalized due to the infection no matter the delay and his surgical consultation delayed until the infection cleared. Therefore, even if Claimant's conduct was unreasonable, he only extended his hospitalization and owed TTDs by one day.

39. Defendants have not met their burden of showing Claimant's conduct was unreasonable and have not met their burden of showing Claimant's compensation should be reduced.

40. **Medical Care.** Idaho Code § 72-432(1) requires an employer to provide 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 or manifestation of an occupational disease, and for a reasonable time thereafter.

41. Claimant's past medical care is compensable. Regarding future care, Dr. Woodall's proposed surgery, a tendon repair, is no longer recommended. Dr. Woodall examined Claimant on August 8 and his tendons are intact. Dr. Woodall recommended ongoing physical therapy and an

EMG to evaluate Claimant's nerve function. Defendants are responsible for this medical treatment. There are no other pending medical care recommendations in the record.

42. **Temporary Disability Benefits and Refusal of Suitable Work.** Income benefits during periods of temporary disability are payable to an injured worker pursuant to the provisions of Idaho Code § 72-408. An injured worker who is released to modified duty work during his period of recovery must satisfy additional conditions in order to continue to receive time loss benefits. If such an employee refuses or unreasonably fails to seek physically or mentally suitable work, or refuses or unreasonably fails or neglects to work after such suitable work is offered to, procured by or secured for the employee, the injured employee shall not be entitled to temporary disability benefits during the period of such refusal or failure. Idaho Code § 72-403; *Roberts v. Portopros*, IC 2019-008048 (Issued October 11, 2019). Whether offered employment is reasonable is a question of fact. *Perkins v. Croman, Inc.* 134 Idaho 721, 9 P.3d 524 (2000). It is Employer who bears the burden of showing that an injured worker's income benefits should be curtailed for any of the reasons identified in Idaho Code § 72-403.

43. Claimant was not cleared for light duty work until Dr. Woodall, at his July 31 deposition, clarified that Claimant could have worked one-handed after his May hospitalization. Claimant's work releases continually took him completely off work until this clarification by Dr. Woodall on July 31. Dr. Olson took Claimant off work on May 10. The ER physician continued Claimant off work on May 17. Dr. Woodall took Claimant off work because he was being admitted on May 23. On June 6, Claimant was to remain off work for an additional four weeks. On June 27, Claimant was to remain off work pending surgery, which Defendants declined to authorize. On August 8, Dr. Woodall no longer recommended surgery; however, he did not update Claimant's work restrictions. Presumably, Dr. Woodall's July 31 work restriction is still in place, Claimant

may work one-handed.

44. The June 6 record does contain an interesting phrase: “if patient needs to return to work, dressing would need to stay c/d/I with no use of left arm.” JE 5:416. The June 6 work release itself did not have this notation. It merely states Claimant was to remain off work. The work release itself controls over this notation in the records. Further, at this time, Claimant had received no income benefits whatsoever. Within the context of this claim and medical records, it appears far more likely that this was put in the notes because Claimant needed income (“if patient needs to return to work”), not because he was actually released to light duty work.

45. Claimant was paid TTDs from May 14 to June 8. Per the above, Claimant is entitled to additional TTDs until July 31. Dr. Woodall’s retroactive clarification does not relieve Defendants of their duty to pay TTDs to an injured worker in a period of recovery who was taken off work. This evidence was not presented until July 31. Further, a claimant cannot be expected to go against his physician’s current off-work instruction and accept employment. To hold otherwise would create a perverse incentive for claimants to accept work which they perceive within their abilities, but their physicians do not, creating another basis for a defendant to argue injurious practices if the work imperils or delays their recovery.

46. Defendants have not offered a light duty position since July 31, when Claimant was actually released to light duty work per Dr. Woodall’s testimony. Defendants have not argued Claimant has unreasonably failed to seek work, nor offered evidence of other available work within Claimant’s restrictions.

47. At hearing, Claimant testified that he would refuse an offer of employment from Employer regardless of whether it accommodated his restrictions because of the way he had been treated:

Q: [Mr. Harris] Are you willing to accept a light duty position at Idaho Pacific if one is available and it meets your physical restrictions and limitations?

A: Not at this time.

Q: Okay. Why not?

A: Just because of everything they put me through and how they made me feel this whole time. They put me in a hardship, and it's been months. They just threw me out there to dry.

Tr. 42:22-43:5. However, this testimony does nothing to help Defendants as they have yet to make Claimant an offer of light duty employment after July 31 consistent with his restrictions. Idaho Code § 72-403 provides a claimant is not entitled to temporary disability if a claimant “refuses or unreasonably fails or neglects to work after such suitable work is offered” to the claimant. Claimant’s preemptive refusal does not relieve Defendants of making the light duty offer in the first place; it is Defendants’ burden to make an offer of suitable employment within Claimant’s light duty restrictions. Defendants’ prior offers ignored the fact that Claimant was released from work completely, so it is difficult to evaluate whether they are or were suitable under Claimant’s new restrictions of one-handed work only. Further, there is no evidence Dr. Woodall reviewed either job offer despite Defendants’ assertion that “Dr. Woodall testified that the position as offered would have been appropriate.” Def’s Brief, p. 14. Regardless, Defendants are obligated to make a suitable light duty job offer that actually takes into consideration Claimant’s work restrictions or present evidence that Claimant refused or unreasonably failed to seek physically or mentally suitable work within his light duty work restrictions. Until Defendants meet this burden, they must pay total temporary disability benefits.

48. **Attorney’s Fees.** Attorney’s fees are not granted as a matter of right under the Idaho Workers Compensation Law, but may be recovered only under the circumstances set forth in Idaho Code § 72-804 which provides:

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 18

72-804. ATTORNEY'S FEES — PUNITIVE COSTS IN CERTAIN CASES. If the commission or any court before whom any proceedings are brought under this law determines that the employer or his surety contested a claim for compensation made by an injured employee or dependent of a deceased employee without reasonable ground, or that an employer or his surety neglected or refused within a reasonable time after receipt of a written claim for compensation to pay to the injured employee or his dependents the compensation provided by law, or without reasonable grounds discontinued payment of compensation as provided by law justly due and owing to the employee or his dependents, the employer shall pay reasonable attorney fees in addition to the compensation provided by this law. In all such cases the fees of attorneys employed by injured employees or their dependents shall be fixed by the commission.

The decision that grounds exist for awarding attorney's fees is a factual determination which rests with the Commission. *Troutner v. Traffic Control Company*, 97 Idaho 525, 528, 547 P.2d 1130, 1133(1976). It is axiomatic that a surety has a duty to investigate a claim in order to make a well-founded decision regarding accepting or denying the same. *Akers v. Circle A Construction, Inc.*, IIC 1998-007887 (Issued May 26, 1999). Defendants' grounds for denying a claim must be reasonable both at the time of the denial and in hindsight. *Bostock v. GBR Restaurants*, IIC 2018-008125 (Issued November 9, 2020).

49. Defendants filed a complaint on June 6 alleging Claimant had turned down reasonable light duty work and was engaged in injurious practices. This is a curious assertion as the complaint was filed a full two days before the June 8 letter offering Claimant light duty work. Defendants had already accepted the claim on June 2. Defendants were entitled to file a complaint alleging injurious practices but were contesting Claimant's claim for TTDs without reasonable grounds at the time they filed the complaint.

50. Defendants have declined to pay TTDs past June 8, which they paid on July 25, the day before the originally scheduled emergency hearing. On May 23, the hospital faxed Employer a work release taking Claimant off work because he was being admitted and also noted no use of the left hand/arm. On June 8, Employer made an offer of light duty employment attaching the May 23

work release. On June 28, Dr. Woodall's office faxed another work release to Defendants noting that Claimant was off work pending the recommended surgery.

51. Defendants did pay TTDs from May 15 to June 8, but not until July 25, far past when it was apparent that Claimant was entitled to at least some TTDs for that time frame. Further, Defendants had no defense against liability for TTDs after June 28 when Claimant was taken completely off work, pending surgery. And, even with a pending complaint of injurious practices, Defendants were required to have an order from the Commission prior to suspending or discontinuing benefits under the plain language of Idaho Code § 72-435. Therefore, the filing of a complaint alleging injurious practices did not relieve the Defense from the obligation to pay TTDs. Furthermore, Defendants' own avoidant style of interaction largely contributed to the situation. Defendants' refusal to communicate with Claimant throughout the beginning of this claim very likely caused the delay in treatment that they allege is the basis for injurious practices. If Defendants had communicated clearly with Claimant that he was covered by workers' compensation for this injury, he may very well have been admitted on May 11 and Defendants could have avoided this litigation entirely. For the forgoing reasons the Referee finds Defendants neglected to pay compensation within a reasonable time and discontinued payment of compensation without reasonable grounds.

52. Unless the parties can agree on an amount for reasonable attorney's fees, Claimant's counsel shall, within twenty-one days of the entry of the Commission's decision, file with the Commission a memorandum of attorney's fees incurred in counsel's representation of Claimant in connection with these benefits, and an affidavit in support thereof, with appropriate elaboration on *Hogaboom v. Economy Mattress*, 107 Idaho 13, 684 P.2d 990 (1984). The memorandum shall be submitted for the purpose of assisting the Commission in discharging its responsibility to determine

reasonable attorney fees in this matter. Within fourteen days of the filing of the memorandum and affidavit thereof, Defendants may file a memorandum in response to Claimant's memorandum. If Defendants object to the time expended or the hourly charge claimed, or any other representation made by Claimant's counsel, the objection must be set forth with particularity. Within seven days after Defendants' counsel files the above-referenced memorandum, Claimant's counsel may file a reply memorandum. The Commission, upon receipt of the foregoing pleadings, will review the matter and issue an order determining attorney's fees.

CONCLUSIONS OF LAW

1. Claimant did not engage in injurious practices and Defendants are not entitled to a suspension or reduction of Claimant's benefits;
2. Claimant is entitled to past medical treatment to date and pending recommended care related to his industrial injury;
3. Claimant did not refuse suitable work and is entitled to total temporary disability benefits until Defendants meet the requirements of Idaho Code § 72-403;
4. Claimant is entitled to attorney's fees.

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 20th day of November, 2023.

INDUSTRIAL COMMISSION



Sonnet Robinson, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of December, 2023, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail and *E-mail transmission* upon each of the following:

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Gina Espinosa

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JASSON STRYKER,

Claimant,

v.

IDAHO PACIFIC HOLDINGS, INC,

Employer,

and

GENERAL CASUALTY COMPANY OF
WISCONSIN,

Surety,
Defendants.

IC 2023-012738

ORDER

FILED

DEC 11 2023

INDUSTRIAL COMMISSION

Pursuant to Idaho Code § 72-717, Referee Sonnet Robinson submitted the record in the above-entitled matter, together with her 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 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 did not engage in injurious practices and Defendants are not entitled to a suspension or reduction of Claimant's benefits.
2. Claimant is entitled to past medical treatment to date and pending recommended care related to his industrial injury.

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3. Claimant did not refuse suitable work and is entitled to total temporary disability benefits until Defendants meet the requirements of Idaho Code § 72-403.

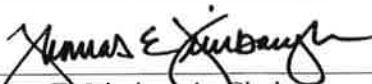
4. Claimant is entitled to attorney's fees. Unless the parties can agree on an amount for reasonable attorney's fees, Claimant's counsel shall, within twenty-one days of the entry of the Commission's decision, file with the Commission a memorandum of attorney's fees incurred in counsel's representation of Claimant in connection with these benefits, and an affidavit in support thereof, with appropriate elaboration on *Hogaboom v. Economy Mattress*, 107 Idaho 13, 684 P.2d 990 (1984). The memorandum shall be submitted for the purpose of assisting the Commission in discharging its responsibility to determine reasonable attorney fees in this matter. Within fourteen days of the filing of the memorandum and affidavit thereof, Defendants may file a memorandum in response to Claimant's memorandum. If Defendants object to the time expended or the hourly charge claimed, or any other representation made by Claimant's counsel, the objection must be set forth with particularity. Within seven days after Defendants' counsel files the above-referenced memorandum, Claimant's counsel may file a reply memorandum. The Commission, upon receipt of the foregoing pleadings, will review the matter and issue an order determining attorney's fees.

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


DATED this 8th day of December, 2023.



INDUSTRIAL COMMISSION




Thomas E. Limbaugh, Chairman



Thomas P. Baskin, Commissioner



Aaron White, Commissioner

ATTEST:


Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of December 2023, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail and by *E-mail transmission* upon each of the following:

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