

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

HECTOR LARA,

Claimant,

v.

GRAIN ELEVATORS/FARMS, MILLER
COORS,

Employer,

and

INDEMNITY INSURANCE COMPANY OF
NORTH AMERICA,

Surety/Defendants.

IC 2019-006770

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

FILED

AUG 20 2021

INDUSTRIAL COMMISSION

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Sonnet Robinson, who conducted a telephonic hearing on May 14, 2021. Claimant, Hector Lara, represented himself *pro se*. Nicole O'Toole of Boise represented Defendants. The parties presented oral and documentary evidence. The matter came under advisement on August 5, 2021, and is ready for decision.

ISSUE

The sole issue to be decided is whether Claimant's claim is barred by the statute of limitations pursuant to Idaho Code § 72-706 due to Claimant's failure to timely file an application for hearing.

CONTENTIONS OF THE PARTIES

Claimant declined to provide an oral closing or any briefing, however he asserted at hearing that he did everything he could do to get paperwork filed appropriately.

Defendants contend Claimant's complaint was not timely filed per Idaho Code § 72-706, and that Claimant was not misled to his prejudice.

Claimant did not file a written reply.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. Defendant's Exhibits (DE) 1-4, 6-7;
3. The testimony of Claimant, Hector Lara, taken at hearing.

All outstanding objections are overruled, except for Claimant's objection to Exhibit 5, which is sustained. Claimant is correct that Exhibit 5 is irrelevant to whether he timely filed a complaint or was misled to his prejudice and is excluded.

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 December 21, 2018, Claimant was shoveling barley when he felt pain in his left shoulder; Claimant promptly reported the injury to his supervisor, Brent Wolf. DE 1:1. Claimant thought it was just a "pulled" muscle, but Claimant eventually sought medical treatment and was diagnosed with a torn rotator cuff and labrum tear. Tr. 8:1-18. Claimant reported the results of his MRI to his supervisor and Defendants filed a first report of injury (Form IA-1) on March 5, 2019. DE 1:1; 2:3.

2. Defendants referred Claimant for an independent medical exam with Qing-Min Chen, MD. Dr. Chen opined Claimant's shoulder complaints were pre-existing and degenerative in nature, and Claimant's claim was denied on April 2, 2019. DE:3. Claimant received that denial. Tr. 12:8-13.

3. In July of 2019, Claimant attempted to have his denial reversed, but was advised by Gail Warner, a Surety representative, that if he wanted his claim covered, he would need to file a complaint; Claimant admitted that at no time was he misled by Surety that they would accept the claim. Tr. 14:8-24.

4. Claimant testified that he filed a Form IA-1, also known as a first report of injury (FROI), sometime around December 2019, which was never received by the Commission. Tr. 23:3-6; 16:3-8; IIC Legal File. On April 10, 2020, Claimant faxed to the Commission another Form IA-1 and attached 41 pages of documents. Tr. 21:5-8; IIC Legal File.

5. Claimant filed a complaint with the Commission on July 29, 2020, and it was served on Defendants on August 3, 2020. IIC Legal File; DE 7:17.

6. Claimant admitted Defendants never paid any compensation on the claim, and all bills were processed through his health insurance. Tr. 9:14-23.

7. **Credibility.** Claimant testified credibly.

DISCUSSION AND FURTHER FINDINGS

8. The provisions of the 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). 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, 479, 849 P.2d 934 (1993). While *pro se* Claimants are generally afforded more leniency in worker's compensation proceedings, they are still held to the same legal standards as attorneys. *Hagler v. Micron Technology, Inc.*, 118 Idaho 596, 798 P.2d 55 (1990); *Clark v. Cry Baby Foods, LLC*, 155 Idaho 182; 307 P.3d 1208 (2013).

9. Idaho Code § 72-706(1) reads:

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.

10. A claim is defined as filing a first report of injury or an application for hearing, referred to as a Complaint, with the Commission. IDAPA 17.01.01.010.09.

11. Defendants filed a first report of injury, a claim, on March 5, 2019 when Claimant informed them he had sought medical treatment for his injury. Per Idaho Code § 72-706(1), if Defendants did not pay any compensation and did not mislead Claimant to his prejudice, Claimant had until March 5, 2020 to file a request for hearing (complaint). Claimant did not file a complaint by that deadline, and even the most liberal construction of Idaho Code § 72-706 does not help Claimant.

12. Claimant admitted at hearing that he, or his health insurance, paid every bill; Defendants paid no compensation on this claim. Claimant admitted that Defendants did not mislead him regarding his claim and at no point did Claimant think his claim was accepted.

13. Claimant knew his claim was denied in April of 2019. Claimant attempted to reverse the denial but knew by July 2019 that the Surety was not going to accept his claim, and he

was directed, by Surety, to file a complaint. Claimant did not attempt to prosecute his claim until December 2019 when he testified he filed a Form IA-1, which was never received by the Commission.

14. Claimant's next attempt to prosecute his claim was a fax on April 10, 2020 containing another Form IA-1, which was filed a month past the deadline to file his complaint. The only possibly timely filing of his complaint was the December¹ Form IA-1 filing, and assuming *arguendo* that this could be construed as a complaint, it was still never received by the Commission.

15. It is clear from the record that Claimant confused Form IA-1, the first report of injury, with the complaint form. At hearing, Claimant explained he submitted the wrong form twice before finally submitting a complaint, the correct form. Tr. 21:9-18. Claimant also explained he was not aware there was a statute of limitations and that this was his first time doing anything of this nature, meaning a worker's compensation case. Tr. 6:20-25; 15:9-12.

16. However, Claimant's ignorance of the forms and procedures, while understandable, does not excuse his untimely filing; Claimant had months to file a complaint, was directed by Surety to file a Complaint, and waited months between attempts to file a complaint. Claimant, while *pro se*, is governed by the same statute of limitation as a claimant represented by an attorney, and Claimant did not comply with that statute.

17. Claimant did not comply with the Idaho Code § 72-706(1), and his claim is forever

¹ There is a receipt in the Commission's legal file, submitted by Claimant as a part of his 41-page April 2020 filing, which shows an envelope was mailed on December 18, 2019 to Boise, Idaho 83720 from a United States Postal Service Office in Rupert, Idaho. Claimant testified this envelope contained a Form IA-1 and that when he called the Industrial Commission, an employee confirmed no filing had been received. There is no evidence that the Commission ever received a December filing from Claimant, and it is impossible to tell to whom the envelope was addressed simply from the receipt alone. Even if this document had been offered and admitted (which it was not), it does not prove Claimant filed anything with the Commission, only that he unsuccessfully attempted to do so.

barred pursuant to Idaho Code § 72-706(6).

CONCLUSIONS OF LAW

1. Claimant did not timely file his application for hearing and his claim is forever barred pursuant to Idaho Code § 72-706.
2. All other issues are moot.

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 9th day of August, 2021.

INDUSTRIAL COMMISSION

Sonnet Robinson

Sonnet Robinson, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of August, 2021, 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:

HECTOR LARA



NICOLE O'TOOLE
PO BOX 1617
BOISE ID 83701-1617

ge

Lina Espinoza

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Claimant,

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ORDER

FILED

AUG 20 2021

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 timely file his application for hearing and his claim is forever barred pursuant to Idaho Code § 72-706.
2. All other issues are moot.
3. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

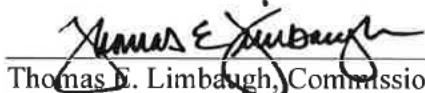
DATED this 20th day of August, 2021.




INDUSTRIAL COMMISSION



Aaron White, Chairman



Thomas E. Limbaugh, Commissioner



Thomas P. Baskin, Commissioner

ATTEST:



Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of August, 2021, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

HECTOR LARA



NICOLE O'TOOLE
PO BOX 1617
BOISE ID 83701-1617

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