

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

DAN SANTAMARIA LOPEZ,

Claimant,

v.

RON BENCH CONSTRUCTION INC. and
KENDAL ASHER,

Non-Insured Employer,
Defendants.

IC 2022-001663

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

FILED

DECEMBER 6, 2022

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee John Hummel, who conducted a Default Hearing in Twin Falls on October 19, 2022. Claimant, Dan Santamaria Lopez, was present in person. Defendant Employers, Ron Bench Construction Inc. and Kendal Asher, were not present. Defendants defaulted by failing to answer the Complaint and took no part in the proceeding. Defendants did not appear or otherwise submit a defense prior to entry of Default. Claimant presented oral and documentary evidence at the hearing. Claimant took no post-hearing depositions and did not submit a brief. The matter came under advisement on October 25, 2022.

ISSUES

The issues to be decided by the Commission as the result of the hearing are:

1. Whether and to what extent Claimant is entitled to medical care.
2. Whether Employer is liable to Claimant for the penalties set forth in Idaho Code § 72-210.

CONTENTIONS OF THE PARTIES

Claimant argues that he sustained injuries in the employment of Defendants on November 3, 2021 that required medical care. He claims reimbursement in the total amount of \$2,531.45 for an MRI that was performed but which Defendants did not reimburse. Claimant further argues that he is not at maximum medical improvement and therefore is entitled to continuing medical care. Finally, he argues that he is entitled to a statutory penalty in the amount of 10% of the total amount of his compensation costs, pursuant to Idaho Code § 72-210.

Defendants did not file an Answer to the Complaint or otherwise appear or defend this action prior to the entry of Default.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. Claimant's Exhibits 1 and 2, admitted at the hearing; and
3. The hearing testimony of Claimant.

COURSE OF THE PROCEEDINGS

Claimant filed a workers compensation complaint with the Commission on January 25, 2022. Claimant filed an amended complaint with the Commission on February 18, 2022. Although served with copies of the complaint, Defendants did not file an answer or otherwise appear and defend this action prior to Default. Claimant filed a Notice of Intent to Take Default on September 2, 2021. The Referee entered an Order of Default on April 21, 2022. Claimant's attorney withdrew on August 30, 2022. The Referee held a Default Hearing pursuant to due notice on October 19, 2022.

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

FINDINGS OF FACT

1. **Employer.** At all relevant times, Defendants operated a concrete construction business in or about Burley, Idaho. Amended Complaint.

2. Administrative notice is taken that, at all relevant times, Defendants failed to secure payment of compensation as required by the Idaho Workers' Compensation Act.

3. **Claimant.** At the time of hearing, Claimant was 41 years old, having been born on November 6, 1980 in Mexico City, Mexico. He attended school to the fifth grade in Mexico. Claimant emigrated to the United States approximately fourteen to fifteen years prior to the hearing, in or about 2008 or 2009. Prior to working for Defendants, Claimant's work history consisted primarily of concrete construction labor in the United States. Tr., 7:21-8:22.

4. **Employment of Claimant.** Defendants hired Claimant to perform the duties of a concrete construction laborer in or about 2018. *Id.* at 9:20-22. His starting pay was \$19 per hour. *Id.* at 10:11-12.

5. **Industrial Accident.** On November 3, 2021, Claimant was performing his regular duties as a concrete construction laborer for Defendants. He was in the process of pouring concrete at an entrance to a house. Claimant slipped on a rock with his right foot. To not fall into the fresh concrete, Claimant used his strength to fall onto his knees in between the rocks. Claimant felt a stabbing pain in his lower back and right leg. Supervisor/Owner/Defendant Kendal Asher observed what happened but continued working. Claimant finished out his shift although he felt "something was hurting." Asher instructed him to work through it. *Id.* at 11:11-12:25.

6. On the following day, Claimant told Asher that he was in pain and could not work. He asked to be “checked out” and Asher told him no. Tr., 13:25-25.

7. On the third day, Claimant spoke with Asher by telephone again and told him that his right leg was still hurting significantly. This time Asher authorized Claimant to go see a doctor and told him he would pay for it. *Id.* at 14:2-8.

8. **Medical Care.** Claimant presented at Burley Physical Therapy for an initial encounter on December 1, 2021. His chief complaint was severe pain in the back and right leg. He was reporting difficulties with all physical activities. Ex. 1:3. It was noted that Claimant “presents to therapy with s/s [symptoms] consistent with back injury following a fall at work about 1 month ago. Pt has sciatic pain radiating down R leg and sustained R ankle sprain. Pt presents walking with crutches and walking boot.” *Id.* at 5.

9. Claimant visited Sterling Urgent Care on December 4, 2021 to follow up on his injury. P.A. Malm assessed right sided sciatica, injury of right foot, and fall on same level from slipping. P.A. Malm provided treatment for right-sided sciatica. *Id.* at 5.

10. A report for Claimant’s MRI of his back dated May 31, 2022, states normal findings except for the L5, S1 showing degenerative disk disease with broad based disc bulge severely narrowing the neural foramina and compressing the L5 nerve roots. *Id.* at 10.

11. When Claimant was first examined, the doctor gave him a boot and prescribed medication. Later, he was prescribed steroids. When he was prescribed an MRI, Claimant became concerned about how he would pay for his medical bills because the medical providers were billing him directly and not the Defendants because they did not have workers’ compensation coverage. Claimant became concerned because he did not have the money to pay for his medical costs. Tr., 27:4-20.

12. Claimant went to three or four physical therapy appointments before they quit treating him due to nonpayment. Defendants refused to pay the bills. Tr., 18:7-8; 22-19:1.

13. **Medical Costs.** A bill issued by Cassia Regional Hospital on June 10, 2022 for Claimant's "MRI Lumbar Spine" was in the amount of \$2,531.45.

14. There are no other bills or medical receipts contained in the records that Claimant submitted for the record.

15. **Claimant's Current Condition.** Claimant states that his right leg "hurts, it hurts." Because of his depression due to his circumstances, Claimant gained a great deal of weight and was hospitalized and diagnosed with pre-diabetes and high blood pressure. Claimant got committed to exercise and diet and lost 70 pounds. Tr., 23:24-24:20.

DISCUSSION AND FURTHER FINDINGS

16. 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).

17. **Medical Treatment.** An employer shall provide reasonable medical care for a reasonable time after an injury. Idaho Code § 72-432(1). A "reasonable time" includes the period of recovery before medical stability but may include a longer period. *Jarvis v. Rexburg Nursing Center*, 136 Idaho 579, 38 P.3d 617 (2001). Reasonable medical treatment benefits may continue for life; there is no statute of limitation on the duration of medical benefits under Idaho Workers' Compensation Law.

18. A claimant bears the burden of showing that medical treatment required by a physician is reasonable. Idaho Code § 72-432(1). A claimant must support his or her workers' compensation claim with medical testimony that establishes compensability to a reasonable degree of medical probability. *Hope v. ISIF*, 157 Idaho 567, 572, 338 P.3d 546, 552 (2014), citing *Sykes v. CP Clare & Co.*, 100 Idaho 761, 764, 605 P.2d 939, 942 (1980). The reasonableness of treatment is dependent upon the totality of the facts and circumstances of the individual being treated. *Harris v. Independent School District No. 1*, 154 Idaho 917, 303 P.3d 605 (2013). Totality of circumstances is a factual determination, but not a retrospective analysis with the benefit of hindsight. *Chavez v. Stokes*, 158 Idaho 793, 353 P.3d 414 (2015).

19. It is for the physician, not the Commission, to decide whether the treatment is required; the only review the Commission is entitled to make is whether the treatment was reasonable. *Sprague v. Caldwell Transportation, Inc.*, 116 Idaho 720, 779 P.2d 395 (1989).

20. This is a default case; Claimant has not provided the deposition testimony of a physician in connection with his proof. Nevertheless, Claimant has provided sufficient information in his testimony and the accompanying medical exhibits to show that the medical expenses he incurred while treating his industrial injury were both necessary and reasonable.

21. For the foregoing reasons, Claimant is entitled to recover the costs of the medical treatment that he received in connection with his industrial injury in the total amount of \$2,531.45, the cost of his MRI.¹

22. Claimant is entitled to recover from Defendants such further amounts necessary to compensate him for ongoing and future medical care.

¹ Claimant would be entitled to recovery of more itemized medical costs had he provided such bills and receipts for the record.

23. **Penalty, Costs, & Attorney Fees.** Idaho Code § 72-210 provides as follows:

EMPLOYER'S FAILURE TO INSURE LIABILITY. If an employer fails to secure payment of compensation as required by this act, an injured employee, or one contracting an occupational disease, or his dependents or legal representative in case death results from the injury or disease, may claim compensation under this law and shall be awarded, in addition to compensation, an amount equal to ten per cent (10%) of the total amount of his compensation together with costs, if any, and reasonable attorney's fees if he has retained counsel.

Employer failed to secure the payment of workers' compensation as required by statute.

Claimant is entitled to recover 10% of his total compensation, as follows: medical costs, \$2,531.45 = total compensation, $\$2,531.45 \times 10\% = \253.14 . Claimant is therefore entitled to recover \$253.14 as a penalty for Employer's failure to secure payment of compensation as required by the Idaho Workers' Compensation Act, pursuant to Idaho Code § 72-210.

24. Claimant did not submit any costs for reimbursement for the record, therefore no costs apply to this action.

25. Claimant represented himself *pro se*, thus attorney fees also do not apply to this proceeding.

CONCLUSIONS OF LAW

1. Claimant is entitled to recover medical expenses in the total amount of \$2,531.45.

2. Claimant is entitled to recover such reasonable and necessary ongoing and future medical expenses as may be required by his physicians.

3. To date, Claimant is entitled to recover \$253.14 as a penalty for Employers' failure to secure payment of compensation as required by the Idaho Workers' Compensation Act, pursuant to Idaho Code § 72-210.

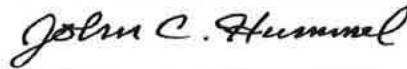
4. Costs and attorney fees do not apply in this action.

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 10th day of November, 2022.

INDUSTRIAL COMMISSION



John C. Hummel, Referee

ATTEST:



Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of December, 2022, 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:

DAN SANTAMARIA LOPEZ



KENDAL ASHER
246 S 700 W
BURLEY ID 83318

RON BENCH CONSTRUCTION

246 S 700 W
BURLEY ID 83318

Shannowa Carver

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ORDER

FILED

DEC - 6 2022

INDUSTRIAL COMMISSION

Pursuant to Idaho Code § 72-717, Referee John Hummel 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 is entitled to recover medical expenses in the total amount of \$2,531.45.
2. Claimant is entitled to recover such reasonable and necessary ongoing and future medical expenses as may be required by his physicians.
3. To date, Claimant is entitled to recover \$253.14 as a penalty for Employers' failure to secure payment of compensation as required by the Idaho Workers' Compensation Act, pursuant to Idaho Code § 72-210.
4. Costs and attorney fees do not apply in this action.
5. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

ORDER - 1

DATED this 5th day of December, 2022.



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 6th day of December, 2022, a true and correct copy of the foregoing **ORDER** was served by regular United States mail upon each of the following:

DAN SANTAMARIA LOPEZ
227 S 17TH STREET APT 3
BURLEY ID 83318

RON BENCH CONSTRUCTION
246 S 700 W
BURLEY ID 83318

KENDAL ASHER

ORDER - 2

246 S 700 W
BURLEY ID 83318

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Kameron Slay

ORDER - 3