

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

ANA MARIA GOMEZ,

Claimant,

v.

PEDRO RAMSES BELTRAN,

Un-Insured  
Employer,  
Defendant.

**IC 2015-004160**

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

**Filed April 2, 2018**

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**BACKGROUND**

On February 13, 2015, Claimant filed a Complaint against Pedro Ramses Beltran and Guerdon Enterprises and its surety Zurich American Insurance Company in the above-entitled matter alleging an industrial accident and injury on or about July 25, 2014, while working for Pedro Ramses Beltran at Guerdon Enterprises. Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned this matter to Referee Alan Taylor who conducted a telephone conference on June 6, 2016 in which Defendant Beltran participated. Hearing was scheduled for August 17, 2016. Claimant thereafter settled her claims against Guerdon Enterprises and Zurich American Insurance Company and the August 17, 2016 hearing was vacated.

On September 12, 2017, Claimant filed her Request for Hearing and properly served her request upon Defendant Beltran, who filed no response. On October 30, 2017, the Commission issued a Notice of Hearing to be conducted December 19, 2017 and duly served the notice upon Defendant Beltran by certified mail pursuant to Idaho Code § 72-713.

The referee conducted a hearing in the above-entitled case in Boise on December 19, 2017. Claimant, Ana Maria Gomez, was present in person and represented by

Darin G. Monroe, of Boise. Defendant Employer, Pedro Ramses Beltran, did not appear. Claimant presented oral and documentary evidence. Claimant testified at hearing through interpreter Susan Evans. No post-hearing depositions were taken and Claimant's brief was later submitted. Defendant Beltran did not submit a brief. The matter came under advisement on February 26, 2018.

### **ISSUES**

The issues to be decided are:

1. Whether, and to what extent, Claimant is entitled to attorney fees.
2. Whether Employer is liable to Claimant for the penalties set forth in Idaho Code § 72-210 for failing to insure liability.

### **CONTENTIONS OF THE PARTIES**

Claimant asserts she suffered an industrial accident on July 25, 2014, when she fell while working for Beltran at Guerdon Enterprises. She asserts Beltran was not insured at the time of her accident and seeks attorney fees and statutory penalties. Beltran has provided no response to Claimant's assertions.

### **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. Claimant's Exhibits A through G, admitted at the hearing.
3. Claimant's testimony taken at hearing.

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. Claimant was born in 1972 and resided in Caldwell at the time of the hearing.
2. Defendant Pedro Ramses Beltran is an individual residing or formerly residing at 2012 W. Eaglecrest Dr. in Nampa, Idaho.
3. Beltran employed Claimant and assigned her to perform work for Guerdon Enterprises where she sanded, cleaned, and caulked manufactured homes. She was paid \$12.00 per hour and worked 40 or more hours per week.
4. On July 25, 2014, Claimant was working for Beltran at Guerdon Enterprises from a ladder caulking a bathroom when she developed a bad headache. She began to descend the ladder, but lost consciousness and fell. She regained consciousness on the floor surrounded by coworkers who directed her not to move. Claimant reportedly struck her back against a toilet and her head against a wall as she fell. She was taken by ambulance to a hospital emergency room where she underwent diagnostic testing and evaluation and was found to have a back strain and a closed head injury.
5. While in the emergency room, Claimant learned that Defendant Beltran had no workers' compensation insurance coverage. Guerdon Enterprises and its surety apparently covered at least part of Claimant's medical expenses.
6. Claimant was able to return to work the following week, but developed headaches and dizziness and by August 1, 2014 sought additional medical treatment from Michael McMartin, M.D., who diagnosed post-concussion syndrome. Claimant received extensive rehabilitation at the STARS Concussion Clinic.
7. As a result of her industrial accident, Claimant incurred the following medical charges: transportation via ambulance \$1,341.80; hospital emergency room evaluation including

metabolic panel, chest x-ray, head CT, chest CT, cervical spine CT, abdomen and pelvic CT, and EKG totaling \$11,276.00; follow-up emergency room evaluation and head CT \$2,325.24; radiology services \$842.80; evaluation and treatment by Dr. McMartin \$1,255.00; and evaluation and rehabilitative services by various STARS clinic physical therapists, speech therapists, and occupational therapists totalling \$4,195.50. The total amount of medical charges incurred by Claimant as a result of her industrial accident was \$21,236.34.

8. The record confirms Claimant was unable to work due to her industrial accident from August 1 through September 14, 2014. On September 15, 2014, she returned to work 4.5 hours per day for approximately two weeks until September 30, 2014. Claimant's average weekly wage at the time of her accident was \$480.00.

9. Claimant retained attorney Darin Monroe to represent her and agreed to attorney fees of 25% of any amounts recovered without the necessity of a hearing and 30% of any amounts recovered or awarded by the Commission after hearing. Mr. Monroe actively prosecuted Claimant's workers' compensation case from filing of the Complaint herein through hearing and post-hearing briefing.

10. By the time of the hearing, Claimant had recovered from her industrial injuries without any permanent impairment.

11. Claimant is a credible witness.

#### **DISCUSSION AND FURTHER FINDINGS**

12. 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).

13. **Idaho Code § 72-210 attorney fees and penalties.** Idaho Code § 72-210 allows Claimant to collect reasonable attorney fees, costs, and a statutory penalty equal to 10% of the compensation awarded from an uninsured employer.

14. At the time of Claimant's industrial accident, Defendant Pedro Ramses Beltran had failed to insure his liability under the Idaho Worker's Compensation Laws. Claimant is thus entitled to attorney fees and costs pursuant to Idaho Code § 72-210.

15. Claimant was represented by attorney Darin Monroe from the commencement of this action through the time of hearing. Consistent with IDAPA 17.02.08.033 et seq, Claimant's counsel requests attorney fees of 25% of any amounts recovered without necessity of a hearing and 30% of any amounts recovered or awarded by the Commission after hearing. In the present case, this request is reasonable as evaluated by the factors enumerated in Hogaboom v. Economy Mattress, 107 Idaho 13, 684 P.2 990 (1984), given the anticipated time, effort, and issues involved in proceeding against an uninsured employer, the fees customarily charged for workers' compensation matters, the possible recovery, the time constraints imposed, the length of the attorney-client relationship, Claimant's counsel's extensive experience, Claimant's limited ability to pay for legal services, and the risk of no recovery given an uninsured employer.

16. As noted, Claimant's average weekly wage at the time of her 2014 accident was \$480.00. Idaho Code § 72-408(1) generally establishes Claimant's total temporary disability benefits at 67% of her average weekly wage, which equates to \$321.60. Claimant was unable to work from August 1 until September 15, 2014, a period of six weeks and three days. Because her disability for work exceeded two weeks, she is not subject to a five-day waiting period

pursuant to Idaho § 72-402. Claimant is entitled to temporary disability benefits in the amount of \$2,067.43 for the period she was disabled from work due to her industrial accident.

17. The record herein establishes workers' compensation benefits to which Claimant is entitled, the 10% penalty, and attorney fees and costs owing pursuant to Idaho Code § 72-210, are as set forth below.

Amounts to which Claimant is entitled pursuant to Idaho Code §§ 72-432 and 408:

Medical expenses	\$ 21,236.34
<u>Temporary disability benefits</u>	<u>\$ 2,067.43</u>
Total	\$ 23,303.77

Amounts presently owing pursuant to Idaho Code § 72-210:

10% penalty	\$ 2,330.38
<u>Attorney fees and costs</u>	<u>\$ 6,991.13</u>
Total	\$ 9,321.51

18. The total amount of attorney fees and penalties presently due and owing to Claimant from Defendant Pedro Ramses Beltran pursuant to Idaho Code § 72-210 is \$9,321.51.

### **CONCLUSIONS OF LAW**

1. Claimant has proven she is presently entitled to attorney fees in the amount of \$6,991.13 and a 10% penalty in the amount of \$2,330.38 pursuant to Idaho Code § 72-210.

2. The total amount of attorney fees and penalties presently due and owing to Claimant from Defendant Pedro Ramses Beltran pursuant to Idaho Code § 72-210 is \$9,321.51.

**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 \_\_23rd\_ day of March, 2018.

INDUSTRIAL COMMISSION

\_\_\_\_\_  
/s/ Alan Reed Taylor, Referee

ATTEST:

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

**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_2nd\_ day of \_April\_\_\_, 2018, 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:

DARIN G MONROE  
PO BOX 50313  
BOISE ID 83705

PEDRO RAMSES BELTRAN  
2012 W EAGLECREST DR  
NAMPA ID 83651

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

\_\_\_\_\_  
/s/ Aaron White, Commissioner

ATTEST:

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

**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_2nd\_ day of \_April\_\_\_\_\_, 2018, a true and correct copy of the foregoing **ORDER** was served by regular United States mail upon each of the following:

DARIN G MONROE  
PO BOX 50313  
BOISE ID 83705

PEDRO RAMSES BELTRAN  
2012 W EAGLECREST DR  
NAMPA ID 83651

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/s/