

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

CURTIS STANLEY,

Claimant,

v.

STATE OF IDAHO, INDUSTRIAL SPECIAL  
INDEMNITY FUND,

Defendants.

**IC 2013-016787**

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

**Filed February 10, 2020**

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**INTRODUCTION**

On July 3, 2018, Claimant, Curtis Stanley, filed his Complaint in the above entitled matter through attorney, Andrew A. Adams, of Idaho Falls. On July 16, 2018, Defendant State of Idaho, Industrial Special Indemnity Fund (ISIF), filed its Answer through attorney Paul J. Augustine, of Boise. Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the matter to Referee Alan Taylor. 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.

On September 11, 2019, ISIF filed a Motion to Dismiss/Motion to Bifurcate with supporting memorandum seeking dismissal of the Complaint or an order bifurcating the issue of the statute of limitations for determination by the Commission prior to hearing. On September 26, 2019, Claimant filed a response objecting to dismissal and disputing ISIF's statute of limitations defense.

On November 4, 2019, a telephone conference was held during which the parties agreed to submit the issue of the statute of limitations on a stipulation of facts with briefing for determination by the Commission. The Referee assigned to this matter issued an Order Bifurcating Issues on November 6, 2019.

On December 5, 2019, the parties filed a Stipulation of Facts with attached exhibits on the issue of the statute of limitations. On December 10, 2019, ISIF filed its Memorandum Regarding Statutes of Limitations. On January 3, 2020, Claimant filed his Brief. The matter came under advisement on January 9, 2020.

### **ISSUE**

The issue to be decided is whether the Complaint is barred by the statute of limitations set forth in Idaho Code § 72-706.

### **CONTENTIONS OF THE PARTIES**

ISIF contends that Idaho Code § 72-706 applies to claims against ISIF and that Claimant's Complaint is barred by Idaho Code §§ 72-706(2) and (3). Claimant maintains that his Complaint against ISIF is timely because the Commission approved a settlement with Claimant's time of injury employer and its surety, expressly retaining jurisdiction of future medical benefits. Claimant therefore asserts the Commission still has jurisdiction of the case.

### **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. The parties' Stipulation of Facts and Joint Exhibits A through F.

## **FINDINGS OF FACT**

1. On June 24, 2013, while employed by Valley Wide Co-Op (Employer), Claimant, Curtis Stanley, suffered an accident arising out of and in the course of his employment.

2. As a result of his June 24, 2013 accident, Claimant suffered an injury to his left shoulder and low back.

3. Claimant gave timely notice to his Employer and its Surety, the Idaho State Insurance Fund (SIF) of his accident.

4. At the time of his injury, Claimant was 52 years of age and his average weekly wage was \$760.20.

5. As a result of his June 24, 2013 accident, the SIF paid Claimant TTD and TPD benefits from July 20, 2013 through September 23, 2015 in the amount of \$52,663.54.

6. On September 2, 2015, Robert Friedman, M.D., found Claimant was at maximum medical improvement and rated Claimant's permanent partial impairment of his lumbar spine at 6% of the whole person of which 100% was due to Claimant's pre-existing conditions and 2% of the upper extremity for his left shoulder injury which was not apportioned.

7. The SIF paid Claimant 2% of the upper extremity permanent and partial impairment for a total of \$2,224.20.

8. On October 19, 2015, Claimant filed his Complaint against Employer/Surety seeking additional workers' compensation benefits.

9. In May 2017, Claimant, Employer, and SIF entered into a Modified Lump Sum Agreement whereby the SIF agreed to pay Claimant an additional \$40,000 for disputed past medical and disability benefits. Claimant, Employer, and SIF agreed to keep medical benefits open, but disputed. Claimant, Employer, and SIF further agreed to a stipulation for dismissal of

Claimant's claims with prejudice, except as to reasonable future medical benefits resulting from the accident of June 24, 2013.

10. The Modified Lump Sum Agreement was approved by the Commission on June 20, 2017. Exhibit A. The Industrial Commission ordered that Claimant's case, IC. No. 2013-016787, be dismissed with prejudice except regarding future medical benefits pursuant to the Stipulation to Dismiss and Order of Dismissal. Exhibit B.

11. Following the entry of the orders by the Industrial Commission on June 21, 2017, the SIF issued a check for indemnity benefits as required by the Modified Lump Sum Agreement. Claimant cashed the SIF's check on June 28, 2017.

12. On May 17, 2018, Claimant underwent a left reverse total shoulder arthroplasty. Claimant had been complaining of left shoulder issues prior to his industrial accident of June 24, 2013.

13. On June 11, 2018, Claimant served a Notice of Intent to File a Workers' Compensation Complaint against the Industrial Special Indemnity Fund ("ISIF") which was received by ISIF on June 14, 2018. Exhibit C.

14. On June 25, 2018, James Kile, Manager of ISIF, mailed a letter to Claimant denying the claim and identifying the statute of limitations as a serious issue. Exhibit D.

15. On July 2, 2018, ISIF received a Complaint against the ISIF from Claimant's attorney's office that was in an envelope postmarked June 29, 2018. Exhibit E.

16. On July 2, 2018, Claimant filed with the Industrial Commission a workers' compensation Complaint against ISIF alleging a date of injury of June 24, 2013. Exhibit F.

## DISCUSSION AND FURTHER FINDINGS

17. 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).

18. **Statute of Limitations.** In the present case, ISIF contends that Idaho Code § 72-706 applies to claims against ISIF and that Claimant's Complaint against ISIF is barred because it was filed more than five years after his industrial accident and more than one year after his claims against Employer/Surety were dismissed.

19. ISIF asserts that Waltman v. Associated Fruit Stores, Inc., 109 Idaho 273, 707 P.2d 384 (1985), establishes that Idaho Code § 72-706 applies to claims against ISIF.

20. In Waltman, ISIF asserted that Waltman's claim was barred by Idaho Code § 72-706 because he did not file a claim or application for hearing against ISIF within five years of his industrial accident. The Commission concluded Waltman had a viable claim. On appeal, the Idaho Supreme Court agreed the Commission had jurisdiction, observing:

Moreover, the Commission concluded that it was cloaked with jurisdiction where the claimant reopened his claim within the five year time limitations set forth in I.C. § 72-706. No challenge has been made to that conclusion. Because the Commission had continuing jurisdiction where the subsequent application requesting total permanent disability was made within the statutory time limits, we find the ISIF's arguments without merit, as applied to this case. Had the claimant failed to reopen his case within the allowable time limitations, then the arguments of the ISIF might be proper.

Similarly, where an injured claimant in the first instance fails to meet the time requirements of I.C. § 72-701, and his claims against the employer-surety are

barred, then the ISIF seemingly obtains the benefit of that preclusion. However, that is not the case before us.

Waltman, 109 Idaho at 275, 707 P.2d at 386 (emphasis in original, footnotes omitted).

21. The Waltman dissent emphasized that Idaho Code § 72-706 applied to claims against the ISIF and set forth the ill-advised consequences of holding otherwise:

We should not avoid the ultimate issue in the case of whether the time limits contained in I.C. §§ 72–706, –719, are applicable to claims against I.S.I.F. If not applicable, there would be no time limit barring claims against I.S.I.F., a result I find not reasonably intended by the legislature. Many industrial accident victims could have pre-existing impairments which, with enough time and age, could degenerate to alleged total permanent disability. Unless there are some time limits, former claimants could file new claims against I.S.I.F. twenty or thirty years after an industrial accident. Workmen's compensation benefits are not intended as old-age health or retirement benefits, or to protect against the natural degeneration of the human body. These stale claims would raise impossible evidentiary questions, and the potential for fraudulent claims would be enormous. Therefore, there must be a statute of limitations on claims against I.S.I.F. It is only reasonable that the general statute of limitations contained in I.C. §§ 72–706 and –719 also apply to claims against I.S.I.F. Other jurisdictions have ruled accordingly. [Citations omitted.] The commission reasoned that since the I.S.I.F. is not specifically mentioned in the statutes, the legislature did not intend the statutes to be applicable to I.S.I.F. claims. However, neither are the surety or employer mentioned in the statutes, but this Court applies the statute of limitations to them. The statutes are applicable to “any such claim [for compensation],” I.C. § 72–706, and “any order, agreement or award,” I.C. § 72-719, which clearly must include those involving the I.S.I.F.

Waltman, 109 Idaho at 276–277, 707 P.2d at 387–388 (Bakes, J., dissenting) (emphasis in original).

22. ISIF further argues that the Commission’s decisions in Morton v. Industrial Special Indemnity Fund, 2011 IIC 0098 (December 23, 2011), and Mitchell v. Idaho Department of Corrections, 2013 IIC 0056, 2013 WL 5291502 (Idaho Ind. Com. Aug. 16, 2013), apply Idaho Code § 72-706 to claims against ISIF.

23. In Morton, the Commission reviewed Waltman and determined that Idaho Code § 72-706 applies to claims against ISIF, noting that the statute does not define a period of

limitation based on who has paid compensation, but rather on whether and when compensation has been paid and when it was discontinued. Considering Idaho Code § 72-706, the Commission summarized the holding of Waltman thus:

Stated more simply, the rule we infer from Waltman is this: so long as the Commission has jurisdiction over a claim for indemnity benefits, then a timely complaint may be filed against ISIF. Stated differently, so long as a timely complaint against the surety for indemnity benefits either is pending or could still be filed before the Commission, then a complaint against ISIF may be filed, provided the complaint also complies with the requirements of Idaho Code § 72-334. If, however, no complaint is pending before the Commission, and a timely complaint can no longer be made against the surety, then a timely complaint can no longer be made against ISIF, either.

Morton, 2011 IIC 0098 at 9-10 (emphasis in original).

24. In Mitchell, the Commission reaffirmed its conclusions in Morton and offered several hypothetical scenarios to illustrate the operation of Idaho Code § 72-706 in claims filed against ISIF:

For example, assume that Claimant files a timely Complaint against Employer/Surety just before the running of the five year period of limitation referenced at Section 72-706(2). The Commission will have jurisdiction over the matter until it is resolved either following a hearing, or the settlement of the parties. Typically, the Commission will no longer have jurisdiction over such a case once the settlement or decision becomes final. In some cases, however, the Commission specifically determines that it is appropriate to retain jurisdiction due to concerns over a likely change in the extent and degree of an injured worker's disability. Per Morton, a Complaint may be filed against the ISIF by Claimant where the Commission has continuing jurisdiction over the claim.

Where the Commission no longer has jurisdiction over a claim against the employer/surety, an injured worker may file a Complaint against the ISIF where a Complaint against the ISIF would still be timely under Section 72-706. For example, assume that benefits have been paid to a claimant in a particular case where claimant and employer/surety reach a final settlement on the second anniversary of the accident, claimant could nevertheless file a timely Complaint against the ISIF up until the fifth anniversary of the claim as anticipated by Section § 72-706, notwithstanding that the Commission had no continuing jurisdiction over the claim brought by claimant against employer/surety.

Mitchell, 2013 WL 5291502 at 4. The Commission found Mitchell's Complaint against ISIF timely under Idaho Code § 72-706(3) because it was filed within one year of the payment of benefits pursuant to a lump sum settlement agreement that compromised employer/surety's exposure for disability benefits and thus constituted the payment of income benefits.

25. Considering Waltman, Morton, and Mitchell, it is apparent that Idaho Code § 72-706 applies to Claimant's Complaint against ISIF herein. The statute provides:

(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.

Idaho Code § 72-706.



26. In the present case, Claimant's accident occurred on June 24, 2013. He received payments of compensation including medical, temporary disability, and permanent partial impairment benefits. Pursuant to Idaho Code § 72-706(2), Claimant had five years—until June 24, 2018—to file a Complaint against ISIF. Claimant lastly received disputed medical and disability benefits pursuant to the Modified Lump Sum Agreement approved by the Commission on June 20, 2017, paid by Surety and cashed by Claimant on June 28, 2017. This payment occurred more than four years from the date of the accident. Pursuant to Idaho Code § 72-706(3), Claimant had one year—until June 28, 2018—to file a Complaint against ISIF. The envelope containing Claimant's Complaint was postmarked June 29, 2018. The Complaint was received by ISIF on July 2, 2018 and filed with the Commission on July 2, 2018. Claimant's Complaint is not timely pursuant to Idaho Code §§ 72-706(2) or (3).<sup>1</sup>

27. Claimant does not dispute that Idaho Code § 72-706 applies to claims against ISIF. However he asserts that because the Commission retained jurisdiction of his case against Employer/Surety in the settlement agreement, it has continuing jurisdiction thereby making his present Complaint against ISIF timely.

28. Claimant's Lump Sum Agreement with Employer/Surety provided:

[T]he above-entitled proceedings are dismissed with prejudice and the Employer, Valley Wide Cooperative, Inc., and the Surety, are discharged and released of and from any and all liability on account of the above-entitled injuries, with the exception of reasonable future medical benefits as defined in the fifth section of this Agreement.

Exhibit A, p. 10 (emphasis supplied). The Stipulation & Order For Dismissal With Prejudice provided:

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<sup>1</sup> ISIF asserts that the statute of limitations is not tolled by Claimant's notice of intent to file a complaint against ISIF, correctly noting Idaho Code § 72-434 [sic § 72-334] contains no tolling language. Claimant does not dispute this assertion.

[T]he above-numbered cause has been settled and, subject only to the payment of the sums ordered in the Commission's Order of Approval and Discharge, the above-styled and numbered cause may be dismissed with prejudice, except as to reasonable future medical benefits which are compensable pursuant to the provisions of Idaho Code Section 72-432, resulting from the accident of June 24, 2013.

Exhibit B, p. 1 (emphasis supplied). Thus the only jurisdiction retained was over future medical benefits. No jurisdiction was retained over non-medical benefits.

29. A close reading of the Commission's decision in Mitchell is instructive:

In some cases, however, the Commission specifically determines that it is appropriate to retain jurisdiction due to concerns over a likely change in the extent and degree of an injured worker's disability. Per Morton, a Complaint may be filed against the ISIF by Claimant where the Commission has continuing jurisdiction over the claim.

Mitchell, 2013 WL 5291502, at 4 (emphasis supplied).

30. What Morton specifically makes clear is that the jurisdiction retained must be for indemnity benefits:

[S]o long as the Commission has jurisdiction over a claim for indemnity benefits, then a timely complaint may be filed against ISIF. Stated differently, so long as a timely complaint against the surety for indemnity benefits either *is* pending or *could still be filed* before the Commission, then a complaint against ISIF may be filed, provided the complaint also complies with the requirements of Idaho Code § 72-334.

Morton, 2011 IIC 0098 at 9 (italics in original, other emphasis supplied).

31. In contrast to Mitchell and Morton which address retained jurisdiction of disability and jurisdiction over claims for indemnity respectively, the settlement agreement in the present case dismissed Claimant's proceedings against Employer/Surety and retained jurisdiction only to consider future reasonable medical benefits. The Commission did not retain jurisdiction over any non-medical benefits. Because the Commission did not retain such jurisdiction, it now has no jurisdiction to entertain Claimant's Complaint against ISIF for non-medical benefits.

32. Idaho Code § 72-432 provides the Commission continuing jurisdiction for reasonable and necessary medical treatment due to an industrial accident. Idaho Code § 72-706(4) indicates that payment of medical benefits beyond five years after the date of the accident does not extend the statute of limitations. However, Idaho Code § 72-706(5) clarifies that an injured worker's right to reasonable medical benefits may only be barred by Idaho Code § 72-706(1) but is otherwise not barred. In essence, unless otherwise limited by an agreement approved by the Commission, once Idaho Code § 72-706(1) is satisfied the Commission has continuing jurisdiction to determine reasonable medical benefits for the life of the injured worker. Claimant's settlement agreement with Employer/Surety in the present case did not create jurisdiction, rather it simply recognized jurisdiction already provided by Idaho Code § 72-432 over medical benefits—a potential liability of the Employer/Surety, never a liability of ISIF. Expressly affirming continuing jurisdiction pursuant to Idaho Code § 72-432 over reasonable medical benefits payable by Employer/Surety does not retain jurisdiction over claims against ISIF.

33. If Claimant's Complaint herein were not subject to the statute of limitations of Idaho Code §§ 72-706(2) and (3) solely because of the Commission's continuing jurisdiction of medical benefits only, then Claimant could potentially file a complaint against ISIF at any time during his lifetime. If the Commission's continuing jurisdiction of medical benefits alone were sufficient to confer jurisdiction for claims against ISIF, then every injured worker would have a potential lifetime claim against ISIF. There is no indication such a result was intended by the legislature.

34. Claimant's Complaint against ISIF is not timely pursuant to Idaho Code § 72-706. The Commission did not retain jurisdiction to consider Claimant's Complaint for non-medical benefits against ISIF. The Complaint must therefore be dismissed.

**CONCLUSIONS OF LAW AND ORDER**

1. Claimant's Complaint against ISIF is not timely pursuant to Idaho Code § 72-706. The Commission did not retain jurisdiction to consider Claimant's Complaint for non-medical benefits against ISIF.

2. Claimant's Complaint against ISIF must be dismissed.

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

DATED this \_\_\_10th\_\_\_ day of \_\_\_February\_\_\_, 2020.

INDUSTRIAL COMMISSION

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

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

\_\_\_\_\_/s/\_\_\_\_\_  
Thomas E. Limbaugh, Commissioner

ATTEST:

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

**CERTIFICATE OF SERVICE**

I hereby certify that on the   10th   day of   February  , 2020, 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:

ANDREW A ADAMS  
598 N CAPITAL AVE  
IDAHO FALLS ID 83402

PAUL J AUGUSTINE  
PO BOX 1521  
BOISE ID 83701

\_\_\_\_\_/s/\_\_\_\_\_  
\_\_\_\_\_