

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

GLEN BALSLEY,

Claimant,

v.

SHAFER HEATING & COOLING, INC.,

Employer,

and

STATE INSURANCE FUND,

Surety,
Defendants.

IC 2016-020992

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

Filed June 23, 2017

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Alan Taylor, who conducted a hearing in Coeur d'Alene on December 20, 2016. Claimant, Glen Balsley, was present in person and represented himself Pro Se. Defendant Employer, Shafer Heating & Cooling, Inc. (Shafer), and Defendant Surety, State Insurance Fund, were represented by Bradley J. Stoddard and Tyler Stoddard, of Coeur d'Alene. The parties presented oral and documentary evidence. Post-hearing depositions were taken and briefs were later submitted. The matter came under advisement on March 24, 2017.

ISSUE

The issue to be decided is whether, and to what extent, Claimant is entitled to additional temporary disability benefits.

CONTENTIONS OF THE PARTIES

All parties acknowledge that Claimant sustained an industrial accident resulting in right index finger injuries while working for Shafer on July 28, 2016. Defendants provided medical

and time loss benefits. Claimant presently claims additional temporary disability benefits for 33 days in which he did not work following his accident. Defendants assert that Claimant declined their offer of suitable light duty work and has not proven his entitlement to further benefits due to his industrial accident.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. Claimant's Exhibits A through E and Defendants' Exhibits A through I, admitted at the hearing; and
3. The testimony of Claimant, Donald Shafer, Charles Gamache, Bobbie Hunsinger, and Robert Shafer taken at the December 20, 2016 hearing.

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

FINDINGS OF FACT

1. **Background.** Claimant was born in 1971. He was 45 years old and resided in Coeur d'Alene at the time of the hearing. He is right-handed. He graduated from high school in 1990. Claimant worked as an HVAC installer and ultimately became a credentialed journeyman HVAC installer. To become a credentialed journeyman requires two to four years of schooling, a substantial number of hours of work as an apprentice under the supervision of a journeyman, and successful completion of formal testing. Apprentices cannot work on a job site without supervision by a journeyman.

2. Shafer is a heating and cooling enterprise doing business in the Coeur d'Alene area. Robert Shafer is the president of Shafer; Don Shafer is the vice president. Chuck Gamache

has been a salesman for Shafer for 10 years. He assists in overseeing all Shafer employees. Bobbie Hunsinger is Shafer's secretary and office manager. She has worked for Shaffer for 13 years. Her duties included bookkeeping, payroll, secretary, and answering the phone.

3. On June 9, 2016, Shafer hired Claimant as a full-time HVAC installer earning \$21.00 per hour. Shafer's business had been brisk for two years and Shafer needed a journeyman which would allow two apprentices to work on a job site under the journeyman's supervision. Shafer hired Claimant because he is a journeyman and Robert Shafer anticipated Claimant would supervise two apprentices. Claimant considered Shafer a reasonable employer and Shafer was pleased with Claimant's work.

4. **Industrial accident and treatment.** On July 28, 2016 while working for Shafer, Claimant lacerated his right index finger and severed the extensor tendon on sheet metal. Claimant received medical treatment at the Post Falls Urgent care and his severed extensor tendon and skin lacerations were sutured by Pete Obligato, M.D. Defendants accepted the claim and paid medical benefits and temporary disability benefits until approximately August 23, 2016.

5. On or shortly after the date of injury, Claimant and Robert Shafer had a telephone conversation in which Claimant apologized for hurting himself during the busy season and told Robert that if Shafer needed to hire someone else, he would understand. Robert told Claimant they wanted to keep Claimant on. Claimant said that would be great. Robert offered Claimant light duty work. Thereafter Robert conversed with Don Shafer, Chuck Gamache, and Bobbie Hunsinger about finding something Claimant could do within his restrictions. Claimant's work restrictions included no forceful gripping or lifting more than 20 pounds with his right hand and keeping his wound and sutures dry and clean.

6. On August 15, 2016, Claimant presented to Jeff Givens, M.D., who removed his sutures and cleared him for modified duty work, directing him to not use his right index finger and keep it splinted. Dr. Givens advised Claimant to expect a follow-up call from a tendon rehabilitation specialist.

7. **Modified duty work discussions and efforts.** On August 18, 2016, Gamache had a phone conversation with Claimant. Gamache told Claimant of a list of light duty projects at Shafer that Claimant could do. Claimant expressed concern about returning to work before he had seen a specialist or was completely healed. Claimant had sustained a wrist laceration and tendon injury years before and was concerned about returning to work before the tendon was fully healed. Gamache understood Claimant could supervise the work of apprentices and offered Claimant work within his light duty restrictions. Claimant at that time declined to return to work until he had seen a specialist. Gamache believed that Claimant could have covered Gamache's work desk and office phone calls and there was no pressure on Claimant to perform any particular HVAC installation job.

8. Hunsinger confirmed Shafer's verbal offer of light duty employment to Claimant on August 18, 2016. Hunsinger heard the telephone conversation of Gamache with Claimant and she was shocked that Claimant had refused the work offer. She was so shocked that she immediately called Claimant back to confirm that he understood the offer was for light duty work. He understood and reiterated his decision to decline the offer.

9. At hearing Claimant affirmed that he was offered light duty by Gamache on August 17 or 18, 2016, but declined the offer. Claimant acknowledged that Gamache offered one-handed work of many kinds, but Claimant said he did not want to push it until he saw a specialist. Claimant recorded in his written timeline under August 18, 2016: "Spoke with Chuck

and he said that they had some projects that could be done on light duty. I told Chuck that I would like to see a specialist before I push it.” Claimant’s Exhibit A, p. 3.

10. On August 18, 2016, following Gamache’s and Hunsinger’s telephone conversations with Claimant, Hunsinger prepared a written offer of modified duty employment which she sent via certified mail to Claimant stating in part:

We have received information from Dr. Givens, MD, releasing you to light duty work effective 8/1/16. We currently have a position available within the work restrictions recommended.

Please report to work on Monday August 22, 2016 at 7:am[sic]. The lite [sic] duty position will be for 8 hours per day 5 days per week at your normal rate of \$21.00 per hour.

If you are required to attend physical therapy or doctor appointments, you should notify Don Shafer in advance, and obtain a slip from the medical provider, stating the time you are required to attend this appointment. Any wage loss incurred by you due to medical appointments related to the injury, or our inability to provide work within your restrictions, will be reported to our workers’ compensation carrier for consideration of wage reimbursement.

Please sign the bottom portion of this letter, indicating your willingness to perform this position, beginning 8/22/16 for the hours and pay specified and return it to our office.

Defendants’ Exhibit C, p. 2. Claimant received the certified letter from Shafer and on August 19, 2016, marked “I accept this offer of light duty work, effective 8/22/16, at the specified hours and pay” and signed and returned the offer to Shafer.

11. On Monday August 22, 2016, Claimant reported for work at Shafer at 7:00 am. Claimant’s light duty release included a 20 pound lifting restriction and no power gripping with his right hand. Claimant acknowledged that Shafer directed him “to go out to the job and ‘do what I can do’ with no emphasis on speed.” Claimant’s Exhibit A, p. 3. Claimant testified at hearing “Q. So you wanted to see a specialist. However, was the work that Shafer was offering

you after your injury—was it not within the restrictions that the doctor had provided? A. It was on the 22nd. I managed to get through it.” Transcript, p. 83, l. 23 through p. 84, l. 3.

12. Claimant performed duct sealing on his own from a four foot ladder on August 22 because that was all on the job site he could find to do within his restrictions. Duct seal is a paintable mastic applied by brush. He held onto the trusses with the palm of his right hand and used his left hand to apply duct seal. Very little duct sealing work was accessible from the floor. Most duct sealing work required access from a ladder. Claimant testified that duct sealing work was within his restrictions.

13. On Tuesday August 23, 2016, Claimant reported to work for Shafer and talked to Gamache and Don Shafer about his work. Gamache described his recollection of the meeting:

But when he came up to the office, there was some talk about the work itself and is he happy and what’s going on. It was a general overview of “How you doing?” You know it was a concern, “Hey, it was your first day back yesterday. Here you are again.” Glen on Tuesday said that he had a doctor’s appointment that day. At that point in time, I told Glen again that we cared about him as a person and as an employee and that we needed him. I told him that if he needed to take the day off to go to the doctor’s appointment, that we would obviously be a hundred percent okay with that, but that the lapse of time that were [sic] going on between him calling our shop and these doctor’s appointments, we found awkward, and so that we needed him to tell us what was going on at the doctor’s appointment and we needed to hear from him. It’s my understanding that, after that Tuesday, we didn’t hear from him for another three or so days until Friday of that week and so I was expecting Wednesday to hear back from Glen when he’d show up to work or at least say how the appointment went.

Transcript, p. 37. L. 23 through p. 38, l. 17.

14. Claimant recorded in his timeline of that August 23, 2016 meeting:

Went to work—When helping unload the van and loading my truck to go to the job site and getting supplies Don asked me to come see him in the office. Talked with Chuck and Don. Chuck said that they are happy with my work and have no problems. I talked about my limitations and frustration with the things I can’t do and the value of my work. Don grunted and we discussed the letter sent; Chuck said that the letter was to confirm my intention to return to work. I told them both that I have every intention to return to work. Chuck said “we’ll see you when

you're ready" and while I was getting ready to leave Chuck said that they reassigned my work van and would put me in a pickup upon my return. I went home.

Claimant's Exhibit A, p. 3.

15. At hearing Claimant testified that he left the meeting on August 23, 2016, with the understanding that "I would return [to work] when I was ready to do the job." Transcript, p. 93, ll. 12-13. When cross-examined he confirmed: "Q. You were capable of doing the work. Okay. You were frustrated because you couldn't do your normal work and feel like you were being more productive? A. Correct." Transcript p. 102, ll. 1-4.

16. Claimant was not able to see a hand specialist as soon as he anticipated. On August 23, 2016, he contacted the office of Kate Kuhlman, M.D., and scheduled an appointment for the soonest available date—September 13, 2016. Claimant did not show up to work for Shafer for the rest of the week. Claimant testified at hearing that "I probably did not keep up—keep in touch as well as I should have, but there were several calls made and a couple of in-office—in the shop meetings, in-person appearances." Transcript, p. 81, ll. 16-19. Gamache expected to hear back from Claimant shortly after the August 23 meeting, but Claimant did not contact anyone at Shafer again until he called Don Shafer on the afternoon of Friday August 26, 2016, "to give Don my appointment schedule. He stated that he had hired someone else, but he still needed me and had plenty of work." Claimant's Exhibit A, p. 3. After his August 26th phone call, Claimant did not contact Shafer again for 11 days.

17. On September 7, 2016, Claimant "Went in to Shafer's to get my check ... I advised Chuck that I was available for light duty." Claimant recorded that he was told that Shafer "hadn't heard from me and considers me 'self-terminated' and that I had been replaced." Claimant's Exhibit A, p. 4.

18. On September 13, 2016, Claimant was finally able to see hand specialist Dr. Kuhlman, who continued him on light duty work and referred him to physical therapy.

19. On September 19, 2016, Don Shafer summarized his perception of the previous several weeks:

Glen Balsley was offered by phone on August 17th, 2016 by Chuck Gamache to return to work in whatever capacity he felt fit. He did not want to do this. Our bookkeeper, Bobbie Hunsinger called him and asked if he understood it was light duty being offered and that his release to work said he could lift up to 20 lbs and we could find work for him. He again said no. Bobbie called the Industrial Commission and asked what to do. They instructed a letter be sent that offered light duty and had an option to refuse. This letter was sent certified on 8/18/16 and Glen showed up Monday August 22, 2016 and worked one day. On the second day August 23rd I and Chuck Gamache talked to Glen and he said he had an appointment with a specialist. We asked him if he wanted to not work and to go to that appointment and then to let us know what was going on. He left and did not call until Friday August 26 at 4:45 and say if we needed to replace him to go ahead. He made no mention of coming back to work. (He still had not been to the specialist[.]) We received in the mail the letter we had sent certified on Monday August 29 saying he was willing to do light duty, but he made no attempt to come back to work. On 8/30/16 we received a fax from Kootenai Occupational Medicine that he had been seen and could now lift up to 30 pounds. At this point with the only times we had any contact we had with Glen was when we called him we wrote a letter and told him that we felt that he had self-terminated by not contacting us or making any effort to return to light duty work.

Claimant's Exhibit B, p. 6.

20. Claimant completed physical therapy and on October 6, 2016, Dr. Kuhlman released him to full duty work. On October 10, 2016, Claimant began working for another employer.

21. **Condition at the time of hearing.** At the time of hearing, Claimant had returned to work without restriction and was working as a journeyman HVAC installer for another employer.

22. **Credibility.** Having observed Claimant and the other witnesses at hearing and compared their testimony with all the evidence of record, the Referee finds that Claimant is

credible; Robert and Don Shafer, Chuck Gamache, and Bobbie Hunsinger are all also credible witnesses.

DISCUSSION AND FURTHER FINDINGS

23. 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).

24. **Additional temporary disability benefits.** Idaho Code § 72-102 (11) defines "disability," for the purpose of determining total or partial temporary disability income benefits, as a decrease in wage earning capacity due to injury or occupational disease, as such capacity is affected by the medical factor of physical impairment, and by pertinent nonmedical factors as provided for in Idaho Code § 72-430. Idaho Code § 72-408 further provides that income benefits for total and partial disability shall be paid to disabled employees "during the period of recovery." The burden is on a claimant to present medical evidence of the extent and duration of the disability in order to recover income benefits for such disability. Sykes v. C.P. Clare and Company, 100 Idaho 761, 605 P.2d 939 (1980). Additionally:

[O]nce a claimant establishes by medical evidence that he is still within the period of recovery from the original industrial accident, he is entitled to total temporary disability benefits unless and until evidence is presented that he has been medically released for light work *and* that (1) his former employer has made a reasonable and legitimate offer of employment to him which he is capable of performing under the terms of his light work release and which employment is likely to continue throughout his period of recovery *or* that (2) there is employment available in the general labor market which claimant has a reasonable opportunity of securing and which employment is consistent with the terms of his light duty work release.

Malueg v. Pierson Enterprises, 111 Idaho 789, 791-92, 727 P.2d 1217, 1219-20 (1986).

25. In the present case, Claimant requests 33 days of additional temporary disability benefits. He asserts that Defendants' offer of light duty work was not in good faith.

26. Claimant was reluctant to return to work until he could see a specialist. Thus he declined the August 18 offer of light duty work by Gamache. Claimant did return to work on August 22, 2016 in response to the certified letter from Shafer. He performed duct sealing with his left hand for eight hours that day and acknowledged that this work was within his light duty work restrictions. He came back for work on August 23, 2016, and met with Robert Shafer, Don Shafer, and Chuck Gamache. Claimant expressed his concern that he did not want to "push it" with his right hand until he had seen a specialist. Claimant apparently believed he would get in to see the specialist that very day, but in fact was not able to see the specialist until September 13, 2016. Claimant did not communicate with Shafer again until the end of the day on Friday, August 26, 2016. Thereafter he did not communicate with Shafer or report for light duty work for 11 more days; until September 7, 2017.

27. Shafer was committed to finding light duty work for Claimant that would fit his restrictions. Claimant, Robert and Don Shafer, Gamache, and Hunsinger all testified that Shafer offered Claimant light duty work within his restrictions. There is no medical evidence that he could not perform the light duty work Shaffer offered during the time for which he now claims additional temporary disability benefits. He does not assert, and there is no evidence in the record indicating, that Shafer pressured him to perform any work beyond his restrictions.

28. Claimant left the August 23, 2016 meeting understanding that "I would return [to work] when I was ready to do the job." Transcript, p. 93, ll. 12-13. He characterized this as a mutual decision. However, this was Claimant's desire and preference, and his unilateral decision

to not return to any work until he felt ready. Such was entirely Claimant's prerogative and Shafer accepted Claimant's decision; however this does not alter the fact that Shafer indeed offered Claimant suitable light duty work which he by his actions effectively declined. Claimant acknowledged he was capable of doing the light duty work offered but was frustrated because he could not do his normal work and be more productive. While Claimant may not have discerned an abundance of light duty tasks, the record establishes that Shafer was committed to making such work available to Claimant. Defendants' offer was in good faith although specific light duty work assignments were still being identified.

29. The record establishes that Shafer made a reasonable and legitimate offer of employment to Claimant which he was capable of performing within the terms of his work restrictions and which employment was likely to continue throughout his period of recovery. Shafer fulfilled its obligations under Malueg. Claimant has not proven he is entitled to additional temporary disability benefits.

CONCLUSION OF LAW

Claimant has not proven he is entitled to additional temporary disability benefits.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusion of Law, the Referee recommends that the Commission adopt such findings and conclusion as its own and issue an appropriate final order.

DATED this 13th day of June, 2017.

INDUSTRIAL COMMISSION

_____/s/_____
Alan Reed Taylor, Referee

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of June, 2017, 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:

GLEN BALSLEY
810 E PINE AVE
COEUR D'ALENE ID 83814

TYLER R STODDARD
PO BOX 896
COEUR D'ALAENE ID 83816-0896

_____/s/_____

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Claimant,

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SHAFER HEATING & COOLING, INC.,

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Surety,
Defendants.

IC 2016-020992

ORDER

Filed June 23, 2017

Pursuant to Idaho Code § 72-717, Referee Alan Taylor 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 has not proven he is entitled to additional temporary disability benefits.
2. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 23rd day of June, 2017.

INDUSTRIAL COMMISSION

_____/s/_____
Thomas E. Limbaugh, Chairman

_____/s/_____
Thomas P. Baskin, Commissioner

_____/s/_____
R. D. Maynard, Commissioner

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of June, 2017, a true and correct copy of the foregoing **ORDER** was served by regular United States mail upon each of the following:

GLEN BALSLEY
810 E PINE AVE
COEUR D'ALENE ID 83814

TYLER STODDARD
PO BOX 896
COEUR D'ALENE ID 83816-0896

sc

_____/s/_____