

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

LYNN SHEPPARD,

Claimant,

v.

ANHEUSER BUSCH,

Employer

and

INDEMINITY INSURANCE COMPANY OF  
NORTH AMERICA

Surety,  
Defendants.

**IC 2009-018074**

**ORDER ON CLAIMANT'S  
MOTION FOR RELIEF AND  
ORDER TO SHOW CAUSE**

**Filed 6/22/2018**

This matter came before the Industrial Commission on Claimant's May 8, 2018 filing of his Motion for Relief of Order Pursuant to Idaho Rule of Civil Procedure 60. Defendants filed their timely response. Claimant filed no reply.

Claimant's motion has its roots in Defendants' repeated failure to pay Idaho Code § 72-432 medical benefits in timely fashion. By way of background, Claimant suffered a work-related injury on July 11, 2009. In 2014, the parties stipulated that Claimant is totally and permanently disabled. On June 26, 2015, the Commission approved a partial lump sum settlement which resolved all issues in the case except for Claimant's entitlement to future medical benefits. Notably, the partial lump sum settlement appears to have resolved claims for medical benefits incurred, but unpaid, as of the date of approval of the settlement by the Commission. (See LSS at p.7).

Following the Commission's approval of the partial lump sum settlement, Claimant filed, on October 13, 2015, his Motion to Compel and Request for Attorney Fees Pursuant to Idaho **ORDER ON CLAIMANT'S MOTION FOR RELIEF AND ORDER TO SHOW CAUSE - 1**

Code § 72-804. By this motion, Claimant sought to obtain an order directing Defendants' to pay certain travel and medical expenses, most of which appear to have been incurred prior to the date of the June 26, 2015 lump sum settlement. Counsel's affidavit reflects that demand for payment of these benefits was made by letters of June 3, 2015 and September 7, 2015. Defendants did not respond to these letters, or pay the benefits at issue. Nor did Defendants file a written response to Claimant's motion to compel. Defendants did participate in a telephone hearing at which the Commission entertained the arguments of the parties. By Order dated November 18, 2015, the Commission granted Claimant's motion, and ordered Defendants to pay the medical and travel expenses in question. Further, the Commission made an award of attorney's fees in the amount of \$250.

On June 20, 2016, Claimant filed his Motion to Compel and Request for Attorney's Fees Pursuant to Idaho Code § 72-804. By this motion, Claimant sought to compel Defendants' payment of certain medical expenses incurred following the June 26, 2015 partial lump sum settlement. Defendants did not respond to this motion, and by Order dated July 11, 2016, the Commission ordered Defendants' to pay the bills in question and also made an award of attorney's fees in the amount of \$250.

On December 23, 2016, Claimant filed his Motion for Attorney's Fees pursuant to Idaho Code § 72-804. The affidavit supporting that motion reflects another long battle between Claimant and Defendants in procuring the payment of certain medications required by Claimant. Eventually, Surety paid these bills, but refused to pay the \$250 attorney fee requested by Claimant for counsel's efforts. Defendants did not respond to the motion, and by Order dated January 19, 2017, the Commission entered an award for attorney's fees in the amount of \$250.

On or about March 27, 2017, Claimant filed another Motion to Compel and Request for Attorney's Fees Pursuant to Idaho Code § 72-804. This motion, too, addressed certain medical bills which had been submitted to Defendant, but which had not been paid, despite request by Claimant. Defendants did not respond, and on April 20, 2017, the Commission entered its Order requiring payment of bills in question and approving attorney's fees in the amount of \$350.

On January 2, 2018, Claimant filed his final Motion to Compel and Request for Attorney's Fees Pursuant to Idaho Code § 72-804. By this motion, Claimant sought to require Defendants to pay additional medical bills incurred in connection with Claimant's care, among them a \$1,619 bill from Dr. Vance. The supporting affidavit of counsel reflects multiple requests for payment of the bills in question over a period of months. Defendants did not respond to the motion, and on January 22, 2018, the Commission entered its Order requiring Defendants to pay the bills in question and further entered an award of attorney's fees in the amount of \$500.

During the period Referee Powers was dealing with the January 2, 2018 Motion to Compel, the parties submitted a lump sum settlement to the Commission for review and approval. This settlement closed future medical benefits, which had been left open by the June 26, 2015 partial settlement. The settlement was approved by the Commission on or about January 4, 2018. The settlement provided, inter alia, for the payment of \$130,000 to Claimant. Of this, \$46,892 was evidently used to fund a WCMSA, with the \$83,108 balance payable to Claimant. From this, attorney's fees of \$23,000 were taken, leaving Claimant with \$60,180 in hand, presumably to pay such additional medical expenses as might not be included for payment in the WCMSA. Notably, the January 4, 2018 settlement provided as follows concerning medical bills unpaid as of the date of settlement:

Following submission of the June 25, 2015 settlement agreement, an additional \$2,725.96 in medical expenses have been incurred by Claimant and paid by the

Surety. Claimant understands and agrees that all other medical expenses are his responsibility, and that upon approval of this agreement, the Defendants will have no further responsibility for medical expenses incurred to date or in the future.

Following the approval of the lump sum settlement which resolved all remaining issues in this case, Counsel for Defendants contacted Referee Powers concerning the January 22, 2018 Order granting the motion to compel and request for attorney's fees pursuant to Idaho Code § 72-804. In his letter, Counsel explained that the reason he did not respond to Claimant's January 2, 2018 motion was that the parties expected approval of the lump sum settlement agreement that had been negotiated. As noted, that settlement was approved on January 4, 2018. Counsel did not explain why Defendants had failed to respond to nearly identical motions of October 13, 2015, June 20, 2016, December 23, 2016, or March 27, 2017. By letter dated February 9, 2018, Claimant advised that though not referenced in the lump sum settlement agreement, the settlement was premised on the understanding of the parties that all medical bills incurred, but unpaid, would be paid by Defendants and would be paid as part of the parties' agreement. In his Order of February 22, 2018, Referee Powers suspended his January 22, 2018 Order and requested that the parties attempt to resolve the matter of the unpaid bills.

Evidently, no compromise was reached for on May 8, 2018, Claimant filed his Motion for Relief of Order Pursuant to Idaho Rule of Civil Procedure 60, pursuant to which Claimant seeks relief from the provisions of the January 4, 2018 settlement to the extent that it appears to relieve Defendants from any obligation to pay medical bills incurred, but unpaid, as of the date of settlement. Claimant suggests that authority for this request is found in IRCP 60(b)(3) which allows relief from a final judgment on the basis of fraud.

In support of this motion, Claimant asserts:

That I communicated with Mr. Bailey by phone on January 2, 2018 where he assured that all medical bills relating to Claimant, including Dr. Vance's

outstanding bill of \$1,619.00, would be paid (See Affidavit of Michael McBride at p.2).

Defendants did not provide an affidavit in opposition to that filed by Claimant, but, in their responsive brief, assert that Defendants did pay some additional medical bills during the period leading up to the approval of the lump sum, but admittedly not all, reasoning that Claimant would be receiving certain monies in the lump sum intended to resolve unpaid bills. (See Defendants' Response to Claimant's Motion for Relief of Order Pursuant to IRCP 60 at p.3). Defendants also argue that the specific language of the lump sum relieves Defendants of responsibility for the payment of all bills incurred, but unpaid, as of the date of settlement.

Pursuant to Idaho Code § 72-718 an order of the Commission is subject to review via a motion for reconsideration within 20 days of the date of the Commission's order of approval. No such motion was filed in connection with the January 4, 2018 Order approving the lump sum settlement agreement.

Pursuant to Idaho Code § 72-719, anytime within five years from the date of injury, Claimant may file a petition for change of condition or for fraud. Pursuant to Idaho Code § 72-719(3) the Commission, on its own motion, or at the urging of a party, may reopen a case anytime within five years of the date of injury in order to correct a manifest injustice. None of these provisions of Idaho Code § 72-719 can apply to the facts of this case since it has been more than five years from the date of accident. More importantly, the provisions of Idaho Code § 72-719 are inapplicable to a lump sum settlement approved pursuant to Idaho Code § 72-404. (See Idaho Code § 72-719(4)). Therefore, there exists no mechanism under the Idaho Worker's Compensation Law to revisit the lump sum settlement. It is presumed that all discussions and negotiations leading to that agreement are merged into the settlement. The settlement itself specifically states that the agreement relieves Defendants of all past and future medical expenses.

The language is unambiguous, and does not anticipate that Claimant may insist upon the payment of certain medical bills, in addition to what is paid pursuant to the lump sum settlement. IRCP 60, governing civil actions, will not avail Claimant in light of the specific statutory provisions which govern the reopening and finality of lump sum settlements. See *Campbell v. Key Millwork & Cabinet Co.*, 116 Idaho 609, 778 P.2d 731 (1989); *Swanson v. Kraft*, 116 Idaho 315, 775 P.2d 629 (1989); *Kinney v. Tupperware*, 117 Idaho 765, 792 P.2d 330 (1990). Accordingly, we conclude that IRCP 60 has no application to the facts of this case. Claimant's motion is denied.

Having come to this conclusion, we nevertheless find a good deal to be concerned about in connection with the history of this case since the approval of the 2015 partial lump sum settlement. Defendants appear to have altogether ignored certain medical bills and requests to pay the same during a period of time when they were obligated to pay medical and related expense pursuant to Idaho Code § 73-432. We cannot tell whether there are legitimate good faith disputes concerning Claimant's entitlement to payment of the bills at issue in the various motions, because Defendants do not appear to have ever been troubled enough by these matters to respond to the motions. Defendants appear to have been content to do nothing until being ordered by the Commission to pay the bills. The modest penalties imposed by the Commission for Surety's recalcitrance seem to have been treated as an acceptable cost of doing business, since they did nothing to secure future compliance. In all, the several motions and supporting affidavits discussed above leave us with very little to dispute the conclusion that Surety, or its agents, failed to abide by its statutory responsibilities to promptly pay worker's compensation benefits as required by Idaho Code § 72-304. We conclude that Surety will be directed to appear before the Commission to show cause why it should not suffer additional penalties for its failure

to abide by the requirements of Idaho Code § 72-304, up to and including the withdrawal of its approval to write worker's compensation insurance in the state of Idaho. However, preparatory to such hearing, the Industrial Commission Benefits Department is directed to conduct such additional investigation as may be needed to ascertain whether these practices are systemic. By order to follow, the Commission will advise all parties of the time and place for the show cause hearing.

DATED this 22nd day of June 2018.

INDUSTRIAL COMMISSION

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

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

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

ATTEST:

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

**CERTIFICATE OF SERVICE**

I hereby certify that on this 22<sup>nd</sup> day of June 2018, a true and correct copy of the foregoing **ORDER ON CLAIMANT'S MOTION FOR RELIEF AND ORDER TO SHOW CAUSE** was served by regular United States Mail upon each of the following:

ERIC BAILEY  
1311 W JEFFERSON ST  
BOISE, ID 83701

MICHAEL MCBRIDE  
1495 E 17<sup>TH</sup> ST  
IDAHO FALLS, ID 83404

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