

Clara Plastics, and Defendant Surety, State Insurance Fund (SIF) were represented by Jon M. Bauman of Boise. Defendant Employer, Preco, Inc., and Defendant Sureties, American Motorists Insurance Company and American Protection Insurance Company (American) were represented by Tyra H. Stubbs of Boise. Defendant Employer, Preco Electronics and SCP Global Technologies, and Defendant Surety, Connecticut Indemnity Company (Connecticut) were represented by Eric S. Bailey of Boise. Defendant State of Idaho Industrial Special Indemnity Fund (ISIF) was represented by Kenneth L. Mallea. A written stipulation of facts was filed with Commission on June 8, 2006, and notice of acceptance of the stipulation by all parties was filed with the Commission on June 29, 2006. This matter came under advisement on June 29, 2006.

BACKGROUND

After hearing on August 3 and 26, 2004, the Commission issued its order of April 22, 2005, concluding that Claimant has incurred a compensable occupational disease, that American Protection Insurance Company is liable for Claimant's medical and time-loss benefits, that Claimant complied with the statutory limitations set forth in Idaho Code § 72-448, that Claimant is entitled to the cost of the medical care either provided by or recommended by Dr. Schwartz, Dr. Jutzy, and Dr. Koeplin in the treatment of his occupational disease, and that Claimant is entitled to temporary total disability benefits during the period he was receiving disability benefits from Employer during 1999.

ISSUES

The issues submitted presently for resolution are:

1. Whether Claimant is entitled to compensation for benefits and medical services prior to the date of "manifestation" of his occupational disease; and
2. Whether the Surety is Responsible for the Full Amount of the "Provider Billing" as

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Distinguished from the “Discounted Amount” of the Contractual Adjustments.

ARGUMENTS OF THE PARTIES

Claimant argues he is entitled to medical benefits prior to July 23, 2003, the date of manifestation of his occupational disease. Claimant relies upon Idaho Code § 72-432. All responding Defendants assert that the statutory framework of Title 72 of the Idaho Code does not contemplate medical benefits prior to the manifestation of an occupational disease.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. All evidence considered in the Commission's April 22, 2005, decision in this matter; and,
2. Stipulation of Facts re Issue of Compensability of Benefits and Medical Services Prior to Date of “Manifestation” of Occupational Disease filed June 8, 2006, of which acceptance by all parties was filed with the Commission on June 29, 2006.

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

FINDINGS OF FACT

1. The Commission’s Order of April 22, 2005, adopting Findings of Fact, Conclusions of Law, and Recommendation of Hearing Officer Robert D. Barclay ruled that the subject occupational disease manifested itself on July 23, 2003. (Employer and Sureties dispute the correctness of that date, but the date is utilized as a final order for purposes of Claimant’s motion.)
2. Claimant Ron Wilson has incurred medical expense for treatment of the acinic cell carcinoma **prior** to the date of manifestation.

DISCUSSION AND FURTHER FINDINGS

3. The provisions of the Workers' Compensation Law are to be liberally construed in favor of the employee. Haldiman v. American Fine Foods, 117 Idaho 955, 793 P.2d 187 (1990). The humane purposes which it serves leaves no room for narrow, technical construction. Ogden v. Thompson, 128 Idaho 87, 910 P.2d 759 (1996).

4. **Compensation prior to “manifestation” of occupational disease.** In the present case, the Commission found Claimant suffers from an occupational disease, acinic cell cancer of the nasal cavity, and that the disease was actually incurred during his employment with Employer, that Claimant was exposed to these hazards for a period greater than 60 days, and was totally disabled from working for Employer while he was hospitalized in January 1999. Thus the Commission found Claimant has incurred a compensable occupational disease.

5. Claimant specifically seeks medical benefits prior to the date of the manifestation of his occupational disease. Manifestation, under Idaho Code § 72-102 (18), means the time when an employee knows that he has an occupational disease, or whenever a qualified physician informs the injured worker that he has an occupational disease.

6. Claimant's argument is founded upon Idaho Code § 72-432(1) which provides in pertinent part:

the employer shall provide for an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital service, medicines, crutches and apparatus, as may be reasonably required by the employee's physician or needed immediately after an injury or manifestation of an occupational disease, and for a reasonable time thereafter. If the employer fails to provide the same, the injured employee may do so at the expense of the employer.

(Emphasis supplied.)

7. Claimant notes the above emphasized disjunctive “or” of the statutory language of

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Idaho Code § 72-432(1), and asserts that medical benefits reasonably required by the employee's physician are not statutorily limited to the period after manifestation of an occupational disease. Claimant accurately argues that in Mulder v. Liberty Northwest Insurance Company, 135 Idaho 52, 14 P.3d 372 (2000), the Idaho Supreme Court determined that Idaho Code § 72-432(1) controlled over Idaho Code § 72-437 in determining entitlement to medical benefits, and that a claimant need not prove total incapacitation to obtain medical benefits for an occupational disease.

8. Defendants note Sundquist v. Precision Steel & Gypsum, Inc., 141 Idaho 450, 111 P.3d 135 (2005), wherein the court declared:

An occupational disease exists for the purposes of the worker's compensation law when it first manifests. With respect to occupational diseases, the worker's compensation law treats the "manifestation" of the disease as being equivalent to the time or occurrence of an accident causing an injury. I.C. §§ 72-216, 72-217, 72-218, 72-229, 72-307, 72-401, 72-411, 72-413, 72-413A, 72-419, 72-430, 72-706, 72-719, and 72-805. In addition, it is the manifestation of the occupational disease that triggers the employer's obligation to provide medical services, appliances, and supplies and that triggers the running of the time periods for giving notice to the employer and filing a claim for benefits. I.C. § 72-432 and 72-448.

9. The court in Sundquist provided the above quoted language as a general framework to assist the reader in its discussion of the ultimate liability of one of several defendants pursuant to Idaho Code § 72-439. Sundquist did not specifically address the issue of entitlement to medical benefits prior to manifestation of an occupational disease.

10. The Commission's Order of April 22, 2005, found Claimant entitled to total temporary disability benefits for a period in January 1999—clearly prior to manifestation of his occupational disease in July 2003. The same Order addresses Claimant's entitlement to medical benefits and specifically notes that Claimant had not established his entitlement to some medical care rendered in early 2003, December 2001, and July 1999—not because such care was rendered

prior to manifestation of his occupational disease—but because the evidence did not show such medical treatment to be within the scope of treatment for his occupational disease. This is the law of the case.

11. The holding in Mulder is that Idaho Code § 72-432 governs entitlement for medical benefits without regard to total disablement. It is noted that Mulder’s occupational disease was manifest well prior to his carpal tunnel surgery. There was no issue regarding entitlement to medical benefits prior to manifestation, only after manifestation. While the Supreme Court’s decision in Mulder allows medical benefits without total disablement, it does not eviscerate the rest of the statutory framework and prerequisites to establish an occupational disease, including the requirement of manifestation. However, once all statutory requirements of an occupational disease—including manifestation—are established, there is no bar to compensation for medical treatment received prior to manifestation. The medical examinations and diagnostic testing generally necessary to establish medical causation and manifestation of an occupational disease are often recognized as compensable even though they actually precede manifestation.

12. This result logically parallels the common scenario ensuing when a worker suffers an industrial accident but medical benefits are denied based upon any number of issues, such as medical causation. If the issue of medical causation is ultimately resolved in the worker’s favor, the Idaho worker’s compensation law requires the employer to provide the injured worker medical benefits retroactive to the date of the industrial accident. The date of the accident—not the date when medical causation is established—dictates the date from which the injured worker is entitled to medical benefits.

13. Claimant is entitled to medical care for the treatment of his acinic cell cancer even

prior to its manifestation as an occupational disease.

14. **Amount of medical billings.** The second issue is whether the Surety should be liable for the amount of the medical provider billings or a discounted amount.

15. Defendants assert that a surety is not responsible to pay the full amount of the medical bills which qualify for reimbursement for treatment of Claimant's occupational disease. They maintain such would constitute a windfall and double recovery for Claimant.

16. The Commission explained its rationale for requiring payment of the full amount of medical bills in Sangster v. Potlatch Corporation, 204 IIC 0851:

Had Claimant's injury been accepted by Surety as a workers' compensation claim, Surety would have had to pay the full amount that the medical providers billed. Because Defendants denied the claim, and Claimant's private health insurance picked up most of the medical bills, the providers were paid only the Regence Blue Shield contractual rate, and Claimant was responsible for co-payments. When medical service providers enter into contracts with health insurance companies, they willingly accept reduced contract rate payments in return for other benefits. Doctors and hospitals do not have the same opportunity to bargain for a *quid pro quo* on workers' compensation claims. When Defendants refuse to reimburse medical providers for the difference between billing rates and contract rates, the providers suffer a loss for which they did not bargain and Surety enjoys a windfall that it did not earn.

17. Defendants are responsible for the full amount of the medical provider billings for treatment of Claimant's occupational disease.

CONCLUSIONS OF LAW

1. Claimant is entitled to compensation for benefits and medical services prior to the date of "manifestation" of his occupational disease.

2. The Surety is responsible for the full amount of the "Provider Billing" as distinguished from the "Discounted Amount" of the contractual adjustments.

RECOMMENDATION

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

DATED this 8th day of August, 2006.

INDUSTRIAL COMMISSION

/s/ _____
Alan Reed Taylor
Referee

ATTEST:

/s/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of August , 2006, a true and correct copy of **Findings of Fact, Conclusions of Law, and Recommendation** was served by regular United States Mail upon each of the following:

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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 compensation for benefits and medical services prior to the date of "manifestation" of his occupational disease.

2. The Surety is responsible for the full amount of the "Provider Billing" as distinguished from the "Discounted Amount" of the contractual adjustments.

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

DATED this __24th__ day of __August____, 2006.

INDUSTRIAL COMMISSION

/s/
Thomas E. Limbaugh, Chairman

/s/
James F. Kile, Commissioner

/s/
R. D. Maynard, Commissioner

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 24 day of August, 2006, a true and correct copy of the foregoing **Order** was served by regular United States Mail upon each of the following persons:

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