BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

WALLESS THOMPSON, Claimant, v. PEASLEY TRANSFER & STORAGE COMPANY, Employer, and STATE INSURANCE FUND, Surety, Defendants.	)	**IC 05-518777** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** Filed November 17, 2006

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Michael E. Powers, who conducted a hearing in Boise on May 9, 2006. Claimant was present and represented himself. Neil D. McFeeley of Boise represented Employer/Surety. Oral and documentary evidence was presented. The record remained open so that Claimant could undergo a cervical spine CT scan at the Boise VA Medical Center that was accomplished on June 8, 2006. The parties then submitted post-hearing briefs and this matter came under advisement on September 29, 2006.

ISSUES

The issues to be decided as a result of the hearing are:

1. Whether Claimant complied with the notice limitations set forth in Idaho Code §§ 72- 701 through 706;

2. Whether Claimant suffered an injury arising out of an industrial accident;

3. Whether Claimant's condition is due in whole or in part to a pre-existing condition and, if so,

4. Whether apportionment is appropriate.

CONTENTIONS OF THE PARTIES

Claimant contends he injured his neck when he hit his head on a low over-hang during the course of his employment as a furniture mover and seeks the appropriate benefits for that injury. He further asserts that he informed his immediate supervisor of his accident and injury on the day of its occurrence.

Defendants contend that while Claimant may have bumped his head on the date claimed, he never informed anyone at Employer's of the work-relatedness of his alleged injury until over a year after its occurrence and his claim is therefore, untimely. In the alternative, Claimant has presented no medical evidence of a connection between his accident and his current cervical complaints that are merely the natural progression of his documented pre-existing degenerative joint disease.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant and Charles Fellows presented at the hearing;

2. Defendant's Exhibits 1-2 admitted at the hearing; and

3. Medical records from Michael J. Kilfoyle, M.D., of the Boise VA Medical Center submitted post-hearing by agreement of the parties.

After having considered all the above evidence and the briefs 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 57 years of age and resided in Boise at the time of the hearing. He has worked in the furniture moving industry for 27 years.

2. Claimant testified that on July 21, 2004, he was moving items into a customer's outdoor shed when he struck the top of his head on a low over-hang, and, " . . . jammed my neck and it put me to my knees for, I don't know, three or four seconds." Hearing Transcript, p. 11. Claimant further testified that he told his immediate supervisor of his accident and injury, " . . . when I got back in." *Id*.

3. Claimant missed no work and did not seek medical treatment until August 17, 2005. He explained the delay in seeking treatment as follows:

> I'm – I have been in the business 27 years and being hurt on the job is commonplace and I'm not the type of a person who runs to the doctor every time I get an owey and in the process of that year there would be days I would have good days and I would have bad days, but there for – up to the point where I sought treatment for about three months it just didn't go away, so I figured I needed to have it looked at.

Hearing Transcript, p. 12.

4. A Notice of Injury and Claim for Benefits (Form 1) filed by Employer on January 18, 2006, indicated Employer was notified of Claimant's accident and injury on August 17, 2004. (The August 17, 2004 date appears to be an error. When read in context with the entire document, the correct notification date is August 17, 2005.)

5. Claimant filed his Complaint on January 13, 2006.

6. Claimant wrote a letter to the Commission filed on February 28, 2006, requesting a hearing.

7. No benefits have been paid on this claim. *See*, Answer to Complaint.

DISCUSSION AND FURTHER FINDINGS

Idaho Code § 72-701 provides that a notice of an accident shall be given to the employer as soon as practical but not later than 60 days after the happening thereof and a claim for compensation with respect thereto shall be made within one year from the date of the accident.

8. Here, giving Claimant the benefit of the doubt, the Referee finds that Claimant notified Employer of his accident on the date of its occurrence; i.e., July 21, 2004. Therefore, he had until July 21, 2005, within which to make a claim for compensation. No such claim was made until January 18, 2006, when Employer filed the Form 1. The Referee finds that Claimant's claim was not timely filed and his Complaint should be dismissed.

9. In addition to the above, the Referee finds that Claimant has failed to support his claim by expert medical testimony that any of his current cervical symptoms are, more probably than not, related to his accident of July 21, 2004.

CONCLUSIONS OF LAW

1. Claimant's claim for compensation is untimely and his Complaint should be dismissed with prejudice.

2. Claimant has failed to prove he suffered an injury arising out of an industrial accident.

3. The remaining issues are moot.

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 __8th ___ day of __November___, 2006.

INDUSTRIAL COMMISSION

___/s/_____
Michael E. Powers, Referee

ATTEST:

__/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __17th ___ day of ___November____, 2006, a true and correct copy of the **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

WALLESS C. THOMPSON
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NEIL D MCFEELEY
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___/s/_____

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