BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

ANGELITA BOUTWELL, Claimant, v. SPEARS MANUFACTURING COMPANY, INC., Employer, and AMERICAN ZURICH INSURANCE COMPANY, Surety, Defendants.	**IC 2017-011374** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** **Filed May 3, 2019**

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 Twin Falls on August 13, 2018. Claimant, Angelita Boutwell, was present in person and represented by Dennis R. Petersen, of Idaho Falls. Defendant Employer, Spears Manufacturing Company, Inc. (Spears), and Defendant Surety, American Zurich Insurance Company, were represented by David P. Gardner, of Pocatello. The parties presented oral and documentary evidence. Post-hearing depositions were taken and briefs were later submitted. The matter came under advisement on December 10, 2018. 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.

ISSUES

The issues to be decided were clarified at hearing and are:

1. Whether Claimant's claim is barred by the notice limitations set forth in Idaho Code § 72-448.
2. Whether Claimant suffers from a compensable occupational disease.
3. Claimant's entitlement to medical care.
4. Whether Claimant is entitled to attorney fees pursuant to Idaho Code § 72-804.

All other issues are reserved.

CONTENTIONS OF THE PARTIES

Claimant alleges she suffers a compensable acute occupational disease caused by her work on the cutting line at Spears in January 2017. She seeks medical benefits for bilateral trigger finger, carpal tunnel syndrome, and cubital tunnel syndrome. Claimant also asserts Defendants are liable for attorney fees for unreasonable denial of these benefits.

Defendants assert that Claimant did not comply with the notice requirements of Idaho Code § 72-448, has not proven her work at Spears caused her carpal tunnel syndrome or cubital tunnel syndrome, and denial of her claim was not unreasonable.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. Joint Exhibits A-N, admitted at hearing.
3. The testimony of Claimant, Leticia Lua, Brenda Krug, and Bruce Simms taken at hearing.
4. The post-hearing deposition testimony of Tyler R. Wayment, M.D., taken by Claimant on September 19, 2018.

All outstanding objections are overruled and motions to strike are denied.

FINDINGS OF FACT

1. Claimant was born in 1964 and is right-handed. She was 54 years old and lived in Twin Falls at the time of the hearing.

2. Spears is a manufacturer of rigid PVC plumbing parts.

3. **Background.** Claimant was raised near Lovell, Wyoming and graduated from high school in 1982. During high school she worked picking rock. After completing high school Claimant worked as a waitress. In approximately 1985 she married and thereafter worked as a bartender and appliance salesperson. In 2000 she commenced working at Wal-Mart as a cashier, sporting goods and apparel associate. From approximately 2001 until 2004 Claimant worked with special needs children at the Mountain Home School District. From 2007 until 2009 she worked as a night manager at Big Smoke. Claimant later worked in Twin Falls as a customer service representative at Wal-Mart in apparel and sporting goods.

4. On June 23, 2013, Claimant suffered an accident at Wal-Mart when she tripped and fell to the floor, bruising her head, right shoulder, and right arm almost to her wrist. She was treated by Douglas Stagg, M.D., received physical therapy, and recovered.

5. Thereafter Claimant worked at Chobani for approximately five months. She initially worked in packaging and product inspection. Chobani later assigned Claimant to fill containers via a yogurt dispenser. In 2014, she worked at Shopko as a cashier during the Christmas season. Thereafter Claimant worked for a temporary employment agency that sent her to Glanbia where she tested product. Claimant next worked as assistant manager at a gas station convenience store for a year.

6. Prior to January 1, 2017, Claimant had no ongoing finger, hand, wrist, or elbow pain. She played video games frequently.

7. **Employment at Spears.** On January 2, 2017, Claimant commenced working full-time at Spears. She had applied for a packaging position, but was hired and assigned to the cutting line. Her duties on the cutting line included using hydraulic scissors to cut rigid PVC plastic plumbing parts from their molds. To further trim excess rigid plastic from the molded parts, Claimant used hand dykes, which she described as manually operated (non-hydraulic) wire cutting pliers. She testified that she was not very proficient using the hydraulic scissors and so each time she cut a piece of PVC she "would probably have to use them [hand dykes] on all of them, because I wasn't very good at using their hydraulics." Transcript, p. 126, ll. 9-11. By the fourth day of the first week, the palms and knuckles of both hands, both wrists, and both of her elbows hurt. Her right hand became so sore that she switched and used her left hand to cut until it also became sore. She periodically rotated positions at Spears between the cutting line, the carousel, and as a floater. The carousel and floater positions required less cutting.

8. During the week of January 9, 2017, Claimant continued to work at Spears with increasing bilateral hand pain. She told her backup lead, Leticia (Letty) Lua, that her hands were hurting and was advised that everyone's hands initially were sore when beginning to work on the cutting line. Claimant also told her main lead, Brenda Krug, that her hands were hurting. Brenda responded that this was normal for someone starting on the cutting line. Claimant's hand soreness progressed to where her fingers were "stuck" and she had difficulty opening and closing her hands.

9. In her pre-hearing deposition, Claimant testified:

> Q. BY MR. GARDNER: Now, do you recall an individual, either Letty or somebody at Spears, telling you that your hands would be sore as you did your job?
>
> A. Yes, sir.

Q. And did that person tell you that it would take some time for you to kind of get used to that?

A. Yes, sir.

….

Q. Tell me what she told you.

A. She said this happens normally to everybody that works on the cutting line.

Q. What happens?

A. That your hands start to hurt, start to swell.

Q. And did she tell you what to do about that.

A. Yes. I wore a brace on both of my hands.

Q. Who provided the brace to you?

A. I asked if I could—if she could provide one for me.

….

Q. BY MR. GARDNER: And was that after you had been working there for a while?

A. No. That was, like, within five days?

….

Q. And did you ever ask Lorraine if you could go see a doctor?

A. No.

Q. Did you ever tell Lorraine that you couldn't work because your hands were sore?

A. Yes.

Q. When did you tell her that?

A. Within a week when I couldn't open my hands anymore.

Q. So did you stay home from work?

A. No.

Q. So you continued to work?

A. Yes.

Exhibit J, p. 7.

10. Claimant also described an episode of debilitating hand pain while working on the cutting line:

> Q. BY MR. GARDNER: Was there a specific event that occurred while you were working that caused your hands to hurt?
>
> A. Yes, sir.
>
> Q. Can you tell me about that?
>
> A. Yes, sir. I was working on the cutting line and it got to the point where my hands froze and they turned black. I asked Letty to come over and take over my line. And Lorraine came with her and I said: I need—I can't do this. She's like: What's going on? And I was like: I can't open my hands anymore. They were literally stuck and it scared me. And I went off the floor, went to the bathroom, and put my hands in cold water for about 15 to 20 minutes before my hands got where I can open them again. Both the first and second assistant[s] were there to see that.
>
> Q. Did you ask to go see a doctor?
>
> A. No. They told me it was normal for that to happen.
>
> Q. But did you ask: Can I go see a doctor?
>
> A. Well, no, because they said it was normal for that to happen.
>
> Q. Okay, And I guess—so you never asked to see a doctor on this occasion?
>
> A. No because when I was sitting—when that happened, they said it was normal, that it would take some time for my hands to get used to that. I didn't even think about asking to go see a doctor because they said it was a normal thing, that people that work on the cutting line, that what happens to my hands happened to them as well.

Exhibit J, pp. 7-8. Claimant then returned to her position on the cutting line and completed her shift that day.

11. As Claimant continued working her assigned shifts, her hand pain worsened and persisted even after her work shift ended. Hand pain disrupted her sleep. She tried Tylenol, Icy Hot, and other over-the-counter medications without relief.

12. Although Claimant's hands hurt worse, her supervisors told her they would get better, so she did not ask to see a doctor. Claimant called in sick on January 4, 23, 24, and 27, 2017. She later testified this was probably due to her hand pain. Transcript, pp. 111-112. During January 2017, Claimant actually worked for approximately 16 days at Spears—a substantial part of that time on the cutting line.

13. On January 30, 2017, Spears packaging supervisor Bruce Simms visited with Claimant and formally evaluated her first month's performance at Spears. Claimant was cutting only approximately 14 PVC pieces per cycle but understood she was expected to cut 18 pieces per cycle.[1] She told Bruce her hands were hurting and asked if she could transfer to another position at Spears. Bruce responded that Claimant would have to work on the cutting line for 90 days before she could be considered for another position at Spears. Claimant believed she was at risk of being fired because her cutting rate was too slow. After the evaluation, she worked the remainder of the day. However, the next day Claimant did not return to work at Spears. She had ongoing pain in both hands and in her thumbs and elbows. She testified:

> Q. How long did you work at Spears?
>
> A. 33 days.
>
> Q. And what was your reason for terminating employment?
>
> A. I could no longer open my hands anymore or close them, and the pain was excruciating.

[1] Bruce later explained that a cycle may vary from 60 to 120 seconds. Thus, Claimant was expected to cut between nine and 18 pieces per minute, 60 times per hour. Bruce indicated an employee like Claimant may spend five to six hours per shift on the cutting line. Transcript, p. 202.

Q. Did you go see a doctor at that time?

A. No.

Q. Why not?

A. Health insurance, I had none.

Exhibit J, p. 7.

14. After ceasing to work at Spears, Claimant tried unsuccessfully to relieve her continuing hand pain with rest, over-the-counter medications, and other home remedies. In approximately March 2017, Claimant commenced working as a bakery clerk at Smiths Food Stores where she worked for approximately one year in customer service, packaged cookies, and baked French bread. She had to pay her bills so she worked in spite of continuing bilateral hand pain.

15. On April 17, 2017, Claimant went to the Industrial Commission Twin Falls office where she completed, with assistance, her First Report of Injury Or Illness describing her injury or condition as: "Hands Swell & Lock Up Both Hand [sic]." Exhibit N, p. 7. She listed a date of injury or illness at Spears of January 17, 2017. The First Report of Injury was filed April 18, 2017.

16. On April 18, 2017, Surety sent Claimant a notice that her claim was being investigated. Surety also sent Claimant an authorization to use and disclose medical records which Claimant signed and returned to Surety on or about April 24, 2017. At that time, Claimant still had received no expert medical care for her upper extremity symptoms.

17. On May 2, 2017, Defendants denied Claimant's claim citing Idaho Code § 72-439(2) that "an employer shall not be liable for any compensation for a non-acute occupational disease unless the employee was exposed to the hazard of such disease for a period

of sixty (60) days for the same employer" and stating: "Based upon our investigation to date, we do not find evidence to establish that your condition and need for treatment is the result of a work related occupational disease." Exhibit N, p. 4. After receiving Surety's denial letter, Claimant contacted Surety's adjuster, Chris Flores whom Claimant testified said "she couldn't do anything until I went and seen a doctor." Transcript, p. 98, ll. 11-12. Claimant's fingers were locked and receiving no direction from the adjuster as to a medical provider, Claimant scheduled an appointment with Amra Suljevic, NP.

18. On May 5, 2017, Claimant presented to nurse Suljevic, reporting she had been working as a cutting line operator at Spears and now had "bilateral hand pain and swelling" which nurse Suljevic noted was "Probably from overuse of her hands with cutting at work" and referred her for EMG testing. Exhibit F, pp. 1-2. On May 22, 2017, John Steffens, M.D., performed EMG testing which revealed abnormal nerve conduction of the median nerve at Claimant's wrists bilaterally. Exhibit F, p. 8. Dr. Steffens diagnosed bilateral carpal tunnel syndrome and sent Claimant to Tyler Wayment, M.D.

19. On June 19, 2017, Claimant presented to Dr. Wayment who recorded:

> Angelita Boutwell … presents today with bilateral hand numbness. She states she has been having trouble wit[h] her hand [sic] since January. She states that her hands stick and that all five digits in bilateral hands [sic]. She states she had to change positions at work because of the numbness. She has been having trouble sleeping and she is awaken [sic] with pain several times a night. She has a hard time holding things and she is dropping things all the time. She is constantly wearing braces on her hands and that doesn't help her.

Exhibit F, p. 11. Dr. Wayment assessed bilateral carpal tunnel syndrome and severe bilateral cubital tunnel syndrome. He performed trigger point injections which provided only temporary improvement.

20. On July 10, 2017, Dr. Wayment examined Claimant again and noted her symptoms had not improved. He recommended surgical treatment initially including "right index, middle, ring and small finger release, right endoscopic carpal tunnel release and right ulnar nerve transposition submuscular." Exhibit F, p. 18. Claimant was without insurance or resources to pay for surgery. She requested Surety pay for the surgery. Defendants denied responsibility therefore. Transcript, pp. 101-102.

21. In May 2018, Jessica Taylor, PA-C, assessed worsening bilateral carpal tunnel and bilateral cubital tunnel syndromes. Exhibit F, p. 32.

22. **Condition at the time of hearing.** At the time of hearing Claimant worked for Ross Clothing where she hung up apparel in spite of her bilateral upper extremity pain because she had to pay her bills. She continued to experience bilateral hand and elbow pain. Her hands were getting worse and she wore wrist splints most of the time—especially at night. Dr. Wayment continued to recommend and offer to perform surgical releases on her right hand and elbow, and then on her left hand and elbow.

23. **Credibility.** Having observed Claimant at hearing, and carefully compared her testimony with other evidence in the record, the Referee finds that Claimant is a credible witness and the testimonies of Leticia Lua, Brenda Krug, and Bruce Simms are largely consistent therewith. The Commission finds no reason to disturb the Referee's findings and observations on Claimant's presentation or credibility.

DISCUSSION AND FURTHER FINDINGS

24. 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).

25. **Occupational disease.** The first issue is whether Claimant suffered a compensable occupational disease. Claimant alleges, and Defendants deny, that she contracted the occupational disease of bilateral trigger finger, carpal tunnel syndrome, and cubital tunnel syndrome from her work at Spears.

26. The Idaho Workers' Compensation Law defines an "occupational disease" as "a disease due to the nature of an employment in which the hazards of such disease actually exist, are characteristic of, and peculiar to the trade, occupation, process, or employment ...." Idaho Code § 72-102(22)(a).

27. Idaho Code § 72-439 limits the liability of an employer for any compensation for an occupational disease to cases where (1) "such disease is actually incurred in the employer's employment," and (2) for a non-acute occupational disease, where "the employee was exposed to the hazard of such disease for a period of 60 days for the same employer." The 60-day period of exposure required by Idaho Code § 72-439 need not be a single continuous period. Jones v. Morrison-Knudsen Co., Inc., 98 Idaho 458, 567 P.2d 3 (1977). Furthermore, the law provides that:

> [w]hen an employee of an employer suffers an occupational disease and is thereby disabled from performing his work in the last occupation in which he was injuriously exposed to the hazards of such disease, ... and the disease was due to the nature of an occupation or process in which he was employed within the period previous to his disablement as hereinafter limited, the employee, ... shall be entitled to compensation.

Idaho Code § 72-437.

28. Disablement means "the event of an employee's becoming actually and totally incapacitated because of an occupational disease from performing his work in the last occupation in which injuriously exposed to the hazards of such disease," and "disability means the state of being so incapacitated." Idaho Code § 72-102(22)(c). Finally, "Where compensation is payable for an occupational disease, the employer, or the surety on the risk for the employer, in whose employment the employee was last injuriously exposed to the hazard of such disease, shall be liable therefore." Idaho Code § 72-439(3). However: "Nothing in these statutes indicates an intent to require that an employer who employs an employee who comes to the employment with a pre-existing occupational disease will be liable for compensation if the employee is disabled by the occupational disease due to an injurious exposure in the new employment." Reyes v. Kit Manufacturing Co., 131 Idaho 239, 241, 953 P.2d 989, 991 (1998).

29. In summary, under the statutory scheme, those with occupational disease claims must demonstrate (1) that they were afflicted by a disease; (2) that the disease was incurred in, or arose out of and in the course of, their employment; (3) that the hazards of such disease actually exist and are characteristic of and peculiar to the employment in which they were engaged; (4) that they were exposed to the hazards of such non-acute disease for a minimum of 60 days with the same employer; and (5) that as a consequence of such disease, they became actually and totally incapacitated from performing their work in the last occupation in which they were injuriously exposed to the hazards of such disease. Fowler v. Militec Defense Systems, 2014 IIC 0070 (2014). Claimant's occupational disease claim is examined in light of each of the above elements.

30. Disease. Nurse Suljevic and Dr. Steffens diagnosed Claimant with bilateral carpal tunnel syndrome. Dr. Wayment diagnosed Claimant with bilateral trigger finger, carpal tunnel

syndrome, and cubital tunnel syndrome. Claimant has proven she suffers bilateral trigger finger, carpal tunnel, and bilateral cubital tunnel syndrome.

31. Causation. Medical testimony to a reasonable degree of medical probability is required to prove a causal connection between the medical condition and the occupational exposure which caused it. Langley v. State, Industrial Special Indemnity Fund, 126 Idaho 781, 890 P.2d 732 (1995). "Probable" is defined as "having more evidence for than against." Fisher v. Bunker Hill Company, 96 Idaho 341, 344, 528 P.2d 903, 906 (1974).

32. Defendants vigorously deny that Claimant contracted and incurred an occupational disease due to her work at Spears. Instead, Defendants emphasize Claimant's video gaming, work at Chobani, and 2014 right hand injury at Wal-Mart as the current cause of her bilateral hand and elbow symptoms. Defendants also rely on the testimony of Bruce Simms, who previously worked at Chobani, that Claimant's previous jobs at Chobani and Glanbia were more hand intensive than her job at Spears, speculating that she must have developed carpal tunnel and cubital tunnel syndrome prior to commencing work at Spears. However, Mr. Simms is not a physician and there are no medical records supporting his speculation or any of Defendants' assertions. To the contrary, the record is devoid of any evidence that Claimant suffered ongoing upper extremity symptoms between approximately 2015 and January 2, 2017 when she began working for Spears.

33. The medical evidence uniformly attributes Claimant's upper extremity pathology to her work on the cutting line at Spear. On May 5, 2017, nurse Suljevic recorded Claimant's hand symptoms were "Probably from overuse of her hands with cutting at work." Exhibit F, p. 2. On June 5, 2017, Suljevic further recorded:

> Abnormal nerve conduction study due to the presence of median mononeuropathy at the wrist bilaterally. … Given the severity of her pain and dysfunction, consider surgical release.
>
> Again, this was caused by the repetitive use of her hands and wrists while she worked as a cutting line operator at Spears. She has not responded to conservative treatment. She was referred to Dr. Wayment. She will need surgical intervention.

Exhibit F, p. 10 (emphasis supplied).

34. Dr. Wayment recorded on June 19, 2017:

> All her fingers go numb. They are stinging, burning. She cannot use her fingers, she cannot make a fist just hurts too bad. She says she is working at Spears. They put her on the fish line and a month into it she could not tolerate it anymore. Things just hurt too bad. Her fingers, the whole thing she cannot move them. She was popping them back open and there was just extreme pain as a constant 9-10 out of 10 pain.
>
> …. She has severe tenderness to palpation of the A1 pulleys of the index, middle, ring, and small. …. Very positive Tinel's at wrist, positive Phalen's sign, positive ulnar nerve compression test, positive Tinel's at the cubital tunnel, positive elbow flexion test.
> ….
>
> Triggers, carpal tunnel and cubital tunnel.
> ….
>
> I do believe this all started when she was on that line at Spears, and I think it is all related to that original injury, which makes sense, as she just could not tolerate it. Hands got all flared up and they have not been able to calm down since.

Exhibit F, pp. 15-16.

35. In his post-hearing deposition, Dr. Wayment initially indicated that Claimant was working at Spears on a processing line cutting fish.[2] The following exchange ensued:

> Q. [by Mr. Petersen] And did she tell you what she was doing to cause the onset of the hand symptoms?
>
> A. She was working at Spears at the time.

[2] This appears to have been simply a mistaken assumption upon hearing Claimant's report that she was working on a cutting line that she was working on a fish cutting line when in fact she was working on a PVC plastic cutting line.

Q. Do you know what Spears is?

A. Completely, probably not right now. But from what I understand, it's a fish place and they process trout. No? I guess I don't know. I will say, no, I do not.

Q. Okay. It is a place where they—her job was cutting plastic.

A. Okay. Oh, yeah.

Q. Have you seen any other cases from Spears?

A. Yes, I have.

Q. What kind of cases were those?

MR. GARDNER: Objection. Relevance.

THE WITNESS: Just hand stuff.

Q. (BY MR. PETERSEN) Do you understand what the job was at Spears?

A. I looked back over my notes. She was in the manufacturing lines doing hand work, from what I could best understand from my notes, looking at what she had told me.

Wayment Deposition, p. 6, l. 11 through p. 7, l. 7.

36. Dr. Wayment reaffirmed his conclusion that Claimant's work at Spears caused her bilateral carpal and cubital tunnel syndromes resulting in her need for surgical intervention.[3] He explained:

A. …. It's not infrequent that we see patients that have been in manufacturing jobs that get that inflamed, that sensitive that their hands just don't tolerate, until we put the steroid in, modify the work a little bit, and then see if we can see any benefit in helping to relieve their symptoms.

[3] Dr. Wayment clearly understood from the beginning that Claimant performed hand work on a production line at Spears. Additionally, as noted in Claimant's briefing, JRP 10(E)(4) expressly provides: "Experts testifying post-hearing may base an opinion on exhibits and evidence admitted at hearing as well as on expert testimony developed in post-hearing depositions."

> Q. And I'll represent to you that she started working at Spears on January 2, 2017 and worked through January 30, 2017. You say you related it to the work at Spears. What made you come up with that opinion?
>
> A. Just because it started back in January. She never got any—nothing ever changed. And so she hadn't—the treatment that she had seen some Occ. Health at that point had never, to me addressed the fundamental problems, and, therefore, that's why she still wasn't any better.
>
> Q. Okay. Is that based upon a reasonable degree of medical probability?
>
> A. Yes.

Wayment Deposition, p. 11, l. 11 through p. 12, l. 4.

37. Dr. Wayment agreed that Claimant's disease condition "having a sudden onset, sharp rise, and short course," would be described as acute. Wayment Deposition, p. 14, ll. 20-21.

38. Consistent with Dr. Wayment's observations, no medical expert has noted symptoms of trigger finger, carpal tunnel, or cubital tunnel syndrome in any of Claimant's medical records prior to her work at Spears. Defendants have presented no expert medical evidence refuting the conclusions of Claimant's treating providers. Claimant has proven she developed bilateral trigger finger, carpal tunnel syndrome, and cubital tunnel syndrome from her work at Spears in January 2017.

39. Peculiar hazard. In addition to proving actual causation, Claimant must also prove that the hazards of the disease are characteristic of and peculiar to her occupation.

40. In Mulder v. Liberty Northwest Insurance Co. 1998 IIC 1433 (1998), the Commission considered the description of Mulder's job activities and expert medical evidence that such activities were peculiar risks for causing carpal tunnel and concluded that the hazards to which Mulder was exposed at work "may be distinguished from the general run of occupations in that exposure to long periods of repetitive upper extremity motions, including writing and keyboarding ... are not characteristic of all occupations" but were characteristic of

Mulder's work duties. Mulder, 1998 IIC 1433 p. 6. On appeal to the Idaho Supreme Court, defendants asked the Court to take judicial notice that virtually all employees drive, write, and keyboard. The Court declined to do so and instead observed that while a great number of occupations required such activities, an equally great number did not. The Court affirmed the Commission's conclusion, finding that substantial and competent evidence supported the Commission's determination that Mulder's duties including: "exposure to long periods of repetitive upper extremity motions ... [is] not characteristic of all occupations." Mulder v. Liberty Northwest Insurance Co., 135 Idaho 52, 57, 14 P.3d 372, 377 (2000). The Court concluded:

> The phrase, "peculiar to the occupation," is not here used in the sense that the disease must be one which originates exclusively from the particular kind of employment in which the employee is engaged, but rather in the sense that the conditions of that employment must result in a hazard which distinguishes it in character from the general run of occupations.

Mulder, 135 Idaho at 56, 14 P.3d at 376, quoting Bowman v. Twin Falls Const. Co. Inc., 99 Idaho 312, 323, 581 P.2d 770, 781 (1978), overruled on other grounds DeMain v. Bruce McLaughlin Logging, 132 Idaho 782, 979 P.2d 655 (1999) (emphasis in original).

41. Referring to the Court's analysis in Mulder, the Commission has observed: "It is instructive that the Court approved the Commission's focus on whether the hazard causing the disease was characteristic of and peculiar to the occupation, not on whether the frequency of the disease was greater in the occupation than other occupations." Lineberry v. Elwood Staffing, 2018 WL 1830486, at 13 (Idaho Ind. Com. Feb. 2, 2018).

42. Defendants herein assert:

> The key evidence that must be presented in this case is some explanation as to how the work conditions at Spears resulted in a hazard which is distinguishable, in character, from the general run of occupations. Defendants submit that this

> type of evidence is beyond the understanding of a lay witness and would require some expert testimony, none of which was submitted in the case.

Defendants' Post-Hearing Response Brief, p. 15.

43. Contrary to Defendants' assertion, as noted above, Dr. Wayment indicated it was not infrequent to see patients, such as Claimant, "that have been in manufacturing jobs that get that inflamed, that sensitive that their hands just don't tolerate" such repetitive hand work and develop upper extremity conditions such as Claimant's that require treatment. Wayment Deposition, p. 11. To the extent expert evidence may be deemed necessary to establish the peculiar hazard of the cutting line at Spears, Dr. Wayment's opinions suffice.

44. Even more persuasive in the present case is the overwhelming evidence that the cutting line work at Spears required significant hand work. Brenda testified that Spears issues wrist assists with their safety equipment to all new hires and she informed all new employees that their hands may be sore when they first start on the cutting line. Transcript, p. 158, ll. 5-15. Brenda testified that everybody had hand pain when they start this job. Transcript, p. 181, ll. 1-9. Spears issued Claimant a wrist band upon hiring her. Claimant testified that Leticia told her "Everybody—their hands hurt here." Transcript, p. 74, ll. 19-20. Bruce testified that he tells new employees they will feel hand soreness with the work. Transcript, p. 192. He also affirmed that Spears stocks two types of hand braces—a simple hand brace and a more intensive hand brace. Additionally, Spears charges its supervisors with training according to the "cutter training checklist" which includes the charge to: "Explain safety procedures and importance …. Set cutters down whenever possible and stretch hands." Exhibit M, p. 30. Hand braces for all new hires and directions to stretch hands whenever possible are not characteristics of the run of the mill occupations.

45. Defendants' casual dismissal of Claimant's reports of hand pain further underscores how pervasive this condition was in the cutting line at Spears. Everyone had hand pain, so her hand pain was not considered unusual. Such hand pain is not the usual experience with every type of employment, but was characteristic of and peculiar to Claimant's work on the cutting line at Spears.

46. Additionally, Claimant indicated that other individuals working on the cutting line at Spears had undergone carpal tunnel surgery. Leticia testified she was aware of two other individuals at Spears that had carpal tunnel syndrome. Dr. Wayment testified he had seen other hand cases from Spears. Wayment Deposition, p. 7, l. 1.

47. These facts establish that the work on the cutting line at Spears is more hand intensive than the run of the mill occupations. The hazards of repetitive forceful use of her hands, to which Claimant was exposed during her work for Spears, are characteristic of the cutting line and can be distinguished from the general run of occupations in that they are not characteristic of all occupations.

48. Claimant has proven that the hazards of carpal tunnel syndrome and cubital tunnel syndrome are characteristic of and peculiar to her occupation as a cutting line operator at Spears.

49. Acute vs. Non-Acute. The medical evidence, corroborated by Claimant's testimony, establishes that Claimant's occupational disease is of the acute variety. The 60-day exposure period required by Idaho Code § 72-439 is not applicable to the present case.

50. Incapacity. In addition to showing that her bilateral wrist condition is causally related to her work at Spears, Claimant must also show that she was "actually and totally incapacitated because of an occupational disease from performing [her] work in the last occupation in which [she] was injuriously exposed to the hazards of such disease." Idaho Code

§ 72-102(22)(c). Disablement has been construed "as the state of becoming actually and totally incapacitated from further performing the particular tasks that induced such incapacity." Kitchen v. Tidyman Foods, 130 Idaho 1, 3, 936 P.2d 199, 201 (1997) (citing Blang v. Liberty Northwest Insurance Corporation, 125 Idaho 275, 277, 869 P.2d 1370, 1372 (1994)).

51. By February 1, 2017, Claimant left her position at Spears because she was no longer able to tolerate the resulting bilateral hand pain. She was incapacitated from performing her usual work duties on the cutting line at Spears due to her bilateral upper extremity pathology.

52. Claimant has proven that she contracted and incurred the occupational disease of bilateral trigger finger, carpal tunnel syndrome, and cubital tunnel syndrome from her employment at Spears. Claimant has established through medical testimony an acute occupational disease, thus not requiring sixty days of exposure. Finally, Claimant has also proven that she was disabled as a result of her occupational disease and that the hazard of such disease was peculiar to or characteristic of her occupation as a cutting line operator. Claimant has proven she suffered a compensable occupational disease.

53. **Notice of occupational disease.** Having determined that Claimant suffers from a compensable occupational disease arising from the hazards to which she was exposed in the course of her January 2017 employment, the Commission must next consider Defendant's assertion that notice was not timely given. Idaho Code § 72-448(1) which provides in part: "Unless written notice of the manifestation of an occupational disease is given to the employer within sixty (60) days after its first manifestation … all rights of the employee to worker's compensation due to the occupational disease shall be forever barred." Manifestation is defined by Idaho Code § 72-102(19) as "the time when an employee knows that he has an occupational

disease, or whenever a qualified physician shall inform the injured worker that he has an occupational disease."

54. The definition of manifestation is in the disjunctive. It is either the date on which Claimant "knows" she has an occupational disease or the date on which a physician informs the Claimant that she has an occupational disease, whichever occurs first. See Sundquist v. Precision Steel & Gypsum, Inc., 141 Idaho 450, 111 P.3d 135 (2005).

55. A "physician," as that term is defined at Idaho Code § 72-102(25), first informed Claimant of the relationship between her work and her condition on May 5, 2017. If this is the date of manifestation then Claimant's written notice is timely, inasmuch as it was given not only within 60 days following the date of first manifestation, but before Claimant was actually evaluated by Nurse Soldjeck. However, the fact that Claimant gave written notice on April 18, 2017 suggests that the issue of manifestation must also be evaluated from the standpoint of whether Claimant can be said to have "known" that she suffered from an occupational disease prior to May 5, 2017, independent of an opinion from a competent medical authority.

56. Claimant's testimony, and that of her supervisors, clearly establishes that even while employed by Employer, Claimant associated her bilateral hand complaints with the work that she was doing. Claimant developed hand pain while performing her work, and the association between her work and her discomfort was further augmented by the information she obtained from Employer that most, if not all, employees who performed the type of work to which Claimant was assigned, develop hand pain, which is ordinarily temporary. Accordingly, it might be argued that even before she left her employment in late January of 2017, Claimant "knew" that her bilateral upper extremity complaints were causally related by the demands of her employment. This conclusion was informed not only by her own experience, but also by the

experience of others, as explained by her Employer. In Dahlke v. Ashgrove Cement Co., 2014 IIC 0030 (2014) the Commission considered what must be demonstrated before it can be said that an injured worker without medical expertise "knows" that her condition is causally related to the demands of her employment. As developed in Dahlke, the inquiry is not as straightforward as it may at first seem. For example, while it is easy to understand that an individual cannot be said to "know" a causal proposition that subsequently turns out to be false, it also turns out that it is not enough to show that the relationship the injured worker believes in fact turns out to be true. In addition, the individual's belief in the true proposition must be justified in some fashion. As we said in Dahlke, "no one can be said to gain knowledge solely by believing something that subsequently turns out to be true." As an example, an individual might come to the conclusion that his disease is related to the demands of his employment because of some peculiar superstition that he happens to have. Even if it is subsequently demonstrated by competent medical evidence that such a Claimant's disease actually is related to his employment, the Claimant could not be said to have "known" about the causal relationship because his conviction lacked a satisfactory justification. In Dahlke, the Commission noted that it will be a small percentage of cases in which it can be demonstrated that a non-medically trained claimant "knew" of the work-related nature of a disease without being so advised by competent medical authority. However, such proof is not impossible:

> Consider the following example: Claimant works in a lead smelter where he is exposed on a daily basis to contact with lead. Over the years, a number of Claimant's co-workers have received medical diagnoses of lead poisoning. They all developed characteristic signs and symptoms of lead poisoning, and these signs and symptoms were well-known to Claimant. Eventually, he too develops what he knows to be the signs and symptoms of lead poisoning. He also knows that his workplace is the only place where he has been exposed to lead. He concludes that he has developed occupationally-related lead poisoning. His knowledge is based on other cases of lead poisoning among his co-workers, an understanding of the signs and symptoms of lead poisoning, and the fact that he

> was not exposed to lead anyplace else. Claimant's knowledge that he has lead poisoning is appropriately justified and therefore he can be said to "know" within the meaning of the statute that he has a work-related disease.

The hypothetical scenario discussed in Dahlke bears some similarities to the facts of this case. Claimant's association of her work with the development of upper extremity complaints was validated by information she received via her supervisors that most, if not all, employees who perform the tasks in question develop soreness of the hands, at least on a temporary basis. On this evidence, it is arguable that Claimant's belief in the relationship between her complaints and her work is appropriately justified. The argument would be that Claimant's date of manifestation was certainly no later than the end of January, 2017. Therefore, Claimant's April 18, 2017 written notice to Employer is untimely.

57. However, the Commission need not reach a conclusion concerning when Claimant independently "knew" that her condition was related to the demands of her employment because her lack of timely written notice required by Idaho Code § 72-448 is excused by the provisions of Idaho Code § 72-704. That section provides:

> 74-704 SUFFICIENCY OF NOTICE - KNOWLEDGE OF EMPLOYER. A notice given under the provisions of section 72-701 or section 72-448, Idaho Code, shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place, nature or cause of the injury, or disease, or otherwise, unless it is shown by the employer that he was in fact prejudiced thereby. Want of notice or delay in giving notice shall not be a bar to proceedings under this law if it is shown that the employer, his agent or representative had knowledge of the injury or occupational disease or that the employer has not been prejudiced by such delay or want of notice.

Whether the Employer, his agents or representatives had actual knowledge of the occupational disease is a question of fact. With regard to this question, the inquiry is whether the Employer had "considerable knowledge" of the occupational disease. Murray-Donohue v. Nat. Car Rental

Licensee Assn., 127 Idaho 337, 900 P.2d 1348 (1995); Gibson v. Ada County Sheriff's Office, 147 Idaho 491, 211 P.3d 100 (2009)).

58. Given the testimonies of Claimant, Leticia, Brenda, Bruce, and Claimant's first report of injury, the record establishes that Defendants had knowledge that Claimant's hands hurt, that they started hurting within the first week of her work at Spears, and that she attributed it to work on the cutting line at Spears. Defendants had actual knowledge Claimant's continuing bilateral hand pain was caused by her work on the cutting line at Spears. From the testimony of Leticia, Brenda, and Bruce, as well as Claimant, hand pain was the usual and expected result of everyone commencing work on the cutting line. Spears' representatives assured Claimant that everyone had hand pain initially when working on the cutting line, her experience was like everyone else, and it would take a while for her hand pain to pass. Defendants had knowledge that Claimant had such significant hand pain that she had to be relieved of her cutting duties by a supervisor for a period during her shift and soak her hands in cold water before returning to the cutting line. Defendants' knew Claimant attributed her hand pain to her work at Spears. Defendants knew hand pain was a common complaint of cutting line operators and Defendants themselves attributed Claimant's hand pain to her work on the cutting line at Spears. Defendants knew Claimant wore the standard issued hand braces and due to her ongoing hand pain she had been issued and wore more supportive hand braces which were checked out for her by her main supervisor. Defendants knew she had reported her hand pain to three supervisors. Defendants knew her cutting production speed was below expectations. Defendants knew she had taken several days of sick leave from work. Defendants knew that by the time of her formal evaluation after one month as a cutting line operator that her hand pain although perhaps improving, had been present for three weeks and had not resolved.

59. Defendants had considerable knowledge of Claimant's continuing bilateral hand pain from her work on the cutting line prior to Claimant's last day of work.

60. Assuming, without deciding, that Claimant's date of manifestation predates the date on which she was first advised by competent medical authority of the work related nature of her occupational disease, the potential untimeliness of her April 18, 2017 written notice is excused by Employer's "considerable knowledge" of Claimant's injury in January of 2017.

61. **Medical care.** The next issue is Claimant's entitlement to medical care. Idaho Code § 72-432(1) mandates that an 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 required by the employee's physician or needed immediately after an injury or disability from 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. Idaho Code § 72-432(1). Of course an employer is only obligated to provide medical treatment necessitated by the industrial accident. The employer is not responsible for medical treatment not related to the industrial accident. Williamson v. Whitman Corp./Pet Inc., 130 Idaho 602, 944 P.2d 1365 (1997).

62. Having proven that she suffers a compensable occupational disease, Claimant is entitled to reasonable medical care therefore, including past medical care and prospective medical care including surgery recommended by Dr. Wayment for treatment of her bilateral trigger finger, carpal tunnel syndrome, and cubital tunnel syndrome.

63. **Attorneys Fees.** Attorney fees was a noticed issue, however, neither party argued the issue in briefing, and therefore it is deemed waived.

CONCLUSIONS OF LAW AND ORDER

1. Claimant need not prove the timeliness of her written notice because Employer had considerable knowledge of her occupational disease.
2. Claimant has proven she contracted and incurred the compensable acute occupational disease of bilateral trigger finger, carpal tunnel syndrome, and cubital tunnel syndrome from her employment at Spears.
3. Claimant has proven her entitlement to medical care including but not limited to past medical care and prospective bilateral trigger finger, carpal tunnel, and cubital tunnel surgical release as recommended by Dr. Wayment.
4. Claimant's claim for attorney's fees is deemed waived.
5. Pursuant to Idaho Code § 72-718, this matter is final to all matters adjudicated.

DATED this __3rd__ day of __May__, 2019.

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 ___3rd___ day of _____May_____, 2019, 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:

DENNIS R PETERSEN
PO BOX 1645
IDAHO FALLS ID 83403-1645

DAVID P GARDNER
412 WEST CENTER STREET SUITE 2000
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_____/s/_____