

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

CATHERINE HUNTER,

Claimant,

v.

THE GUARDIANS ACADEMY, LLC

Un-Insured Employer,  
Defendants.

**IC 2021-015482**

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

**FILED**

**DEC 13 2021**

**INDUSTRIAL COMMISSION**

**INTRODUCTION**

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee John Hummel. Taylor Mossman-Fletcher, of Boise, represented Claimant, Catherine Hunter. This matter came before the Commission pursuant to an Order of Default, and a hearing was not held. Claimant filed an Application for Default in the form of an Affidavit and supporting exhibits as default proof. Defendant, The Guardian Academy, LLC, a non-insured Employer, did not appear or otherwise submit a defense prior to the entry of Default. The matter came under advisement on October 29, 2021.

**ISSUES**

The issues to be decided by the Commission as the result of the Default are as follows:

1. Whether and to what extent Claimant is entitled to medical care;
2. Whether and to what extent Claimant is entitled to Temporary Partial and/or Temporary Total Disability benefits (TPD/TTD); and

3. Whether and to what extent Claimant is entitled to a 10% penalty, costs and attorney fees pursuant to Idaho Code § 72-210.

All other issues are reserved.

### **CONTENTIONS OF THE PARTIES**

Claimant argues that she sustained an injury in the employment of Employer on May 14, 2021 that required medical care and disabled her from working. She claims reimbursement for past medical expenses in the total amount of \$9,334.74, together with past temporary disability benefits in the total amount of \$17,578.00. Claimant further argues that she is not at maximum medical improvement and therefore is entitled to continuing medical and temporary disability benefits. Finally, she argues that she is entitled to a statutory penalty pursuant to Idaho Code § 72-210 in the amount of 10% of the total amount of her compensation costs, together with costs and reasonable attorney fees.

Employer did not file an Answer to the Complaint or otherwise appear or defend this action prior to the entry of Default.

### **COURSE OF THE PROCEEDINGS**

Claimant filed a Complaint with the Commission on August 3, 2021. Although served with a copy of the Complaint, Employer did not file an Answer or otherwise appear and defend this action prior to Default. Claimant filed a Notice of Intent to Take Default on September 2, 2021. The Referee entered an Order of Default on September 28, 2021. On October 28, 2021, Claimant filed exhibits in support of and together with her Application for Default. On November 17, 2021, Claimant filed her Affidavit in Support of Application for Award or Judgement.

## EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. Claimant's Application for Default;
3. Exhibits 1 through 9; and
4. Claimant's Affidavit.

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

## FINDINGS OF FACT

1. **Employer.** At all relevant times, Employer operated a school in Meridian, Idaho. Claimant's Application at 1, ¶ 1; Ex. 1.
2. Administrative notice is taken that, at all relevant times, Employer failed to secure payment of compensation as required by the Idaho Workers' Compensation Act.
3. **Employment of Claimant.** Employer hired Claimant to perform the duties of a teacher on or about December 1, 2020. Her yearly salary was \$50,000 per year, earning \$961.54 weekly. Claimant's Appl. at 1, ¶1; Claimant's Affidavit at 1, ¶2.
4. **Industrial Accident.** On May 14, 2021, Claimant was performing her regular duties as a teacher. Upon exiting her classroom, she bumped into a low beam in a low doorway, hitting her head and suffering a head injury. Claimant's Appl. At 1, ¶2; Claimant's Affid. at 1, ¶3; Ex. 1.
5. Claimant reported the injury to Employer on the date that it occurred. Claimant's Appl. at 1, ¶3; Claimant's Affid. at 2, ¶4. On June 14, 2021, Claimant filed a Notice of Injury with the Industrial Commission. Claimant's Appl. At 1, ¶3; Claimant's Affid. at 2, ¶4; Ex. 1.

6. **Medical Care.** Claimant first sought medical treatment for her injury on the date that it occurred, May 14, 2021. She underwent evaluation and treatment by Nurse Practitioner John-Paul Denham and Stephanie A. Bodes, M.D., at Saint Luke's Regional Medical Center, emergency department, in Meridian, Idaho. NP Denham noted in pertinent part as follows: "53-year-old female presents for evaluation of head injury that occurred at work at approximately 10:30 this morning. She reports that she struck her head on a shelf and has since been experiencing dizziness, nausea and being shaky." A coworker who accompanied Claimant to the emergency department indicated that Claimant was tremulous, and her eyes were dilated after the injury. Claimant's chief complaint was headache. Claimant had CT scans of her head and neck, both of which were unremarkable. Dr. Bodes' diagnosis was acute closed head injury with mild concussion, cervical strain. Dr. Bodes advised Claimant to rest for the next few days, ice her head, and not undertake any vigorous physical activity during that time. Claimant also received medical advice that headaches may continue for several weeks or even up to a month. She received further advice to take Tylenol or Motrin for headache. Dr. Bodes restricted Claimant from working and then referred her to Saint Luke's Occupational Medicine Clinic. Ex. 2; Claimant's Affid. at 2, ¶5.

7. Claimant attended the Saint Luke's Occupational Medicine Clinic on May 18, 2021. Nurse Practitioner Kathryn G. Cochran examined Claimant and opined that the "most likely cause [of Claimant's symptoms] was the work injury." NP Cochran's diagnostic impression of Claimant was concussion, strain of neck muscle, and closed head injury. Treatment recommendations included rest, Tylenol, and Ibuprofen. NP Cochran ordered diagnostic tests, including a CT scan of the head and a CT scan of the spine, both which did not reveal any abnormalities. Ex. 2.

8. NP Cochran referred Claimant back to the emergency department of Saint Luke's due to a concern that she might have a brain bleed. Claimant received transport via wheelchair to the ED. Examination there revealed a normal neural examination. Ex. 2.

9. In a telephone call with NP Cochran on May 19, 2021, Claimant denied any worsening or increase in symptoms. Claimant indicated that she no longer worked for Employer and was returning to her home state of North Carolina to be with family. She asked for a referral to a concussion clinic in North Carolina. Ex. 2.

10. NP Cochran scheduled Claimant for a follow-up evaluation with Cody D. Heiner, MD, a physician with Saint Luke's Boise Concussion Clinic, a division of Occupational Medicine, for May 21, 2021. Dr. Heiner considered both occupational and non-occupational etiologies for Claimant's condition, and concluded that it was likely work-related, on a more probably than not basis. Dr. Heiner further prescribed both physical and cognitive rest as well as analgesics for pain. Claimant reported the same symptoms as before, however her headaches were milder. Ex. 2.

11. On August 4, 2021, Claimant sought treatment for her concussion/head injury/neck injury at the Carolina Neurology Center in Hendersonville, North Carolina. She reported daily, chronic headaches, memory difficulties, heat intolerance, light sensitivity, language disruption, double vision while working on a computer, dizziness, weakness, nausea, and sleep disruption, and pain in her neck. Aneeta J. Gupta, MD, diagnosed Claimant with a mild traumatic brain injury (TBI) with significant vestibular involvement. Dr. Gupta prescribed physical therapy and vestibular therapy. Ex. 9.

12. Claimant sought treatment for her neck pain at Myers Chiropractic and Functional Health with Dr. Brent Meyers, D.C., CCSP, on October 27, 2021. Dr. Meyers noted that

Claimant's problem began in May 2021 when she had a concussion. When palpitated by Dr. Meyers, Claimant felt worse symptoms and was very sensitive even to the lightest of touch. Dr. Meyers recommended that she seek a "gentler" therapy than chiropractic. Ex. 9.

13. Keith Sales, DPT, of AVORA Balance & Dizzy Center, evaluated Claimant for physical therapy on October 22, 2021. Claimant reported that she had a concussion in May 2021 and was experiencing dizziness and giddiness, unsteadiness on feet, and headaches. The diagnosis was postconcussional syndrome. DPT Sales halted testing of Claimant because she reported significant symptoms and had an inability to complete "smooth pursuits." He advised Claimant to consider medical treatment of her anxiety symptoms so that she could complete PT testing. Ex. 9.

14. **Medical Costs.** Claimant provided an itemized summary of her costs together with receipts for medical care due to the industrial accident between May 14, 2021 and October 27, 2021. These medical bills totaled \$8,820.84. Ex. 6. Claimant's out of pocket expenses (co-pays) appear to be included in these medical bills.

15. Claimant submitted an itemization of her mileage incurred in attending medical appointments for the record. The total mileage reported was 578.4 miles. Ex. 6. The total amount for mileage reimbursement was \$323.90.

16. **Temporary Disability.** Claimant submitted a calculation of temporary total disability benefits (TTD) for the record, based upon her inability to work following the industrial accident. *See*, Claimant's Appl. at 2, ¶2. Based upon an average weekly wage of \$961.53 per week, the compensation rate of 67% AWW = \$644.22 (first 52 weeks). Claimant has been unable to work since the date of the accident on May 14, 2021. Thereafter, the date of disability for calculating TTDs started May 17, 2021 For the time period May 17, 2021 through October

31, 2021 (27 weeks and 2 days), at the compensation rate of \$644.22, the total amount of TTDs was \$17,578.00.

### **DISCUSSION AND FURTHER FINDINGS**

17. 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).

18. **Medical Treatment.** An employer shall provide reasonable medical care for a reasonable time after an injury. Idaho Code § 72-432(1). A "reasonable time" includes the period of recovery before medical stability but may include a longer period. *Jarvis v. Rexburg Nursing Center*, 136 Idaho 579, 38 P.3d 617 (2001). Reasonable medical treatment benefits may continue for life; there is no statute of limitation on the duration of medical benefits under Idaho Workers' Compensation Law.

19. A claimant bears the burden of showing that medical treatment required by a physician is reasonable. Idaho Code § 72-432(1). A claimant must support his or her workers' compensation claim with medical testimony that establishes compensability to a reasonable degree of medical probability. *Hope v. ISIF*, 157 Idaho 567, 572, 338 P.3d 546, 552 (2014), citing *Sykes v. CP Clare & Co.*, 100 Idaho 761, 764, 605 P.2d 939, 942 (1980). The reasonableness of treatment is dependent upon the totality of the facts and circumstances of the individual being treated. *Harris v. Independent School District No. 1*, 154 Idaho 917, 303 P.3d 605 (2013). Totality of the facts and circumstances is a factual determination, but not a

retrospective analysis with the benefit of hindsight. *Chavez v. Stokes*, 158 Idaho 793, 353 P.3d 414 (2015).

20. It is for the physician, not the Commission, to decide whether the treatment is required; the only review the Commission is entitled to make is whether the treatment was reasonable. *Sprague v. Caldwell Transportation, Inc.*, 116 Idaho 720, 779 P.2d 395 (1989).

21. This is a default case and Claimant has not provided the deposition testimony of a physician in connection with her default proof. Nevertheless, Claimant has provided sufficient information in her Affidavit and the accompanying medical exhibits to show that the medical expenses she incurred while treating her industrial injury were both necessary and reasonable. Furthermore, Dr. Heiner's medical records contain a specific opinion relating the industrial accident to Claimant's condition, including her concussion.

22. For the foregoing reasons, Claimant is entitled to recover the costs of the medical treatment that she received in connection with her industrial injury in the total amount of \$8,820.84. Furthermore, pursuant to *Neel v. Western Construction, Inc.*, 147 Idaho 146, 149, 206 P.3d 852, 855 (2009), Claimant is entitled to recover 100% of the invoiced amounts of these medical expenses that she incurred and for which Defendant denied responsibility.

23. Claimant has not yet reached maximum medical improvement, Claimant's Affid. at 2, ¶7, and is therefore entitled to recover from Defendant such further amounts necessary to compensate her for ongoing and future medical care.

24. **Temporary Disability Benefits.** The next issue is Claimant's entitlement to 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. By reason of her industrial injury, Claimant entered into a period of disability which is still ongoing. Claimant is entitled to recover TTDs for the period May 17, 2021 through October 31, 2021 in the total amount of \$17,578.00, as shown in her Application, Affidavit and Exhibits.

26. Claimant is further entitled to ongoing and future TTDs after October 31, 2021, until such time as she reaches medical stability or the *Malueg*, 111 Idaho at 791-92, 727 P.2d at 1219-20, conditions apply.

27. **Penalty, Costs, & Attorney Fees.** Idaho Code § 72-210 provides as follows:

EMPLOYER’S FAILURE TO INSURE LIABILITY. If an employer fails to secure payment of compensation as required by this act, an injured employee, or one contracting an occupational disease, or his dependents or legal representative in case death results from the injury or disease, may claim compensation under this law and shall be awarded, in addition to

compensation, an amount equal to ten per cent (10%) of the total amount of his compensation together with costs, if any, and reasonable attorney's fees if he has retained counsel.

Employer failed to secure the payment of workers' compensation as required by statute. Claimant is entitled to recover 10% of her total compensation, as follows: medical costs, \$8,820.84 + mileage, \$323.90 + TTDs, \$17,578.00 = total compensation, \$26,722.74 x 10% = \$2,672.27. Claimant is therefore entitled to recover \$2,672.27 as a penalty for Employer's failure to secure payment of compensation as required by the Idaho Workers' Compensation Act, pursuant to Idaho Code § 72-210.

28. Claimant's Application argues that she is entitled to recover a contingent attorney fee based upon the total amount of her claimed total compensation. *See*, Claimant's Appl. at 2, ¶3. Claimant is entitled to recover attorney fees pursuant to Idaho Code § 72-210, provided that her counsel provides the Commission with an affidavit of costs and attorney fees that complies with IDAPA § 17.01.01.802.02 and the factors provided by *Hogaboom v. Economy Mattress*, 107 Idaho 13, 684 P.2d 990 (1984).

29. **Retention of Jurisdiction.** Good cause exists for the Commission to retain jurisdiction over the reserved issues beyond the applicable statute of limitations. Claimant has complied with applicable time limitations for notice, claim filing, and complaint filing, and the Complaint alleged the reserved issues in addition to the ones at issue in this decision.

30. For the foregoing reasons, the Commission should retain jurisdiction over this case on the reserved issues beyond the applicable statute of limitations.

### CONCLUSIONS OF LAW

1. Claimant is entitled to recover medical expenses in the total amount of \$9,144.74.

2. Pursuant to *Neel v. Western Construction, Inc.*, 147 Idaho 146, 149, 206 P.3d 852, 855 (2009), Claimant is entitled to recover 100% of the invoiced amounts of these medical expenses that she incurred, and that Defendants did not reimburse.

3. Claimant is entitled to recover TTDs in the total amount of \$17,578.00 for the period May 17, 2021 through October 31, 2021.

4. Claimant is entitled to recover such reasonable and necessary ongoing and future medical expenses as may be required by her physicians.

5. Claimant is entitled to recover ongoing and future TTDs provided that she has not reached MMI or the *Malueg* conditions do not apply.

6. Claimant is entitled to recover \$2,672.27 as a penalty for Employer's failure to secure payment of compensation as required by the Idaho Workers' Compensation Act, pursuant to Idaho Code § 72-210.

7. Defendant Employer is liable for costs and attorney fees pursuant to Idaho Code § 72-210 due to a failure to secure compensation as required by the Idaho Workers' Compensation Act. Claimant's counsel shall, within twenty-one (21) days of the entry of the Commission's decision, file with the Commission a memorandum of attorney fees and costs incurred in counsel's representation of Claimant in connection with these benefits, and an affidavit in support thereof. The memorandum shall be submitted for the purpose of assisting the Commission in discharging its responsibility to determine reasonable attorney fees and costs in the matter. *See, Hogaboom v. Economy Mattress*, 107 Idaho 13, 18, 684 P.2d 900, 995 (1984).

8. The Commission shall retain jurisdiction over the reserved issues beyond the applicable statute of limitations.

## 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 29<sup>th</sup> day of November, 2021.

INDUSTRIAL COMMISSION



John C. Hummel, Referee

ATTEST:

  
Assistant Commission Secretary

## CERTIFICATE OF SERVICE

I hereby certify that on the 13<sup>th</sup> day of December, 2021, 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:

TAYLOR MOSSMAN-FLETCHER  
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KRISTEN MONROE, REGISTERED AGENT  
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BOISE, ID 83705



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

CATHERINE HUNTER,

Claimant,

v.

THE GUARDIANS ACADEMY, LLC,

Un-Insured  
Employer,  
Defendants.

IC 2021-015482

**ORDER**

**FILED**

**DEC 13 2021**  
**INDUSTRIAL COMMISSION**

Pursuant to Idaho Code § 72-717, Referee John Hummel 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 is entitled to recover medical expenses in the total amount of \$9,144.74.
2. Pursuant to *Neel v. Western Construction, Inc.*, 147 Idaho 146, 149, 206 P.3d 852, 855 (2009), Claimant is entitled to recover 100% of the invoiced amounts of these medical expenses that she incurred, and that Defendants did not reimburse.
3. Claimant is entitled to recover TTDs in the total amount of \$17,578.00 for the period May 17, 2021 through October 31, 2021.
4. Claimant is entitled to recover such reasonable and necessary ongoing and future medical expenses as may be required by her physicians.

5. Claimant is entitled to recover ongoing and future TTDs provided that she has not reached MMI or the *Malueg* conditions do not apply.
6. Claimant is entitled to recover \$2,672.27 as a penalty for Employer's failure to secure payment of compensation as required by the Idaho Workers' Compensation Act, pursuant to Idaho Code § 72-210.
7. Defendant Employer is liable for costs and attorney fees pursuant to Idaho Code § 72-210 due to a failure to secure compensation as required by the Idaho Workers' Compensation Act. Claimant's counsel shall, within twenty-one (21) days of the entry of the Commission's decision, file with the Commission a memorandum of attorney fees and costs incurred in counsel's representation of Claimant in connection with these benefits, and an affidavit in support thereof. The memorandum shall be submitted for the purpose of assisting the Commission in discharging its responsibility to determine reasonable attorney fees and costs in the matter. *See, Hogaboom v. Economy Mattress*, 107 Idaho 13, 18, 684 P.2d 900, 995 (1984).
8. The Commission shall retain jurisdiction over the reserved issues beyond the applicable statute of limitations.
9. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.


DATED this 10th day of December, 2021.


INDUSTRIAL COMMISSION



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Aaron White, Chairman



  
Thomas E. Limbaugh, Commissioner

  
Thomas P. Baskin, Commissioner

ATTEST:

  
Assistant Commission Secretary

### CERTIFICATE OF SERVICE

I hereby certify that on the 13<sup>th</sup> day of December, 2021, a true and correct copy of the foregoing **ORDER** was served by regular United States mail upon each of the following:

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