BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

NANCY LITTLEFIELD, Claimant, v. MEDICAL SOLUTIONS, LLC, Employer, and XL SPECIALTY INSURANCE COMPANY, Surety, Defendants.	**IC 2021-024893** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** FILED APR 07 2023 INDUSTRIAL COMMISSION

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee John Hummel, who conducted a hearing in Idaho Falls on December 8, 2022. Claimant, Nancy Littlefield, was present in person; Steven Atkinson, of Rexburg, represented her. Lora Breen, of Boise, represented Defendant Employer, Medical Solutions, LLC, and Defendant Surety, XL Specialty Insurance Company. The parties presented oral and documentary evidence and later submitted briefs. Depositions were not taken. The matter came under advisement on February 24, 2023.

The undersigned Commissioners have reviewed the Referee's proposed decision and conclude that different treatment is warranted on the issue of jurisdiction. Accordingly, the Commission declines to adopt the proposed decision and issues these findings of fact, conclusions of law, and order.

The Commission finds no reason to disturb the Referee's findings and observations on Claimant's presentation or credibility.

ISSUES

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

1. Whether jurisdiction is appropriately before the Idaho Industrial Commission.
2. Whether Claimant timely filed her Worker's Compensation Complaint under the statutory requirements set forth in Idaho Code §§72-701 and 72-706.

CONTENTIONS OF THE PARTIES

Claimant injured her hamstring on September 19, 2016, while she was working for Employer as a traveling/strike nurse in St. Paul, Minnesota. Prior to working for Employer, she signed an online contract in her home in Rexburg, Idaho, which has been her primary residence for 21 years. Claimant reported the injury to her leg to Employer, and Employer and/or its third-party administrator, filled out and filed a First Report of Injury with the Minnesota Department of Labor and Industries, the workers' compensation agency in Minnesota. After reporting the injury, Employer's Surety paid Claimant $2,200 for loss of earnings through the Minnesota workers compensation system. It also covered Claimant's medical expenses through that system. Claimant filed her complaint with the Idaho Industrial Commission on September 15, 2021.

Claimant argues that her claim is covered in Idaho under the extraterritorial provisions of the Workers Compensation Law. Furthermore, Claimant argues that she timely filed her worker's compensation complaint and otherwise complied with all the requirements of Idaho Code §§ 72-701 and 72-706.

Defendants agree that there was a contract for hire, however they assert that it was a Minnesota contract – where Claimant traveled, worked and was injured. Benefits were filed for

and paid in Minnesota through the Minnesota Worker's Compensation System. Minnesota is the appropriate legal jurisdiction, not Idaho. Furthermore, Claimant did not make a timely claim for benefits in Idaho. Defendants thus contend that Claimant's claim is precluded in Idaho for failure to make a claim in Idaho within the required timelines, and failure to file a complaint within the required timelines, which would have been the one-year statute of limitations where no benefits are paid.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. Joint Exhibits 1 through 15, admitted at the hearing; and
3. Testimony taken at the hearing on December 8, 2022.

FINDINGS OF FACT

1. **Claimant.** At the time of hearing and for twenty-one years prior thereto, Claimant resided in Rexburg, Idaho. Tr., 16:5-10.

2. **Travel or Strike Nurse.** For a good portion of her latter career, Claimant worked as a "travel nurse." *Id.* at 18:3-23. A travel nurse is a contracted nurse who is sent to work at various hospitals. Those hospitals could be experiencing nursing staffing shortages or undergoing a nursing staff strike. Usually the contract term was for three months, with the exception of strikes for which the work term might be longer or shorter. A medical staffing company made the nurse's arrangements for traveling and working in a remote location. Claimant explained that under these contracted arrangements, she "became a staff nurse at the hospital because they're short of nurses, and so then you just fill in." *Id.* The medical staffing company would email nurses various opportunities for working. According to Claimant, the

email would advise, "This is what we have open. These are all our openings," and "any place you want to go." *Id.*

3. The medical staffing company would cover the costs of travel and lodging for nurses working at hospitals they had contracted. *Id.* at 18:24-19:11.

4. Employer, a medical staffing company, recruited Claimant more than once to work as a contract nurse. She observed, "I worked for them quite a few times." Tr., 20:17-25. *See also*, Ex. 14:484-485 (Claimant's Curriculum Vitae showing occasions when she worked as a travel or strike nurse.)

5. Once Claimant went through the recruitment process, which included speaking with the recruiter on the phone and interviewing on the phone with a representative of the hospital, the medical staffing company would send her a contract to sign via email. *Id.* at 22:1-14.

6. **Contract for Hire**. On September 12, 2016, Claimant electronically signed a contract entitled "Job Action RN Contract" with Employer. She signed the contract online in her home in Rexburg, Idaho. Claimant agreed to provide temporary healthcare staffing at a client location in Minnesota for a "work stoppage job action" (i.e., strike) that began in September 2016. Claimant agreed to work all shifts as directed by Nurse Bridge Consultants; accept assignment in any of Client's facility in which she was competent to work; work shifts as determined by the Client (to include day and night shifts); and comply with all policies and procedures of Client and NBC. Ex. 1:1-2.

7. The contract between Claimant and Employer did not specify a choice of law or otherwise provide anything concerning worker's compensation. *Id.*

8. Claimant agreed that the work she contracted for with Employer was for work to be performed exclusively in Minnesota. Tr., 38:21-25.

9. **Industrial Accident.** On September 19, 2016, while working for Employer as a travel/strike nurse at a United Hospital in St. Paul, Minnesota, Claimant hurt her right hamstring. She was working in the postpartum department when she took a load of laundry to the utility room. She believes someone had "sabotaged" the room by leaving it filled with an inch of water on the floor. Claimant recalls that she "walked in and did the splits and ripped the back of my [right] hamstring and laid in the water. I couldn't – I couldn't move." Ex. 15:510, 87:15-17. Claimant called for help and eventually someone came and opened the door. She was transported to the ER, where she received first treatment. *Id.* at 87:19-88:7; Tr., 27:1-6.

10. **Post-Injury Events**. Claimant reported her accident and injury to Employer. Tr., 27:7-9. Employer filled out a First Report of Injury that was filed with Minnesota Department of Labor and Industry. Ex. 2:3. The date Employer was notified was September 19, 2016, *Id.* Annabel Major was listed as the Employer's contact. Sedgwick was listed as the claims administrator company. *Id.*

11. Claimant received a diagnosis of right hamstring injury and was advised not to work until September 26, 2016. Ex. 3:54. Subsequently she returned to regular duties as scheduled for approximately three weeks until the hospital strike was finished. Ex.15:511, 93:18-24.

12. Employer's practice was to file a worker's compensation claim in the state where the injury occurred. Employer Representative Ashley Josoff explained as follows: "So when we receive a report of injury, we look and see where the injury occurred, which is going to be where the employee was working at the time. And that is always what we choose to be the state of

jurisdiction: wherever the injury occurred." Tr., 43:21-44:1. That is what happened in this case – the claim was filed with Minnesota. *Id.* at 44:6-10.

13. Claimant received both medical benefits and temporary disability benefits from Surety. None of these benefits were paid through the State of Idaho; all benefits were paid through the State of Minnesota. *Id.* at 44:22-45:14.

14. Employer does not maintain a physical office in the State of Idaho. *Id.* at 46:11-15. Its headquarters is in Omaha, Nebraska, but it does business in all fifty states and Guam. *Id.* at 47:4-13.

15. After her work in Minnesota ended, Claimant returned to her home in Rexburg, Idaho. She sought additional treatment on October 17, 2016, with Joseph Watson, M.D. Dr. Watson referred Claimant to physical therapy. He prepared a workers' compensation initial treatment form, which Claimant signed, that identified her Minnesota claim number, the claims examiner at Sedgwick, and contact information for Employer in Nebraska. Ex. 4:63.

16. Claimant continued to treat with Dr. Watson through December 27, 2016. Ex. 4:67-70. At their last appointment, Dr. Watson released Claimant to unrestricted duty. Ex. 4:70. He released Claimant from care. Ex. 6:139.

17. In March and April 2017, the Minnesota Department of Labor and Industry corresponded with Claimant concerning an Order for Rehabilitation Counseling. The end result of this correspondence was that Claimant was not required to undergo a consultation. Ex. 7:144-149.

18. Claimant's claims examiner from the Minnesota Department of Labor and Industry prepared a form entitled Notice of Intention to Discontinue Workers' Compensation Benefits on April 12, 2017, and served it on Claimant. Ex.7:153-56.

19. On September 15, 2021, Claimant filed a workers' compensation complaint, seeking permanent partial disability benefits, with the Idaho Industrial Commission.

DISCUSSION AND FURTHER FINDINGS

20. 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).

JURISDICTION

21. **Jurisdiction**. The first issue is whether the Idaho Industrial Commission has jurisdiction over the claim, as the injury occurred in Minnesota. Idaho's Workers Compensation Law has an "extraterritorial coverage" statute and related statutes under which one may find guidance on this question, as follows:

> I.C. § 72-217. *Extraterritorial Coverage.* – If an employee, while working outside the territorial limits of this state, suffers an injury or an occupational disease on account of which he, or in the event of death, his dependents, would have been entitled to the benefits provided by this law had such occurred within this state, such employee, or in the event of death resulting from such injury or disease, his dependents, shall be entitled to the benefits provided by this law, provided that at the time of the accident causing such injury, or at the time of manifestation of such disease:
> (1) His employment is principally localized in this state; or
> (2) He is working under a contract of hire made in this state in employment not principally localized in any state; or
> (3) He is working under a contract of hire made in this state in employment principally localized in another state, the workmen's compensation law of which is not applicable to his employer; or
> (4) He is working under a contract of hire made in this state for employment outside the United States and Canada.

22. Idaho's extraterritorial jurisdiction statute provides jurisdiction over Claimant's case under I.C. § 72-217(2). As discussed in detail below, Claimant's employment was not principally localized in either Idaho or Minnesota. Additionally, Claimant's contract of hire was made in Idaho when Claimant signed the contract from her computer while in Rexburg, Idaho.

Claimant's Employment Is Not Principally Localized In Any State

23. Claimant's employment was not principally localized in either Idaho or Minnesota, and there is no contention that another state could be the principal location of employment. Under Idaho Code § 72-220, defining the locale of employment,

> (1) A person's employment is principally localized in this or another state when:
> (a) His employer has a place of business in this or such other state and he regularly works at or from such place of business; or
> (b) He is domiciled and spends a substantial part of his working time in the service of his employer in this or such other state.
> (2) An employee whose duties require him to travel regularly in the service of his employer in this and one or more other states may, by written agreement with his employer, provide that his employment is principally localized in this or another such state, and, unless such other state refuses jurisdiction, such agreement shall be given effect under this law.

24. First, employment is principally localized where the employer has a "place of business" in the state and claimant "regularly works at or from such place of business." I.C. § 72-220(1)(a). Here, Claimant worked for a medical staffing agency headquartered in Nebraska that conducts business through all fifty states. However, employer's business model is to arrange for work coverage for other businesses. In the present situation, Claimant worked at a hospital in Minnesota where her employer had contracted to provide coverage while its own staff was on strike. She did not work at a place of business of her employer in either Idaho or Minnesota.

25. Second, employment is principally localized where the claimant is domiciled and spends a substantial part of his working time in the service of his employer in the state. I.C. § 72-220(1)(b). Claimant is domiciled in Idaho and maintains her permanent residence here. However,

all of her work was at the hospital in Minnesota. Therefore, this provision does not place a principal location of employment in either Minnesota or Idaho.

26. Third and finally, employment is principally localized where an employee's "duties require him to travel regularly in the service of his employer in this and one or more other states" and there is a written agreement that employment is principally localized in a state. I.C. § 72-220(2). Here, there is no written agreement that Idaho is the principal locale of Claimant's employment. Further, Claimant did not regularly travel as part of her contract. Her contract was for a three-week term of employment working from a hospital in Minnesota. While she had to travel to work in Minnesota, and then return, the travel itself was a single round trip incidental to the location of the work, which was entirely in Minnesota. Therefore, Idaho Code § 72-220(2) does not apply and Claimant's employment is not principally localized in Idaho, Minnesota, or any other state.

Claimant's Contract of Hire Was Formed in Idaho

27. Claimant's contract of hire was formed in Idaho. A valid contract is formed when there is a meeting of the minds through offer and acceptance; the contract must have valid consideration, and its material terms must be complete, definite, and certain. *See Weisel v. Beaver Springs Owners Ass'n, Inc.*, 152 Idaho 519, 272 P.3d 491 (Idaho 2012), *Bajrektarevic v. Lighthouse Home Loans*, 155 P.3d 691, 693, 143 Idaho 890 (Idaho 2007). Here, Claimant's written contract contains consideration and specific terms regarding wages, work duties, and the term of her employment. While Claimant's contract is notable in that it is not signed by employer, it is nevertheless complete.

> Formation of a valid contract requires a meeting of the minds as evidenced by a manifestation of mutual intent to contract. *Inland Title Co. v. Comstock*, 116 Idaho 701, 703, 779 P.2d 15, 17 (1989). This manifestation takes the form of an offer followed by an acceptance. *Id* [. . .] Anything that amounts to a

> manifestation of a formed determination to accept, and is communicated or put in the proper way to be communicated to the party making the offer, completes a contract.
>
> A response to an offer amounts to an acceptance if an objective, reasonable person is justified in understanding that a fully enforceable contract has been made, even if the offeree subjectively does not intend to be legally bound.

Justad v. Ward, 211 P.3d 118, 147 Idaho 509 (2009).

28. Here, Claimant's contract states "Employer agrees that upon signature of this contract the RN is obligated to perform the duties listed above. Employer agrees to all terms listed above." Ex. 1:2. There is then a box for Claimant's signature and a date line, where Claimant's signature and date are written in an italic font.[1] There is no location for any signature by an agent of employer. The sum of the language and formatting evinces an unambiguous intent by employer that the contract would be complete and impose obligations upon Claimant's signature. When the language of a contract is clear and unambiguous, its interpretation and legal effect are questions of law. *State v. Barnett*, 133 Idaho 231, 234, 985 P.2d 111, 114 (1999). An unambiguous contract will be given its plain meaning. *Intermountain Eye v. Miller*, 127 P.3d 121, 125, 142 Idaho 218 (2005). This writing demonstrates a mutual intent to contract without an actual signature from employer being used. Finding that an employment contract can be completed with the signature of only party is consistent with caselaw across the United States, from Indiana and Georgia to Washington and Texas.[2] Therefore, the contract was completed upon Claimant's signature.

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[1] A signature can be type-written. *Bmc West Corp. v. Horkley*, 174 P.3d 399, 144 Idaho 890 (Idaho 2007) ("because a signature is not explicitly required, her type-written name suffices.")

[2] *See Peddler, Inc. v. Rikard*, 221 S.E.2d 115, 266 S.C. 28 (S.C. 1975) ("It is not always necessary, in order to give validity to a contract, that it should be signed by both parties; it may be sufficient if it be signed by one party and accepted, held, and acted upon by the other."); *Hightower v. State*, 72 Ga. 482 (Ga. 1884) ("the statute does not require that [the contract] be signed by both parties. If it be signed by the servant only, and accepted by the master, it is binding and sufficient, especially if he receives services thereunder."); *Irving v. Goodimate Co.*, 320 Mass. 454, 70 N.E.2d 414, 415 (Mass. 1946) (holding typewritten name of company and typewritten initials where the initials of the one dictating and the one typing the letter are usually found was sufficient to admit letters as evidence of

29. As Claimant completed the contract of hire in Idaho, the remaining question is whether this contract was formed in Idaho. It is a general principle of contract law that a contract is formed where the last act necessary for its completion occurs.[3] The Industrial Commission has previously cited as persuasive authority Professor Larson's treatise, the Law of Worker's Compensation, which states: "The making of the contract within the state is usually deemed to create the relation within the state." *Hendershott*, 050592 IDWC, 87-569252 (Idaho Industrial Commission Decisions, 1992) (citing 4A A. Larson, The Law of Workmen's Compensation, Section 87.42(a)). It seems the majority of states, although not all,[4] have applied this principle to find that where a contract was completed via telephone, it was completed where the call was

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satisfaction of statute of frauds); *GSC Wholesale, LLC v. Young*, 654 S.W.3d 558, 566 (Tex. App. 2022) ("For a signature to be the only way to manifest assent to an agreement, the parties must 'explicitly require signatures as a condition of mutual assent'"); *Majd Pour v. Basic American Medical, Inc.*, 512 N.E.2d 435, 438 (Ind. App. 1987)("The signature of one, with acceptance by the other of the benefits stipulated, constitutes a written contract."); *Jaffe v. Gibbons*, 351 S.E.2d 343, 346, 290 S.C. 468, 473 (S.C. App. 1986)(A contract does not always require the signature of both parties; it may be sufficient, if signed by one and accepted and acted on by the other.); *Wilson v. Weyerhaeuser Co*, No. 80896-6-I, (Wash. App. May 17, 2021) (Employee accepted job by signing the offer letter).

[3] A contract is generally made where the last act necessary to make the contract binding occurs. *See Perini/Tompkins Joint Venture v. Ace Am. Ins. Co.*, 738 F.3d 95, 100 (4th Cir. 2013) (An insurance contract is made where "the last act is performed which makes the agreement a binding contract. Typically, this is where the policy is delivered and the premiums are paid."); *Transit Bus Sales v. Kalamazoo Coaches*, 145 F.2d 804 (6th Cir. 1944) (The general rule is that a contract is made where the last act necessary to make it a binding obligation is performed. citing Williston on Contracts, § 97; Restatement, § 74)); *Foundation Property Investments v. Ctp, LLC*, 159 P.3d 1042, 37 Kan.App.2d 890 (Kan. App. 2007) ("Kansas applies the lex loci contractus doctrine and applies the law of the state where the contract is made. A contract is made where the last act necessary for its formation occurs."); *Konover Property Trust, Inc. v. WHE Associates, Inc.*, 142 Md.App. 476, 790 A.2d 720 (Md. App. 2002)("For choice-of-law purposes, a contract is made where the last act necessary to make the contract binding occurs."); *Hunter Corp. v. Industrial Com'n*, 645 N.E.2d 259, 262, 268 Ill.App.3d 1079, 1083, 206 Ill. Dec. 254, 257 (Ill. App. 1994)(A contract is made where the last act necessary to give validity occurs.); *Western Branch Holding v. Trans Marketing Houston*, 722 F.Supp. 1339 (E.D. Va. 1989) ("[U]nder Virginia's conflict of law rules, the place of contracting ... is the place where the last act necessary for a binding contract took place...").

[4] Not all states have held that a contract is made where acceptance occurs. *See Matter of Sanchez v. Clestra Cleanroom, Inc.*, 11 AD3d 781, 783 N.Y.S.2d 676, 2004 NY Slip Op 7562 (N.Y. App. Div., 2004) (Employment contract was prepared, agreed to and executed via mail and facsimile between the claimant's Georgia office and the employer's New York office. New York held claimant's contract was made in New York and thus New York was the place of hire.); *also see Baum v. Birchall*, 150 Pa. 164, 168-69, 24 A. 620 (Pa. 1892) ("The place where a contract is signed is not, in contemplation of law, the place where the contract is made, if it is not the intention of the parties that it should go into effect there . . . Thus it was held that if one orders goods from another state by mail, which are sent by a carrier, the contract is made where the order is received and the goods delivered to the carrier for the buyer; and the law of that state will govern the contract.")

received, and the recipient communicated their acceptance.[5] Idaho courts have not addressed the issue of whether a contract made using a remote mechanism such as fax, telephone, email, or the internet affects the location of where a contract is made. Idaho has held that an oral contract was completed during a telephone conversation where all essential and material terms were conveyed, even without a formal written settlement. *See Suitts v. First Sec. Bank of Idaho, N.A.*, 867 P.2d 260, 267, 125 Idaho 27, 34 (Idaho App. 1993).

30. The acceptance of an offer via telephone is highly analogous to acceptance by signing a document online. Here, the last act to complete Claimant's employment contract was her signature completed by signing the contract sent from her employer via the internet. Therefore, the Commission finds that the contract of hire was made where Claimant was located, in Rexburg, Idaho. As Claimant's employment is not principally localized in any state and the contract of hire was made in Idaho, Idaho has extraterritorial jurisdiction under Idaho Code § 72-217(2).

31. The original recommendation of the referee in this case was that Claimant's contract of hire was not made in Idaho. The analysis the referee used for this determination was

[5] The majority of states find that a contract formed over telephone is completed where the offeree conveys acceptance. *See Graham v. TSL, Ltd.*, NO. 2010-CA-000547-WC (Ky. Ct. App. Oct 08, 2010) ("'in contracts made by telephone, the place where the acceptor speaks his acceptance is the place where the contract is made" citing *Trinity Universal Ins. Co. v. Mills*, 293 Ky. 463, 169 S.W.2d 311, 314 (1943)); *Ex parte Robinson*, 598 So.2d 901, 904 (Ala. 1991) ("an acceptance sufficient to give rise to an employment contract need not be verbal, but may be an act, such as a worker's responding to an offer of employment by embarking on a journey to the place of employment in a sister state", holding claimant formed contract in Alabama where he received call for employment then packed his bags and left for work in other state); *City Products Corp. v. Industrial Commission*, 19 Ariz. App. 286, 506 P.2d 1071 (1973)(employee who received call for employment in Arizona, then reported for work in California, formed contract in Arizona); *Bundsen v. Workers' Comp. Appeals Bd.*, 195 Cal. Rptr. 10, 12, 147 Cal.App.3d 106, 109 (Cal. App. 1983) ("California has adopted the rule that an oral contract consummated over the telephone is deemed made where the offeree utters the words of acceptance."); *Niday v. Roehl Transp., Inc.*, 934 N.W.2d 29, 39 (Iowa App. 2019) (listing cases from states such as Kansas, Georgia, Louisiana, South Carolina, and Tennessee that hold that acceptance of offer over the phone finalized contract of hire, even if drug testing or other contingencies existed); *Mark Hudnall v. Raytheon Technical Services Co.*, NO. 042831-06, (Massachusetts Department of Industrial Accidents, May 31, 2012 ("[A]n oral contract consummated over the telephone is deemed made when the offeree utters the words of acceptance.") *But see Parr v. U.S. Exp. Enterprises, Inc.*, 946 So.2d 178 (La. App. 2006) (contract not completed where claimant would have to complete orientation, pass her physical, and pass a road test

based on two cases which analyzed factors pertaining to the employment's contacts with Idaho. *See In Parrish Criddle v. Yount Enterprises*, IC No. 2015-032646 (2022), *In re Dorothy E. Almgren*, 384 B.R. 12 (2007). However, the Commission finds those cases are materially distinct from the present question. The critical question is where the contract of hire was made. Here, Claimant entered into a written contract while still in Idaho. In contrast, the claimant of *In re Almgren* had completed an application and received an offer, but the facts of that case did not indicate the existence of an actual written contract. In *Criddle*, the analysis centered on whether Nebraska worker's compensation law applied as it pertained to I.C. § 72-217(3). Factually, the claimant had not utilized any sort of written contract but effectively started working to accept the offer. Therefore, the analysis used in *Criddle* and in *In re Almgren* does not apply here.

32. For all the foregoing reasons, Idaho has jurisdiction to hear Claimant's workers' compensation claim.

TIMELINESS

33. **Timely Claim:** Defendants have raised the argument that Claimant's filing of her Idaho claim is time barred. Claimant first claimed benefits under Idaho law with the filing of her complaint on September 15, 2021, nearly five years after the date of injury, though importantly just before a five year period would actually expire. The parties are consequently in dispute over which of Idaho's statutes is the applicable statute of limitations. As discussed below, we conclude that the one-year limit in Idaho Code § 72-701 is applicable. In the alternative, the two-year limit in Idaho Code § 72-218 applies. Therefore, Claimant had no more than two years to file her claim after the date of injury and her claim is time barred.

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before she could be hired as a driver).

34. Under Idaho Code § 72-701, a claimant must file a claim within one year following the date of injury, although this may be tolled if payments of "compensation" have been made. Specifically, I.C. § 72-701 states that:

> No proceedings under this law shall be maintained unless . . . a claim for compensation with respect thereto shall have been made within one (1) year after the date of the accident [. . .] If payments of compensation have been made voluntarily or if an application requesting a hearing has been filed with the commission, the making of a claim within said period shall not be required.

Given that employer had notice of the injury to Claimant on the day of the injury, the effect of this statute is that if no "compensation" was paid, Claimant had one year to make her claim in Idaho. Per I.C. § 72-102(6) "'Compensation' used collectively means any or all of the income benefits and the medical and related benefits and medical services." Per I.C. § 72-106(15) "'Income benefits' means payments provided for or made under the provisions of this law. . ." Per I.C. § 72-102(19) "'Medical and related benefits' means payments provided for or made for medical, hospital, burial and other services as provided in this law other than income benefits." The use of the term "this law" refers to Title 72 of the Idaho Code, as read in the short title of Title 72, where it is provided that "[t]his law may be cited as the worker's compensation law." I.C. § 72-101(1).

35. In *Marler v. Croman Corp.*, cited by defendants, the Idaho Industrial Commission relied on these definitions to find that:

> "Compensation" is a term of art and refers to benefits "made under the provision of this law." . . . The statute does not transform out-of-state benefits into Idaho benefits. Thus, the receipt of out-of-state benefits does not, without more, toll the running of the statute of limitations in I.C. § 72-706(1).

Marler v. Croman Corp., 083198 IDWC, IC 96-023757 (Idaho Industrial Commission Decisions, 1998). The language in I.C. § 72-701 is comparable to that in I.C. § 72-706(1) and

there is not any language to support giving the term compensation different meanings between these two statutes. Therefore, as Claimant only received benefits provided through another state's worker's compensation system, those benefits do not apply to toll the statute of limitations of I.C. § 72-701.

36. Claimant argues that even if the one-year statute of limitations applies, her failure to make a timely claim should be waived because she was misled to her prejudice by the actions of Employer. Although I.C. § 72-706(1) makes express provision for waiver of the period of limitation if claimant has been misled to her prejudice by the actions of employer or surety, no such language is found in the provisions of I.C. § 72-701. Nevertheless, the Idaho Supreme Court has made it clear that by its actions an employer may waive "...any of the various time limitations for giving notice and filing claims under the Workmen's compensation law." *Bottoms v. Pioneer Irrigation District*, 95 Idaho 487, 490, 511 P.2d 304, 307 (1973).

37. Generally, the Idaho Supreme Court examines the "course of conduct" of the employer and surety to determine whether it was "sufficient to reasonably lead claimant to refrain from petitioning for a hearing." *Id.* A failure to notify claimant of the denial of a claim within the one-year time limit after providing a medical examination constitutes such misleading conduct. *See Thompson v. United Parcel Service, Inc.*, 122498 IDWC, IC 94-894907 (Idaho Industrial Commission Decisions, 1998). A surety's provision of medical treatment, with negotiations of payment and investigation, only to later deny the claim, constitutes misleading conduct. *See Harris v. Bechtel Corporation*, 74 Idaho 308, 261 P.2d 818 (1953).

> [I]n those cases in which the Idaho Supreme Court or the Commission has found a specific worker's compensation statute of limitations to have been tolled by conduct of employer or surety tending to mislead a claimant, including I.C. Sec. 72-706(1), there has been competent evidence of either bonafide ongoing negotiations between claimant and surety or employer after the statute of limitations has passed or clear conduct on the part of employer or surety which

> would lead a reasonable person to believe (a) that defendants would not be asserting the statute of limitations as a defense or (b) that it would be unnecessary for the claimant to take any further action to protect his or her claim.

LaPan, 013086 IDWC, 83-430260 (Idaho Industrial Commission Decisions, 1986).

38. The evidence in this case is not indicative of misleading conduct on the part of employer or surety. Claimant received medical care and had a claim filed in the Minnesota Worker's Compensation system, per her employer's standard practice of filing the claim in the jurisdiction where the injury occurs. The top left of the first report of injury states "MN Department of Labor and Industry." Ex. 2:3. That claim worked its course through the Minnesota Department of Labor, and Claimant received all her benefits from Minnesota. In her initial deposition, Claimant recalled there was a filing, but stated she did not know who it was with, either the hospital or employer. Ex.15:516, 3-17. However, the surety did have some written contact with Claimant, over mail and via email, regarding her claim. (6/11/18, Ex. 8:279-80; 5/11/2018, Ex. 8:285, 288). On October 25, 2022, Claimant indicated at her deposition that she was unaware of the fact that there was a worker's compensation process, but did recall she did not pay any medical bills. Ex. 15:512, 96:13-97:8. The Minnesota Department of Labor records include a statement of benefits summarizing medical expenses of $5,080.25 and disability payments of $2,814.12. Ex.7:156. This notice had instructions to send a copy to the employee, employer, and insurer. *Id.* Eventually, Dr. Watson released Claimant to unrestricted duty. Ex. 4:70; Ex. 6:139.

39. Both parties have noted that at the outset of her claim, Claimant talked to an attorney regarding suing the hospital for the water on the floor. Ex. 8:439-40; Defendant's Responsive Brief p. 11, Claimant's Reply Brief 7, n. 5. Claimant states the conversation with surety that occurred after this was misleading as she believed worker's compensation was the

only remedy. *Id.* In context however, this conversation is discussing the potential recovery of a lawsuit against the hospital. It does not discuss a conflict of laws between Idaho or Minnesota, but the issue of wage calculation in Minnesota. Claimant was sent the notice of intention to discontinue worker's compensation benefits, with the summaries of payments, on April 12, 2017. Ex. 7:153. While Claimant may not have been aware of the legal niceties regarding where her claim was filed or Idaho deadlines, Claimant's own lack of knowledge does not toll the statute of limitations. *See Ashton v. Ashton Fence Co.*, 072503 IDWC, IC 00-013924 (Idaho Industrial Commission Decisions, 2003).

40. The evidence here does not indicate that Employer and Surety handled Claimant's negotiations or claim in such a way as to mislead Claimant and deprive her of the opportunity to file. Rather, the facts here present a fairly standard course of action where the claim was simply handled and ultimately closed through the worker's compensation program of the jurisdiction where the injury occurred. We conclude that the claim is barred by the provisions of I.C. § 72-701.

41. Even if the one-year statute of limitations of I.C. § 72-701 does not apply, Claimant's filing is still untimely under the two-year statute of limitations in I.C. § 72-218. I.C. § 72-218 provides that:

> The payment or award of benefits under the workmen's compensation law of another state [. . .] shall not be a bar to a claim for benefits under this law, provided that claim under this law is filed within two (2) years after the accident causing such injury, or manifestation of such disease, or death.

I.C. § 72-218 applies only "in situations where benefits were received from another state and no claim at all had been filed with the state of Idaho within two years after the accident." *Sankey*, 022487 IDWC, 83-418757 (Idaho Industrial Commission Decisions, 1987). Presumably, this statute of limitations, as well, is subject to waiver for misleading conduct by the employer or

surety pursuant to *Bottoms*, 95 Idaho at 491, 511 P.2d at 307. As discussed above, the Surety's and Employer's conduct does not appear to be misleading. Additionally, no claim was filed in Idaho within the two years of the accident. Therefore, Claimant is subject to the application of I.C. § 72-218.

42. It is noted that neither party extensively discussed the issue of I.C. § 72-218, and the Industrial Commission cannot raise a new theory or defense. *See Deon v. H&J, Inc.*, 339 P.3d 550, 157 Idaho 665 (2014). However, Defendants did cite this statute in their responsive brief. Defendant's Responsive Brief, pp. 11-12. Additionally, the issue of timeliness has already been raised and the parties have particularly discussed the significance of out of state benefits. The statute of limitations in I.C. § 72-218 is subsumed within that discussion. Claimant did not file a claim in Idaho until nearly five years after the injury, and otherwise her claim was handled entirely through the Minnesota system. Therefore, her claim is untimely pursuant to Idaho Code § 72-218.

43. The parties also discussed the issue of the timeliness of a request for hearing under Idaho Code § 72-706. However, given that the claim itself is untimely, this issue is moot.

CONCLUSIONS OF LAW AND ORDER

1. The Idaho Industrial Commission has jurisdiction pursuant to I.C. § 72-217(2).

2. The claim is untimely filed under I.C. § 72-701 and I.C. § 72-218.

3. The timeliness of Claimant's request for hearing under I.C. § 72-706 is moot.

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

DATED this 6th day of April, 2023.

INDUSTRIAL COMMISSION

Thomas E. Limbaugh, Chairman

Thomas P. Baskin, Commissioner

Aaron White, Commissioner

ATTEST:

Kamerron Slay
Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of April, 2023, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER was** served by regular United States Mail and Electronic Mail upon each of the following:

STEVEN ATKINSON
PO BOX 100
REXBURG ID 83440
stevena@bamattorneys.com

LORA R BREEN
1703 W HILL ROAD
BOISE ID 83702
breen@bvwcomplaw.com
admin@bvwcomplaw.com

mm

Mary McMenomey