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BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

SCOTT M. CHADWICK, Claimant/Appellant, v. MULTI-STATE ELECTRIC, LLC, Employer, and IDAHO STATE INSURANCE FUND, Surety, Defendants/Respondents.	)))))))))))	SUPREME COURT NO. 42473 IC 2012-021676 APPELLANT'S REPLY TO DEFENDANTS/RESPONDENTS' BRIEF

APPEAL FROM THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER OF THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

Claimant/Appellant appearing Pro Se

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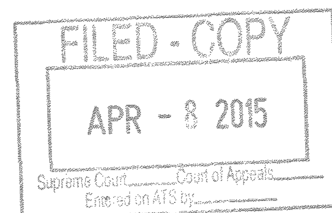

COMES NOW the Claimant/Appellant, Scott M. Chadwick, a lay person, appearing Pro Se, and submits his Reply to Defendants/Respondents' Brief. Claimant asserts that the decision of the Industrial Commission was not factually correct and was based on prejudicial information predicated on erroneous information. As such, the Order dismissing the Complaint should be reversed and/or remanded for a new hearing.

Reply to issues addressed in Defendants/Respondents' Brief

1. On page 1 of their Brief, Defendants assert that strict adherence to procedural Appellate Rules is grounds for dismissal. Claimant can only apologize to the Court for his shortcomings in this regard. Claimant is merely seeking justice to the best of his lay ability with the spirit of the law as his guide notwithstanding the procedural impediments with which he must comport. Although a procedural error may be grounds for a dismissal, it is not in and of itself a mandate to dispense with justice. Appellant has made every effort to be accurate and clear, and cites and references the record to assist the court in locating specific information contained therein.
2. On page 2 of their Brief, Defendants assertions regarding Claimant's injuries not being work related are refuted by medical reports. This issue is discussed at length in Claimant's Appellate Brief under Issue E, Wrongful medical findings, commencing on page 16.
3. On page 3 of their Brief in the second paragraph of section C. Statement of Facts, Defendants make statements that Claimant would work forty hours a week and seldom, if ever, worked on a Saturday. Such information is erroneous. It is a statement that could only have been based on uncorroborated information provided by Employer to Surety. Employer refused to provide work records to Claimant during the discovery process.

4. In pages 4 through 7 of their Brief, Defendants use deposition transcripts to assert that Claimant's "lack of recollection" as to what he may have said at one time to a doctor constitutes a denial of the occurrence of an event when it is nothing more than an inability to recollect whether a specific statement was made to a particular doctor on a specific occasion.

   Defendants use this same parsing of words technique in the same manner on the same issue on page 21 of their Brief in footnote #1where Defendants assert that Claimant never told the doctor his injury was work related. Again, Claimant merely stated that he didn't recall exactly what he told the doctor. Claimant's not recalling every statement made to a doctor four months after his meeting with the doctor is not an acknowledgment that he never said it. Yet, on page 21 of Defendant's Brief the Defendants refer to a snippet from deposition transcripts wherein they are asking a question of the Claimant and make reference in the question as to whether his "jumping in and out of the truck" was correct. Claimant's answer was, "Yes, it is accurate." Claimant has never faltered on the facts, merely on remembering what he may have said to a doctor during an unrecorded interview process therewith.

5. On page10 of their Brief, Defendants cite that "The preliminary x-ray results were negative for acute injury." Defendants conveniently omit the contrary results from the MRI conducted on Claimant that did show a physical change of his body.

6. On page 10 of their Brief, Defendants attempt to use the lateness of the Employer's first report of injury as evidence to support their assertion that Claimant failed to report an injury to Employer. This is a bootstrap argument. Claimant addressed the lateness of that report in Issue A, Timely notification of injuries, commencing on page 8 of Appellant's Brief.

7. On page 11 of their Brief, Defendants assert that Claimant created an accident "post hoc." Claimant asserts that Employer created an information vacuum at the outset by failing to direct Claimant to complete an injury report and by failing to initiate an investigation when he received notice as addressed in Issue A, Timely notification of injuries, commencing on page 8 of Appellant's Brief.
8. In paragraph 2 on page 11 of their Brief, Defendants assert that Claimant's testimony of "'now' is that on July 26, 2012…." However, Claimant's testimony is not a "now" matter. His testimony and statement were set forth in a voicemail message to Surety in October, 2012, and in the letter sent to Surety on November 6, 2012. His position in this regard has not changed.
9. On page 12 of their Brief, Defendants commence a paragraph on the "clearest explanation of the Claimant's causation problems" with the word "Perhaps." In other words, the Defendants want the court to speculate instead of reason. Perhaps a timely investigation and report by the Defendants as mandated followed by a proper medical referral would have resolved this matter.
10. The scenario set forth on page 13 of Defendants Brief is a "he said/she said" argument with regard to whether what Claimant said to Employer was adequate to constitute notice. It is more thoroughly set forth in Issue A, Timely notification of injuries, commencing on page 8 of Appellant's Brief.

Defendants argue on page 13 of their Brief that the text message wherein Claimant says "I didn't have an accident at work, but it's work related so we will have to talk about what's next," constitutes a denial on the part of Claimant that there was no work related incident worthy of an investigation. However, that text message stating that an incident was

"work related" contradicts Employer's denial that he had any notice of a work related injury worthy of an investigation even though Claimant's perception of the meaning of the word "accident" and his not using that word comes into question. By stating that he needs to talk with Defendant Employer about "what's next," Claimant is inferring that there is a workers compensation issue that needs to be addressed. And, since it was a text message, it was in a written form, albeit electronic. Defendant Employer had no excuse for not following up on the contact with an investigation and report.

The text messages from Claimant to Employer may have been difficult to understand, but they did constitute actual written notice to Employer of Claimant's worsening condition. They also provided employer with a parts list and the hours that Claimant actually worked on a Saturday, thereby refuting Employer's statement to the contrary.

11. On page 18 of their Brief, Defendants make reference to the sixty day rule on reporting an incident. The 60-day rule makes sense because of the difficulty in recalling past events with great specificity. However, the rule that does not require specific language in giving notice to an employer of a work related incident also makes sense. What makes no sense is Employer's failure to respond to Claimant's verbal and texted notices and his failure to investigate and/or document anything regarding this matter. Employer ignored and buried the incident and the Claimant with it.
12. On pages 20 of their Brief, Defendants assert that there was an accumulation of problems from 25 to 30 years of heavy labor. However, there are no medical reports in the record to substantiate that allegation. It is pure argument based on innuendo.
13. On page 21 of their Brief, Defendants make reference in footnote #1 to a question addressed to Claimant that included the term "you started working harder." Claimant's response was,

"My opinion." Defendants argue that such response is conclusive on the nature of Claimant's visit to Kuna Chiropractic. However, Claimant's answer to the question does not invalidate the doctor's findings with regard to work related injury.

14. On page 26 of their Brief, Defendants argue that the misreading of the information contained in Dr. McKim's intake document is immaterial. Although it may seem like an insignificant matter, it is extremely significant and relevant. The interpretive discrepancy was the key factor in the Referee's determination, and the subsequent Commission's adoption thereof, that the Claimant's testimony lacked credibility. The Referee specifically referred to the misread item when declaring her disbelief of Claimant's testimony. Such misreading was a determinative and critical factor in the Referee's decision. Her Findings were based on an opinion derived from her own error. As such, her misled perception of Claimant's character was the poison that tainted the fruit of her reasoning and her decision.
15. On page 27 of their Brief, Defendants assert that there is no proof that Defendants failed to provide discovery to Claimant. This is addressed on page 11 of Appellant's Brief with specific mention of at least three specific attempts through three alternative means by Claimant to obtain discovery prior to the hearing. Said requests are documented in the record in Exhibit D, page 113. Claimant explains his discovery efforts at length in Issue B, Failure to order production of discovery, in pages 11 and 12 of Appellant's Brief. Appellant did not waive discovery, he aggressively sought it, albeit in maybe a form less structured than standard legal format. It certainly did not preclude Defendants from providing the requested information in a spirit of cooperation in the interest of justice.
16. Defendants' demand for an award of fees set forth on page 28 of their Brief is not warranted. Claimant's appeal is not specious. It is based on legitimate legal issues involving questions of

notice, questions on Employer's failures to perform mandated duties, and on erroneous interpretation of evidence affecting the Referee's mindset in making a ruling.

Defendants assert that Appellant committed a fatal error in failing to sign his Brief. As quoted by Defendants, Rule 11.2, IAR, provides that a party who is not represented by an attorney shall sign each brief. Appellant did sign his Brief. The Brief Appellant filed with the court was in fact signed. Rule 11.2 does not specifically require that every copy of a Brief be signed. It was an unfortunate oversight that the copy served on Defendants was one made prior to the original Brief being signed. The Proof of Service does, however, provide confirmation that the copy provided to Defendants was in fact a true and correct copy of the Brief, albeit lacking a signature. Claimant made every effort as a lay party to comply with all applicable rules and again apologizes to the court and the defendants for this innocuous simple mistake.

CONCLUSION AND PRAYER

Wherefore, it is respectfully requested that this court reverse the findings of the Referee and Commission or, in the alternative, remand the matter for a new hearing before a full commission, or for further proceedings as the court deems just and proper. It is further requested that Defendant's demand for fees be denied.

Respectfully submitted,

Scott Chadwick,
Claimant/Appellant

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BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

IN THE DISTRICT COURT

SCOTT M. CHADWICK, Claimant/Appellant, v. MULTI-STATE ELECTRIC, LLC, Employer, and IDAHO STATE INSURANCE FUND, Surety, Defendants/Respondents.	)	SUPREME COURT NO. 42473 IC 2012-021676 S.I.F. No. 201209258 PROOF OF SERVICE OF APPELLANT'S REPLY TO DEFENDANTS/RESPONDENTS' BRIEF

NOTICE IS HEREBY GIVEN that on this 6th day of April, 2015, I caused to be served upon the attorney on behalf of the Defendants/Respondents, Neil D. McFeeley, P. O. Box 1368, Boise, Idaho 83701-1368, and The Idaho Industrial Commission, P. O. Box 83720, Boise, Idaho 83720-0041, the Appellant's Reply To Defendants/Respondents' Brief.

Dated this 6th day of April, 2015.

By:
Scot M. Chadwick, Claimant