



## **ISSUES**

After due notice to the parties, the issues were identified as:

1. Whether the condition for which Claimant seeks benefits was caused by the alleged industrial accident;
2. Whether apportionment for a preexisting condition is appropriate pursuant to Idaho Code § 72-406; and
3. Whether and to what extent Claimant is entitled to the following benefits:
  - (a) temporary disability (TTD),
  - (b) permanent partial impairment (PPI),
  - (c) permanent disability in excess of impairment (PPD),
  - (d) medical care, and
  - (e) attorney fees; and,
4. Whether Claimant is entitled to permanent total disability under the odd-lot doctrine.

## **CONTENTIONS OF THE PARTIES**

Claimant contends he suffered two compensable accidents which resulted in a back injury, one on February 25, 2001, the other on October 22, 2001. Claimant denies he recovered from the February accident before he suffered the October accident. He has suffered a permanent impairment of 20%. His postsurgical work restrictions and other factors result in a significant permanent disability which is likely total. Claimant should be awarded attorney fees because Defendants refused to pay the undisputed portion of the PPI rating and unreasonably denied medical care.

Defendants contend Everest covered the risk for the February accident and Liberty covered the risk for the October accident. After the February accident, Claimant was “basically pain free” according to Douglas Stagg, M.D., as of March 23, 2001, and did not seek treatment again until after the October accident. Claimant suffered no PPI as a result of the February accident. All PPI – and therefore disability – is attributable to the October accident.

## **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 2**

Claimant also has a preexisting degenerative condition to which PPI should be apportioned. Claimant failed to show he is an odd-lot worker. He did not cooperate with ICRD consultants in a job search. Claimant incurred no unpaid TTD between the February and October accidents. Subsequent TTD, if any, relates solely to the October accident. Defendants acted reasonably and should not be assessed attorney fees.

### **EVIDENCE CONSIDERED**

The record in the instant case consists of the following:

1. Oral testimony at hearing by Claimant and his ex-wife;
2. Claimant's exhibits 1 – 11;
3. Defendants' exhibits A – D; and,
4. Posthearing deposition of Douglas L. Stagg, M.D.

### **FINDINGS OF FACT**

1. Claimant worked for Employer since 1999 after he arrived in America from Bosnia in 1998. He worked as a meat packer.

2. On February 23, 2001, he lifted a heavy package of meat and felt low back pain. He immediately reported the accident to a supervisor who required him to complete the Friday shift. The Referee takes judicial notice that February 23, 2001, was a Friday and the Form 1 identifies February 23, 2001, as the date of the accident. Assertions by Claimant's attorney that February 25, 2001, was the date of the February accident are *de minimus* errors. Claimant testified the February accident occurred on February 23, 2001.

3. Upon returning to work on Monday, another supervisor sent him to Dr. Stagg's office. Claimant reported he visited Dr. Stagg's office on Monday but saw another doctor. The medical records do not support Claimant's recollection of such a visit. However, they do support

such a scenario after the October accident. Claimant saw Dr. Harris at Dr. Stagg's office on October 22, 2001, but did not see Dr. Stagg until October 24, 2001.

4. On Tuesday, February 27, 2001, Dr. Stagg examined him and diagnosed an acute low back strain. Dr. Stagg ordered him off work for the rest of the day, but allowed him to return to work the next day with lifting restrictions. Claimant returned to work on Wednesday.

5. Claimant returned to Dr. Stagg on March 5, 2001. Claimant reported he was "a bit improved" but with "significant pain."

6. Claimant returned to Dr. Stagg on March 12, 2001. Claimant reported he was "improving" but with "some discomfort" and was ready to try unrestricted work. Dr. Stagg conditionally lifted the restrictions.

7. Claimant returned to Dr. Stagg on March 23, 2001. Claimant reported he was "much better, basically pain free," with occasional "discomfort" and had tolerated normal work. Dr. Stagg released Claimant to return to unrestricted work and indicated no further follow-up unless requested by Claimant.

8. On each of these four visits, Dr. Stagg examined Claimant and reported findings consistent with a healing back strain. Claimant did not again visit Dr. Stagg or any other medical provider until after the October accident.

9. On October 22, 2001, Dr. Harris noted Claimant had "no history of back problems." Claimant did not report continuing back problems since March 2001. On October 24, 2001, Dr. Stagg noted Claimant was "generally healthy. He has had a couple of prior low back strains." Dr. Stagg referred specifically to treatment following the February accident. The note does not indicate continuing pain or medication use between the February and October accidents.

10. At deposition, Dr. Stagg testified that Claimant's wife accompanied him on these visits. Although neither spoke much English, he believed he well understood Claimant's description of his condition. Dr. Stagg dictated his medical records either during or immediately after each visit. Dr. Stagg opined Claimant suffered no PPI as a result of the February accident.

11. After the October accident, Claimant received treatment from Dr. Stagg and others. Michael T. Phillips, M.D., performed an evaluation at Liberty's request. He rated Claimant's PPI and apportioned some to preexisting causes and to the February accident as well as the October accident. Because a settlement agreement between Claimant and Liberty was pending at the time of the hearing, to the extent this finding relates to liability for the October accident it should not be considered instructive or binding.

#### **Discussion and Further Findings**

12. **Causation.** Claimant disputed the accuracy of Dr. Stagg's records. He and his wife testified that they did not say things to Dr. Stagg to indicate Claimant's pain had ameliorated. Rather, they claim he continued to have significant pain for which he took over-the-counter medications constantly between the February and October accidents. Claimant's confused memory about when he saw Dr. Harris undercuts his recollection of the dates of continuous pain.

13. Dr. Stagg is the only physician who saw Claimant between the February and October accidents. Dr. Stagg's testimony, opinions, and records receive significant weight. Claimant suffered a back injury as a result of the February accident which healed around the end of March 2001.

14. **Apportionment, PPI, and PPD.** Dr. Stagg's opinion that no PPI is attributable to the February accident is persuasive. All other issues relating to liability of Everest are moot.

Given the status of the pending settlement agreement between Claimant and Liberty at the time of the hearing, no findings relevant to the October accident are appropriate.

### CONCLUSIONS OF LAW

1. As a result of the February accident, Claimant suffered a back strain which required medical care until the end of March 2001;
2. Claimant failed to show he suffered any PPI as a result of the February accident; and
3. All further issues relevant to the February accident are moot.

### RECOMMENDATION

The Referee recommends that the Commission adopt the foregoing findings of fact and conclusions of law and issue an appropriate final order.

DATED this 14<sup>TH</sup> day of April, 2005.

INDUSTRIAL COMMISSION

/S/ \_\_\_\_\_  
Douglas A. Donohue, Referee

ATTEST:

/S/ \_\_\_\_\_  
Assistant Commission Secretary

### CERTIFICATE OF SERVICE

I hereby certify that on the 22<sup>ND</sup> day of APRIL, 2005, 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:

Brit D. Groom  
P.O. Box 227  
Cottonwood, ID 83522-0227

M. Lynn Dunlap  
P.O. Box 2754  
Twin Falls, ID 83303

Mark C. Peterson  
P.O. Box 829  
Boise, ID 83701

db

/S/ \_\_\_\_\_

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

BORO LAZIC, )  
 )  
 Claimant, ) **IC 01-007859**  
 ) **IC 01-517578**  
 v. )  
 )  
 INDEPENDENT FOOD CORPORATION, INC., ) **ORDER**  
 )  
 Employer, )  
 and )  
 )  
 EVEREST NATIONAL ) **FILED APRIL 22 2005**  
 INSURANCE COMPANY, )  
 )  
 Surety, )  
 and )  
 )  
 LIBERTY NORTHWEST )  
 INSURANCE CORPORATION, )  
 )  
 Surety, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

Pursuant to Idaho Code § 72-717, Referee Douglas A. Donohue submitted the record in the above-entitled matter, together with his proposed findings of fact and conclusions of law to the members of the 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. As a result of the February accident, Claimant suffered a back strain which required medical care until the end of March 2001.

2. Claimant failed to show he suffered any PPI as a result of the February accident.
3. All further issues relevant to the February accident are moot.
4. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all issues adjudicated.

DATED this 22<sup>ND</sup> day of APRIL, 2005.

INDUSTRIAL COMMISSION

/S/ \_\_\_\_\_  
Thomas E. Limbaugh, Chairman

/S/ \_\_\_\_\_  
James F. Kile, Commissioner

/S/ \_\_\_\_\_  
R. D. Maynard, Commissioner

ATTEST:

/S/ \_\_\_\_\_  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on 22<sup>ND</sup> day of APRIL, 2005, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

Brit D. Groom  
P.O. Box 227  
Cottonwood, ID 83522-0227

M. Lynn Dunlap  
P.O. Box 2754  
Twin Falls, ID 83303

Mark C. Peterson  
P.O. Box 829  
Boise, ID 83701

db

/S/ \_\_\_\_\_