

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

PHILIP R. LUVISI,)
)
 Claimant,)
)
 v.)
)
 RICHARD C. STRAUCH,)
)
 Employer,)
)
 and)
)
 STATE INSURANCE FUND,)
)
 Surety,)
 Defendants.)
 _____)

IC 03-516592

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

Filed April 11, 2005

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Rinda Just, who conducted a hearing in Boise, Idaho, on December 2, 2004. Richard Kim Dredge of Boise represented Claimant. James A. Ford, also of Boise, represented Defendants. The parties submitted oral and documentary evidence. One post-hearing deposition was taken and the parties submitted post-hearing briefs. The matter came under advisement on February 16, 2005 and is now ready for decision.

ISSUES

By agreement of the parties at hearing, the issues to be decided are:

1. Whether Claimant suffered a personal injury arising out of and in the course of employment;

2. Whether Claimant's injury was the result of an accident arising out of and in the course of employment;

3. Whether Claimant's condition is due in whole or in part to a pre-existing injury or cause;

4. Whether Claimant is entitled to reasonable and necessary medical care as provided for by Idaho Code § 72-432, and the extent thereof; and

5. Whether Claimant is entitled to temporary partial and/or temporary total disability (TPD/TTD) benefits, and the extent thereof.

All other issues, including permanent impairment and disability in excess of impairment were reserved.

CONTENTIONS OF THE PARTIES

Claimant asserts that as a result of lifting boxes in the course of his employment he sustained a compensable injury to his cervical spine, which ultimately required surgery. While Claimant freely admits that something happened to his neck the previous week while high-diving at the West Boise YMCA, he maintains that the diving incident was not the cause of his herniated cervical disc. Claimant contends that Defendants are responsible for the cost of his medical treatment, including the surgical fusion of his cervical spine, together with income benefits during his period of recovery.

Defendants argue that Claimant's herniated cervical disc was the result of the diving incident. They contend that lifting the boxes at work did not cause Claimant's injury and question whether the events described by Claimant constitute an accident as the term is defined in the workers' compensation statutes. Because Claimant's injury is not work-related,

Defendants argue, they are not responsible for the costs of Claimant's medical care or payment of time loss benefits.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant, Debrya Ann LuVisi, and Richard C. Strauch taken at hearing;
2. Claimant's Exhibits 1 through 12 and Defendants' Exhibits 1 through 24 admitted without objection at hearing; and
3. The post-hearing deposition of Timothy E. Doerr, M.D.

After having considered all the evidence and the briefs of the parties, the Referee submits the following findings of fact and conclusion of law for review by the Commission.

FINDINGS OF FACT

1. At the time of hearing, Claimant was 36 years of age. He resided in Kuna, Idaho, with his wife and two children.
2. In May or June of 2002, Claimant was hired by Employer to work in Employer's food distribution and vending business. Claimant worked as a route driver performing direct store deliveries of potato chips and other snack items. From all indications, Claimant was a good employee.
3. Claimant worked Monday through Friday. While his work hours varied each day, he invariably began the day early—between 4:30 and 5:30 a.m. When he had completed his deliveries and paperwork for the day, his workday was complete.

THE DIVING INCIDENT

4. On July 22, 2003, Claimant's wife arranged for the family to go swimming at the West Boise YMCA when Claimant got off work.¹ Claimant testified that he used the diving board several times, and then decided to go off the high dive. He made several dives from the high dive. Claimant testified that on his last dive, "going into the pool . . . I felt my neck get a little pinch . . ." Tr., p. 29. When asked to elaborate on what he meant by "a little pinch," Claimant responded:

A. It felt like my muscles tightened up on my neck.

Q. [By Claimant's Counsel] Again in what specific location?

A. My left shoulder.

Id. After the last dive, Claimant went over and joined his wife and daughter who were sitting in the pool. Claimant went down the slide with his daughter several times until he started to get sore, and then exited the pool.

5. Claimant reported for work at 5:00 a.m. on July 23. He engaged in a brief conversation with Employer at the warehouse while he was loading up his truck, and told Employer about the diving incident and that his "shoulder was hurting from going diving the day before." Claimant's Ex. 2, Bates 02. Claimant worked until 2:00 p.m. that day.

6. On Thursday, July 24, Claimant worked from 5:00 a.m. until 2:30 p.m.; on the following day, Friday, July 25, he worked from 5:00 a.m. until 3:30 p.m. He reported being sore both days.

7. Claimant rested over the weekend and returned to work on Monday, July 28. He worked from 5:00 a.m. until 3:00 p.m. Claimant reported that Employer knew that Claimant still

¹ Although some of the records indicate that the trip to the YMCA occurred on July 24, 2003, the parties agree that the later date was in error and that the visit to the YMCA was July 22, 2003.

wasn't feeling well on the 28th. There is no evidence in the record of any conversation between Claimant and Employer on the 28th, and upon further questioning it became clear that Claimant merely assumed that Employer was aware of his condition on that Monday.

8. On Tuesday, July 29 and Wednesday, July 30, Claimant worked 4:30 a.m. to 11:30 a.m. and from 4:30 a.m. until 2:00 p.m., respectively. He reported still being sore both days.

9. On July 31, Thursday, Claimant worked 5:30 a.m. until 3:00 p.m. and noted that he "was feeling a bit better and not hurting as bad." *Id.*

THE LIFTING INCIDENT

10. On Friday, August 1, Claimant arrived at work at 5:00 a.m. He saw Employer at the warehouse and Employer commented that Claimant looked better. Claimant replied that he was feeling better. By late morning, Claimant was running late on his route. By about 11:45 a.m., he was at the Albertson's store on Veterans Parkway. Claimant testified that he tossed the required boxes of product out of the truck, completed the paperwork, then jumped out of the truck:

[W]hen I reached down to lift the boxes, I bent down to lift them and as I lifted them I felt a pop in my neck. So, then, I was like, ow. Then, I felt a little numbness going down my arm and I'm like, oh, this is not good . . .

Tr., p. 36. Claimant stated that he carried the boxes into the store and dropped them "because they were heavy." *Id.* at 37. He later carried the boxes into the aisle and restocked the shelves. Claimant completed his route and returned to the warehouse about 4:00 p.m. Claimant went home. He did not contact Employer to tell him about the lifting incident, nor did he leave a note or a phone message regarding the day's events.

11. When Claimant awoke on Saturday morning, August 2, his thumb was numb and

he “could not move [his] left arm.” *Id.* at p. 39. Claimant was supposed to participate in a scouting activity that day, but he stayed home and rested all day. On Sunday morning, August 3, Claimant’s condition was unchanged, and his wife took him to the ER. Claimant described his condition at the ER: “I couldn’t move my arm. My left arm had numbness in my thumb and it was major pain . . .” *Id.*

12. Claimant did not return to work after August 1. He was laid off in September, for reasons having nothing to do with his injury or surgery.

THE MEDICAL RECORDS

13. According to the emergency department admission record, Claimant arrived at the ER with his wife at 10:15 a.m. His chief complaint was “[left] shoulder/neck injury. Went off high dive 1 w[ee]k ago. Numbness into [left] arm to hand. Intermittent.” Defendant’s Ex. 6, Bates 1004. Focus notes on the form indicate that Claimant “woke [with left] arm pain. Thumb ‘tingling.’” *Id.* Claimant was tender to palpation over his left trapezius and his strength was equal bilaterally. The typed emergency room report also discussed the diving incident and the subsequent “little twinge in his left lateral neck.” *Id.* at Bates 1001. The report goes on to note:

[Claimant] has a job where he does quite a bit of lifting and he has worked a full work week. Now at the end of his work week this *neck pain has gradually gotten worse through the course of the week.* Complains of left lateral neck pain that travels down his left arm. At times he has some intermittent numbness of his thumb. *Presents here because in the usual amount of time that an injury gets better for him, it seems to be getting worse.*

Id. (Emphasis added.) Claimant was sent for cervical spine x-rays, which showed no appreciable fractures or acute changes. He was diagnosed with “[a]cute left cervical strain and left trapezius muscle spasm with neuropathy.” *Id.* Claimant was treated at the ER with intramuscular injections and was sent home with prescription muscle relaxant and painkillers. He was directed to take ibuprofen every eight hours. Claimant was referred to Samuel S. Jorgenson, M.D., an

orthopedic surgeon, for follow-up in one week.

14. On Monday, August 4, Claimant saw Michael P. Gibson, M.D., an occupational medicine specialist, who had treated him for other work-related injuries and had performed Claimant's required physicals for maintaining his commercial drivers' license. Claimant testified that he went to see Dr. Gibson because he was still in pain on Monday. Dr. Gibson diagnosed cervical radiculitis and opined that Claimant probably had a C6 nerve root impingement as a result of a herniated disc. Dr. Gibson's treatment notes state:

I have recommended that he go thru [sic] with the CT myelogram and see Dr. Jorgenson for evaluation. I will not need to see him again. I basically saw him for a second opinion regarding the recommendations from the emergency room.²

Defendants' Ex 3, Bates 5005. Claimant underwent the CT myelogram on August 5. The clinical indication for the CT myelogram was "Diving injury with neck pain and left arm pain."

15. On August 6, Claimant saw Dr. Jorgenson. On the new patient intake form Claimant identified the *onset* of his neck pain as occurring the day after the high dive incident, and identified the *cause* of the injury to be a recreational accident. When asked to describe the onset of his pain, Claimant led with the high-dive incident, then noted the lifting incident. Dr. Jorgenson took Claimant's history as follows:

[Claimant] is a 44-year-old male³ who describes a neck injury on July 24, 2003. At that time he was diving at the West Boise YMCA off the high dive. He hit the water awkwardly and had pain to his neck. The pain was minimal at first and he was able to continue swimming. It then progressed more significantly throughout the day and that evening.

He was able to return to work, for which he does some stocking. His pain significantly worsened on August 1, 2003, with new onset of left arm pain.

² Claimant was scheduled to see Dr. Jorgenson on August 6, and Dr. Jorgenson had ordered that Claimant have a CT myelogram prior to the appointment.

³ Claimant's age was 34. This is apparently a typographical error.

Defendants' Ex. 8, Bates 2001. Claimant's complaints included:

. . . pain in the posterior aspect of the cervical spine, extending into the left cervical trapezial region and the left medial border of the scapula, extending down the lateral aspect of his left arm into the dorsal forearm and settles into the thumb and index finger region. He notes significant numbness and tingling to the forearm and to his thumb.

Id. On exam, Dr. Jorgenson found Claimant's symptoms consistent with the findings from the CT imaging showing a large left-sided disc extrusion at C5-6. Claimant had neurologic deficits in strength, reflexes and sensation. Dr. Jorgenson recommended surgery.

16. Claimant underwent a surgical anterior cervical discectomy and fusion (ACDF) on August 11, 2003. There were no complications and Claimant had a normal recovery.

17. On August 15, Claimant's wife contacted Dr. Gibson and advised him that Claimant was filing a workers' compensation claim for his injury. Dr. Gibson's records provided no further information on the content of their discussion. Dr. Gibson placed the following note on Claimant's chart the same day:

I reviewed the history. The patient had mild pain in his neck on the left side related to the dive incident. The pain intensified after lifting at work, which then resulted in radicular pain and findings in the left arm. Historically this would qualify as an aggravation of a pre-existing problem. In retrospect, it is most likely that this patient injured his C6 disk when he dove off the high dive. The injury, however, was not causing radicular pain until he lifted boxes at work. It is most likely that the disk herniated during this activity and caused the resultant arm pain, numbness, tingling, and weakness.

Defendants' Ex. 3, Bates 5005. On September 12, Claimant and his wife contacted Kate Krakker, N.P., the nurse practitioner who had seen Claimant when he went to the ER on August 3. She noted the following in an addendum to the ER report:

The patient and his wife called the emergency room concerned that my medical chart was not complete. I did review his history with him and I did recall some initial statements by him that stated that he had dove [sic] off his diving board and as I had previously reported felt a twinge and had some neck pain for about a week. He described it as a soreness the second week after his diving accident and

again he felt he was generally improving at the end of his work week on Friday. *He now gives me new information that he was specifically lifting three potato chip boxes when he felt a pulling in his neck. Again it was mildly sore. He was able to complete his shift. It was the following morning, Saturday morning, the day before I saw him that his left arm was more painful and had some mild numbness.*

Defendants' Ex. 6, Bates 1009.

CLAIMANT'S WORKERS' COMPENSATION COMPLAINT

18. On August 3, the day Claimant went to the ER, he called Employer and told him that he would not be at work for the next few days. He related that he had gone to the ER and that further testing was needed. There is nothing in the record to support Claimant's testimony at hearing that he told Employer about the lifting accident during this phone call. Employer remained unaware of the box lifting incident and believed that Claimant's injury was the result of the diving incident. In a later conversation with Claimant's wife, Employer, still unaware of the lifting incident, advised that he did not believe that Claimant's injury was compensable because it was not work-related. Claimant's wife said nothing about the lifting incident during that conversation. Claimant and his wife remained in contact with Employer during Claimant's recovery. At no time did either of them mention the lifting incident. In fact, Employer did not become aware of the lifting incident until contacted by defense counsel in August 2004.

19. Claimant's wife saw an attorney on August 13. According to Claimant, the attorney advised that Claimant's injury might be a compensable workers' compensation claim and advised that Claimant should file the paperwork. Claimant filed a hand-written First Report of Injury or Illness on August 14, 2003.

20. Employer terminated Claimant on September 3. On the same date, Claimant sent a letter to Surety, enclosing all of the bills he had received to date for his medical care. He also provided a chronology of events. In pertinent part, Claimant wrote:

07-22-03 . . . On one of the dives I felt my head jerk a little when hitting the water but didn't think anything of it. I then went down the slide a few times with my daughter but then my shoulder started hurting a little so we went home.

* * *

08-01-03 . . . I brought in 3 cases of chips. When I reached down and picked them up, I felt a pop in my left shoulder and my arm started hurting. When I got in the store my arm was hurting so bad that I dropped the boxes on the ground. . . . My shoulder and arm felt sore the rest of the day.

08-13-03 . . . My wife talked to an attorney who told her that my case could possibly qualify as a workers' comp case and that I should file the paperwork. So a few days after I got home from the hospital I filed the paperwork even though I had already given my Aetna insurance card to everyone I had seen. My whole scenario was so rushed that all I could think about was getting rid of the pain I was in. And then when my boss told my wife that I couldn't file workers' comp, I just took it as such. So that brings us to today and me scrambling to get all the info you need to review my case.

Defendants' Ex. 10.

21. On October 16,⁴ Surety contacted Dr. Doerr, an orthopedic surgeon, by letter and asked him to provide a records review of Claimant's case in an effort to identify the most likely cause of Claimant's injury. Surety noted in its letter to Dr. Doerr that Dr. Jorgenson had declined to provide an opinion on causation and had suggested a third-party review. Surety provided Dr. Doerr with all of the medical records Surety had received to date in support of Claimant's case (17 pages). Dr. Doerr responded with surprising alacrity, replying by letter of even date. Dr. Doerr concluded that the diving incident "was medically more probable than not the source of [Claimant's] cervical disk herniation." Defendants' Ex. 15, Bates 4001.

22. Claimant's workers' compensation claim was denied on November 20, 2003. Surety relied on the opinion of Dr. Doerr in denying the claim.

⁴ Surety's letter to Dr. Doerr appears in the record three times. In Defendants' Ex. 15, Bates 4002, the letter is dated October 17, 2003. In Claimant's Ex. 11, Bates 32, the letter is dated October 17, 2003. In Claimant's Ex. 12, Bates 38, the letter is dated October 16, 2003. The letter was actually sent on October 16, as evidenced by the fax cover sheet, *Id.*, Bates 37, and the fax transmission information that appears on the top of the letter.

DISCUSSION AND FURTHER FINDINGS

INJURY/ACCIDENT

The burden of proof in an industrial accident case is on the claimant.

The claimant carries the burden of proof that to a reasonable degree of medical probability the injury for which benefits are claimed is causally related to an accident occurring in the course of employment. Proof of a possible causal link is insufficient to satisfy the burden. The issue of causation must be proved by expert medical testimony.

Hart v. Kaman Bearing & Supply, 130 Idaho 296, 299, 939 P.2d 1375, 1378 (1997) (internal citations omitted). "In this regard, 'probable' is defined as 'having more evidence for than against.'" *Soto v. Simplot*, 126 Idaho 536, 540, 887 P.2d 1043, 1047 (1994).

23. For the reasons set out below, the Referee finds that Claimant has failed to prove that his cervical injury was, more likely than not, caused by lifting the potato chip boxes on August 1, 2003.

24. **Inconsistencies In The Record.** While the Referee found Claimant to be sincere in his testimony and demeanor, the record reveals a number of inconsistencies, including:

- Whether the diving incident hurt Claimant's neck or his shoulder;
- Whether Claimant experienced pain *or* numbness as a result of the diving incident;
- Whether Claimant experienced a "pop" or "a pinch" or "a pulling" in his neck as a result of the diving incident;
- Whether Claimant was lifting *one* box of potato chips or *three*;⁵
- Whether Claimant hurt his *neck* or his *shoulder* lifting the box or boxes of chips;
- Whether Claimant went to the ER because he wasn't recovering from the diving accident or because he injured himself lifting the box or boxes of chips; and

⁵ In his answers to interrogatories posed by Defendants, Claimant stated that he was lifting one particular box when he felt the onset of neck pain. Tr., p. 54.

- Whether Claimant did or did not tell Employer about the lifting incident.⁶

Occasional and minor variations are to be expected when a Claimant is asked to describe events a number of times in a number of formats. It is human nature to rephrase and refine answers and certainly an individual's recollections tend to become less certain over time. Normally such inconsistencies are chalked up to the fact that claimants are imperfect recorders and replays of events. But the record in this case was striking as to the number of inconsistencies, particularly with regard to crucial issues and recollections of the kind that are usually quite concrete.

For example, the lifting incident appears as an afterthought in most of the medical records. The record shows that the lifting incident is not mentioned at all in Claimant's first visit to the emergency room, nor is it prominent in the records of Dr. Jorgenson. Subsequent efforts to amend the records to include reference to the lifting incident some time later highlights this deficiency. Claimant's explanation that the medical providers didn't write it down and he was just trying to correct the record falls flat. Medical providers live and die, as do their patients, by the completeness and accuracy of the medical records they generate. It is not typically the case that a primary caregiver ignores a crucial part of a patient's history, especially when it sheds light on the etiology of the patient's complaints. It seems particularly odd that Claimant's efforts to amend the records included the one set of medical records that already included the lifting incident (Dr. Gibson's August 4 record).

Similarly, individuals who seek medical care, perhaps particularly in an emergency room, are generally quite thorough in telling the hospital staff of every action, event, or detail that they

⁶ At hearing, Claimant testified that he told Employer of the lifting accident on August 3. As shown during cross examination, his deposition testimony varied substantially from his hearing testimony. Tr., p. 56.

think might help alleviate their distress. That Claimant neither mentioned the lifting incident, nor advised that his injury was work-related when he presented at the ER is telling, especially in light of the fact that Claimant has had other workers' compensation claims and presumably is aware of the importance of providing such information.

25. **Medical Evidence.** Claimant relies solely on Dr. Gibson's opinion to establish causation. Claimant contends that Dr. Gibson is just as qualified as Dr. Doerr to render an opinion on the cause of Claimant's cervical injury, that Dr. Gibson actually saw and examined Claimant, and that he did so at a time that was in close proximity to the events that necessitated attention to the causation question. Defendants counter that Dr. Gibson practices occupational medicine, is not an orthopedic surgeon, and specifically recommended that Claimant see Dr. Jorgenson, an orthopedic surgeon who specializes in diagnosing and treating the spine. Defendants also point out that Dr. Gibson's opinion appears in the addendum to his chart following a call from Claimant's wife several weeks after he saw Claimant. The Referee is struck by the fact that the opinion seems almost gratuitous, as nothing in the record indicates that anyone involved with the matter asked Dr. Gibson for an opinion on causation. It is the experience of this Referee that physicians are often averse to opining on causation, even when they are the primary treating physician and are directly asked to do so by a Surety. Dr. Jorgenson's refusal to do so is a case in point. Defendants also point out that Dr. Gibson offered this opinion without reviewing any of the subsequent medical records, including the imaging studies or the records of Dr. Jorgenson.

Dr. Doerr, on the other hand, did not have the opportunity to see Claimant. He did have access to all of the relevant medical records, and he was able to clearly explain his analysis and how he reached his ultimate opinion. Dr. Doerr stated that he reviewed all the medical records

but found the original ER records, the notes from Dr. Gibson, and Claimant's initial visit with Dr. Jorgenson to be the most significant in reaching his ultimate conclusion. Dr. Doerr explained that Claimant's injury was consistent with the diving incident, which would place an asymmetric axial load on the spine. Dr. Doerr stated that lifting boxes could cause a ruptured disc, but asymmetric axial load was an "overwhelmingly more common cause for a disk rupture." Doerr Depo., p. 12. Additionally, Dr. Doerr discussed the chronology of Claimant's injury, and found it entirely consistent with the natural history of a disc herniation—gradually progressing from slight discomfort to pain and radicular symptoms over time. Dr. Doerr was clearly the more qualified of the two physicians who provided a causation opinion. Dr. Doerr's opinion was provided after a full review of the records and in response to a direct request, and he was able to explicate, simply and clearly, how and why he reached the conclusion he did.

The Referee is troubled by Dr. Jorgenson's refusal to render an opinion on causation, as he was probably in the best position to do so with some authority. Dr. Doerr's explanation as to why Dr. Jorgenson refused to tender an opinion is plausible, but the Referee declines to speculate as to what Dr. Jorgenson's refusal might mean.

Claimant sincerely believes that his injury was the result of the lifting incident. However, viewed as a whole, the record fails to persuade the Referee that Claimant's herniated cervical disc was caused by the lifting incident to a reasonable medical probability. Because no causation is found, the remaining issues are moot.

CONCLUSION OF LAW

1. Claimant's herniated cervical disc was caused, more probably than not, by the diving incident that occurred on July 22, 2003. Claimant's injury did not arise out of and in the course of his employment and is, therefore, not compensable.

RECOMMENDATION

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

DATED this 25 day of March , 2005.

INDUSTRIAL COMMISSION

 /s/ _____

Rinda Just, Referee

ATTEST:

 /s/ _____

Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 11 day of April , 2005 a true and correct copy of **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon:

RICHARD K DREDGE
PO BOX 9499
BOISE ID 83707-3499

JAMES A FORD
PO BOX 1539
BOISE ID 83701-1539

djb

 /s/ _____

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

PHILIP R. LUVISI,)	
)	
Claimant,)	IC 03-516592
)	
v.)	ORDER
)	
RICHARD C. STRAUCH,)	
)	
Employer,)	
)	Filed April 11, 2005
and)	
)	
STATE INSURANCE FUND,)	
)	
Surety,)	
Defendants.)	
_____)	

Pursuant to Idaho Code § 72-717, Referee Rinda Just submitted the record in the above-entitled matter, together with her proposed findings of fact and conclusion of law, to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendation of the Referee. The Commission concurs with this recommendation. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusion of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant's herniated cervical disc was caused, more probably than not, by the diving incident that occurred on July 22, 2003. Claimant's injury did not arise out of and in the course of his employment and is, therefore, not compensable.
2. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all

matters adjudicated.

DATED this __11_ 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 the _11_ 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 persons:

RICHARD K DREDGE
PO BOX 9499
BOISE ID 83707-3499

JAMES A FORD
PO BOX 1539
BOISE ID 83701-1539

djb

_____/s/_____