

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

STEVE SWAIM,)
)
 Claimant,)
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 v.)
)
 SCOTT HURST TRUCKING,)
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 Employer,)
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 and)
)
 RELIANCE INSURANCE COMPANY,)
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 Surety,)
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 and)
)
 WESTERN GUARANTY FUND,)
)
 Successor in Interest,)
)
 Defendants.)
 _____)

IC 01-020876

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

Filed April 22, 2005

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Michael E. Powers, who conducted a hearing in Coeur d’Alene, Idaho, on December 29, 2004. Claimant was present and was represented by Edgar L. “Ned” Annan of Spokane. Glenna M. Christensen of Boise represented Employer/Reliance Insurance Company and its Successor in Interest, Western Guaranty Fund (Surety). Oral and documentary evidence was presented and the record remained open for the taking of two post-hearing depositions. The parties submitted post-hearing briefs and this matter came under advisement on March 22, 2005.

ISSUES

As agreed to by the parties, the issues to be decided as the result of the hearing are:

1. Whether Claimant is entitled to additional medical care;
2. Whether Claimant is entitled to temporary total disability (TTD) benefits from June 11, 2004, to the present;
3. Whether and to what extent Claimant is entitled to permanent partial impairment (PPI) benefits;
4. Whether Claimant is totally and permanently disabled pursuant to the “odd-lot” doctrine; and,
5. Whether Claimant is entitled to attorney’s fees pursuant to Idaho Code § 72-804 for Surety’s unreasonable termination of TTD benefits and their unreasonable delay in authorizing medical treatment prescribed by Claimant’s treating physician.

CONTENTIONS OF THE PARTIES

Claimant contends he is entitled to further medical care in this accepted claim consisting of pain medication and epidural steroid injections. He also asserts he is entitled to further TTD benefits as a result of continued post-surgery back problems including sacroiliitis, a condition from which he still suffers. Further, he is entitled to a 21% whole person PPI rating, as that is the only rating that has been assigned. Finally, Claimant contends he is entitled to permanent total disability benefits as an odd-lot worker as he can no longer move furniture like he has done for 26 years and to look for work in the sedentary class to which he is now relegated would be futile.

Defendants contend that Claimant’s need for future medical care is speculative. Further, Claimant is not entitled to additional TTD benefits, as an IME physician of his own choosing had

declared him stable prior to the termination of his TTD benefits. Defendants do not contest the 21% whole person PPI rating. Defendants contend that Claimant is not an odd-lot worker in that he has not shown that he has tried work and failed or that **any** effort to find employment would be futile. Finally, Claimant is not entitled to attorney fees, as Surety was reasonable in terminating TTD benefits; they do not address Claimant's contention that they failed to timely approve the epidural steroid injections.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant and ICRD consultant Daniel Wesley Brownell presented at the hearing;
2. Claimant's Exhibits 1-12 admitted at the hearing;
3. Defendants' Exhibits A-K admitted at the hearing; and,
4. The post-hearing deposition of Jeffrey D. McDonald, M.D., Ph.D., taken by Claimant on January 3, 2005, and that of William M. Shanks, M.D., taken by Defendants on January 18, 2005.

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

FINDINGS OF FACT

1. Claimant was 51 years of age at the time of the hearing and resided in an "old" motor home behind his daughter's house in Post Falls. He has worked as a furniture mover for 26 years.
2. On September 29, 2000, Claimant was helping move a nine-drawer dresser down some stairs in a residential home. The stairs made a turn and within the turn were some pie-

shaped stairs. Claimant was going backwards on the downhill end of the dresser. As Claimant was making the turn in the stairs, his foot slipped on one of the pie-shaped stairs, which brought the weight of the dresser down on him. He felt an immediate “sheering” pain in his back. The driver of the moving van provided Claimant with lighter work until Claimant was able to return to his office and report the accident to Employer.

3. Claimant continued to work until around October 12, 2000, at which time he felt something “pop” in his back. He first sought medical treatment on October 20, 2000, when he presented to Bradley S. Reed, D.C. Dr. Reed ordered an MRI on October 27, 2000, that was interpreted by Arne E. Michalson, M.D., as showing a L4-5 left far lateral disk extrusion causing compression of the exited left L4 nerve root in the exit zone, and a L5-S1 posterior disk bulge without nerve root compression. Defendants’ Exhibit J, p. 69. When Dr. Reed’s treatment proved ineffectual, he referred Claimant to Jeffrey D. McDonald, M.D., Ph.D., a neurosurgeon.

4. Claimant first saw Dr. McDonald on November 9, 2000. Based on his examination, Dr. McDonald noted “. . . my strong recommendation to him is that he consider undergoing surgical decompression at the site of the herniation given its impressively large size.” Claimant’s Exhibit 1, p. 61. On November 27, 2000, Dr. McDonald performed a left L4-5 microdiscectomy.

5. Unfortunately, Claimant’s post-surgical course was not as expected in that his back pain increased during physical therapy. Claimant returned to Dr. McDonald on January 5, 2001, complaining of low back pain and occasional numbness in his legs. Dr. McDonald was concerned about ongoing left L5 nerve root irritation. He ordered extension-flexion x-rays as well as an MRI that revealed probable disc material on the left of L4-5.

Dr. McDonald offered a repeat surgery “. . . to clean out this area.” Defendants’ Exhibit B. Claimant declined Dr. McDonald’s offer and opted instead to continue with conservative care.

6. On September 18, 2001, Claimant saw Jae Y. Lim, M.D., a neurosurgeon practicing in Spokane, for a second opinion regarding surgery. Dr. Lim noted that Claimant’s leg pain improved after surgery, but Claimant continued to complain of debilitating low back pain and mild numbness and weakness in his left leg. Dr. Lim concluded that because Claimant was experiencing symptoms consistent with mechanical back pain, a fusion at L4-5 should be considered.

7. Claimant returned to Dr. McDonald on September 28, 2001, with “incapacitating” back pain. Again, Dr. McDonald advised that an L4-5 decompression and fusion was the only way to relieve Claimant’s back pain. Claimant chose to “think about it” and would get back with Dr. McDonald regarding his decision in that regard.

8. Claimant did not return to Dr. McDonald until June 14, 2002. At that time, Claimant agreed to the surgery and on July 2, 2002, Dr. McDonald performed a re-do lumbar laminectomy and fusion at L4-S1.

9. As with his first surgery, Claimant’s post-operative recovery was not without complications. First, Claimant developed a peripheral vascular problem in his left lower extremity that required a left femoral-popliteal bypass surgery on August 17, 2004; he had a full and complete recovery from this surgery. Claimant also developed sacroiliitis, a painful inflammation of the SI joint that occurs in approximately 35% of fusion patients. Alleviating the pain associated with sacroiliitis is a “challenge,” and Dr. McDonald has implemented a program of epidural injections, physical therapy, and medications to try to manage Claimant’s chronic

pain. As stated by Claimant at hearing, after the second surgery, “I have never really been the same since.” Hearing Transcript, p. 24.

DISCUSSION AND FURTHER FINDINGS

Medical Benefits:

Idaho Code § 72-432(1) obligates an employer to provide an injured employee reasonable medical care as may be required by his or her physician immediately following an injury and for a reasonable time thereafter. 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. See, *Sprague v. Caldwell Transportation, Inc.*, 116 Idaho 720, 779 P.2d 395 (1989).

10. Dr. McDonald testified that Claimant will continue to need Flexeril and Hydrocodone indefinitely. Further, he will need steroid injections from time to time. Dr. McDonald’s testimony in that regard is unrebutted. The Referee finds that such treatment is required by Claimant’s treating physician and is, therefor, reasonable.

TTD Benefits:

Idaho Code § 72-408 provides for income benefits for total and partial disability during an injured worker’s period of recovery. “In workmen’s [sic] compensation cases, the burden is on the claimant to present expert medical opinion 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, 763, 605 P.2d 939, 941 (1980); *Malueg v. Pierson Enterprises*, 111 Idaho 789, 791, 727 P.2d 1217, 1220 (1986). Once a claimant is medically stable, he or she is no longer in the period of recovery, and total temporary disability benefits cease. *Jarvis v. Rexburg Nursing Center*, 136 Idaho 579, 586, 38 P.3d 614, 621 (2001) (citations omitted).

Once a claimant establishes by medical evidence that he or she is still within the period of recovery from the original industrial accident, he or she is entitled to total temporary disability benefits unless and until evidence is presented that he or she has been medically released for light work and that (1) his or her former employer has made a reasonable and legitimate offer of employment to him or her which he or she is capable of performing under the terms of his or her light duty work release and which employment is likely to continue throughout his or her period of recovery, or that (2) there is employment available in the general labor market which the claimant has a reasonable opportunity of securing and which employment is consistent with the terms of his or her light duty work release. *Malueg, Id.*

11. Claimant contends he is entitled to TTD benefits from June 11, 2004, when Surety terminated those benefits to the present as he has been in a period of recovery since then and has been unable to work. Defendants terminated TTD benefits based on a report by William M. Shanks, M.D., who examined Claimant on February 4, 2003, at his then-attorney's request. Dr. Shanks found Claimant to be at maximum medical improvement and rated him at 21% of the whole person. It is not known why Surety continued to pay TTD benefits for an additional 16 months. On June 17, 2003, Dr. McDonald authored a "Provider Interview Form" wherein he indicated that he concurred with the PPI rating given by Dr. Shanks and the restrictions he imposed. He indicated that Claimant needed vascular surgery that was unrelated to his industrial accident and that he was proceeding to close Claimant's claim. Claimant has presented no medical evidence that he has been in a period of recovery for any work-related condition since June 11, 2003. While Dr. McDonald has recommended further treatment, that treatment is incidental to Claimant's sacroiliitis and appears to be geared more toward making Claimant comfortable than in effectuating a "cure." As Dr. McDonald stated in his deposition, "I believe

he is right now about as good as we can make him.” Dr. McDonald’s Deposition, p. 33. The Referee finds that Claimant has failed to prove he is entitled to additional TTD benefits.

PPI benefits:

“Permanent impairment” is any anatomic or functional abnormality or loss after maximal medical rehabilitation has been achieved and which abnormality or loss, medically, is considered stable or nonprogressive at the time of the evaluation. Idaho Code § 72-422. “Evaluation (rating) of permanent impairment” is a medical appraisal of the nature and extent of the injury or disease as it affects an injured worker’s personal efficiency in the activities of daily living, such as self-care, communication, normal living postures, ambulation, elevation, traveling, and nonspecialized activities of bodily members. Idaho Code § 72-424. When determining impairment, the opinions of physicians are advisory only. The Commission is the ultimate evaluator of impairment. *Urry v. Walker Fox Masonry Contractors*, 115 Idaho 750, 755, 769 P.2d 1122, 1127 (1989).

12. Defendants concede in their post-hearing brief that they do not disagree with Dr. Shanks’ 21% whole person PPI rating and the Referee finds that rating to be reasonable. Therefore, Claimant is entitled to PPI benefits equating to that rating.

PPD Benefits:

“Permanent disability” or “under a permanent disability” results when the actual or presumed ability to engage in gainful activity is reduced or absent because of permanent impairment and no fundamental or marked change in the future can be reasonably expected. Idaho Code § 72-423. “Evaluation (rating) of permanent disability” is an appraisal of the injured employee’s present and probable future ability to engage in gainful activity as it is affected by the medical factor of impairment and by pertinent non-medical factors provided in Idaho Code

§ 72-430. Idaho Code § 72-425. Idaho Code § 72-430(1) provides that in determining percentages of permanent disabilities, account should be taken of the nature of the physical disablement, the disfigurement if of a kind likely to handicap the employee in procuring or holding employment, the cumulative effect of multiple injuries, the occupation of the employee, and his or her age at the time of the accident causing the injury, or manifestation of the occupational disease, consideration being given to the diminished ability of the affected employee to compete in an open labor market within a reasonable geographical area considering all the personal and economic circumstances of the employee, and other factors as the Commission may deem relevant, provided that when a scheduled or unscheduled income benefit is paid or payable for the permanent partial or total loss or loss of use of a member or organ of the body no additional benefit shall be payable for disfigurement.

The test for determining whether a claimant has suffered a permanent disability greater than permanent impairment is “whether the physical impairment, taken in conjunction with non-medical factors, has reduced the claimant’s capacity for gainful employment.” *Graybill v. Swift & Company*, 115 Idaho 293, 294, 766 P.2d 763, 764 (1988). In sum, the focus of a determination of permanent disability is on the claimant’s ability to engage in gainful activity. *Sund v. Gambrel*, 127 Idaho 3, 7, 896 P.2d 329, 333 (1995).

Claimant contends he is an odd-lot worker and, thus, permanently and totally disabled. At issue is whether Claimant fits within the definition of an odd-lot worker. *Boley v. State Industrial Special Indemnity Fund*, 130 Idaho 278, 281, 939P.2d 854, 857 (1997). An odd-lot worker is one “so injured the he can perform no services other than those which are so limited in quality, dependability or quantity that a reasonably stable market for them does not exist.” *Bybee v. State of Idaho, Industrial Special Indemnity Fund*, 129 Idaho 76, 81, 921 P.2d 1200,

1205 (1996), *citing Arnold v. Splendid Bakery*, 88 Idaho 455, 463, 401 P.2d 271, 276 (1965). Such workers are not regularly employable “in any well-known branch of the labor market – absent a business boom, the sympathy of a particular employer or friends, temporary good luck, or a super human effort on their part.” *Carey v. Clearwater County Road Department*, 107 Idaho 109, 112, 686 P.2d 54, 57 (1984), *citing Lyons v. Industrial Special Indemnity Fund*, 98 Idaho 403, 406, 565 P.2d 1360, 1363 (1963)

Odd-lot status may be proved in one of three ways:

- (1) by showing what other types of employment the employee has attempted;
- (2) by showing the employee, or vocational counselors, employment agencies, or the Job Service on behalf of the employee, have searched for other work for the employee, and that other work was not available; or,
- (3) by showing that any efforts by the employee to find suitable employment would have been futile. *Huerta v. School District No. 431*, 116 Idaho 43, 47, 773 P.2d 1130, 1134 (1989). The burden of establishing odd-lot status lies with the claimant. *Rost v. J.R. Simplot*, 106 Idaho 444, 680 P.2d 866 (1984).

13. The only vocational expert to testify and give expert vocational opinions in this matter was Coeur d’Alene ICRD field consultant Daniel Wesley Brownell. Mr. Brownell has been with the Coeur d’Alene field office for over 24 years and is intimately familiar with the north Idaho labor market. He first began working with Claimant on January 7, 2003, when Claimant self-referred to the Coeur d’Alene field office. Mr. Brownell interviewed Claimant and learned that he had a tenth grade education, no GED, and had worked as a furniture mover for 26 years. He had also spent eight years as a painter and sandblaster and six years as a truck driver. Mr. Brownell discovered that Claimant’s time-of-injury job was no longer available to him. Mr. Brownell and a rehabilitation nurse assigned to Claimant’s case arranged for a functional capacities evaluation that was performed by Paula Taylor, P.T., on March 11 and 12, 2003. While Claimant’s self-rating placed him at the low end of the sedentary work category, Claimant actually demonstrated abilities that matched him with the light work category with the exception

of being able to get to the floor for lifts, etc. Mr. Brownell closed his file in June of 2003 due to Claimant's need for continuing medical treatment and because Claimant had been in heavy labor jobs to which he could no longer return.

14. Mr. Brownell met again with Claimant on December 14, 2004, at the request of Surety and Claimant's attorney. Claimant informed Mr. Brownell that he needs to lie down three to five times in a 24-hour period for about three hours at a time to rest. He then gets up and engages in sedentary activity or walking for three hours. He has foot pain, like stepping on a rock all the time. Mr. Brownell observed Claimant wearing bifocals and was concerned about his visual acuity and eye/hand coordination as he was focusing more on sedentary-type jobs than he was when he first met Claimant. Upon his review of prior and current medical records and considering Claimant's age, education, work history, lack of transferable skills, and Claimant's physical condition, Mr. Brownell reached the conclusion that Claimant is unemployable in any regularly available employment and for him to search for any employment would be futile.

15. Mr. Brownell's opinion, stated on a more likely than not basis, is unrebutted and persuasive. The Referee noted at hearing that Claimant looked considerably older than his stated age of 51 and had considerable difficulty ambulating. Mr. Brownell commented about Claimant's age at hearing:

Q. (By Referee Powers): And would you describe, if you can, his general appearance for the record for the Commission.

A. Well, frankly, I'm shocked by his appearance because we're exactly the same age. And he looks like he's 20 years older than I am. Just frankly saying that. His appearance is just looking like a much older man than what he is.

. . .

Q. (By Referee Powers): Could you describe how he gets around.

A. Slowly. He has to be concerned about where he's going. He sits in a chair with care usually is what I saw around the situation that I saw him in last.

Hearing Transcript, pp. 81-82.

16. Dr. McDonald also commented on Claimant's demeanor and appearance in his office note dated July 26, 2004, ". . . now he is truly miserable" and ". . . Mr. Swaim appears disheveled and deconditioned. His movements are extremely antalgic." Claimant's Exhibit 1, p. 3. Dr. McDonald testified in his deposition regarding his observations of Claimant's appearance:

Q. (By Mr. Annan): Okay. I'd like to ask you one more thing. How would you describe his general appearance?

A. He's a large man who varies from time to time from a very presentable, cooperative individual to a rather disheveled, unkempt appearance; and in my observation of him, it is highly dependent on his level of pain, level of function, and how many pain pills he's required to take. In the beginning, it's easy to dismiss him as being disheveled and unkempt, but over my years of observation of him I truly believe there's a basis for those rougher days, and he has looked very rough sometimes when he comes in the clinic, and I think the basis is his pain. When he feels good, he looks good, okay? But at best he's a large man, he's somewhat overweight, and he is definitely deconditioned generally speaking. He's not an intellectual individual.

Q. Now he's 51 years of age. Does he appear to be 51?

A. He looks much older from [*sic*] 51.

Q. How much older would you say?

A. See, I don't remember him as 51. He looks significantly older, more like late sixties.

Dr. McDonald's Deposition, pp. 25-26.

17. While a claimant's demeanor and appearance is but one factor to consider in reaching a determination of the extent of PPD, in this case the Referee finds that factor to be significant. When one adds to that the physical restrictions imposed by Dr. Shanks (and agreed to by Dr. McDonald) of no long standing or sitting, no repetitive bending, squatting, or stooping, no lifting over 20-30 pounds, lack of transferable skills to the sedentary labor market, education, and work history, it becomes apparent that Claimant's PPD is substantial.

18. Claimant has not worked since shortly after his September 29, 2000, accident and he, nor anyone on his behalf, has looked for work, therefore, he has failed to establish odd-lot status by the first two prongs of the *Huerta* test. However, he has satisfied the third prong of that test in that the Referee agrees with Mr. Brownell that it would be futile for him to attempt work or to search for work. The Referee finds that Claimant's pain and lack of mobility is genuine and his testimony regarding his need to lie down frequently during a 24-hour period is credible. Further, Claimant's appearance, demeanor, and his attitude toward his disability make him unemployable. The Referee finds that Claimant has established by a preponderance of evidence a *prima facie* case that he is permanently and totally disabled pursuant to the odd-lot doctrine effective June 11, 2004, the date when Defendants terminated Claimant's TTD benefits.

Once an injured worker has established a *prima facie* case of odd-lot status, the burden shifts to the defendants to show that some kind of work is regularly and continuously available. *See, Carey v. Clearwater County Road Department*, 107 Idaho 109, 686 P.2d 54 (1984) *citing Lyons v. Industrial Special Indemnity Fund*, 98 Idaho 403, 565 P.2d 1360 (1977).

19. Defendants have produced no evidence of any actual job within a reasonable distance from Claimant's home that he is able to perform or that he can be retrained to perform. Thus, Defendants have failed to rebut Claimant's *prima facie* case that he is an odd-lot worker.

Attorney's fees:

Idaho Code § 72-804 provides for an award of attorney's fees if an employer and/or its surety contested a claim for compensation without reasonable grounds or neglected or refused within a reasonable time after receipt of a written claim for compensation to pay the compensation to which a claimant is entitled. Attorney's fees are not granted to a claimant as a matter of right under the Idaho workers' compensation law, but may be recovered only under the

circumstances set forth in Idaho Code § 72-804. *Troutner v. Traffic Control Company*, 97 Idaho 525, 528, 547 P.2d 1130, 1133 (1976). The decision that grounds exist for awarding a claimant attorney's fees is a factual determination resting with the Commission.

20. Claimant contends he is entitled to an award of attorney's fees for Surety's unreasonable termination of TTD benefits. The Referee finds that Surety acted reasonably in relying on Dr. Shank's report as the basis for eventually terminating Claimant's TTD benefits.

21. Claimant also contends he is entitled to an award of attorney's fees for Surety's untimely approval of the three epidural injections (ESIs) requested by Dr. McDonald. Dr. McDonald first recommended approval for the ESIs on August 6, 2004, after x-rays previously taken ruled out any adjacent instability in the levels surrounding the lumbar fusion. In an office note of that date, Dr. McDonald indicated Claimant was agreeable to a series of ESIs but further noted, "He is agreeable to this; however, there will have to be delayed [*sic*] in timing. Next week he is to undergo evaluation and probable surgical intervention for distal left lower extremity vascular occlusion disease. He will call when that vascular surgeon will allow him to consider undergoing the back injections thereafter." Defendants' Exhibit B, p. 36. On November 5, 2004, Dr. McDonald first actually requested approval for the ESIs. *Id.*, p. 37. On November 15th, Surety sent Dr. McDonald a fax containing identifying information and stating: "**Comments:** 3 Bi-lateral sacroiliac injections are authorized." Claimant's Exhibit 3, p. 85. On December 6, 2004, Defendants' counsel faxed Claimant's counsel and attached the November 15 fax from Surety to Dr. McDonald. That same day, Claimant's counsel met with Dr. McDonald and showed him the authorization he received from Claimant's counsel.

Dr. McDonald testified that that was the first time he was aware that authorization for the ESIs had been given, as his office staff had “missed” the authorization given in the November 15 fax as the text of the authorization was written in such a small font. It is this that provides the basis for Claimant’s request for attorney’s fees.

22. The Referee finds that Surety’s authorization for the ESIs was timely, the question is whether the authorization was capable of being understood as such. The authorization is contained within a one-page fax coversheet. While the font of the authorization itself is somewhat small, it is certainly visible and is the only writing in the “comments” section. The Referee finds that it would not be fair to Surety to penalize them for Dr. McDonald’s staff’s error in not carefully reading Surety’s fax containing their timely authorization for the ESIs. Thus, Claimant has failed to prove his entitlement to attorney’s fees.

CONCLUSIONS OF LAW

1. Claimant is entitled to future medical care including epidural steroid injections and medications as prescribed by Dr. McDonald.
2. Claimant is not entitled to additional TTD benefits.
3. Claimant is permanently and totally disabled pursuant to the odd-lot doctrine effective June 11, 2004.
4. Claimant is not entitled to an award of attorney’s fees.

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 __18th__ day of ____April____, 2005.

INDUSTRIAL COMMISSION

____/s/_____
Michael E. Powers, Referee

ATTEST:

____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __22nd__ day of ____April____, 2005, a true and correct copy of the **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

EDGAR L ANNAN
5915 S REGAL ST STE 210
SPOKANE WA 99223-6970

GLENNA M CHRISTENSEN
PO BOX 829
BOISE ID 83701-0829

____/s/_____

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BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

STEVE SWAIM,)
)
 Claimant,)
)
 v.)
) **IC 01-020876**
 SCOTT HURST TRUCKING,)
) **ORDER**
 Employer,)
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 and) **April 22, 2005**
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)
 RELIANCE INSURANCE COMPANY,)
)
 Surety,)
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 and)
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)
 WESTERN GUARANTY FUND,)
)
 Successor in Interest,)
)
 Defendants.)
 _____)

Pursuant to Idaho Code § 72-717, Referee Michael E. Powers submitted the record in the above-entitled matter, together with his proposed 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 future medical care including epidural steroid injections and medications as prescribed by Dr. McDonald.
2. Claimant is not entitled to additional TTD benefits.

3. Claimant is permanently and totally disabled pursuant to the odd-lot doctrine effective June 11, 2004.

4. Claimant is not entitled to an award of attorney's fees.

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

DATED this __22nd__ 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 __22nd__ 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:

EDGAR L ANNAN
5915 S REGAL ST STE 210
SPOKANE WA 99223-6970

GLENNA M CHRISTENSEN
PO BOX 829
BOISE ID 83701-0829

____/s/_____

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