

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

NORMAN HUTTON,	)	
	)	
Claimant,	)	<b>IC 00-014485</b>
	)	
v.	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW,</b>
MANPOWER, INC.,	)	<b>AND ORDER</b>
	)	
Employer,	)	
	)	Filed June 29, 2005
and	)	
	)	
CONTINENTAL CASUALTY CO.,	)	
	)	
Surety,	)	
Defendants.	)	
_____	)	

**INTRODUCTION**

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Lora Rainey Breen, who conducted a hearing in Boise, Idaho, on March 6, 2001. At that hearing, Brett Fox represented Claimant and Glenna M. Christensen represented Defendants. Referee Breen found that the injuries Claimant suffered on April 3, 2000 were compensable industrial injuries, and awarded temporary total disability benefits (TTDs) until Claimant reached medical stability. The Commission adopted the findings and conclusions of Referee Breen. Defendants appealed the Commission’s Order to the Idaho Supreme Court, which suspended the appeal for the reason that it was not a “final decision” of the Commission.

After the first hearing, the Industrial Special Indemnity Fund (ISIF) was joined as a party Defendant, and thereafter entered into a lump sum settlement with Claimant prior to the second

hearing. The second hearing, on all remaining issues, was held in Boise, Idaho, on September 21, 2004, before Referee Rinda Just. At the second hearing, Jerry J. Goicoechea represented Claimant, and Ms. Christensen continued her representation of Defendants. The parties submitted oral and documentary evidence. Three post-hearing depositions were taken and the parties submitted post-hearing briefs. The matter came under advisement on February 22, 2005 and is now ready for decision.

### **ISSUES**

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

1. Whether and to what extent the Claimant is entitled to the following benefits:
  - A. Medical care;
  - B. Permanent partial impairment (PPI); and
  - C. Disability in excess of impairment;
2. The date that Claimant reached medical stability (MMI);
3. Whether Claimant is totally and permanently disabled;
4. Whether apportionment is appropriate under Idaho Code § 72-406; and
5. Apportionment under the *Carey* formula.

### **CONTENTIONS OF THE PARTIES**

Claimant contends that as a result of his April 3, 2000 work injury, he required emergency medical care and a six-day hospital stay. Subsequently, as a result of the closed head injury he sustained in the accident, he required on-going medical care for depression and substance abuse, as well as additional care for his pre-existing diabetic condition. Claimant argues that he has sustained a significant level of permanent impairment as a result of his industrial injury, as well as substantial disability in excess of his impairment. In fact, before and

at hearing, Claimant took the position that he was totally and permanently disabled as a result of the industrial accident. Subsequently, in his briefing, Claimant abandoned his claim of total and permanent disability and instead contended that he was *nearly* totally and permanently disabled. Claimant asserted that only a small portion of his near total and permanent disability was attributable to his pre-existing diabetic condition. Claimant also asserts that it is appropriate to make a *Carey* apportionment even though ISIF is no longer a party to the proceeding.

Defendants argue that Claimant's entitlement to medical care is limited to his initial emergency room visit and subsequent hospital stay because his depression, diabetes, and substance abuse were all pre-existing conditions for which Defendants are not responsible. Defendants contend that Claimant's impairment attributable to the industrial accident does not exceed 7%. Defendants also dispute that Claimant sustained any disability in excess of his impairment as a result of the industrial accident, precluding any claim to total and permanent impairment or any apportionment under *Carey*.

### **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. The testimony of Claimant and Nathan Hutton, taken at hearing;
2. Claimant's Exhibits 1 through 10 and Defendants' Exhibits 4 through 7 admitted without objection at hearing;
3. The deposition of Michael S. Weiss, M.D., taken prior to the hearing;
4. Post-hearing depositions of vocational experts Terry Montague and William C. Jordan;
5. The post-hearing deposition of Craig W. Beaver, Ph.D.; and

6. The Commission's legal file, which includes the record of the first hearing in its entirety.

At the outset of the hearing, counsel for Claimant objected to William Jordan, the Defendants' vocational expert, being present in the hearing room during the taking of evidence. The Referee overruled Claimant's objection. Counsel renewed his objection several times throughout the proceeding and the objection continued to be overruled. The Commission directs attention to Rule 10(E)(4), J. R. P., which governs, in part, the use of post-hearing depositions of expert witnesses in workers' compensation proceedings:

Unless the Commission, for good cause shown, shall otherwise order at or before the hearing, the evidence presented by post-hearing deposition shall be evidence known by or available to the party at the time of the hearing and shall not include evidence developed, manufactured, or discovered following the hearing. *Experts testifying post-hearing may base an opinion on exhibits and evidence admitted at hearing* but not on evidence developed following hearing, except on a showing of good cause and order of the Commission.

(Emphasis added.) Because Mr. Jordan would have had the opportunity to read the hearing transcript in its entirety and discuss the hearing testimony with Defendants' counsel prior to his post-hearing deposition, there is no prejudicial effect in allowing him to attend the hearing. It is common practice for either or both parties to have their vocational expert attend the hearing, although the cost of doing so may be prohibitive for some parties. What the parties and the hearing officer must remain vigilant about is the use of information that may be attained or developed *after the hearing*. This is an issue that can arise whether or not a party's expert attended the hearing. Counsel can guard against the use of such evidence by making timely objections when experts are deposed.

All objections made during the post-hearing deposition of William Jordan are overruled with the exception of objections at p. 47, line 5 and p. 90, line 7. All objections made during the

post-hearing deposition of Terry Montague are overruled with the exception of objections at p. 48, line 6, p. 50, line 1, p. 50, line 21, and p. 52, line 11. All objections made during the post-hearing deposition of Dr. Beaver are overruled with the exception of objections at p. 54, line 13, p. 56, line 25, p. 57, line 3, p. 60, line 15, p. 61, line 20, and p. 62, line 10.

After having considered all the above evidence, the briefs of the parties, and the recommendation of the Referee, the Commission hereby issues its decision in this matter.

## **FINDINGS OF FACT**

### ***THE FIRST HEARING***

1. **Causation.** Defendants initially denied that any of Claimant's injuries resulting from the April 3, 2000 accident were compensable industrial injuries. The March 2001 hearing, therefore, focused on causation. The Commission found that "Claimant suffered injuries caused by an accident arising out of and in the course of his employment on April 3, 2000." Order, Sept. 14, 2001, p. 1. (2001 Order).

2. **Injuries.** The Findings of Fact and Conclusions of Law adopted in the 2001 Order identified the injuries that Claimant sustained directly as a result of his industrial accident. They include: "a traumatically induced closed head injury with subarachnoid hemorrhaging, a small temporal lobe subdural hematoma, and a basilar skull fracture with hemotympanum." Findings of Fact, Conclusions of Law, and Recommendation, Sept. 14, 2001, p. 6 (2001 Findings). The 2001 Findings also identified several secondary effects from the original injuries. Three of those secondary effects are relevant to the determination of the issues raised in this second proceeding—difficulty in controlling his blood sugar, cognitive deficits, and depression. In particular, the Commission found:

- “Claimant provided detailed information regarding his insulin dosage regimen, diet, and blood sugar testing. The Referee finds Claimant a credible witness and further finds he conscientiously monitored and treated his diabetic condition before and after April 3, 2000.” *Id.* at p. 10;<sup>1</sup>
- “Claimant’s diabetes was ‘much more brittle after brain injury . . .’” *Id.* at p. 8;
- “[Claimant’s] cognitive test data clearly indicates the presence of *significant* deficits primarily manifested by cognitive slowing and attentional difficulties that interfere with his ability to maintain a consistent learning set.” *Id.* (Emphasis added.);
- “[Siri Ito, M.D.] identified a degree of depression . . . following the brain injury. *Id.*; and
- As of October 17, 2001, “continued cognitive deficits and associated depression” prevented Claimant from working. *Id.*, at p. 15.

3. **TTDs.** The Referee also addressed the issues of temporary total disability (TTD) benefits. The Referee found, and the Commission concurred, that Claimant was entitled to TTD benefits from the date of his injury, April 3, 2000, until July 18, 2000, the date that Harry Glauber, M.D., Claimant’s Oregon endocrinologist, released him to work *vis a vis* his diabetes. The Commission also awarded TTDs from October 17, 2000, the date psychologist William Carroll, Ph.D., determined that Claimant’s cognitive problems and associated depression made him unable to work, until:

he is medically released to return to full duty work, he is released to light duty work and such work is made available to him, he returns to work, or he is determined to be at maximum medical improvement.

2001 Order, p. 1.

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<sup>1</sup> This Finding was buttressed by the testimony of Thomas Young, M.D., which the Referee found “credible and informative,” (2001 Findings, p. 11), as well as the discharge notes from St. Alphonsus Regional Medical Center referenced in Finding 5. 2001 Findings, p. 6.

## *MEDICAL CARE*

4. Defendants concede that Claimant is entitled to some limited medical benefits but dispute that any of the care he received as a result of his diabetes, substance abuse, or cervical spine and shoulder issues is compensable. Defendants concede that Claimant has cognitive deficits and suffers from depression, but question whether or to what extent those conditions are compensable. Claimant has never asserted that his cervical spine and shoulder problems were the result of the industrial accident. Claimant does assert that his significant cognitive deficits, his depression, and his alcohol abuse are compensable because they were the result of his closed head injury. Claimant also contends that his diabetes became less stable after the accident, necessitating additional treatment that is compensable.

### *Cognitive Deficits*

5. As Defendants stated in their post-hearing brief, “[t]here is no dispute that Claimant has some neurocognitive deficits, although their exact nature is in dispute.” Defendants’ Post-hearing Brief, p. 18. Dr. Carroll, Claimant’s treating psychologist, and Dr. Beaver, the psychologist who performed an independent medical evaluation (IME) on Claimant, each offered opinions as to the extent of Claimant’s neurocognitive deficits. Referee Breen made a finding regarding the extent of Claimant’s neurocognitive deficits:

[Claimant’s] cognitive test data clearly indicates the presence of *significant* deficits primarily manifested by cognitive slowing and attentional difficulties that interfere with his ability to maintain a consistent learning set.

2001 Findings, p. 8 (emphasis added). Referee Breen’s finding was based on Dr. Carroll’s first evaluation, done in October 2000.

6. Nine months later, and subsequent to the first hearing, Dr. Carroll conducted a second neuropsychological evaluation of Claimant. He found that, with one exception, there was

little change in Claimant's cognitive deficits. During the second evaluation, Claimant demonstrated more trouble with double mental tracking, suggesting increased difficulty in organizing and directing his behavior without external structure. This was indicative of executive skills deficits.

7. At Defendants' request, Dr. Beaver performed an independent medical exam (IME) of Claimant over two days in December 2001. His report is dated December 24, 2001. Dr. Beaver interviewed Claimant, and reviewed his medical records. Dr. Beaver also administered a comprehensive neuropsychometric test battery.

8. Dr. Beaver described Claimant as being alert and attentive, able to follow multi-step simple instructions without difficulty, and able to communicate effectively. Dr. Beaver described Claimant's appearance as "unkempt and disheveled, with dirty clothes and hands. He was unshaven. Eye contact was fair. Rapport was minimal." Defendants' Ex. 5, p. 12. Dr. Beaver also noted that Claimant was somewhat irritable.

9. Claimant told Dr. Beaver, in pertinent part, that:

. . . he was 'no dummy' before, but now he is. He complains he can only focus on one thing at a time and then he gets distracted. [Claimant] further reports he has difficulty with word finding. His short-term memory varies and he has difficulty remembering things. He uses a notebook to remind himself of things. [Claimant] also complains he has considerable difficulty planning and organizing.

*Id.*, at p. 14.

10. Dr. Beaver interpreted the results of the psychological tests in which Claimant participated. He determined that Claimant was "functioning solidly in the average range of intellectual skills and abilities." *Id.*, at p. 15. He also noted that Claimant performed relatively well across a wide spectrum of neuropsychological measures. Although Claimant continued to complain of cognitive difficulties, specifically attention, speech and memory, Dr. Beaver

reported:

Formal neuropsychological testing finds, however, overall [Claimant] is doing remarkably well. In fact, he performed solidly within normal limits in almost all tasks administered to him. The only exception was in the area of high-level attention and concentration, in which he evidenced moderate difficulties. All other aspects of testing, including verbal fluency and formal memory testing, as well as executive problem solving skills, were found to be well within normal limits.

*Id.*, at p. 19. Dr. Beaver acknowledged that Claimant did evidence “significant emotional distress, consistent with some of his complaints of depression.” *Id.* Dr. Beaver opined, based on his interpretation of the testing, that Claimant’s depression was chronic and pre-existing, and that the depression likely caused him to exaggerate his psychological symptoms.

11. Claimant’s son, Nathan Hutton, testified at the hearing concerning the changes in his father after the accident.<sup>2</sup> In response to a question about Claimant’s slow and hesitant manner of speaking and whether it was a change from his pre-accident speech patterns, the witness responded:

A. Oh, yeah, many things have changed – speech, attitude, personality. He’s like a whole different guy.

Q. Is the speech itself totally different?

A. Yes, he talks slower. Like before, it was, like, more of a snappy response. If I asked him questions, he knew a lot more of the stuff I was asking him. Now it’s more like he’s thinking before he talks or a lot of the stuff that he used to know right off the top of his head he doesn’t know anymore.

Tr., p. 88. In response to a question about whether Claimant’s personality changed, the witness responded:

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<sup>2</sup> The record reflects that from the time of his parents’ divorce when he was nine or ten years of age the witness lived with Claimant. The witness testified that despite Claimant working rotating twelve-hour shifts, he spent a great deal of time with the witness and participated in his activities and that the two of them often did things together. “I mean, my whole life growing up was basically him catering to my sports, everything that I was involved in, and taking care of me.” Tr., p. 90.

A. Well, basically, I mean, he's just a totally different person. He thinks differently. The main thing that kind of put up a red flag in my head was, growing up, he had a – his love has always been music and whether he was playing it or listening to it. He had a collection of probably 1,200 CD's, [sic] a couple bookcases full. It was in our living room. That was, you know, what he did every week, buying CD's, [sic] two, three, four.

And then after the accident, he told me I could have them all because music didn't mean as much to him or didn't sound the same to him anymore. . . .I knew something changed for him to be willing to give up everything that he – I mean, there's probably \$40,000 worth of music. Just after that, just to be, 'I don't want it anymore,' doesn't sound the same.

Tr., p. 93. The witness also testified about Claimant's personal computing skills before and after the accident:

Q. Did he used to have a passion for computers?

A. I wouldn't call it a passion. But I would say he was very good on one. And we had a couple in the house for school projects. And he'd get on there. He'd install programs I needed. We'd play Myst, a suspenseful game, mystery game on there. We'd play that together. But he could install. And you had to run them if I ever had a problem.

Q. Does he continue to have a computer?

A. No. He actually purchased a computer . . . . He had it built so that he could record his own music. And recently he brought that computer to my house and told me I could have it because he couldn't figure out how to get the programs to work. And so he was getting frustrated with it just sitting there with the money he spent on it.

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Q. Why was it that he didn't use it for what it was intended for [sic]? What caused that?

A. He couldn't figure out the programs. He couldn't install the programs or get them to run right. Or they were opening other programs. He didn't know what it was doing.

Q. Do you believe that is from his brain injury?

A. Well, the computer, before, he used to be really good on computers. And I would be able to ask him questions. And now it's kind of vice versa [sic]. I'm still, you know, not very good with a computer. But I feel now that I know more than he does.

Tr., p. 94. The witness was asked about Claimant's memory:

Q. Has your dad's memory changed from after the accident? How bad, in your estimation?

A. It's horrible now. I can call him up one day and tell him just any random thing from 'I got a new truck' to 'I ran into one of your old friends yesterday' or something, anything like that. And the next day, he will -- you know, the next time he comes over, he'd be like, 'whose truck's in the driveway?' And we would have talked about it a couple days ago. That's constantly happening with things that we discuss or talk about. He's not remembering our conversations over little simple things.

Tr., p. 96.

12. At the hearing, Claimant testified that since the accident he had problems with his memory and his ability to think and to verbalize his thoughts. He said he felt like the people with adult attention deficit disorder that he heard described on a television commercial. He didn't read anymore because he couldn't retain what he'd read from day to day. He gave away his computer because he couldn't retain what he learned from day to day regarding how to use the programs and perform the operations to make the computer useful. Claimant also testified that he rarely drove because he could not cope with the traffic and would get confused and lost.

#### Diabetes

13. The question of whether Claimant's diabetes was well controlled prior to his industrial injury was answered in the affirmative as a result of the first hearing. Referee Breen found that prior to the accident Claimant managed his diabetes well. He had two minor hypoglycemic episodes over the sixteen or so years from his diagnosis in 1984 until his April 2000 accident. Prior to the accident, Claimant's diabetes was predictable and manageable.

14. Referee Breen also found that the nature of Claimant's diabetes changed following the accident—that his diabetes became unpredictable and unstable and thus more difficult to control. The records from the Veterans Administration Medical Center (VAMC), particularly those of Dr. Ito, document the difficulty in regulating Claimant's blood glucose following the accident, despite Claimant's compliance with his diet, testing, and insulin regime.

Claimant's Ex. 8.

15. Claimant's continuing difficulty in regulating his blood glucose is also apparent in the medical records generated after the March 2001 hearing. On April 6, 2001, Claimant saw Katherine Weber, M.D., an endocrinologist. Blood sugar records for the preceding weeks were described as:

[N]otable for many very low readings in the mornings (33-67)—almost half the mornings in the last month his blood sugar has been [less than] 70. His blood sugars the rest of the day are variable with occasional lows in no specific pattern and many readings of [over] 200. . . . He lives at the Vet's Home so eats three meals a day at the same time each day.”<sup>3</sup>

*Id.* Dr. Weber observed in her assessment that “[Claimant] has had increased variability in his blood sugar control since his [closed head injury], though there is not a clear pathophysiologic link.” *Id.* Dr. Weber recommended some changes to Claimant's insulin regimen, a consultation with a dietician, and regular weekly downloads of his blood sugar levels to guide future adjustments to the insulin regimen.

16. On May 3, 2001, a download of Claimant's glucose monitor showed blood sugar readings varying from 41 to 392 despite consistent activity levels and food intake.

17. On July 27, 2001 chart notes indicate inadequate glycemic control.

18. On December 3, 2001, chart notes indicate that Claimant was still having occasional hypoglycemic episodes that occurred without warning.

19. Dr. Young, whose testimony at the first hearing was influential in persuading Referee Breen that Claimant's injury was compensable, provided additional insight into

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<sup>3</sup> As noted in the 2001 Findings, (ftn. 1), blood sugar or blood glucose levels are measured in terms of mg/dl. Claimant attempted to keep his blood sugar level at 200 when working and 130 to 150 when not working. Findings 3 and 19, 2001 Findings.

Claimant's diabetes by a letter to Claimant's counsel.<sup>4</sup> Dr. Young noted that Claimant's diabetes was still unstable and identified the factors that could cause such instability:

The factors that could be affecting the control are: inability to maintain the appropriate diet, poor compliance with the exercise regimen, psychological stress or depression, or worsening disease state. From the records provided it appears that he is compliant with his diet and exercise requirements.

Claimant's Ex. 6. Dr. Young went on to note that Claimant's depression (which he attributed to the April 2000 injury) was a significant contributor to Claimant's inability to control his diabetes.

20. By letter dated June 24, 2003 to Claimant's counsel, Dr. Young specifically opined that:

[t]he accident has substantially worsened and or accelerated the process of the disease [diabetes] and results in a substantial increase in the impairment secondary to the diabetes. I further believe that [Claimant] will continue to have substantial problems as a result of his accident.

*Id.* In the March 2001 hearing, Referee Breen specifically found that Dr. Young had substantial experience treating diabetics and that his testimony was both credible and helpful in making her ultimate determination.

21. Blood tests taken at intervals from August 2003 through August 2004 show both high and low blood sugar levels:

August 8, 2003	122
February 11, 2004	95
February 18, 2004	162
August 11, 2004	381

Claimant's Ex. 8. Claimant testified that on the morning of the hearing, his blood glucose was 32. On the preceding day it was 43. He testified that this high frequency of low blood sugar

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<sup>4</sup> Although undated, the letter references "current" medical records dated September and October of 2002, subsequent to the first hearing.

readings has been occurring since the accident. Tr. p. 47.

Depression

22. Claimant testified at hearing that at the time of his divorce in 1992 or 1993 he suffered a brief bout of depression and was treated with Zoloft. Claimant testified that he was not depressed before the April 2000 accident. There is no other evidence in the record regarding depression or dysthemia.

23. All of the medical experts seem to agree that since the accident Claimant has suffered from depression. What is in dispute is whether the accident was the *cause* of the depression. In November 2000, Dr. Blackburn diagnosed Claimant with organic affective disorder status/post traumatic brain injury. Claimant's Ex. 7. In July 2001, Dr. Carroll diagnosed Claimant with "Mood Disorder Due to Head Injury with Depressive Features."

Claimant's Ex. 5. In the fall of 2002, Dr. Young stated:

After reviewing notes for K. H. Blackburn, M.D. and William Carroll, Ph.D. I believe [Claimant] has significant cognitive impairment as the result of his injury of April 2000. I also agree with information describing his mood disorder. Given this past information coupled with the current records of September – October of 2002 I would conclude that Mr. Hutton's depression is a direct result of his April 2000 injury.

Claimant's Ex. 6.

Substance Abuse

24. At hearing, Claimant testified that he started abusing alcohol about eight months after the industrial accident, which would have been in December 2000. The first hints about Claimant's alcohol abuse start appearing in Dr. Carroll's records in early February 2001 when Claimant inquired about getting into the state veterans home. Although Claimant and Dr. Carroll discussed sobriety in late February, the first specific reference to alcohol abuse appears in the chart notes for June 5, 2001. By that date, Claimant had gotten in trouble at the state veterans

home for drinking. He told Dr. Carroll that a couple of times a week he was stopping in a bar to play pool and interact and would have a couple of beers because he couldn't find anyone at the state veterans home with whom to socialize.

25. By September 2001, Claimant's alcohol abuse had seriously impacted his life—he'd been discharged from the state veterans home for drinking, was living in a van, and had picked up a couple of driving under the influence charges. He eventually entered the VAMC inpatient alcohol treatment program and had successfully completed the program at the time of his November 20, 2001 visit with Dr. Carroll. Claimant maintained his sobriety until early February 2002, at which time Dr. Carroll's chart notes indicate that he had started drinking again. The chart notes are illegible in part, so it is impossible to determine whether Claimant was occasionally *using* alcohol or was *abusing* alcohol at that time.

26. At the hearing, Claimant testified that he now drinks alcohol "occasionally." Tr., p. 49. Claimant also testified that at one time (prior to his divorce in the early 1990s) his wife "used to get mad at me because she thought I drank a little too much after work and stuff." *Id.* Claimant testified at hearing that he had completely abstained from alcohol use for a period of 12 or 13 years—from the time his son came to live with him after his divorce until he started drinking after the accident. There is nothing in the record indicating that Claimant either abused alcohol or had been treated for alcohol abuse prior to his in-patient treatment at VAMC after the accident.

27. By letter dated December 17, 2001, prepared in response to a request from Claimant's counsel, Dr. Carroll stated:

I have no doubt that his accident contributed to his drinking. He had indicated to me that he had been sober for some time prior to his accident.

Claimant's Ex. 5.

***MMI***

28. **Dr. Weiss.** Dr. Weiss found Claimant reached maximum medical improvement on December 18, 2001.

29. **Dr. Beaver.** In his IME report dated December 24, 2001, Dr. Beaver found Claimant at maximum medical improvement *vis a vis* his head injury.

30. **Dr. Carroll.** Dr. Carroll did not provide an opinion as to the date that Claimant reached maximum medical improvement.

31. **Dr. Young.** Sometime subsequent to October 2002, Dr. Young opined that Claimant's diabetes was not yet medically stable. By June 24 of 2003, Dr. Young concluded that Claimant had reached maximum medical improvement.

***PPI***

32. **Dr. Carroll.** Dr. Carroll did not assign Claimant an impairment rating based on the *AMA Guides to the Evaluation of Permanent Impairment*, Fifth Ed. (*AMA Guides*), but did give him a Global Assessment of Functioning (GAF) score of 41 ("serious impairment in social and occupational functioning").

33. **Dr. Beaver.** Dr. Beaver assigned an impairment of 7% of the whole person based on section 13.3d of the *AMA Guides* pertaining to impairment related to mental status. Dr. Beaver did not believe that any of the impairment should be apportioned to pre-existing conditions. He did note that there may be other conditions outside the neurocognitive realm that would be ratable and deferred to Dr. Weiss on those conditions.

34. **Dr. Weiss.** Dr. Weiss determined that Claimant was not entitled to any impairment rating for his loss of hearing, citing the *AMA Guides*. Dr. Weiss concurred with Dr. Beaver's rating for Claimant's mental status. As to Claimant's diabetes, Dr. Weiss opined that

an appropriate impairment rating would be:

for class IV impairment with type 1 diabetes and hypoglycemia or hyperglycemia occurring frequently despite conscientious efforts of both physician and individual, which is 21-40% impairment of the whole person, estimated 30% impairment.

Defendants' Ex. 4, p. 5. Dr. Weiss did not believe that any of the diabetic impairment was related to Claimant's industrial injury, so Dr. Weiss' initial rating referable to the industrial accident was zero. In a follow-up letter dated April 15, 2002, Dr. Weiss stated that he had an opportunity to review additional records from VAMC regarding Claimant:

The only effect review of these records has on my previously expressed opinions is that it is apparent that [Claimant's] diabetes provides significantly more impairment than I estimated in my previous reports and his depression and anxiety problems also contribute significantly to his total impairments.

*Id.*, p. 7a. Again, Dr. Weiss stated that he did not believe that either the diabetes or the mood disorder resulted from the industrial accident, and therefore offered no new impairment rating.

35. **Dr. Young.** Dr. Young rated Claimant's total impairment at 52% of the whole person based on the following breakdown:

Diabetes	40%
Loss of smell	3%
Depression	10%
Impotence	7%

Claimant's Ex. 6. Dr. Young added that although the diabetes was present before the accident, but for the accident, its contribution to Claimant's ultimate impairment rating would only have been 15%. The accident "substantially worsened and or accelerated the process of the disease and results in a substantial increase in the impairment secondary to the diabetes." *Id.* Dr. Young also noted that Claimant did suffer a hearing loss as a result of the accident that could not be quantified or rated, but was, nonetheless, real and related directly to the accident. Thus, Dr. Young's rating attributable to the accident would be 39% of the whole person using the *AMA*

*Guides Combined Values Chart found at p. 604.*

***DISABILITY IN EXCESS OF IMPAIRMENT/TOTAL PERMANENT DISABILITY***

36. Surprisingly, vocational experts for both the Claimant and the Defendants agree that Claimant is unlikely to return to work, though for different reasons.

*Vocational Expert Terry Montague*

37. Claimant retained Terry Montague as his vocational expert. Mr. Montague holds a master's degree in Sociology from Idaho State University, and has worked in the area of vocational rehabilitation for a number of years. Since 1994, Mr. Montague has been self-employed as a vocational consultant in a variety of venues including workers' compensation, personal injury, divorce, medical malpractice, and social security disability.

38. Mr. Montague prepared a report, dated October 13, 2003. Claimant's Ex. 10. In preparing the report, Mr. Montague reviewed the vocational report prepared by Defendants' expert, medical records of all relevant providers, and Social Security Administration records. He completed a transferable skills analysis for Claimant, and a labor market analysis based on Claimant's transferable skills. Mr. Montague reviewed current labor market information together with contemporaneous employment and wage data. He also reviewed current job orders for Ada and Canyon counties. Mr. Montague also used a number of standard reference works in reaching his conclusions.

39. Mr. Montague concluded that:

[T]here are no jobs (not just occupational titles) that currently exist and are regularly and continuously available in [Claimant's] labor market; which are within a reasonable distance from his home; and which he could now perform or for which he could be trained to perform and expect to have a reasonable opportunity to be employed.

In my opinion, any efforts by [Claimant] or those more skilled in job development and job placement to find "suitable employment" for [Claimant] at this time

would be futile. When consideration is given to all of the medical and non-medical factors associated with [Claimant's] case, it would be my opinion that he is not capable of competing for gainful employment in an open labor market and it would not be unreasonable for the Industrial Commission to conclude that [Claimant] is now totally and permanently disabled.

*Id.*<sup>5</sup>

40. Mr. Montague cited a number of medical and non-medical factors that led him to his conclusion. In particular, Mr. Montague noted medical factors such as Claimant's head injury and resulting cognitive impairment, his unstable diabetes, hearing loss, depression, and alcohol abuse. Mr. Montague also noted non-medical factors that presented significant obstacles to Claimant's employment, including his age, his lack of education, his forty-three months of unemployment, and his driving record.<sup>6</sup> At the time Mr. Montague prepared his report, Claimant had no address or telephone, which Mr. Montague noted as a considerable obstacle. By the time of the hearing, Claimant's housing was stable.

41. Mr. Montague also noted that at the time he prepared his report, Claimant's labor market had seen an increase in the unemployment rate and a number of layoffs from major local employers that included high tech, call centers, and warehouse operations.

Vocational Expert William Jordan

42. Defendants retained William C. Jordan as a vocational expert. Mr. Jordan holds a masters in public administration from Boise State University and is certified as both a Disability Management Specialist and as a Rehabilitation Counselor. Mr. Jordan has worked in the vocational rehabilitation field since 1978 and has been a private consultant in the field since

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<sup>5</sup> Mr. Montague's report was prepared at a time when Claimant was still seeking total and permanent disability.

<sup>6</sup> One can assume that Claimant's subsequent reluctance (or inability) to drive would also be an obstacle both to finding employment and maintaining employment.

1993. Mr. Jordan's consultation practice includes vocational and medical disability management services for public and private employers, with a special focus on vocational counseling, job site analysis, labor market analysis and disability evaluation.

43. Mr. Jordan's first employability report is dated July 7, 2003. In preparing his report, Mr. Jordan met with and interviewed Claimant and conducted a vocational assessment. Mr. Jordan reviewed relevant medical records, Claimant's educational history, and his employment history. Based upon the information he gleaned from the records and from Claimant, Mr. Jordan prepared an employability analysis that included labor market information and a list of twenty-eight recent job openings in occupations for which he believed Claimant had the necessary skills, abilities, and physical capacity.

44. Mr. Jordan concluded that Claimant had sustained no disability in excess of his impairment as a result of the industrial injury. In support of this conclusion, Mr. Jordan addressed a number of factors.

45. **Education and Transportation.** Mr. Jordan determined that Claimant's education was not a limiting factor in obtaining suitable employment, noting that Claimant had a high school diploma, had attended a year of college, and had specialized training in electrical nuclear power operation. Mr. Jordan also concluded that transportation was not a limiting factor in obtaining employment as Claimant held a valid drivers' license.

46. **Access to the Labor Market.** Mr. Jordan opined that Claimant had not lost access to any significant portion of the labor market as a result of his industrial accident, having been released to work without restrictions related to the industrial accident.<sup>7</sup> Mr. Jordan noted

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<sup>7</sup> Claimant does have a degenerative condition in his cervical spine for which Dr. Weiss imposed some modest restrictions. Mr. Jordan did not believe that those restrictions precluded Claimant from the types of work he had been doing prior to his industrial injury.

that since the industrial injury, Claimant had performed various tasks in the medium to heavy category without apparent difficulty.

47. **Wage-Earning Capacity.** Mr. Jordan determined that Claimant suffered no wage loss as a result of the accident because he could easily obtain work that paid what he was making at the time of his injury--\$9.00 per hour.

48. **Updated Report.** Mr. Jordan prepared an updated report on September 1, 2004. Mr. Jordan met with Claimant and determined that he had no significant changes in his medical condition, with the exception that he was no longer abusing alcohol. At the time of this second interview, Claimant was living in an apartment in Boise and had access to a vehicle and a valid drivers' license. Claimant had not returned to any kind of regular work, though he reported that he had applied for several positions. Claimant was not registered with Job Service and was not working with the Industrial Commission Rehabilitation Division or the Idaho Division of Vocational Rehabilitation.

49. Mr. Jordan concluded that Claimant was "disabled" because he was unlikely to return to full employment. Mr. Jordan reasoned that Claimant's employment options were limited because of his diabetes and his "mental condition," which Mr. Jordan believed to be pre-existing:

In conclusion: but for Claimant's pre-existing mental and physical disabilities, he could be gainfully employed at a variety of jobs that are regularly and continuously available. Claimant would not have been totally and permanently disabled as a result of the 04/03/00 injury, as there are no specific physical or mental restrictions associated with the industrial injury of 04/03/00.

Defendants' Ex. 7, p. 52.

## CONCLUSIONS OF LAW

### *MEDICAL CARE*

50. As noted previously, Defendants admit that Claimant sustained injuries as a result of his industrial accident that required medical care. What remains at issue is whether Claimant is entitled to reasonable medical care for any of the care he received as a result of his diabetes, depression, cognitive loss, and substance abuse.

51. 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). Once a claimant has met his burden of proving a causal relationship between the injury for which benefits are sought and an industrial accident, then Idaho Code § 72-432 requires that the employer provide reasonable medical treatment, including medications and procedures.

52. For the reasons set forth below, the Commission finds that Claimant's cognitive deficits, his depression, his substance abuse, and a portion of his diabetes care were the natural sequelae of his industrial injury and are compensable. The Commission finds that Claimant's shoulder and cervical spine complaints are unrelated to the April 2000 industrial accident.

53. **Diabetes.** As previously noted, Referee Breen found that Claimant's diabetes was significantly changed after his industrial accident. The Commission adopted this finding. Referee Breen's original finding was well-supported in the record upon which she based her

recommendations. Findings 15 through 21 herein addressed the additional medical evidence that has become available since the first hearing, all of which support a finding that but for the accident, Claimant's diabetes would have remained well-controlled and required minimal medical supervision. Claimant is entitled to reasonable medical care for that portion of his diabetes care attributable to the industrial accident. Dr. Young opined that Claimant's pre-existing impairment from the diabetes was only 15%. Therefore, Claimant shall pay the first 15% of any on-going diabetes care he requires with the balance being compensated as part of his workers' compensation claim.

54. **Depression.** As Referee Breen noted in her findings, depression was a major component of Claimant's post-accident medical problems. As discussed herein at findings 22 and 23, Drs. Blackburn, Carroll, and Young all determined that Claimant's depression was a direct result of his head injury. Drs. Blackburn and Carroll were Claimant's treating physicians who saw him regularly, and were in the best position to assess what caused Claimant's post-accident depression. Dr. Young, who Referee Breen found to be a credible and helpful expert, agreed with their diagnoses, particularly noting the causal relationship between Claimant's head injury and his subsequent depression.

Defendants' contention that Claimant's depression predated his injury finds no support in the medical records. Claimant's brief bout of depression coincident with his divorce some dozen years before his accident, which does not appear in the medical records but was part of Claimant's hearing testimony, cannot be extrapolated to a diagnosis of chronic pre-existing depression as Dr. Beaver opined. Claimant is entitled to reasonable medical care for his depression.

55. **Alcohol Abuse.** As discussed in findings 24 through 27 above, nothing in the record suggests that Claimant was an alcoholic, abused alcohol, or participated in any kind of alcohol treatment prior to his industrial accident. Claimant's own statement that his wife "used to get mad at me because she thought I drank a little too much after work and stuff," (Tr., p. 49) is hardly tantamount to a determination that Claimant had a long-standing alcohol problem prior to the accident. Dr. Carroll was convinced that Claimant's head injury was a contributing factor to Claimant's post-accident alcohol abuse. Claimant's VAMC in-patient alcohol treatment in 2001 is compensable. At the time of the hearing, Claimant was not abusing alcohol, and the Commission makes no determination whether any future treatment for alcohol abuse will be compensable.

56. **Cognitive Deficits.** There is no question that Claimant's cognitive deficits are the result of his industrial injury. It is not clear from the record, however, whether Claimant has received any care relating to his cognitive problems that has not been compensated. To the extent that Claimant has received treatment which has not been paid for or reimbursed, or requires treatment in the future for his cognitive losses, such reasonable treatment is compensable.

### ***MMI***

57. Maximum medical improvement, or medical stability (MMI), is not defined in the Idaho statutes, so the Idaho Supreme Court has looked to other jurisdictions for guidance. In general, MMI has been taken to mean the time at which further recovery or improvement from an injury is not reasonably expected; finding that an individual has reached MMI is a demarcation between a temporary impairment or disability and a permanent disability. *McGee v. J.D. Lumber*, 135 Idaho 328, 17 P.3d 272 (2000).

58. Three different medical experts offered three different dates for when Claimant reached medical stability. Drs. Weiss and Beaver found Claimant at MMI in December 2001. Dr. Young opined that Claimant was at MMI at the time of his June 2003 IME. Dr. Carroll, who is probably in the best position to determine when Claimant reached MMI, was never asked for an opinion on medical stability. However, it is clear that Dr. Carroll did not believe Claimant was medically stable as late as April 3, 2002. *See*, Claimant's Ex. 5 (Dr. Carroll's April 3, 2002 letter to Brett Fox). In the fall of the same year (October 2002), Dr. Young found Claimant's diabetes was still unstable and determined that he was not yet at MMI. The Commission finds that Claimant reached medical stability sometime between October 2002 and June 2003. Since an exact date cannot be determined, the Commission relies on the opinion of Dr. Young who found Claimant medically stable on June 24, 2003.

### ***PPI***

59. "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 non-progressive 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 non-specialized 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).

60. **Diabetes.** Dr. Young assigned a PPI rating of 40% for Claimant's diabetes, and opined that, but for the accident, the impairment would have been only 15%. Dr. Weiss assigned a rating of 30%, but later determined that his rating had been low. However, he did not believe that any of the diabetes impairment was attributable to the industrial accident. Table 10-8 of the *AMA Guides* suggests a range of 21% to 40% whole person impairment for Type 1 diabetes with hyperglycemia or hypoglycemia occurring frequently despite the best efforts of the patient and the physician. Based on the *AMA Guides*, and the ratings by Dr. Weiss and Dr. Young, the Commission finds that Claimant had a 40% whole person impairment related to his diabetes, of which 25% was as a direct result of the industrial accident.

61. **Cognitive Losses.** Dr. Beaver assigned an impairment of 7% of the whole person based on section 13.3d of the *AMA Guides* pertaining to impairment related to mental status. He attributed all of the impairment to the industrial accident. Dr. Weiss concurred with Dr. Beaver's rating for Claimant's mental status. Dr. Beaver was the only doctor to assign an impairment rating based on the *AMA Guides* for Claimant's neurocognitive problems. Therefore, the Commission finds that Claimant is entitled to a rating of 7% whole person impairment for his neurocognitive deficits resulting from the head injury.

62. **Depression.** Neither Dr. Weiss nor Dr. Beaver assigned any impairment for Claimant's depression, believing it to be a pre-existing condition. The Commission has previously found that the depression was not a pre-existing condition, and was a direct result of Claimant's head injury. Dr. Young assigned 10% whole person impairment to Claimant for his depression, and attributed it solely to the industrial accident. The criteria for rating impairment due to emotional disorders arising out of verifiable neurologic impairments (such as head injury) are set out in Table 13-8 of the *AMA Guides*. A 10% impairment rating falls within the 0% to

14% range of Class 1 impairments, described as “Mild limitation of activities of daily living and daily social and interpersonal functioning.” *Id.* The record is quite clear, from those who know him best, that Claimant’s depression significantly impacted his activities of daily living and daily social and interpersonal functioning. The Commission finds Claimant is entitled to an impairment rating of 10% of the whole person for his depression.

63. **Alcohol Abuse.** No physician awarded an impairment rating for Claimant’s alcohol abuse. While the Referee found that Claimant was entitled to medical care for his alcohol abuse, finding it was a direct result of the industrial accident, there is no evidence in the record that Claimant is currently abusing alcohol, or that his use of alcohol (if any) is a permanent impairment. The Commission finds no permanent impairment relating to the use or abuse of alcohol.

64. **Loss of Hearing, Impotency, Loss of Smell.** Dr. Young awarded Claimant 3% impairment for his reported loss of smell, and 7% for his reported impotency. While all of the physicians agreed that Claimant’s hearing loss was real, none found it to be ratable. The Commission assigns no impairment for Claimant’s reported loss of hearing, impotency, or loss of smell. While the records of the VAMC indicate that Claimant was treated for impotency, they do not shed any light on whether the condition was caused by Claimant’s diabetes or the industrial injury. Given that Claimant did not report an inability to achieve and maintain an erection until late in his treatment, it is unlikely that the impotency was the result of the head injury.

Although Claimant reported a loss of smell, the records do not indicate when this deficit was first noticed, or what might have caused it. Without some medical evidence documenting an objective loss of his sense of smell and some causal connection between the objective loss and

Claimant's injuries, the Commission is unable to relate Claimant's loss of smell to the industrial accident and therefore, assigns no impairment rating.

65. **Combined PPI Rating.** Combining the various ratings attributable to the industrial accident (25% for diabetes, 10% for depression, and 7% for neurocognitive losses) according to the Combined Values Chart of the *AMA Guides*, the Commission calculates a combined permanent impairment rating of 38% of the whole person.

### ***DISABILITY IN EXCESS OF IMPAIRMENT***

66. **Disability.** The definition of "disability" under the Idaho workers' compensation law is:

. . . a decrease in wage-earning capacity due to injury or occupational disease, as such capacity is affected by the medical factor of physical impairment, and by pertinent nonmedical factors as provided in section 72-430, Idaho Code.

Idaho Code § 72-102 (10). 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. A 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 permanent impairment and by pertinent nonmedical factors. Idaho Code § 72-425.

Among the pertinent nonmedical factors are the following: the nature of the physical disablement; the cumulative effect of multiple injuries; the employee's occupation; the employee's age at the time of the accident; the employee's diminished ability to compete in the labor market within a reasonable geographic area; all the personal and economic circumstances of the employee; and other factors deemed relevant by the commission. Idaho Code § 72-430.

The case of *Baldner v. Bennett's, Inc.*, 103 Idaho, 458, 461, 649 P.2d 1214 (1982) is instructive

on the relationship between impairment and disability. In *Baldner*, the Supreme Court wrote:

A claimant's impairment evaluation or rating is one component or element to be considered by the Commission in determining a claimant's permanent, partial disability, I.C. § 72-425, and is not the exclusive factor determinative of the disability rating fixed by the Commission. I.C. § 72-427. A disability rating may exceed the claimant's impairment rating. (Citations omitted.)

In order to establish that he has sustained disability in excess of his impairment, Claimant must prove, by a preponderance of the evidence, that he has sustained a loss of earning capacity or a reduced ability to engage in gainful activity. *Ball v. Daw Forest Products Company*, 136 Idaho 155, 30 P.3d 933 (2001). "[T]he Workmen's [sic] Compensation law does not require any particular method of proof." *Baldner*, 103 Idaho at 461, 649 P.2d at 1217.

At the outset, Claimant averred that his permanent disability in excess of impairment was total. Defendants initially took the position, supported by the first report of Mr. Jordan, that Claimant had no disability in excess of his 7% impairment. The record does not support either position.

Before the accident, the Claimant was employed full-time, was paid relatively well, was cognitively intact, was able to learn easily, was able to drive without limitation, was in control of his diabetes, was fluent with computer hardware and software, and was a functioning member of a family and social circle. After the accident:

- Claimant's employment was limited to sporadic manual labor for a family member;
- His short-term memory and executive functioning was impaired along with his ability to maintain a consistent learning set;
- He rarely drove and when he did he would sometimes have to pull over because he was overwhelmed by the multiple conflicting demands for his attention;

- He became a brittle diabetic with wildly fluctuating blood sugar levels despite his best efforts at control;
- He could no longer use a computer because he could not use the software; and
- He withdrew from his family, isolated himself from society, and began using alcohol.

Each of these changes individually, and certainly all of them taken together, affected Claimant's ability to find and keep a job. The Commission finds that Claimant has met his burden of proving a loss of earning capacity and reduced ability to engage in gainful activity as a result of the industrial accident. Medical factors alone constitute an impairment of 53% (38% attributable to the accident plus the 15% pre-existing impairment for his diabetes); Claimant's age, his limited education, the difficulty he would have learning new skills, his limited ability to drive, his time away from the labor market, and his unkempt appearance and flat affect all constitute obstacles to employment above and beyond his rated impairment.

67. Claimant abandoned his claim of total and permanent disability, but contends that his disability should be 95%, inclusive of his impairment. As stated in his brief:

[Claimant] does not request a finding of 100% disability. There is testimony from at least two medical experts that he is not totally disabled, and in fact he feels he can do some work.

Claimant's Opening Brief on Second Part of Bifurcated Hearing, p. 28 (Claimant's Opening Brief).<sup>8</sup> Claimant argues that 90% of the disability should be apportioned to the industrial accident. This would apportion 85.5% of Claimant's total disability to the industrial accident, with 9.5% attributable to pre-existing conditions.

Defendants also changed their tack after Mr. Jordan submitted his second report, which constituted something of a shift in the vocational winds. In his second report, Mr. Jordan opined

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<sup>8</sup> Claimant's statement that "he feels he can do some work" is not an admission that is binding on the finder of fact or the Defendants on the issue of total and permanent disability.

that Claimant was actually “disabled,” but that his “disability” pre-existed his work-related injury. In reaching his new conclusion, Mr. Jordan was careful to avoid using any of the terms of art that have legal consequence in the workers’ compensation statutes. Mr. Jordan neither opined that Claimant was totally and permanently disabled nor that he was an odd-lot worker. In their briefing, Defendants finessed the patent inconsistency between Mr. Jordan’s reports by drawing elements from both to create a hybrid theory: If Claimant sustained a decrease in wage-earning capacity, it was not the result of the industrial accident.

The Commission agrees that Claimant is not 100% disabled as a result of his impairment and relevant non-medical factors. Based on the entirety of the record herein, the Commission finds that Claimant’s permanent disability, inclusive of impairment, is 90%.

***APPORTIONMENT UNDER IDAHO CODE § 72-406***

68. In cases of permanent disability less than total, if the degree or duration of disability resulting from an industrial injury is increased or prolonged because of a preexisting physical impairment, the employer shall be liable only for the additional disability from the industrial accident. Idaho Code § 72-406. As noted elsewhere in these findings, Claimant’s total pre-existing impairment amounts to 15% as a result of his diabetic condition. Aside from the impairment itself, nothing regarding Claimant’s pre-existing diabetic condition increased or prolonged the degree or duration of Claimant’s disability. Therefore, after apportionment, the Commission finds Claimant suffers 75% disability, inclusive of impairment, as a result of his April 2000 industrial accident.

***APPORTIONMENT UNDER THE CAREY FORMULA***

69. Defendants specifically asked the Commission for an apportionment of liability under the *Carey* formula in the event that Claimant was found to be totally and permanently

disabled. Because Claimant was not found to be totally and permanently disabled, no Carey apportionment is necessary.

\* \* \* \* \*

**ORDER**

1. Claimant’s depression, his neurocognitive deficits, his need for in-patient alcohol treatment, and all but 15% of his diabetes care are causally related to his industrial accident, and are compensable.

2. Claimant reached maximum medical improvement on or about June 24, 2003.

3. Claimant sustained permanent partial impairment amounting to 38% of the whole person as a result of the industrial accident.

4. Claimant sustained disability in excess of his impairment. Claimant’s disability, attributable to the industrial accident, is 75% inclusive of his impairment.

5. Claimant is not totally and permanently disabled, making a *Carey* apportionment unnecessary.

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

DATED this 29<sup>th</sup> day of June, 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 29th day of June, 2005 a true and correct copy of **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** was served by regular United States Mail upon:

JERRY J GOICOECHEA  
PO BOX 6190  
BOISE ID 83707-6190

GLENNA M CHRISTENSEN  
PO BOX 829  
BOISE ID 83701-0829

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/s/