BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

FIDENCIO MATA,	)	
	)	**IC 99-501050**
Claimant,	)	**IC 99-502367**
v.	)	
	)	
KING B, INC.,	)	**FINDINGS OF FACT,**
	)	**CONCLUSIONS OF LAW,**
Employer,	)	**AND RECOMMENDATION**
and	)	
	)	
LIBERTY NORTHWEST INSURANCE CORPORATION,	)	FILED FEB 15 2006
	)	
Surety,	)	
Defendants.	)	
	)	

INTRODUCTION

The Industrial Commission assigned this matter to Referee Douglas A. Donohue. He conducted a hearing on limited issues and recommended proposed findings of fact and conclusions of law to the Commission. These were adopted in an Order dated October 14, 2004. Mr. Donohue conducted a second hearing in Idaho Falls on June 28, 2005. An interpreter assisted. Dennis R. Petersen represented Claimant. E. Scott Harmon represented Defendants. The parties presented oral and documentary evidence. They took post-hearing depositions and submitted briefs. The case came under advisement on January 9, 2006, and is now ready for decision.

ISSUES

As stipulated by the parties at hearing, the issues to be resolved are:

1. Whether Claimant is entitled to additional PPI;

2. Whether Claimant is entitled to permanent disability in excess of PPI; and

3. Whether apportionment under Idaho Code § 72-406 is appropriate.

In post-hearing briefs, the apportionment issue was withdrawn.

CONTENTIONS OF THE PARTIES

Claimant sustained an injury to his left shoulder on or about March 10, 1999, and to his right index finger on March 16, 1999, while working as a meat cutter for Employer.

Claimant contends he is entitled to PPI for the shoulder and disability in excess of PPI for both conditions of at least 40% of the whole person.

Defendants contend Claimant is entitled to no PPI for the shoulder and no disability.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant at the June 28, 2005 hearing;

2. The record upon which the Commission's October 14, 2004 Order was based;

3. Joint exhibits identified as a supplement to Exhibit 18, and Exhibits 20-25; and

4. Post-hearing depositions of orthopedic surgeon Gregory West, M.D., functional capacities evaluator Bryan D. Huntsman, and vocational consultant Nancy Collins, Ph.D.

Having fully considered all of the above evidence, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

FINDINGS OF FACT

1. The findings of fact and conclusions of law adopted in the October 14, 2004

Order are incorporated by reference as if set forth in full here.

2. Orthopedic surgeon Gregory West, M.D., opined Claimant's left shoulder impingement syndrome was related to the industrial injury which occurred about March 10, 1999, when Claimant was struck by a heavy metal door.

3. On January 12, 2004, Dr. West performed surgery on Claimant's left shoulder.

4. On July 15, 2004, Dr. West opined Claimant suffered no ratable PPI as a result of Claimant's left shoulder condition. He did restrict Claimant from frequent repetitive overhead activity and defined "frequent" as more than 66% of the work day.

5. At the time of hearing, Claimant worked full time for Yellowstone Plastic, earning $9.00 per hour. As a result of the loss of his right index finger and shoulder condition, he modifies how he performs his job. The record contains no suggestion that Claimant's modifications affect his employer's satisfaction with his performance.

6. On November 16, 2004, Bryan Huntsman performed a functional capacities evaluation. Claimant's responses rendered the testing invalid. Nevertheless, Mr. Huntsman opined he was able to reasonably determine appropriate activity levels for Claimant.

7. On April 20, 2005, Nancy Collins, Ph.D., evaluated Claimant's permanent disability. She considered all factors available to her, including Mr. Huntsman's testing, and opined Claimant suffered a 40% whole person permanent disability, inclusive of the 11% PPI for Claimant's right index finger previously awarded.

DISCUSSION AND FURTHER FINDINGS

8. **PPI.** Dr. West opined in a contradictory way by asserting Claimant suffered no PPI but also imposing permanent restrictions resulting from Claimant's left shoulder

condition which required surgery. Thus, Claimant established he suffered *de minimus* PPI rated at 1% of the whole person.

9. **Permanent disability.** Permanent disability is defined and evaluated according to statute. Idaho Code §§ 72-423, 424, 425, 430(1). Some factors are expressly defined by statute and other unexpressed factors may be considered. Idaho Code § 72-430(1).

10. Dr. Collins' opinions were based, in part, upon unreliable data – Claimant's subjective reports and Mr. Huntsman's invalid testing. The objective fact most salient to this disability analysis is that Claimant has worked at various jobs since the accidents and is currently working full-time at $3.50 per hour more than at the time of these accidents. Nevertheless, Claimant showed it likely he suffered a genuine loss of labor market access. He proved some small amount of permanent disability in addition to PPI as a result of the loss of his index finger and left shoulder restriction.

11. Considering, primarily, Claimant's time-of-hearing job status and wage, work history, and English language difficulties, as well as other relevant factors to be considered by statute, Claimant suffered permanent disability rated at 15% of the whole person, inclusive of PPI for his right finger and left shoulder.

CONCLUSIONS OF LAW

1. Claimant suffered PPI as a result of his compensable left shoulder injury rated at 1% of the whole person; and

2. Claimant suffered permanent disability rated at 15% of the whole person, inclusive of all PPI. Defendants are entitled to credit for PPI previously paid.

RECOMMENDATION

The Referee recommends that the Commission adopt the foregoing Findings of Fact and Conclusions of Law as its own and issue an appropriate final order.

DATED This 3RD day of February, 2006.

INDUSTRIAL COMMISSION

/S/_____
Douglas A. Donohue, Referee

ATTEST:

/S/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 15TH day of FEBRUARY, 2006, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

Dennis R. Petersen
P.O. Box 1645
Idaho Falls, ID 83403-1645

E. Scott Harmon
P.O. Box 6358
Boise, ID 83707

db /S/_____

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FIDENCIO MATA,	)	
	)	**IC 99-501050**
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KING B, INC.,	)	**ORDER**
	)	
Employer,	)	
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	)	FILED FEB 15 2006
LIBERTY NORTHWEST INSURANCE CORPORATION,	)	
	)	
Surety,	)	
Defendants.	)	
	)	

Pursuant to Idaho Code § 72-717, Referee Douglas A. Donohue submitted the record in the above-entitled matter, together with his proposed findings of fact and conclusions of law to the members of the Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

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

1. Claimant suffered PPI as a result of his compensable left shoulder injury rated at 1% of the whole person.

2. Claimant suffered permanent disability rated at 15% of the whole person, inclusive of all PPI. Defendants are entitled to credit for PPI previously paid.

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

DATED this 15TH day of FEBRUARY, 2006.

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 15TH day of FEBRUARY, 2006, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

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