

limine prior to the hearing. Defendant requested the exclusion of all evidence, oral and written, which had not properly been made available during the discovery process.

4. Before the November 29, 2006, hearing, Defendant moved for Dismissal as a sanction for Claimant's failure to respond to discovery requests.

5. Claimant did not appear for the hearing on November 29, 2006. Defendant's attorney informed the Referee that Claimant had telephoned and cited transportation problems as a reason for his absence and that Claimant had requested a delay in the start of the hearing. Using the caller ID number from the telephone of Defendant's attorney, the Referee telephoned Claimant. Claimant acted as if he was unable to hear the Referee's voice. Minutes later, well after the scheduled time for the start of the hearing, Claimant telephoned the Pocatello field office and spoke with the Referee. Claimant cited transportation problems as his reason for his failure to appear.

6. The Referee declined to wait "an hour or so" to start the hearing based upon Claimant's continued failure to prosecute his case and failure to maintain communication with Defendant and with the Commission.

7. Defendant and the Industrial Commission incurred costs to attend the hearing.

8. Claimant had adequate notice of the date, time, and place of the hearing.

9. Defendant's motion to dismiss is proper.

10. Claimant's claim should be dismissed. Moreover, Claimant failed to show he was entitled to any benefits under the Idaho Worker's Compensation Law.

11. The Referee informed the parties that he would recommend the dismissal be without prejudice in order for the Commission to evaluate Claimant's excuse for failure to attend the hearing.

FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION - 2

CONCLUSION OF LAW

Claimant’s claim should be dismissed.

RECOMMENDATION

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

DATED this 1ST day of December, 2006.

INDUSTRIAL COMMISSION

/S/ _____
Douglas A. Donohue, Referee

ATTEST:

/S/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 8TH day of DECEMBER, 2006, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

James E. Layman
P.O. Box 2316
Pocatello, ID 83206

M. Brent Morgan
1106 East Center
Pocatello, ID 83201-5202

db _____

CERTIFICATE OF SERVICE

I hereby certify that on 8TH day of DECEMBER, 2006 a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

James E. Layman
P.O. Box 2316
Pocatello, ID 83206

M. Brent Morgan
1106 East Center
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/S/_____