

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

REBECCA FEIGHNER, )  
 )  
 Claimant, )  
 )  
 v. )  
 )  
 NORTHWEST BEC CORPORATION, )  
 dba GOODING REHABILITATION AND )  
 LIVING CENTER, )  
 )  
 Employer, )  
 )  
 and )  
 )  
 IDAHO STATE INSURANCE FUND, )  
 )  
 Surety, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

**IC 2003-011270**

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

Filed  
January 5, 2007

**INTRODUCTION**

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Alan Taylor, who conducted a hearing in Twin Falls, Idaho, on March 15, 2006. Claimant, Rebecca Feighner, was present in person and represented by Emil Pike of Twin Falls, Idaho; Defendant Employer, Northwest BEC Corporation dba Gooding Rehabilitation and Living Center (Gooding Rehabilitation), and Defendant Surety, Idaho State Insurance Fund, were represented by Neil McFeeley, of Boise, Idaho. The parties presented oral and documentary evidence. This matter was then continued for the taking of post-hearing depositions, the submission

of briefs, and subsequently came under advisement on October 16, 2006.

### **ISSUES**

The noticed issues were narrowed at hearing and the issues presently to be resolved are:

1. The extent of Claimant's permanent partial impairment; and
2. The extent of Claimant permanent partial disability in excess of permanent impairment.

### **ARGUMENTS OF THE PARTIES**

Claimant asserts her industrial accident of April 25, 2003, caused chronic lumbar strain resulting in a 5% permanent impairment of the whole person and 20% permanent disability, inclusive of impairment. Defendants assert that Claimant's industrial accident did not result in any permanent impairment, and that Claimant has no permanent disability in excess of impairment.

### **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. The testimony of Claimant and Charles Porter, D.C., taken at hearing;
2. Claimant's Exhibits 1 through 3 admitted at hearing;
3. Defendants Employer and Surety's Exhibits 1, 2, and 4 admitted at hearing; and
4. Dr. Hammond's supplemental report of May 1, 2006, admitted post-hearing by agreement of the parties.

After having considered the above evidence, and the arguments of the parties, the Referee submits the following findings of fact and conclusions of law.

### **FINDINGS OF FACT**

1. Claimant was born in 1981. She was 24 years old and resided in Jerome, Idaho, at the time of the hearing. She was hospitalized at age 12 for an emotional breakdown after an altercation with her mother. Claimant was diagnosed with Attention Deficit Hyperactivity Disorder, ADHD, in her teens and had significant conflicts with her parents. She attended high school through the 11<sup>th</sup> grade, then left high school to work for minimum wage at a fast food restaurant in Colorado. Claimant also worked at an assembly line and as an exotic dancer. Thereafter, Claimant worked as a secretary for her father's concrete company in Colorado, making \$8.00 to \$10.00 per hour. She processed orders and taught others to use the company's computer system. In 2001, Claimant married but separated three months later and subsequently divorced. In 2002, she moved to Idaho to be closer to her family. Claimant then worked driving truck for two months at minimum wage.

2. In February 2003, Claimant began working as a nurse's assistant at Gooding Rehabilitation where her duties included changing bedding, bathing, feeding, and general personal care of residents. She earned \$6.00 per hour.

3. On April 25, 2003, Claimant was transferring a patient with the assistance of a co-worker when she felt a sharp pain in her mid and lower back. Claimant was treated initially by Charles Porter, D.C., with extensive chiropractic treatments. She was later seen by David Hanscom, M.D. Upon the advice of her attorney, Claimant was also seen by Richard Hammond, M.D. He ordered a lumbar MRI scan which was read as normal.

4. Claimant returned to work for a short time with Gooding Rehabilitation and her employment was subsequently terminated.

5. Claimant returned to truck driving briefly, and thereafter worked for seven months in

the receiving department of St. Benedict's Hospital in Jerome, Idaho, where she filled hospital supplies and helped with computer work. She earned from \$7.00 to \$7.50 per hour. She left because of a conflict with a supervisor. Claimant next worked at Pizza Hut where she earned \$6.00 per hour. She then accepted employment at Idaho Pizza Company in Jerome where she was preparing to become assistant manager when she moved.

6. In April 2005, Claimant married and moved with her husband to Missouri where she worked as a housekeeper at a motel, earning minimum wage. Her husband was subsequently stationed overseas and in December 2005, Claimant returned to Jerome.

7. At the time of the hearing, Claimant was working five or six hours per day, three days per week as a bar tender earning \$6.00 per hour plus tips. No heavy lifting was required.

8. Claimant testified that she cannot tolerate standing very long before her back begins throbbing. She testified that she cannot lift her six-year-old nephew. Claimant testified that she suffers continuing back pain, that her legs go numb or go to sleep after sitting down, and that standing more than an hour increases her back pain.

9. Claimant is five feet eight inches tall and weighs 105 pounds. She has never obtained a GED, although she plans to commence GED courses soon.

#### **DISCUSSION AND FURTHER FINDINGS**

10. The provisions of the Workers' Compensation Law are to be liberally construed in favor of the employee. Haldiman v. American Fine Foods, 117 Idaho 955, 793 P.2d 187 (1990). The humane purposes which it serves leave no room for narrow, technical construction. Ogden v. Thompson, 128 Idaho 87, 910 P.2d 759 (1996).

11. **Impairment.** "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 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 employee's personal efficiency in the activities of daily living, such as self-care, communication, normal living postures, ambulation, 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).

12. Chiropractor Charles Porter treated Claimant extensively after her industrial accident. At hearing, he testified that Claimant suffers a 5% permanent impairment due to her industrial injury.

13. Dr. Hammond, a neurologist, examined Claimant on May 1, 2006, and noted that she had reached maximum medical improvement. He recorded moderate spasm of her lumbar paraspinal muscles, but also embellishment of her symptoms. He rated Claimant's permanent impairment of her back due to her industrial injury at 5% of the whole person using the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, and a DRE II category.

14. The Referee finds Dr. Hammond's opinion persuasive and concludes that Claimant suffers permanent impairment of 5% of the whole person due to her industrial accident.

15. **Permanent Disability.** "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 permanent impairment and by pertinent nonmedical 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 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.

16. The degree of permanent disability suffered by a claimant is a factual question committed to the particular expertise of the Commission. McClurg v. Yanke Machine Shop, Inc., 123 Idaho 174, 176, 845 P.2d 1207, 1209 (1993). Wage loss may be a factor. Baldner v. Bennett's Inc., 103 Idaho 458, 649 P.2d 1214 (1982). 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).

17. In the present case, Dr. Hammond restricted Claimant to lifting no more than 35 pounds with limited bending and stooping. Since her industrial injury, Claimant has clearly demonstrated her ability to obtain a variety of jobs within these restrictions. Chiropractor Porter

opined that Claimant was restricted to lifting no more than 15 pounds. Given the absence of objective findings on the MRI and Dr. Hammond's neurological expertise, the Referee finds Dr. Hammond's opinion of Claimant's physical abilities more persuasive.

18. Claimant was working as a care center assistant and earning \$6.00 per hour at the time of her industrial accident. Since her accident, Claimant has applied her skills and worked at a variety of full-time and part-time jobs, the majority of which have paid at least as much as her time-of-injury wage. Claimant has changed jobs frequently, not due to any alleged difficulty with performing the physical tasks required by her employers, but rather due to a number of personal factors unrelated to her industrial injury.

19. Based on Claimant's impairment rating of 5% of the whole person, and her various medical and non-medical factors, Claimant's ability to engage in gainful activity has been reduced. However, Claimant's proven ability to find a number of jobs paying wages equal to or higher than her time of injury wage, demonstrates that the restrictions from her industrial injury have a negligible impact on her actual ability to engage in gainful employment.

20. Claimant has not established her entitlement to any permanent disability in excess of her permanent impairment.

### **CONCLUSIONS OF LAW**

1. Claimant has proven she suffers permanent partial impairment of 5% of the whole person due to her industrial accident.

2. Claimant has not proven she suffers any permanent disability due to her industrial injury in excess of her 5% permanent impairment.

### **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 5th day of January, 2007.

INDUSTRIAL COMMISSION

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/s/  
Alan Reed Taylor, Referee

ATTEST:

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/s/  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the 5th day of January, 2007, a true and correct copy of **Findings of Fact, Conclusions of Law, and Recommendation** was served by regular United States Mail upon each of the following:

EMIL F PIKE JR  
PO BOX 302  
TWIN FALLS ID 83303-0302

NEIL D MCFEELEY  
PO BOX 1368  
BOISE ID 83701-1368

\_\_\_\_\_  
/s/

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 IDAHO STATE INSURANCE FUND, )  
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 Surety, )  
 )  
 Defendants. )  
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Pursuant to Idaho Code § 72-717, Referee Alan Reed Taylor 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 recommendation of the Referee. The Commission concurs with this recommendation. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

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

1. Claimant has proven she suffers permanent partial impairment of 5% of the whole person due to her industrial accident.
2. Claimant has not proven she suffers any permanent disability due to her industrial injury in excess of her 5% permanent impairment.

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

DATED this 5th day of January, 2007.

INDUSTRIAL COMMISSION

\_\_\_\_\_  
/s/  
James F. Kile, Chairman

\_\_\_\_\_  
/s/  
R.D. Maynard, Commissioner

\_\_\_\_\_  
/s/  
Thomas E. Limbaugh, Commissioner

ATTEST:

\_\_\_\_\_  
/s/  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on 5th day of January, 2007, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

EMIL F PIKE JR  
PO BOX 302  
TWIN FALLS ID 83303-0302

NEIL D MCFEELEY  
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lbs

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/s/