

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

BARRY BRADFORD, )  
 )  
 Claimant, )  
 )  
 v. )  
 )  
 ROCHE MOVING & STORAGE, INC., )  
 Employer, and LIBERTY NORTHWEST )  
 INSURANCE CORPORATION, Surety, )  
 )  
 and )  
 )  
 FRONTIER MOVING AND STORAGE, )  
 Employer, and STATE INSURANCE )  
 FUND, Surety, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

**IC 2006-524422**  
**IC 2006-523989**

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

Filed November 9, 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 Idaho Falls on May 3 and 4, 2007. Claimant, Barry Bradford, was present in person and represented by Paul T. Curtis of Idaho Falls. Defendant Employer, Roche Moving & Storage, Inc. (Roche), and Defendant Surety, Liberty Northwest Insurance Corporation, were represented by Monte R. Whittier of Boise. Defendant Employer Frontier Moving and Storage (Frontier), and Defendant Surety, State Insurance Fund, were represented by Scott R. Hall of Idaho Falls. The parties presented oral and documentary evidence. This matter was then continued for the submission of briefs, and subsequently came under advisement on July 19, 2007.

## **ISSUES**

The issues to be resolved are who was Claimant's employer, or was Claimant an independent contractor, on August 9, 2006?

## **ARGUMENTS OF THE PARTIES**

All parties concede Claimant was severely injured on August 9, 2006, on the business premises used, or later used, by Roche and Frontier. Claimant argues he was a direct employee of either Roche or Frontier at the time of his accident.

Roche maintains that Claimant was not a Roche employee at the time of the accident—although he had previously been a Roche employee. Roche argues that Claimant's actions at the time of his accident were purely voluntary. Roche asserts that if Claimant is deemed an employee at all at the time of his accident, then he was the employee of Frontier, to whom Roche sold its business effective August 1, 2006.

Frontier maintains that Claimant was not its employee at the time of the accident and has never been its employee. Frontier argues that its purchase of the Roche business was not completed until the final signing of the purchase agreement on November 21, 2006. Frontier alleges that, in any event, Claimant's actions at the time of his accident were purely voluntary and not as an employee.

## **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. The testimony of Claimant, Brenda Hill, Chad Rose, Dean Cook, and Darren Smith taken at the May 3 and 4, 2007, hearing;
2. Exhibits A through II admitted at the hearing;

All objections made during the depositions of Chad Rose and Dean Cook are overruled.

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

### **FINDINGS OF FACT**

1. Defendant Roche was a moving and storage company owned and operated by Dean Cook with a storage warehouse located in Idaho Falls. Roche provided moving and storage services to the general public. Roche packed and stored household and commercial goods in its warehouse, received goods into storage, and retrieved and delivered goods from its warehouse. Roche's operation was exclusively moving and warehouse storage. The bulk of Roche's work occurred in the warmer months.

2. Claimant was 45 years old and lived in Osgood at the time of the subject accident. He completed the ninth grade and later obtained a high school equivalency certificate. Claimant is an experienced mover. He is skilled in overseas packaging and shipment, and in residential and commercial moving, storage, and general warehouse work. Claimant first began working for Roche in the 1990's and then returned to work for Roche in 2005 as a regular hourly employee.

3. In 2005, Roche had approximately 10 employees. Two employees were salaried full-time employees: Cook and his secretary Brenda Hill. All other Roche employees were considered regular hourly workers and were paid by the hour with a minimum of four hours per day, and additional amounts according to the actual hours they worked each day. Roche's regular hourly workers did not always work 40 hours per week, but were expected to report for work at the Roche warehouse each morning Monday through Friday during the busy moving season and be available to be called in for work during the slower season. They accrued vacation and unemployment benefits,

and Roche withheld taxes from their earnings. Claimant was considered a regular hourly Roche employee in 2005.

4. Roche also used as needed hourly workers to assist as day laborers during busy times. Roche paid as needed hourly workers by the hour, for a minimum of four hours. Roche apparently considered an hourly worker paid by Roche, whether regular or as needed, to be covered under Roche's workers' compensation insurance for the time which he worked for Roche. In 2005 Roche paid as needed hourly workers \$10 per hour and did not withhold any taxes. These workers did not accrue paid vacation or unemployment benefits. When called to work at Roche's warehouse, as needed hourly workers reported to the office upon arriving and kept their own time card for that day.

5. Roche generally used hourly workers for local moves. Hourly workers loaded and/or unloaded trucks and packed materials at Roche's warehouse or at Roche's customers' residences. Roche provided all necessary tools and hourly workers could have quit for any reason at any time without liability.

6. Consistent with standard moving industry practice, Roche maintained a lumper list comprised of individuals interested in helping out-of-town truck drivers load and/or unload their trucks in the Idaho Falls area. Out-of-town drivers regularly called Roche requesting lumpers at a specified day and time, whereupon Roche arranged for individuals from the lumper list to meet the driver at the parking lot of Roche's warehouse. Lumpers often put their names on many moving companies' lumper lists to obtain more work. Lumpers were paid cash by the driver for whom they worked. Lumpers were customarily paid \$12 per hour to unload and \$15 per hour to load. On very rare occasions, Roche paid the lumper if the driver ran out of cash and Roche was then reimbursed by the driver's company. Roche did not consider lumpers to be Roche employees because they

worked for, were directed by, and were paid by out-of-town drivers. Roche's lumper list included a number of Roche hourly workers who were available from time to time to work as lumpers for out-of-town drivers when Roche's own moving and warehouse work slowed.

7. Occasionally, Roche hourly workers worked four hours for Roche at its warehouse and four hours for drivers as lumpers on the same day. In such instances the truck driver paid for the hours spent as a lumper and Roche paid for the hours spent as a worker at Roche's warehouse. An Allied Van Lines shirt was required wear of Roche's regular and as needed hourly workers and of lumpers also.

8. Claimant was a regular hourly worker for Roche during most of 2005 for which Roche paid him over \$15,000 and withheld taxes. Claimant loaded and unloaded trucks and worked in Roche's warehouse. He was a good dependable worker. Roche paid Claimant \$9 per hour and required him to submit daily time sheets documenting his work hours. Claimant came in everyday during the busy season, and thereafter reported only when called in by Roche during the slow season. Claimant had no written employment contract and Cook could have terminated Claimant's employment with Roche at any time. Cook and, occasionally Hill, were Claimant's supervisors.

9. As 2005 progressed, Cook experienced ill health and underwent multiple treatments for cancer. He was forced to curtail Roche's business activities.

10. In January 2006, Claimant and a number of others were taken off Roche's regular payroll. Claimant then left Roche and began working for another moving and storage company in February 2006. Sometime in the late spring of 2006, at Claimant's request, his name was placed on Roche's lumper list. Roche thereafter called Claimant periodically to work as a lumper for out-of-town drivers.

11. Roche also called Claimant for as needed hourly work for Roche's warehouse and customers in June and July 2006. Claimant's work for Roche in 2006 was the same type of work he had performed in 2005. Roche paid Claimant \$10 per hour for a total of approximately \$1,500 in 2006. Roche withheld no taxes from Claimant's checks.

12. On occasion, lumpers who were waiting at the Roche warehouse helped regular Roche employees with warehouse duties for a few minutes until the lumper's out-of-town driver arrived. This assistance was provided voluntarily and gratuitously. Roche did not expect or require such assistance as a prerequisite to placing an individual on the lumper list. As a lumper, Claimant usually helped in such situations. On those occasions, Claimant donated his time and did not expect or request payment for a few minutes of service.

13. In the summer of 2006, Frontier began negotiating an asset purchase agreement with Roche. An agreement was drafted with an effective date of August 1, 2006. The August 1, 2006, date was selected so Frontier could benefit from the busy summer moving season. The purchase agreement essentially provided for Frontier to begin managing on the effective date and to cover all expenses and receive all income from the business commencing August 1, 2006. In accordance with the purchase agreement, Cook received payment for work performed before August 1, 2006, but did not receive any income from Roche after that day. Also in accordance with the agreement, Frontier paid business expenses for work performed on and after August 1, even though Roche initially paid some such bills and was then reimbursed by Frontier. Pursuant to the purchase agreement, Frontier made an initial payment of \$10,000 to Cook on approximately August 1, 2006, for the Roche business.

14. On August 1, and for a few hours each day for several days thereafter, Cook was

present in the warehouse. However, Cook did not manage any personnel on or after August 1, 2006. On August 1, 2006, Frontier recognized as employees Hill, Scott Lancaster, and several others not including Claimant. Hill understood she was a Frontier employee as of August 1, 2006. In contrast, Claimant never filled out a W-4, I-9 or any other form for Frontier.

15. On August 2, 2006, two former Roche employees, Shane Storer and Cord Lemons, were injured while helping with a Roche/Frontier moving job in Pocatello. Roche filed workers' compensation claims for both men and their claims were paid.

16. On August 3 and 4, 2006, Hill called Claimant in as an hourly worker to assist with moving and packing for a Roche/Frontier customer in Chubbuck. Roche initially paid Claimant by the hour for his work on those days, but this expense was later reimbursed to Roche by Frontier.

17. On August 7, 2007, Frontier's manager, Chad Rose, arrived at the Idaho Falls warehouse and began managing the Frontier operation in person. Cook did not direct Rose. Frontier co-owner Darren Smith was also present at the warehouse by August 7, 2006. Rose set up a new computer system and new bookkeeping system. Hill accounted to Smith and Rose. Rose managed all day to day Frontier operations. Hill showed Rose the scheduling books and helped him understand the business. Although Rose was in charge, Hill assigned hourly workers and orchestrated lumpers for the first several weeks after Rose's arrival. Rose had never called in any hourly workers or lumpers prior to August 9, 2006.

18. Rose met Claimant briefly for the first time on August 7 or 8, 2006. Rose was probably aware that Claimant had worked for Roche previously.

19. On August 7 or 8, 2006, Cook and Smith took the former Roche regular employees out to dinner to help reassure them of their job security with Frontier. Claimant was not invited and

did not attend.

20. On August 7, 2006, Claimant was married.

21. On August 8, 2006, Hill called Claimant and arranged for Claimant to work as a lumper to meet an out-of-town driver at 8:00 a.m. the next day at the warehouse parking lot and help unload the driver's truck. August 8<sup>th</sup> was also Claimant's wedding reception. Claimant acknowledged that he was drunk the evening of August 8<sup>th</sup>, but asserted that he drank no alcohol after 10:00 that evening. Claimant denies he was drunk on August 9, 2006.

22. On August 9, 2006, at approximately 7:30 a.m., Frontier manager Rose arrived at the warehouse and attempted to raise the main warehouse door. It jammed after raising approximately five feet. Lancaster arrived shortly thereafter and together with Rose unsuccessfully attempted to raise the door with a crowbar. A freight truck arrived at the warehouse carrying overseas crates which required a forklift to unload. The forklift was inside the warehouse.

23. The main warehouse door was a 14 foot tall spring-assisted door comprised of multiple wooden panels. The vertical sides of the door panels sported rollers which ran in vertical rails on either side. The rollers occasionally stuck in the tracks due to weld spots on the rails and required additional force—including the use of a crowbar—to free the rollers and raise the door.

24. Claimant arrived shortly before 8:00 a.m. on August 9, 2006, and met the out-of-town driver for whom Claimant was to work as a lumper that day. The driver was in his truck in the warehouse parking lot awaiting the arrival of a second lumper. Claimant noticed the warehouse door was stuck and observed Rose and Lancaster trying to free it. Claimant was familiar with the process of freeing the door rollers and had done so on previous occasions as a Roche hourly worker. Claimant asked the driver if he could help raise the warehouse door. The driver consented. The

driver's load was not for delivery to the warehouse and had no connection with either Roche or Frontier's business operations. Claimant later acknowledged that he wanted to help free the door to make a good impression on the new warehouse operators and get on Frontier's steady payroll.

25. The testimony of the witnesses is partially conflicting as to the brief conversation that occurred at this point. Rose testified that while he and Lancaster worked on the door, Claimant approached and said "stand over on that side ...." Transcript p. 149, Ll. 18-19, or "Here, let me show you. Let me help you out here." Deposition of Chad Rose, p. 25, Ll. 11-12. Rose testified that Lancaster did not ask Claimant to help and that Claimant did not ask Rose if he could work on the door. Rose did not ask Claimant to help with the door. Rose perceived that Claimant was taking control of the situation. August 9<sup>th</sup> was Rose's third day managing the warehouse on site and from Claimant's statement, Rose believed that the door had jammed before and that Claimant knew how to free it. Rose could have stopped Claimant from helping with the door but did not.

26. Lancaster testified that he asked Claimant to help with the door. Lancaster was acknowledged as a Frontier employee at that time, but had no authority to hire others to assist at the warehouse on behalf of Frontier. Lancaster left Frontier's employment approximately three weeks later because he was unhappy with his compensation.

27. Claimant testified that he looked at Lancaster and asked: "You need a hand here? And he goes, Yes." Transcript p. 389, Ll. 21-22.

28. Claimant observed that one or more rollers of the door were displaced from the rails to a greater extent than he had ever before seen, that the rollers of the bottom door panel were not only out of their rails, but the entire bottom panel itself was angled sharply out of the usual vertical alignment of the other door panels, and that a cable from the door was caught around a ladder

affixed to an adjacent wall. Claimant helped Lancaster push on the crowbar but to no avail. Claimant then climbed up the ladder and stomped on the door with both feet, dislodging the cable and perhaps even breaking free a panel of the door. Once freed, the spring-assisted door shot upward, projecting Claimant abruptly upward, perhaps as high as the 22 foot warehouse ceiling, after which Claimant fell to the concrete floor sustaining multiple severe injuries. Only a few minutes elapsed from Claimant's arrival at the warehouse entrance until he was injured. Claimant was taken via ambulance to a nearby hospital where his blood alcohol level measured 0.197; Idaho's legal driving limit is 0.08. He remained hospitalized for an extended period.

29. At the time of the accident, Claimant was dressed consistent with Roche's dress code in clean Levis and an Allied shirt. This was also required dress for lumpers.

30. It is undisputed that except to the extent that Lancaster may have invited Claimant's help as noted above, no one from Roche or Frontier asked or directed Claimant to do any work for Roche or Frontier on August 9, 2006. Claimant was not called to come to work at the warehouse. Claimant only came onto the warehouse property to meet the driver for whom he was to work as a lumper that day. The truck and load that Claimant was to unload was not for storage or handling by Roche or Frontier.

31. Claimant did not claim, and neither Roche nor Frontier promised or provided, any compensation for his activities on the day of his accident.

32. Approximately November 21, 2006, Roche and Frontier completed the final accounting and signed the asset purchase agreement. Roche owed substantial property and payroll taxes, and back due rent. This, together with delayed receipt of definitive statements from Allied to Roche, delayed final reconciliation and accounting. The effective date stated in the executed

purchase agreement remained August 1, 2006.

33. Having carefully examined the record herein and observed the witnesses at hearing, the Referee finds Claimant honest and forthright, however as noted above, Claimant's blood alcohol level at the time of the accident was 0.197 which is approximately two and one-half times the legal limit to operate a motor vehicle. The accuracy of Claimant's perception, judgment, and recollection of the events surrounding the accident are subject to question due to his blood alcohol level. The Referee finds the testimony of Rose and Smith more reliable than that of Claimant.

### **DISCUSSION AND FURTHER FINDINGS**

34. 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, 956, 793 P.2d 187, 188 (1990). The humane purposes which it serves leave no room for narrow, technical construction. Ogden v. Thompson, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996). Facts, however, need not be construed liberally in favor of the worker when evidence is conflicting. Aldrich v. Lamb-Weston, Inc., 122 Idaho 361, 363, 834 P.2d 878, 880 (1992).

35. **Employment relationship.** Coverage under the workers' compensation law generally depends upon the existence of an employer-employee relationship. Anderson v. Gailey, 97 Idaho 813, 555 P.2d 144 (1976).

36. Claimant initially argues that because his accident occurred on Roche/Frontier's business premises, it is presumed to have occurred in the course of his employment with Roche or Frontier. This assertion ignores the threshold question of whether Claimant at the time of his accident was an employee of Roche or Frontier. "Before one can receive compensation for injuries sustained and claimed to have occurred during the course of his employment, it is axiomatic that the

relationship of employer and employee must be shown to exist.” Seward v. State Brand Division, 75 Idaho 467, 471-472, 274 P.2d 993, 997-998 (1954).

37. Claimant asserts he was a Roche or Frontier employee on August 9, 2006. Cook testified that Claimant was not an employee of Roche during 2006. Smith testified Claimant was not an employee of Frontier at any time. Whether Claimant was a direct employee of Roche or Frontier at the time of his accident is a factual issue. Claimant has the initial burden of proving this relationship.

38. Control is the hallmark of a direct employment relationship. The extent of the right to control distinguishes a direct employee from an independent contractor, and even more so, from a volunteer. The Idaho Supreme Court has described the extent of control which distinguishes an employee from an independent contractor:

The ultimate question in finding an employment relationship is whether the employer assumes the right to control the times, manner and method of executing the work of the employee, as distinguished from the right merely to require certain definite results in conforming with the agreement. Four factors are traditionally used in determining whether a 'right to control' exists, including, (1) direct evidence of the right; (2) payment and method of payment; (3) furnishing major items of equipment; and (4) the right to terminate the employment relationship at will and without liability.

Roman v. Horsley, 120 Idaho 136, 137, 814 P.2d 36, 37 (1991); quoting Burdick v. Thornton, 109 Idaho 869, 871, 712 P.2d 570, 572 (1985); see also Stoica v. Pocol, 136 Idaho 661, 39 P.3d 601 (2001).

39. Direct evidence of the right to control the manner and method of performing the work, the right to require compliance with instructions, to establish set hours of work, to require the worker to devote substantially full time to the business are all indicative of an employment relationship. In the present case, neither Roche nor Frontier controlled Claimant’s activities on

August 9, 2006. Claimant reported to work as a lumper for an out-of-town driver. Claimant asked permission of the driver to help Rose and Lancaster raise the warehouse door. Neither Roche nor Frontier controlled or directed Claimant when he voluntarily and gratuitously attempted to help raise the warehouse door. Claimant's directive that others stand back or allow him to show them how to do it, is precisely the reverse of the normal direction of control from employer to employee, or from principal to independent contractor. The complete absence of control over Claimant by Roche or Frontier on August 9, 2006, emphasizes the fact that Claimant's actions were entirely voluntary.

40. Payment by the hour, week, day, month or other regular periodic interval generally suggests an employment relationship. Withholding income and social security taxes from a person's wages is also indicative of direct employment. In the present case, there was no payment whatsoever from Roche or Frontier to Claimant for his services on August 9, 2006, and no expectation thereof. Claimant's services were entirely gratuitous. Claimant argues he could have filed a time card for his time on August 9, 2006, however, no one at Roche or Frontier had or exercised control of Claimant's conduct on August 9, 2006. Claimant never requested compensation for his services. There was no agreement to compensate Claimant for his services. Claimant understood this, and testified that he did not expect any compensation but was motivated by a desire to make a good impression so that Frontier would hire him onto its regular payroll.

41. Furnishing major items of equipment is typical of an employment relationship. In the present case, there was no significant equipment furnished by any party beyond the jammed warehouse door.

42. The ability to terminate the relationship without incurring liability is indicative of an employment relationship. Here Claimant did not work exclusively with Roche or Frontier; he

worked regularly as a lumper for out-of-town drivers and was, in fact working as a lumper on August 9, 2006.

43. The facts of the present case do not demonstrate the right of control indicative of a direct employment relationship. Indeed, the facts do not constitute a circumstance where voluntary service is regular, expected, perhaps even scheduled, and the individual may even be formally denominated a “volunteer.” Rather, the facts of the present case establish voluntary service that was irregular, unexpected, and spontaneous.

44. “Before one can become the employee of another, the knowledge and consent of the employer, express or implied, is required. .... Under the workmen's compensation law the relationship of employer and employee depends upon a contract of hire which may be either express or implied.” In re Sines' Estate, 82 Idaho 527, 532, 356 P.2d 226, 230 (1960), (superseded by statute as to jurors in Yount v. Boundary County, 118 Idaho 307, 315, 796 P.2d 516, 524 (1990)). Several cases are particularly instructive.

45. In Larson v. Independent School Dist. No. 11J of King Hill, 53 Idaho 49, 22 P.2d 299 (1933), the school district contracted with Larson as school custodian. Although not named in the written contract, school board members expected and were aware that Larson’s wife assisted him with custodial duties. In addition to Larson’s salary, the school district provided housing for the Larson family. After several months of working, Larson’s wife died in an accident while performing custodial work at the school. The Commission denied Larson’s workers’ compensation claim. The Idaho Supreme Court reversed, noting that the school district fully expected, and actually knew for several months, that Larson’s wife assisted him in custodial duties, that the school district compensated Larson’s wife by providing her housing, and had the right to control her services.

46. Larson may be distinguished from the present case in that Larson's wife not only worked regularly for several months with the knowledge and expectation of the employer, but also received compensation for her work in the form of housing accommodations. In contrast, Claimant herein did not receive or expect any compensation. Claimant gratuitously offered his assistance for, quite literally, less than five minutes. Furthermore, no control existed or was exercised by Roche or Frontier. Neither Rose nor Lancaster had or asserted the right to control Claimant's conduct on August 9, 2006. Claimant offered his assistance purely voluntarily.

47. In Seward v. State Brand Division, 75 Idaho 467, 274 P.2d 993 (1954), Seward was injured while helping a state deputy brand inspector gratuitously examine brands at the express request of the deputy inspector. The Commission found that Seward was an independent livestock hauler, had previously helped with brand inspections on occasion, and was unaware that the deputy inspector had no authority to hire him. The Commission determined the accident was compensable. The Idaho Supreme Court reversed noting there was no assertion or evidence the state brand inspector was aware of the deputy's actions. The Court declared:

Before one can become the employee of another, knowledge and consent of the employer, expressed or implied, is required. .... Claimant did not have either an express oral or written agreement for employment and ... the Deputy Brand Inspector at Idaho Falls had no power or authority to employ him, if he did. ....

Before one can receive compensation for injuries sustained and claimed to have occurred during the course of his employment, it is axiomatic that the relationship of employer and employee must be shown to exist. ....

Services gratuitously and voluntarily performed for another or for the employee of an employer are, subject to certain exceptions not pertinent here, not covered by the Workmen's Compensation Act.

Seward v. State Brand Division, 75 Idaho 467, 274 P.2d 993 (1954).

48. The present case is similar to Seward in that Claimant herein offered his services

**FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION - 15**

gratuitously and voluntarily. He neither expected nor received any compensation therefor. Claimant's only established dialogue with any other individual on August 9, 2006, was with Lancaster who had no authority from either Roche or Frontier to hire Claimant.

49. In Parker v. Engle, 115 Idaho 860, 771 P.2d 524 (1989), the Commission denied compensation to Parker, a former employee of the limited partnership Mara Green Acres (MGA), who was injured while loading a water heater. The Commission determined that the MGA manager had advised Parker several days prior to the accident that his employment with MGA would end after the completion of several projects—none involving the water heater. The spouse of the MGA manager later suggested Parker check the water heater if he had time, but did not request that Parker load or move the water heater. The Commission found Parker's actions regarding the water heater were strictly voluntary, and not pursuant to any employment relationship with MGA. The Idaho Supreme Court affirmed noting: "Voluntary activities will not suffice; an award of compensation depends on the existence of an employer/employee relationship." Parker, 115 Idaho at 865, 771 P.2d at 529.

50. Parker is similar to the present case in that the manager's spouse could not obligate MGA. Parker's service, like Claimant's herein, was a voluntary activity; not requested and not compensated.

51. Given that the key to determining whether a direct employment relationship existed is whether the alleged employer had the right to control the time, manner, and method of executing the work, as distinguished from the right to merely require the results agreed upon, it is apparent in the present case that neither Roche nor Frontier had or exercised the right to control Claimant's time, manner, or method of the service he attempted on August 9, 2006. Furthermore, neither Roche nor

Frontier had even the right to merely require the results agreed upon, because there was no agreement regarding results. The absence of these customary elements of control underscore the fact that Claimant's actions on August 9, 2006, were purely voluntary and gratuitous. "Voluntary activities will not suffice; an award of compensation depends on the existence of an employer/employee relationship." Parker v. Engle, 115 Idaho 860, 865, 771 P.2d 524, 529 (1989).

52. Claimant has not proven he was a direct employee of Roche or Frontier at the time of his accident on August 9, 2006.

### **CONCLUSION OF LAW**

Claimant has not proven he was a direct employee of Roche or Frontier on August 9, 2006.

### **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 2nd day of November, 2007.

INDUSTRIAL COMMISSION

/s/ \_\_\_\_\_  
Alan Reed Taylor, Referee

ATTEST:

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

## CERTIFICATE OF SERVICE

I hereby certify that on the \_\_9th\_\_ day of \_November\_\_\_\_, 2007, a true and correct copy of **Findings of Fact, Conclusion of Law, and Recommendation** was served by regular United States Mail upon each of the following:

PAUL T CURTIS  
598 NORTH CAPITAL  
IDAHO FALLS ID 83402

MONTE R WHITTIER  
P O BOX 6358  
BOISE ID 83707-6358

SCOTT R HALL  
P O BOX 51630  
IDAHO FALLS ID 83405-1630

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

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

BARRY BRADFORD,	)	
	)	
Claimant,	)	<b>IC 2006-524422</b>
	)	<b>IC 2006-523989</b>
v.	)	
	)	<b>ORDER</b>
ROCHE MOVING & STORAGE, INC.,	)	
Employer, and LIBERTY NORTHWEST	)	
INSURANCE CORPORATION, Surety,	)	
	)	
and	)	Filed November 9, 2007
	)	
FRONTIER MOVING AND STORAGE,	)	
Employer, and STATE INSURANCE	)	
FUND, Surety,	)	
	)	
Defendants.	)	
_____	)	

Pursuant to Idaho Code § 72-717, Referee Alan 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 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 has not proven he was a direct employee of Roche or Frontier on August 9, 2006.

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

DATED this 9th day of November, 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 the 9th day of November, 2007, a true and correct copy of the foregoing **Order** was served by regular United States Mail upon each of the following persons:

PAUL T CURTIS  
598 NORTH CAPITAL AVENUE  
IDAHO FALLS ID 83402

SCOTT R HALL  
PO BOX 51630  
IDAHO FALLS ID 83405-1630

MONTE R WHITTIER  
PO BOX 6358  
BOISE ID 83707-6358

ka

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