

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

KENNETH FRANS,	)	
	)	
Claimant,	)	<b>IC 2002-011992</b>
	)	
v.	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSION OF LAW,</b>
	)	<b>AND RECOMMENDATION</b>
CENTRAL PAVING COMPANY,	)	
	)	
Employer,	)	April 30, 2008
	)	
and	)	
	)	
INSURANCE COMPANY OF THE WEST,	)	
	)	
Surety,	)	
Defendants.	)	
_____	)	

**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 Boise on April 11 and 20, 2007. Claimant, Kenneth Frans, was present in person and represented by Bradford Eidam of Boise. Defendant Employer, Central Paving Company, and Defendant Surety, Insurance Company of the West, were represented by Paul Penland of Boise. The parties presented oral and documentary evidence. This matter was continued for the taking of post-hearing depositions and the submission of briefs and came under advisement on November 1, 2007. It is now ready for decision.

**ISSUE**

**RECOMMENDATION - 1**

The parties resolved several noticed issues before hearing, and at the commencement of hearing stipulated Claimant suffers 21% permanent impairment of the whole person and has received an overpayment of total temporary disability benefits in the amount of \$670.56. The sole remaining issue is the extent of Claimant's permanent disability.

### **ARGUMENTS OF THE PARTIES**

Claimant asserts he suffers 60% permanent disability inclusive of his 21% permanent impairment. Employer and Surety contend that Claimant suffers no permanent disability in excess of impairment, or at most only 20% disability in excess of impairment.

### **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. The testimony of Claimant, Patrick McEntee, Robert Potts, and Don Thompson taken at hearing;
2. Claimant's Exhibits 1 through 21 admitted at hearing;
3. Defendants' Exhibits 1001, and 1003 through 1008 admitted at hearing;
4. The post-hearing deposition of Steven Roser, M.D., taken by Claimant on May 3, 2007;
5. The post-hearing deposition of Douglas Crum taken by Claimant on May 30, 2007; and
6. The post-hearing deposition of Don Thompson taken by Defendants on July 9, 2007.

Evidentiary objections: age. At hearing and in depositions, Defendants objected repeatedly to evidence regarding the impact of Claimant's age and perceived physical disablement on the extent of his permanent partial disability. Specifically, Defendants asserted that employment

discrimination based on age and perceived disablement being illegal under state and federal law, that the Commission should not assume that potential future employers will engage in illegal conduct, and that any future discrimination related to age or disablement that Claimant might suffer would be remedied by such laws, and thus no evidence should be allowed to suggest that Claimant's age or perceived disablement may hinder his current and future employability. Defendants cite the Commission's decisions in Walker v. Fred Meyer, Inc., 93 IWCD 6600, 1993 IIC 1040 (September 15, 1993), and Hoffman v. Ceda-Pine Veneer, Inc., 96 IWCD 9417, 1996 IIC 0747 (July 24, 1996), in support of their position. Defendants urge that the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 et seq., the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq., and the Idaho Human Rights Act, Idaho Code §§ 67-5901 et seq., will provide adequate remedies to Claimant herein.

Claimant responds that the rulings in Walker and Hoffman are erroneous or should not control the present case because Claimant may be subject to future employment discrimination for which state and/or federal law provides no remedy. Claimant also notes that Idaho Code § 72-430 expressly requires the Commission to consider Claimant's age when determining the extent of permanent disability.

In Walker, a vocational rehabilitation expert assumed potential future employers would discriminate against Walker due to her two prior back surgeries. The referee sustained defendants' objection to this testimony. Walker never requested the Commission to revisit or overrule the referee's evidentiary ruling, but instead formulated arguments based upon the excluded testimony.

The Commission declared:

We affirm [the referee's] ruling and note that it was improper for claimant to proceed to advance arguments based on Ms. Peterson'[s] excluded testimony.

**RECOMMENDATION - 3**

Further, claimant's arguments of alleged discrimination would likely constitute illegal discrimination prohibited by both Federal and State law, e.g., under the recent Americans with Disabilities Act, 42 USCS, Section 12112, and Idaho's Human Right[s] Act, Idaho Code Section 67-5090. Both Acts provide remedies for such discrimination. 42 USCS, Section 12117; Idaho Code, Section 67-5098. In determining disability we decline to assume that potential employers will willfully engage in illegal activities.

Walker, 93 IWCD 6600, 6605, 1993 IIC 1040, 1045.

In Hoffman, the Commission declared:

During Mr. Jordan's deposition, he was asked by Claimant's counsel whether it was harder for a person with a physical limitation to find employment as opposed to a person with no limitations. Defense counsel objected to this question on the basis that it was irrelevant due to the Commission's decision in Walker v. Fred Meyer [citation omitted], which held in part that the Commission would not assume that potential future employers would willfully engage in illegal discrimination prohibited by both State and Federal law.

Hoffman, 96 IWCD 9417, 9420, 1996 IIC 0747, 0750.

The Walker and Hoffman rulings expressly dealt with the effect of perceived disablement from prior injuries on subsequent employability. Neither specifically addressed the effect of age. The evidentiary rulings in Walker and Hoffman apparently arise from three assumptions: first, that every incident of age or disablement-related employment discrimination is illegal; second, that every incident of such employment discrimination will be adequately remedied by federal and/or state law (not including workers' compensation law); and third, that the injured worker in question will successfully obtain the federal and/or state remedy. There is no persuasive evidence that the three foundational assumptions accepted in Walker and Hoffman are valid as to potential employment discrimination toward Claimant herein.

The federal Age Discrimination in Employment Act cited by Defendants applies only to employers engaged in an industry affecting commerce and employing 20 or more people for

**RECOMMENDATION - 4**

specified periods. See 29 U.S.C. § 630(b). It expressly does not apply when an age requirement or limit is a bona fide occupational qualification. See 29 U.S.C. § 623(f).

The Americans with Disabilities Act (ADA), also cited by Defendants, applies only to employers engaged in interstate commerce and having 15 or more employees for specified periods. See 42 U.S.C. § 12111. Furthermore, the ADA recognizes a valid defense to a discrimination charge where an employment selection criteria is job-related, consistent with business necessity, and performance cannot be accomplished by reasonable accommodation. See 42 U.S.C. § 12113.

The Idaho Human Rights Act cited by Defendants applies only to those employing five or more people. See Idaho Code § 67-5902. The Act expressly provides that it is not discrimination to classify by age when age is a bona fide occupational qualification reasonably necessary to the normal operation of the business, nor does the Act prohibit discrimination because of disability if the disability, even with reasonable accommodation, prevents performance of the work required. See Idaho Code § 67-5910.

Even the above cursory review compels the conclusion that not every incident of age or disablement-related employment discrimination is illegal, nor is a remedy for such employment discrimination always provided under state and/or federal law apart from workers' compensation law. The foundational assumptions of the evidentiary rulings in Walker and Hoffman have not been proven valid in the present case. The existence of a potential remedy in some circumstances, does not guarantee an adequate remedy to Claimant herein under all circumstances. The Referee is not persuaded that the evidentiary rulings in Walker and Hoffman should control here.

Significantly, Idaho Code § 72-430 expressly requires the Commission to consider age when determining permanent disability. This mandate constitutes legislative recognition that age is

**RECOMMENDATION - 5**

relevant to the issue of permanent disability. Such recognition does not assume that all potential employers will illegally discriminate based upon age, nor does it assume that an adequate remedy will always obtain under other law.

Defendants' objections to evidence regarding Claimant's age and disablement, and their potential impact on his employability are overruled and Defendants' motions to strike such evidence are denied.

Evidentiary objections: disfigurement.

The record contains evidence that Claimant limps and shakes hands left-handed due to his industrial injuries. Defendants object to testimony regarding the impact of Claimant's limping and shaking hands left-handed on his future employability. They characterize this as disfigurement and assert that Idaho Code § 72-430 effectively renders such evidence inadmissible.

The Idaho Workers' Compensation statutes contain no definition of disfigurement; however disfigurement generally means a persisting abnormal appearance, such as significant scarring, rather than abnormal function. Idaho Code § 72-430 provides in pertinent part:

**72-430. Permanent disability -- Determination of -- Percentages -- Schedule.**

(1) Matters to be considered. In determining percentages of permanent disabilities, account shall 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 age at the time of accident causing the injury, or manifestation of the occupational disease, consideration being given to the diminished ability of the afflicted 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, provided that when a scheduled or unscheduled income benefit is paid or payable for the permanent partial or total loss or loss of use of a member or organ of the body no additional benefit shall be payable for disfigurement.

Idaho Code § 72-430 (emphasis supplied).

**RECOMMENDATION - 6**

Defendants apparently assert that because permanent impairment benefits are payable for Claimant's right hand and left foot injuries, no further benefits, including permanent disability benefits, can be paid based on disfigurement arising from those injuries, including limping and shaking hands left-handed. Defendants' apparent construction of this final phrase of Idaho Code § 72-430(1) would preclude all benefits, including medical benefits, temporary disability benefits, and permanent disability benefits when permanent impairment is payable for a given loss or loss of use of a body member. Such a construction would deny the majority of the workers' compensation benefits otherwise available to injured workers.

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). Idaho Code § 72-428 contains the scheduled income benefits—expressly denominated permanent impairments—payable for various amputations. The final phrase of Idaho Code § 72-430(1), that “no additional benefits shall be payable for disfigurement,” refers to the “scheduled or unscheduled income benefit” mentioned immediately prior, which are permanent impairment benefits. An illustration of the intent of the final phrase of Idaho Code § 72-430(1), is that where permanent impairment is payable for the loss of use of an injured worker's amputated foot; no additional permanent impairment is payable for the abnormal appearance of the foot stump no matter how unsightly it may be.

In the present case, permanent impairment has already been stipulated by the parties and no additional permanent impairment is owing due to the abnormal appearance of Claimant's left foot stump or the skin grafting on his right hand. However, evidence regarding the nature of Claimant's physical disablement, including his limping and shaking hands left-handed, is admissible in

**RECOMMENDATION - 7**

evaluating the extent of his permanent disability. Limping and shaking hands left-handed are particularly significant because of the perception of abnormal functional capacity conveyed thereby, rather than abnormal appearance.

Defendants' objections to evidence regarding Claimant's limping and shaking hands left-handed, and its potential impact on his employability, are overruled and Defendants' motions to strike such evidence are denied.

Other evidentiary objections. All objections posed in the Deposition of Douglas Crum are overruled, except the objection on page 34 which is sustained. All motions to strike made in the course of Mr. Crum's deposition are denied. All objections posed in Claimant's deposition are overruled. Defendants' motion to strike appearing at page 65 of Claimant's deposition is granted. All objections posed in the deposition of Dr. Roser are overruled, except the objection on page 35 which is sustained. All motions to strike posed in Dr. Roser's deposition are denied. All objections posed during the deposition of Don Thompson 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 for review by the Commission.

### **FINDINGS OF FACT**

1. Claimant was 53 years old and resided in Nampa at the time of the hearing. He is right hand dominant. Claimant was born in 1953. He was raised in Caldwell where he graduated from high school in 1973. He earned average or below-average grades in high school academic subjects, but excelled in athletics. In 1982 Claimant certified in plate welding through a community college. He has had no additional formal training.

2. Following high school, Claimant worked in commercial hay grinding and hauling.

### **RECOMMENDATION - 8**

He also worked as a cowboy branding cattle and as a ranch hand raising hay. Claimant later worked as a pipe fitter and hyster driver. Thereafter he drove combines, hauled asparagus, and worked on an assembly line.

3. In 1989 Claimant worked at an aluminum press shearing and stacking aluminum. In 1991 he worked as a farm laborer changing sprinkler pipe, operating bulldozers, and pulling farm implements. In the winter he overhauled equipment and repaired farm roads. In 1995 Claimant worked cleaning up construction sites in Nevada. He later worked as a construction laborer operating a jack hammer and grading roads.

4. In 1996 Claimant began working for Employer, Central Paving. Claimant operated a front-end loader, Bobcat loader, and roller, and eventually became the groundman at the rock crusher. The rock crusher is an extensive semi-portable array of large equipment and conveyors used to crush rock into gravel of desired dimensions for road building. The groundman continuously inspects, maintains, and repairs all rock crushing equipment.

5. On July 29, 2002, Claimant suffered an industrial accident while working for Central Paving. The rock crusher was partially disassembled for moving via a crane. Claimant was holding the crane boom lines in his right hand when the crane boom hit an overhead power line carrying approximately 33,000 volts. The current entered Claimant's right hand and exited through his left foot. He was 48 years old and earning approximately \$13.00 per hour at the time of the accident.

6. Claimant was life-flighted to a burn center in Salt Lake City. He received extensive medical treatment through August 2003. Substantial skin grafting was performed on Claimant's right palm and left foot.

7. The electrical injury caused Claimant's right shoulder and upper extremity to "freeze

up” and he underwent multiple surgeries and intensive therapy to regain mobility and use of his right shoulder, elbow, and hand. The electrical injury also caused significant nerve damage to Claimant’s right hand resulting in chronic and severe pain. Several surgeries were performed to permanently destroy damaged nerves in Claimant’s right thumb and thereby reduce his unrelenting hand pain. As a result of the electrical injury and multiple hand surgeries, Claimant’s right thumb is numb and lacks dexterity. He has significantly less strength and dexterity in his right hand than in his left, and frequently drops things inadvertently with his right hand.

8. The electrical injury caused similar nerve damage and severe pain in Claimant’s left foot. He has undergone multiple left foot surgeries and extensive joint manipulation under anesthesia to excise multiple neuromas and address burn contractures and related problems. Stephen Roser, M.D., amputated two severely burned toes on Claimant’s left foot to help alleviate his unrelenting neuropathic pain. Claimant’s foot pain improved for a time, but worsened when he attempted to return to work at Central Paving and was on his feet for prolonged periods.

9. In October 2005, Dr. Roser performed a left foot metatarsal amputation. Once again, Claimant’s pain initially improved, but then worsened when he returned to work. Dr. Roser later referred Claimant to chronic pain specialist, Michael Sant, M.D., for treatment of neuropathic foot pain. Claimant’s physicians have prescribed various medications seeking to control his ongoing foot pain. However, none have been effective, and Claimant has discontinued all prescription pain medications. He continues to suffer neuropathic foot pain from his electrical injury. His foot stump is very sensitive, even bed sheets irritate it. Claimant testified his foot stump feels like it is swollen and near bursting. Claimant has tried numerous insoles and various orthotics, but none provide relief. Since the industrial accident, Claimant has been walking on his left heel, and has begun to

experience right lower extremity symptoms, including right knee pain, due to his unnatural gait. He has not yet sought medical attention for his right knee symptoms. Dr. Roser has advised that amputation of Claimant's left leg at or slightly below the knee is the next step for pain control. Claimant desires to avoid further amputation.

10. Central Paving has been outstanding in working with Claimant during his recovery. Since returning to work in 2004, Claimant has performed a number of different jobs for Central Paving including scale shack operator, substitute scale shack operator, front end loader operator, hot plant groundman, and D-8 cat operator.

11. At the time of the hearing, Claimant worked full-time for Central Paving earning approximately \$14 per hour. He experienced significantly increased foot pain within approximately two hours of commencing work each day. Nevertheless, he continues working with the increased pain and completes his shift. He believes he must retain his employment because it is very unlikely that any other employer would hire him.

12. Claimant has two minor sons. One resides with him five days per week and the other two days per week.

13. Claimant reads with difficulty, struggles with math, does not type, and has no computer skills. Due to chronic right hand pain, he has tried to retrain himself to perform most functions, including writing, left-handed.

14. Having met and observed Claimant at hearing and having carefully reviewed the evidence, the Referee finds that Claimant has, admittedly, a less than perfect memory, but is a credible witness and has a very strong work ethic.

## **DISCUSSION AND FURTHER FINDINGS**

### **RECOMMENDATION - 11**

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 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. As previously noted, the parties have stipulated that Claimant suffers 21% whole person impairment due to his industrial accident; 7% whole person impairment for his right hand

injuries and 14% whole person impairment for his left foot injuries and transmetatarsal amputation.

18. Claimant's permanent physical restrictions from his injuries have been evaluated by several physicians. Steven Care, M.D., imposed a 25 pound lifting restriction on Claimant's dominant right upper extremity. Dr. Friedman restricted Claimant from any repetitive activity with his right hand. Claimant lacks dexterity in his right hand and often drops small objects including tools. He has taught himself to write left-handed, but acknowledges that his handwriting is poor.

19. Claimant also has standing and walking restrictions arising from his left foot. Dr. Roser opined that Claimant's persisting chronic foot pain is related to his electrical injury, rather than his amputation. In July 2006, Dr. Roser restricted Claimant to minimal stair work simply for getting on and off equipment such as a loader or CAT. Dr. Roser restricted Claimant from uneven surfaces, pitched surfaces, excessive standing and significant ladder work and no more than 10 minutes per hour of walking for eight to ten hours per day. Dr. Roser restricted Claimant to walking no more than 30 minutes per hour on even ground, less on uneven ground.

20. In November 2006, after further discussion with Defendants, Dr. Roser opined Claimant could do stairs, uneven surfaces, pitched surfaces, ladders, and walking, but should avoid excessive activities for any of them. Dr. Roser testified that these restrictions were for Claimant's comfort and safety, the safety of Claimant's coworkers, and to minimize the risk of mechanical wear and tear issues which might otherwise lead to further amputations, including a below the knee amputation of Claimant's left foot. Dr. Roser opined that ideally, Claimant should perform sedentary work, but recognizing that Claimant enjoyed his work, Dr. Roser increased Claimant's restrictions to upwards of 30 minutes or so per hour of walking or standing on even surfaces to try to accommodate Claimant's work at Central Paving and allow Claimant to work to his level of

tolerance. Roser Deposition, p. 46. Dr. Roser defined uneven surfaces as “nonpaved, nonconcrete,” Roser Deposition, p. 89, L. 21, and opined that photographs of Claimant’s work area at Central Paving demonstrated uneven surfaces. Roser Deposition p. 90.

21. Claimant has tried various prescription prosthesis and insoles for his left shoe, however none have been helpful. Claimant has also tried a number of prescription medications for his chronic pain and found none were helpful. At the time of hearing he was taking no prescription medications.

22. Claimant can no longer fulfill all of the duties of a groundman at the hot (asphalt) plant. He cannot climb ladders of significant height, thus he cannot check, adjust, and maintain high equipment or clear debris from higher conveyor belts. He cannot remain standing and walking indefinitely but must be off his feet from time to time. His right hand weakness and loss of dexterity prevent him from performing more rigorous maintenance in that he can no longer forcefully use large wrenches or manipulate smaller parts with his dominant right hand.

23. Claimant can operate a front end loader and can operate a roller, but not on a regular basis. Claimant cannot operate a Bobcat loader for more than approximately 30 minutes due to his right hand fatigue and pain.

24. Claimant testified that he does everything he can now just to keep his job, that sometimes he goes overboard, but that he must in order to keep his job. Claimant enjoys his job, and has excellent rapport with his co-workers and supervisors. He regrets not being able to fully complete all of his duties, but Central Paving has been excellent to accommodate him, and Claimant appreciates the opportunity to continue working there.

25. Claimant’s vocational rehabilitation expert, Douglas Crum, opined that Claimant has

lost access to between 73 and 82% of his pre-accident job market. Crum opined that Claimant could no longer perform fast food work, landscaping, construction labor, maintenance and repair work, and many positions in road construction. Crum testified that Claimant would still be competitive for some heavy equipment operator positions. Crum testified Claimant would still have access to courier and messenger jobs, some custodial jobs, food preparation and serving jobs, and local truck driving jobs. Crum considered Claimant's limited academic skills, age, loss of job market access and physical restrictions. Crum opined that Claimant's present position with Central Paving exceeds the work restrictions imposed by Dr. Roser, specifically that Claimant is required to be on his feet more than 30 minutes each hour and that too on uneven ground. Crum Deposition, pp. 59-60. Crum opined that Claimant suffers a permanent disability of 60%, inclusive of his permanent impairment.

26. Industrial Commission rehabilitation consultant Don Thompson testified regarding Claimant's current employment opportunities. Thompson affirmed that there are many potential employment opportunities for an individual with Claimant's skills in his labor market. However, Thompson also testified that Claimant's employment opportunities are reduced, that his injuries are debilitating, that his position with Central Paving aggravates his foot pain, and that Thompson "will believe him when he tells me that he can no longer do it, and I believe that day may come." Thompson Deposition, p. 93, Ll.9-11.

27. The Referee finds both Crum's and Thompson's opinions helpful.

28. Claimant's present position at Central Paving likely exceeds Dr. Roser's restrictions in that, to fulfill his duties, Claimant is not able to get off his feet but is required to walk the hot plant area most of each shift. Even if Claimant operates a front loader, his foot pain increases

significantly within approximately two to three hours and remains aggravated throughout the rest of his work day until he returns home where he can elevate his foot for the rest of the evening.

29. Claimant has difficulty reading and writing. He graduated from high school because all of his teachers were athletic coaches, and Claimant excelled in high school athletics.

30. Since his accident Claimant has been unable to hike, backpack, hunt, or stream fish to any extent—activities which he enjoyed regularly before his accident. His right hand is sufficiently numb and weakened that he cannot open a jar of mayonnaise with it. Sustained operation of a clutch or other control with his left foot increases his foot pain.

31. Claimant was earning \$13 per hour at the time of his industrial accident and \$14 per hours at the time of the hearing. He has sustained permanent impairment of 21% of the whole person, with permanent work restrictions and limited ability to use his dominant right hand for any repetitive activity, or occasional lifting of more than 25 pounds. Claimant also has significant restrictions on standing and walking. Considering his non-medical factors, including his age, high school education, difficulty with high school academics, absence of computer skills, limited transferable skills in sedentary and light occupations, and limited ability to return to his previous rigorous occupations, Claimant's ability to engage in gainful activity has been significantly reduced. Claimant has established a permanent disability of 60% of the whole person, inclusive of his permanent impairment.

#### **CONCLUSION OF LAW**

Claimant has proven he suffers a permanent partial disability of 60%, inclusive of his permanent impairment.

**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 \_\_23\_\_ day of April, 2008.

INDUSTRIAL COMMISSION

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

ATTEST:

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

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

KENNETH FRANS, )  
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 Claimant, )  
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 v. )  
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 CENTRAL PAVING COMPANY, )  
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 Employer, )  
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 and )  
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 INSURANCE COMPANY OF THE WEST,)  
 )  
 Surety, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

**IC 2002-011992**

**ORDER**

April 30, 2008

Pursuant to Idaho Code § 72-717, Referee Alan Reed Taylor submitted the record in the above-entitled matter, together with his recommended 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 proven he suffers a permanent partial disability of 60% inclusive of his permanent impairment.

**ORDER - 1**

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

DATED this 30 day of April, 2008.

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 30 day of April, 2008 a true and correct copy of **Findings, Conclusions, and Order** were served by regular United States Mail upon each of the following:

BRADFORD S EIDAM  
PO BOX 1677  
BOISE ID 83701

PAUL S PENLAND  
PO BOX 8266  
BOISE ID 83707

ka

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

**ORDER - 2**