BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

PAMELA GAGE, Claimant, v. J.R. SIMPLOT COMPANY, Employer, and PINNACLE RISK MANAGEMENT SERVICES, and STATE OF IDAHO, INDUSTRIAL SPECIAL INDEMNITY FUND, Defendants.	)	**IC 2001-015140** **ORDER DENYING RECONSIDERATION** filed April 22, 2008

On March 5, 2008, Defendant Employer (Employer) timely filed, pursuant to Idaho Code § 72-718, a motion and supporting memorandum to reconsider the Commission's Order dated February 15, 2008. Defendant State of Idaho, Industrial Special Indemnity Fund (ISIF) responded on March 17, 2008. Claimant did not file a response. Employer did not file a reply.

In his motion, Employer requests the Commission to reconsider ISIF liability. Employer argues that the Commission failed to adequately consider the treating psychologist's opinion and Claimant's previous pre-existing injuries in determining ISIF liability. Further, Employer argues that Claimant's perception of her disabling factors received too great of weight by the Referee.

In response, ISIF contends that the Supreme Court has held that the mere existence of manifest physical handicaps at the time of employment, by itself, is insufficient to establish fund

liability. Further, ISIF argues that the Commission's Order finding Claimant totally and permanently disabled from her back injury alone is supported by substantial and competent evidence.

Employer's motion amounts to little more than a request to reweigh the evidence already presented. Here, Employer's contentions center on ISIF liability, which requires the presence of four factors. The Referee, in determining if each factor was present, analyzed each of the experts' opinions, including Claimant's treating psychologist, and all related medical evidence, including any pre-existing injuries. In determining the validity of the "combined with" element, the Referee's recommendation specifically addressed the conflicting record and acknowledged that some evidence supported that element, however ultimately concluded there was more evidence against the "combined with" element. While the Referee gave great weight to Claimant's testimony that her back condition alone restricted her from the workforce, the lack of the "combined with" element was the determining factor in finding no ISIF liability.

The record reflects an exhaustive review of all the evidence and fully supports the Commission's decision. As such, there is no justification to warrant a reconsideration of the order.

Based upon the foregoing reasons, Employer's Motion for Reconsideration should be, and is hereby, DENIED.

DATED this _22nd__ day of __April_____2008.

INDUSTRIAL COMMISSION

__/s/_____
James F. Kile, Chairman

_____
R. D. Maynard, Commissioner

_/s/_____
Thomas E. Limbaugh, Commissioner

ATTEST:

_/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on this ___22nd___ day of __April_____2008, a true and correct copy of the foregoing **ORDER DENYING RECONSIDERATION** was served by regular United States Mail upon each of the following:

RICHARD KIM DREDGE
PO BOX 9499
BOISE ID 83707-3499

WES L SCRIVNER
PO BOX 27
BOISE ID 83707

LAWRENCE E KIRKENDALL
KIRKENDALL LAW OFFICES
2995 NORTH COLE ROAD STE 260
BOISE ID 83704

Rjo/cjh __/s/_____