

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JAMES L. MELLEN,)
)
 Claimant,)
)
 v.)
)
 REGULUS STUD MILL,)
)
 Employer,)
)
 and)
)
 STATE INSURANCE FUND,)
)
 Surety,)
)
 Defendants.)
 _____)

IC 2005-526630

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

Filed November 17, 2008

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Michael E. Powers. Craig M. Young of Lewiston represented Claimant. Alan K. Hull and Justin P. Aylsworth of Boise represent Employer/Surety. A hearing was scheduled for October 23, 2008, in St. Maries, however, the parties agreed to submit a stipulation in lieu of the hearing. On October 14, 2008, the parties submitted their Stipulation for Entry of Findings of Fact, Conclusions of Law, and Recommendation as well as Order. The matter was then placed under advisement.

ISSUE

The sole issue to be decided is whether Claimant is totally and permanently disabled pursuant to Idaho Code § 72-407(2).

RECOMMENDATION - 1

EVIDENCE CONSIDERED

The records in this matter consist of the following:

1. The Industrial Commission legal file.
2. The above referenced stipulation filed October 14, 2008.
3. A Factual Addendum to the stipulation summarizing Claimant's accident and resultant medical care.

After having considered all the above evidence, the Referee submits the following findings of fact and conclusion of law for review by the Commission.

FINDINGS OF FACT

1. Claimant was a "head operator" in Employer's "boiler house." On November 26, 2005, Claimant was pulled into the gear motor sprockets of a silo-out feed. It took about two hours to extricate him.

2. Claimant suffered severe crush and other injuries to his bilateral lower extremities. He had a complex treatment regimen that eventually resulted in bilateral below-the-knees amputation.

Idaho Code § 72-407(2) provides that the loss of both feet at or above the ankles results in total and permanent disability.

3. The parties agree, and the Referee finds, that Claimant is totally and permanently disabled pursuant to Idaho Code § 72-407(2).

CONCLUSION OF LAW

Claimant is totally and permanently disabled pursuant to Idaho Code § 72-407(2).

RECOMMENDATION - 2

RECOMMENDATION

Based upon the foregoing Findings of Fact, Conclusion of Law, and Recommendation, the Referee recommends that the Commission adopt such findings and conclusions as its own and issue an appropriate final order.

DATED this ___13th___ day of November, 2008.

INDUSTRIAL COMMISSION

_____/s/_____
Michael E. Powers, Referee

ATTEST:

_____/s/_____
Assistant Commission Secretary

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ORDER

Filed November 17, 2008

Pursuant to Idaho Code § 72-717, Referee Michael E. Powers submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusion of law to the members of the Idaho 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 conclusion of law as its own.

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

1. Claimant is totally and permanently disabled pursuant to Idaho Code § 72-407(2).
2. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this ___17th___ day of November, 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 the __17th__ day of November, 2008, a true and correct copy of **FINDINGS, CONCLUSIONS, AND ORDER** were served by regular United States Mail upon each of the following:

CRAIG M YOUNG
PO BOX 287
LEWISTON ID 83501

ALAN K HULL
PO BOX 7426
BOISE ID 83707-7426

ge

Gina Espinosa