BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

CINDY PETERSON-BIGHAM, Claimant, v. DAVEANDSUE, LLC., dba TENABO HOMES ASSISTED LIVING, Employer, and STATE INSURANCE FUND, Surety, Defendants.	)	**IC 2007-004420** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** Filed: February 17, 2009

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 June 17, 2008. Claimant, Cindy Peterson-Bigham, was present in person and represented by Brett Fox of Boise. Defendant Employer, DaveandSue, LLC., dba Tenabo Homes Assisted Living (Tenabo), and Defendant Surety, State Insurance Fund, were represented by Jon Bauman of Boise. The parties presented oral and documentary evidence. This matter was then continued for the submission of briefs and came under advisement on October 8, 2008.

ISSUES

The issues to be resolved are:

1. Whether Claimant suffered an injury from an accident arising out of and in the course of employment on September 20, 2006, and/or October 19, 2006;
2. Whether Claimant gave timely and sufficient notice of her accidents of September 20, 2006, and/or October 19, 2006, to Employer; and
3. Whether and to what extent Claimant is entitled to attorney fees.

ARGUMENTS OF THE PARTIES

Claimant asserts that she injured her back at Tenabo on or about September 20, 2006, while lifting a resident and further injured her back on approximately October 19, 2006, while lifting another resident. She contends that she promptly advised her supervisor of each incident and later repeatedly attempted to telephone her supervisor for directions to obtain medical treatment after her termination, but the supervisor avoided her calls. She claims entitlement to attorney fees for Defendants' alleged unreasonable denial.

Defendants dispute the occurrence of Claimant's work accidents on or about September 20 and October 19, 2006, and contend that Claimant did not give timely notice of any accident or resulting injury and has not reasonably located the time of her alleged accidents. They argue that Claimant has provided inconsistent accounts of her alleged accidents and delayed seeking medical treatment for any alleged injuries thus rendering her claim highly suspect and Defendants' denial of her claim reasonable.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant, Kathryn Parmentier, and Dan Barclay taken at the June 17, 2008, hearing;

2. Claimant's Exhibits A, B, C, and E admitted at the hearing; and

3. Defendants' Exhibits 1 through 18 (excepting page 16 of Exhibit 13) admitted at the hearing.

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

FINDINGS OF FACT

1. Claimant was born in 1957. She lived in Meridian and was 50 years old at the time of the hearing. She is approximately five feet two inches tall. Claimant attended high school and later obtained a GED. She has completed a college-level office occupations course but has had no other formal education.

2. In 1998, Claimant suffered a closed head injury when she slipped and fell with an Alzheimer's patient and struck her head on a stool and then on the floor. She was treated at a hospital emergency room and at the Idaho Elks Rehabilitation Hospital in the brain injury program by Robert Friedman, M.D. He rated the permanent impairment for her closed-head injury at 5% of the whole person. Claimant continues to suffer some memory and balance problems due to this accident.

3. In March 2004, Claimant applied for Social Security Disability asserting periodic dizzy spells, limited standing tolerance, and the inability to lift more than five pounds. Her application was denied in June 2006.

4. Tenabo is an assisted-living care center purchased in early 2006 by Dave and Sue

Barclay and at all relevant times managed by Dave's brother Dan Barclay (Dan). Dave Barclay is an osteopathic physician. Sue Barclay is an LPN. Dan is a CPA. Dan assumed the manager position to help with Tenabo's operational restructuring in 2006.

5. Claimant commenced working for Tenabo in March 2006, at which time Tenabo had six or seven residents. By September 2006, Claimant was earning $11.00 per hour and working at least 40 hours per week. Claimant's usual work shift began at 3:00 p.m. and ended at 11:30 p.m. When Tenabo was short-handed, she sometimes worked the 11:00 p.m. to 7:00 a.m. shift as well as her regular shift. Claimant assisted residents with personal hygiene needs, passed out resident medications, prepared dinner meals, ordered food, and maintained the communications log. Claimant also assisted with some management duties including determining employee work schedules, revising the employee handbook, and evaluating Tenabo business policies and procedures.

6. Most Tenabo residents were elderly Alzheimer's patients who required lifting and transfer assistance. Tenabo was generally staffed with only one individual to care for the six residents. Claimant was accustomed to regular temporary back discomfort, which she attributed to pulled back muscles from lifting Tenabo residents as part of her usual work duties. She did not file a workers' compensation claim for these temporary episodes of back pain.

7. During the summer of 2006, Claimant also worked through a temporary employment service providing home health care from 8:00 a.m. until approximately 2:00 p.m. The patients to whom she provided home health care required no lifting or transfers. Between Tenabo and the temporary employment service, Claimant worked an average of at least 80 hours per week. Claimant ceased providing home health care prior to approximately September 1, 2006.

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8. Claimant testified at hearing that on or about September 20, 2006, she suffered an accident at Tenabo while attempting to lift an elderly resident named Mildred. Mildred weighed approximately 140 pounds and could be combative when agitated. Claimant testified that on the date of the incident Mildred was in her room and Claimant tried to help Mildred get out of her recliner chair from the front, and then from the side. Claimant was unsuccessful and felt immediate pain in her back and down her left leg to her left foot. She left Mildred seated and sought out Dan to help her lift Mildred. Dan was on the phone but Claimant testified that when he completed his phone call she told him that she had hurt her back and that she could not keep lifting Mildred. Dan then helped Claimant lift Mildred. Claimant did not then ask Dan to make a workers' compensation claim. She completed her shift. Claimant testified she told Kathryn Parmentier (Kay), another Tenabo employee who worked the next shift, that Mildred was having a rough day and that Claimant's back was killing her. Claimant testified Kay told her to leave the heavy work and mopping for her. After Claimant's shift, she went home, took some Tylenol, and iced her back. She believed she had a pulled back muscle which would resolve.

9. Claimant testified that the next day at work she again described to Dan her injury of the day before while lifting Mildred and advised him her back did not feel any better. She testified she told Dan she was concerned about not having a gait belt or Hoyer lift for transfers. Claimant testified that Dan told Claimant to leave Mildred up until Kay came on for the next shift so that Kay could help Claimant transfer Mildred.

10. Claimant testified that although her back pain continued, she took no time off from work because her financial circumstances compelled her to keep working and she believed there was no one to cover her shifts. Claimant continued to work her regular shifts and take Tylenol or Motrin

to manage her continuing back pain.

11. Claimant testified at hearing that approximately October 19 or 20, 2006, she sustained a second work injury while lifting another Tenabo resident named Marjorie. Claimant testified that on that occasion Claimant had to lift Marjorie from the floor onto her recliner chair and then to her bed. Claimant experienced increased back pain. Claimant testified that the next day she told Dan that Marjorie slid out of her chair and that Claimant hurt her back picking up Marjorie off the floor. Claimant again assumed her back pain was due to a pulled muscle and would resolve on its own. She continued working although in significant pain.

12. On November 2, 2006, Dave telephoned Claimant and dropped off her final paycheck with a note under Claimant's doormat notifying her that her employment with Tenabo was terminated. Claimant has not worked since.

13. At hearing Claimant testified that after her termination, she made multiple phone calls trying to reach Dan about her unresolved back pain and where she should seek medical treatment. Claimant understood that Dan would ask his brother David, who is an osteopathic physician and part owner of Tenabo, to examine Claimant's back. Claimant called Tenabo Homes and Dan's cell and home phones. Claimant testified she left Dan messages, informing him that her back pain was not improving after lifting Mildred, and asking that he return her calls. Claimant testified she also left some messages for Dan with the Tenabo receptionists who assured her that Dan would call her back, but that Dan never returned her calls. Dan acknowledged that a patient services representative ultimately called him and notified him that Claimant had sought treatment at a hospital for an industrial injury. Claimant eventually called the Industrial Commission and filed a workers' compensation claim.

14. Commencing on December 1, 2006, and over the following months, Claimant sought medical treatment at Terry Riley Health Services in Nampa for back pain. She was treated by several physicians. Claimant did not initially report her back complaints were work-related, however she later so asserted. Lumbar MRIs revealed bulging discs. Claimant eventually received a series of steroid injections at Terry Riley Health Services for her ongoing back pain. A physician there expressed concern over Claimant's diminished left leg reflexes and recommended physical therapy and surgical consultation. Claimant attended one free physical therapy session, but had no funds for further therapy or for surgical consultation.

15. Defendants have denied the claim and Claimant has been unable to obtain further medical treatment. Claimant performs various yoga, stretching, and Pilates exercises at home three times each week. She experiences continuing back pain and is still seeking Social Security Disability.

DISCUSSION AND FURTHER FINDINGS

16. 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). However, the Commission is not required to construe facts 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).

17. **Occurrence and notice of an accident.** The first issue is whether Claimant suffered an industrial accident. Defendants dispute Claimant's accounts that she suffered two industrial accidents at Tenabo and further dispute that Claimant gave adequate timely notice of either accident.

18. Idaho Code § 72-701 provides in pertinent part: "No proceedings under this law shall be maintained unless a notice of the accident shall have been given to the employer as soon as practicable but not later than sixty (60) days after the happening thereof." The Idaho Supreme Court has held that notice must be sufficient to apprise the employer of any accident arising out of and in the course of employment causing the personal injury. Murray-Donahue v. National Car Rental Licensee Association, 127 Idaho 337, 339, 900 P.2d 1348, 1350 (1995). However Idaho Code § 72-704 provides:

> A notice given under the provisions of section 72-701 or section 72-448, Idaho Code, shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place, nature or cause of the injury, or disease, or otherwise, unless it is shown by the employer that he was in fact prejudiced thereby. Want of notice or delay in giving notice shall not be a bar to proceedings under this law if it is shown that the employer, his agent or representative had knowledge of the injury or occupational disease or that the employer has not been prejudiced by such delay or want of notice.

Thus pursuant to Idaho Code § 72-704, "want of notice is not a bar to proceedings to establish a claim under the workman's compensation act if the employer, his agent or representative had actual knowledge of the accident or injury, or was not prejudiced by the lack of notice." McCoy v. Sunshine Mining Co., 97 Idaho 675, 678, 551 P.2d 630, 633 (1976).

19. In Murray-Donahue the claimant failed to give notice as required by Idaho Code § 72-701. However, the Court noted the claimant could overcome a lack of notice by showing pursuant to Idaho Code § 72-704:

> 'that the employer . . . *had knowledge of the injury* . . . *or* that the employer has not been prejudiced by such delay or want of notice.' I.C. Section 72-704 (emphasis added). Oral notice to the employer may provide the employer with actual knowledge of an injury, thus obviating the necessity of a written notice. ….
>
> [T]here may be circumstances where an employer has considerable *knowledge* of an accident or injury without having received a formal written *notice*. The employer

> may have witnessed the accident, or otherwise been apprised of an injury. No formal notice is required in such circumstances under I.C. Section 72-704.

Murray-Donahue v. National Car Rental Licensee Association, 127 Idaho 337, 340, 900 P.2d 1348, 1351 (1995) (emphases in original).

20. In this case Defendants dispute the occurrence of both accidents, as well as notice thereof. The credibility of the witnesses is critical to a determination of whether Claimant's alleged accidents occurred and whether she gave adequate notice. The credibility of each witness is examined below.

21. Claimant's credibility. Claimant testified of her September and October 2006 accidents. She further testified that she told Dan of her September 2006 injury the day of and the day after it occurred, and told Dan of her October 2006 injury the day after it occurred. Defendants assert that Claimant has offered conflicting versions of her alleged accidents thereby disproving their occurrence. Defendants argue that Claimant's statement to Surety's investigator, Jeff McDermott, is irreconcilable with her testimony at hearing.

22. McDermott took Claimant's recorded statement on February 26, 2007, before she retained counsel. In that statement Claimant recounted her September 2006 injury at Tenabo while lifting Mildred and then responded to notice questions as follows:

> Q When you went to Dan's office and asked him for the assistance, did you mention to him or say anything to him about hurting your back?
>
> A All I said was she's [Mildred's] killing my back. I can't do this.
>
> Q Okay. Like a casual thing. Not like a notification of something?
>
> A Right. Because we had to hurry and get back in there because she was trying to get up.

Claimant's Exhibit E, p. 19, Ll. 5-13 (emphasis supplied).

23. Claimant then described her alleged accident in mid to late October 2006 between approximately 8:00 and 9:00 p.m. while lifting Marjorie and responded to McDermott's questions as follows:

> Q Now, did you notify anyone, Dan or anyone that you had this second incident either that evening or the follow [sic] days?
>
> A I did try to call Dan and I didn't get an answer on his phone. All I had was his cell phone and I didn't have an answer to – on his cell phone. And then the next day, when I came to work, then I told him. I said, you know, I can't keep lifting them. My back is killing me. I said I don't know if it's just because I'm old or what but I said – and I told him about the incident with Marjorie, how she slid out of her chair. Told him what happened and how difficult it was trying to get her into that bed and because of the fact that you weren't really able to get to the bed, you had to straddle the chair to get to the middle of the bed and he said, "Well, maybe we need to try to move the chair."
>
> Q So when you told Dan the following day after this incident with Marjorie, did you tell him that you had injured your back that evening?
>
> A I just told him my back hurts. I said between Mildred and her [Marjorie], I said my back is killing me.
>
> Q Now, when you tell him, "My back is killing me," do you believe you're notifying him or giving him notice of a work-related injury or are you just kind of casually telling him, "Hey, I can't be doing – I'm having a hard time and my back's killing me"? Is it one or the other?
>
> A I think it was – it was to inform him that there was a real issue there that my back was hurting. My back was hurting because of them.
>
> Q Right, right.
>
> A. He didn't know – you know, he was new at this. He had never worked in this kind of environment before. He had no idea what to do and, you know, I really just – because at that time, we really didn't have enough people to cover all the shifts. He was having to come in and learn everything from scratch and he knew nothing about running that kind of an environment and we were all on overload at that point.
>
> Q Okay. Now Cindy, did he, meaning Dan or anyone there, document anything in writing that you had this incident with Marjorie?

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A I don't believe he did.

Claimant's Exhibit E, p. 26, L. 6 through p. 27, L. 22 (emphases supplied).

24. Claimant's account in her deposition that she told Dan of her September 2006 injury within minutes of its occurrence is not significantly different from her statement to McDermott:

Q So go ahead and continue explaining.

A Okay. And at that point, he—Dan Barclay was in the office, and I went in there and told him that I was having trouble with Mildred. I wasn't able to get her up, and I tried from the front and the back. …. And I told him that I had tried everything, please come in and help me. …. And I told him when I had done that, and I was around straddling her chair, that I had pulled something in my back. And I said, I know I can't lift her now by myself, please come and help me.

Claimant's Exhibit A, p. 74, L. 10 through p. 75, L. 6 (emphasis supplied).

25. Claimant also testified that she told Dan again the next day of her September 2006 accident:

Q Okay. Explain to me the notice that you gave Dan the day following the injury.

A Correct. And then the day following I just told him, I said she's killing my back. I said, it hurts. I said last night when I tried to lift her up—I said, I can't do it anymore. And I said, my back hurts. I don't know if straddling her chair and trying to lift her up, she's a tall woman, she's a big woman, and I said, I'm not physically able to do it. And I said, we need to have a gait belt here.
….

Q Okay. Did you tell him [Dan] that you thought you had a work-related injury?

A No. I just told him that I hurt my back.

Claimant's Exhibit A, p. 86, L. 7 through p. 87, L. 12 (emphases supplied).

26. Claimant's various descriptions of her September and October 2006 accidents are largely consistent and provide significant and reasonable detail. Claimant's accounts consistently assert that she told Dan the day of her September 2006 accident that lifting Mildred was killing

Claimant's back and she could not continue lifting Mildred alone. This notice was given the very day the incident occurred. Claimant testified at hearing that the following day, she again told Dan of the incident and informed him that her back was no better. Claimant's three accounts are substantially consistent, including her statement to McDermott which was made before she retained counsel. This tends to support Claimant's credibility. Although Claimant did not use the terminology that her back pain immediately after attempting to lift Mildred or Marjorie signaled a "work-related injury," she gave adequate notice that she hurt her back lifting Mildred in September 2006 and lifting Marjorie in October 2006.

27. Defendants question Claimant's credibility in her testimony concerning the availability of a gait belt. Claimant testified there were no gait belts available at Tenabo. Parmentier testified there were gait belts available. Dan Barclay testified he did not know what a gait belt was and did not know whether there were any gait belts available at Tenabo. Claimant explained in her recorded statement to McDermott that someone brought a gait belt to Tenabo at one time, which was available for general use, but that a departing employee took it with her. Thus at the time of Claimant's accidents she had no idea where the gait belt was.

28. Dan's credibility. Dan denied Claimant timely advised him of either accident or injury. When pressed at hearing, Dan testified that he did not recall Claimant notifying him of her alleged accidents until several months after they occurred. However, Dan admitted helping transfer Mildred and also admitted that Claimant complained of back pain at Tenabo.

29. Claimant testified that after her termination, she made multiple calls trying to reach Dan about her unresolved back pain and to inquire where she should seek medical treatment. Claimant called Tenabo Homes, Dan's cell phone, and Dan's home phone. Claimant testified she

left Dan messages that her back pain was not improving after lifting Mildred, and asking that he return her calls. Claimant testified she also left some messages for Dan with the Tenabo receptionists who assured her that Dan would call her back, but that Dan never returned any of her calls.

30. Phone records in evidence establish Claimant called Dan approximately 28 times from her cell phone between September and November 2, 2006. It is apparent that a number of these calls pre-dated Claimant's accidents and pertained to Tenabo's usual operations. However, Claimant made from six to nine calls to Dan following her termination, all of which she testified pertained to inquiring about medical treatment for her back injuries at Tenabo. Dan testified that he called Claimant once and left a message in response to one of her phone calls. He professed to be unaware that Claimant had tried to call him so many times after her termination. The phone records undermine Dan's credibility on this matter.

31. There is additional evidence tending to undermine the credibility of Tenabo's representatives. Claimant testified that while she worked at Tenabo, there were no incident report forms for the residents as required by state law. Claimant was trained in other facilities that such documentation was necessary for periodic nursing assessments done by registered nurses. She testified that she advised the Barclays when she was hired of state requirements to maintain incident report forms documenting resident falls and various other resident activities. Claimant provided example incident report forms but Dave and Sue Barclay ultimately declined to utilize them. Claimant testified that upon commencing employment at Tenabo, the caregivers maintained a record of the residents and their difficulties. However Sue Barclay directed Claimant and the other caregivers to refrain from making such entries. Claimant testified that Tenabo utilized a registered

nurse who simply signed blank nursing assessment forms and that Sue Barclay, an LPN, then completed the nursing assessment forms.

32. Kay's credibility. Claimant testified that after her October 2006 accident lifting Mildred she told Kay, who arrived to work the next shift, that Mildred was having a rough day and that Claimant's back was "killing her", to which Kay responded that Claimant should leave the heavy work and mopping for her. Kay testified at hearing that she did not recall any such conversation. However, when cross-examined by Claimant's counsel, Kay also testified that she did not recall what she told Claimant's counsel about Claimant's injury in a telephone conversation less than two months prior to hearing.

33. Having observed Claimant, Dan, and Kay at hearing, and closely compared the testimony of the witnesses with each other and with the documentary evidence, the Referee concludes that Claimant is a more credible witness than Dan or Kay. Claimant's testimony regarding the occurrence of industrial accidents in September and October 2006 while working for Tenabo, and giving timely notice thereof to Dan, is credible.

34. **Accidents reasonably located**. Defendants contend that Claimant has not reasonably located the time of her alleged accidents. Claimant responded to McDermott's questions of whether her September 2006 accident at Tenabo while lifting Mildred occurred in the beginning, middle, or end or September by indicating it was at the end of September. In her deposition and at hearing Claimant estimated the date to be September 19 or 20, 2006. Claimant acknowledged that she could not state precisely which day, but testified consistently that her accident while lifting Mildred occurred on or about September 19 or 20, 2006. This testimony is credible and reasonably locates the time of Claimant's September 2006 industrial accident.

35. Claimant testified that her second injury at Tenabo occurred in October 2006 while lifting a resident named Marjorie. Claimant told McDermott that Marjorie was a "fairly new resident." Claimant's Exhibit E, p. 22, L. 22. When questioned by McDermott as to whether this incident occurred in "the beginning of October", Claimant responded that it was "like in the middle of October." Claimant's Exhibit E. p. 22, L. 25 through p. 23, L. 1. Claimant told McDermott that the accident occurred between 8:00 and 9:00 in the evening. At hearing Claimant struggled to recall precisely which day she hurt her back lifting Marjorie. Claimant initially testified: "It was in October and it was the second to third week in October …. I just remember it was towards the end of the month." Transcript, p. 57, Ll. 18-24 (emphasis supplied). When pressed to specify a date, Claimant testified: "It was around October 19th, 20th, right around there." Transcript, p. 59, Ll. 9-10. Defendants produced documentary evidence that Marjorie first became a Tenabo resident on October 29, 2006. Claimant's time cards establish that she worked at Tenabo from 8:00 a.m. until 8:00 p.m. on October 28 and 29, 2006, and from 3:00 p.m. until at least 11:00 p.m. on October 30 and 31, 2006. Claimant's last day of work at Tenabo was November 1, 2006. Tenabo terminated Claimant's employment on November 2, 2006.

36. Claimant's account of her industrial accident while lifting Marjorie on a particular day in mid to late October 2006 is credible. The collective evidence indicates that this accident more likely than not occurred on or about October 30, 2006. Claimant testified that she probably did not document in an incident report her accident from lifting Marjorie after she slid out of her chair "because at that point Sue [Barclay] was very guarded in what we wrote in the books." Claimant's Exhibit A, p. 93, Ll. 4-5.

37. Claimant reasonably located and provided notice to Dan of her September 2006

industrial accident the very day of its occurrence. She provided notice to Dan and reasonably located the time of her October 2006 accident the day following its occurrence. He took no action to document or complete a claim for Claimant's accidents. Defendants' assertion that Claimant's accidents are not reasonably locatable is not persuasive. Claimant has reasonably located the time of both of her industrial accidents.

38. **Attorney fees**. Claimant seeks attorney fees for Defendants' denial of her claim. Idaho Code § 72-804 provides in part:

> If the commission or any court before whom any proceedings are brought under this law determines that the employer or his surety contested a claim for compensation made by an injured employee or dependent of a deceased employee without reasonable ground, or that an employer or his surety neglected or refused within a reasonable time after receipt of a written claim for compensation to pay to the injured employee or his dependents the compensation provided by law, or without reasonable grounds discontinued payment of compensation as provided by law justly due and owing to the employee or his dependents, the employer shall pay reasonable attorney fees in addition to the compensation provided by this law.

39. Attorney fees are not granted to a claimant as matter of right under the Idaho Workers' Compensation Law, but may be recovered only under the circumstances set forth in Idaho Code § 72-804. The decision that grounds exist for awarding a claimant attorney fees is a factual determination which rests with the Commission. Troutner v. Traffic Control Company, 97 Idaho 525, 528, 547 P.2d 1130, 1133 (1976).

40. In the present case, both of Claimant's accidents were witnessed only by the dementia residents Claimant lifted. Claimant struggled to reasonably locate the time of her accidents. She erroneously identified the date of her October 2006 accident. She delayed seeking medical care for her injuries until after Tenabo terminated her employment. At hearing, Claimant's co-worker disputed portions of Claimant's account of the circumstances surrounding her September 2006

accident. In light of these circumstances, Defendants' denial of her claim, though not persuasive, was not unreasonable.

CONCLUSIONS OF LAW

1. Claimant has proven she suffered an industrial accident on or about September 20, 2006, and on or about October 30, 2006, and has reasonably located the time of her industrial accidents.

2. Claimant has proven that she gave adequate notice of her industrial accidents.

3. Claimant has not proven her entitlement to attorney fees.

RECOMMENDATION

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

DATED this 13th day of January, 2009.

INDUSTRIAL COMMISSION

__/s/_____
Alan Reed Taylor
Referee

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

CINDY PETERSON-BIGHAM, Claimant, v. DAVEANDSUE, LLC., dba TENABO HOMES ASSISTED LIVING Employer, and STATE INSURANCE FUND, Surety, Defendants.	)	**IC 2007-004420** **ORDER** Filed: February 17, 2009

Pursuant to Idaho Code § 72-717, Referee Alan 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 she suffered an industrial accident on or about September 20, 2006, and on or about October 30, 2006, and has reasonably located the time of her industrial accidents.
2. Claimant has proven that she gave adequate notice of her industrial accidents.
3. Claimant has not proven her entitlement to attorney fees.

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

DATED this 17th day of February, 2009.

INDUSTRIAL COMMISSION

_Participated but did not sign_____
R.D. Maynard, Chairman

_/s/_____
Thomas E. Limbaugh, Commissioner

_/s/_____
James F. Kile, Commissioner

ATTEST:

_/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of February, 2009 a true and correct copy of the foregoing **FINDINGS, CONCLUSIONS, AND ORDER** was served by regular United States Mail upon each of the following:

BRETT R FOX
355 W MYRTLE ST STE 100
BOISE ID 83702-7607

JON M BAUMAN
PO BOX 1539
BOISE ID 83701

sc __/s/_____