



to benefits for psychological injuries from his January 15, 2007, industrial accident pursuant to Idaho Code § 72-451.

### **ARGUMENTS OF THE PARTIES**

Claimant asserts his left wrist injury at work on January 15, 2007, resulted in not only orthopedic injuries, but ultimately psychological disorders, including severe depression, for which he is entitled to psychological treatment. Claimant relies principally upon the expert testimony of Tim Rehnberg, Ph.D.

Defendants acknowledge Claimant's industrial wrist injury of January 15, 2007, and have paid substantial benefits related thereto. However, Defendants contend that Claimant's current psychological condition is the product of many causes and that his work injury is not the predominant cause, as compared to all other causes combined. Defendants rely upon the expert testimony of Ronald Klein, Ph.D.

### **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. The Commission's legal file, including the medical records attached to Claimant's Motion for Emergency Hearing filed June 26, 2008;
2. Claimant's deposition taken June 25, 2008, and the change sheet thereto;
3. The testimony of Claimant and his wife, Julie Smith, taken at the October 27, 2008, hearing;
4. Claimant's Exhibits A, A-1, and B admitted at the hearing;
5. Defendants' Exhibits 1 through 22 admitted at the hearing;
6. Defendants' Exhibit 15A (comprising the records appended to Defendants' Motion

to Augment Record, filed November 18, 2008, and granted December 5, 2008, including Region 1 Mental Health Services records Bates numbered 12064-12106);

7. The post-hearing deposition of Tim Rehnberg, Ph.D., taken by Claimant on November 11, 2008; and
8. The post-hearing deposition of Ronald Klein, Ph.D., taken by Defendants on November 11, 2008.

All objections posed during Claimant's deposition are overruled. All objections posed during Dr. Rehnberg's deposition are overruled, except for the objection at page 43, which is sustained.<sup>1</sup> All objections posed during Dr. Klein's deposition are overruled. Claimant's motion to strike the testimony of Dr. Klein is denied for the reason that Idaho Code § 72-451(5) does not require Defendants' medical expert to be licensed to practice in Idaho before providing medical opinion testimony. McGee v. J.D. Lumber Co., 1999 IIC 0538, 0540, n.1, 99 IWCD 11988 (April 27, 1999).

After having considered 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 born in 1972 and was 36 years old at the time of the hearing. He is left hand dominant.

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<sup>1</sup> Defendants objected to Dr. Rehnberg's opinion that the accident is the "predominant cause" of Claimant's psychological condition. Rehnberg Deposition, p. 21. They argue that this testimony amounted to new evidence not previously disclosed as required by JRP 10. Dr. Rehnberg previously opined that had the accident not occurred, Claimant would likely not have suffered psychological decompensation, but it was not until his deposition that Dr. Rehnberg declared that the accident is the predominant cause of Claimant's psychological difficulties, as compared to all other causes combined. Dr. Rehnberg's deposition testimony on this point constitutes a new opinion not previously disclosed within the time frame of JRP 10. His opinion on this issue, which is hereafter found unpersuasive, could be rejected on this basis as well.

2. Claimant has no recollection of his biological father who left the family when Claimant was very young. As a youth Claimant was the victim of significant neglect by his mother and repeated physical abuse by his stepfather who struck him with a closed fist, coat hangers, and rocks. The physical abuse was so severe that Claimant was temporarily placed in foster care on occasion. Claimant graduated from high school in Fontana, California and left home shortly after graduating. He testified that after completing high school he used marijuana a few times. He also admitted to using hash on one occasion.

3. Claimant served approximately two years in the U.S. Army. His discharge was prompted by marijuana abuse. In Claimant's deposition he denied serving in the U.S. Armed Forces. However, in his deposition change sheet Claimant acknowledged that following high school his first real job was in the Army.

4. At the age of 20 Claimant returned home and beat up his stepfather. Claimant has apparently been estranged from his mother, stepfather, and siblings since that time.

5. After his service in the Army, Claimant relocated to Lake Tahoe, California and worked in various construction jobs. He changed jobs frequently, remaining at most jobs a relatively short time, but had no trouble finding work. He was fired on two occasions for bad-mouthing his employer's wife. Although Claimant demonstrated impulsivity, he also demonstrated ambition and a strong work ethic. He was rarely without employment for significant periods. Claimant admitted, and then later denied, that during this time he posed as an illegal alien on one occasion in order to obtain free medical care.

6. In July 1997, Claimant fell approximately 20 feet from a balcony when a railing he was leaning on gave way. He landed on his feet and shattered both heels. He received extensive

medical treatment, including surgery, from Edward Tapper, M.D., and was confined to a wheelchair for approximately one year. Claimant was unable to work for well over a year. His wife, who was pregnant at the time of his fall, became the family's sole breadwinner. Due to the family's reduced income, Claimant and his wife were evicted from their apartment several months later and lived in their car with their two-month old daughter for a few days before moving into an inexpensive motel. During Claimant's recovery from his fall, Dr. Tapper refused to prescribe narcotics for pain relief, explaining that narcotics may aggravate depression and that Claimant was "emotionally decompensated." Defendants' Exhibit 2, p. 10004. Dr. Tapper repeatedly told Claimant that his left ankle was probably destroyed beyond repair.

7. For approximately eighteen months after the fall Claimant was largely unable to ambulate. After his fractures healed, Claimant was left with residual heel pain and reduced standing tolerance. He determined that he could no longer perform general construction work, which required him to be on his feet continually. Claimant sought and obtained employment and on-the-job training in plumbing. This was less demanding on his feet. Claimant lived in Lake Tahoe and later in Reno where he worked as a plumber and supported his wife and their two children comfortably.

8. Claimant acknowledged some marijuana use while living in Lake Tahoe and Reno. In contrast, Claimant's wife testified that Claimant smoked marijuana almost daily while living in Reno and maybe almost daily while living in Lake Tahoe. Claimant continued to change jobs repeatedly.

9. In 2006, Claimant and his family relocated to Coeur d'Alene. He thereafter commenced working as a plumber for Garland.

10. On January 15, 2007, Claimant fell to the ground and injured his left wrist when he slipped on ice while loading his work truck. He was initially treated for left wrist sprain and possible radius fracture and assigned light-duty work. Further diagnostic testing suggested a dorsolunate fracture fragment and a scapholunate ligament tear. In July 2007, Peter Jones, M.D., performed left wrist surgery and removed the fracture fragment. Dr. Jones found the scapholunate ligament intact but noted post traumatic degenerative changes. Garland terminated Claimant's employment a few days after surgery. Claimant's attitude and emotional stability began to deteriorate.

11. After a period of recuperating from surgery, Claimant attempted a minor plumbing repair in his own home and discovered that his left wrist continued to be too painful to effectively use a screwdriver. He concluded he could no longer work as a plumber and became very concerned about how to provide for his family given his residual foot limitations and the new limitations of his dominant left hand. Claimant's concern grew into anxiety; he experienced difficulty sleeping and began withdrawing from usual interactions with his family. His anxiety increased further as he was unable to identify any viable employment options to support his family and began to consider his situation hopeless.

12. By September 2007, Dr. Jones noted that Claimant was borderline suicidal. Dr. Jones referred Claimant for psychological evaluation for depression. Ruth Milbee, a nurse case manager provided by Defendants, helped arrange for Claimant to be seen for psychological issues by psychiatrist David Wait, M.D.

13. At Defendants' request, James Brinkman, M.D., performed an independent medical examination on September 20, 2007. He was concerned by Claimant's apparent depression and

encouraged referral to a psychiatrist for evaluation or treatment of anxiety and depression.

14. On October 10, 2007, Claimant presented to Dr. Wait, who diagnosed a single episode of severe major depression. Dr. Wait prescribed Celexa and encouraged hospitalization, or at least weekly counseling. Claimant declined hospitalization but agreed to counseling. Dr. Wait noted that Claimant had a longstanding pattern of being a self-starter, that he suffered fairly significant wrist pain limiting his ability to lift or carry, and that Claimant's depression stemmed from his inability to return to work. Claimant falsely denied any history of substance abuse, including marijuana.

15. On October 29, 2007, Defendants authorized five psychiatric visits. Claimant treated with Dr. Wait who recommended that he continue counseling with Emily Hart, M.Ed., LCPC. Claimant counseled with Hart on three occasions in December 2007. Claimant told Hart a number of falsehoods, including that he had lived in Holland, had changed his name, and had committed past crimes in retaliation against others who had wronged his friends. Claimant falsely denied being the victim of physical abuse as a child. In his deposition, when confronted with his fabrication, Claimant explained that he considered Hart attractive and desired to impress her.

16. On December 12, 2007, Joseph Welch, M.D., found Claimant's left wrist condition medically stable and rated his permanent impairment at 9% of the upper extremity.

17. Claimant filed his Complaint through counsel on January 14, 2008.

18. By early 2008, Claimant was receiving counseling and medications from Idaho Department of Health and Welfare Region 1 Mental Health Services (MHS).

19. On May 26, 2008, Claimant and his wife were arguing at home when he became violently angry. He broke kitchen chairs, threw ash trays and pancake batter everywhere, overturned

tables, broke an interior door, threw clothes from a closet, and broke window blinds. His wife fled their home with their children and called Claimant's psychological counselor who called police. Claimant left his home briefly and smoked marijuana. Upon returning to his home, Claimant was taken into temporary custody by police and evaluated for involuntary commitment at Kootenai Medical Center Behavioral Health by Eric Heidenreich, M.D. Dr. Heidenreich diagnosed major depression, recurrent, severe. Claimant reported to Dr. Heidenreich that he lived in Holland in his early twenties, where he used marijuana regularly and also tried LSD. Claimant has apparently never lived in Holland. Claimant did not meet the criteria for involuntary commitment and was released.

20. On June 23, 2008, Claimant was seen at MHS by Jill Megow, LCSW, who assessed frustration and severe depression with accompanying anger. She noted that Claimant had tested positive for marijuana twice since representing that he last used it over four weeks earlier on May 26. On June 24, 2008, Claimant and his wife both attended a counseling session and adamantly denied Claimant was using marijuana, expressing extreme anger over their perception that MHS had failed to assist Claimant. In subsequent visits over the next few weeks, Claimant was seen by Megow, psychiatrist Jennifer Rhodes, M.D., and Marie Parkman, Psy.D. Dr. Rhodes prescribed various medications, some of which Claimant tried, disliked, and discontinued and others which Claimant refused.

21. Claimant was subsequently stopped for speeding in Oregon and also charged with possession of marijuana. On July 18, 2008, Claimant attended a counseling session at MHS with Robert Bishop, LSW, where Claimant was "very stressed out due to charges against him in Oregon for child endangerment and possession of marijuana." Defendants' Exhibit 15A, p. 12078.

## **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION - 8**

22. MHS assisted Claimant in applying for Social Security Disability benefits. On August 4, 2008, he underwent a Disability Determination Evaluation by Dr. Parkman, Jill Megow, and Dr. Rhodes. After pointed inquiry, Claimant acknowledged that he was “struggling with quitting marijuana.” Defendants’ Exhibit 15A, p. 12086.

23. At the time of hearing, Claimant continued counseling sessions at MHS but testified that he feels worse after each session. Claimant has been prescribed various medications, all of which Claimant ultimately discontinued or refused.

24. Having observed Claimant at hearing, and carefully examined the record herein, the Referee finds that Claimant is not a credible witness. Claimant’s two positive marijuana tests at MHS, his charge for possession of marijuana in Oregon, and finally his admission on August 4, 2008, that he was struggling with quitting marijuana indicate that Claimant has not been truthful about the extent of his marijuana abuse. Claimant has also been intentionally untruthful with several of his counselors on multiple occasions, including Emily Hart, Dr. Waite, Dr. Parkman, and also to a lesser extent Drs. Rehnberg and Klein, regarding his past residences, past and current drug abuse, and exposure to past physical abuse. Taken collectively, these instances of dishonesty indicate that Claimant fabricates, at least occasionally, when he perceives it is to his advantage to mislead. The frequency of this behavior cannot be ascertained with certainty. While Claimant’s dishonesty makes his testimony less reliable, there is sufficient corroborating evidence—specifically, expert medical evidence—to persuade the Referee that Claimant’s psychological conditions, including depression, are real and genuine.

#### **DISCUSSION AND FURTHER FINDINGS**

25. 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).

26. **Psychological condition.** Defendants acknowledge Claimant's left wrist injury and have paid substantial benefits therefor. The crux of the present dispute is Claimant's entitlement to treatment for his psychological condition. Generally, a claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability, Langley v. State, Industrial Special Indemnity Fund, 126 Idaho 781, 785, 890 P.2d 732, 736 (1995), and "probable" is defined as "having more evidence for than against." Fisher v. Bunker Hill Company, 96 Idaho 341, 344, 528 P.2d 903, 906 (1974). Generally, "an employer takes an employee as it finds him or her; a preexisting infirmity does not eliminate the opportunity for a worker's compensation claim provided the employment aggravated or accelerated the injury for which compensation is sought." Spivey v. Novartis Seed Inc., 137 Idaho 29, 34, 43 P.3d 788, 793 (2002). However, more rigorous causation standards apply when psychological injuries are alleged. Idaho Code § 72-451 requires:

Psychological injuries, disorders or conditions shall not be compensated under this title, unless the following conditions are met:

(1) Such injuries of any kind or nature emanating from the workplace shall be compensated only if caused by accident and physical injury as defined in section 72-102(18)(a) through (18)(c), Idaho Code, or only if accompanying an occupational disease with resultant physical injury, except that a psychological mishap or event may constitute an accident where: (i) it results in resultant physical injury so long as the psychological mishap or event meets the other criteria of this section, and (ii) it is

readily recognized and identifiable as having occurred in the workplace, and (iii) it must be the product of a sudden and extraordinary event; and

(2) No compensation shall be paid for such injuries arising from conditions generally inherent in every working situation or from a personnel related action including, but not limited to, disciplinary action, changes in duty, job evaluation or employment termination; and

(3) Such accident and injury must be the predominant cause as compared to all other causes combined of any consequence for which benefits are claimed under this section; and

(4) Where psychological causes or injuries are recognized by this section, such causes or injuries must exist in a real and objective sense; and

(5) Any permanent impairment or permanent disability for psychological injury recognizable under the Idaho worker's compensation law must be based on a condition sufficient to constitute a diagnosis using the terminology and criteria of the American psychiatric association's diagnostic and statistics manual of mental disorders, third edition revised, or any successor manual promulgated by the American psychiatric association, and must be made by a psychologist, or psychiatrist duly licensed to practice in the jurisdiction in which treatment is rendered; and

(6) Clear and convincing evidence that the psychological injuries arose out of and in the course of the employment from an accident or occupational disease as contemplated in this section is required.

27. Predominant cause. Of the six required elements enumerated in Idaho Code § 72-451, one is particularly disputed by the parties herein: whether Claimant's wrist injury is the predominant cause of his psychological condition.

28. Idaho Code § 72-451(3) does not present a "but for" standard of causation. Under the predominant cause standard, it is not sufficient that the industrial injury be merely the proverbial "straw that breaks the camel's back." Although an employer takes an employee as he is, in determining the predominant cause of a psychological condition, the contribution of all of the employee's pre-accident factors must be weighed against the contribution of the industrial accident.

To be the predominant cause, the work injury must be a greater cause of the psychological condition than all other causes combined. Thus, if a percentage of contribution were assigned to each and every factor which collectively produce a claimant's psychological condition, the contribution of the industrial accident must be more than 50% of the total of all of the causes. Against this standard, the evidence, including expert testimony, produced by the parties must be evaluated.

29. Dr. Klein. Defendants offered the testimony of psychologist Ronald Klein, Ph.D. Dr. Klein evaluated Claimant on July 17, 2008, and reviewed his medical and psychological treatment records. He opined that Claimant suffers an Adjustment Disorder with anxious and depressed features, a Mixed Personality Disorder with emotionally dependent and narcissistic features, and significant financial and family stresses. Defendants' Exhibit 20, p. 14011. He characterized Claimant's functioning like that of a maladjusted child. Dr. Klein testified that Claimant's current psychological condition and depression are the product of many causes and that his work injury is not the predominant cause, as compared to all other causes combined. He opined that Claimant's psychological functioning was essentially the same before and after his industrial accident, and that the wrist injury had no impact on Claimant's psychological condition. Klein Deposition, pp. 50-51.

30. In arriving at his conclusion, Dr. Klein testified that Claimant's psychological disorders go back to his childhood. He noted that Claimant as a youth was subject to a series of horribly abusive, neglectful, and emotionally demoralizing relationships and that he was subject to such severe physical abuse that he was placed in temporary foster care. Dr. Klein testified that Claimant demonstrated impulsivity in beating up his stepfather, changing jobs frequently, and bad-mouthing the wives of two prior bosses (for which he was fired)—all prior to the wrist injury. Dr. Klein interpreted Claimant's work history, starting with his service in the Army and continuing until

his industrial accident, as a series of jobs interrupted by Claimant's behavioral outbursts which got him into trouble in the workplace. Dr. Klein noted that prior to Claimant's industrial accident he was repeatedly fired from jobs he had the knowledge and physical ability to perform, but was psychologically so maladjusted that he could not retain. Klein Deposition, p. 58. He noted that Claimant repeatedly demeaned himself during his evaluative interview.

31. Dr. Klein opined Claimant's heel fractures were more physically disabling than his industrial wrist injury. He noted that Claimant's chief limitation presently is his own report of continuing left wrist pain in spite of medical treatment. Dr. Klein testified that the veracity of Claimant's reported wrist pain is undermined by multiple lies which Claimant has told to his medical providers. Dr. Klein opined that Claimant's repeated lies to his providers reveal his psychological functioning, emotional immaturity, and impulsivity. He observed that Claimant lied repeatedly to his providers to avoid responsibility for his actions or to attempt to impress one therapist whom he considered attractive. Dr. Klein noted that by lying to his providers, Claimant was misleading them and effectively sabotaging his own treatment.

32. The record substantiates Dr. Klein's opinion of Claimant's pre-accident impulsivity and adjustment disorder. However, Claimant demonstrated energy and ambition in finding work after his 1997 heel fractures. If Claimant's wrist injury had no impact on his psychological condition, it is difficult to explain why he rebounded from his heel fractures but not after his wrist injury.

33. Dr. Rehnberg. Psychologist Tim Rehnberg, Ph.D., testified for Claimant. Dr. Rehnberg evaluated Claimant on August 26 and September 12, 2008. He diagnosed Claimant with Major Depressive Disorder, Adjustment Disorder with Mixed Anxiety and Depressed features,

Mixed Personality Disorder, and Pain Disorder. Dr. Rehnberg noted Claimant's history of major depression as outlined by Dr. Wait and Dr. Rhodes. He concluded that Claimant was psychologically impaired and emotionally volatile, with mood swings from depression to anger.

34. Dr. Rehnberg performed extensive psychological testing. Based upon his testing, Dr. Rehnberg opined that Claimant's intelligence was in the top 20% nationally and that Claimant is capable of college level training, after addressing his present psychological condition. Dr. Rehnberg administered SIMS testing to Claimant, which revealed a score of 18. This generally tends to suggest a malingered performance. However, considering all factors, Dr. Rehnberg ruled out malingering. Dr. Rehnberg administered the Substance Abuse Subtle Screening Inventory which he concluded showed no evidence of addiction or chemical dependency within the prior 12 months. This conclusion is soundly refuted by Claimant's two positive drug tests at MHS in June 2008, and by his own admission to Dr. Parkman in August 2008 that he was having trouble quitting marijuana.

35. Dr. Rehnberg testified that the critical basis for his diagnosis was that he identified several stressors which maintain Claimant's depression, including physical pain, loss of employment, and a negative future outlook, all coming from Claimant's wrist injury. He opined that because Claimant was working and functioning before the industrial accident, the industrial accident was a leading cause of his present psychological condition. He concluded that if Claimant had not sustained a work injury, he would not have experienced an adjustment disorder, mood disturbance or pain disorder. Rehnberg Deposition, Exhibit A-1. When asked specifically whether Claimant's accident was the predominant cause of his diagnosis as compared to all other causes combined, Dr. Rehnberg responded affirmatively, then declared that if Claimant had not been injured he would probably still be working.

36. Dr. Rehnberg's opinion is based in part upon the unreliable foundation of Claimant's representations that he was not using marijuana, when irrefutable evidence establishes that Claimant repeatedly abused marijuana on an ongoing basis. The adequacy of the foundation of Dr. Rehnberg's opinion is open to question in other areas. Although Claimant's counsel provided extensive medical and psychological treatment records to Dr. Rehnberg for his review, during cross-examination Dr. Rehnberg acknowledged that he did not review Claimant's medical records generated prior to 2007, but relied on Claimant's deposition and the records of mental health professionals commencing in 2007. However, it became apparent during further cross-examination that Dr. Rehnberg did not review some of the psychological treatment records from 2008. When specifically questioned, Dr. Rehnberg did not recall ever seeing Dr. Heidenreich's report or the Kootenai Medical Center records regarding Claimant's detention and evaluation in May 2008. Dr. Rehnberg also initially opined that Claimant should have been treated longer at MHS before being advised by counsel that Claimant continued treatment at MHS through the time of hearing.

37. Dr. Rehnberg's assessment of Claimant's present psychological condition appears substantially similar to that provided by Dr. Klein. However, Dr. Rehnberg's evaluation of the cause of Claimant's present psychological condition was rendered without a full understanding of Claimant's past and recent medical and psychological history and at least in partial reliance upon Claimant's false representations that he does not abuse marijuana. Dr. Rehnberg was not in a knowledgeable position to determine whether Claimant's industrial wrist injury was the predominant cause of his present psychological condition as compared to all other causes combined.

38. Other medical providers. Dr. Jones, Dr. Brinkman, Emily Hart, Dr. Wait, Dr. Rhodes, and Dr. Parkman all suspected or diagnosed Claimant with depression after his industrial

accident. Several of these practitioners attributed Claimant's depression to his inability to return to work following his industrial accident. However, none of these practitioners expressed an opinion as to whether Claimant's industrial accident was the predominant cause of his psychological condition as compared to all other causes combined. Significantly, Claimant concealed his ongoing marijuana abuse from most of these practitioners.

39. Analysis. Claimant emphasizes that his functioning declined dramatically after his wrist injury. He argues that because he continued to function after his heel fractures, the fact that he has struggled with depression since his wrist injury indicates that the wrist injury is the cause of his present psychological condition.

40. It appears that Claimant's wrist injury is a contributing factor to his present psychological condition. However to satisfy Idaho Code § 72-451(3), Claimant's wrist injury must be the predominant cause of his psychological condition as compared to all other causes combined. This requires a comparison of the industrial accident's contribution in causing Claimant's adjustment disorder, mixed personality disorder, and depression against the role of all other causes combined, including his heel fractures, longstanding marijuana abuse, limited formal education, limited educational opportunities, limited employment opportunities as they existed prior to his wrist injury, abusive childhood, impulsivity, and dishonesty.

41. Claimant has been dishonest with his medical providers on several occasions regarding several subjects. His lack of credibility restrains the weight given to his complaints and the weight which can be given to medical opinions rendered in reliance upon the credibility of his complaints. The most frequent dishonesty concerns Claimant's marijuana abuse. He repeatedly denied ongoing marijuana use, yet he tested positive on two occasions at MHS and finally admitted

to Dr. Parkman that he was struggling to quit marijuana. This is significant because Dr. Parkman and Dr. Rhodes noted Claimant's positive drug tests and concluded: "Obviously the marijuana use is of concern and probably is exacerbating Kevin's mood difficulties to some extent. It is unclear the degree or amount of marijuana abuse involved in his current functioning." Defendants' Exhibit 15A, p. 1294. Dr. Klein also expressed concern about the impact of Claimant's marijuana abuse.

42. Dr. Klein emphasized that Claimant's psychological condition has been essentially unchanged for a number of years and was largely determined during his adolescence and early adulthood. He specifically noted the abuse and neglect Claimant suffered as a child, the residual limitations of his bilateral heel fractures, and the documented pattern of Claimant's marijuana abuse, maladjustment, impulsivity, and dishonesty—all manifested prior to his wrist injury. The record further establishes Claimant's limited formal education and self-perceived intellectual inadequacy.

43. As noted above, Dr. Rehnberg's opinion lacks foundation. Dr. Rehnberg acknowledged that he did not review any of Claimant's medical records prior to 2007. He was not familiar with Claimant's 1997 fall, heel fractures, and the resulting limited standing tolerance. He did not review all of Claimant's psychological records. He was not fully apprised and did not address the impact of Claimant's marijuana abuse because Claimant intentionally concealed it from him. Given these inadequacies, Dr. Rehnberg's opinion is not persuasive. Consequently, there is no informed and persuasive medical evidence that Claimant's wrist injury contributed more to the cause of his present psychological condition than all other causes combined.

44. Claimant's psychological condition is genuine and requires treatment. His psychological condition appears to be partially related to his industrial wrist injury. However, Claimant has not proven by clear and convincing evidence that his wrist injury is the predominant



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

KEVIN R. SMITH,	)	
	)	
Claimant,	)	
	)	<b>IC 2007-002698</b>
v.	)	
	)	
GARLAND CONSTRUCTION SERVICES,	)	
	)	<b>ORDER</b>
Employer,	)	
	)	
and	)	Filed: April 27, 2009
	)	
TRUCK INSURANCE EXCHANGE/ FARMERS INSURANCE,	)	
	)	
Surety,	)	
	)	
Defendants.	)	
_____	)	

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 not proven his entitlement to benefits for psychological injuries from his January 15, 2007, industrial accident pursuant to Idaho Code § 72-451.

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

DATED this 27<sup>th</sup> day of April, 2009.

INDUSTRIAL COMMISSION

\_\_\_\_\_  
/s/  
R.D. Maynard, Chairman

\_\_\_\_\_  
/s/  
Thomas E. Limbaugh, Commissioner

\_\_\_\_\_  
/s/  
Thomas P. Baskin, Commissioner

ATTEST:

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

**CERTIFICATE OF SERVICE**

I hereby certify that on the 27<sup>th</sup> day of April, 2009 a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

STARR KELSO  
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COEUR D'ALENE ID 83816-1312

JON M BAUMAN  
PO BOX 1539  
BOISE ID 83701

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/s/