

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

SANTOS RODRIGUEZ,)
)
 Claimant,)
)
 v.)
)
 LYLE COOK, d/b/a CORNERSTONE)
 MANUFACTURING, INC.,)
)
 Employer,)
)
 Defendant.)
 _____)

IC 2006-003866

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

Filed: July 29, 2009

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Alan Taylor. Claimant filed his Complaint on November 24, 2008, his Notice of Intent to Take Default on February 2, 2009, and his Motion for Entry of Default on March 2, 2009. Defendant did not appear personally or by counsel at any time and has defaulted in these proceedings. The Commission’s Order Entering Default against Defendant was filed on March 17, 2009. Claimant filed the Affidavit of Santos Rodriguez in Support of Claimant’s *Prima Facie* Case and the Affidavit of Albert Matsuura in Support of Claimant’s *Prima Facie* Case, together with Claimant’s Exhibits A through H, on April 20, 2009, pursuant to J.R.P. 6. The matter is now ready for decision.

ISSUE

The issue to be decided is Claimant’s entitlement to workers’ compensation benefits.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;

2. The Affidavit of Santos Rodriguez in Support of Claimant's *Prima Facie* Case filed April 20, 2009;
3. The Affidavit of Albert Matsuura in Support of Claimant's *Prima Facie* Case filed April 20, 2009; and
4. Claimant's Exhibits A through H submitted with the above affidavits.

After having considered 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 38 years old and resided in Ammon at all relevant times.
2. Cornerstone Manufacturing, Inc. (Cornerstone) was formed and registered as an Idaho corporation on January 6, 2005; the sole shareholders and board of directors were identified as Lyle Cook and Terry Cook with listed residences in Rigby.
3. On April 27, 2005, Claimant was employed as a cabinet maker for Cornerstone in Rigby. On that day he sustained serious injury to his right hand while edging door pieces on a power shaper. The injury included partial amputation of his right ring finger and avulsions and lacerations to his right middle and little fingers. The injury occurred in the course and scope of his employment with Cornerstone. Claimant filed an IC Form One in regard to his injury.
4. Pursuant to the Industrial Commission web site for employer coverage verification searches conducted on Cornerstone, Lyle Cook, and Terry Cook for coverage on April 27, 2005, no workers' compensation insurance coverage was verified for Cornerstone, Lyle Cook, or Terry Cook for April 27, 2005. No assertion or proof has been offered that Cornerstone, Lyle Cook, or Terry Cook maintained workers' compensation insurance coverage for Claimant's April 27, 2005, date of injury.

5. As a result of his right hand injury, Claimant undertook medical treatment and incurred medical bills for treatment of his right hand injury as set forth below. Claimant received a 5% whole person impairment rating on his right hand injury, issued by Dr. Ronald Mills on March 7, 2006.

6. Cornerstone was administratively dissolved as a corporation on April 10, 2007.

7. Claimant executed an attorney-client retainer agreement with Goicoechea Law Offices-Pocatello, L.L.P., which Claimant reaffirmed after attorney, Daniel Luker, left the firm in October 2008 and attorney Albert Matsuura thereafter took over representation in this matter. Through counsel Claimant asserted a claim for workers' compensation benefits against Cornerstone and its principal shareholders and officers, Terry Cook and Lyle Cook. Pursuant to negotiations with Claimant's counsel, Terry Cook and Lyle Cook acknowledged liability for payment of Santos Rodriguez's claimed workers' compensation benefits and made payment of benefits and penalties per Idaho Code § 72-210 (attorney fees) as set forth below.

8. Terry Cook filed for bankruptcy and obtained a discharge in bankruptcy on Claimant's claim for workers' compensation benefits in February 2008. The Bankruptcy Trustee made distribution of \$315.35 of the remaining assets in Terry Cook's Bankruptcy Estate to Claimant through his attorney in March 2009. That payment is included in the statement of benefits below. With the bankruptcy filing of Terry Cook and his subsequent discharge, no further action or claim for workers' compensation benefits has been asserted against Terry Cook. Claimant asserts all remaining claims for benefits and penalties solely against Lyle Cook, in his individual capacity as a principal and officer in the now defunct Cornerstone corporation, pursuant to Idaho Code § 72-319.

9. Through his attorney, Claimant last received payment of benefits from Lyle Cook in December 2008. All payments Claimant received from Lyle Cook and the Bankruptcy Estate of Terry Cook are included in the amounts listed in the statement below. The record establishes compensable expenses incurred by Claimant, benefits owed to Claimant, and payments received by Claimant from Cornerstone, Terry Cook, Lyle Cook, and Terry Cook's Bankruptcy Estate as follows:

<u>Items</u>	<u>Expenses or Benefits</u>	<u>Payments Received</u>	<u>Balance Owed</u>
Medical expenses	\$6,746.69	\$6,746.69	\$0
5% Permanent Partial Impairment	\$7,463.75	\$4,712.14	\$2,751.61
10% penalty Idaho Code § 72-210	\$1,421.04	\$0	\$1,421.04
Attorney fees and costs	\$4,705.84	\$1,861.27	\$2,844.57
Total benefits and penalties owed:			\$7,017.22

10. The balance still due and owing to Claimant from Cornerstone and/or its principal Lyle Cook on benefits and penalties per Idaho Code §§ 72-210 and 319 is \$7,017.22.

CONCLUSION OF LAW

Claimant has proven his entitlement to additional workers' compensation benefits and penalties from Cornerstone and/or its principal Lyle Cook in the amount of \$7,017.22.

RECOMMENDATION

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

DATED this 23rd day of July, 2009.

INDUSTRIAL COMMISSION

_____/s/_____
Alan Reed Taylor, Referee

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of July, 2009, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

ALBERT MATSUURA
PO BOX 2196
POCATELLO ID 83206-2196

LYLE COOK
CORNERSTONE MANUFACTURING, INC.
5180 E 145 N
RIGBY ID 83442-5765

sc

_____/s/_____

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ORDER

Filed: July 29, 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 his entitlement to additional workers’ compensation benefits and penalties from Cornerstone and/or its principal Lyle Cook in the amount of \$7,017.22.
2. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 29th day of July, 2009.

INDUSTRIAL COMMISSION

_____/s/_____
R.D. Maynard, Chairman

/s/
Thomas E. Limbaugh, Commissioner

 Unavailable for signature
Thomas P. Baskin, Commissioner

ATTEST:

 /s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of July, 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:

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