

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

CLAYTON YOUNG,)
)
 Claimant,)
)
 v.)
)
 C-A-L RANCH STORES,)
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 Employer,)
)
 and)
)
 CONTINENTAL CASUALTY)
 COMPANY,)
)
 Surety,)
 Defendants.)
 _____)

IC 2005-004427

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

July 21, 2009

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Susan Veltman, who conducted a hearing in Idaho Falls, Idaho, on February 24, 2009. David M. Cannon of Blackfoot represented Claimant. Glenna M. Christensen of Boise represented Defendants. The parties submitted oral and documentary evidence. The parties submitted post-hearing briefs and the case came under advisement on June 16, 2009.

ISSUES

By agreement of the parties at hearing, the issues to be decided are:

1. Whether and to what extent Claimant is entitled to additional temporary total disability (TTD) benefits;

2. Whether and to what extent Claimant is entitled to retraining benefits pursuant to Idaho Code § 72-450; and

3. Whether and to what extent Claimant is entitled to permanent partial or permanent total disability (PPD/PTD) in excess of permanent impairment, including whether Claimant is entitled to permanent total disability pursuant to the odd-lot doctrine.

Following hearing, Claimant provided written notice to the Commission and Defendants that he would like to withdraw the issue regarding additional temporary TTD benefits. The issue is withdrawn and will not be further addressed in this decision.

CONTENTIONS OF THE PARTIES

It is undisputed that Claimant sustained an industrial injury to his back on April 17, 2005 for which he underwent lumbar surgery in April 2006. The extent of Claimant's permanent restrictions resulting from the injury is in dispute as well as the impact of those limitations on Claimant's employability.

Claimant contends that he is totally and permanently disabled pursuant to the odd-lot doctrine and that an employment search would be futile because of his significant limitations and narrow labor market. Claimant relies on the vocational opinions of Kathy Gammon, CRC, MPT.

Defendants contend that Claimant is able to perform at least sedentary work and has not met his burden to establish total permanent disability. Claimant failed to pursue re-employment or retraining of any kind and failed to fully cooperate with services offered by the Industrial Commission Rehabilitation Division (ICRD).

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. Claimant's Exhibits 1 through 10;
2. Defendants' Exhibits 1 through 7;
3. Testimony taken at hearing from Claimant, vocational expert Kathy Gammon, CRC, MPT, and ICRD consultant Valerie Fitte; and
4. The Industrial Commission's legal file.

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

FINDINGS OF FACT

Background

1. Claimant was 37 years old and resided in Blackfoot, Idaho, at the time of hearing. He graduated from Snake River High School in 1989 and earned approximately one year's worth of college credits between Lewis and Clark College and Idaho State University. Claimant is computer literate and mechanically inclined. He assembled a computer in 2005 that he continues to use.

2. Claimant's previous injuries include a car wreck in 1990 that resulted in a shattered left femur requiring placement of metal plates in his left leg and resulting in residual left knee problems. He was diagnosed with herniated discs at the base of his neck in 2000 following a slip and fall injury. Claimant is 5'10" and weighed approximately 350 pounds at the time of hearing. At the time of injury, Claimant weighed between 305 and 314 pounds. Claimant did not have formal medical restrictions at the time he commenced work for Employer,

but demonstrated an inability to sustain employment in occupations that required back-intensive physical labor.

3. Claimant's previous work experience includes labor, maintenance, machine operation, telephone operator work, youth baseball coaching and sales. He performed administrative duties, general office work and bookkeeping for his father's trucking business. In early 2000, Claimant left his job as an assistant maintenance supervisor for Fred Meyer Stores because the work was too labor intensive for his back. Similarly, Claimant discontinued a custodial job in 2001 and a labor job in 2002 because the work was too heavy for his back.

4. Claimant was hoping to earn a college scholarship in baseball and planned to walk-on to the team at Lewis and Clark. However, his motor vehicle injuries in 1990 prevented pursuit of that goal.

5. From 2000 through 2004, Claimant's average annual earnings were approximately \$4,000 with his highest annual earnings being \$6,354.27 in 2004.

Injury and Treatment

6. Claimant injured his lower back on April 17, 2005, his first official day at work for Employer. He was breaking down pallets of whiskey barrel halves that were used for outside planters. While Claimant bent over to lower a stack of the half-barrels, the stack behind him fell on his back. Neither the accident nor the existence of an injury is in dispute. Claimant was working for \$7.00 per hour at the time of injury.

7. Claimant initially sought treatment at Blackfoot Medical Clinic on April 22, 2005 at which time was diagnosed with a lumbar strain. X-rays revealed mild degenerative changes and a healed plate impaction fracture at L2.

8. Claimant received extensive conservative medical treatment throughout 2005 without significant improvement. He continued working for Employer in a modified duty capacity for approximately six weeks following the injury, but discontinued because of pain and an inability to stand behind a cash register for a full shift.

9. A lumbar MRI revealed a herniated disc at L4-5 with impingement in the left foramina as well as positive findings in the thoracic area. A discogram reflected a concordance of pain at L4-5.

10. Claimant was referred to neurosurgeon Clark H. Allen, M.D., in early 2006. Dr. Allen recommended surgical intervention due to disc disease, annular tear and disc protrusion at L4-5.

11. On April 28, 2006, Dr. Allen performed a posterior lumbar interbody fusion and decompression at L4-5 with instrumentation. Post-operative x-rays in July 2006 revealed good positioning of the hardware. Follow-up x-rays in November 2006 revealed that the fusion hardware was in satisfactory position; that there was no motion at the fusion site; and that the disc spaces above the fusion were normal.

12. Claimant participated in post-surgical physical therapy throughout 2006 and made slow but steady progress.

Post-Surgical Work Restrictions and Employment

13. Dr. Allen referred Claimant to Mary Himmler, M.D., to evaluate Claimant from a vocational standpoint. Dr. Himmler determined that Claimant had not reached maximum medical improvement (MMI) in February 2007 because he continued to be in a period of recovery. Lumbar x-rays revealed the possibility of instability at the SI joint and additional diagnostic studies were performed.

14. In April 2007, Dr. Himmler confirmed that spinal instability had been ruled out. She noted continued mechanical low back pain, deconditioning and obesity. Dr. Himmler recommended a functional capacity evaluation and participation in the Life Fit program offered through the Elks Rehabilitation Hospital. She reported that Claimant was performing receptionist work for his family's trucking business.

15. Dr. Himmler referred Claimant to Scott Billing, MPT, CEAS, who performed a functional assessment on May 29, 2007. The assessment was noted to be "conditionally valid" which is defined as perceived full effort with submaximal effort provided. Defendants' Exhibit 5, p.65. Mr. Billing concluded that:

In current Dictionary of Occupational Titles and Department of Labor terms, [Claimant] demonstrated *at least the capacity* to work a 6 hour workday, light duty, with minimal occasional bending, stooping, stair climbing, crouching and balancing.

Defendants' Exhibit 5, p.61.

16. Dr. Himmler re-evaluated Claimant on June 21, 2007 at which time she certified that Claimant reached MMI with a 15% whole person impairment rating. She essentially adopted the opinions of Mr. Billing and concluded that:

[Claimant] is capable of working 6-8 hours per day with the following restrictions: light duty, minimal occasional bending and stooping, stair climbing, crouching and balancing. Avoid squatting, kneeling and crawling. These are recommendations rather than permanent restrictions.

Defendants' Exhibit 4, p.59.

17. Dr. Himmler determined that Claimant may require future medical treatment in the form of oral medication, pain management, physical therapy and a reconditioning program. However, Claimant did not receive treatment for his industrial injury from June 2007 through the date of hearing other than a follow-up evaluation with Dr. Allen in June 2008.

18. On June 16, 2008, Claimant returned to Dr. Allen and described ongoing pain and loss of function. Claimant explained that he was in a “legal battle” with his workers’ compensation company and that he did not agree with the findings of the independent medical examiner.¹ Claimant reported that he was unable to perform any gainful activities. Defendants’ Exhibit 3, p.52.

19. Dr. Allen reiterated that Claimant would benefit from a formal group pain setting with a full evaluation of his weight status and noted that this had not occurred since it was recommended by Dr. Himmler a year earlier. Dr. Allen declined to address functional limitations and restrictions since those had been previously addressed by Dr. Himmler. Dr. Allen recommended that all future questions should be addressed by an appropriately trained rehabilitation physical medicine evaluation.

20. In November 2008, Claimant was referred by his attorney to Nathan Hunsaker, PT, MSPT, for a functional capacity assessment. One of the validity tests of the assessment reflected that Claimant perceives his abilities as less than they are. Mr. Hunsaker attributed this to fear of re-injury. Test results demonstrated that Claimant was functioning in the sedentary capacity level according to the Dictionary of Occupational Titles and specifically that:

[Claimant] is able to perform standing and walking on an occasional basis, provided there are opportunities to change positions as needed and rest breaks are provided. He demonstrates the functional capabilities required to lift-carry objects up to 15 lbs on an occasional basis if objects of that magnitude are placed at waist level for retrieval and he is allowed to carry those objects at his side in one hand. He is able to lift 10 lbs from floor to waist if allowed to perform with one hand while the other supports his upper body. However, lifting tasks of this magnitude should be done on a very infrequent basis.

Claimant’s Exhibit 9, p.2.

¹ It appears that Claimant was referring to Dr. Himmler as an independent medical examiner, but Dr. Himmler’s reports reflect that she was treating Claimant at the referral of Dr. Allen.

21. Mr. Hunsaker provided responses to specific questions posed to him by Claimant's vocational expert and clarified that Claimant could tolerate sedentary work for four hours per day, three days per week with multiple positional requirements and mandatory breaks.

22. Claimant does not believe that he is able to return to work and is not aware of being released by any physician to return to work. He has not applied for any jobs since working for Employer. Claimant does not think he could work for more than four hours per day, three days per week and doubts that he could find employment consistent with his restrictions that would pay enough to make a living.

23. Claimant has not held a valid driver's license for several years because his license was revoked secondary to child support arrearage. He did not have a driver's license when he commenced work for Employer and either drove without one or relied on family members for transportation.

Vocational Evidence

24. The case was initially referred to the Industrial Commission Rehabilitation Division (ICRD) in October 2005. Vocational efforts stalled until mid 2006 by which time Claimant began to recover from surgery. During January 2007, Dr. Allen confirmed that Claimant could not return to his pre-injury job.

Valerie Fitte

25. Claimant's ICRD counselor was Valerie Fitte. She communicated with Claimant, Surety, Dr. Allen and Dr. Himmler to ascertain Claimant's work restrictions. In July 2007, Ms. Fitte was provided with Dr. Himmler's June 2007 report and felt that she needed additional information from Dr. Himmler since she phrased Claimant's limitations as recommendations

rather than permanent restrictions. Dr. Himmler reiterated her previous opinion to ICRD in August 2007.

26. Claimant failed to maintain contact with ICRD after April 2007. On April 12, 2007, Ms. Fitte attended Claimant's appointment with Dr. Himmler. Ms. Fitte left phone messages for Claimant to return her call on May 30, 2007, July 16, 2007, September 27, 2007 and October 29, 2007. Letters were sent to Claimant in October and November of 2007 requesting that he contact ICRD. Claimant's file was closed in January 2008 based on lack of response from Claimant and the lack of clarification from Dr. Himmler as to Claimant's permanent restrictions.

27. Ms. Fitte performed a labor market survey at the time of file closure. She considered factors including Claimant's customary labor market, age, education, transferability of skills, restrictions and physician's recommendations and concluded that Claimant was employable. Ms. Fitte identified appropriate occupations for Claimant as cashier, telemarketer, switchboard operator/answering service, hotel desk clerk and emergency dispatcher. Local hourly wages for these positions ranged from \$6.18 through \$13.49.

28. At hearing, Ms. Fitte testified that Dr. Allen approved job positions of retail store operator, phone operator and hotel desk clerk but that he determined that working at Target or in a bartender position would not be appropriate. Subsequent medical follow-up was with Dr. Himmler.

29. Ms. Fitte testified that she generally places a responsibility on the injured worker to meet with her once per week, conduct job searches through the newspaper or Job Services and to document their efforts. These activities did not occur with Claimant since he did not respond to her calls or letters after April 2007.

30. Ms. Fitte did not look into retraining for Claimant because she was able to find jobs for Claimant at his pre-injury wage. Ms. Fitte was aware of available call center jobs in Pocatello/Idaho Falls with Qwest, Center Partners and Convergys.

31. When performing the labor market survey, Ms. Fitte considered the recommendations identified by Dr. Himmler as Claimant's restrictions. By the time of hearing she also considered the restrictions identified by Mr. Hunsaker and felt that there were jobs available to Claimant within those limitations. Primarily, the hotel desk clerk job would still be appropriate.

Kathy Gammon, CRC, MPT

32. Ms. Gammon has a master's degree in vocational rehabilitation counseling and is a self-employed vocational counselor. Her background includes 25 years working as a physical therapist in various settings. She was hired by Claimant to perform a vocational assessment.

33. Preparation for her assessment of Claimant included review of medical records, a personal interview with Claimant, vocational testing and posing written questions to Mr. Hunsaker. Her meeting with Claimant was on September 25, 2008.

34. Ms. Gammon deferred preparation of her report until receiving the November 2008 functional capacity assessment by Mr. Hunsaker along with Mr. Hunsaker's responses to the questions she posed. She also reviewed the May 2007 functional capacity assessment performed by Mr. Billing.

35. Ms. Gammon compared and contrasted the two functional capacity assessments. She explained that the raw data of both assessments correlates with an ability to perform work at the sedentary exertion level. The assessments utilized different methodologies and the methodology utilized by Mr. Hunsaker in November 2008 has more precise validity criteria.

36. Ms. Gammon concluded that Claimant was employable at a sedentary unskilled to semi-skilled level but that he was not necessarily placeable because of the multiple restrictions outlined by Mr. Hunsaker. She estimated that Claimant is precluded from 93% to 97% of the local competitive job market for the Idaho Falls and Pocatello metropolitan statistical areas.

37. Ms. Gammon explained that Claimant is precluded from the majority of his previous work positions other than telephone solicitor/telemarketer. If Claimant were able to secure employment, his loss of wage earning capacity would be nominal and short-term.

38. Ms. Gammon opined that Claimant's placeability is further eroded by the current job market and that Claimant is likely an odd-lot worker absent additional training. Claimant would require a sympathetic employer to retain employment. Ms. Gammon noted the recommendations of Drs. Allen and Himmler for additional rehabilitation and explained that Claimant would benefit from vocational counseling.

DISCUSSION AND FURTHER FINDINGS

Retraining

39. Once a claimant is beyond the period of recovery and establishes the existence of permanent disability, he or she may be entitled to retraining benefits pursuant to Idaho Code § 72-450. Retraining is not mandatory and the Commission has discretion over awards of retraining benefits. *See Archer v. Bonners Ferry Datsun*, 117 Idaho 166, 786 P.2d 555 (1990).

40. Claimant appears to be a good candidate for retraining and would likely benefit from retraining to increase his skill set for sedentary employment. However, Claimant failed to present evidence of a retraining plan and has demonstrated only marginal receptiveness to vocational assistance. Claimant's reliance on his perceived inability to become gainfully employed, along with his financial situation, hampered his enthusiasm to pursue additional

education or retraining. Claimant opted to defer exploration of retraining plans or pursuit of additional education pending resolution of his workers' compensation claim. Claimant failed to establish that he is entitled to retraining benefits and there is no evidence in the record upon which an award of retraining benefits may be based. Defendants did not present evidence regarding retraining as a means to mitigate Claimant's disability.

Permanent Total Disability

41. A claimant may establish that he or she is totally and permanently disabled by using either of the two methodologies available to establish total permanent disability:

First, a claimant may prove a total and permanent disability if his or her medical impairment together with the nonmedical factors total 100%. If the Commission finds that a claimant has met his or her burden of proving 100% disability via the claimant's medical impairment and pertinent nonmedical factors, there is no need for the Commission to continue. The total and permanent disability has been established at that stage. *See Hegel v. Kuhlman Bros., Inc.*, 115 Idaho 855, 857, 771 P.2d 519, 521 (1989) (Bakes, J., specially concurring) ("Once 100% disability is found by the Commission on the merits of a claimant's case, claimant has proved his entitlement to 100% disability benefits, and there is no need to employ the burden-shifting odd lot doctrine").

Boley v. State, Indus. Special Indem. Fund, 130 Idaho, at 281, 939 P.2d at 857. When a claimant cannot make the showing required for 100% disability, then a second methodology is available:

The odd-lot category is for those workers who are so injured that they can perform no services other than those that are so limited in quality, dependability or quantity that a reasonably stable market for them does not exist.

Jarvis v. Rexburg Nursing Center, 136 Idaho 579, 584 38 P.3d 617, 622 (2001), citing *Lyons v. Industrial Special Indem. Fund*, 98 Idaho 403, 565 P.2d 1360 (1977). The worker need not be physically unable to perform any work:

They are simply not regularly employable in any well-known branch of the labor market absent a business boom, the sympathy of a particular employer or friends, temporary good luck, or a superhuman effort on their part.

Id., 136 Idaho at 584, 38 P.3d at 622. There are three methods of proving odd-lot status: (1) attempts at other types of employment were unsuccessful; (2) the worker, vocational counselors, employment agencies or other job service agencies have unsuccessfully searched for work for the worker; or (3) that any efforts of the employee to find suitable employment would be futile. *Fowble v. Snoline Express, Inc.*, 146 Idaho 70, 190 P.3d 889 (2008).

100% Method

42. Claimant's permanent medical impairment was assessed at 15% of the whole person by Dr. Himmler and no alternate ratings have been assigned.

43. The most significant non-medical factor impacting Claimant's employability is the relatively small labor market in Blackfoot combined with transportation issues associated with Claimant's lack of a valid driver's license. There is no indication that Claimant's no-license status is permanent and it is reasonable to presume that Claimant has the ability to travel to Idaho Falls and Pocatello for employment with the assistance of public transportation and the same methods he employed prior to his industrial accident. Claimant's obesity is likely a hindrance to employment from both a medical and non-medical standpoint. Claimant's age and capacity for skill acquisition do not work against him. However, Claimant's lack of a college degree or professional certification limits the types of sedentary employment available to him.

44. Medical evidence does not establish a total inability to work.

45. Claimant failed to meet his burden to prove that he is permanently and totally disabled based on the 100% method.

Odd-Lot Doctrine

46. Claimant did not attempt other types of work following his injury.

47. Neither Claimant nor anyone acting on his behalf made an unsuccessful job search.

48. To the extent that Ms. Gammon's opinions could be construed as a conclusion that any efforts made by Claimant to find work would be futile, her opinions fail to establish a *prima facie* case that Claimant is an odd-lot worker because her opinions are based on medical restrictions that are not necessarily permanent in nature and are more restrictive than the limitations established by the credible evidence.

49. The work limitations (at least light type work) identified by Mr. Billing are adopted over the work limitations (sedentary with positional limitations) identified by Mr. Hunsaker. Both functional assessments constitute reasonable medical evidence, but the results of the May 2007 assessment performed by Mr. Billing are more credible with regard to a determination of Claimant's permanent restrictions. The functional assessment performed by Mr. Billing was reviewed and adopted by Dr. Himmler who evaluated Claimant on multiple occasions. Dr. Himmler's comment that the limitations were recommendations as opposed to permanent restrictions suggests that Claimant may have greater abilities than reflected on Mr. Billing's evaluation. Dr. Allen reviewed Dr. Himmler's report and deferred to her opinions. Both the evaluation of Mr. Billing and Mr. Hunsaker suggest that Claimant's perception of his abilities is more limited than his actual abilities. The assessment of Mr. Hunsaker may very well reflect Claimant's limitations during the two days of testing during November 2008. However, the results were not reviewed by a physician and no opinion was given as to the permanence of limitations as opposed to temporary limitations associated with deconditioning.

50. Based on the restrictions outlined by Mr. Billing in May 2007, the jobs identified in Ms. Fitte's labor market survey would be appropriate. Claimant's level of education and

computer literacy along with his past work experience in telemarketing and bookkeeping make it more likely than not that a job search in the Idaho Falls, Blackfoot and/or Pocatello areas would not be futile.

51. Assuming, *arguendo*, that Claimant could establish a *prima-facie* case that he is an odd-lot worker based on the futility of a job search, the testimony and report of Ms. Fitte are sufficient to rebut the futility assertion. Defendants offered evidence to establish that some kind of work suitable for Claimant is regularly and continuously available.

52. Claimant failed to meet his burden to prove that he is permanently and totally disabled by virtue of the odd-lot doctrine.

Permanent Partial Disability

53. The parties have taken all or nothing positions with regard to permanent disability and neither party articulated alternative positions addressing what amount of disability less than total would be appropriate. However, the issue of PPD was articulated as an issue to be resolved at hearing and the positions of the parties do not preclude a finding of PPD.

54. The burden of proof is on Claimant to prove the existence of any disability in excess of impairment. *Seese v. Ideal of Idaho, Inc.*, 110 Idaho 32, 714 P.2d 1 (1986). “Evaluation (rating) of permanent disability” is an appraisal of the Claimant’s present and probable future ability to engage in gainful activity as it is affected by the medical factor of permanent impairment and by pertinent non-medical factors provided for in Idaho Code § 72-430. Idaho Code § 72-425.

55. As described above, the functional assessment results determined by Mr. Billing and agreed to by Drs. Himmler and Allen are adopted. Accordingly, Claimant has the ability to perform light duty work for at least six hours per day.

56. Claimant failed to establish the existence of loss of wage earning capacity. His greatest annual salary prior to his injury was approximately \$6,350 and he was earning \$7.00 per hour at the time of injury. According to both Ms. Gammon and Ms. Fitte, mid-range wages for sedentary to light employment equals or exceeds Claimant's past earnings.

57. Claimant established loss of labor market access to jobs requiring medium physical exertion. He is able to perform sedentary and light type work. ICRD records reflect that Claimant was not able to sustain heavy or very heavy type work prior to his industrial injury and that he left multiple jobs because of strain to his back. Ms. Gammon's assessment of loss of access to at least 93% of Claimant's relevant labor market is inflated. Her calculation is based on the more stringent limitations assigned by Mr. Hunsaker and does not reflect Claimant's inability to maintain heavy labor jobs prior to working for Employer.

58. Considering Claimant's medical impairment along with non-medical factors discussed in preceding paragraph 43, Claimant has demonstrated some degree of loss of labor market access. It is undisputed that Claimant is not able to return to his pre-injury employment of retail sales work that requires moderate to heavy lifting. Claimant retains the ability to perform sedentary and light type work. It will be more difficult for Claimant to find employment than it was prior to his injury and resultant surgery. However, once Claimant is able to find a job, his wages will likely meet or exceed his pre-injury wages.

59. Claimant is articulate and comes across as intelligent and detail oriented. He likely has the potential to improve his employability and wage earning capacity through additional education and/or retraining. However, neither party submitted evidence to quantify Claimant's potential beyond mere speculation. Therefore, Claimant's PPD is calculated based on his educational and vocational status at the time of hearing.

60. The evidence establishes that Claimant's permanent disability is properly rated at 35%, inclusive of 15% permanent impairment.

CONCLUSIONS OF LAW

1. Claimant is not entitled to retraining benefits pursuant to Idaho Code § 72-450.
2. Claimant is not permanently and totally disabled.
3. Claimant has permanent partial disability of 35%, inclusive of 15% permanent partial impairment.

RECOMMENDATION

The Referee recommends that the Commission adopt the foregoing findings of fact and conclusions of law and issue an appropriate final order.

DATED this 13 day of July 2009.

INDUSTRIAL COMMISSION

/s/ _____
Susan Veltman, Referee

ATTEST:

/s/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 21 day of July a true and correct copy of **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon:

DAVID M CANNON
75 EAST JUDICIAL STREET
BLACKFOOT ID 83221

GLENNA M CHRISTENSEN
P O BOX 829
BOISE ID 83701-0829

jc

/s/ _____

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

CLAYTON YOUNG,)
)
 Claimant,) **IC 2005-004427**
)
 v.)
)
 C-A-L RANCH STORES,)
)
 Employer,)
) **ORDER**
)
 CONTINENTAL CASUALTY)
 COMPANY,)
) **July 21, 2009**
 Surety,)
)
 Defendants.)
 _____)

Pursuant to Idaho Code § 72-717, Referee Susan Veltman submitted the record in the above-entitled matter, together with her proposed 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 is not entitled to retraining benefits pursuant to Idaho Code § 72-450.
2. Claimant is not permanently and totally disabled.
3. Claimant has permanent partial disability of 35%, inclusive of 15% permanent partial impairment.

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

DATED this __21__ day of ____July_____, 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 __21__ day of __July_____, 2009, a true and correct copy of the foregoing **Order** was served by regular United States Mail upon each of the following persons:

DAVID M CANNON
75 EAST JUDICIAL STREET
BLACKFOOT ID 83221

GLENNA M CHRISTENSEN
P O BOX 829
BOISE ID 83701-0829

jkc

_____/s/_____