

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

STEVEN HAY,)
)
Claimant,)
)
v.)
)
ATK ALLIANT TECHSYSTEMS/)
AMMUNITION ACCESSORIES,)
)
Employer,)
)
and)
)
INSURANCE COMPANY OF THE)
STATE OF PENNSYLVANIA,)
)
Surety,)
)
Defendants.)
_____)

IC 2006-003348

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

Filed: October 7, 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 Lewiston on December 17, 2008. Claimant, Steven Hay, was present in person and represented by Thomas Callery, of Lewiston. Defendant Employer, ATK Alliant Techsystems/Ammunition Accessories (ATK), and Defendant Surety, Insurance Company of the State of Pennsylvania, were represented by Bentley Stromberg, of Lewiston. The parties presented oral and documentary evidence. Post-hearing depositions were taken and briefs were later submitted. The matter came under advisement on July 1, 2009.

ISSUES

The issues to be decided were narrowed at hearing and are:

1. Claimant's permanent partial impairment due to his work-related condition;
2. Claimant's permanent disability in excess of impairment; and
3. Apportionment pursuant to Idaho Code § 72-406.

CONTENTIONS OF THE PARTIES

Claimant contends he suffers permanent impairment of 15% of the whole person, all attributable to his work-related bilateral carpal tunnel syndrome. He asserts disability inclusive of impairment of 45%, none of which should be apportioned pursuant to Idaho Code § 72-406.

Defendants acknowledge that Claimant suffers permanent impairment of 15%, but assert that 7% is attributable to his pre-existing diabetes and only 8% to his work-related condition. Defendants argue that Claimant experiences no permanent disability in excess of his impairment or, in the alternative, that 50% of any disability found should be apportioned to his pre-existing diabetes.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file.
2. The testimony of Claimant taken at the December 17, 2008, hearing.
3. Claimant's Exhibit A, admitted at hearing.
4. Defendants' Exhibits 1 through 29, admitted at hearing.
5. The deposition of Rodde Cox, M.D., taken by Defendants on January 9, 2009.
6. The deposition of Nancy Collins, Ph.D., taken by Claimant on January 15, 2009.
7. The deposition of Tom L. Moreland, taken by Defendants on January 30, 2009.

The objection posed during the deposition of Nancy Collins is overruled. After having considered the above evidence and the arguments of the parties, 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 1966. He was 42 years old and lived in Clarkston at the time of the hearing. Claimant graduated from high school in 1984 with a 2.83 GPA. He has had no other formal training.

2. Claimant's family owns and operates Hay's Produce and Garden Center, founded by Claimant's father in 1974. Starting in 1980, at age 14, Claimant worked in the family produce business. He worked 30 or more hours per week during the school year and 50 to 60 hours per week during each summer. Claimant operated cash registers, stocked shelves, and unloaded trucks. He became an assistant manager at Hay's Produce. He was not involved in hiring or firing, but was involved with day-to-day ordering, stocking, cashiering, and training and managing employees and he occasionally made the bank deposit. By approximately 1983, Claimant earned \$10 per hour plus \$5,000 to \$6,000 annually in profits.

3. Claimant's father was an astute business man with a forceful personality. He trained Claimant's brother in all aspects of the business and groomed him to take over the business. Claimant's brother received college training in business and banking and eventually bought out the family business.

4. Claimant left Hay's Produce in approximately 1993. Claimant was unemployed for several months and then accepted a job as the manager of Mighty Mart, a "mom and pop" grocery store. Claimant managed all aspects of the day-to-day operations of Might Mart for approximately four months. His duties included stocking, cashiering, hiring, firing, scheduling employees, and running the entire store. He earned \$1,700 per month as salary and an additional \$800 per month in profits.

5. After four months Claimant tired of the 15 to 16 hour days at Mighty Mart and in 1994 he returned to Hay's Produce where he did stocking, loading, unloading, and ordering produce. Claimant left Hay's Produce in 1997 due to conflicts with his brother.

6. In 1997, Claimant went to work for ATK assembling center fire ammunition and repetitively handling ammunition plates weighing 15-25 pounds. He was a reliable worker.

7. In March 2006, Claimant was flipping plates on the assembly line at ATK when he felt extreme pain in his right upper arm and elbow and was unable to continue working. Claimant was examined by William England, M.D., who diagnosed tendonitis and prescribed ibuprofen and a tennis elbow brace. Dr. England also suspected carpal tunnel syndrome.

8. On April 13, 2006, Claimant presented to orthopedic surgeon Orié Kaltenbaugh, M.D. At that time Claimant was 39 years old, five feet ten inches tall and weighed 360 pounds. Dr. Kaltenbaugh assessed bilateral hand pain and ordered nerve conduction testing which confirmed bilateral carpal tunnel syndrome.

9. On May 5, 2006, Claimant's family doctor, Elizabeth Black, M.D., confirmed a tentative diagnosis of Type 2 diabetes made at a March 27, 2006, appointment and started Claimant on diabetes medication and regular blood glucose testing.

10. On May 9, 2006, Dr. Kaltenbaugh performed right carpal tunnel release surgery. On May 23, 2006, Dr. Kaltenbaugh performed left carpal tunnel release surgery. Claimant's hand symptoms persisted.

11. On July 17, 2006, Claimant tried to return to light-duty work at ATK sorting brass cases. Within 30 minutes Claimant's hands went numb and he experienced extreme pain forcing him to stop. Subsequent repeat nerve conduction testing showed continued abnormal latencies bilaterally.

12. On August 30, 2006, Craig Stevens, M.D., examined Claimant at Defendants' request and recommended more extensive carpal tunnel releases. Claimant told Dr. Stevens that he did not have diabetes and that a recent test for diabetes was negative. Defendants' Exhibit 16, p. 3.

13. On October 2, 2006, Steven Ozeran, M.D., performed repeat right carpal tunnel release surgery. On March 6, 2007, Dr. Ozeran performed repeat left carpal tunnel release surgery.

14. After the March 2007 surgery, Claimant could not discern much improvement and returned to physical therapy which was not helpful. He later underwent further nerve conduction testing which showed persisting abnormal latencies. Claimant has been advised that he continues to have significant carpal tunnel syndrome and there is another surgery which will not relieve his present pain, but will prevent it from worsening. Claimant has decided against any further surgery at this time.

15. In April 2007, ATK terminated Claimant's employment.

16. From May 2006 through August 2007, Claimant worked with Industrial Commission rehabilitation consultant Lynette Schlader who advised Claimant of available jobs in the area, helped him create a résumé, and gave Claimant multiple copies to use in his job search. Schlader alerted Claimant to job openings for a glass salesman, grocery stocker, and security guard. Schlader's notes attest that Claimant reported to her that he was submitting numerous applications and actively pursuing the job leads she provided. However, Claimant acknowledged at hearing that he never gave his résumé to anyone and that he did not follow up on any of Schlader's suggestions or job leads or submit any applications, except for one job lead which she provided him. With this limited exception, Claimant has not applied for any work since March 2006. Claimant admitted that he did not apply for work at any of several nearby grocery or retail stores, including Albertsons, Rosauers, Wal-Mart, Shopko, Costco, Vigg's Produce, A&B Grocery, or IGA.

17. Since 2007, Claimant has been receiving monthly long-term disability payments of \$1,250 from MetLife Insurance; prior to that he received short-term disability from the beginning of his carpal tunnel syndrome in 2006. In April 2007, Claimant applied for Social Security Disability. His application was denied and he has appealed. At hearing Claimant acknowledged that his monthly disability benefit payments would stop if he got a job.

18. At hearing Claimant testified that he rarely drives a vehicle due to his bilateral hand pain. He claimed to have limited computer skills, but admitted he plays fantasy football on his computer. He testified that in a typical day he arises and helps get his son to school. Claimant does minimal housework, such as folding three or four towels, before he must stop due to hand pain. He testified he tried raking leaves last fall and only tolerated it for about five minutes. Claimant uses a riding mower to mow his lawn. He testified that his wife has to open jar lids for him. Claimant testified that he sleeps less than two hours at a time in his recliner with his arms resting on pillows. He takes Hydrocodone for his carpal tunnel pain and reported at hearing that his pain is increasing. He testified that he recently attempted to change a thermostat secured by two screws, but dropped the screwdriver several times in his attempt to remove the first screw and took an hour to finish the project. Claimant does not believe he could work in a grocery store again.

19. Claimant testified he does not see much of a future for himself. He claims to have essentially no function in his hands and arms. He has considered formal retraining but has nothing in mind. He admitted that he does not want to take a \$7.00 per hour job and lose his \$1,250 per month long-term disability benefits.

20. Having observed Claimant and closely compared his testimony with the medical records and other hearing exhibits, especially the records of Lynette Schlader and Dr. Stevens, both of whom Claimant apparently intentionally sought to mislead, the Referee concludes that Claimant is not a credible witness.

DISCUSSION AND FURTHER FINDINGS

21. 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).

22. **Permanent Impairment.** “Permanent impairment” is any anatomic or functional abnormality or loss after maximal medical rehabilitation has been achieved and which abnormality or loss, medically, is considered stable or non-progressive at the time of evaluation. Idaho Code § 72-422. “Evaluation (rating) of permanent impairment” is a medical appraisal of the nature and extent of the injury or disease as it affects an injured employee’s personal efficiency in the activities of daily living, such as self-care, communication, normal living postures, ambulation, traveling, and non-specialized activities of bodily members. Idaho Code § 72-424. When determining impairment, the opinions of physicians are advisory only. The Commission is the ultimate evaluator of impairment. Urry v. Walker & Fox Masonry Contractors, 115 Idaho 750, 755, 769 P.2d 1122, 1127 (1989).

23. Claimant asserts that he did not have diabetes and was not taking insulin prior to March 2006, when he was diagnosed with carpal tunnel syndrome at ATK.

24. Dr. Stevens rated Claimant’s impairment at 6% of the whole person with one-half attributable to his diabetes. Dr. Ozeran opined that Claimant’s impairment rating should not be apportioned to pre-existing diabetes. However his conclusion was based upon the mistaken understanding that Claimant did not have diabetes when Dr. Kaltenbaugh performed the first carpal tunnel release surgery.

25. Rodde Cox, M.D., examined Claimant at Defendants’ request and rated Claimant’s permanent impairment at 15% of the whole person according to the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, with 7% impairment attributed to Claimant’s pre-existing diabetes and 8% impairment to his carpal tunnel syndrome. Dr. Cox testified that diabetes affects the overall health of the nerves and thus is a significant factor in Claimant’s failure to respond better to his multiple carpal tunnel releases. Dr. Cox also testified

that Claimant's Type 2 diabetes developed over an extended period of several months to a few years. He noted that Claimant's blood chemistry profile showed objective indications of diabetes existing prior to Claimant's first report of carpal tunnel symptoms at ATK.

26. Claimant first reported right upper extremity symptoms on March 14, 2006. On March 27, 2006, Dr. Black diagnosed Type 2 diabetes versus impaired fasting glucose. On April 4, 2006, Dr. Stoutin first mentioned carpal tunnel syndrome in his notes. On April 13, 2006, Claimant reported to Dr. Kaltenbaugh that he had been experiencing pain in his hands and arms for three weeks. At that time Claimant weighed 360 pounds. Dr. Kaltenbaugh formally diagnosed Claimant with bilateral carpal tunnel syndrome on April 21, 2006. On May 5, 2006, Dr. Black described Claimant as returning for "follow-up of ... type 2 diabetes." Defendants' Exhibit 11, p. 8. Dr. Cox noted that Claimant's hemoglobin A1c at that time was abnormally high—indicative of elevated blood sugar levels over at least the prior month and a clear sign of poorly controlled diabetes. On May 9, 2006, Dr. Kaltenbaugh performed the first carpal tunnel surgery.

27. Dr. Cox's testimony is well-reasoned and founded upon an accurate understanding of the dates Claimant was diagnosed with carpal tunnel and diabetes. The record demonstrates that Claimant suffered Type 2 diabetes prior to the onset of his carpal tunnel syndrome.

28. Claimant has proven he suffers permanent impairment totaling 15% of the whole person, consisting of 8% impairment due to his work-related carpal tunnel syndrome and 7% impairment due to his pre-existing diabetes.

29. **Permanent Disability.** "Permanent disability" or "under a permanent disability" results when the actual or presumed ability to engage in gainful activity is reduced or absent because of permanent impairment and no fundamental or marked change in the future can be reasonably expected. Idaho Code § 72-423. "Evaluation (rating) of permanent disability" is an appraisal of the injured employee'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

nonmedical factors provided in Idaho Code § 72-430. Idaho Code § 72-425. Idaho Code § 72-430 (1) provides that in determining percentages of permanent disabilities, account should be taken of the nature of the physical disablement, the disfigurement if of a kind likely to handicap the employee in procuring or holding employment, the cumulative effect of multiple injuries, the occupation of the employee, and his or her age at the time of accident causing the injury, or manifestation of the occupational disease, consideration being given to the diminished ability of the affected employee to compete in an open labor market within a reasonable geographical area considering all the personal and economic circumstances of the employee, and other factors as the Commission may deem relevant.

30. The test for determining whether a claimant has suffered a permanent disability greater than permanent impairment is “whether the physical impairment, taken in conjunction with non-medical factors, has reduced the claimant’s capacity for gainful employment.” Graybill v. Swift & Company, 115 Idaho 293, 294, 766 P.2d 763, 764 (1988). In sum, the focus of a determination of permanent disability is on the claimant’s ability to engage in gainful activity. Sund v. Gambrel, 127 Idaho 3, 7, 896 P.2d 329, 333 (1995).

31. As noted previously, the record establishes that Claimant has not been forthright on prior occasions, thus his testimony alone of his limitations is not persuasive. However, nerve conduction testing after his repeat bilateral carpal tunnel releases documented persisting abnormal latencies, thus the medical restrictions imposed by Drs. Stevens, Ozeran, and Cox rest upon an objectively verified and reliable foundation. Dr. Cox opined that Claimant should avoid repetitive forceful gripping with both hands. Dr. Ozeran concluded that Claimant could not return to his prior employment at ATK, but noted there was no reason Claimant could not work. He reported that Claimant could do some lifting, pushing, and pulling, but not on a repetitive basis. Dr. Stevens, who examined Claimant at Defendants’ request, restricted Claimant to light-duty work lifting 25 pounds occasionally, with repetitive arm-hand activity only occasionally.

32. Claimant testified that he does not believe he could work in the produce section of a large grocer such as Albertsons, Safeway, or Rosauers. He believed he could not move 50-pound crates of apples and oranges, or stock vegetables in 25 to 100-pound boxes. Claimant believed that moving produce out of coolers and placing it on display would require constant handling of product. He testified that he could not do general merchandise stocking by hand, as is often required in retail businesses. He did not believe he could operate a cash register due to the repetitious movements required. Claimant also believed he lacked the managerial experience to work in very large grocery stores.

33. Lynette Schlader's notes indicate that work is available for Claimant as a retail salesperson, assistant grocery stocker, hotel night auditor, security guard, juvenile detention specialist, or receptionist. Schlader noted in April 2007 that Claimant intended to go to college and study business that fall. However, he subsequently began receiving long-term disability benefits through MetLife and did not pursue further education. Schlader noted that Claimant could work in the following positions at the hourly local wage indicated: assistant retail manager at \$12.02 per hour, hotel front desk clerk or night auditor at \$8.00 per hour, assistant grocery manager at \$10.00 per hour, retail salesperson at \$8.50 per hour, or security guard at \$6.91 per hour. Claimant maintains that he has no keyboarding skills and professed limited computer skills, except for acknowledging that he plays fantasy football. However, Schlader's records indicate that Claimant has computer skills involving the internet, e-mail, Word, Excel, and limited bookkeeping.

34. Claimant's vocational expert, Nancy Collins, Ph.D., testified that the first quartile wage for a sales supervisor or manager in Claimant's labor market would be \$9.68 per hour. She reported this would likely be Claimant's post-injury earning capacity. Dr. Collins opined that Claimant could work as a hotel night auditor, security guard, front desk clerk, reservationist, and perhaps at specific jobs as a retail assistant manager, retail sales associate, or customer service

representative. Dr. Collins reported that Claimant had a loss of wage earning capacity of at least 33% and testified at her deposition that his loss of earning capacity was probably closer to 40%. Dr. Collins acknowledged that although Claimant would likely enter retail sales at a wage of between \$8.00 and \$9.00 per hour, his earnings would likely increase and his disability decrease over time.

35. Defendants' vocational expert, Tom Moreland, evaluated employment options for Claimant and concluded that Claimant likely experiences a 60% loss of labor market access. However, Moreland noted that Claimant has 20 years of experience as an assistant grocery manager and agreed with Schlader's notes that Claimant could work as an assistant retail manager. Moreland noted that work as an assistant retail manager at \$12.08 per hour would result in a loss of earnings of approximately 17% as compared to Claimant's time of injury wage. Moreland also noted that in the prior six months, 64 security guard, hotel clerk, and rental clerk positions were filled locally at \$7.00 to \$8.00 per hour. Moreland testified that Claimant could reenter the labor market in retail management earning potentially \$15.00 per hour and that even if Claimant entered at the first quartile wage rate he would likely achieve the median wage rate in retail management within two years.

36. At hearing Claimant seemed resigned to an unproductive future. He has not effectively managed his diabetes and Dr. Cox noted that even at the time of the hearing Claimant's diabetes continued to be poorly controlled. Claimant collects monthly long-term disability benefits from MetLife rather than pursue employment or education options. He inquired about other employment at ATK within his restrictions, but located none. He has made almost no attempt to find employment since developing carpal tunnel syndrome in early 2006.

37. Claimant was earning \$14.50 per hour plus benefits at the time he developed carpal tunnel syndrome. Based on Claimant's total impairment rating of 15% of the whole person, his permanent work restrictions of lifting up to 25 pounds occasionally, inability to use

his hands for repetitive activities or forceful gripping, and considering his non-medical factors including his age, high school education, and limited transferable skills, Claimant's ability to engage in gainful activity has been reduced. The Referee concludes that Claimant has established a permanent disability of 25%, inclusive of his permanent impairment.

38. **Apportionment.** Idaho Code § 72-406 (1) provides:

In cases of permanent disability less than total, if the degree or duration of disability resulting from an industrial injury or occupational disease is increased or prolonged because of a pre-existing physical impairment, the employer shall be liable only for the additional disability from the industrial injury or occupational disease.

39. Claimant herein worked full-time, was highly functional in spite of his pre-existing diabetes, and did not suffer any appreciable disability beyond his permanent impairment prior to developing carpal tunnel syndrome in 2006 at ATK. However, the degree of disability resulting from his work-related carpal tunnel syndrome is increased and prolonged because of his pre-existing diabetes.

40. Dr. Stevens reported that Claimant's pre-existing diabetes interfered with his successful recovery from his carpal tunnel surgeries. Dr. Stevens noted that it was extremely unusual to fail to respond to carpal tunnel release on both sides unless a co-existing factor—in this case diabetes—interfered with recovery and prevented a return to full function after surgery. Dr. Cox similarly testified that Claimant's poor result from his carpal tunnel surgeries is due to his pre-existing diabetes which compromises the health of his nerves making them more susceptible to compression and less likely to heal even after surgical release. For this reason both Dr. Cox and Dr. Stevens apportioned Claimant's permanent impairment arising from carpal tunnel syndrome 50% to his pre-existing diabetic condition and 50% to his work at ATK. It is highly significant that after Claimant's first bilateral carpal tunnel releases in May 2006, Dr. Kaltenbaugh gave Claimant a full work release effective July 17, 2006. However, Claimant failed in his attempt to return to work, even light-duty work. On July 27, 2006, Dr. Kaltenbaugh

recorded that Claimant could return and should have returned to work as of July 17, 2006. Dr. Kaltenbaugh noted that Claimant's persisting bilateral hand symptoms, which precluded him from working, were likely not the result of his work-related condition. Had Claimant been able to return to his full work duties at ATK in July 2006, as Dr. Kaltenbaugh expected, Claimant would arguably have suffered little if any loss of wage earning capacity.

41. The Idaho Supreme Court has rejected a mechanical apportionment of disability in excess of impairment under Idaho Code § 72-406. See Henderson v. McCain Foods, Inc., 142 Idaho 559, 130 P.3d 1097 (2006). The formula established in Carey v. Clearwater County Road Department, 107 Idaho 109, 112, 686 P.2d 54, 57 (1984), governs apportionment under Idaho Code § 72-332 but is not applicable to apportionment pursuant to Idaho Code § 72-406.

42. In the present case, Dr. Cox's opinion is the most logical and well-reasoned evidence in the record explaining the role of Claimant's pre-existing diabetes in his failure to respond to repeated carpal tunnel release surgeries and his continuing significant bilateral hand symptoms. Claimant's bilateral hand and arm limitations, which Dr. Cox attributes 50% to Claimant's work at ATK and 50% to his pre-existing diabetes, restrict his upper extremity functionality, thereby reducing his wage earning capacity and increasing his disability. Defendants have established that Claimant's disability in excess of permanent impairment should be apportioned 50% to his pre-existing permanent physical impairment of diabetes and 50% to his work at ATK.

CONCLUSIONS OF LAW

1. Claimant has proven that he suffers permanent partial impairment of 15% of the whole person: 8% of the whole person due to his work at ATK and 7% of the whole person due to his pre-existing diabetes.

2. Claimant has proven that he suffers a permanent partial disability of 25%, inclusive of his 15% permanent impairment.

3. Claimant's permanent partial disability in excess of impairment should be apportioned 50% to his pre-existing diabetes pursuant to Idaho Code § 72-406. Claimant's permanent disability attributable to his work-related carpal tunnel syndrome is 13%, inclusive of his 8% whole person permanent impairment.

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 25th day of September, 2009.

INDUSTRIAL COMMISSION

/s/ _____
Alan Reed Taylor, Referee

ATTEST:

/s/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of October, 2009, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

THOMAS W CALLERY
PO BOX 854
LEWISTON ID 83501

BENTLEY G STROMBERG
PO BOX 1510
LEWISTON ID 83501

sc

/s/ _____

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

STEVEN HAY,)	
)	
Claimant,)	
)	IC 2006-003348
v.)	
)	
ATK ALLIANT TECHSYSTEMS/ AMMUNITION ACCESSORIES,)	
)	ORDER
Employer,)	
)	
and)	
)	
INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA,)	Filed: October 7, 2009
)	
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 proven that he suffers permanent partial impairment of 15% of the whole person: 8% of the whole person due to his work at ATK and 7% of the whole person due to his pre-existing diabetes.
2. Claimant has proven that he suffers a permanent partial disability of 25%, inclusive of his 15% permanent impairment.

3. Claimant's permanent partial disability in excess of impairment should be apportioned 50% to his pre-existing diabetes pursuant to Idaho Code § 72-406. Claimant's permanent disability attributable to his work-related carpal tunnel syndrome is 13%, inclusive of his 8% whole person permanent impairment.

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

DATED this 7th day of October, 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 7th day of October, 2009, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

THOMAS W CALLERY
PO BOX 854
LEWISTON ID 83501

BENTLEY G STROMBERG
PO BOX 1510
LEWISTON ID 83501

sc

/s/