BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

ROBERT BAKER, Claimant, v. MODERN ROOFING & INSULATION COMPANY, INC., Employer, and LIBERTY NORTHWEST INSURANCE CORPORATION, Surety, and STATE OF IDAHO, INDUSTRIAL SPECIAL INDMENITY FUND, Defendants.	**IC 2005-527212** **2006-519334** **2007-005921** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** **Filed April 27, 2012**

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Michael E. Powers, who conducted a hearing in Pocatello on November 1, 2011. Claimant was present and represented by Albert Matsuura of Pocatello. Roger L. Brown of Boise represented Employer/Surety. Paul B. Rippel of Idaho Falls represented State of Idaho, Industrial Special Indemnity Fund (ISIF). Oral and documentary evidence was presented, and the record remained open for the taking of one post-hearing deposition. Employer/Surety and ISIF submitted post-hearing briefs, and this matter came under advisement on January 24, 2012.

ISSUES

At hearing, Employer/Surety and ISIF stipulated that Claimant was totally and permanently disabled as of the time of the hearing, therefore, the only remaining issues are:

1. Whether ISIF is liable pursuant to Idaho Code § 72-332; and, if so

2. Apportionment under the *Carey* formula.[1]

CONTENTIONS OF THE PARTIES

Claimant contends, and Defendants concede, that he is permanently and totally disabled as of the time of the hearing. Claimant will leave it to the Commission to apportion (or not) the liability for that permanent disability between Employer/Surety and ISIF.

Employer/Surety contends that Claimant's permanent disability is the result of his manifest pre-existing physical impairments combining with his November 25, 2005 accident (last accident). Therefore, ISIF bears some liability for Claimant's permanent and total disability.

ISIF contends that Claimant's permanent and total disability is the sole result of the last industrial accident wherein he suffered a serious right shoulder injury that took him out of his workforce. Therefore, ISIF bears no responsibility for Claimant's disability.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant, taken at the hearing.

2. Joint Exhibits A-S, admitted at the hearing.

3. The post-hearing deposition of Richard G. Taylor, Ph.D., taken by ISIF[2] on November 2, 2011.

After having considered all the above evidence and briefs 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 54 years of age and had resided in the Pocatello area for most of his life at the time of the hearing. He completed the 10th grade and eventually obtained his GED at Idaho State University. His work history consisted primarily of roofing. Claimant was employed by Employer year-round from 1983 to 2005 as a working foreman in charge of a

[1] See, *Carey v. Clearwater County Road Department*, 107 Idaho 109, 686 P.2d 54 (1984).

[2] Claimant had originally retained Dr. Taylor and intended to depose him, but in light of Defendants' stipulation that Claimant is totally and permanently disabled, he decided not to take his deposition. ISIF opted to do so pursuant to Rule 10, E-2 JRP.

roofing crew on residential, commercial, and industrial installations. He would spend between 10 and 13 hours a day on roofs. At the time of his last accident, Claimant was earning $17.50 an hour with life and medical insurance, as well as a 401K retirement plan.

Right shoulder injury

2. On November 28, 2005, Claimant, who was 48 years of age at the time, suffered an injury to his right shoulder when he fell from a church steeple. He described his fall at hearing:

> I was on a 17 and 12 sloped roof, which is about a wall. And the toeboards [sic] that we had put up broke; and I slipped down the roof. And at the edge of the roof, the rope had got tangled around - - the safety line was tangled around my right arm; and when I hit the end of it, it yanked the shoulder out. And then I kind of bounced against the wall, and it shoved it back into my ribs.

Hearing Transcript, p. 15.

Right shoulder treatment

3. Claimant presented to the Cassia Regional Medical Center Emergency Department[3] on the day of his accident. He was diagnosed with a right shoulder dislocation that was reduced under conscious sedation. Claimant was to follow-up with orthopedic surgeon Kenneth Newhouse, M.D., who had previously operated on Claimant's right shoulder in 1997.

Kenneth Newhouse, M.D.

4. Claimant first saw Dr. Newhouse on December 9, 2005 and told him that he was having no problems with his right shoulder prior to his last accident even though he had had a right shoulder rotator cuff repair in 1997. A subsequent CT scan of the right shoulder revealed osteoarthritis, a Hill-Sachs deformity, and an AC joint separation. When a trial of physical therapy failed, Dr. Newhouse brought Claimant to diagnostic arthroscopy surgery on April 19, 2006 wherein he removed loose bodies, performed an extensive debridement, and repaired Claimant's right rotator cuff. Dr. Newhouse's findings recorded in his operative report reveal the seriousness of Claimant's injury:

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[3] Claimant was working in Burley at the time of his accident.

> 1. The patient has diffuse mild to moderate grade II-III changes throughout his glenoid cartilages and humeral head.
>
> 2. Abnormal inferior recess and posterior bare area. The inferior recess had evidence of multiple chondral loose bodies and suture knots from a previous rotator cuff repair.
>
> 3. The biceps tendon was intact but anteriorly subluxed.
>
> 4. The rotator cuff was torn. There was evidence of infraspinatus but the entire supraspinatus and infraspinatus construct had actually been subluxated and torn from anteriorly and had receded posteriorly.
>
> 5. The anterior capsular ligamentous construct was completely abnormal. There were no identifiable structures. The subscapularis was not identifiable and the anterior, middle or inferior glenohumeral ligaments were not identifiable although there was a significant amount of scar tissue, which came taut with abduction/external rotation.

Exhibit B-2, p. 15.

5. In an April 27, 2006, follow-up note, Dr. Newhouse remarked, "I told him that I think he definitely needs to be vocationally rehabilitated away from laboring activities." *Id.*, p. 17. On May 4, 2006, Dr. Newhouse released Claimant to work with no use of his right arm or climbing ladders.

Gary Walker, M.D. --- IME

6. On June 22, 2006, physiatrist Gary Walker, M.D., performed an IME regarding Claimant's right shoulder at Employer/Surety's request. Dr. Walker opined that Claimant was not at MMI, as he was just beginning the "active stage" of physical therapy. He surmised that, although Claimant had underwent right rotator cuff repair in 1997, he did well for the following eight years so his current right shoulder problems are directly related to his fall from the steeple. Dr. Walker deemed it likely that, even after reaching MMI, Claimant would be permanently medically restricted from ladder climbing or being on roofs.

7. Claimant returned to Dr. Walker on September 16, 2006. He noted that Claimant was not recovering well from his right shoulder surgery. He was reporting significant pain and

exhibited crepitus and poor range of motion. Dr. Walker expressed the following thoughts regarding Claimant's condition:

> For a rotator cuff repair this is going fairly slow although he had significant injury requiring extensive debridement. At this point I am certainly concerned about his slow progress. The patient is working hard in therapy. I see no evidence or suggestion at all of malingering. Unfortunately his shoulder was extensively injured and the surgery was quite extensive. My concern at this point is the slow progress and the need for additional treatment or considerations.

Exhibit B-8, p. 4.

Back to Dr. Newhouse

8. Claimant followed up with Dr. Newhouse on September 27, 2006, by which time Dr. Newhouse had reviewed Dr. Walker's IME. Dr. Newhouse basically agreed with Dr. Walker's report, but disagreed with Dr. Walker's recommendation for a corticosteroid injection and diagnostic arthroscopy, because such would not change the natural history of the progression of Claimant's right shoulder symptoms.

9. On November 10, 2006, Dr. Newhouse referred Claimant to L.E. Weeks, M.D., a shoulder specialist in Salt Lake City, Utah, for a second opinion. He made this referral after reviewing a new right shoulder MRI that revealed:

> I have reviewed his MRI. It does appear that he has had partial healing, and/or partial re-tearing of his supraspinatus tendon. In any event this is a very difficult case in that he has a probable complete disruption of his subscap which is chronic, partial re-tear of his supraspinatus tendon, shoulder instability and multiple previous surgeries.

Exhibit B-2, p. 31.

L.E. Weeks, M.D.

10. Claimant first saw Dr. Weeks on December 11, 2006. Claimant indicated that he has had no shoulder problems at all[4] between his 1997 right shoulder surgery and his steeple fall.

[4] Claimant reported that he could carry 120-pound rolls on his shoulders up to the roof before his last accident.

Dr. Weeks diagnosed a right rotator cuff tear, a large recurrent tear of the supraspinatus and subscapularis and right glenohumeral degenerative joint disease. Dr. Weeks discussed the "great difficulty of this severe problem" with Claimant and recommended a right humeral head resurfacing with pectoralis major transfer and biceps tenodesis. The procedure would not likely help Claimant's active elevation, but it could help relieve some pain and restore some function. In the event Claimant chose not to proceed with the surgery, Dr. Weeks opined he would be at MMI with a 20% whole person PPI rating. Dr. Weeks permanently restricted Claimant to no use of the right arm.

11. On February 27, 2007, Dr. Weeks performed a right shoulder hemiarthroplasty/resurfacing, a right biceps tenodesis, and a right pectoralis major transfer. Claimant was to follow-up with Dr. Newhouse for wound care.

12. Dr. Weeks placed Claimant in physical therapy with which Claimant was compliant. Nonetheless, although there was some improvement in function, Claimant continued to experience pain and crepitus in his right shoulder. Therefore, on November 27, 2007, Dr. Weeks performed a right shoulder arthroscopy with debridement and an open rotator cuff repair.

13. On January 5, 2008, Dr. Weeks assigned Claimant a 25% whole person PPI rating for his right shoulder by utilizing the 5th Edition of the *AMA Guides*. Dr. Weeks permanently restricted Claimant from using his right arm in a work situation, although he could use his right hand.

Other present post-last accident medical conditions

<u>2006 left carpal tunnel</u>:

14. Claimant first complained of left carpal tunnel symptoms on August 10, 2006 to Dr. Newhouse. He indicated that he had experienced left hand tingling and numbness for several years and it was gradually getting worse. Dr. Newhouse performed a left carpal tunnel release on November 9, 2006 with good results. However, Claimant testified that his fingers will not "come together."

2006 right carpal tunnel:

15. Claimant first reported to Dr. Newhouse right carpal tunnel symptoms on September 31, 2006. Due to a possible entrapment of the median nerve at the elbow, Dr. Newhouse referred Claimant to his hand specialist partner, Vermon Esplin, M.D., who first saw Claimant on August 30, 2007. Even though nerve conduction studies and EMG were negative, Dr. Esplin performed an open right carpal tunnel release on September 8, 2008. Post-surgery, Claimant developed a right "trigger thumb" which was released on an unknown date. As with Claimant's left carpal tunnel release, he had good results with the exception of not being able to bring his fingers together.

DISCUSSION AND FURTHER FINDINGS

16. The Referee finds, pursuant to the parties stipulation, that Claimant was totally and permanently disabled as of the time of the hearing on November 1, 2011.

Idaho Code § 72-332 provides:

> **Payment for second injuries from industrial special indemnity account. --** (1) If an employee who has a permanent physical impairment from any cause or origin, incurs a subsequent disability by an injury or occupational disease arising out of and in the course of his [or her] employment, and by reason of the combined effects of both the pre-existing impairment and the subsequent injury or occupational disease or by reason of the aggravation and acceleration of the pre-existing impairment suffers total and permanent disability, the employer and surety shall be liable for payment of compensation benefits only for the disability caused by the injury or occupational Idaho Code § 72-332 disease, including scheduled and unscheduled permanent disabilities, and the injured employee shall be compensated for the remainder of his income benefits out of the industrial special indemnity account.
>
> (2) "Permanent physical impairment" is as defined in section 72-422, Idaho Code, provided, however, as used in this section such impairment must be a permanent condition, whether congenital or due to injury or occupational disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining re-employment if the claimant should become unemployed. This shall be interpreted subjectively as to the particular employee involved; however, the mere fact that a claimant is employed at the time of the subsequent injury shall not create a presumption that the pre-existing permanent

physical impairment was not of such seriousness as to constitute such hindrance or obstacle to obtaining employment.

There are four elements that must be proven in order to establish liability of ISIF:

1. A pre-existing impairment;

2. The impairment was manifest;

3. The impairment was a subjective hindrance to employment; and

4. The impairment combines with the industrial accident in causing total disability. *Dumaw v. J.L. Norton Logging*, 118 Idaho 150, 795 P.2d 312 (1990).

Pre-last accident medical conditions resulting in physical impairments

Left ankle:

17. In 1978 Claimant was involved in a motorcycle accident wherein he shattered his left ankle, among other serious injuries. He was awarded a 2% whole person PPI rating for this injury.

Right shoulder:

18. In 1997, Claimant slipped on some ice and injured his right shoulder resulting in a rotator cuff repair by Dr. Newhouse. Claimant was assigned a 2% whole person PPI rating for this injury.

Left shoulder and right knee:

19. In 2000, a ladder slipped and Claimant injured his right shoulder and left knee resulting in a left rotator cuff repair and a right knee medial meniscus repair surgeries. He was assigned a 6% whole person PPI rating for his left shoulder and a 1% whole person rating for his right knee.

Manifest

20. It is undisputed that Claimant's pre-existing physical impairments were manifest and the Referee so finds.

Subjective hindrances

The subjective hindrance component of the test is found at I.C. § 72-332(2). That section provides:

> "Permanent physical impairment" is as defined in section 72-422, Idaho Code, provided, however, as used in this section such impairment must be a permanent condition, whether congenital or due to injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining re-employment if the claimant should become employed. This shall be interpreted subjectively as to the particular employee involved, however, the mere fact that a claimant is employed at the time of the subsequent injury shall not create a presumption that the pre-existing permanent physical impairment was not of such seriousness as to constitute such hindrance or obstacle to obtaining employment.

Therefore, a preexisting permanent physical impairment, in order to qualify for ISIF liability, must be of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining re-employment should a claimant become unemployed. Further, this assessment shall be made subjectively as to the particular employee involved. That an injured worker may be employed at the time of a subsequent work injury shall not create a presumption that a preexisting physical impairment did not constitute an obstacle to obtaining employment. The case of *Archer v. Bonners Ferry Datsun*, 117 Idaho 166, 786 P.2d 557 (1990) makes it clear that an injured worker's attitude toward a preexisting condition is but one factor to be considered by the Commission in determining whether the preexisting physical impairment constituted a subjective hindrance. After *Archer*, the Commission is required to weigh a wide variety of medical and nonmedical factors, expert and lay testimony in making the determination as to

whether or not a preexisting condition constituted a hindrance of obstacle to employment for the particular claimant.

21. Here, it is clear that Claimant did not allow his preexisting shoulder, knee and ankle injuries to keep him from continuing in his work as a roofer. However, that Claimant was employed as a roofer as of the date of the 2005 accident, or the fact that Claimant found ways to do his work notwithstanding the limitations imposed by his preexisting conditions, does not necessarily lead to the conclusion that Claimant's preexisting conditions did not amount to a subjective hindrance to Claimant. On the contrary, the Referee finds that Claimant's preexisting shoulder, knee and ankle conditions did reasonably constitute a subjective hindrance to employment for Claimant. As noted by Employer/Surety, Claimant's ankle condition causes him to experience a good deal of pain when he engages in prolonged standing and walking. He made adjustments in the way he performed his job because of his ankle injury, testifying that his knee and his ankle injury made it difficult for him to kneel. Claimant typically wore an ankle brace to provide ankle support, especially when working on steeply inclined surfaces. Although Claimant may have found a way to accommodate his left ankle limitations in his job as a roofer, the Referee concludes that the left ankle condition did constitute a hindrance to Claimant in the way he did this work, and would have constituted a hindrance to Claimant in other employments, should he have lost his job as a roofer.

22. With respect to the impairment arising from Claimant's 1997 right shoulder injury, the Referee finds that this impairment, too, constituted a subjective hindrance to Claimant within the meaning of *Archer, supra*. Claimant was cautioned by his treating physician to avoid overusing the shoulder. He was evidently unable, or unwilling, to strictly follow these recommendations. As a consequence, he suffered chronic right shoulder dislocations prior to the

2005 accident. The Referee finds these facts sufficient to support the conclusion that Claimant's preexisting physical impairment for his right shoulder constituted a subjective hindrance to Claimant's employability.

23. For the same reason, the Referee finds that the preexisting physical impairment for Claimant's left shoulder constituted a subjective hindrance to Claimant's employability prior to the 2005 accident. Claimant received permanent restrictions against climbing ladders, working on roofs, and lifting in excess of 100 pounds. These restrictions were accommodated, to some extent, by Modern Roofing, and, of course, Claimant continued in his work as roofer following the 2000 accident. Even so, the Referee concludes that the prophylactic limitations/restrictions imposed by Claimant's treating physician are sufficient to demonstrate that his left shoulder impairment constituted a subjective hindrance to Claimant in his employment, even though he was stoic or stubborn enough to continue working as a roofer notwithstanding his physician's recommendations.

24. Finally, because of his preexisting right knee impairment, Claimant was required to change the way he did his work, scooting along the roof on his buttocks, rather than kneeling.

25. Although none of Claimant's preexisting physical impairments were significant enough to cause him to abandon his work as roofer, each of these impairments significantly impacted the way he did his work. Moreover, the limitations/restrictions given to Claimant for his preexisting physical impairments were of sufficient magnitude to impact Claimant's ability to perform other work that might have relied more extensively on his ability to stand, walk, climb ladders, or engage in continuous overhead work. For these reasons, the Referee finds that Claimant has met his burden of establishing that the preexisting impairments for his shoulders, knee and ankle all constituted a subjective hindrance to Claimant's employability.

Combination

26. However, the Referee concludes that Claimant's claim against ISIF still fails because the persuasive vocational expert evidence establishes that his right shoulder injury from his steeple fall, alone, rendered him totally and permanently disabled.

Vocational evidence

Mary Barros-Bailey, Ph.D.

27. Surety retained Dr. Barros-Bailey to prepare a Disability Evaluation (see Exhibit H). Dr. Barros-Bailey's qualifications are well known to the Commission and will not be repeated here. She interviewed Claimant and reviewed pertinent vocational and medical records. She prepared a report dated July 27, 2010. In her report, Dr. Barros-Bailey developed a table to gauge Claimant's disability under various scenarios. Ultimately, she reaches the conclusion that Claimant has suffered total disability as the result of a combination of all his injuries. Dr. Barros-Bailey did not elaborate regarding her "combination" theory and was never asked to do so.

Richard G. Taylor, Ph.D.

28. Dr. Taylor is a rehabilitation counselor and is the director of services for students with disabilities at Brigham Young/Idaho in Rexburg. His CV is found at Exhibit 1 to his deposition. Dr. Taylor was originally retained by Claimant to assess his employment capabilities. He telephonically interviewed Claimant and obtained Claimant's education, work, and medical histories. He prepared a report dated July 20, 2011 and was deposed.

29. Dr. Taylor placed Claimant's duties as a roofer in the medium-to-heavy work category and noted that Claimant could perform this work until his last accident. Dr. Taylor agrees that Claimant is totally and permanently disabled, but would select the date of his last

accident in November 2005 as the commencement of that disability, rather than as of the date of the hearing. In arriving at his opinion, Dr. Taylor only utilized restrictions that were imposed as a result of Claimant's last accident.[5] Dr. Taylor testified that Claimant informed him that after each of Claimant's prior injuries he returned to work without restrictions.

30. Dr. Taylor reviewed Dr. Barros-Bailey's report regarding Dr. Newhouse's July 17, 2001 letter to Surety indicating that Claimant would probably not be able to return to roofing on a full-time basis. He explained his understanding of Claimant's situation:

> My understanding would be not, that he did not work within the restrictions given by Dr. Newhouse.
>
> He felt comfortable going back and doing a full range of work as he had done before after a period of, you know, convalescence and rehabilitation. At least that was my understanding; he did a full range of work.

Dr. Taylor Deposition, p. 28.

31. The Referee is persuaded that Claimant's last accident independently causes Claimant's total and permanent disability. Although Claimant self-accommodated and was offered some accommodations by Employer following his various pre-last accident injuries and recuperations, nonetheless, from 2001 to 2005, he always returned to his pre-last accident position as a roofer. He loved his job and was considered a valuable, experienced employee. Loose toe boards, not his physical condition, caused him to slip down the side of a church steeple and almost off the roof itself but for getting tangled up in a safety rope that nearly tore off his right arm. He never returned to work[6] and underwent three post-last accident shoulder surgeries, and may need yet another. He sees a pain specialist primarily for pain associated with his right

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[5] Dr. Taylor did not consider Claimant's bilateral carpal tunnel conditions diagnosed and treated in 2006.

[6] Claimant testified that he attempted to return to work at light-duty for 4 hours a day, but Employer "got mad" when Claimant refused Employer's request to once again get up on a roof. His employment then ended.

shoulder. Both Dr. Newhouse and Dr. Weeks agree that Claimant's right shoulder injury involved a massive rotator cuff tear and was severe. Dr. Weeks limited Claimant to no use of the right arm for work, although he could use his right hand. Claimant cannot return to his lifelong occupation of roofing.[7] He was assigned the rather significant whole person PPI ratings of between 14% and 25% for his 2005 right shoulder injury. He testified at hearing that his right shoulder was the main source of his pain and discomfort.

32. Claimant testified that after his last accident he could no longer engage in recreational activities such as motorcycle riding, camping, hunting,[8] and limited snowmobiling. He is no longer able to drive a manual transmission due to right shoulder pain when shifting. The Referee noted that Claimant was unable to independently raise his right hand to be sworn in at hearing.

33. Simply put, even though Claimant was not 100% functional before his steeple fall, his right shoulder injury and subsequent restrictions regarding no use thereof would take him out of his labor market, roofing, in any event, and there is no other labor market available to him.

34. The Referee finds that Claimant's pre-existing impairments did not combine with his last accident to render him totally and permanently disabled and, thus, the ISIF is not liable for any of that total disability.

CONCLUSIONS OF LAW

1. Claimant is totally and permanently disabled.

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[7] The Referee acknowledges that as early as 2001, Dr. Newhouse had recommended that Claimant get out of the roofing business. For various reasons, Claimant continued roofing until his last accident.

[8] Claimant utilizes handicap hunting presently.

2. Employer has failed to prove ISIF liability and the Complaint against ISIF should be dismissed with prejudice.

RECOMMENDATION

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

DATED this __12th___ day of April, 2012.

INDUSTRIAL COMMISSION

__/s/_____
Michael E. Powers, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the _27th_ day of April, 2012, 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:

ALBERT MATSUURA
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IDAHO FALLS ID 83405-1219

ge _Gina Espinosa_

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

ROBERT BAKER, Claimant, v. MODERN ROOFING & INSULATION COMPANY, INC., Employer, and LIBERTY NORTHWEST INSURANCE CORPORATION, Surety, and STATE OF IDAHO, INDUSTRIAL SPECIAL INDEMNITY FUND, Defendants.	**IC 2005-527212** **2006-519334** **2007-005921** **ORDER** **Filed April 27, 2012**

Pursuant to Idaho Code § 72-717, Referee Michael E. Powers 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 recommendation 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 totally and permanently disabled.

2. Employer has failed to prove ISIF liability and the Complaint against ISIF is dismissed with prejudice.

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

DATED this _27th__ day of _April__, 2012.

INDUSTRIAL COMMISSION

__/s/_____
Thomas E. Limbaugh, Chairman

__/s/_____
Thomas P. Baskin, Commissioner

_____
R. D. Maynard, Commissioner

ATTEST:

__/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the _27th___ day of __April___ 2012, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

ALBERT MATSUURA
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