

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

ALBERTO CASTANEDA,

Claimant,

v.

CROP PRODUCTION SERVICES, INC., f/k/a
UAP DISTRIBUTION, INC.,

Employer

and

INSURANCE COMPANY OF THE STATE OF
PENNSYLVANIA, Surety,

Defendants.

IC 2007-033482

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

FILED 04/12/2012

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 Twin Falls on February 1, 2011. Claimant, Alberto Castaneda, was present in person and represented by Patrick Brown, of Twin Falls. Defendants, Crop Production Services, Inc., (CPS), and Insurance Company of the State of Pennsylvania were represented by Susan Veltman of Boise. The parties presented oral and documentary evidence. Post-hearing depositions were taken. Defendants submitted a brief, Claimant did not, and the matter came under advisement on December 1, 2011.

ISSUES

The issues to be decided are:

1. Whether the condition for which Claimant seeks benefits was caused by the industrial accident;
2. Whether Claimant is entitled to medical care;

3. Whether Claimant is entitled to temporary disability benefits;
4. Whether Claimant is entitled to permanent partial impairment;
5. Whether Claimant is entitled to permanent disability;
6. Apportionment pursuant to Idaho Code § 72-406; and
7. Whether Claimant is entitled to attorney fees.

CONTENTIONS OF THE PARTIES

All parties agree that Claimant suffered an industrial accident on September 20, 2007, during his employment at CPS. Defendants paid appropriate medical and temporary disability benefits for Claimant's left inguinal hernia repair in October 2007. Claimant asserts he sustained a bilateral hernia due to his 2007 industrial accident and a subsequent recurrent left inguinal hernia. He now seeks medical and temporary disability benefits relating to his bilateral inguinal hernias which were surgically repaired in July 2009. In addition, Claimant seeks permanent impairment and disability benefits due to his 2007 accident. He requests attorney fees for Defendants' denial of benefits for his right inguinal hernia and recurrent left inguinal hernia.

Defendants acknowledge Claimant's right inguinal hernia and recurrent left inguinal hernia, but assert that both hernias developed subsequent to, and were not caused by, his 2007 industrial accident. Defendants maintain that Claimant suffered no permanent impairment or disability due to his 2007 industrial accident.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. Claimant's Exhibits 1-20, and Defendants' Exhibits 1-7, admitted at the hearing;
3. The testimony of Claimant taken at the February 1, 2011 hearing;

4. The post-hearing deposition of F. Bryce Moser, M.D., taken by Claimant on March 8, 2011; and
5. The post-hearing deposition of F. Taylor Johansen, D.O., taken by Claimant on March 8, 2011.

All objections posed during the depositions are overruled except Defendants' objection at page 25 of the Deposition of Patrick McGrane (contained in Claimant's Exhibit 20), which is sustained.

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 Mexico in 1966. He was 44 years old at the time of the hearing. Although he testified at his deposition in English, he testified at hearing only through an interpreter.
2. Claimant attended school in Mexico through the ninth grade. Thereafter he helped feed and care for livestock on a small farm. At the age of 19, he came to the United States and began working in Rupert and Malta. He performed general farm work, including planting, irrigating, cleaning beets and onions, and feeding livestock. In approximately 1990, Claimant began laying water pipe, breaking rock, excavating and operating loaders, forklifts, and bulldozers.
3. In 2004, Claimant began working for CPS, a fertilizer manufacturer and distributor. He packaged and palletized 50-pound bags of fertilizer. He drove loaders and forklifts and often lifted 50-pound fertilizer bags most of his work day.

4. On September 20, 2007, Claimant was lifting bags of fertilizer at work when he felt strong groin pain, particularly on the left side. He reported the incident to his supervisor. On September 21, 2007, Claimant presented to F. Bryce Moser, M.D., with abdominal pain, but did not report any lifting injury. Dr. Moser diagnosed acute prostatitis.

5. On September 26, 2007, Claimant presented to Dr. Moser and reported a lifting injury. Dr. Moser examined Claimant again and diagnosed bilateral inguinal hernias. Dr. Moser referred Claimant for an ultrasound and then to Eduardo Avila, M.D., for surgery. The ultrasound confirmed a small reducible fat containing left inguinal hernia. The right groin region was normal.

6. On October 25, 2007, Dr. Avila performed a laparoscopic repair of Claimant's left inguinal hernia. Dr. Avila confirmed via laparoscopic exploration that Claimant had no evidence of any right inguinal hernia.

7. Claimant was off work until approximately December 2007 and then returned to work with a lifting restriction. He swept and painted trucks, and welded and fixed hoppers. By February 2008, Claimant returned to his normal work duties, including lifting 50-pound bags of fertilizer.

8. At hearing, Claimant testified that his groin pain did not go away after the October 2007 surgery. He testified that he told Dr. Avila about the continuing pain, but Dr. Avila assured him that it was typical post-surgical pain and would resolve over time. Claimant testified that his pain from the surgery on the left side eventually subsided, but the pain from the right side did not. However, he sought no medical treatment for groin pain from December 2007, until July 2008.

9. On July 1, 2008, Claimant returned to Dr. Avila who assessed probable hernia on the right side. Dr. Avila subsequently moved from the area. On July 7, 2008, Claimant underwent an ultrasound that revealed a small reducible fat containing right inguinal hernia. The left groin region was normal.

10. On July 10, 2008, Claimant presented to Ray Hanson, M.D., complaining of right inguinal pain. Dr. Hanson noted that the July 7, 2008 ultrasound showed small properitoneal fat that on Valsalva maneuver tended to enter the right inguinal canal area and reduced when the Valsalva maneuver stopped. On examination, Dr. Hanson could not feel a hernia on either side. He concluded that Claimant had a muscle strain rather than a right inguinal hernia, and recommended treatment with anti-inflammatories and reduced activity for three weeks. Claimant was disgruntled, but finally decided to follow Dr. Hanson's recommendation. Claimant returned to Dr. Hanson on July 24, 2008, and Dr. Hanson instructed Claimant to return again in two weeks if he was still having inguinal symptoms. Claimant resumed his normal work duties and never returned to Dr. Hanson. Claimant did not seek further medical attention for inguinal pain from August 2008 until May 2009.

11. On May 8, 2009, Claimant's job was terminated by Employer. Claimant subsequently filed a discrimination claim with the Idaho Human Rights Commission against Employer.

12. On May 12, 2009, Claimant returned to Dr. Moser, who recorded Claimant's complaints of intermittent right groin pain for the prior two months. Dr. Moser assessed right groin pain of unknown etiology and referred Claimant to F. Taylor Johansen, M.D. A subsequent sonogram revealed a small recurrent left inguinal hernia.

13. On July 30, 2009, Dr. Johansen performed a surgical repair of Claimant's recurrent left-sided inguinal hernia and also a repair of a right-sided inguinal hernia. Claimant's recovery was uneventful. By September 1, 2009, Claimant was doing very well and was released from further medical care. However, Claimant testified at hearing that his 2009 surgery did not help with his groin pain, but that he did not return to a doctor because he lacked insurance or money to pay for further medical treatment. There is no medical evidence that Claimant suffered recurrent hernias after September 1, 2009.

14. At the time of the hearing, Claimant was laid off from working at a stone quarry, where he drove loaders and excavators five days per week, from 10 to 14 hours per day. Claimant had been laid off at the quarry since November 2010.

15. At hearing, Claimant testified that he had groin pain: "[m]y hernias are causing a little pain, so I need to stand up." Transcript, p. 89, ll. 17-18. He testified that his hernia pain never improved after his first or second surgeries. He denied doing anything after his first surgery that caused the need for his second surgery. Claimant testified that nothing decreases his groin pain, but lifting anything increases his pain.

16. Having observed Claimant at hearing and compared his testimony with other evidence in the record, the Referee finds that Claimant's credibility, particularly as to the extent of his ongoing groin pain, is suspect.

DISCUSSION AND FURTHER FINDINGS

17. The provisions of the Idaho 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).

18. **Causation.** The first issue is whether the condition for which Claimant seeks benefits was caused by the industrial accident.

19. A claimant must prove not only that he suffered an injury, but also that the injury was the result of an accident arising out of and in the course of employment. Seamans v. Maaco Auto Painting, 128 Idaho 747, 751, 918 P.2d 1192, 1196 (1996). Proof of a possible causal link is not sufficient to satisfy this burden. Beardsley v. Idaho Forest Industries, 127 Idaho 404, 406, 901 P.2d 511, 513 (1995). A claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability. Langley v. State, Industrial Special Indemnity Fund, 126 Idaho 781, 785, 890 P.2d 732, 736 (1995). “Probable” is defined as “having more evidence for than against.” Fisher v. Bunker Hill Company, 96 Idaho 341, 344, 528 P.2d 903, 906 (1974). Magic words are not necessary to show a doctor’s opinion was held to a reasonable degree of medical probability; only their plain and unequivocal testimony conveying a conviction that events are causally related. Jensen v. City of Pocatello, 135 Idaho 406, 412, 18 P.3d 211, 217 (2001).

20. Claimant herein alleges that his September 20, 2007 industrial accident caused his right inguinal hernia and recurrent left inguinal hernia. He presented the post-hearing deposition testimony of Drs. Moser and Johansen on this issue.

21. Dr. Moser is Claimant’s treating family physician. In distinguishing between a strain and a hernia, Dr. Moser testified that a muscle strain is an actual tearing of the muscle at a microscopic level due to over-use, excessive force, or trauma. He noted that a hernia occurs

when normal body contents pass through muscle tissue into an area not the normal location for such contents.

22. Recurrent left inguinal hernia. When questioned by Claimant's counsel, Dr. Moser concluded that Claimant's recurrent left inguinal hernia was caused by his 2007 accident:

Q. And Dr. Johansen says, yes, recurrent left-sided problems. So I want to, hopefully, get that resolved if everybody agrees that's a continuing recurrent hernia. And then we'll talk about the right side.

A. Okay.

Q. Do you agree that [Claimant] got the left-sided hernias from the industrial injury?

A. He has recurrent left inguinal hernia.

Q. That originated in your previous opinions---

A. Right.

Q. --with his lifting the fertilizer bags.

A. Right.

Moser Deposition, p. 22, ll. 5-22.

23. Dr. Johansen opined that Claimant's recurrent left inguinal hernia "could potentially be related to that previous injury as he has had previous repair there but has also been involved in work since that time that could have caused a recurrence of that hernia." Defendants' Exhibit 5, pp. 90-91. Dr. Johansen explained Claimant's inguinal hernia as more than a muscle strain, but rather a fascial defect constituting "an enlargement of the natural opening in the abdominal wall through [which] the spermatic cord ... passes" Johansen Deposition, p. 14, l. 24 through p. 15, l. 1. Dr. Moser explained the challenge inherent in surgical repair of an inguinal hernia:

A. A recurrent hernia is a hernia that occurs after a previous surgical intervention that fixes the previous hernia.

Q. And they're not uncommon, are they?

A. They're not uncommon.

....

A. Especially with inguinal hernias, ... you can't just totally block off because you have important structures that still have to go down the hole. So, you have to close the hole enough—

....

A. —but still allow blood vessels to go down which are very sensitive. So, if you get it too tight, then you have pain still and you have—

Q. If you get it too loose—

A. And then if you get it too loose, then you're going to get a recurrent inguinal hernia.

Moser Deposition, p. 19, l. 1 through p. 20, l. 3.

24. There is no indication in the 2009 operative report of Dr. Johansen that he found any evidence that the surgical repair performed by Dr. Avila in 2007 was inadequate. However, given Dr. Moser's affirmative testimony that Claimant's recurrent left inguinal hernia was caused by his 2007 industrial accident, and Dr. Johansen's acknowledgement that Claimant's recurrent hernia could potentially be related to the repair of his previous industrial injury, the Referee finds that Claimant has proven his recurrent left inguinal hernia was related to his industrial accident.

25. Right inguinal hernia. At his deposition, Dr. Moser initially opined that Claimant's right-sided hernia arose from the same September 2007 industrial accident that had produced his initial left-sided hernia. However, Dr. Moser acknowledged that Claimant had no right inguinal hernia in October 2007, at the time Dr. Avila performed Claimant's first hernia surgery. During cross-examination at his deposition, Dr. Moser agreed that Claimant's right

inguinal hernia occurred sometime after the industrial accident and reaffirmed his opinion, recorded in his July 2009 chart note; that Claimant's right groin pain was of unknown etiology.

26. Dr. Johansen first examined Claimant on May 15, 2009, and performed Claimant's bilateral hernia repair surgery in July 2009. Dr. Johansen authored a letter stating that the "right-sided hernia is likely not caused by the events of 2007 as during the surgery Dr. Avila performed in 2007, no hernia was present on the diagnostic laparoscopy." Defendants' Exhibit 5, p. 90. Dr. Johansen acknowledged that it was possible that Claimant may have had a developing right-sided hernia at the time of the first surgery in 2007, however, Dr. Johansen did not change his opinion during his deposition, noting that the September 2007 sonogram ruled out a right-sided inguinal hernia, Dr. Avila visualized no right-sided hernia during surgery in October 2007, and Claimant sought no medical care for any right-sided groin complaints from December 2007 until July 2008. Significantly, Claimant does not allege any other lifting injury at CPS except that occurring on September 20, 2007.

27. Dr. Moser's testimony about Claimant's right inguinal hernia is equivocal at best. He initially related the right inguinal hernia to Claimant's September 2007 industrial accident, but ultimately affirmed that Claimant's right groin pain was of unknown etiology. Dr. Johansen consistently opined that Claimant's right inguinal hernia was not caused by his September 2007, industrial accident. His conclusion is well supported by the objective medical evidence.

28. The Referee finds Claimant has not proven that his right inguinal hernia was caused by his September 20, 2007 industrial accident.

29. **Medical care.** Idaho Code § 72-432(1) mandates that an employer shall provide for an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital service, medicines, crutches, and apparatus, as may be reasonably required by the

employee's physician or needed immediately after an injury or manifestation of an occupational disease, and for a reasonable time thereafter. If the employer fails to provide the same, the injured employee may do so at the expense of the employer. Of course an employer is only obligated to provide medical treatment necessitated by the industrial accident, and is not responsible for medical treatment not related to the industrial accident. Williamson v. Whitman Corp./Pet, Inc., 130 Idaho 602, 944 P.2d 1365 (1997).

30. Claimant herein has not proven that his right inguinal hernia was caused by his industrial accident and thus has not proven his entitlement to medical care therefore. However, Claimant has proven that his recurrent left inguinal hernia is related to his industrial accident and thus is entitled to reasonable medical benefits therefore, including surgical repair as performed by Dr. Johansen on July 30, 2009.

31. **Temporary disability.** Idaho Code § 72-102 (10) defines “disability,” for the purpose of determining total or partial temporary disability income benefits, as a decrease in wage-earning capacity due to injury or occupational disease, as such capacity is affected by the medical factor of physical impairment, and by pertinent nonmedical factors as provided for in Idaho Code § 72-430. Idaho Code § 72-408 further provides that income benefits for total and partial disability shall be paid to disabled employees “during the period of recovery.” The burden is on a claimant to present medical evidence of the extent and duration of the disability in order to recover income benefits for such disability. Sykes v. C.P. Clare and Company, 100 Idaho 761, 605 P.2d 939 (1980).

32. In Malueg v. Pierson Enterprises, 111 Idaho 789, 791-92, 727 P.2d 1217, 1219-20 (1986), the Supreme Court noted:

[O]nce a claimant establishes by medical evidence that he is still within the period of recovery from the original industrial accident, he is entitled to total temporary disability

benefits unless and until evidence is presented that he has been medically released for light work *and* that (1) his former employer has made a reasonable and legitimate offer of employment to him which he is capable of performing under the terms of his light work release and which employment is likely to continue throughout his period of recovery *or* that (2) there is employment available in the general labor market which claimant has a reasonable opportunity of securing and which employment is consistent with the terms of his light duty work release.

33. In the present case, Claimant has not proven that his right inguinal hernia was caused by his industrial accident and thus has not proven his entitlement to any temporary disability benefits therefore. However, Claimant has proven his recurrent left inguinal hernia is related to his industrial accident and thus he is entitled to temporary disability benefits therefore.

34. The record establishes that Claimant underwent surgical repair of his recurrent left inguinal hernia on July 30, 2009. On August 3, 2009, Dr. Johansen examined Claimant and released him to return to work with a 25-pound lifting restriction. Dr. Johansen anticipated Claimant could return to full activity as tolerated in two weeks. Heather Grimmatt, P.A.-C, examined Claimant at Dr. Johansen's direction on September 1, 2009, recorded that Claimant was doing very well and released him from further care.

35. Defendants correctly note that CPS terminated Claimant's employment prior to July 30, 2009, for alleged misconduct. Although Claimant's alleged misconduct unrelated to his industrial accident precluded him from work which might have been available with Employer, his 2007 industrial accident causing a recurrent left hernia necessitating surgery precluded him from work which might have been available in the general labor market. Defendants did not offer Claimant suitable employment or establish that suitable employment was available to Claimant in the general labor market during his period of recovery. Under Idaho Code § 72-408 and Malueg, Claimant is entitled to temporary disability benefits during his period of recovery.

36. Defendants also contest temporary disability benefits, noting that Claimant settled

his claim for an unrelated intervening shoulder injury before hearing and asserting that Claimant cannot confirm whether he has already been compensated for temporary disability benefits during his recovery. However, the record contains inadequate evidence to support Defendants' assertion and does not establish that the temporary disability benefits to which Claimant is otherwise entitled should be reduced because of the settlement of his unrelated shoulder claim.

37. Claimant was in a period of recovery from his recurrent left inguinal hernia repair from July 30 through August 31, 2009. Claimant has proven he is entitled to temporary total disability benefits from July 30, 2009, through August 31, 2009.

38. **Permanent partial impairment.** Permanent impairment is any anatomic or functional abnormality or loss after maximal medical rehabilitation has been achieved and which abnormality or loss is considered stable at the time of evaluation. Idaho Code § 72-422. 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).

39. In the present case, Claimant testified that no doctor has given him any permanent impairment rating and no doctor has given him any permanent physical restrictions for his hernia condition. Although Claimant complained of persisting groin pain at hearing, his testimony in that regard is suspect and not persuasive. Heather Grimmett, P.A.-C, released Claimant from further medical care on September 1, 2009, based upon Claimant's report that he was doing fine and had no complaints. Dr. Johansen indicated Claimant was ultimately released without restrictions after his bilateral hernia repair. Dr. Johansen testified that a typical successful hernia repair would usually result in a 0% permanent impairment. He opined that based upon his last examination of Claimant, Dr. Johansen would consider Claimant as a Class 0 for purposes of

permanent partial impairment under the AMA, Guides to the Evaluation of Permanent Impairment, 6th Edition.

40. Claimant has not proven he suffers any permanent impairment due to his 2007 industrial accident.

41. **Permanent disability.** "Permanent disability" results when the claimant's 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. Absent permanent impairment, there can be no permanent disability. Having failed to prove any permanent impairment, Claimant herein has not proven he suffers any permanent disability due to his 2007 industrial accident.

42. **Apportionment.** Apportionment of permanent disability pursuant to Idaho Code § 72-406 is moot.

43. **Attorney fees.** The final issue is Claimant's entitlement to attorney fees pursuant to Idaho Code § 72-804. Attorneys fees are not granted as a matter of right under the Idaho Workers' Compensation Law, but may be recovered only under the circumstances set forth in Idaho Code § 72-804 which provides:

If the commission or any court before whom any proceedings are brought under this law determines that the employer or his surety contested a claim for compensation made by an injured employee or dependent of a deceased employee without reasonable ground, or that an employer or his surety neglected or refused within a reasonable time after receipt of a written claim for compensation to pay to the injured employee or his dependents the compensation provided by law, or without reasonable grounds discontinued payment of compensation as provided by law justly due and owing to the employee or his dependents, the employer shall pay reasonable attorney fees in addition to the compensation provided by this law. In all such cases the fees of attorneys employed by injured employees or their dependents shall be fixed by the commission.

44. The decision that grounds exist for awarding a claimant attorneys fees is a factual determination which rests with the Commission. Troutner v. Traffic Control Company, 97 Idaho

525, 528, 547 P.2d 1130, 1133 (1976).

45. Claimant herein has proven his entitlement to medical and temporary disability benefits relating to his recurrent left inguinal hernia. However, Defendants reasonably contested whether Claimant's recurrent left inguinal hernia was caused by his 2007 industrial accident. The July 2008 ultrasound showed no left inguinal hernia. Claimant went for approximately 18 months after the surgical repair of his original left inguinal hernia in October 2007, before being diagnosed with a recurrent left inguinal hernia in July 2009. During much of this time he performed his usual work duties at CPS, including lifting 50-pound bags of fertilizer. Dr. Johansen opined that while Claimant's recurrent left hernia could potentially be caused by his industrial accident, it could also have been caused by subsequent lifting. Given these facts, Defendants' denial was not unreasonable. Claimant has not proven he is entitled to attorney fees.

CONCLUSIONS OF LAW

1. Claimant has proven his recurrent left inguinal hernia was related to his 2007 industrial accident. Claimant has not proven that his right inguinal hernia was caused by his industrial accident.

2. Claimant has proven he is entitled to reasonable medical benefits for his recurrent left inguinal hernia, including surgical repair as performed by Dr. Johansen on July 30, 2009.

3. Claimant has proven he is entitled to temporary total disability benefits from July 30, 2009, through August 31, 2009, due to his recurrent left inguinal hernia.

4. Claimant has not proven he suffers any permanent impairment due to his 2007 industrial accident.

5. Claimant has not proven he suffers any permanent disability due to his 2007

industrial accident.

6. Apportionment pursuant to Idaho Code § 72-406 is moot.
7. Claimant has not proven he is entitled to attorney fees.

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 9th day of April, 2012.

INDUSTRIAL COMMISSION

_____/s/_____
Alan Reed Taylor, Referee

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 14th 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:

PATRICK D BROWN
335 BLUE LAKES BLVD N
TWIN FALLS ID 83301

SUSAN R VELTMAN
PO BOX 2528
BOISE ID 83701-2528

sb

_____/s/_____

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

ALBERTO CASTANEDA,

Claimant,

v.

CROP PRODUCTION SERVICES, INC., f/k/a
UAP DISTRIBUTION, INC.,

Employer

and

INSURANCE COMPANY OF THE STATE OF
PENNSYLVANIA, Surety,

Defendants.

IC 2007-033482

ORDER

FILED 04/12/2012

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 recurrent left inguinal hernia was related to his 2007 industrial accident. Claimant has not proven that his right inguinal hernia was caused by his industrial accident.

2. Claimant has proven he is entitled to reasonable medical benefits for his recurrent left inguinal hernia, including surgical repair as performed by Dr. Johansen on July 30, 2009.

ORDER - 1

3. Claimant has proven he is entitled to temporary total disability benefits from July 30, 2009, through August 31, 2009, due to his recurrent left inguinal hernia.

4. Claimant has not proven he suffers any permanent impairment due to his 2007 industrial accident.

5. Claimant has not proven he suffers any permanent disability due to his 2007 industrial accident.

6. Apportionment pursuant to Idaho Code § 72-406 is moot.

7. Claimant has not proven he is entitled to attorney fees.

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

DATED this 9th day of April, 2012.

INDUSTRIAL COMMISSION

_____/s/_____
Thomas E. Limbaugh, Chairman

_____/s/_____
Thomas P. Baskin, Commissioner

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

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 12th 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:

PATRICK D BROWN
335 BLUE LAKES BLVD N
TWIN FALLS ID 83301

SUSAN R VELTMAN
PO BOX 2528
BOISE ID 83701-2528

sb

_____/s/_____