

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

CORDELL L. LIPE,

Claimant,

v.

BOWERS COLLISION,

Employer

and

TRUCK INSURANCE EXCHANGE/  
FARMERS INSURANCE, Surety,

Defendants.

**IC 2010-022226**

**IC 2010-022227**

**IC 2010-022228**

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

**Filed June 4, 2012**

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**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 Idaho Falls on September 14, 2011. Claimant, Cordell Lipe, was present in person and represented by Dennis Petersen, of Idaho Falls. Defendants, Bowers Collision and Truck Insurance Exchange/Farmers Insurance were represented by Jon Bauman of Boise. The parties presented oral and documentary evidence. Briefs were later submitted and the matter came under advisement on February 24, 2012.

**ISSUES**

The issues to be decided are:

1. Whether Claimant suffered a compensable industrial accident on May 13, 2010;
2. Whether Claimant suffered a compensable industrial accident on May 25, 2010; and
3. Whether Claimant suffered a compensable industrial accident on May 28, 2010.

All other issues are reserved.

### **CONTENTIONS OF THE PARTIES**

Claimant alleges he suffered industrial accidents while working on May 13, 25, and 28, 2010.<sup>1</sup> Defendants do not dispute receiving timely notice; however, they contend that Claimant's accounts of the alleged industrial accidents are not credible.

### **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. The testimony of Claimant, Douglas Bowers, Tom Chavez, Clay Yancey, and Cliff Verderber taken at the September 14, 2011 hearing; and
3. Claimant's Exhibits 1-25, and Defendants' Exhibits 1-13, admitted at the hearing.

All objections posed during Claimant's pre-hearing deposition, admitted as Claimant's Exhibit 25, are 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's background.** Claimant was born in 1962. He was 49 years old and resided in Blackfoot at the time of the hearing. He did not graduate from high school, but completed the tenth grade. After leaving high school, he worked for one year washing and rechroming cars for the Union Pacific Railroad in Emmett. From 1981 to 1983, he worked in Blackfoot washing and detailing cars.

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<sup>1</sup> The three claims were consolidated for hearing.

2. In August 1982, Claimant pulled a neck muscle while working. He received multiple chiropractic treatments and eventually recovered. He filed a workers' compensation claim in connection with this incident; however, his claim was denied after a hearing.

3. From 1983 to 1984, Claimant worked at a tire shop in Pocatello changing tires. From 1984 to 1985, he worked in Pocatello recapping tires. In approximately 1985 or 1986, he worked in Utah restoring houses damaged by fire. Thereafter he returned to Pocatello and worked rebuilding transmissions.

4. In May 1988, Claimant experienced low back pain after lifting tires. He received chiropractic treatments and recovered, missing no time from work. In September 1989, he suffered low back pain while moving a transmission. He recovered and continued working.

5. In approximately 1990, Claimant worked at a muffler shop in Blackfoot. From approximately 1992 until 2003, Claimant operated his own auto repair shop. In 2003 he commenced rebuilding transmissions for a business in Idaho Falls.

6. In July 2003, Claimant split his right little finger to the bone and required stitches. Also in July 2003, Claimant sought medical attention to remove a piece of metal from his eye. In both instances, he recovered without complication and continued working.

7. **Bowers' background.** Doug Bowers is a high school graduate. From 1982-1996, Bowers worked in the sign and painting trade in Phoenix. Thereafter he moved back to Blackfoot. In 1999 Bowers built his own auto repair shop. He is the owner of and has been employed by Bowers Collision for approximately 15 years. Bowers Collision performs automotive repairs, bodywork, and painting. At the time of the hearing, Bowers Collision employed 11 individuals. The minimum tenure of its employees was approximately five years.

Bowers Collision participates in direct repair programs with a number of auto insurance companies.

8. Bowers and Claimant have known each other since they were 11 years old. Bowers lived in Claimant's home for a time.

9. **Claimant's work with Bowers Collision.** In approximately 2004, Claimant began working for Bowers Collision performing auto body and mechanical work, with Doug Bowers as his direct supervisor. Claimant subsequently left his job at Bowers Collision and started a partnership with another individual. However, by 2005, Claimant returned to working for Bowers Collision.

10. In August 2005, Claimant experienced right mid-back pain after working under the dashboard of a car. Bowers was not aware of Claimant's back pain at that time and fired Claimant on the spot that day when Claimant refused to install a heater core on a Trans Am. Claimant sought medical attention and after two chiropractic treatments his back condition improved. Approximately 10 days later Bowers offered Claimant his job back and Claimant returned to work at Bowers Collision.

11. On January 31, 2006, Claimant reported to a medical clinic in Blackfoot complaining of back pain. Claimant was subsequently found to have kidney stones, was treated and returned to work. On September 14, 2007, Claimant suffered a left hand injury at Bowers Collision when his hand caught in a trailer spring. X-rays revealed no fracture. He performed light-duty work for one week and then resumed his full work duties. Claimant understood that Bowers paid for the x-rays out of his own pocket rather than making a workers' compensation claim for Claimant's hand injury.

12. On January 15, 2010, Claimant was intoxicated and fell off of a snowmobile, landing hard on his buttocks and sustaining extensive bruising. When he returned to work thereafter, Claimant displayed the large bruise to his coworkers at Bowers Collision. Doug Bowers noticed Claimant limping at work after his fall from the snowmobile. Claimant missed no time from work due to his snowmobile accident and performed all of his usual work duties.

13. During his work at Bowers Collision, Claimant regularly sat on a shop stool approximately 18 inches tall while he worked on cars. The stool was equipped with rollers to allow quick and easy movement across the concrete shop floor. Claimant fell off his work stool in January 2010 and again in March 2010 when the rollers caught on cracks in the shop floor. He noticed no lasting discomfort from either of those falls.

14. By May 2010, Claimant was earning \$23.00 per hour at Bowers Collision.

15. **Alleged May 13, 2010 accident (I.C. 2010-022226).** Claimant testified that on May 13, 2010, he was at Bowers Collision doing body work on a car when his work stool rollers caught in a crack in the concrete floor and he fell. Claimant testified he had a screwdriver in his right back pocket and landed hard on his buttocks on the concrete floor. Claimant leaped to his feet and asked a nearby coworker, Tom Chavez, if he had seen Claimant's fall. Chavez replied that he had not. Claimant testified that shortly thereafter he told Bowers that he fell off the stool and hurt his buttock and showed Bowers the screwdriver that had been in his back pocket. Claimant promptly went back to work.

16. Bowers testified that during his years of work at Bowers Collision, Claimant often complained of his back. Bowers did not recall Claimant showing him a screwdriver after he fell from a stool. However, Bowers acknowledged seeing Claimant fall off of his work stool, hit the floor, jump up, and rub his buttocks. Bowers testified that this may not have been the time when

Claimant fell with a screwdriver in his back pocket. Two of Claimant's coworkers, Cliff Verderber and Tom Chavez, testified that they did not see Claimant fall from his work stool in May 2010; however, they both remembered Claimant telling them about his fall within minutes after it occurred. Both Verderber and Chavez were employed by Bowers Collision at the time of the hearing.

17. Claimant testified that later the night of May 13, 2010, he felt an unusual tingling sensation in his left leg above the knee. By the following day he noticed left lateral thigh numbness. The following Monday, Claimant told Doug Bowers that his left leg was numb and that Claimant thought it was due to his fall off the stool. He did not specifically ask Bowers to complete a notice of injury because Claimant feared for his job. Claimant continued to perform his regular work duties.

18. **Alleged May 25, 2010 accident (I.C. 2010-022227).** Claimant testified that on May 25, 2010, he helped three co-workers move a Ford pickup bed in the shop. Each man lifted a corner of the truck bed. While carrying the truck bed, Claimant had to maneuver around a tire and in so doing noted immediate back discomfort. He believed he had pulled a muscle in his lower back, but as pulled muscles were not uncommon in his work experience, and generally resolved over time, Claimant did not tell anyone about the incident that day. Claimant told Bowers of the incident only after leaving employment with Bowers Collision two weeks later. Verderber, Chavez, and another co-worker, Clay Yancey, testified at hearing that they had no specific recollection of any unusual incident involving moving a truck bed on May 25, 2010. However, all testified that moving truck beds in the shop occurred at least weekly, and often multiple times each week.

19. Immediately after finishing work at Bowers Collision that day, Claimant drove to Idaho Falls and helped his father-in-law string electrical wire in a new home. Claimant climbed up and down a five-foot step ladder for approximately three hours helping string wire. Claimant helped string wire for each of the next three evenings. He lifted nothing heavier than the ladder. Bowers noticed that Claimant was stiff and slow getting around the next several days while working at Bowers Collision and chastened Claimant for the negative impact of his afterhours wiring project on his productivity at Bowers Collision.

20. **Alleged May 28, 2010 accident (I.C. 2010-022228).** Claimant testified that on Friday, May 28, 2010, Clay Yancey, Cliff Verderber, Tom Chavez, and Claimant went to retrieve a truck bed from a location several blocks away from the shop. The bed was sitting on a trailer and each man was to lift a corner of the truck bed. Claimant testified that while lifting the truck bed, a wooden support was knocked aside and the truck bed suddenly dropped about one foot, yanking Claimant abruptly towards the bed and slamming his head into the side of the bed. Claimant felt a crunch and pop in his back and noted immediate pain from his neck down to his buttocks. Claimant held onto the truck bed, as did his co-workers, and the bed did not fall. After loading the truck bed, Claimant could not tolerate sitting down to ride two blocks back to the shop because of back pain. Instead, he lay down in the back seat.

21. Again, Verderber, Chavez, and Yancey testified at hearing that they had no specific recollection of any truck bed lifting incident on May 28, 2010. However, all readily acknowledged that moving truck beds occurred at least weekly, and often several times each week.

22. After returning to the shop that afternoon, Claimant took four ibuprofen and tried to continue working. However, by 3:00 pm his back pain was intolerable. Approximately 3:00

that afternoon, another truck bed needed to be moved in the shop and Bowers directed Claimant and several others to move it. Claimant testified that he yelled across the shop to Bowers that moving the truck bed earlier that day hurt his back. Claimant believed that Bowers and the rest of those present in the shop heard his remark. Bowers testified at hearing that he did not remember Claimant making any such remark. Claimant testified that when he declined to help move the truck bed, Bowers said to the rest of those in the shop: “look at the pansy. He’s hiding over there so he won’t have to move—or hiding in the corner.” Transcript, p. 73, ll. 5-6. Bowers testified at hearing that he would never say such a thing. However, Yancey testified at hearing that Bowers “said that stuff before” but Yancey did not specifically remember whether Bowers did so on that particular occasion. Transcript, p. 188, l. 16. Yancey was no longer employed at Bowers Collision at the time of the hearing.

23. Claimant testified that he went straight home on May 28 after leaving work. He had difficulty walking due to back pain. He spent the rest of Friday and most of the day Saturday in bed. By Sunday afternoon his back pain was improving. Monday was a holiday and Claimant did not work. His back improved.

24. Claimant testified that he went to work the following Tuesday and told Bowers that his leg was numb and that his back had hurt all weekend. Claimant testified that he told Bowers that his back hurt from his work on May 25 and 28, 2010, at Bowers Collision. Claimant did not specifically ask Bowers to complete a notice of injury because Claimant feared for his job.

25. **Claimant’s subsequent activities.** Claimant performed his usual work duties the week of June 1, 2010. He returned the following Monday, June 7, 2012, and asked for half of the following day off. Bowers inquired whether Claimant was going to look for another job,

whereupon Claimant acknowledged that he was. Bowers then asserted that Claimant had chosen to quit his employment effective June 7, 2010, and should leave. Claimant concluded that Bowers fired him effective June 7, 2010.

26. Bowers testified that only after Claimant's employment with Bowers Collision ended did Claimant notify Bowers that Claimant allegedly hurt his back while helping lift truck beds on May 25 and 28, 2010.

27. On June 15, 2010, Claimant began working as a transmission rebuilder in Pocatello. At the time of hearing, Claimant continued to be so employed. Claimant subsequently sought further medical care and at the time of the hearing desired additional medical treatment. Claimant testified that his left thigh numbness still persisted at the time of hearing and occasionally progressed to stabbing left lateral thigh pain.

#### **DISCUSSION AND FURTHER FINDINGS**

28. 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).

29. Claimant alleges industrial accidents on May 13, 25, and 28, 2010. Defendants deny all accidents. Claimant reported two of his alleged industrial accidents to the medical practitioner from whom he first sought medical care. On June 14, 2010, Claimant presented to Travis Christensen, P.A., who recorded that Claimant came "on a worker's comp claim" with complaints of left leg pain after falling off a stool with a screwdriver in his back pocket on May

13, 2010, and straining his back while helping lift a truck bed approximately two weeks later. Claimant's Exhibit 10, p. 1.

30. Having observed Claimant, Bowers, Chavez, Verderber, and Yancey at hearing, and compared their testimony with other evidence in the record, it is apparent that the memories of all of the witnesses are imperfect. It is not surprising that none of Claimant's co-workers recall any particular truck bed lifting incident on May 25 or 28, 2010, because lifting truck beds was a regular and common part of their work. Bowers acknowledged seeing Claimant fall from his work stool and land on his buttocks on the concrete floor on one occasion. Claimant's accounts of his accidents given in his recorded statement to the Surety's adjustor on June 16, 2010, in his August 31, 2011, deposition, and at hearing are consistent. Claimant's hesitation to request that Bowers complete a notice of injury for fear of losing his job is consistent with Bowers' demonstrated propensity to fire employees in abrupt anger. Claimant's demeanor at hearing was unhesitating, forthright, and direct. Bowers' demeanor was less so. The Referee finds that Claimant is generally a credible witness. The Referee further finds that Claimant is a more credible witness than Bowers.

31. The Referee finds persuasive Claimant's testimony alleging industrial accidents at work on May 13, 25, and 28, 2010. The extent of injury caused by these accidents is not an issue presently framed for determination. Claimant has proven he suffered industrial accidents on May 13, 25, and 28, 2010, while working for Bowers Collision.

#### **CONCLUSIONS OF LAW**

1. Claimant has proven he suffered an industrial accident on May 13, 2010.
2. Claimant has proven he suffered an industrial accident on May 25, 2010.
3. Claimant has proven he suffered an industrial accident on May 28, 2010.

**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 \_\_24<sup>th</sup>\_\_ day of May, 2012.

INDUSTRIAL COMMISSION

\_\_\_\_\_/s/\_\_\_\_\_  
Alan Reed Taylor, Referee

ATTEST:

\_\_\_\_\_/s/\_\_\_\_\_  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the 4<sup>th</sup> day of June, 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:

DENNIS R PETERSEN  
PO BOX 1645  
IDAHO FALLS ID 83403-1645

JON M BAUMAN  
PO BOX 1539  
BOISE ID 83701-1539

sb

\_\_\_\_\_/s/\_\_\_\_\_

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

CORDELL L. LIPE,

Claimant,

v.

BOWERS COLLISION,

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TRUCK INSURANCE EXCHANGE/  
FARMERS INSURANCE, Surety,

Defendants.

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**IC 2010-022227**

**IC 2010-022228**

**ORDER**

**Filed June 4, 2012**

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Pursuant to Idaho Code § 72-717, Referee Alan Reed 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 he suffered an industrial accident on May 13, 2010.
2. Claimant has proven he suffered an industrial accident on May 25, 2010.
3. Claimant has proven he suffered an industrial accident on May 28, 2010.
4. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this \_\_4<sup>th</sup>\_\_ day of \_\_June\_\_\_\_, 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 \_\_4<sup>th</sup>\_\_ day of \_\_June\_\_\_\_, 2012, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

DENNIS R PETERSEN  
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\_\_\_\_/s/\_\_\_\_\_