

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

CAROL SWAINSTON,

Claimant,

v.

CLEAR SPRINGS FOODS, INC.,

Employer,

and

LIBERTY NORTHWEST INSURANCE CORP.,

Surety,
Defendants.

IC 2010-011191

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

FILED
JAN 10 2013
INDUSTRIAL COMMISSION

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, Idaho on October 13, 2011. Claimant, Carol Swainston, was present in person and represented by Dennis R. Petersen, of Idaho Falls, Idaho. Defendant Employer, Clear Springs Foods, Inc. (Clear Springs), and Defendant Surety, Liberty Northwest Insurance Corp., were represented by E. Scott Harmon, of Boise, Idaho. The parties presented oral and documentary evidence. Post-hearing depositions were taken and briefs were later submitted. The matter came under advisement on September 26, 2012.

ISSUE

The issues to be decided were narrowed at hearing to the sole issue of whether Claimant suffers from a compensable occupational disease.

CONTENTIONS OF THE PARTIES

Claimant contends that she contracted the occupational disease of asthma from her cold

and damp work environment at Clear Springs. Defendants acknowledge that Claimant suffers from asthma but maintain she has not proven that her asthma was incurred in employment and furthermore, has not proven that her asthma is characteristic of and peculiar to her employment and is therefore not a compensable occupational disease.

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 October 13, 2011 hearing;
3. Claimant and Defendants' Joint Exhibits 1-16, admitted at the hearing;
4. The post-hearing deposition of David L. Shrader, M.D., taken by Claimant¹ on March 5, 2012; and
5. The post-hearing deposition of Ronald K. Fullmer, M.D., taken by Defendants on June 19, 2012.

All pending objections are overruled. After having considered the above evidence and the arguments of the parties, the Referee submits the following findings of fact and conclusion of law for review by the Commission.

FINDINGS OF FACT

1. Claimant was born in 1949. She was 62 years old and lived in Twin Falls at the time of the hearing. In 1967, she graduated from high school in North Dakota. After graduating she moved to Portland, Oregon and worked as an insurance company file clerk for several years. She then married and moved to California where she worked as a waitress until 1974. In 1974,

¹ The transcript of Dr. Shrader's deposition mistakenly reverses the designation of the parties' attorneys.

Claimant moved to Twin Falls where she commenced working as a waitress and night manager at a restaurant.

2. In 1979 Claimant began working at Blue Lakes Trout Farm where she continued working for 17 years. Her duties included fresh fish processing, evisceration, and trimming in a constantly damp work environment that was approximately 50 degrees Fahrenheit. She experienced no respiratory problems. In 1998 she left when the processing plant closed and thereafter worked as a substitute school teacher for two years.

3. In 2000 Claimant commenced working for Clear Springs, a fresh fish processor. She was hired to work in packaging and promptly transferred to evisceration where she worked for the next 10 years. She was a machine operator and continuously sorted and cleaned fresh trout. The Clear Springs plant temperature was approximately 55 degrees Fahrenheit, but may have been slightly cooler in the winter or warmer at other seasons. Claimant started work at 3:30 am five days per week and usually worked from 12 to 14 hours per day. She pulled tubs of fish on ice out of the freezer and cleaned fish. Her duties required her hands to be in cold water a great deal of the time while she stood on a wet floor. She also worked on the trim line where she inspected and trimmed fresh fish. She iced down the fish and moved tubs of fish into the freezers.

4. On April 3, 2008, Claimant presented to her family physician, David Spritzer, M.D., reporting feeling depressed due to “a lot of stress,” including her husband’s recent multiple heart bypass surgery, the diagnosis of cancer of several members in her extended family, and her own impending surgery for an unrelated health issue. Dr. Spritzer elected to start Claimant on an antidepressant and prescribed Lexapro. In addition, Claimant complained of intermittent shortness of breath and chest tightness for the prior few weeks. This did not come

on with exertion. She denied coughing or wheezing. Chest imaging performed that day showed evidence of pulmonary hyperinflation suspicious for asthma. Claimant continued working.

5. On March 3, 2009, Claimant returned to Dr. Spritzer with a five-day history of cough and congestion. Dr. Spritzer assessed acute upper respiratory infection and prescribed Zithromax and provided Rocephin injections. Claimant returned to her usual work.

6. On April 6, 2009, Claimant returned to Dr. Spritzer reporting a persistent cough, wheezing, and congestion. Dr. Spritzer noted there was no clear history of asthma and that Claimant worked in a damp environment at Clear Springs. Dr. Spritzer diagnosed asthma and prescribed medications, including an albuterol nebulizer and Medrol dose pack. Chest imaging performed that day revealed mild lung hyperexpansion, likely representing a component of underlying chronic obstructive pulmonary disease. Dr. Spritzer noted on April 8, 2009, that Claimant's respiratory symptoms included a reactive airway component and prescribed Advair.

7. On April 15, 2009, Claimant returned to Dr. Spritzer who recorded that she denied coughing, shortness of breath, and wheezing, and was feeling much better. Claimant continued her usual work at Clear Springs.

8. On April 26, 2010, Claimant returned to Dr. Spritzer reporting recurrent persistent respiratory symptoms. She asserted that her frequent respiratory infections and cough were due to her work in the cold damp environment at Clear Springs. Claimant testified at hearing that her symptoms got worse during the work week, but improved when she was off work on the weekends.

9. On April 26, 2010, Claimant determined to file the instant workers' compensation claim. She contacted Clear Springs production manager Chris Henna and he completed a first

report of injury at Claimant's request. Claimant's last day of work at Clear Springs was April 26, 2010. She has not worked for any other employer since that time.

10. On April 29, 2010, Claimant presented to Brian Johns, M.D., at Defendants' request. Dr. Johns recorded:

She reported to the clinic today telling me that she's had "weak lungs" and a problem with recurrent lung infections and breathing difficulties for about the last two years. She seems to have more problems after being at work, and wonders whether there may be something at work that's causing her difficulties.

She tells me that about two years ago she had "bad congestion" which progressed to "pneumonia". She tells me that at the time the chest x-ray showed "weak lungs". The last couple of years since then she says she has never fully recovered. She says that it seems like she gets sick very frequently, has chest congestion, wheezing, difficulty breathing, tightness in her chest, sometimes a sore throat or a lost voice. She feels better when she is not in the plant, and feels worse when she's down in the plant.

Exhibit 5, p. 1. Dr. Johns assessed moderately severe asthma and noted: "I will seek more information to try to address causation. It sounds like this may have started with a bad case of pneumonia a couple of years ago. It sounds like cold maybe [sic] a trigger for her asthma."

Exhibit 5, p. 3. Claimant told Dr. Johns that she was not aware of anyone else at the plant having similar problems. He directed Claimant to avoid cold work environments and referred her to a pulmonologist.

11. On May 25, 2010, Claimant presented to pulmonologist Ronald Fullmer, M.D., in Twin Falls. She reported coughing, wheezing, chest congestion, and shortness of breath:

The patient comes in today complaining of breathing problems and states this has been getting worse over the past two years. She complains of pneumonia two years ago. She was not hospitalized and was treated with antibiotics, a nebulizer, and Advair. She had cough, chest congestion, and wheezing. Her pneumonia improved but she continued to have problems "struggling" with her breathing. She states the cold and humidity at her workplace make her symptoms worse.

Exhibit 6, p. 1. Dr. Fullmer diagnosed asthma, ordered pulmonary function testing, and instructed Claimant to use an inhaler.

12. On May 28, 2010, Claimant returned to Dr. Johns. She denied wheezing or shortness of breath and reported that she was feeling better as she was no longer working in a cold damp environment. Dr. Johns noted that the causation of her asthma was still in question.

13. On June 3, 2010, Claimant returned to Dr. Fullmer reporting that her breathing was improving after being off work for several weeks. Complete pulmonary function testing demonstrated mild to moderate obstruction and Dr. Fullmer diagnosed asthma and possible allergic alveolitis. He instructed Claimant to continue off work and keep using inhalers.

14. On June 9, 2010, Dr. Fullmer recorded: “Ms. Swainston has significant bronchial asthma. She had previously been working at a local fish processing facility. The cold and humid work environment has caused significant worsening in her asthma symptoms.” Exhibit 6, p. 15. On June 28, 2010, Dr. Fullmer wrote:

Ms. Carol Lee Swainston has a history of respiratory problems over the past several years. Her symptoms have been worse associated with exposures at her workplace. Her history could be compatible with occupational asthma related to workplace exposures at the Trout [sic] processing plant where she has worked. Her asthma symptoms have significantly improved with time off from her work place.

Exhibit 6, p. 16. Dr. Fullmer subsequently moved from the area and Gregory Ball, M.D., assumed Claimant’s primary care.

15. On September 27, 2010, Claimant presented to Dr. Ball complaining of a cough and difficulty breathing for the prior two weeks. Dr. Ball assessed chronic obstructive asthma and a lung nodule. He increased her medications.

16. On December 6, 2010, Claimant returned to Dr. Ball reporting wheezing and trouble breathing, especially with the cold. Dr. Ball noted that her oxygen saturation was 79%

when she walked into the examining room, but improved to 92% with rest. He prescribed oxygen therapy.

17. On April 5, 2011, Claimant presented to David Shrader, M.D., on recommendation from her attorney.

18. In May 2011, Claimant was approved for Social Security disability due to her pulmonary condition.

19. Having observed Claimant at hearing and compared her testimony with other evidence in the record, the Referee finds that Claimant is a credible witness; however her memory is not infallible.

DISCUSSION AND FURTHER FINDINGS

20. 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).

21. **Occupational disease.** Claimant alleges that her asthma constitutes a compensable occupational disease. The Idaho Workers' Compensation Law defines an "occupational disease" as "a disease due to the nature of an employment in which the hazards of such disease actually exist, are characteristic of, and peculiar to the trade, occupation, process, or employment" Idaho Code § 72-102(22)(a). Idaho Code § 72-439 limits the liability of an employer for any compensation for an occupational disease to cases where (1) "such disease is actually incurred in the employer's employment," and (2) for a non-acute occupational disease, where "the employee was exposed to the hazard of such disease for a period of 60 days for the

same employer.” The 60-day period of exposure required by Idaho Code § 72-439 need not be a single continuous period. Jones v. Morrison-Knudsen Co., Inc., 98 Idaho 458, 567 P.2d 3 (1977). Furthermore, the law provides that:

[w]hen an employee of an employer suffers an occupational disease and is thereby disabled from performing his work in the last occupation in which he was injuriously exposed to the hazards of such disease, . . . and the disease was due to the nature of an occupation or process in which he was employed within the period previous to his disablement as hereinafter limited, the employee, . . . shall be entitled to compensation.

Idaho Code § 72-437. Disablement means “the event of an employee’s becoming actually and totally incapacitated because of an occupational disease from performing his work in the last occupation in which injuriously exposed to the hazards of such disease,” and “disability means the state of being so incapacitated.” Idaho Code § 72-102(22)(c). Finally, “Where compensation is payable for an occupational disease, the employer, or the surety on the risk for the employer, in whose employment the employee was last injuriously exposed to the hazard of such disease, shall be liable therefore.” Idaho Code § 72-439(3). However: “Nothing in these statutes indicates an intent to require that an employer who employs an employee who comes to the employment with a pre-existing occupational disease will be liable for compensation if the employee is disabled by the occupational disease due to an injurious exposure in the new employment.” Reyes v. Kit Manufacturing Co. 131 Idaho 239, 241, 953 P.2d 989, 991 (1998).

22. In summary, under the statutory scheme claimants with occupational disease claims must demonstrate (1) that they were afflicted by a disease; (2) that the disease was incurred in, or arose out of and in the course of, their employment; (3) that the hazards of such disease actually exist and are characteristic of and peculiar to the employment in which they were engaged; (4) that they were exposed to the hazards of such non-acute disease for a minimum of 60 days with the same employer; and (5) that as a consequence of such disease, they became actually and totally incapacitated from performing their work in the last occupation in

which they were injuriously exposed to the hazards of such disease. In the present case, Claimant's occupational disease claim for asthma must be examined in light of each of the above elements.

23. Disease. Drs. Spritzer, Johns, Fullmer, and Shrader agree, and Defendants do not dispute, that Claimant suffers from asthma.

24. Causation. Medical testimony to a reasonable degree of medical probability is required to prove a causal connection between the medical condition and the occupational exposure which caused it. Langley v. State, Industrial Special Indemnity Fund, 126 Idaho 781, 890 P.2d 732 (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).

25. In the present case, Defendants deny that Claimant initially contracted and incurred asthma from her employment at Clear Springs. They assert that her asthma was initially caused by a non-work-related infectious process and thereafter may have been exacerbated by her work at Clear Springs.

26. Defendants rely upon the opinion of Dr. Fullmer. He is board certified in internal medicine and pulmonary medicine. On October 11, 2011, Dr. Fullmer wrote:

It seemed clear that her asthma symptoms were exacerbated by the cold and humid conditions at her workplace at Clear Springs Foods fish processing. I did not have clear evidence that her asthma was directly caused by workplace conditions at Clear Springs Foods. A question of hypersensitivity pneumonitis related to her workplace was raised, but this was not proven on follow-up studies. It is more probable than not that her asthma was exacerbated by workplace conditions at Clear Springs Food [sic]. It is not more probable than not that her asthma was induced by workplace conditions there.

Exhibit 6, p. 36.

27. At his deposition, Dr. Fullmer testified that the most common inciting cause of asthma he had observed is infection, particularly viral infection. He then explained his opinion regarding the non-work related cause of Claimant's asthma:

The reasons why I say that is because, by her history, the initial precipitating event that led to her developing these problems was an infection two years previous and that—and then there was a lack of a history of a—some kind of specific chemical or other agent exposure that would be likely to induce her to develop occupational-induced asthma. So, by her history, this began with an infectious process.

Fullmer Deposition, p. 25, l. 23 through p. 26, l. 6. He further testified: “I don’t believe that cold can induce asthma as far as bringing it on, but it can definitely exacerbate preexistent asthma.” Fullmer Deposition, p. 17, ll. 3-5. He estimated that cold would trigger an asthma attack in 50% of his asthma patients.

28. Although Dr. Fullmer testified that prolonged exposure to cold air does not induce asthma, his conclusion that Claimant’s employment did not cause her asthma also appears to be driven by his belief that Claimant’s asthma was induced by a significant respiratory infection. Fuller Deposition, p. 25/9-26/4. Dr. Fullmer’s notes of May 25, 2010, record Claimant’s report of pneumonia two years prior for which she was not hospitalized, but was treated with antibiotics and a nebulizer. Claimant’s report to Dr. Fullmer is very consistent with her report to Dr. Johns on April 29, 2010. Significantly, her description of being treated with antibiotics and a nebulizer is consistent with and descriptive of her acute respiratory infection and treatment noted in Dr. Spritzer’s March 3, and April 6 and 8, 2009, notes. This infection and treatment occurred approximately 14 months—rather than two years—prior to her May 25, 2010 discussion with Dr. Fullmer. There is no record of any medical visit for respiratory issues two years prior to May 2010. It is apparent that Claimant’s estimated time period of two years was mistaken.

29. The timing of Claimant’s episode of pneumonia is critical because Dr. Fullmer understood this infectious process preceded her development of asthma. However, the record reveals that on April 3, 2008—nearly one year before the referenced acute respiratory infection—Claimant complained to Dr. Spritzer of intermittent shortness of breath and chest tightness that did not come on with exertion. Chest imaging performed that day and interpreted

by Evan Thomas, M.D., showed “Air-trapping related to asthma and/or centrilobular emphysema must be strongly considered. IMPRESSION: EVIDENCE OF PULMONARY HYPERINFLATION SUSPICIOUS FOR ASTHMA AND/OR EMPHYSEMA.” Exhibit 4, p.

26. Dr. Fullmer’s causation opinion is therefore not persuasive.

30. Claimant relies upon the opinion of Dr. Shrader. He is board certified in internal medicine, and also certified in pulmonary medicine or respiratory diseases. On April 5, 2011, Dr. Shrader examined Claimant. He reviewed in detail her medical history and symptoms. On May 6, 2011, Dr. Shrader wrote to Claimant:

You noted that you had worked for 10 years at Clear Springs Fish Processor facilities in a work environment that had temperatures consistently under 50 degrees.

....

It is my opinion that you have developed asthma with no underlying genetic predisposition. It does not seem to be allergic in nature and occurred while you were working for quite some length of time in a very cold damp environment. Cold temperatures are associated with asthma causing airway reactivity.

....

Therefore, in summary, you have developed asthma after working in a cold, damp environment.

Exhibit 7, pp. 1-2.

31. In his deposition, Dr. Shrader testified that Claimant “had occupationally induced or related asthma.” Shrader Deposition, p. 25, ll. 20-21. He noted that Claimant had never smoked, had no prior history of asthma, no family history of asthma, no genetic predisposition to asthma, and showed no evidence of lung tissue disorder on pulmonary CT testing. He testified that some individuals have cold-induced asthma, generally from working in cooler temperatures of approximately 50 degrees. Dr. Shrader testified that the cold, not the humidity, was the triggering factor of Claimant’s asthma. He testified that 50 degrees was not a firm cut-off, and the precise temperature of 50 or 55 degrees was not as relevant as was the chilled work

environment. Dr. Shrader testified that he commonly instructs patients to avoid chilled environments that trigger their asthma, whether the temperature is 50, 55, or even 60 degrees. Dr. Shrader testified that early on in the progression of asthma, symptoms increase when working in the irritating environment, and abate when outside of that environment. This helps identify the inciting irritant that initially induced the asthma. However, he noted asthma may progress due to repeated irritating exposures to the point where continued exposure to the inciting irritant is not needed for the disease to worsen.

32. It is significant that Claimant had evidence of asthma documented by chest imaging in April 2008, nearly one year before her significant acute respiratory infection documented in Dr. Spritzer's records. Furthermore, Claimant's respiratory condition in 2009 and 2010 improved on the weekends when she was off work, and worsened during the week while working at Clear Springs. Her condition improved significantly after leaving her employment with Clear Springs in the summer of 2010 and then worsened with the arrival of winter.

33. Dr. Shrader's opinion is adequately explained, consistent with the evidence of record, and persuasive. Claimant has proven that she contracted and incurred asthma due to her work for Clear Springs.

34. Characteristic and peculiar. In addition to proving actual causation, Claimant must also prove that the hazards of the disease are characteristic of and peculiar to her occupation.

The phrase, "peculiar to the occupation," is not here used in the sense that the disease must be one which originates exclusively from the particular kind of employment in which the employee is engaged, but rather in the sense that the conditions of that employment must result in a hazard which distinguishes it in character from the general run of occupations.

Mulder v. Liberty Northwest Insurance Co., 135 Idaho 52, 56, 14 P.3d 372, 376 (2000), quoting

Bowman v. Twin Falls Const. Co., Inc., 99 Idaho 312, 323, 581 P.2d 770, 781 (1978), overruled on other grounds, DeMain v. Bruce McLaughlin Logging, 132 Idaho 782, 979 P.2d 655 (1999) (emphasis in original).

35. In the present case, Defendants assert that Claimant's asthma is neither characteristic of nor peculiar to her occupation since she has not shown a heightened occurrence of asthma among workers in the fresh fish processing industry as compared to the general population. Defendants note that Dr. Fullmer practiced medicine in the Twin Falls area for 23 years as one of only two pulmonologists in the area. He testified that he had seen many patients who developed asthma later in life without any childhood or family history of asthma and the most common inciting event was an infectious disease. Defendants emphasize Dr. Fullmer testified that while he saw a number of patients whose respiratory problems were exacerbated by work in trout processing plants, and some that had asthma induced by chemical cleaning agents used in such plants, he did not observe "a greater predominance of new-onset asthma in those kind of workers as compared to the general population." Fullmer Deposition, p. 28, l. 15-17.

36. Further review of Mulder v. Liberty Northwest Insurance Co., 135 Idaho 52, 14 P.3d 372 (2000), is enlightening. In Mulder the Court examined and approved of the Commission's analysis and application of the "characteristic of and peculiar to" requirement stating:

Applying the test from Bowman, the Commission found the hazards that Mulder was exposed to during his work at Liberty could be distinguished from the general run of occupations. The Commission determined that exposure to long periods of repetitive upper extremity motions, including writing, keyboarding, and gripping of a steering wheel are not characteristic of all occupations. The Commission based its factual determination, in part, on the medical testimony of Dr. Lenzi and upon the description of the job duties peculiar to Mulder's position with Liberty. The Commission determined that those duties necessitated driving, handwriting and keyboarding. Though Liberty presented conflicting testimony from its expert, Dr. Richard Knoebel (Dr. Knoebel), this Court will defer to the Commission's findings as to the credibility of conflicting medical experts. [Citation omitted.] This evidence is substantial and competent, and will not be disturbed on appeal.

Mulder v. Liberty Northwest Insurance Co., 135 Idaho 52, 57, 14 P.3d 372, 377 (2000). It is instructive that the Court approved the Commission's focus on whether the hazard causing the disease was characteristic of and peculiar to the claimant's occupation, not on whether the frequency of the disease was greater in the claimant's occupation than other occupations.

37. In the present case, Claimant's work duties at Clear Springs Foods exposed her to the hazard of working in a continuously chilled environment which caused her asthma. Dr. Shrader affirmed that working in a continuously chilled environment year round was unusual among occupations. The hazards of a chilled work environment to which Claimant was exposed during her work for Clear Springs are characteristic of fresh fish processors, and can be distinguished from the general run of occupations in that a chilled work environment is not characteristic of all occupations. Working in a chilled environment was characteristic of and peculiar to Claimant's employment with Clear Springs as a fish processor. Although at hearing, Claimant testified she was aware of only one other coworker at Clear Springs that experienced respiratory problems, failure to prove a higher incidence of asthma among fresh fish processors than the general population is not fatal to Claimant's case.

38. Claimant has proven that the hazards producing her asthma are characteristic of and peculiar to her occupation.

39. Exposure. It is undisputed that Claimant worked as a fish processor for Clear Springs for more than 60 days during which time she was exposed to the hazards of a chilled work environment which caused her asthma.

40. Incapacitation. Dr. Shrader persuasively affirmed that because of her asthma, Claimant can no longer work in the chilled environment of fish processing, the occupation in which she was injuriously exposed to the hazards which caused her asthma.

41. Claimant has proven that her asthma constitutes a compensable occupational disease.

CONCLUSION OF LAW

Claimant has proven that her asthma constitutes a compensable occupational disease.

RECOMMENDATION

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

DATED this ___10___ day of January, 2013.

INDUSTRIAL COMMISSION

_____/s/_____
Alan Reed Taylor, Referee

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the ___10___ day of January, 2013, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSION 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

E SCOTT HARMON
PO BOX 6358
BOISE ID 83707-6358

kh _____/s/_____

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

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Claimant,

v.

CLEAR SPRINGS FOODS, INC.,

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LIBERTY NORTHWEST INSURANCE CORP.,

Surety,
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IC 2010-011191

ORDER

FILED

JAN 10 2013

INDUSTRIAL COMMISSION

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 that her asthma constitutes a compensable occupational disease.
2. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 10 day of January , 2013.

INDUSTRIAL COMMISSION

_____/s/_____
Thomas P. Baskin, Chairman

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

Participated But Did Not Sign
Thomas E. Limbaugh, Commissioner

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the ___10___ day of _January___, 2013, a true and correct copy of the foregoing **ORDER** was served by regular United States mail upon each of the following:

DENNIS R PETERSON
PO BOX 1645
IDAHO FALLS ID 83404-1645

E SCOTT HARMON
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kh

_____/s/_____