

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

STEVEN FELLER,

Claimant,

v.

C STEIN, INC.,

Employer,

and

LIBERTY NORTHWEST INSURANCE  
CORPORATION,

Surety,

Defendants.

**IC 2012-013348**

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

**Filed January 28, 2014**

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**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 on July 30, 2013 in Boise. Claimant was present and represented by Robert A. Nauman of Boise. Kent W. Day of Meridian represented Employer/Surety (Defendants). Oral and documentary evidence was presented. The parties took no post-hearing depositions and this matter came under advisement on October 28, 2013.

**ISSUES**

The issues to be decided are:

1. Whether Claimant suffered an accident arising out of and in the course of his employment causing an injury; and, if so
2. Claimant's entitlement to medical benefits pursuant to Idaho Code § 72-432.

3. All other issues are reserved.

### **CONTENTIONS OF THE PARTIES**

Claimant contends that he hurt his back on May 24, 2012 while moving pallets and product at Employer's warehouse. He seeks reimbursement for the costs of emergency back surgery.

Although Defendants concede that Claimant was in need of emergency back surgery, they deny that he was injured on the date and in the manner he alleges. Claimant told some co-workers that he had hurt his back a week or so before while helping a friend move. Claimant's versions of events have varied and he should not be believed.

### **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. The testimony of Claimant, Employer's warehouse manager Justin Selander, Employer's inventory clerk James Hansen, Employer's comptroller Janet Willoughby, and Employer's corporate director of operations Robert Sims, taken at the hearing.
2. Joint Exhibits (JE) 1-22.

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 56 years of age and resided in Boise at the time of the hearing. He attended high school through the tenth grade in Seattle and moved to Idaho in 1973. He obtained his GED at Boise State in 1992. Claimant never served in the military. He was

married for over 20 years, but, unfortunately, his wife passed away about a month before the hearing.

2. Claimant was convicted of delivery of methamphetamine around 1991. He served prison time and was released in 1997. He is not on probation or parole, and has been clean and sober since then.

3. Claimant was diagnosed with ADHD as a child. He took medication until 1972 or 1973, when he no longer needed it. He was diagnosed with severe ADHD after his release from prison and currently takes Ritalin for that condition.

4. Claimant injured his back at work with Employer in 2007. He received no treatment and did not file a claim. He also received treatment in 2012 for arthritis in his right hip. He filed a workers' compensation claim "years ago" for some glass in one of his knees. The glass was removed and he recovered without residuals.

5. Claimant began working for Employer, a beer and wine distributor, on March 14, 2001 as a "night picker." That position involved picking out orders at night to go on the trucks in the morning. After doing this job for about a year-and-a-half, Claimant switched to day shift where he received and shelved wine. Claimant held this position for about five years and then became the warehouse janitor. His hours were from 4:45 a.m. until 12:45 p.m. Sunday through Thursday. His primary duty as a janitor was to "[t]o make sure and keep it clean, behind the pallets, behind everything, and keep the floors nice and shiny." Hearing Transcript, p. 29.

6. In the approximately 11 years since Claimant began his employment, he was never disciplined for any reason and missed only about 13 days of work. He was described as a good, reliable employee.

7. On Thursday, May 24, 2012 at approximately 10:00 or 11:00 a.m., Claimant testified to the following events:

So I was moving it [product] out and then picking pallets up and sweeping and mopping under them.

Q. (By Mr. Nauman): How were you moving the product?

A. By hand.

Q. Okay. Had you just begun that process, or were you part way through the process; where were you?

A. I was about the third section down.

Q. Okay. And why is it that you're not using the Hyster or pallet jack in this area?

A. Because the pallets were in two - - two of them were in straight, then one was tipped sideways so that you couldn't get to it with a pallet jack.

Q. Okay. So you had to do it by hand?

A. So you had to do it by hand.

Q. All right.

A. Plus they were wedged, pushed tight in between the steel.

Q. Okay. So what was it exactly that you're doing at the time of your injury?

A. I was taking the beer and moving it off the pallet and stacking it in the aisle and then lifting up the pallets. And I went like that (indicating), and all of a sudden my back just started throbbing.

Q. Okay. And - -

A. And I was having a hard time standing. I couldn't stand back up straight.

Q. Ultimately, were you able to stand back up?

A. No. I was kind of hunched over the rest of the day.

Q. Okay. Did you finish the rest of your shift?

A. Yes.

Hearing Transcript, pp. 30-31.

8. As his back continued to hurt, Claimant spent his next two days off lying on his couch watching television. Claimant was able to work his full shift on Sunday, May

27<sup>th</sup>, because he was not required to perform any physical labor; he merely rode around on a riding floor machine polishing floors.

9. On Monday, May 28<sup>th</sup>, Claimant was again scheduled to work. Before leaving for work, Claimant and his wife were smoking cigarettes in their garage. He testified:

Well, then I got up and went to go back in the house, and I stepped up into the little step that goes into - - into the house. And I got about two or three steps and I just got all these sharp pains shooting down my right leg and ended up falling on the floor.

Hearing Transcript, p. 36

10. Claimant laid on the floor for about an hour, [b]ecause I - - my leg, there was no way I could - - because my foot was all numb, and I had no feeling in my leg. My leg had sharp pain shooting up and down it, and they were so intense that I couldn't do anything. *Id.*, p. 36.

11. Claimant's wife drove him to St. Al's where he complained of right hip pain beginning with a twisting injury a few days previously at work. Claimant was diagnosed with acute sciatica and prescribed a Medrol Dosepak, Flexeril, and Norco and was to follow-up with his primary physician.

12. The following day, Claimant presented to Cody Heiner, M.D., at St. Luke's Occupational Health Services. A lumbar MRI was accomplished that day and revealed multiple level degenerative disk disease as well as a large right central disk protrusion at L4-5. Dr. Heiner referred Claimant to Timothy Johans, M.D., a neurosurgeon.

13. On May 31, 2012, Dr. Johans took the following history from Claimant:

The patient is a very pleasant 55-year-old man who has worked for the same company for more than a decade. He has had some low back pain off and on, but he has never had problems down his leg. On 05/24/2012 he

had to pick up a case of beer in order to clean around it, as a custodian, when he caused an injury to his back. It hurt a lot, he got through the day. Most of the next day he worked, but all he had to do was drive around a floor cleaner. There was horrible pain in the back. Three days after the original injury and the back pain never went away and [sic – in] the interim and it was terrible. He started having pain, numbness and weakness going down his right leg with profound numbness and now progressive weakness. He was seen by Dr. Heiner who recognized the urgent nature of this, got an MRI scan, sent to me urgently and I am admitting him tomorrow morning for an urgent low back surgery, which will be a right hemilaminectomy and excision of giant free fragment at L4-5. Pain is now 10 out of 10. When he is on all of his medications he can get down to about a 6. The numbness has been since day 3. It is progressive and profound. He cannot feel the top of his foot at all or the top of the anterior shin. He also has numbness in the S1 distribution. He has definite weakness of the right leg that also is progressive.

JE 5, p. 29.

14. On May 31, 2012, Dr. Johans performed the surgery mentioned above.

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

An accident is defined as an unexpected, undesigned, and unlooked for mishap, or untoward event, connected with the industry in which it occurs, and which can be reasonably located as to time when and place where it occurred, causing an injury. Idaho Code § 72-102(17)(b). An injury is defined as a personal injury caused by an accident arising out of and in the course of employment. An injury is construed to include only an injury caused by an accident, which results in violence to the physical structure of the body. Idaho Code § 72-102(17)(a). A claimant must prove not only that he or she was injured, 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 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).

Lay witness recorded statements and hearing testimony

15. **Justin Selander** is Employer’s warehouse manager and Claimant’s direct supervisor. He gave a recorded statement to an adjuster for Surety on June 21, 2012. He described a conversation he had with Claimant the morning of May 24, 2012:

Steve came up to me, I want to say, maybe about 7:45 came up to me and stated that he hurt his back. I asked him specifically after he hurt his back if it was work related. Steve replied no, he was upset that he had to help his friend move over the weekend, I believe and he hurt his back helping his friend lifting something heavy into a back of a pickup. I asked him if he was okay, he said he thought he was okay. I asked him, well, do you need to leave work to go to the hospital and Steve said, no, I do not, I can work.

JE 16, p. 134.

16. Besides providing the above recorded statement, Mr. Selander also testified at hearing. He testified that on May 24, 2012, he had been Claimant’s supervisor for three-and-a-half to four years. Mr. Selander testified that the information he gave to Surety’s adjuster was accurate. After Claimant told him he had hurt his back, Mr. Selander watched Claimant for any signs of injury and observed none. Mr. Selander first learned that Claimant had sought medical treatment the following Monday (Memorial Day) when he received an e-mail from Robert Sims, Employer’s corporate director of operations, that he (Mr. Sims) had received a call early that morning from Claimant’s wife informing him that Claimant would not be into work because he had hurt his back. Mr. Sims also told Mr. Selander that Claimant’s wife told him Claimant had hurt his back helping a friend move.

17. Mr. Selander also spoke with his inventory clerk, Jim Hansen, on May 24<sup>th</sup>. Mr. Hansen informed Mr. Selander that Claimant told him (Mr. Hansen) that he (Claimant) had injured his back lifting something into the back of a pickup truck while helping a friend move. Mr. Selander has not seen or spoken with Claimant since May 24, 2012.

18. **James Hansen** is the above-referenced inventory clerk. He gave a recorded statement to an adjuster for Surety on June 21, 2012. On an unknown date, Claimant told Mr. Hansen that “. . . he [Claimant] was helping a friend over the weekend. And he was lifting something up on a truck and he hurt his back at that point.” JE 15, p. 129.

19. Besides providing the above recorded statement, Mr. Hansen also testified at hearing. He testified that on an unknown date, while he and Claimant were taking a smoke break:

Well, I noticed that he was kind of grimacing, he was in a little bit of pain, and I had just inquired “What’s going on and why are you in pain?”

Q. (By Mr. Day): And what was his response?

A. His response was that I think over the weekend he had been helping some friends move some furniture that were moving, and he hurt his back during that process.

Hearing Transcript, p. 107.

20. **Janet Willoughby**, Employer’s comptroller, gave a recorded statement to an adjuster for Surety on June 1, 2012. Ms. Willoughby stated that the first she heard about any “issues” with Claimant was on Tuesday, May 29, 2012 when she received a phone call from Claimant’s wife indicating that Claimant hurt his back and had been to the hospital. Ms. Willoughby further stated that Claimant’s wife “alluded” Claimant hurt his back while moving product or beer at work. Ms. Willoughby informed Claimant’s wife to take Claimant to Employer’s preferred provider. She further informed Claimant’s wife to have

Claimant get in touch with her to complete a First Report of Injury (FROI). Claimant phoned Ms. Willoughby the next day and a FROI was completed.

21. Regarding the information needed to complete the FROI, Ms. Willoughby stated, “He told me he was moving, moving cases off a pallet to move the pallet to clean under it. Um, and that his right foot was numb, he had pain in his back and his right foot was numb.” JE 14, p. 125.

22. Ms. Willoughby stated she did not know why Rob Sims never told her that Claimant’s wife told him (Rob) that Claimant injured his back while moving especially in light of Rob’s knowledge that Claimant had filed a workers’ compensation claim.

23. Besides providing the above-referenced recorded statement, Ms. Willoughby also testified at the hearing. As part of her duties as comptroller, Ms. Willoughby is responsible for handling workers’ compensation claims. She testified that she learned of Claimant’s injury this way:

On that Tuesday (May 29) I received a phone call from Steve’s wife telling me that he had hurt his back and that Rob had told her to call me and tell me.

I wanted to hear how he hurt his back from him. I didn’t want to hear from her. So I said “Well, he needs to go to our doctor,” and I gave her those directions, “and then he needs to talk to me; so if this is work related we can fill out workers’ comp paperwork.”

Hearing Transcript, p. 119.

24. Claimant called Ms. Willoughby the following day and told her that he injured himself at work on May 24<sup>th</sup> at 10:00 a.m. while cleaning the “roll aisle” moving a pallet. Claimant informed Ms. Willoughby that he told Mr. Selander the same thing earlier. Later that day, Ms. Willoughby told Mr. Selander what Claimant had told her. Mr.

Selander responded, “That’s not workers’ comp. Rob told me he hurt himself helping someone move.” *Id.*, p. 120.

25. Under cross-examination, Ms. Willoughby had no idea why Mr. Sims would have told Claimant’s wife to contact her (Ms. Willoughby) if this was not a workers’ compensation claim (as Claimant allegedly told Mr. Sims he hurt his back non-industrially). Regarding that portion of Ms. Willoughby’s statement that referred to Claimant’s wife as alluding to Claimant having injured his back moving product or beer, she testified:

Q. (By Mr. Nauman): Close quote. And then the insurance investigator says, quote: “Alluding to moving product or beer here at work?” Close quote.

And your response was: “Alluding to that, yes,” close quote.

Your recollection is that she was telling you that Steve had hurt himself on the job; is that correct?

A. Well, not really. I didn’t necessarily pay a lot of attention to how she was describing it, because I could hear Steve in the background talking and saying, “No, no, that’s not it,” you know.

And my information I wanted to come from Steve. So she said he hurt himself moving something and alluding to moving something at work perhaps. I don’t know.

*Id.*, pp. 122-123.

26. Ms. Willoughby further testified that neither Claimant nor Claimant’s wife ever told her directly that Claimant was injured any place other than at work.

27. **Robert (Rob) Sims**, Employer’s corporate director of operations, testified at hearing. He explained his involvement in this matter as follows:

Q. (By Mr. Day): Did you receive a telephone call from Mr. Feller’s late wife at some early hour in the morning on Monday, May 28<sup>th</sup>?

A. I did receive a phone call that subsequently I found out was her. It said Steve. I’m assuming she was using his phone. So when I answered the phone, I thought it was him.

I was a little groggy because it was 5:00 a.m. on Memorial Day, and I wasn't working and didn't expect anybody else to be calling me. But she said, "Hey, this is Gwen, Steve's wife," after I said "Steve, what's up?" And she said "This is Gwen."

I've talked to Gwen off and on over the years, I know her voice, and, you know, I've called Steve at home to talk to him; so I knew it was her. And she said she was at the hospital with Steve, that he had hurt himself moving, and he would not be in.

I was a little confused because I didn't even know he was going to work that day. I assumed he was off, but . . .

Q. Okay. Did she give you or did you elicit further information from her about what he was moving, when he was moving it, where he was moving it?

A. No. I just - - I really wanted to go back to sleep. I mean, I'll be honest, I was trying to get what I needed from her, what she needed from me, which is really what she was looking for, was to let me know that he wouldn't be in. And I'm like, "Okay, you know. Thank you." I'm done. I mean, I want to go to sleep.

Hearing Transcript, pp. 125-127.

28. Mr. Sims e-mailed<sup>1</sup> Mr. Selander later that morning informing him that Claimant would not be in to work. Mr. Sims does not know whether or not he informed Mr. Selander how Claimant hurt his back.

29. Under cross-examination, Mr. Sims further explained why he did not think Claimant was injured at work after his phone conversation with Claimant's wife:

Q. (By Mr. Nauman): Is there any reason not to think that what she meant was he hurt himself moving some stuff at work? I mean, why do you immediately jump to the conclusion that he was in the back of a moving van?

A. I didn't immediately jump to that conclusion.

Q. Okay.

A. My expectation, right, wrong, or otherwise, is Steve hurt himself at work, or, you know, I - - I think there's a clear definition between moving and working, and that's what I heard, was moving. So that's what I expected, you know; it was moving.

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<sup>1</sup> No e-mails are in evidence.

Q. Okay. You heard Janet Willoughby testify earlier that Gwen said you told her to call Janet.

A. Mn-hmm.

Q. Is there any reason you would have Gwen call Janet other than your belief that this was an industrial injury and workers' comp claim?

A. I don't know if I did or not. Janet is also our health administrator; so she takes care of all the health care claims for private insurance. But I have no idea if I did or not.

*Id.*, pp. 135-136.

30. In an SIU Closing Report dated July 10, 2012, Surety's adjuster wrote that, "Wtns Rob (Sims) states wife indicated it happened at work." And, "wtns Rob sent an email to Justin stating, "According to his wife, helping somebody lift something." Claimant's Supp. JRP Disclosure, p. 252. When asked by Claimant's counsel to explain this discrepancy, Mr. Sims testified:

Yeah. And I would not have indicated that he did it at work, because I was never told that, and I was never given any indication.

Q. (By Mr. Nauman): Well, that's what you say, but then on the other hand, Gwen Feller, not knowing who was who at C Stein, somehow finds her way directly to your work comp person. And Gwen Feller tells Janet Willoughby that she was directed by you to contact Janet.

A. And as I said, I might have told her that, you know. That's the person all employees contact at work for anything, is Janet.

Hearing Transcript, pp. 137-138.

31. Mr. Sims has no explanation for how the reference to him (Mr. Sims) stating that Claimant's wife told him it happened at work appeared in the closing report.

#### Medical evidence

32. In a July 2, 2012 letter to Claimant's primary physician, Dr. Johans wrote, *inter alia*:

Curiously, work comp denied his claim. From my standpoint and the story he has given me, this seems like a very straight-forward valid work comp claim. He injured himself while rotating with cases of beer. He hurt

his back in a new and unique way that he never had before and shortly after that, it started going down the leg. He injured himself in the low back on Thursday after carrying the beer and by Sunday, the pain down the leg was quite severe and by Monday when he woke up he realized he had a foot drop. It seems fairly clear to be a work comp claim.

JE 17, p. 147.

#### Surveillance video

33. Employer had previously placed a fixed security camera in the area where Claimant alleges he was injured. The video shows Claimant rotating beer cases and cleaning under shelves. Claimant is not visible during much of the video as shelving or product blocks the view of him. In any event, at 11:33:05 of the video, it appears that Claimant drops something and quickly stands up and flexes his back as if in pain. He then proceeds to leave the area with a noticeable limp that was not as apparent in the earlier portion of the video.

34. The Referee is persuaded that Claimant suffered an accident arising out of and in the course of his employment as alleged. The recorded statement and testimony of Mr. Sims is not convincing in that there would have been no reason for him to have referred Claimant's wife to Ms. Willoughby unless he understood the Claimant was injured at work. His testimony that because Ms. Willoughby handles all of Employer's health insurance issues (not just workers' compensation), he would have told Claimant's wife in any event is not credible. Claimant's wife called Mr. Sims at 5:00 a.m. on Memorial Day. Unless dealing with a workers' compensation claim, Mr. Sims would have no reason to "bother" Ms. Willoughby with insurance matters that could not be resolved over the holiday. Further, Mr. Sims admitted that he was groggy during this conversation and may not have fully understood Claimant's wife. Mr. Sims at one point indicated that his "impression" was that Claimant hurt himself on the job. The SIU Closing Report indicated that Mr. Sims told the investigator that Claimant's wife had told him that Claimant hurt

himself at work. Overall, Mr. Sims' testimony is not persuasive that Claimant was not injured on the job.

35. Mr. Selanders' testimony regarding Claimant telling him at around 7:45 a.m. on May 24, 2012 that he had hurt his back helping a friend move the weekend before is suspect. Mr. Selander had no explanation as to why Claimant would not have told him of his injury before May 24<sup>th</sup> as he was Claimant's "shoulder to cry on."<sup>2</sup> Further, Mr. Selander testified that he watched Claimant for signs of injury but observed none. It can reasonably be inferred that if Claimant injured his back to the extent that it resulted in a massive free floating disc fragment the week before, he would have exhibited some pain behavior both before and after the subject accident.

36. Ms. Willoughby first learned of Claimant's injury in a telephone call from his wife indicating Claimant had a work-related back injury. Ms. Willoughby wanted to hear that information from Claimant himself, which he provided to her the very next day. Ms. Willoughby does not know why Rob would have instructed Claimant's wife to call her if he (Rob) did not believe this was a workers' compensation claim, which weakens Rob's testimony that he would have instructed Claimant's wife to call Ms. Willoughby even if not a workers' compensation matter.

37. The medical evidence is unrebutted. Defendants argue that Dr. Johans' causation opinion is based solely on what Claimant told him regarding the mechanics of his accident. However, that would be true in every case unless the physician actually witnessed the accident or event. The Referee finds that Claimant credibly explained the circumstances surrounding his accident and the accident itself and Dr. Johans' causation opinion derived there from is also credible.

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<sup>2</sup> Mr. Selander testified that Claimant tells him everything and he would have expected Claimant to have told him had he injured his back the week before sooner than May 24<sup>th</sup>.

38. Claimant had private health insurance with Employer that he had used in the past. If Claimant injured himself the week prior, it is reasonable to assume that he would have sought treatment under that policy rather than working in pain for a week that resulted in an emergency back surgery and then contriving a bogus workers' compensation claim. Had Claimant had the motivation to conjure up a phony accident, one is left to wonder why he picked May 24 and why he picked that particular manner in injuring himself. That just does not make sense. What does make sense is to stage an accident in front of a credible witness(es) and not to stage an unwitnessed accident in an area subject to surveillance.

39. Defendants argue that Claimant is not a credible witness due to his prior felony conviction and because he admitted that he smoked marijuana and took his wife's oxycodone after his industrial injury. While it is true that Claimant is a convicted felon, the crime for which he was convicted and sentenced was not one involving moral turpitude or dishonesty and need not be used to automatically discount his testimony as not credible. Whether Claimant smoked marijuana after his accident to help alleviate the pain does not mean that the accident did not happen.

40. Defendants also argue that the need for Claimant's emergency surgery was due to Claimant's pre-existing back condition. However, the only medical evidence regarding causation is from his treating neurosurgeon who established the same, *albeit* based on the history obtained from Claimant. There is no medical evidence to the contrary. Defendant's argument in this regard is without merit.

41. Claimant has timely, consistently, and credibly related the happening of his accident to his physicians and others. He credibly testified that he never told anyone he was injured the week before helping someone move. The surveillance video corroborates

Claimant's testimony at least to the extent that Claimant was where he said he was, doing what he said he was doing at the time of his accident. Testimony that Claimant may have told someone differently does not trump the fact that the Referee finds otherwise.

42. As the Referee has found that Claimant suffered a compensable accident arising out of and in the course of his employment, it follows that he is entitled to reasonable medical care.

### **CONCLUSIONS OF LAW**

1. Claimant has proven that he suffered a compensable accident arising out of and in the course of his employment.

2. Claimant is entitled to reasonable medical care pursuant to Idaho Code § 72-432.

### **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 \_\_15<sup>th</sup>\_\_ day of January, 2014.

INDUSTRIAL COMMISSION

\_\_\_\_\_/s/\_\_\_\_\_  
Michael E. Powers, Referee

## CERTIFICATE OF SERVICE

I hereby certify that on the \_\_28<sup>th</sup>\_\_\_\_ day of \_\_January\_\_, 2014, 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:

ROBERT A NAUMAN  
3501 W ELDER ST STE 108  
BOISE ID 83705

KENT W DAY  
PO BOX 6358  
BOISE ID 83707-6358

ge

*Gina Espinoza*

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

STEVEN FELLER,

Claimant,

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C STEIN, INC.,

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LIBERTY NORTHWEST INSURANCE  
CORPORATION,

Surety,

Defendants.

**IC 2012-013348**

**ORDER**

**Filed January 28, 2014**

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 has proven that he suffered a compensable accident arising out of and in the course of his employment.
2. Claimant is entitled to reasonable medical care pursuant to Idaho Code § 72-432.

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

DATED this \_\_28<sup>th</sup>\_\_ day of \_\_January\_\_, 2014.

INDUSTRIAL COMMISSION

\_\_\_\_/s/\_\_\_\_\_  
Thomas P. Baskin, Chairman

\_\_\_\_/s/\_\_\_\_\_  
R. D. Maynard, Commissioner

\_\_\_\_/s/\_\_\_\_\_  
Thomas E. Limbaugh, Commissioner

ATTEST:

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

**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_28<sup>th</sup>\_\_ day of \_\_January\_\_ 2014, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

ROBERT A NAUMAN  
3501 W ELDER ST STE 108  
BOISE ID 83705

KENT W DAY  
PO BOX 6358  
BOISE ID 83707-6358

ge

*Gena Espinoza*