BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

GARY FOWLER, Claimant, v. MILITEC DEFENSE SYSTEMS INC., Employer, and IDAHO STATE INSURANCE FUND, Surety, Defendants.	**IC 2012-002810** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** **FILED SEP 8 2014**

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Industrial Commission assigned the above-entitled matter to Referee Douglas A. Donohue who conducted a hearing in Lewiston on April 8, 2014, Claimant represented by himself, pro se. Wynn Mosman represented Defendants Employer and Surety. The parties presented oral and documentary evidence and submitted briefs. This matter came under advisement on July 2, 2014. This matter is now ready for decision.

ISSUES

Pursuant to the Notice of Hearing and the parties' stipulation at the hearing, the issues to be decided as a result of the hearing are:

1. Whether Claimant suffered an injury caused by an accident arising out of and in the course of employment;

2. Whether the condition for which Claimant seeks benefits was caused by the alleged industrial accident;

3. Whether Claimant suffers from a compensable occupational disease;

4. Whether Claimant has complied with the notice and limitations requirements set forth in Idaho Code § 72-448;

5. Whether Claimant's condition is due in whole or in part to a subsequent intervening cause;

6. Whether apportionment for a preexisting condition under Idaho Code § 72-406 is appropriate;

7. Whether and to what extent Claimant is entitled to temporary disability benefits and medical care; and

8. Whether Claimant's entitlement to medical benefits should be affected by application of Idaho Code § 72-439.

In his closing brief, Claimant pleads for additional time in which to prepare his case. Specifically, he seeks more time in which to develop medical evidence. Claimant's request deemed a motion to reopen the record to admit additional evidence. Claimant was advised in telephonic conferences on May 21 and December 16, 2013 as well as January 16 and March 26, 2014 that he bore the burden of proving his entitlement to benefits at the hearing. Also, in order to provide Claimant more time to prepare his case, a previously scheduled hearing was vacated. Claimant was also advised to seek legal counsel, yet he elected to proceed pro se. Claimant was afforded a fair opportunity to prepare and present his case. He has not established good cause for his request for an open-ended order reopening the record. Claimant's request for more time is denied.

CONTENTIONS OF THE PARTIES

Claimant contends that he incurred reactive airways disease from inhaling chemical fumes at Militec, that this condition is a compensable occupational disease, and that he incurred a compensable right arm injury from an industrial accident while deburring

rifle scopes and mounting brackets during the last weekend in 2011. He acknowledges that no physician has provided a medical opinion supporting his causation hypotheses, but he is certain of his position with respect to these conditions, nonetheless.

Defendants contend that Claimant has proffered insufficient medical evidence to establish that he incurred either an occupational disease or an arm injury at Militec. Further, if Claimant has been diagnosed with any respiratory condition due to industrial exposures, that condition manifested before he was hired by Militec. Defendants are not liable.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The prehearing deposition of Claimant taken December 3, 2013;
2. Claimant's Exhibits A through E admitted at the hearing;
3. Defendants' Exhibits 1 through 20 admitted at the hearing; and
4. The testimony of Claimant at the hearing.

Only evidence admitted at the hearing will be considered. Evidence presented for the first time in a party's brief is disregarded.

FINDINGS OF FACT

After considering 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 and recommends it approve the same.

Background

1. Claimant, a machinist for approximately 30 years, was 54 years of age at the time of the hearing. He resides in Cottonwood. He was employed as a machinist at Militec from about January 2, 2011 through January 3, 2012. At Militec, Claimant fabricated

rifle scopes, mounting brackets, and other parts using a CNC lathe or a metal-turning mill. He also changed the coolant in at least two machines each day. During the last three months or so, he also deburred parts using a metal hand file.

2. Previously, from January 2008 through March 3, 2010, Claimant worked as a machinist at Advanced Lean Manufacturing ("Advanced") in Redmond, Washington, where he machined metal and cleaned coolant filters twice a day.

3. Claimant was treated for various mental and physical conditions prior to his employment at Militec, including but not limited to: bilateral carpal tunnel syndrome treated with bilateral release surgeries; cough with yellow sputum, nasal congestion, and fatigue diagnosed as acute bronchitis; chronic cough; vision problems treated with surgery; an industrial eye injury; hypertension treated with medication; chronic recurrent depression and bipolar personality disorder treated with medication; erectile dysfunction treated with medication; post-surgical chronic back pain related to a 1987 surgery; new herniated lumbar disc in 2003 treated with discectomy followed by continuing chronic low back pain; and Barrett's esophagus.

4. Claimant has been unemployed for significant periods due to various circumstances, including his back conditions and marital problems. From 2003-2006, his wife supported him. From 2006-2008, he lived with his sister because he did not feel like working.

Occupational Disease Claim Related To Prior Employer

5. Claimant experienced respiratory symptoms while working for Advanced. In June 2009 he sought treatment at Evergreen Medical Center. Two courses of antibiotics

did not resolve his condition. He sought additional treatment from U.S. Health Works in November 2009 for constant watery, burning, itchy eyes, worsened nasal congestion, cough worsened with activity that occasionally led to vomiting, and increasing fatigue. Claimant was advised to wear a protective mask at work. Although he tried wearing a mask at work, Claimant did not continue because it was uncomfortable, he was ridiculed for doing so, or both. Claimant began developing shortness of breath, without wheezing, especially at work. His symptoms improved when he was away for a two-week holiday vacation in late 2009, but they returned when he went back to work.

6. Claimant left employment at Advanced on March 3, 2010 after another employee wanted to fight him.

7. In March 2010 on the heels of his departure from employment at Advanced and approximately ten months prior to his employment at Militec, Claimant was evaluated at Pacific Medical Center in Kirkland, Washington for respiratory disease that Claimant asserted was due to toxic exposures at Advanced. Some of Claimant's symptoms had resolved, but his cough and nasal congestion persisted, and he reported blood in his sputum.

8. Claimant was diagnosed with chronic cough, possibly related to paranasal drip. He was referred for routine follow-up with a pulmonologist and the occupational medicine department at Harborview Medical Center ("Harborview") in Seattle, and was prescribed with a nasal inhaler.

9. Claimant filed a claim with the Washington Department of Labor and Industries ("L&I") based upon an injury date of January 1, 2008 for benefits related to respiratory disease he believed he contracted from environmental exposures at Advanced. His claim was initially

denied, so he appealed.

10. On April 15, 2010 in connection with his appeal, Claimant underwent a medical evaluation by Sukriti Singhal, M.D., a pulmonologist at Harborview. Dr. Singhal conducted a comprehensive review of Claimant's circumstances, including a medical records review, examination, and investigation into the details pertaining to Claimant's work environment and the chemicals to which he was exposed.

11. Dr. Singhal reported no objective findings on physical examination to account for Claimant's persistent symptoms. For example, though Claimant reported persistent nasal congestion, "there is no apparent mucosal or retropharyngeal erythema." She posited that Claimant's symptoms may have somewhat resolved now that he had been away from the Advanced work environment for more than one month.

12. Dr. Singhal recommended that Claimant receive additional follow-up, including a methacholine challenge test. She also sought industrial hygiene test results from the Advanced work environment so that she could make a better exposure assessment. Dr. Singhal also noted that Claimant's esophageal condition could be a factor contributing to his persistent cough and wheezing. No additional treatment was recommended pending the methacholine challenge test results, but Claimant was advised to avoid further exposure to air contaminants including smoke, fumes, vapors, and dusts. Aaron Firestone, M.D., concurred with her opinions.

13. Claimant underwent a methacholine challenge test on April 26, 2010 at Harborview. On April 30 he was reevaluated by Dr. Singhal who discussed the test results with him. Claimant reported chest pain since the test, and an episodic cough sometimes associated with vomiting/nausea and fatigue that he thought was worsening.

14. Claimant's methacholine challenge test demonstrated a 16% fall in his FEV1 at stage six, after receiving a 10 m/ml dose of methacholine. Dr. Singhal considered this "borderline normal" and suggested Claimant may be at increased risk of symptoms. She recommended a trial course of albuterol and reiterated her strong recommendation that Claimant avoid exposure to irritants like second hand-smoke and recommended adequate ventilation and use respiratory personal protective equipment as needed. She identified no other substantial work restriction. Dr. Firestone concurred. He opined the cause was multi-factorial and stated, "exposures to airborne irritants are a proximate cause of his condition." His restrictions included avoidance of "unprotected exposures to air contaminants such as irritant gases, fumes, dusts, or aerosols."

15. An investigation into toxic exposures at Advanced was conducted by an L&I consultant on April 20, 2010. Nancy J. Beaudet, certified industrial hygienist, reviewed the consultant's findings in August 2010. The consultant also noted that Claimant worked about 26 hours per week, spending about three hours per day in the machine room. He spent approximately eight to sixteen minutes per shift changing coolant filters on the machines, during which time he experienced intense exposure to coolant fumes. Other tasks included cleaning and putting away parts, restocking delivery carts, and making deliveries.

16. The record suggests that ventilation is not specifically recommended and is not generally needed for those machines.

17. Ms. Beaudet opined, among other things, that: It is unlikely that oil mist exposures such as those Claimant experienced exceeded regulatory standards or American Conference of Governmental Industrial Hygienist threshold limit values; reports of health

problems from fungal or bacterial growth in machine coolants are well documented in the published literature; biological growth may have occurred in the coolant from February 2009 to February 2010 but the cleaning routine was improved before testing occurred, so no measurements were taken.

18. Ms. Beaudet's opinions are unchallenged in the record. She provided her written report to Dr. Firestone in August 2010. No further opinion from Dr. Firestone appears in the record.

19. Claimant was unsuccessful, as of the time of the hearing, in obtaining L&I benefits related to his employment at Advanced.

Treatment After Beginning Employment At Militec

St. Mary's Medical Clinic

20. On October 26, 2011 Claimant was treated by Margaret Gehring, FNP, for white patches on his throat, chronic cough, sore throat with onset several years previously, and increased fatigue. Claimant reported that his cough, sore throat, and fatigue were due to inhaling machine fumes at Militec. Claimant also related that a tonsillectomy had been recommended in the past, but he did not undergo this procedure because he could not get workers' compensation benefits to pay for it.

21. On exam Claimant had a cough and nasal congestion. Nurse Gehring took a throat culture, ordered lab tests, diagnosed reactive airways disease and chronic pharyngitis and prescribed an albuterol inhaler for shortness of breath and cough. Claimant used the albuterol inhaler she prescribed for only one day.

22. Claimant followed up with Ms. Gehring on November 2, 2011. Ms. Gehring had reviewed Claimant's prior records and Claimant's test results. Ms. Gehring ordered a blood

test for celiac disease, which could account for Claimant's chronic sinus congestion, chronic sore throat, muscle aches and spasms, and general fatigue. She prescribed vitamin D supplements, Singulair, and Zegerid for gastroesophageal reflux disease ("GERD"). She referred Claimant to Colin Doyle.

23. On November 29, 2011 Ms. Gehring again examined Claimant who had discontinued using Singulair because it made him anxious. He still had some dysphagia and felt congested at work. Ms. Gehring diagnosed allergic rhinitis, GERD, vitamin D deficiency and fatigue. She prescribed medications and recommended a gluten-free diet. Although Ms. Gehring recommended follow-up in one month, no further chart notes from her or St. Mary's appear in the record.

Colin Doyle, M.D.

24. Dr. Doyle evaluated Claimant's throat symptoms on November 22, 2011. Claimant reported that he often breathed toxic fumes at work and coughed and choked and returned home with a sore throat. Dr. Doyle examined Claimant's larynx under anesthesia and diagnosed chronic pharyngitis. He discussed the potential risks and benefits of a tonsillectomy with Claimant. He advised Claimant that a tonsillectomy may improve his sore throat, but it would not improve any symptoms associated with exposure to solvents. He did not relate any of Claimant's symptoms to his work at Militec.

25. In December 2011 Claimant advised his supervisor at Militec that he was taking a 30-day leave of absence due to right-arm pain from deburring parts. In a "Formal Grievance" he indicated that he could no longer work 10 hours per day and wished to go to an eight-hour day; that he was still having trouble with chronic cough, sore throat, and impaired respiratory

function due to coolant exposure; that he was having problems with his arms being sore and cramping up due to the deburring; and that he wished to speak to a neutral third party about his problems. Approximately two weeks into his leave, Claimant was informed by letter that he had been fired.

26. At his deposition, Claimant explained that his symptoms never got better. His arm would not stop hurting; the pain increased when he used it. His shortness of breath did not improve.

Ty Smith, D.O.

27. On January 6, 2012 Claimant was evaluated by Dr. Smith, a family physician, for constant, moderate dyspnea with onset in 2007 that Claimant reported was exacerbated by smoke and metal shop fumes. Claimant reported reflux symptoms, intermittent, moderate right-arm pain and respiratory complaints. Dr. Smith diagnosed right arm pain and ventilation pneumonitis. He referred him for a pulmonary evaluation. He referred Claimant for an EMG/NCV of his arm.

28. A plethysmography showed no lung disease.

29. The EMG/NCV suggested bilateral carpal tunnel syndrome, as well as borderline findings suggesting a left ulnar polyneuropathy.

30. On February 25, 2012 Claimant sought emergency care for burning left-sided chest pain radiating to his left arm. GERD was diagnosed.

31. Claimant underwent a transthoracic echocardiogram on February 29, 2012. It demonstrated mild left ventricular hypertrophy, but no clinically significant valvular heart disease.

32. On March 8, 2012 Claimant reported vagary symptoms. Dr. Smith ordered an MRI of Claimant's head. The record does not show whether Claimant followed through.

33. On March 14, 2012, Claimant's blood was drawn for a number of lab tests. On March 15, 2012, Dr. Smith discussed cholesterol management with Claimant.

Damilola Olupana, D.O.

34. Claimant was evaluated by Dr. Olupana, a family physician, on November 19, 2013 and January 14, 2014. Claimant wanted her to "vouch for" him as being disabled. Dr. Olupana recorded a normal examination.

35. At his second appointment, Dr. Olupana recommended Claimant improve his diet and exercise.

Jared Pikus, D.O.

36. Dr. Pikus, a family practitioner, prescribed inhalers for Claimant in 2014. In February, he noted that Claimant had some symptom improvement with these medications, suggesting that he may have asthma, so further pulmonary testing versus chest x-ray should be considered.

SSDI

37. Claimant has been trying to obtain Social Security Disability Insurance ("SSDI") benefits since March 2012, alleging disability since he left Militec in January 2012. Despite efforts by an attorney, at the time of hearing Claimant still had not been awarded SSDI benefits.

38. Because SSDI criteria are so dissimilar to Idaho Workers' Compensation Law, SSDI determinations do not significantly impact our analysis.

Vocational Rehabilitation

39. Claimant worked with a vocational rehabilitation consultant. In response to Defendants' inquiry as to what Claimant wanted the vocational consultant to do, Claimant replied, "I just want to be disabled and collect my Social Security."

40. At the time of his deposition, Claimant believed there was no work that he could do because he became extremely sore after only a half-hour to an hour of activity. His wife helped him bathe and shave and drive. Claimant could not mow the lawn or shovel snow without quickly becoming severely debilitated. He described his condition similarly at the hearing. "I can't do anything at all. I can't even sweep floors. If I use my upper body at all, it makes me really really tired, and I just like will go to sleep within just a little bit, because it really draws me down for some reason."

DISCUSSION AND FURTHER FINDINGS

The provisions of the 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).

Occupational Disease

41. 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). Further, Idaho Code § 72-439 limits the liability of an employer for any compensation for an occupational disease to cases where "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."

42. In proving causation, Idaho case law recognizes compensability for "aggravation" of an underlying disease, but only when such aggravation results from an industrial accident. See, for example, *Nycum v. Triangle Dairy Co*., 109 Idaho 858, 712 P.2d 559 (1985); *Nelson v. Ponsness-Warren Idgas Enterprises*, 126 Idaho 129, 879 P.2d 592 (1994); and *Konvalinka v. Bonneville County*, 140 Idaho 477, 478-479, 95 P.3d 628, 629-630 (2004).

43. 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 therefor." 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 preexisting 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).

44. 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 nonacute 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. Claimant asserts that he incurred reactive airways disease at Militec from breathing in vapors released when he opened machines to check fluids every couple of hours. He argues that the fluids are toxic because neither the fluids nor the filters are changed often enough, so bacteria builds up in them. In the present case, Claimant's occupational disease claim for industrial respiratory disease, diarrhea, and chest pain is examined in light of the above elements.

45. 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).

46. Pursuant to Idaho Code § 72-102(21)(b), " '[c]ontracted' and 'incurred,' when referring to an occupational disease, shall be deemed the equivalent of the term 'arising out of and in the course of' employment."

> Because in Idaho's worker's compensation law the word "incurred" means "arising out of and in the course of' employment," it is as much a reference to cause as to a particular point in time. See I.C. § 72-102(21)(b). As an occupational disease develops over time, it is possible for the disease to be "incurred" by a claimant under a series of different employers before it becomes manifest. In such a situation, I.C. § 72-439(3) provides that it is the last such employer, or its surety, who is liable to the claimant.

Sundquist v. Precision Steel & Gypsum, Inc., 141 Idaho 450, 456, 111 P.3d 135, 141 (2005).

47. Claimant's physicians have not opined that Claimant's respiratory disease is a result of his work at Militec. Claimant asserts that many of the medical care providers he has seen so far are incompetent, have altered his records, are lazy, and/or are "just students," and that is why none have linked his respiratory complaints to his employment. The evidence of record fails to support Claimant's allegations that any of the care he received was inadequate, or that any of his care providers were not professionally qualified, or that any of them erred.

48. The evidence fails to support Claimant's allegations of bacterial growth in the machine coolant at Militec. No evidence establishing the presence of bacteria in the coolant was admitted in support of Claimant's allegations.

49. Dr. Firestone acknowledged that the etiology of Claimant's condition is likely multi-factorial. The Washington L&I environmental investigation of Advanced, after Claimant left employment, revealed no evidence of heightened levels of airborne irritants from chemicals specifically tested for. No testing was conducted at Militec. No persuasive medical opinion has shown that Claimant's work environments, anywhere, exposed Claimant to any "airborne

irritants" in sufficient quantities and durations such as to contribute to the onset of Claimant's condition.

50. At his deposition, Claimant asserted that he had diarrhea and chest pain as a result of his exposure to coolant at Militec. The medical records do not support these claims.

51. Claimant has failed to prove by a preponderance of medical evidence that his industrial exposures at Militec caused or aggravated his respiratory condition.

Right-Arm Injury

52. The Idaho Workers' Compensation Act places an emphasis on the element of causation in determining whether a worker is entitled to compensation. In order to obtain workers' compensation benefits, a claimant's disability must result from an injury, which was caused by an accident arising out of and in the course of employment. *Green v. Columbia Foods, Inc.*, 104 Idaho 204, 657 P.2d 1072 (1983); *Tipton v. Jannson*, 91 Idaho 904, 435 P.2d 244 (1967).

53. The claimant has the burden of proving the condition for which compensation is sought is causally related to an industrial accident. *Callantine v. Blue Ribbon Supply*, 103 Idaho 734, 653 P.2d 455 (1982). Further, there must be medical testimony supporting the claim for compensation to a reasonable degree of medical probability. A claimant is required to establish a probable, not merely a possible, connection between cause and effect to support his or her contention. *Dean v. Dravo Corporation*, 95 Idaho 558, 560-561, 511 P.2d 1334, 1336-1337 (1973), overruled on other grounds by *Jones v. Emmett Manor*, 134 Idaho 160, 997 P.2d 621 (2000).

54. The Idaho Supreme Court has held that no special formula is necessary when

medical opinion evidence plainly and unequivocally conveys a doctor's conviction that the events of an industrial accident and injury are causally related. *Paulson v. Idaho Forest Industries, Inc.*, 99 Idaho 896, 591 P.2d 143 (1979); *Roberts v. Kit Manufacturing Company, Inc.*, 124 Idaho 946, 866 P.2d 969 (1993).

55. 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).

56. A claimant need not show that he suffered an injury at a specific time and at a specific place. *Hazen v. Gen. Store*, 111 Idaho 972, 729 P.2d 1035, (1986), *rehearing denied* (1986); *Wynn v. J.R. Simplot Co.*, 105 Idaho 102, 666 P.2d 629 (1983). The accident need only be reasonably located as to the time when and the place where it occurred. *See Spivey v. Novartis Seed, Inc.*, 137 Idaho 29, 43 P.3d 788 (1981).

57. Claimant asserted at the hearing that he incurred an injury to the outside of his right arm during the last weekend in 2011 when his right arm cramped up while deburring rifle

scopes and mounting brackets at Militec. Claimant argued in his brief that this pain was different from carpal tunnel pain (in hands, wrists, and inside of arm), and from the pain he experienced after carrying a linoleum roller (inside of arm). However, in his April 23, 2012 Complaint, Claimant alleged that he sustained carpal tunnel syndrome and needed surgery as a result of filing parts at Militec. He subsequently filed two Amended Complaints on May 9, 2012 and May 11, 2012 alleging that he injured his right arm while filing parts, resulting in carpal tunnel syndrome and entitling him to lost wages and medical benefits, specifically for surgery.

58. Claimant's assertions regarding the quality and presumed etiology of his subject right arm pain are inconsistent and unpersuasive. Further, no physician has recommended any further treatment, let alone surgery.

59. Dr. Smith's medical records document Claimant's assertion of increased right arm pain in December 2011 due to his deburring activities at Militec; however, they do not locate his pain to any specific part of his arm, nor do they diagnose any condition.

60. Claimant's February 2012 nerve conduction study demonstrates he has mild carpal tunnel syndrome; however, no physician has opined as to the etiology of Claimant's mild carpal tunnel syndrome. Dr. Olupana's examination in November 2013 revealed normal upper extremity strength and good grip strength. No physician has opined that Claimant sustained any new injury, or that he aggravated any preexisting conditions, as a result of his work at Militec. Claimant has failed to prove by a preponderance of evidence that he sustained an industrial accident and injury at Militec.

61. All other issues are moot.

CONCLUSIONS OF LAW

1. Claimant has failed to establish that he incurred an occupational disease at Militec.

2. Claimant has failed to establish that he sustained a right arm injury as a result of an industrial accident at Militec.

3. Claimant's Complaint should be dismissed with prejudice.

RECOMMENDATION

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

DATED this 29TH day of AUGUST, 2014.

INDUSTRIAL COMMISSION

/S/_____
Douglas A. Donohue, Referee

ATTEST:

/S/_____
Assistant Commission Secretary dkb

CERTIFICATE OF SERVICE

I hereby certify that on the 8TH day of SEPTEMBER, 2014, a true and correct copy of **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** were served by regular United States Mail upon each of the following:

GARY FOWLER
415 BASH
COTTONWOOD, ID 83552

WYNN MOSMAN
P.O. BOX 8456
MOSCOW, ID 83843

dkb

/S/_____

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

GARY FOWLER, Claimant, v. MILITEC DEFENSE SYSTEMS INC., Employer, and IDAHO STATE INSURANCE FUND, Surety, Defendants.	**IC 2012-002810** **ORDER** **FILED SEP 8 2014**

Pursuant to Idaho Code § 72-717, Referee Douglas A. Donohue 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 failed to establish that he incurred an occupational disease at Militec.

2. Claimant has failed to establish that he sustained a right arm injury as a result of an industrial accident at Militec.

3. Claimant's Complaint should be dismissed with prejudice.

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

DATED this 8TH day of SEPTEMBER, 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 8TH day of SEPTEMBER, 2014, a true and correct copy of **ORDER** were served by regular United States Mail upon each of the following:

GARY FOWLER
415 BASH
COTTONWOOD, ID 83552

WYNN MOSMAN
P.O. BOX 8456
MOSCOW, ID 83843

dkb /S/_____