

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

J. MARK DAYLEY,)
)
 Claimant,)
)
 v.)
)
 D & J DIESEL, INC.,)
)
 Employer,)
)
 and)
)
 STATE INSURANCE FUND,)
)
 Surety,)
 Defendants.)
 _____)

IC 2006-505106

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

Filed: February 17, 2011

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Rinda Just, who conducted a hearing in Idaho Falls, Idaho, on January 20, 2010. James C. Arnold of Idaho Falls represented Claimant. Steven R. Fuller of Preston represented Defendants. The parties submitted oral and documentary evidence and filed post-hearing briefs. The matter came under advisement on October 22, 2010 and is now ready for decision.

ISSUE

By agreement of the parties, the sole issue to be decided is whether Claimant suffers from a compensable occupational disease. All other issues are reserved.

CONTENTIONS OF THE PARTIES

Claimant suffers from end-stage osteoarthritis in both of his knees, which he attributes to

many years of work as a diesel mechanic—most of it working for Employer. Claimant asserts that his bilateral degenerative joint disease constitutes a compensable occupational disease pursuant to Idaho Code §§ 72-102(22), 72-437, and 72-439.

Defendants argue that Claimant’s bilateral degenerative arthritis in his knees is not a compensable occupational disease because:

- It is not characteristic of or peculiar to his occupation as required by Idaho Code § 72-102(22);
- He was not totally incapacitated from performing his work for Employer; and
- He did not suffer an accident that aggravated his pre-existing condition.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant, taken at hearing;
2. Joint exhibits 1 through 11, admitted at hearing; and
3. Depositions of Claimant, taken August 21, 2007, and Gene Griffiths, M.D., taken

December 11, 2008.

All objections made during the deposition of Dr. Griffiths are overruled. After having considered all the above evidence and the briefs of the parties, the Referee submits the following findings of fact and conclusion of law for review by the Commission.

FINDINGS OF FACT

BACKGROUND

1. At the time of hearing, Claimant was sixty-six years of age and lived in Pocatello, Idaho.
2. Claimant trained as an auto mechanic and spent the better part of forty years working as a diesel mechanic, primarily rebuilding Detroit Diesel engines. Claimant had been

working as a diesel mechanic for about twenty years before he went to work for Employer in 1978. Claimant spent the next twenty years working for Employer. During the first eighteen or so years, Claimant spent about 70% of his time working in the field repairing engines in mine haul trucks and loaders at open pit mines in Idaho, Wyoming, Nevada, and Montana. Claimant stressed the massive size of the mining equipment in his testimony. Exhibit 9 contains photos showing the relative scale of the equipment. Claimant testified that, when he was in the field, he fixed the equipment where it broke down—outdoors, in sub-zero temperatures during the winter, occasionally on a concrete or steel pad, but usually on a haul road or in the loose gravel. The equipment was so large that a six-foot ladder only got him part-way up to where he needed to work. Claimant regularly carried parts, some weighing as much as ninety-five pounds, up and down the ladder and across uneven ground. The equipment was so large that Claimant could walk under it in a crouching position, and if he was not climbing the ladder to work on the top of the engine, he was kneeling or crouching on the ground to work under the engine.

3. From 1996 to 1998, Claimant worked mostly in Employer’s shop, where he had access to equipment that made his work less strenuous than the fieldwork he did previously. The shop work still required kneeling on hard surfaces, crouching, and lifting.

4. In 1998, Claimant and Employer had a disagreement, and Claimant left Employer. He continued to work as a diesel mechanic for a little over a year, and then took a position as a service manager.

5. Claimant returned to work for D & J Diesel¹ in 2003, where he remained until Employer laid him off in July 2008. During his last stint working for Employer, Claimant

¹ By the time Claimant returned to work at D & J, the company was doing business under the name Central Equipment.

performed most of his work in the shop.

MEDICAL HISTORY

6. In early November 2001, Claimant injured his right knee while hunting. He sought care from Richard Wathne, M.D. Claimant reported that the knee had been bothering him for a couple of years, but became acutely painful during the hunting trip. Diagnostic imaging of the right knee revealed “significant degenerative changes in the lateral compartment on his AP and tunnel views with narrowing as well as degenerative changes in the lateral compartment.” Ex. 2, p. 3. The imaging also revealed spurring off the tibial plateau and spurring on the skyline views off the patella. Dr. Wathne prescribed analgesic and anti-inflammatory medication and strengthening exercises. Dr. Wathne outlined Claimant’s limited future treatment options, including intra-articular steroid injection, osteotomy, and total knee replacement (TKR).

7. Claimant returned to Dr. Wathne after four weeks without improvement and had an intra-articular steroid injection, which provided some relief for a period of time. Claimant did not pursue additional treatment from Dr. Wathne.

8. Over the next several years, Claimant mentioned his right knee pain during visits to his primary care physician (*See*, January 8, 2002 note, Ex. 6, p. 54; August 22, 2002 note, *Id.*, p. 50). The August 22 chart includes a comment that Claimant was considering TKR with Dr. Wathne.

9. In September 2005, while working for Employer, Claimant slipped from a piece of equipment and fell, injuring his right knee.² He sought care at Idaho Orthopaedic & Sports

² Claimant filed a workers’ compensation claim for the 2005 injury. Surety accepted the claim, paid benefits, and the claim was closed. Claimant is not seeking any additional benefits for the 2005 accident in this proceeding.

Clinic, where physician assistant Matthew McKinley treated him.³ X-rays revealed “bone on bone arthrosis in the lateral joint line” and “near bone on bone medial joint arthrosis,” as well as a non-displaced fracture through a large enthesophyte of the inferior pole of the patella, and possible intra-articular loose body in the intercondylar notch. Exhibit 7, p. 138. Mr. McKinley provided conservative care, including bilateral intra-articular steroid injections. Mr. McKinley also discussed the possibility of viscosupplementation injections, and sought approval from Surety. Claimant last saw Mr. McKinley on October 21, 2005.

10. In late December 2005, Surety arranged for an independent medical evaluation (IME) of Claimant by Dr. Griffiths. Surety asked Dr. Griffiths to address a number of questions relating to Claimant’s September 2005 industrial accident.⁴

11. In his January 25, 2006 report, Dr. Griffiths concluded that:

- Claimant’s diagnosis was end-stage osteoarthritis of the right lateral and patellofemoral compartments, and osteoarthritis of the left medial and probably left patellofemoral compartments;
- Claimant’s prognosis was continued degeneration with increased pain and morbidity of both knees;
- Claimant’s diagnosis pre-dates and is unrelated to the September 2005 industrial accident;
- Claimant is at maximum medical improvement (MMI) from the September 2005 injury—he needs no further treatment relating to the industrial injury, has no impairment related to the industrial injury, and has no work restrictions related to the industrial injury.

³ Claimant’s primary care physician referred Claimant to Steven L. Coker, M.D., who practiced in the same clinic as Dr. Wathne, but according to Claimant’s deposition testimony, he never saw Dr. Coker and all of his treatment was provided by Mr. McKinley.

⁴ Surety’s letter to Dr. Griffiths makes reference to claim number 2005-17908. According to Commission records, that claim number is not associated with this claimant. Commission records indicate that the claim number for Claimant’s September 2005 industrial knee claim is 2005-523146.

THE INSTANT CLAIM

12. Claimant filed his First Report of Injury or Illness with the Commission on February 26, 2007, alleging a date of injury (or date of manifestation) of February 23, 2006. Claimant expressly denied any accident or injury in his First Report and stated that he was seeking compensation because of the damage to his knees caused by repetitive use. As Claimant testified both at hearing and in his deposition, his “knees were wore out” from working.

Dr. Griffiths

13. In response to the instant claim, Surety sent Claimant back to Dr. Griffiths for additional guidance on the issues of treatment and work restrictions. Although ostensibly directed solely to a claim not presently before us, the introductory paragraph of Dr. Griffiths’ January 25, 2006 report nicely sums up the gist of *this* claim:

[Claimant] is a 62-year-old male who presents with the chief complaint of bilateral knee pain. Currently complaining of the left knee is [*sic*] more painful and symptomatic than his right knee. The patient denies any history of significant trauma. He denies any prior surgery on either knee. He attributes this chronic bilateral knee pain to the activities that he has done as a diesel mechanic; working for his current employer for approximately thirty years duration. As a diesel mechanic, he states that he has been climbing on and off heavy equipment, working on his knees in a crouched position, and on concrete, etc. He is seeking this to be a workman’s [*sic*] compensation case based on his cumulative thirty year history of employment and does not believe the condition his knees are in today is the result of any particular focal event.

In regards to his current condition he states it was of gradual and insidious onset. No focal event as noted and progressively worsened over the last several years and associated with pain of activities of employment and swelling [*sic*].

Exhibit 5, p. 29.

14. Dr. Griffiths saw Claimant July 13, 2006. Dr. Griffiths’ summary of the circumstances surrounding the visit is consistent with his previous report. He noted that Claimant’s condition was relatively unchanged.

15. In answer to Surety's question regarding recommended treatment, Dr. Griffiths opined that Claimant needed bilateral TKR as a result of his degenerative knee condition that pre-existed and was unrelated to his September 2005 industrial injury. He recommended a staged procedure so Claimant could decide which knee to have done first.

16. In answer to Surety's question regarding permanent restrictions, Dr. Griffiths offered some general restrictions: "[l]imited standing, limited up and down activities and limited walking and minimal crawling, crouching . . ." Ex. 5, p. 32. Dr. Griffiths did not explain what he meant by "limited" or describe the limitations in terms of "frequent," "occasional," or "never," nor did he provide guidance as to percentage of time or number of hours that Claimant could perform the activity. Again, Dr. Griffiths indicated that these restrictions were the result of Claimant's end-stage degenerative knee condition, not any industrial accident.

17. In his January 2006 report, Dr. Griffiths specifically declined to address whether Claimant's degenerative arthritis in his knees related to his years of employment as a diesel mechanic, in general, and with Employer, in particular. If Surety asked Dr. Griffiths to address this causation issue in his second report, he did not do so.⁵

18. Claimant filed his Complaint in the case at bar on February 22, 2007.

19. The parties took the deposition of Dr. Griffiths on December 11, 2008. In his deposition, Dr. Griffiths testified that he was a board-certified orthopedic surgeon and a fellow in the American Academy of Orthopedic Surgeons. He testified that he first worked as a general orthopedist for four years, and began practicing orthopedic surgery in Idaho Falls in 2002. At the time of his deposition, Dr. Griffiths was practicing in Yakima, Washington. Dr. Griffiths

⁵ The record in this matter includes the letter from Surety outlining to Dr. Griffiths the issues it wanted him to address during his first IME. There is no similar letter from Surety in the record regarding the matters to be addressed in the July 2006 IME.

held medical licenses in the states of Idaho, Wyoming, Georgia, and Hawaii, and at the time of his deposition, he held a license to practice in the state of Washington.

20. Despite the best efforts of Claimant's counsel to elicit a favorable causation opinion from Dr. Griffiths, he remained firm in his opinion that Claimant's end-stage arthritis could have been the result of any number of factors, though his vocation was not likely among them. Dr. Griffiths testified: "If the patient has a normal structurally sound knee, I am not aware of any activity that would predispose it to being [*sic*] developing arthritis more than any other activity." Dr. Griffiths' Depo., p. 28. Dr. Griffiths explained that, absent injury or surgery or infection, the primary factors that increase the risk of developing arthritis are age and obesity. Dr. Griffiths stated that he was not aware of any literature that examined a correlation between degenerative arthritis of the knees and particular occupations, but admitted that he did not conduct a literature search as a part of his preparation in the case at bar.

Gail S. Ford, D.O.

21. Sometime after Dr. Griffiths' deposition, Claimant asked Gail S. Ford, D.O., to review Claimant's case and offer an opinion. Dr. Ford's report is dated September 10, 2009.

22. The record includes little evidence with regard to Dr. Ford's education, experience, and current practice. Her report is not on professional letterhead, and contains no contact information or mailing address. Apart from her name, the date, and her opinion, the only other scrap of information that appears on the letter is: "Board Certified Emergency Medicine."

23. In her report, Dr. Ford includes a brief review of the medical records, and her assertion that she also reviewed the depositions of Claimant and Dr. Griffiths. She also sifted through the records to tease out Claimant's employment history, and her discussion of his work evidences a clear understanding of the nature of Claimant's work.

24. The remainder of her report is a record of her research. She started with research about diesel engines, and learned from an uncited 2005 on-line article that diesel engines were lighter now than in the past, with the smallest diesel engines weighing about 1,350 pounds and the largest 11,950 pounds. She surmised that “the parts for these engines also weigh a hefty amount.” Ex. 8, p. 155.

25. Dr. Ford then reviewed an assortment of articles that touched on the topics of osteoarthritis of the knee and particular occupations:

- National Institutes of Occupational Safety and Health (NIOSH) publication No. 1007-122—NIOSH was concerned about frequent stooping, kneeling or squatting in the construction trades;
- A Swedish study reported in the International Journal of Epidemiology, Vol. 20, No. 4 (undated)—focused on the relationship of hip and knee osteoarthritis and occupations with high physical work load;
- A German study reported in the Journal of Occupational Medicine and Toxicology (no citation)—on the role of cumulative physical work load in symptomatic knee osteoarthritis;
- A newsletter written by an ergonomist for the Toronto Local 353 (no citation)—discussing whether electricians experienced work-related knee injuries that developed over time due to ladder climbing, crouching and kneeling; and
- A FAQ sheet published by the American Academy of Orthopedic Surgeons—on the topic of the factors that increase the risk of developing osteoarthritis of the knee.

26. Dr. Ford also discussed the significance of the radiographic findings of enthesophytes:

Entheses are sites of stress concentration at the region where tendons and ligaments attach to bone. Attention is paid to the mechanical factors that influence form and function of enthuses [*sic*] and the self-repair of enthesopathies. His entheses were caused from years of stress and his body then trying to repair it self [*sic*].

Ex. 8, p. 158.

27. Dr. Ford's findings are in the form of responses to questions. The questions were not set out in her report, but can be inferred from her answers.

- Claimant suffers from a disease or condition in his knees that is due to the nature of an employment "in which the hazards of such disease or condition actually exist, are characteristic of, and peculiar to the trade occupation, process or employment." *Id.*, at p. 159;
- Dr. Ford bases her opinion on the literature she reviewed;
- Dr. Ford's opinion is rendered to "within a reasonable degree of medical probability";
- Claimant's diagnosis is severe osteoarthritis; and
- Restrictions include limited standing and up and down activities and no crawling or crouching.

DISCUSSION AND FURTHER FINDINGS

COMPENSABLE OCCUPATIONAL DISEASE

28. Idaho Code 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). The law further provides that:

When 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 herein after limited, the employee . . . shall be entitled to compensation.

Idaho Code § 72-437. Idaho Code § 72-439 limits the liability of an employer for payment of compensation for an occupational disease to cases where: (1) "such disease is actually incurred in the employer's employment," and (2) where "the employee was exposed to the hazard of such disease for a period of 60 days for the same employer" [not at issue here]. Finally, Idaho Code § 72-439(3) states:

[w]here compensation is payable for an occupational disease, the employer, or the surety on the risk for employer, in whose employment the employee was last injuriously exposed to the hazard of such disease, shall be liable therefor [sic].

29. Thus, in order to prevail on his claim, this Claimant must prove:

- That he was afflicted by a disease;
- That the hazards of such disease actually exist, are characteristic of, and peculiar to the trade, occupation, process, or employment in which he was engaged;
- That the disease was incurred in, or arose out of and in the course of his employment;
- That his last injurious exposure to the hazard of the disease occurred while he was employed by Employer; and
- That he became disabled as a result of the disease.

As with industrial accident claims, an occupational disease claimant also has the burden of proving, to a reasonable degree of medical probability, a causal connection between the condition for which compensation is claimed and an occupational exposure to the substance or conditions which caused the alleged condition. *Hagler v. Micron Technology, Inc.*, 118 Idaho 596, 598, 798 P.2d 55, 57 (1990). *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 Co.*, 96 Idaho 341, 528 P.2d 903 (1974).

30. On the record before her, the Referee is unable to make the necessary findings to support a claim for a compensable occupational disease. Claimant’s case falls short in several regards.

Credibility of Experts

31. Ultimately, this case comes down to the opinions of two experts. Dr. Griffiths saw Claimant for evaluation on two occasions. He reviewed the radiographic images. He was deposed, and his deposition testimony included a discussion of the various etiologies of

osteoarthritis, in general, and provided a reasonable explanation of Claimant's condition, in particular. Dr. Griffiths discussed his training and credentials as an orthopedic surgeon.

32. Dr. Ford may be a highly qualified and respected physician, but there is nothing in the record regarding her qualifications, years of practice, or specialized knowledge of orthopedic conditions. She claims board certification in emergency medicine, but there is nothing in the record regarding when she was certified, or if she is currently practicing emergency medicine. Her report is not on letterhead, and does not include a return address or phone number.

33. Dr. Ford did not have an opportunity to examine Claimant. She did review some medical records, but they did not include actual radiographs or reports, just excerpts from the chart notes. Dr. Ford did some sort of literature review and included a synopsis of her findings in her report. However, only one of the articles has a complete citation. Claimant did not depose Dr. Ford, and, as a result, her opinion is just a castle built over a chasm. Absent any testimony regarding the referenced publications and studies, the Referee has no way to evaluate the reliability of the publications or the reputation of those who conducted the studies and wrote the articles. Moreover, the Referee has no measure by which to gage the accuracy or relevance of Dr. Ford's analysis.

34. With no disrespect intended to Dr. Ford, the Referee declines to consider her expert opinion in deciding this matter. The report and the opinions therein lack even the barest indicia of credibility or reliability.

Afflicted by a Disease

35. It is undisputed that Claimant suffers from a disease--severe osteoarthritis of both knees.

Characteristic of and Peculiar to the Occupation

36. Claimant relies on the opinion of Dr. Ford in support of his proposition that his osteoarthritis is a hazard that exists and is characteristic of and peculiar to his occupation as a diesel mechanic. As previously discussed, the Referee gives no weight to Dr. Ford's report. Defendants assert that Claimant's condition does not meet the requirements set out in *Bowman v. Twin Falls Construction, Inc.*, 99 Idaho 312, 323, 581 P. 2d 770, 781 (1978) defining "peculiar to the occupation." For the reasons discussed in the following paragraphs, the Referee finds that Claimant has failed to meet the "peculiar to" requirement.

37. In *Bowman*, the Idaho Supreme Court set out its definition of "peculiar to the occupation," as follows:

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.

Id., overruled on other grounds, *DeMain v. Bruce McLaughlin Logging*, 132 Idaho 782, 979 P.2d 655 (1999). More than thirty years later, that definition still governs the analysis of an occupational disease claim in Idaho.

38. The Court's discussion in *Ogden v. Thompson*, 128 Idaho 87, 910 P.2d 759 (1996) is particularly apposite to the case at bar. Walter Ogden worked primarily in grocery stores and mechanical occupations most of his life, starting when he was fifteen. His employment history included working in a gas station, as a mechanic, as a reserve police officer, and, finally, as shop manager of a tire store. Ogden's work installing tires on vehicles required substantial lifting, bending, and twisting. In November and December 1992, Ogden worked a significant amount of overtime to meet the change-of-season demand for services. By February

1993, Claimant noticed he was experiencing increasing low back pain. He sought medical care and was diagnosed with disc herniation and radiculopathy. Ogden filed a workers' compensation claim. The Commission analyzed Ogden's case using dual theories of injury/accident and occupational disease, finding his injury non-compensable under either theory. With regard to his occupational disease claim, the Commission found that:

. . . Ogden's work was, in fact, "not distinguishable from many other occupations which involve strenuous or heavy labor" and concluded that he did not contract an occupational disease in the course of his employment.

The Commission noted that Ogden's duties involved a significant amount of heavy lifting, twisting, and bending. These activities are certainly not exclusive to Ogden's occupation and are typical of activities common to the general run of occupations involving manual labor.

Id., at 128 Idaho 761, 910 P.2d. 89 (internal citations omitted). In particular, the Commission found that:

Ogden failed to present sufficient evidence regarding the particular hazards of his job as shop manager to justify a finding that he contracted an occupational disease. Ogden relied solely on the testimony of his medical expert as the basis for his occupational disease claim which, as we noted above, conflicted with that of another expert.

Id., 128 Idaho 762, 910 P.2d. 90. The Court upheld the Commission's decision, citing in particular to the Commission's findings discussed, *supra*.

39. In this proceeding, Claimant placed his entire occupational disease claim in the hands of his expert, Dr. Ford, whose opinion the Referee declined to consider. Even if the Referee had considered Dr. Ford's report, her opinion that Claimant's injury was characteristic of and peculiar to his occupation was conclusory and without support.

40. When the Commission has found that a particular injury, say carpal tunnel syndrome, is characteristic of and peculiar to an occupation, it is often because the occupation involves a repetitive activity. (See, *Kinney v. Tupperware*, 117 Idaho 765, 792 P.2d 330 (1990)).

Claimant's job as a diesel mechanic required substantial heavy labor, but a variety of activities, including walking, lifting, climbing, kneeling, twisting, bending, carrying, crouching, and using tools.

41. In sum, Claimant has failed to establish that osteoarthritis of the knees is a risk characteristic of or peculiar to the job of diesel mechanic that sets it apart from every other manual labor job, whether farm laborer or electrician, fireman or heavy construction worker.

Remaining Issues

42. The finding that the risk of osteoarthritis of the knees is not characteristic of or peculiar to Claimant's work as a diesel mechanic effectively concludes this matter without the need for further analysis. For the sake of completeness and judicial efficiency, the Referee feels obliged to briefly discuss additional issues that are addressed by Defendants in their briefing.

Disabled From His Work as a Diesel Mechanic

43. In order to receive indemnity benefits for an occupational disease claim, a claimant must also prove that he or she is disabled from performing the work in the last occupation in which he or she was injuriously exposed to the hazards of such disease. Idaho Code § 72-102(22)(a). Claimant was not disabled from performing his work as a diesel mechanic at the time he filed his claim, because he continued to work for Employer at the same job for seventeen more months (February 2007 to July 2008).

Causation

44. In order to establish a compensable occupational disease claim, Claimant must also prove a causal relationship between his work and his degenerative knee condition. Even if osteoarthritis of the knees was generally accepted to be an occupational disease, each individual claimant must still prove causation in his or her claim.

45. In this case, Claimant relies on the opinions of Dr. Ford and Mr. McKinley to establish a causal relationship between his arthritic knees and his job. Absent Dr. Ford's opinion, Claimant must rely only on Mr. McKinley's opinion. Mr. McKinley briefly treated Claimant following his 2005 industrial injury, and he included a chart note about a *possible* causal link between Claimant's work and his arthritis:

[Claimant] does have arthrosis of both knees, probably in some component related to the job he has done as a mechanic over the years, with lots of kneeling and working on his knees.

Ex. 7, p. 139. This observation is an accurate restatement of Claimant's belief, but it is a tepid opinion on causation, and falls in the face of Dr. Griffiths' well-considered and well-explained opinion.

CONCLUSION OF LAW

1. Claimant has failed to carry his burden of proving that his bilateral degenerative knee condition constitutes a compensable occupational disease.

RECOMMENDATION

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

DATED this 2 day of February, 2011.

INDUSTRIAL COMMISSION

/s/ _____
Rinda Just, Referee

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

J. MARK DAYLEY,)
)
 Claimant,)
)
 v.)
)
 D & J DIESEL, INC.,)
)
 Employer,)
)
 and)
)
 STATE INSURANCE FUND,)
)
 Surety,)
 Defendants.)
)
 _____)

IC 2006-505106

ORDER

Filed: February 17, 2011

Pursuant to Idaho Code § 72-717, Referee Rinda Just submitted the record in the above-entitled matter, together with her proposed findings of fact and conclusion 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 this recommendation. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusion of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant has failed to carry his burden of proving that his bilateral degenerative knee condition 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 17 day of February, 2011.

INDUSTRIAL COMMISSION

/s/ _____
Thomas E. Limbaugh, Chairman

/s/ _____
Thomas P. Baskin, Commissioner

/s/ _____
R.D. Maynard, Commissioner

ATTEST:

/s/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 17 day of February, 2011, a true and correct copy of the foregoing **FINDINGS, CONCLUSION,** and **ORDER** were served by regular United States Mail upon each of the following persons:

JAMES C ARNOLD
PO BOX 1645
IDAHO FALLS ID 83403-1645

STEVEN R FULLER
PO BOX 191
PRESTON ID 83263-0191

djb
