

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

RODGER DEARING, )  
 )  
 Claimant, )  
 )  
 v. )  
 )  
 BEEHIVE HOMES INTERMOUNTAIN, )  
 INC., )  
 )  
 Employer, )  
 )  
 and )  
 )  
 STATE INSURANCE FUND, )  
 )  
 Surety, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

**IC 2009-028584**

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

Filed March 7, 2011

**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 in Boise<sup>1</sup> on July 29, 2010. Claimant was present and represented by Richard Kim Dredge of Boise. David R. Skinner, also of Boise, represented the alleged Employer and its surety. Oral and documentary evidence was presented and the parties submitted post-hearing briefs. This matter came under advisement on December 6, 2010.

**ISSUES**

The issues to be decided are:

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<sup>1</sup> Due to the serious injuries Claimant sustained in the subject motor vehicle accident and other unrelated conditions, it was necessary to conduct the hearing at Capitol Care Center as Claimant could not be transferred to the Industrial Commission.

1. Whether Claimant was an employee of Employer or a consultant/independent contractor.
2. If Claimant is found to be an employee, whether Claimant was injured in an accident arising out of and in the course of his employment.
3. Whether Claimant is entitled to an award of attorney fees.

### **CONTENTIONS OF THE PARTIES**

Claimant contends that he was an employee of Beehive Homes Intermountain (Beehive) under all applicable legal standards. He, at Beehive's request, had delivered and picked up property belonging to Beehive in Utah when the vehicle within which he was a passenger crashed causing him severe injuries. He acknowledged that his trip to Utah was at least partially for his own benefit; however, he would not have made the trip but for the associated business purpose of delivering the items belonging to Beehive. He should be reimbursed for the medical bills he has incurred and should be awarded his attorney fees as this matter should never have gone to hearing.

Defendants respond that Claimant was a consultant/independent contractor under all applicable legal standards. The owners of Beehive basically gave Claimant a place to "hang out" during the day and paid him not so much for services provided, but because the owners felt sorry for him and wanted to help him. Even if Claimant is found to be an employee, his trip to Utah was primarily a vacation and had little to do with delivering items for Employer. The fact that Claimant may have delivered some items to one of the owners in Utah is so insignificant and trivial that it cannot be found that such was the reason for making the trip. No one at Beehive ever requested Claimant to take anything to Utah; Claimant simply volunteered to do so. Finally, there is absolutely no basis for an award of attorney fees in this case.

## **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. The testimony of Claimant; Twayne Walker, a co-owner of Beehive; Aurora Godina, an underwriter for Surety, Reid Olsen, Beehive's accountant; Garrett Dearing, Claimant's son; Dennis Toland, a co-owner of Beehive; Sharon "Bug" Walker, Beehive's office manager; and William Sullivan, Claimant's probation officer, taken at the hearing;
2. Claimant's Exhibits A-B, F (for illustrative purposes) and G-H admitted at the hearing;
3. Defendants' Exhibits 1-5 admitted at the hearing;<sup>2</sup> and
4. The pre-hearing depositions of:
  - Claimant, taken by Defendants on February 23, 2010;
  - Twayne Walker, taken by Claimant on March 2, 2010;
  - Sharon "Bug" Walker, taken by Claimant on March 2, 2010;
  - Reid Olson, CPA, taken by Claimant on April 19, 2010;
  - Garrett Dearing, taken by Claimant on May 11, 2010;
  - Dennis Toland, taken by Claimant on May 24, 2010;
  - Aurora Godina, taken by Claimant on June 8, 2010;
  - Josh Ball, taken by Defendants on June 15, 2010; and
  - Reid Olsen, CPA, taken by Defendants on June 15, 2010.

All objections made during the taking of the above-referenced depositions are overruled with the exception of Defendants' objection at page 37 of Sharon "Bug" Walker's deposition, which is sustained.

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<sup>2</sup> The Referee reserved ruling on Defendants' Exhibit 6, which is an Idaho Repository – Case History regarding Claimant's son Garrett. The Referee declines to admit Exhibit 6 on relevancy grounds.

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**

### **Background:**

1. Claimant was 50 years of age at the time of the hearing. He has resided at Capitol Care Center in Boise, a long-term care facility, since October 2009. On July 6, 2009, Claimant fractured his C5 and C6 vertebrae in a rollover MVA, rendering him unable to walk. His son was driving at the time. It is Claimant's employment status and the relationship between that accident and Claimant's resultant injuries that form the basis for this litigation.

2. Claimant graduated from Sugar City high school in 1978 and went on to obtain an AA degree in pre-physical therapy from Ricks College and a BS in nursing from Idaho State University in 1983. Claimant worked in the health care field following college. He has experience in areas including state and federal health regulations compliance, home health and intensive care nursing. He also owned a home health agency that placed CNAs, physical therapists, and others, in individuals' homes and assisted living facilities, and owned a Beehive home in Wyoming.

3. Twayne Walker (Twayne) is a co-owner with Dennis Toland (Dennis) of Beehive. He described the nature of that business at the hearing as follows:

Q. (By Mr. Dredge): Would you explain to the Referee the sort of business that Beehive operates?

A. We have a system of a company that does franchises, and we take care of the elderly on a smaller 16 bedroom unit. Our facilities are smaller facilities. They're

not as large as these [Capitol Care Center]. They're 16 bedroom units, and that's what we franchise out.

Q. How does the business of Beehive operate?

A. It operates - - basically we have franchisees who come to us or potential franchisees who come to us to do something what [sic] we have in different areas of the country, and we help them do that. They see the homes we have and we prepare them and do the things we need to help them. Whether it's financing or taking care of residents, we train people to do that.

Hearing transcript, pp. 25-26.

4. Claimant first met Twayne in 1994 at their church and they discovered that they were operating similar kinds of businesses. Twayne took Claimant on some business trips and they discussed how assisted living and home health could work better together.

5. Between 2001 and 2003, Claimant was a co-owner of a mental health clinic in Nampa. He and others were indicted by a Federal Grand Jury of scheming to defraud Idaho's Medicaid Program of more than \$100,000 in Medicaid reimbursements by making false and fraudulent claims. Claimant was originally charged with 60 counts but plead guilty to one count in a plea bargain. Claimant served 5 months in prison beginning in early 2007 followed by a couple of months at a halfway house. He was then placed on probation and was on probation at the time of his accident. Claimant was ordered to pay restitution of over \$111,000.

Claimant:

6. At hearing, Claimant described how he came into contact again with Twayne in the spring of 2009 as follows:

Q. (By Mr. Dredge): One of the issues here is when you first got in touch with Mr. Walker about Beehive. Was that early in 2009 or do you remember the date?

A. Spring of 2009.

Q. Can you make it more precise?

A. March.

Q. How did that occur?

A. Just walked in the office.

Q. What did you say?

A. Said I wonder if I could come in and work.

Q. What did he say?

A. He said I have to talk with Dennis and they'd talk it over and get back with me.

Q. Then what happened?

A. He offered me an opportunity to come in and help him out.

Q. How much were they paying you?

A. \$500 every two weeks.

Q. What was your understanding of what you were supposed to do?

A. There was just a series of things to do. They were trying to relicense several of the homes, maybe purchasing back one time, and I helped direct a young woman to get those relicensed.

Q. What other kinds of things did you do?

A. I worked on the Florida policy and procedural manuals.

Hearing Transcript, pp 88-89.

7. Claimant testified that he would go to the Beehive office in Eagle every working day, although he was in and out a lot due to medical appointments. He was never given a fixed schedule but "got the eye" from Twayne if he was not there at a certain time. He generally worked from 10:00 a.m. until 2:00 or 3:00 p.m. On cross-examination, Claimant more fully explained his "working arrangement" with Beehive:

Q. (By Mr. Skinner): And you began with Beehive you think somewhere in March of 2009?

A. Yes.

Q. Were you required to report to work every day at a specific time?

A. No.

Q. Were you required to fill out a time sheet?

A. No.

Q. Were you required to use a punch clock or time clock of any kind?

A. No.

Q. Could you come and go as you pleased?

A. Yes.

Q. You had no written agreement?

A. No.

Q. You didn't have your own office there?

A. Had a desk and a computer.

Q. That was a common area desk that other people also used?

A. Yes.

Q. You testified in your deposition that while at Beehive you could have worked for other employers and other assisted living facilities; correct?

A. I didn't, but that could have been an option.

Hearing Transcript, pp. 116-117.

8. At the time Claimant was receiving \$1,000 a month from Beehive,<sup>3</sup> he was also receiving \$1,600 a month in Social Security Disability benefits. Before beginning work for Beehive, Claimant was not asked to fill out an IRS W-4 form. Further, no taxes were deducted from his checks for Medicare, Social Security, or state or federal income taxes. Claimant testified that he did not know why Beehive was not taking out any deductions from his checks and he did not ask them even though he considered himself to be an employee. When asked why Beehive would not have taken any deductions if Claimant was an employee, he responded, "I planned on taking deductions later on after I settled things up on my taxes." *Id.*, p. 122.

Twayne Walker:

9. As previously indicated, Twayne owns Beehive with his brother-in-law Dennis Toland. Twayne acknowledged that he authorized Beehive's accountant to issue checks to Claimant twice a month for \$500 each beginning March 16, 2009. Twayne knew somewhat of Claimant's health care background before March 2009 and thought he may have some skills that could help Beehive. Twayne was unaware of Claimant's criminal difficulties and incarceration

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<sup>3</sup> The \$1000 a month figure was arrived at so that Claimant's monthly SSD payments would not be reduced.

until after the fact. Twayne never thought of Claimant as Beehive's employee but, "More importantly I think Roger was going through a real hard time,<sup>4</sup> and more importantly I think we were there to try and help him. I wanted to help him out." *Id.*, p. 36. "He wanted to get out of the home. He wanted to get out of his apartment. He needed a place he could hang. We were willing to have him come over." *Id.*, p. 37.

10. Twayne testified that Claimant would come in one to three days a week; he does not remember Claimant coming in every day in a week's time period. Twayne did not "hire" Claimant to perform or complete a specific task. There is no written agreement of employment. Twayne could have "terminated" Claimant at will and Claimant could quit coming in at will. Claimant received no benefits or bonuses otherwise available to employees. Twayne considered Claimant's compensation to be a gift that could be stopped at any time. Twayne was unaware that a provision of Claimant's probation prevented him from working in any area involving Medicaid payments without prior approval of his probation officer (which Claimant did not have). Twayne testified that had he been aware of that prohibition, he would not have made such an arrangement with Claimant.

11. Twayne was aware that Claimant had done some consulting work (versus employment) for Beehive in 2005 and 2006. The tasks performed by Claimant could have been accomplished anywhere and involved the type of work that Beehive had farmed out to consultants in the past. Twayne testified that no deductions were taken from Claimant's bimonthly checks because he was not considered to be an employee.

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<sup>4</sup> Claimant had just been released from a halfway house and had moved into an apartment, had just gotten a divorce, had health problems, and had his 19-year-old son living with him, who had his own legal and financial issues.



Dennis Toland:

12. Dennis is the other co-owner of Beehive. His office is in Pleasant Grove, Utah but he makes frequent trips to Beehive's Eagle office. Twayne discussed having Claimant "work" for them before any checks were issued. Dennis left the final decision to Twayne because Twayne knew Claimant better than he did. Dennis acknowledged that Claimant was proficient in policies and procedures and was a good people person. Dennis did not want Beehive associated with Claimant due to the perception Beehive's franchisors would have of his felony conviction. He considered Claimant's status with Beehive to be a "consultant."

Sharon "Bug" Walker:

13. Sharon, who goes by "Bug," is Twayne's wife and Dennis' sister. She is the office manager at Beehive's Eagle office and is the "go to" person. Bug described at hearing how Claimant came in contact with Beehive in the spring of 2009:

Q. (By Mr. Dredge): I believe it's your testimony [from her pre-hearing deposition] that Mr. Dearing came into your office and said I want something to do; is that correct?

A. Yes. He first started coming and hanging out during the day and spending an hour or two, and he did say, "I'm going nuts looking at the four walls. I've got to get out of the house."

He even quoted at one time, and it was to me, that I'm willing to work and I'm willing to work for nothing. I just needed to get out of the house.

Hearing Transcript, pp. 182-183.

14. Bug testified that there was no written agreement of employment between Claimant and Beehive and that either party could "quit" at any time without consequences. Twayne made the decision to allow Claimant to "help out." Bug was personally against the idea. ". . . I've known Rodger for years and he has some problems with honesty, and it's big in my book." *Id.*, p. 190.

Reid Olsen:

15. Reid Olsen is a CPA who has been Beehive's accountant and friends of Twayne, Bug, and Dennis for over 30 years. In the past he has also served as Claimant's personal and business accountant.<sup>5</sup> He described his duties regarding Beehive:

I provide general accounting services, we do the general ledger work, we do tax returns, we generate financial statements. We pay bills. We reconcile the bank accounts, provide bookkeeping services, and I consult with them frequently.

*Id.*, p. 128.

16. At hearing, Mr. Olsen was asked to identify Claimant's Exhibit B. He described it as a QuickBooks Vender Report showing checks paid to Claimant by Beehive for the period of January –December 2009. The first check was dated March 16, 2009, in the amount of \$150.00. That check, like the rest, was labeled "Consulting Fees" and was prepared at Twayne's instruction. Mr. Olsen confirmed that Claimant was provided an IRS Form 1099 reflecting that no deductions were taken from his checks as both Twayne and Mr. Olsen considered Claimant to be a consultant/independent contractor. For the same reason, Claimant was never asked to fill out an IRS W-4 form nor did Claimant ever ask Mr. Olsen why he was not provided such a form even though he considered himself to be an employee. Mr. Olsen testified that Claimant had performed services for Beehive as a consultant/independent contractor before 2009, but never as an employee.

Aurora Godina:

17. Aurora Godina is an underwriter for Employer's surety, State Insurance Fund, and as part of her underwriting duties monitors the renewals of existing workers' compensation insurance policies. She testified that Beehive submitted a Renewal Payroll Report that listed

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<sup>5</sup> Mr. Olsen testified that Claimant's various businesses employed both employees and consultants/independent contractors.

Claimant as being paid for “labor” as an uninsured independent contractor/subcontractor per the form. *See* Godina Deposition, Ex. A-3.

## **DISCUSSION AND FURTHER FINDINGS**

### **Employee/Employer relationship:**

The issue of whether an employee/employer relationship exists is to be decided from all the facts and circumstances established by the evidence. *Ledesma v. Bergeson*, 99 Idaho 555, 559, 585 P.2d 965, 969 (1978). When doubt exists regarding an employee/employer relationship, the Idaho Workers’ Compensation Act must be given a liberal construction in finding such a relationship. *Olvera v. Del’s Auto Body*, 118 Idaho 163, 165, 795 P.2d 862, 864 (1990). However, when the facts are in dispute, as here, the liberal construction rule does not apply. *Aldrich v. Lamb-Weston, Inc.*, 122 Idaho 361, 363, 843 P.2d 878, 881 (1992).

Here, it is undisputed that no express, written contract of employment existed between Claimant and Beehive and the Referee so finds. Another way of establishing an employee/employer relationship is by way of an implied contract of hire. A contract implied-in-fact is a true contract whose existence and terms are inferred from the conduct of the parties. Such a contract is grounded in the parties’ agreement and tacit understanding. *Kennedy, Id.* (internal citations omitted). A person’s subjective understanding is insufficient to establish an express or implied agreement. *Edmondson v. Shearer Lumber Products*, 139 Idaho 172, 179, 75 P.3d 733, 740 (2003).

An employee/employer relationship is a prerequisite to a finding of liability under Idaho’s workers’ compensation statutes. *Kennedy v. Forest*, 129 Idaho 584, 930 P.2d 1026 (1997). Idaho Code § 72-102(12) defines “employee” as synonymous with “workman” and means any person who has entered into the employment of, or who works under contract of

service or apprenticeship with, an employer. Idaho Code § 72-102(13)(a) defines “employer” as any person who has expressly or impliedly hired or contracted the services of another. Idaho Code § 72-102(17) defines “independent contractor” as any person who renders services for a specified recompense for a specified result, under the right to control or actual control of his principle as to the result of his work only and not as to the means by which such result is accomplished.

The Idaho Supreme Court has articulated a four-pronged test to aid in the determination of whether an individual is an employee or an independent contractor. The ultimate question to be decided is whether the employer assumes the right to control the time, manner, and method of executing the work of the employee, as distinguished from the right to merely require certain results. The four factors that are used to determine if a “right to control” exists are: 1) direct evidence of the right, 2) method of payment, 3) furnishing major items of equipment, and 4) the right to terminate the relationship at will. *Mortimer v. Riviera Apartments*, 122 Idaho 839, 844, 840 P.2d 383, 388 (1992) citing *Burdick v. Thornton*, 109 Idaho 869, 712 P.2d 570 (1985). While each of the four factors must be considered, no one of them, in and of itself, is controlling and one or more of the four may not be present in a given case. The Commission must balance each of the elements present to determine the relative weight and importance of each. *Matter of Hanson*, 114 Idaho 131, 134, 754 P.2d 444, 447.

Direct evidence of the right:

18. This test involves the determination of whether employer has assumed the right to control the time, manner, and method of performing the work as opposed to the right to require a specific result. Here, Beehive did not control the time within which Claimant was to perform his tasks; he was free to come and go as he pleased - - and did so. He was assigned specific tasks to

perform and Beehive cared only about the results as is evidenced by Claimant's expertise in certain areas of health care which is indicative of a consultant and/or independent contractor. Claimant could hire assistants if he desired and could work for other entities while at Beehive. He was not trained by Beehive and Beehive exercised no control over the time, manner, and method by which Claimant performed the work and they were only interested in the results of Claimant's efforts. This lack of evidence of a direct right of control is indicative of a consultant/independent contractor relationship rather than an employer/employee relationship.

Method of payment:

19. No deductions for Social Security, state or federal taxes, or Medicare were taken from any of Claimant's checks for 2009. He did not fill out an IRS W-2 form and was issued an IRS form 1099; Claimant never enquired regarding his employment status even though he was familiar with independent contractors versus employees in association with his previous businesses. Further, Claimant himself had worked for Beehive before 2009 as a consultant/independent contractor; never as an employee. Claimant's explanation that he did not ask about Beehive not taking any deductions because he planned on taking deductions after he settled things up on his taxes is simply not credible. The method by which Claimant was paid is indicative of a consultant/independent contractor relationship rather than an employer/employee relationship.

Furnishing major items of equipment:

20. Beehive allowed Claimant to use a common desk and computer. He was not provided with any major pieces of equipment such as a car, credit card, etc. In fact, Claimant could have, and on occasion did, perform his work from home. Because Beehive supplied no

major items of equipment, this is indicative of a consultant/independent contractor relationship rather than an employer/employee relationship.

Right to terminate:

21. Both Claimant and Beehive had the right to terminate their relationship at will, for any reason including unsatisfactory results, with no legal repercussions. The Referee finds that this factor is indicative of an employer/employee relationship. See *Ledesma v. Bergeson*, 99 Idaho 555, 559, 585 P.2d 965, 969 (1978). However, the Court also recognized that although this factor may have been important to the analysis in the past, it is becoming less and less determinative of whether an employee/employer relationship exists. *Moore v. Moore*, (Feb. 2, 2011), citing *J.R. Simplot*, 2011 WL 310376.

22. Claimant has failed to establish that Beehive had the requisite right to control the time, manner and method by which he executed his work. Therefore, the Referee finds Claimant has failed to prove by a preponderance of evidence, that he was an employee of July 6, 2009.

**Course and Scope of Employment:**

23. Even if Claimant had established that he was an employee, he has failed to prove that his accident occurred while he was acting within the course and scope of employment. A claimant bears the burden of showing that his accident arose out of and in the course and scope of employment. *Reinstein v. McGregor Land and Livestock*, 126 Idaho 156, 158, 879 P.2d 1089, 1091 (1994). Travel may be considered as acting within the course and scope of employment, depending on the nature of the travel. *Id.* at 159, 1092. “If the work of the employee creates the necessity for travel, he is in the course of his employment, though he is serving at the same time some purpose of his own. If, however, the work has had no part in creating the necessity for travel, if the journey would have gone forward though the business errand had been dropped, and

would have been canceled upon failure of the private purpose, though the business errand was undone, the travel is then personal, and personal the risk.” *Id.* (citing *In Re Christie*, 59 Idaho 58, 75-77, 81 P.2d 65, 72-73 (1938)).

24. The evidence establishes that Claimant’s vacation to Utah was personal in nature. He acknowledged in his testimony that he traveled to Utah to see his girlfriend and to participate in Independence Day festivities. Claimant’s son accompanied him, also to see friends. Bug Walker testified that Claimant mentioned his vacation plans to her in passing and volunteered to deliver some small items to Dennis Toland, manager of Beehive’s Utah offices, so that they would not have to be mailed. Claimant testified that he would not have made the trip but for the delivery he was obligated to make on Beehive’s behalf, and could not have made the trip absent Beehive’s agreement to pay for gas. However, Beehive did not pay for Claimant’s meals and lodging, and Claimant stayed in Utah much longer than was necessary to make the delivery. Although Beehive did ultimately provide a check to Claimant’s son to reimburse him for gas, that check was not issued until after the accident, and was not negotiated until August. This evidence fails to persuade the Referee that the trip would not have happened absent Beehive’s after-the-fact payment of \$60.22 for gas. Moreover, at the time Claimant met Mr. Toland to hand over the small items he had offered to deliver, Mr. Toland offered to pay for Claimant’s gas, an offer which Claimant declined. This denigrates Claimant’s current insistence that payment of certain travel expenses by Beehive was a prerequisite to the trip going forward. Finally, the evidence establishes that Claimant made no significant departure from his personal plans in order to perform this small service to Beehive. Indeed, when it came to the delivery, Mr. Toland traveled 45 miles each way to meet Claimant at a convenience store located near to where Claimant was staying in pursuit of his personal interests. These facts support the conclusion that

Claimant's employment did not create the cause for travel, and that Claimant was therefore not acting in the course and scope of employment when he was injured in his motor vehicle accident.

### CONCLUSIONS OF LAW

1. Claimant has failed to prove he was an employee of Beehive on or about July 6, 2009.
2. All other issues are moot.

### 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 \_\_1<sup>st</sup>\_\_ day of February, 2011.

INDUSTRIAL COMMISSION

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

### CERTIFICATE OF SERVICE

I hereby certify that on the \_\_7<sup>th</sup>\_\_ day of March, 2011, 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:

RICHARD KIM DREDGE  
802 W BANNOCK, STE LP 110  
BOISE ID 83702

DAVID R SKINNER  
6098 TONKIN DR  
BOISE ID 83704

ge

Gina Espinosa



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

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 Defendants. )  
 \_\_\_\_\_ )

**IC 2009-028584**

**ORDER**

Filed March 7, 2011

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 this recommendation. 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 prove he was an employee of Beehive on or about July 6, 2009.
2. All other issues are moot.

**ORDER - 1**

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

DATED this \_\_7<sup>th</sup>\_\_ day of March, 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 \_\_7<sup>th</sup>\_\_ day of March, 2011, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

RICHARD KIM DREDGE  
802 W BANNOCK, STE LP 110  
BOISE ID 83702

DAVID R SKINNER  
6098 TONKIN DR  
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Gena Espinoza