

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARCO ANTONIO FONSECA,

Claimant,

v.

CORRAL AGRICULTURE, INC.,

Employer,

and

STATE INSURANCE FUND,

Surety,
Defendants.

IC 2010-031750

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

FILED 11/08/2012

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Alan Taylor, who conducted a hearing in Boise, Idaho on January 10, and March 2, 2012. Claimant, Marco Antonio Fonseca, was present in person and represented by Richard L. Hammond, of Caldwell, Idaho. Defendant Employer, Corral Agriculture, Inc., and Defendant Surety, State Insurance Fund, were represented by Max M. Sheils, Jr., of Boise, Idaho. The parties presented oral and documentary evidence. Briefs were submitted and the matter came under advisement on July 12, 2012.

ISSUES

The issues to be decided are:

1. Whether Claimant suffered an accident in the course of his employment on or about September 10, 2010; and
2. Whether Claimant gave timely notice of any accident.

CONTENTIONS OF THE PARTIES

Claimant asserts that he fell from a ladder and was injured while picking apples for Corral Agriculture on September 10, 2010, and that he timely reported his accident. Claimant asserts that

even if notice was not timely, Defendants were not prejudiced by delayed notice. Defendants note discrepancies in Claimant's accounts of the circumstances surrounding his alleged accident and other evidence of record. Employer representatives deny Claimant timely reported any accident. Defendants contend that Claimant's assertion of an accident is not credible.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. The verbatim report of proceedings regarding the scheduled pre-hearing depositions of Corral Agriculture, Inc., Roberto Corral, Jorge Coronado, and Luisa Corral, dated September 1, 2011;
3. The verbatim report of proceedings regarding the scheduled pre-hearing depositions of Roberto Corral, Sr., and Luisa Corral, dated December 15, 2011;
4. The pre-hearing deposition testimony of Claimant, taken December 15, 2011;
5. The pre-hearing deposition testimony of Jorge Coronado, taken December 15, 2011;
6. Claimant's Exhibits 1 (except pp. 1, 3-10, 12, 15, and 17-20 thereof), 3-5, 6 (except pp. 51, 53-54, 63, and 67-72 thereof), 7 (except pp. 85-96 thereof), 8-10, 15, 17¹, 17a², and 19-20 admitted at hearing;³
7. Defendants' Exhibits 1-3, admitted at hearing;

¹ Claimant's Exhibit 17 (a single page sketch of a tree and ladder drawn by Claimant during his pre-hearing deposition) was admitted at the January 10, 2012 hearing as Exhibit 17. The same sketch was offered by Claimant at the March 2, 2012 hearing and erroneously identified then as Exhibit 16.

² At the March 2, 2012 hearing, Claimant offered a single page document entitled "Reinstatement Annual Report Form" for Corral Agriculture, Inc., issued by the Idaho Secretary of State in 2010, which was admitted into evidence and erroneously identified as Exhibit 17. Said document is identified herein as Claimant's Exhibit 17a.

³ Claimant's proposed Exhibits 13, 14, and 16, consisting of portions of the pre-hearing depositions of Diane Evans, Joyce Ellefson, and Roberto Corral, Jr., respectively, were conditionally admitted at hearing contingent upon the timely filing of the complete transcript of each deposition. Complete transcripts of each deposition were not filed and thus Exhibits 13, 14, and 16 are not considered in evidence.

8. The testimony of Claimant, taken at the January 10, 2012 hearing; and
9. The testimony of Sarai Fonseca, Ana Fonseca, Roger Williamson, John Williamson, Jorge Coronado, and Roberto Corral, Jr., taken at the March 2, 2012 hearing.

All objections posed during the pre-hearing depositions are overruled.

After having considered 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.

FINDINGS OF FACT

1. Claimant was born in 1960 and was educated in Mexico where he completed high school and four years of training to teach elementary school. He never worked as a teacher and left Mexico in approximately 1985. Claimant testified at hearing only through a Spanish interpreter.

2. Corral Agriculture, Inc., (Corral Agriculture) is a corporation owned by Roberto Corral, Sr., (Roberto), who is also its president. Corral Agriculture provided crews of laborers for various agricultural businesses. In 2010, Corral Agriculture had approximately 500 employees. Corral Agriculture employee work assignments were dynamic. Corral Agriculture's employees generally worked periodically. Turnover among work crews of employees was high. At all relevant times, Corral Agriculture was insured for its obligations under the Workers' Compensation Act by State Insurance Fund. At all relevant times, Roberto Corral, Jr., (Tito), son of Roberto Corral, Sr., was a supervisor for Corral Agriculture and supervised Jorge Coronado, who supervised a crew of Corral Agriculture employees. Coronado had worked for Corral Agriculture for approximately ten years.

3. Williamson Orchards is a fruit growing operation owned by brothers Roger and John Williamson. Roger is the president and oversees all office and paperwork regarding the business while John is the vice president and oversees all field operations, including the care of the orchards and harvesting of fruit.

4. On March 25, 2010, Claimant presented to Marjorie Humphrey, PA-C, at the Terry Reilly clinic in Nampa seeking treatment for depression. He was very depressed because he was unemployed, homeless, and estranged from his wife and son. Prozac was prescribed.

5. In September 2010, Williamson Orchards contracted with Corral Agriculture to provide laborers to pick apples. Williamson Orchards provided all step ladders required for picking apples.

6. In September 2010, Claimant worked as a laborer for Corral Agriculture, earning \$8.50 per hour. He was a member of Coronado's crew. Claimant had worked for Corral Agriculture from time to time since 2009.

7. **Claimant's testimony.** At hearing, Claimant testified that on September 10, 2010, commencing at 8:00 a.m., he worked for Corral Agriculture picking apples at Williamson Orchards. Claimant testified that he was picking from near the top of a 10-15 foot ladder when the ladder broke and he fell, grabbing and breaking apple tree branches as he fell. Claimant testified that he fell 10-15 feet and landed on his feet, then fell to the ground on his left buttock. He noticed pain in his feet, hip, and back, extending up to his neck. He testified that five or six other Corral Agriculture employees were working near him when he fell and saw or heard him fall. He testified that he lay on the ground for approximately 30 minutes immediately after his fall. Claimant testified that one of the Williamson brothers saw him on the ground after his fall, that Claimant showed him the broken ladder, and explained that he had fallen. Claimant testified he then asked Williamson if he could work from the ground, but Williamson said no. Claimant testified that he then worked for two or three more hours picking apples, after which Williamson said he did not want any problems and told Claimant to go home.

8. At hearing, Claimant testified that he told Tito about five times the day of his accident that he had fallen and that Tito told Claimant to see Tito's father, Roberto. Claimant testified that the day of his accident he also reported his fall to Coronado in front of 20 other Corral Agriculture employees before leaving work that day. Claimant testified that about one week later he talked to Tito again and told him about the accident. Claimant testified that he told Coronado about the accident

week after week, a total of at least 10 times over the ensuing 60 days. Claimant testified that because he was hurt, Tito assigned Claimant to lighter work—throwing leaves into a shredder—for two weeks after his accident.

9. In his pre-hearing deposition, Claimant testified that the accident happened in the morning between 10:00 and 11:00 on a Friday in September, likely September 17, 2010. Claimant testified in his deposition that he worked the rest of the day of his accident on the ground. In his deposition, Claimant also testified that the day of the accident he told Williamson, the owner of the orchard, as well as Coronado, Tito, and approximately 20 coworkers, that he had fallen and needed medical care. In his deposition, Claimant testified that he was discharged from working in the orchard the day after his fall.

10. Claimant testified that after the accident, he went to Roberto's home many times, but did not find him. Claimant testified that he told Roberto's wife about the accident, but she responded that it was not her business and Claimant should discuss the matter with Roberto himself. Claimant testified that after about two weeks of repeated efforts, he encountered Tito and Roberto and asked them who would take responsibility for Claimant's accident and injuries, to which Roberto replied that Williamson would do so.

11. Claimant testified that Roberto owed him money for Claimant's work at Corral Agriculture and that Roberto's checks bounced. Claimant testified that, a week or two after his alleged accident, and after repeated efforts, Roberto finally paid Claimant \$200.00 cash for his work at Corral Agriculture. Claimant testified that he told Roberto he needed part of this money for medication for his alleged accident. Claimant testified that after this conversation, he did not visit Roberto's home any further, but wrote him a letter and called him. However, Roberto paid Claimant nothing further and thereafter avoided all contact with Claimant. Tito's phone number was subsequently disconnected.

12. Claimant testified at hearing that he has not worked for anyone since his employment with Corral Agriculture ended. However, Claimant later testified at hearing that sometime after his

alleged accident, he helped someone for about four days, after which Claimant's physical condition worsened. Claimant testified at hearing that his pain was not so bad at first, but it became worse approximately a month after the alleged accident. Claimant then attempted to call Tito to request money.

13. Claimant testified that towards the end of November 2010, he called Coronado who provided Claimant Tito's new telephone number. Claimant called Tito at the end of November or the beginning of December 2010, indicating Claimant needed money for pain medication. Tito met Claimant near the mall and gave him \$69.00 in cash.

14. On January 20, 2011, Surety's investigator called Claimant in his attorney's office. Claimant told the investigator he was injured on September 2, 2010. The investigator asked Claimant to whom he reported the alleged accident. Claimant responded that he initially reported it to the orchard owner, Williamson, then to Tito and Coronado, and finally to Tito's father, Roberto. During the January 20, 2011 phone call, Claimant told the investigator that he did not contact Tito or Coronado about the accident for a week after the accident.

15. On December 15, 2011, Defendants took Claimant's deposition. At his deposition, Claimant testified that his accident occurred on September 17, 2010. On December 30, 2011, Claimant's counsel by letter asserted an accident date of September 10, 2010.

16. **Sarai's testimony.** Claimant's adult daughter, Sarai, testified at hearing that on September 10, 2010, she returned home after starting her new semester at school and found her father, Claimant herein, resting on the couch with his leg elevated and complaining of left hip pain. In response to her questions, he told her that he had fallen from a tree or ladder while picking apples.

17. **Ana's testimony.** Claimant's wife, Ana, testified at hearing that she picked her husband up from work on September 10, 2010, and he told her that a ladder had broken and he had fallen while picking apples that day. She testified that she later drove Claimant several times to Roberto's home and initially testified that no one was home. She subsequently testified that Claimant

succeeded in talking with a lady at Roberto's home. Ana also testified on cross-examination that she was not sure of the date of the alleged accident.

18. **Roberto's and Luisa's absence.** Claimant unsuccessfully attempted to obtain Roberto's testimony via subpoena and also the testimony of Roberto's wife, Luisa Corral via subpoena. However, neither Roberto nor Luisa were present at hearing and neither were available for deposition. Defendants acknowledged that after Claimant's alleged accident and prior to hearing, Roberto was deported to Mexico due to a tax issue.

19. **Tito's testimony.** Tito speaks fluent Spanish. At hearing, Tito testified that he had never met Claimant until they met at a Home Depot in Nampa in late November or early December 2010. Tito testified that was the first time Claimant reported he had fallen from a ladder while working for Corral Agriculture. Tito paid Claimant cash for a Corral Agriculture paycheck that had bounced. Tito testified that he asked Claimant why he had not reported the fall when it occurred, to which Claimant did not say anything. Tito testified that Coronado never notified him that Claimant had reported an accident. Tito did not believe Claimant fell from a ladder because Tito believed he would have been notified of any such event by one or more co-workers. Tito also testified that if a ladder had been broken by a Corral Agriculture employee in Williamson Orchards in September 2010, Tito would have been notified because Williamson Orchards would have required Corral Agriculture to replace the broken ladder. Tito affirmed he was never notified of any broken ladder.

20. **Coronado's testimony.** Coronado speaks fluent Spanish. At hearing, Coronado testified that he was out of the area when Claimant's accident allegedly happened. Coronado testified that he did not know about Claimant's alleged accident until the Surety telephoned him about it—several months later. Coronado insisted that Claimant did not notify him of the alleged fall.

21. **John Williamson's testimony.** At hearing, John Williamson testified that he first heard of Claimant's alleged accident in February 2011. John confirmed that he would have been the designated person to contact in the event of an accident in Williamson Orchards in September 2010, but that he did not recall hearing anything about Claimant's alleged accident in the fall of 2010. John

did not recall seeing Claimant laying on the ground or seeing a broken ladder anywhere near Claimant in September 2010. John testified that he remembered seeing Claimant in the orchard in September 2010 and that he instructed Claimant to go home and not come back because John was not pleased with Claimant's work. Claimant became agitated upon being excused. This was approximately 4:00 in the afternoon. John dismissed Claimant from further work in the orchard because Claimant "had an attitude," was mad, and argumentative. John conversed with Claimant through a Spanish interpreter. John observed no indication that Claimant was in pain. John believed that he would have remembered if Claimant had told him of an accident at that time.

22. John testified that he was aware of a younger man that fell from a ladder in the orchard in the fall of 2010. That individual went to a doctor and, after returning, refused to work from a ladder. John affirmed that Claimant was not that individual.

23. **Roger Williamson's testimony.** Roger affirmed that he first heard of Claimant's alleged accident in February 2011. Roger testified that his brother, John, confirmed there were some accidents in Williamson Orchards in the fall of 2010. Roger affirmed that he heard from John that several people slipped off ladders in the orchard, including a man that thereafter did not want to work from a ladder. Roger observed that 95% of the work crews at Williamson Orchards were Hispanic, thus he assumed the man that slipped off the ladder was Hispanic. Roger testified that if someone fell from a ladder and did not need urgent medical treatment, they were usually sent home to rest and invited to return the next day and again asked whether they desired medical treatment. Roger testified that his only knowledge of anyone falling in the orchard in September 2010 was what his brother told him. Roger affirmed that in September 2010, Williamson Orchards had only eight and ten foot ladders.

24. **Medical records.** On September 24, 2010, Claimant presented to Christopher Partridge, M.D., at the Terry Reilly clinic in Nampa. Claimant presented with a stomach problem indicating he was defecating 12 times a day. He reported having similar symptoms for years. Dr. Partridge assessed "acute chronic abdominal pain with boody [sic] diarrhea and chills, undetermined

etiology, however strongly considering IBD.” Defendants’ Exhibit 1, p. 13. Dr. Partridge ordered blood tests and instructed Claimant to return in one week. At hearing, Claimant testified that he reported his fall from the ladder and his resultant back and hip pain to the Terry Reilly clinic and to every medical provider that he visited. In his deposition, Claimant also testified that he reported his fall from the ladder to the providers at the Terry Reilly clinic. However, there is no record that Claimant reported any fall or any back, hip or neck symptoms to Dr. Partridge or to anyone else at the Terry Reilly clinic on September 24, 2010.

25. On October 11, 2010, Claimant presented again to Dr. Partridge at the Terry Reilly clinic in Nampa. Claimant complained of constipation and abdominal and rectal pain. Dr. Partridge ordered further blood testing and instructed Claimant to return after a colonoscopy and consultation with a gastroenterologist. Claimant testified at hearing that he reported his fall from the ladder and his resultant back and hip pain to every medical provider he visited. There is no record that Claimant reported any fall or any back, hip or neck pain to Dr. Partridge on October 11, 2010.

26. On December 15, 2010, the same day Claimant signed a claim form in his attorney’s office, Claimant presented to the emergency room of West Valley Medical Center where he was examined by Jessica Wasielewski, M.D. Claimant reported: “FALL. LEFT HIP INJURY. The injury occurred september [sic]. Fell (states was picking apples on a ladder 3-4 ft off ground and it broke and he fell on left hip. Has not been able to work since. Has not been evaluated for pain, went to workman’s [sic] comp office today and sent to ER.” Defendants’ Exhibit 2, p. 32. Dr. Wasielewski noted a limping gait, but found normal back range of motion without tenderness, no motor or sensory deficits, and concluded Claimant suffered a hip injury. This is the earliest medical record documenting Claimant’s report of his alleged fall to any medical provider.

27. On February 2, 2011, Claimant presented again to Dr. Partridge at the Terry Reilly clinic in Nampa. Claimant presented for follow-up to an emergency room visit for left hip pain. Dr. Partridge recorded: “He states that he fell about 5 months ago while at work picking apples. He stats [sic] taht [sic] he fell from the top of the tree and landed on his side and has had contant [sic] pain

since that time. Pain is located in the L lower flank area, is worse with ambulation [sic], is rated as 6/10 and he states that the pain is keeping him up at night secondary to the pain.” Defendants’ Exhibit 1, p. 18.

DISCUSSION AND FURTHER FINDINGS

28. The provisions of the Idaho Workers’ Compensation Law are to be liberally construed in favor of the employee. Haldiman v. American Fine Foods, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990). The humane purposes which it serves leave no room for narrow, technical construction. Ogden v. Thompson, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996). Facts, however, need not be construed liberally in favor of the worker when evidence is conflicting. Aldrich v. Lamb-Weston, Inc., 122 Idaho 361, 363, 834 P.2d 878, 880 (1992).

29. **Occurrence of an accident.** The credibility of the witnesses is pivotal in this case. If Claimant’s testimony is credible then an accident is established. However, if Claimant’s testimony is not more credible than the contrary evidence of record, then his claim must fail.

30. Claimant’s testimony of an accident is supported by the testimony of his wife and daughter who affirmed they saw him in pain on September 10, 2010, and heard his account of having fallen from a tree or ladder while picking apples. However, neither Claimant’s wife nor daughter witnessed the accident, saw the allegedly broken ladder, or witnessed Claimant’s conversations with John Williamson, Coronado, or Tito.

31. Claimant submitted the translated signed statements of three Corral Agriculture employees, Nazario Marquez, Bruno Aguilar C., and Feliciano Diaz, who were Claimant’s co-workers. Diaz’s statement is a single sentence, does not claim to have witnessed any accident, and makes no mention of any date. Marquez’s entire statement is two sentences long; Aguilar’s statement is a single sentence. The statements of Marquez and Aguilar both assert that they were co-workers of Claimant and that they witnessed an accident on September 10, 2010. Neither contains even a single word describing the alleged accident and neither expressly identifies Claimant as the victim of the alleged

accident. All of the statements are undated. Without opportunity to examine the authors of these statements, the weight afforded this evidence is less than that attributed to the testimony of the hearing witnesses.

32. Claimant's accounts of his accident are not entirely consistent. Claimant's Exhibit 20, p. B-11, indicates Claimant worked eight hours at Williamson Orchards on September 10, 2010, from 8:00 a.m. until 4:30 p.m. with a one-half hour lunch break. Most members of the crew worked eight hours on September 10, 2010; none worked longer. Claimant's Form 1 indicates his accident occurred at 4:00 p.m. in September 2010. Claimant's Exhibit 1, p. 2. Claimant testified at hearing that after falling on September 10, he laid on the ground for 30 minutes, then had a conversation with one of the Williamson brothers and then worked for another two or three hours before being sent home from the orchard by one of the Williamson brothers. This account is irreconcilable with an accident at 4:00 p.m.

33. In his deposition, Claimant testified that the accident happened in the morning between 10:00 and 11:00 on a Friday in September, likely September 17, 2010. Claimant testified in his deposition that he worked the rest of the day of his accident on the ground, not on the ladder, and that when he returned the next day he was discharged. In his deposition, Claimant also testified that the day of the accident, he told Williamson, the owner of the orchard, as well as Coronado, Tito, and approximately 20 coworkers, that he had fallen and needed medical care. This account is not entirely consistent with his hearing testimony of working two or three more hours after his fall before being dismissed and his time card showing that he worked until 4:30 on September 10, 2010.

34. Claimant's testimony of several circumstances surrounding his alleged accident is inconsistent with other evidence in the record. Claimant testified at hearing that the day of his fall, one of the Williamsons saw him lying on the ground and that Claimant showed him the broken ladder and told him he had fallen. John Williamson testified that he did not remember seeing or being told of any fall or broken ladder. Claimant's counsel at hearing characterized Roger Williamson as "the only impartial third person witness." Hearing Transcript, p. 163, ll. 1-2. John Williamson is equally

deserving of this characterization. Tito testified that Williamson Orchards would have required Corral Agriculture to replace any broken ladder and he was never notified of any broken ladder. Other than Claimant's testimony, there is no indication of a ladder being broken by a Corral Agriculture crew in September 2010. There is no indication in the record that the allegedly broken ladder was ever located.

35. Claimant testified that he repeatedly told Coronado of his alleged accident. Coronado testified that Claimant never reported his alleged accident to him. Claimant testified that he repeatedly told Tito of his alleged accident. Tito testified that he first heard of Claimant's alleged accident in late November or early December 2010 when he met Claimant for the first time and paid him cash for a Corral Agriculture work check that had bounced.

36. As already noted, Claimant's credibility is pivotal. The testimonies of all other individuals supposedly present at or near the time of Claimant's alleged accident do not support, but rather refute Claimant's account of an accident. Claimant's records of his medical treatment from Terry Reilly on September 24, 2010, and October 11, 2010, make no mention of any back, hip, or neck pain, let alone any accident, yet Claimant testified he reported his fall and resulting back and hip pain to all of his medical providers. He attributes this apparent inconsistency to the failure of his medical providers to document his condition.

37. At hearing, Claimant was argumentative and defensive on multiple occasions. The irreconcilable inconsistencies between Claimant's testimony and other evidence of record are numerous. Having observed Claimant at hearing and compared his testimony to other evidence of record, the Referee finds that Claimant's credibility is suspect. The Referee finds Sarai and Ana credible witnesses; however their personal knowledge of the alleged accident is entirely dependent upon Claimant's report to them. The Referee finds the testimony of John and Roger Williamson more credible than that of Claimant. The Referee finds that Claimant's testimony is not more credible than that of Tito and Coronado.

38. Claimant has not proven that he suffered an accident while picking apples for Corral Agriculture at Williamson Orchards on or about September 10, 2010.

39. All other issues are moot.

CONCLUSIONS OF LAW

1. Claimant has not proven that he suffered an accident while picking apples for Corral Agriculture at Williamson Orchards on or about September 10, 2010.

2. All other issues are moot.

RECOMMENDATION

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

DATED this 23rd day of October, 2012.

INDUSTRIAL COMMISSION

_____/s/_____
Alan Reed Taylor, Referee

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of November, 2012, 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 L HAMMOND
811 E CHICAGO
CALDWELL ID 83605

MAX M SHEILS JR
PO BOX 388
BOISE ID 83701-0388

sb

_____/s/_____

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARCO ANTONIO FONSECA,

Claimant,

v.

CORRAL AGRICULTURE, INC.,

Employer,

and

STATE INSURANCE FUND,

Surety,
Defendants.

IC 2010-031750

ORDER

FILED 11/08/2012

Pursuant to Idaho Code § 72-717, Referee Alan Taylor submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusions of law, to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendation of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

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

1. Claimant has not proven that he suffered an accident while picking apples for Corral Agriculture at Williamson Orchards on or about September 10, 2010.
2. All other issues are moot.

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

DATED this 23rd day of November, 2012.

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 8th day of November 2012, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

RICHARD L HAMMOND
811 E CHICAGO ST
CALDWELL ID 83605

MAX M SHEILS JR
PO BOX 388
BOISE ID 83701-0388

sb

/s/