

CONTENTIONS OF THE PARTIES

The parties do not dispute that Claimant fell from a ladder at work on May 4, 2009, sustaining permanent partial impairment (PPI) as a result of his related lumbar spine injury, at L4-S1. Further, they agree that Claimant cannot return to heavy construction work, the vocational area in which he has developed the most experience and skills, and that Claimant now earns \$13 per hour working as a project assistant for Employer, whereas, he used to earn \$20 per hour as an installer.

Claimant contends that he is entitled to PPD of 38% to 42%, inclusive of PPI. He relies upon the vocational expert opinion of Nancy J. Collins, Ph.D., who opined that Claimant has suffered 38% PPD based upon a 33% to 48% loss of access to jobs involving his directly transferrable skills, plus a loss in earning capacity of 35% to 39% based upon both his actual loss and his statistically calculated loss, based on jobs in his local labor market.

Defendants counter that Claimant has only suffered 17.5% disability inclusive of impairment. They rely upon Mary Barros-Bailey, Ph.D., who opined that Claimant is entitled to either 17.5% PPD inclusive of PPI based upon his actual loss of earnings, or 41% PPD based upon his loss of access to gainful employment. Defendants assert, however, that loss of access should not be considered in this case because Claimant is employed, so any loss of access would be hypothetical and speculative.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. Joint Exhibits A through L, admitted at the hearing; and
2. The testimony of Claimant taken at the hearing.

After having considered the above evidence and the arguments 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 the hearing, Claimant was 40 years of age and residing in Meridian. He was 38 at the time of his industrial accident, on May 4, 2009, in which he permanently injured his low back when he fell off a ladder while drilling an overhead steel I-beam. Following medical treatment, including surgical intervention and rehabilitation, the parties agree that Claimant sustained some related PPI, as well as some additional PPD.

2. Prior to his industrial injury, Claimant was treated for other medical conditions, including bouts of depression, anxiety, epigastric abdominal pain and insomnia, and a couple of hand wounds. None of these conditions contribute to Claimant's PPD.

INDUSTRIAL PARTIAL PERMANENT IMPAIRMENT

3. The parties agree that, following his industrial injury, Claimant was medically restricted from jobs that exceed medium-duty work capacity; specifically, jobs that would require lifting in excess of 50 pounds (or 30 pounds overhead) and excessive deep squatting. In addition, there is no dispute that Claimant has pain-related limitations on:

- a. Standing for longer than a half hour at a time;
- b. Sitting for more than 30-45 minutes without a walk break;
- c. Lifting/carrying more than 50 pounds further than 30 feet;
- d. Pushing/pulling heavy weights;
- e. Bending/stooping frequently (Claimant indicated bending is his biggest problem);

- f. Twisting/turning through a full range of motion (becomes painful at each extreme);
- g. Reaching forward;
- h. Lifting more than 30 pounds overhead;
- i. Squatting deeply;
- j. Kneeling for prolonged periods;
- k. Operating a standard transmission over long distances; and
- l. Sensation in his left foot (has some occasional numbness that he has to shake out).

VOCATIONAL HISTORY

4. Claimant left high school during his junior year, in 1988 or so. He began working at a grocery store as a box boy in high school, and eventually became a checker. He worked in the grocery industry for two to three years.

5. In the early 1990's, however, Claimant left the grocery business and became a finish carpenter through a friend of his father. He started out cutting, nailing and installing base molding on new residential construction for Construction Concepts. After a few months, he moved to Sawtooth Homes, where he continued to do finish work, such as mantles, cabinets and other interior work. At Sawtooth, he also did framing, floor joist installation, roof sheeting, exterior siding and other jobs involved in building a home from bare ground to completion.

6. From 1995 until 2003, Claimant and a partner were self-employed, doing business as Superior Finishing. They bid jobs for general building contractors to do finish work in newly constructed homes, including cabinetry, molding, etc. Superior Finishing continued to do work for Sawtooth Homes, as well as other area contractors. During this period, Claimant held an Idaho Building Contractor's license.

7. Also, in 1996 or 1997, Claimant passed the General Education Development (GED) exam, generally known as the high school graduate equivalency test.

8. From 2004 through 2007, Claimant and a different partner did business as Landmark Homes, a residential general building contractor. They purchased building lots with financing, on which they built homes they would then sell. Claimant's partner handled most of the office work, while Claimant performed the on-site work, including heavy construction. Claimant completed a two-week course at Idaho Real Estate School during this period and obtained his real estate agent's license. He thought it would be helpful in his contracting business, but he never engaged in work as a real estate agent. At the time of the hearing, Claimant's professional licenses had expired. At some point, Claimant and his partner administratively dissolved Landmark Homes, and Claimant declared personal bankruptcy.

9. In approximately November 2007, Claimant went to work for Employer as an installer of bathroom partitions, flag poles, mirrors, white boards, athletic equipment, fire equipment, and other items in commercial buildings. Claimant also helped run some of these jobs. He earned \$20 per hour. Although the housing market was in a slump, Claimant testified that he was busy at Employer's, and getting some overtime.

10. Following Claimant's industrial accident in May 2009, Claimant returned to Employer's after a month or so of treatment, but he did not do work involving heavy lifting or other tasks beyond his capabilities. Coworkers helped him with what he could not do himself. In March 2010, Claimant was taken off work completely, and he underwent lumbar surgery in October 2010.

11. Claimant returned to work for Employer in May 2011, after his search for other jobs, within his restrictions, and investigation into further training, failed to produce a better

solution. Claimant could no longer perform the duties of an installer, so when Employer offered Claimant work as a project assistant, he took it.

12. As a project assistant, Claimant has learned, and regularly uses, computer software through Windows and Safari (Mac) operating systems, including Excel, Word and iSquareFoot. He also uses some Internet applications and has exposure to Quicken/Quickbooks. However, Claimant's job mainly entails telephone and email communications. He conveys information about shipping dates, project scheduling and purchasing, among other things, earning \$13 per hour. Claimant also assists with submittals for the estimators, but he does not do any estimating or budgeting work.

13. Claimant's discernible business income attributable to his own efforts for the year of, and a few years before, his industrial accident were \$34,290 (2005); \$37,865 (2006); \$43,745 (2008) and \$37,976 (2009). Claimant's current position pays \$27,144 per year, based upon a work year consisting of 2,088 hours, at \$13 per hour.

INDUSTRIAL COMMISSION REHABILITATION DIVISION

14. From December 29, 2010, through June 15, 2011, Lori Badigian, vocational rehabilitation consultant at ICRD, assisted Claimant in securing new employment. Claimant's file was closed after he reached MMI and returned to a permanent position at Employer's.

15. In January 2011, Employer indicated to Ms. Badigian that Claimant would definitely be hired back when medically able because he was a great employee.

16. In February 2011, Ms. Badigian had Dr. Manning, Claimant's treating surgeon, complete a job site evaluation (JSE). His responses indicated that Claimant would not be able to return to his time-of-injury position (due to his 36-50 pound lifting restriction and inability to bend and stoop frequently) and that he was not yet medically stable. Dr. Manning anticipated

medical stability in eight weeks. Ms. Badigian communicated this information to Employer, which advised that work volume had decreased, so it could not accommodate Claimant's lifting restriction; however, Employer also indicated it would keep Claimant in mind if a light-duty position became available.

17. Upon learning that he could not return to his former job, Claimant and Ms. Badigian discussed alternatives. Claimant was interested in retraining to become a radiology technician; however, he ruled this out as an immediate solution after learning that it would require him to gain entrance to, then complete, a competitive four-year program. Thereafter, Claimant spoke with a career counselor at College of Western Idaho (CWI) about alternative health care professions, none of which he thought would work. Instead, he decided he would look into becoming a real estate appraiser. After investigating this option, however, he learned that there is not a lot of work for appraisers, so they are not taking on new apprentices, a necessary step in the two-year appraiser training process. Ms. Badigian also looked into reactivating Claimant's real estate license and found that he would have to take all of the classes again, and pass another licensure test. In addition, Claimant applied for jobs at Lowe's and Home Depot, which only paid approximately \$8-9. However, he failed to receive an interview. Finally, he looked into the machine tool technology program at CWI, a two-year program, going as far as to take the COMPASS entrance evaluation test. He achieved a low score on the English portion, and began studying to take that part again.

18. In or around mid-April 2011, before Claimant could retake the test, Employer offered him the project assistant position. Ms. Badigian investigated, learned other candidates were being considered, and sought verification that the job duties were within Claimant's restrictions. Several weeks passed. Claimant was excited about the prospect of returning to

Employer's as a project assistant, but concerned that the offer was not legitimate due to the delay, so he continued to pursue the machine tool program retraining option. By May 17, 2011, Claimant was offered the full-time position, and he accepted it. He still worked for Employer, at \$13 per hour, at the time of hearing.

VOCATIONAL EXPERT OPINIONS

19. On August 15, 2011, Claimant was interviewed by Dr. Collins and Dr. Barros-Bailey, simultaneously. Each developed her own respective opinion and report, which are both in evidence, but neither provided live testimony.

20. A comparison of the vocational expert reports indicates that Drs. Collins and Barros-Bailey agree that Claimant, as noted above, is permanently medically restricted from jobs that exceed medium-duty work capacity; specifically, jobs that would require lifting in excess of 50 pounds (or 30 pounds overhead) and excessive deep squatting. In addition, there is no dispute that Claimant has subjective limitations, as noted above, on: standing for longer than a half hour at a time; sitting for more than 30-45 minutes without a walk break; lifting/carrying more than 50 pounds further than 30 feet; pushing/pulling heavy weights; bending/stooping frequently (Claimant indicated bending is his biggest problem); twisting/turning through a full range of motion (becomes painful at each extreme); reaching forward; lifting more than 30 pounds overhead; squatting deeply; kneeling for prolonged periods; operating a standard transmission over long distances; and feeling in his left foot (has some occasional numbness that he has to shake out). Claimant also testified that he sleeps two hours less per night due to his industrial injury; however, his prior medical records indicate he had sleep problems prior to his industrial accident. Neither Dr. Collins nor Dr. Barros-Bailey placed particular emphasis on Claimant's sleep difficulties in developing her opinion.

21. **Dr. Collins.** Dr. Collins provided a report detailing her vocational opinion, at Claimant's request, on September 13, 2011. In evaluating Claimant's disability, Dr. Collins considered Claimant's physical capacity, acquired vocational skills, skill acquisition potential, labor market, education, age and psychological functioning. She concluded that Claimant's vocational history consists of skilled work as a carpenter, builder and installer. However, Claimant's physical restrictions related to his industrial accident preclude future access to most of the market for the skilled work he knows, which was in a long-term slump. Dr. Collins did not consider Claimant's psychological functioning, age, skill acquisition potential or education to be limiting factors.

22. Dr. Collins performed a transferrable skills and knowledge analysis using *O*NET* software, then relied upon the *Occupational Employment Quarterly 2011* for statistics regarding carpentry and construction positions in the Boise labor market. Dr. Collins did not look beyond occupations requiring Claimant's directly transferrable skills because the recessed economy has reduced the overall number of available jobs; therefore, (apparently) Claimant's ability to obtain employment in a new area would be significantly reduced due to increased competition from directly qualified applicants. When Dr. Collins excluded the jobs within these categories requiring physical exertion beyond Claimant's restrictions, she concluded that Claimant has suffered a loss of access to directly transferrable work of 33% to 48%.

23. In addition, Dr. Collins calculated Claimant's loss in earning capacity. She determined Claimant has suffered an actual loss of 35%, demonstrated by his before-injury wage of \$20 and his post-injury wage of \$13, as well as a statistically determinable loss, based upon *Idaho Occupational Employment and Wage Survey 2010* statistics identifying the hourly wage¹

¹ Ms. Collins does not state this is the average wage for a carpenter, but the context implies this.

for a carpenter to be \$22.58, and the average wage for an office assistant to be \$13.77. Overall, Dr. Collins opined that Claimant has suffered a loss in earning capacity of 35% to 39%.

24. Given her loss of access and loss of earnings conclusions, Dr. Collins opined that a fair disability rating, inclusive of impairment, would be 38%. She also noted that, should Claimant leave his current position, he would likely not be able to start at the average office assistant wage in a new position.

25. **Dr. Barros-Bailey.** Dr. Barros-Bailey prepared a vocational opinion report, at Defendants' request, on August 30, 2011. Like Dr. Collins, Dr. Barros-Bailey performed a transferrable skills analysis using *O*NET*. She concluded that Claimant's transferrable skills all exist within the work fields of structural fabricating-installing-repairing; filling-packing-wrapping; stock checking; numerical recording-record keeping; and merchandising-sales. She also provided a long itemized list of what she opined were Claimant's transferrable skills.

26. Based upon Claimant's current rate of pay, Dr. Barros-Bailey opined that Claimant has sustained a loss in earning capacity and, therefore, disability of 17.5% inclusive of impairment. Based upon Claimant's loss of access to gainful employment, considering his "vocational and educational histories, his transferable skills, functional limitations, and other non-exertional factors," Dr. Barros-Bailey opined that Claimant has sustained 41% disability inclusive of impairment.

CLAIMANT'S CREDIBILITY

27. A claimant's credibility is always a factor considered in workers' compensation proceedings. There is no dispute, and no evidence to suggest, that Claimant was not a credible witness. Accordingly, the Referee afforded Claimant's testimony full weight in developing her decision.

DISCUSSION AND FURTHER FINDINGS

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).

MAXIMUM MEDICAL IMPROVEMENT

Permanent partial disability is determined as of the date of maximum medical improvement. *Stoddard v. Hagadone Corporation*, 147 Idaho 186, 207 P.3d 162 (2009).

28. According to Dr. Krafft, Claimant reached MMI from his low back injury on March 18, 2011. He concurrently opined that Claimant had incurred 15% PPI of the whole person attributable to the industrial accident. Thereafter, on May 5, 2011, Dr. Manning opined that Claimant's condition had improved and assessed PPI of 7% of the whole person. Further, his notes indicate that Dr. Krafft agreed with the reduced PPI assessment.

29. PPI is not an issue in this case; however, MMI is because that is the point in time at which Claimant's disability must be determined. If Dr. Manning's opinion that Claimant continued to improve to the point where his PPI assessment was reduced by more than half in the two months or so following Dr. Krafft's PPI assessment is persuasive, then it should be concluded that Claimant was not medically stable until May 5, 2011.

30. The potential difficulty with this conclusion is that both vocational experts relied upon Claimant's medical restrictions issued by Dr. Krafft, in March. If those restrictions and/or Claimant's ability to perform gainful employment changed due to a subsequent improvement,

then the vocational opinions should be discounted because they did not evaluate Claimant's disability at the appropriate point in time.

31. The issue in this case is simplified because Dr. Manning, in a letter to Ms. Badigian on May 3, 2011, confirmed that he did not see a present need to alter Dr. Krafft's restrictions. As a result, regardless of which MMI date is elected, Claimant's medical restrictions were the same. Further, the parties substantially agree on Claimant's pain limitations, which are well-supported by his medical record, and which the medical evidence fails to establish substantially changed between March 18 and May 5, 2011.

32. Further, there is insufficient evidence to establish that Claimant's pertinent non-medical factors, specifically his local labor market, materially changed during the relevant period.

33. The Referee finds that Claimant reached MMI on either March 18, 2011, or May 5, 2011. Either date would have the same effect on the PPD determination and, therefore, no further distinction is required.

PARTIAL PERMANENT DISABILITY

“Permanent disability” or “under a permanent disability” results when the actual or presumed ability to engage in gainful activity is reduced or absent because of permanent impairment and no fundamental or marked change in the future can be reasonably expected. I.C. § 72-423.

“Evaluation (rating) of permanent disability” is an appraisal of the injured employee's present and probable future ability to engage in gainful activity as it is affected by the medical factor of permanent impairment and by pertinent nonmedical factors provided in I.C. § 72-430. In determining percentages of permanent disabilities, account should be taken of the nature of

the physical disablement; disfigurement (not relevant here); the cumulative effect of multiple injuries (not relevant here); the occupation of the employee; and his or her age at the time of accident causing the injury. Consideration should also be given to the diminished ability of the affected employee to compete in an open labor market within a reasonable geographical area considering all the personal and economic circumstances of the employee, and other factors as the Commission may deem relevant. I.C. §§ 72-425, 72-430(1).

The test for determining whether a claimant has suffered a permanent disability greater than permanent impairment is “whether the physical impairment, taken in conjunction with nonmedical factors, has reduced the claimant’s capacity for gainful employment.” *Graybill v. Swift & Company*, 115 Idaho 293, 766 P.2d 763 (1988). In sum, the focus of a determination of permanent disability is on the claimant’s ability to engage in gainful activity. *Sund v. Gambrel*, 127 Idaho 3, 896 P.2d 329 (1995).

Permanent disability is defined and evaluated by statute. Idaho Code § 72-423 and 72-425 *et. seq.* Permanent disability is a question of fact, in which the Commission considers all relevant medical and non-medical factors and evaluates the purely advisory opinions of vocational experts. *See, Eacret v. Clearwater Forest Indus.*, 136 Idaho 733, 40 P.3d 91 (2002); *Boley v. State, Industrial Special Indem. Fund*, 130 Idaho 278, 939 P.2d 854 (1997). The burden of establishing permanent disability is upon a claimant. *Seese v. Idaho of Idaho, Inc.*, 110 Idaho 32, 714 P.2d 1 (1986).

34. Dr. Collins and Dr. Barros-Bailey are both well-qualified vocational experts who have provided opinions in many previous workers’ compensation cases. In this case, Dr. Collins’ opinion is more persuasive because it sets forth her methodology, which appears sound, as well as the specific medical and non-medical factors she figured into her analysis.

Further, Dr. Collins appropriately considered and weighed these factors, including Claimant's local labor market as it existed at the time he reached MMI. Along these lines, Dr. Collins' decision to include jobs only involving Claimant's directly transferrable skills is logical and consistent.

35. On the other hand, Dr. Barros-Bailey's opinions were largely conclusory (her loss of access analysis failed to list the non-medical factors she considered or the jobs she ruled out due to Claimant's industrial injury) and, in one instance, apparently erroneous (her wage loss analysis which concluded that \$13 is 82.5% of \$20²). Correcting Dr. Barros-Bailey's math, she would apparently agree with Dr. Collins, that Claimant has suffered an actual loss in wages of 35%.

36. In addition, although her methodology is unknown, Dr. Barros-Bailey was apparently over-inclusive in her loss of access assessment because her long list of Claimant's transferrable skills includes abilities and experience Claimant persuasively testified that he does not possess, including: conducting employment interviews, interpreting and applying construction contracting regulations, preparing bank deposits for a sizeable business, researching and applying land use regulations, applying regulations to surveying and construction activities, applying building codes, analyzing and interpreting data and budgets, applying mathematical principles to accounting (including bookkeeping and budgeting), balancing cash and receipts, evaluating new construction industry practices, interpreting maps (for architecture, construction and civil engineering), performing safety inspections, translating design specifications to cost estimates, selling products, and using negotiation techniques as management tools.

37. Further, Dr. Barros-Bailey failed to conduct a wage loss analysis based on Claimant's local labor market, or in any way to rebut the presumption that Claimant's time-of-

² Dr. Collins correctly calculated that \$13 is 65% of \$20, resulting in a 35% loss.

hearing wage under-represents his wage earning capacity, while Dr. Collins' wage loss analysis persuasively establishes, pursuant to Idaho Code § 72-102 (33), that \$13 per hour slightly over-estimates his likely overall earning capacity.

38. Defendants argue that Claimant is capable of learning new skills and retraining. Dr. Collins' opinion takes Claimant's demonstrated learning capacity into consideration, but persuasively balances this potential advantage with the very real likelihood that employers were unlikely to take on new hires in need of extensive training in spring 2011 due to the depth of applicant pools at that time. Further, Claimant withdrew the issue of retraining, without objection from Defendants. Their argument that he could benefit from retraining is moot.

39. Defendants also argue that Claimant has failed to establish a loss in earning capacity outside of Employer's; however, Dr. Collins' statistical wage analysis, unrebutted by Dr. Barros-Bailey, does establish Claimant would suffer not only a loss in earning capacity based on his pre-injury position at Employer's, but also a likely loss in earning capacity, should he lose his current position at Employer's.

40. In addition, Defendants argue that calculations of Claimant's loss of access to the market should not be considered, because Claimant is employed and "[h]ow Claimant may react under certain hypothetical situations that may occur in the future is speculation." Defendants' Brief, p. 11. Further, "[a]lthough Claimant can presently show a loss of wages he can not [*sic*] show how his pertinent nonmedical factors would affect his ability to engage in gainful activity in an open labor market." *Id.* Defendants' position in this regard is misguided. Permanent partial disability is determined at the time the claimant reaches medical stability, as discussed above. There is nothing hypothetical about Claimant's nonmedical factors at that specific point in time.

41. Along these lines, Defendants' reliance upon the holding in *Paz v. Crookham Company*, 2005 IIC 0166, is also off-track. *Paz* addresses the opposite situation, in which a claimant earns more money post-industrial injury than she did previously. In that case, the Commission found that the claimant's actual and present ability to engage in gainful activity had not been affected by her permanent impairment and relevant medical and non-medical factors. Here, however, the vocational experts agree, and the evidence demonstrates, that Claimant's actual and present ability to engage in gainful activity has clearly been reduced. Therefore, the holding in *Paz* is inapplicable to this case.

42. Finally, Defendants fault Claimant for failing to seek access to his local labor market – for failing to look for work. The record demonstrates evidence to the contrary, that Claimant was at all times a motivated and creative job-seeker. Although he only applied for two actual jobs, the Referee is persuaded that, had there been other positions that Claimant could conceive of obtaining, he would have applied for them, too. Further, Claimant's outside job search was cut short when Employer offered him a position in late April 2011, only a few weeks after the earliest point at which he could be found to have reached medical stability. Moreover, Claimant is not seeking odd-lot worker status, and there are no allegations of malingering, so his job search activities are not material to a PPD finding in this case.

43. The Referee finds Claimant has sustained PPD of 38% inclusive of PPI as a result of his May 4, 2009, industrial accident based on Dr. Collins' opinion and Claimant's permanent lumbar spine impairment, education, vocational skills, work experience and local labor market.

CONCLUSION OF LAW

1. Claimant has proven that he is entitled to PPD inclusive of PPI of 38% as a result of his industrial low back injury.

RECOMMENDATION

Based on 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 10th day of February, 2012.

INDUSTRIAL COMMISSION

/s/
LaDawn Marsters, Referee

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of February, 2012, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

BRADFORD S EIDAM
PO BOX 1677
BOISE ID 83701-1677

KENT W DAY
PO BOX 6358
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sjw

/s/ _____

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BRYAN W. HERBERGER,)
Claimant,)
v.)
SBI CONTRACTING, INC., an Idaho)
Corporation, Employer,)
and)
LIBERTY MUTUAL FIRE INSURANCE)
CO., Surety,)
Defendants.)
_____)

IC 2009-012066

ORDER

February 17, 2012

Pursuant to Idaho Code § 72-717, Referee LaDawn Marsters submitted the record in the above-entitled matter, together with her recommended finding 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 recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee’s proposed finding of fact and conclusion of law as its own.

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

1. Claimant has proven that he is entitled to PPD inclusive of PPI of 38% as a result of his industrial low back injury.
2. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 17th day of February, 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 17th day of February, 2012, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

BRADFORD S EIDAM
PO BOX 1677
BOISE ID 83701-1677

KENT W DAY
PO BOX 6358
BOISE ID 83707-6358

sjw

/s/