BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARGIE JENSEN, Claimant, v. GOLD INN HOSPITALITY, dba SUPER 8 MOTEL, Employer, and MARYLAND CASUALTY COMPANY, Surety, Defendants.	**IC 2010-016473** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** May 4, 2012

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee LaDawn Marsters, who conducted a hearing in Pocatello, Idaho on October 4, 2011. Claimant, Margie Jensen, was present in person and represented by Robert K. Beck, of Idaho Falls. Defendant Employer, Gold Inn Hospitality, dba Super 8 Motel ("Super 8"), and Defendant Surety, Maryland Casualty Company ("Surety"), were represented by David P. Gardner, of Pocatello. The parties presented oral and documentary evidence. Post-hearing depositions were taken and briefs were later submitted. The matter came under advisement on March 26, 2012.

ISSUES

The issues to be decided by the Commission from evidence presented in connection with the hearing are:

1. Whether Claimant incurred a compensable occupational disease;

2. Whether and to what extent Claimant is entitled to the following benefits:

    a. Medical care; and

    b. Temporary partial and/or temporary total disability benefits (TPD/TTD); and

3. Whether Claimant is entitled to attorney fees pursuant to Idaho Code § 72-804.

CONTENTIONS OF THE PARTIES

Claimant contends that she is entitled to workers' compensation benefits for an occupational disease manifesting in cervical spine injuries at C5-6 and C6-7, requiring a fusion surgery in November 2010. Specifically, Claimant cites her repetitive motion activities in pulling tightly stuffed sheets from the washer, making beds, moving furniture, and cleaning while working as an executive housekeeper at Super 8. She relies upon the opinion of her treating cervical spine surgeon, Benjamin Blair, M.D., and the independent medical evaluation (IME) of Robert E. Ward, D.C., to prove that her preexisting, asymptomatic, mild degenerative disc disease (DDD) was permanently aggravated by her work activities at Super 8. Claimant also seeks an award of attorney fees because Defendants wrongfully denied her claim.

Defendants deny that Claimant incurred an occupational disease. They rely upon Gary C. Walker, M.D., who opined that there is insufficient medical evidence to establish a causal link between Claimant's work activities at Super 8 and her C6-7 pathology. In addition, Defendants assert that even if Claimant's condition is the result of permanent aggravation of her preexisting mild DDD, as Claimant maintains, she is, nevertheless, not entitled to workers' compensation benefits because it is undisputed that she did not sustain a workplace accident. Therefore, her claims are barred by the *Nelson* doctrine.

OBJECTIONS

Defendants' objections to the admission into evidence of Claimant's Exhibits 1a, pp. 1-2, and 1e, pp. 1-2, taken under advisement at the hearing, are overruled. All other pending objections are also overruled.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The prehearing deposition testimony of Claimant taken January 26, 2011;
2. Claimant's Exhibits 1 (with subparts "1a" through "1f") through 3[1] admitted at the hearing and as addressed, above;
3. Defendants' Exhibits 1 through 7 admitted at the hearing;
4. The testimony of Claimant, Brett A. Jensen and Glen Spradlin taken at the hearing on October 4, 2011;
5. The post-hearing deposition testimony of Robert E. Ward, D.C., taken November 22, 2011; and
6. The post-hearing deposition testimony of Gary C. Walker, M.D., taken November 30, 2011.

After having considered the 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 48 years of age and residing in Pocatello, Idaho at the time of the hearing. She has worked as a truck and forklift driver, grocery store clerk and waitress. From 2004-2006, she had a cleaning and restoration business in which she provided cleaning services

[1] Claimant withdrew Exhibit 4.

to residential and commercial customers. She had to stop actively operating that business in May 2006, when she sustained a debilitating hip injury following a fall from a horse.

2. One of Claimant's initial treatment records related to her horse accident states that she had left-sided neck stiffness. Thereafter, on October 9, 2007, she obtained treatment from Boe Simmons, physician assistant to Richard A. Wathne, M.D,[2] for pain in her shoulders and elbows and intermittent numbness into her right hand. These symptoms were the only reason for her visit. Mr. Simmons reported Claimant's relevant history as follows:

> Ms. Jensen comes in today with new complaints of ongoing **bilateral** shoulder pain, and, to a lesser degree, **bilateral** elbow pain that she has had for the last several months. This interferes with her custodial duties. She notes ongoing night pain and difficulty with overhead activities. She takes approximately 6 aspirin a day for this. In addition, she complains of some intermittent numbness into her ***right*** hand. She does not recall any traumatic injury.

CE 1a, p. 32 (emphasis in original). A hand-written history on a preprinted form, apparently taken by someone else in Dr. Wathne's office on October 9, 2007, relates Claimant's "ongoing" bilateral shoulder pain to her horse accident:

> CHIEF COMPLAINT: B/L shoulders[3]
> DATE OF ONSET: ongoing
> HISTORY OF PRESENT PROBLEM: C/C B/L shoulder pain…thinks accident caused problems – c/o stiffness & pain c/o numbness & tingle [down] arm c/o [reduced] grip strength
> PRIOR INJURY TO SAME AREA? No.
> IS THERE AN ATTORNEY INVOLVED? (INCLUDE WORKERS' COMPENSATION): No.

CE 1a, p. 31. Claimant does not recall this appointment and she strongly denies that she had any neck or shoulder symptoms prior to approximately June 2010. Nevertheless, the Referee finds

[2] Dr. Wathne is an orthopedic surgeon who treated Claimant following her horse fall.
[3] Elsewhere, the note lists other symptoms, including bilateral elbow aches, difficulty with overhead activities and right hand numbness.

these records are a credible source of information regarding Claimant's condition at that time they were prepared.

3. Mr. Simmons diagnosed bilateral shoulder rotator cuff tendinitis with bilateral elbow inflammations and prescribed medications. Claimant does not recall this appointment, or having any neck or shoulder problems before May or June 2010.

4. In April 2010, Claimant was hired as a housekeeping supervisor at Super 8. She did actual physical labor for eight or more hours per work day, on a full-time schedule. Such labor included:

a. Approximately two hours per day lifting and bending mattress corners to change sheets (five minutes per bed, 18 rooms, undetermined number of beds per room);

b. An undetermined amount of time moving furniture from room to room, or to clean;

c. Shampooing carpets in three rooms per week, at approximately one hour per week;

d. Approximately ten minutes per day, or more if she helped coworkers, throwing heavy duty trash bags from a cart into the dumpster;

e. An undetermined amount of time throwing freight, including boxes up to thirty pounds; and

f. Approximately six to eight hours per day, four or five days per week, pulling wet, tangled sheets out of the tightly stuffed washer, which Claimant testified was the worst job of all.

5. Claimant first had trouble doing her work in about June 2010 when she began experiencing neck pain. "It felt like somebody was sticking a great big nail or something in my

neck." Tr., p. 50. She also had severe tension headaches that she associated with knots in her shoulders, shoulder pain that was mostly right-sided, collar bone pain, right-sided backache, ringing in her ears and tingling on the inside of her arms down to her distal fingertips.

6. Claimant thought her symptoms were temporary, due to overexertion at work, and that they would resolve on their own. However, after approximately three weeks, her pain grew severe enough that she sought medical treatment. Claimant's manager agreed she should see a doctor, but her manager did not say who; so, on July 1, 2010, Claimant again visited Dr. Wathne's office, and was again evaluated by Mr. Simmons.

7. The history recorded in Mr. Simmons' chart note attributes Claimant's symptoms both to her 2006 horse accident and to her work at Super 8:

> Margaret presents to the office today for a repeat evaluation. She has had ongoing pain into her neck and upper trap as well as her **bilateral** shoulders since an accident in 2005 [*sic*] when she was bucked off a horse from over 9'. She feels like she has just never been the same. She also complains of pain at work, where she has to do a significant amount of lifting. She works as a manager in housekeeping at the Super 8. Again, she does have complaints of bilateral shoulder pain posteriorly and into the intrascapular region.

CE 1a, p. 43 (emphasis in original). Claimant denied that she attributed her symptoms, even in part, to her 2006 horse accident when she reported her neck and shoulder pain to Mr. Simmons. She believes that he mistakenly drew a causal connection because he was aware of that event.

8. On exam, Claimant demonstrated no radiculopathy. However, she had marked discomfort to palpation over her cervical spine and pain with both flexion and extension of her cervical spine into her intrascapular region. X-rays revealed slight straightening of her cervical spine, but no significant degenerative changes. Mr. Simmons posited, "Given her history of an injury, it is quite possible that she has had a herniated disc or some degenerative disc disease." *Id.* He ordered an MRI, which confirmed mild cervical DDD, with minimal or mild bulging at

C5-6 and C6-7, but ruled out focal disc disease and stenosis. He also prescribed a Medrol Dosepak, which improved her symptoms.

9. Mr. Simmons ultimately diagnosed DDD and nerve root irritation at C5-6, and prescribed an epidural steroid injection. Over time, Claimant underwent two such injections, each of which brought only short-lived improvement in her pain. In August 2010, Mr. Simmons referred Claimant to Benjamin Blair, M.D., Dr. Wathne's practice partner.

10. Dr. Blair recommended surgery in September 2010 and, following Claimant's cessation from smoking for six weeks, he performed an anterior cervical discectomy and fusion at C5-6 and C6-7.[4] He took a preoperative history in which he noted Claimant had "a long history of neck pain radiating to the bilateral shoulders insidious in onset, progressing to the point it is severe. She had workup which revealed degenerative disc disease cervical spine." CE 1a, p. 75. He also reported that when conservative care had failed, Claimant elected surgery. In addition, Dr. Blair cited imaging results including x-rays that revealed mild degenerative changes, an MRI "significant for degenerative disc disease cervical spine," and a discogram that reproduced Claimant's pain attributable to C5-6 and C6-7.

11. Following surgery, Claimant's pain improved; however, she continued to have significant symptoms through the time of the hearing.

12. On September 21, 2011, Dr. Blair wrote a letter to Claimant's attorney in which he opined that Claimant's symptoms leading to her cervical fusion surgery were caused by an aggravation of her preexisting mild cervical DDD by her work activities at Super 8:

> I believe, with a reasonable degree of medical probability, that Ms. Jensen's work activities at the Super-8 [*sic*] Motel, which were described in your letter, aggravated her pre-existing degenerative disc disease of the cervical spine, causing it to become symptomatic. This is based on

[4] Claimant underwent surgery on November 16, 2010.

> patient's relayed history of the lack of trauma to the cervical spine prior to her work injury and the lack of medical records that might affirm a pre-existing symptomatic problem to the cervical spine prior to being seen in my office for treatment.

CE 1a, p. 1. He also addressed Claimant's objection to the accuracy of Mr. Simmons' July 1, 2010 note by explaining that it appears inconsistent with his own note from his initial examination of Claimant in August 2010:

> I do not have independent recollections to Ms. Jensen's statements during my initial meeting on 8/25/10. However, I did note specifically in the medical record that the pain she was having had been ongoing only since that past year and was without history of trauma. Trauma in this reference would be a motor vehicle accident, a fall from a horse, etc. Therefore, these notations would actually dispute the medical notes recorded by Boe Simmons, P.A.-C with reference to any complaints of pain and problems with her arms and shoulders prior to working at Super-8 [*sic*] Motel.

Id.

INDEPENDENT MEDICAL EVALUATIONS

13. **Robert E. Ward, D.C.** Dr. Ward conducted an independent medical evaluation (IME) at Claimant's request on March 15, 2011. He is currently a non-practicing chiropractor,[5] board certified by the American Medical Association (AMA) to perform IMEs. Dr. Ward attended medical school in Antigua, but he did not serve a medical residency and he is not certified to practice medicine. His opinions are based on both his chiropractic and medical training.

14. Prior to preparing his IME report, Dr. Ward reviewed Claimant's medical records, took a history from Claimant, and conducted a cervical examination. At some point prior to his deposition, he also reviewed the IME opinions of Dr. Walker, set forth more fully, below.

[5] Previously, Dr. Ward maintained a chiropractic practice for 20 years.

15. Dr. Ward opined that Claimant's neck and shoulder symptoms were due to an occupational disease resulting from repetitive trauma from lifting more than 50 pounds, vacuuming, and performing other heavy tasks at Super 8 on a full-time basis, which aggravated her preexisting asymptomatic cervical spine DDD.

16. Dr. Ward did not visit Claimant's workplace, review her job description or otherwise familiarize himself with Claimant's work activities, other than to interview Claimant and accept Claimant's attorney's representations in this regard. He assumed that Claimant was doing heavy work all day long. He had "no idea" how often a given activity must be performed to be considered "repetitive", but he thought that two months was sufficient. Ward Dep., p. 43.

17. **Gary C. Walker, M.D.** Dr. Walker, who is a practicing physician board certified by the AMA in physical medicine and rehabilitation, conducted an IME at Defendants' request on June 22, 2011. Prior to preparing his report, he reviewed Claimant's medical records, her deposition testimony and Dr. Ward's IME opinions. He also took a history from Claimant and performed a cervical examination.

18. Dr. Walker agreed that symptomatic cervical DDD can manifest as neck pain, pain extending to the shoulders, headaches or, less commonly, numbness and tingling into the arms. He also agreed that Claimant's work could have brought on neck and shoulder pain. However, since Claimant's imaging results revealed no acute conditions and Claimant does not attribute her pain to any particular event, he opined that there is insufficient medical evidence to conclude that any of Claimant's symptoms, during 2010 or before, were caused by her mild cervical DDD. Dr. Walker explained that degenerative changes occur over time, so without a specific injury to relate to a specific imaging finding, no causal link can be established to a

reasonable medical probability. He also posited that Claimant's pain may have been the result of muscular overuse and strain.

19. In addition, Dr. Walker knew of no specific hazard associated with housekeeping work that would predispose an individual to an occupational disease involving cervical DDD. "I don't know of anything that has been done to show that degenerative disk [*sic*] disease and occupational disease [sic] associated with housekeepers at hotels." *See,* pp. 22-23. He cited the *AMA Guides* (unknown edition) to support his opinion that DDD is too common in the general population to associate it with any particular occupation:

> And, as a matter of fact, in the AMA Guidebook it specifically comments that common conditions related to degenerative changes in the spine, including abnormalities identified on imaging studies such as annular tears, facet arthropathy, and disk degenerative [*sic*] do not correlate well with symptoms, clinic findings, or causation analysis, and, therefore, are not ratable, according to the guides.

Walker Dep., p. 49.

20. The *AMA Guides, Sixth Edition,* contains the above-described language, at page 563. As explained by Dr. Ward, in his deposition, the language pertains to whether or not permanent partial disability should be assessed as to the given conditions. The paragraph goes on to state, "There may be exceptions to these rules in some jurisdictions related to aggravation of pre-existing conditions." This authority confirms some of the proof problems facing a claimant asserting she contracted symptomatic DDD at work.

CLAIMANT'S CREDIBILITY

21. Claimant testified with charm and conviction at the hearing. However, her recollections are inconsistent with relevant facts reported in her medical records and by Glen Spradlin, a coworker at Super 8.

22. Along those lines, Dr. Walker was highly impressed with Claimant's sincerity and affability. Nevertheless, he favored the accuracy of Mr. Simmons' note regarding the history Claimant reported on July 1, 2010 over Claimant's after-the-fact statements:

> She said I remember telling him [about her symptoms] and she says I think that because I had the accident in 2005 [*sic*], he attributed it all to that, and that was her answer to me was he just attributed it all to that, and, really, I had not had all that since '05. I think she's a very believable person. As a matter of fact, I put in my record an interesting comment, which I have not really made more than a few times probably, particularly with an IME patient, but I made a comment here that she's one of the most delightful people I've ever met in the course of my practice.
>
> This is an extremely believable, very pleasant, nice person. And yet I still have a medical record that Boe Simmons comments and says this. So, you know, I guess if Boe Simmons went back and said, you know what, she never really said that after all, I just put that in there on my own and I assumed that, then I'd go with Boe Simmons, but right now I have to go with a medical record being a believable document.

Walker Dep., pp. 55-56. Apparently, Dr. Walker was unaware of the intake note from October 2007, prepared by someone other than Mr. Simmons, in which it is also reported that Claimant attributed ongoing shoulder pain to her horse accident, and Mr. Spradlin's testimony.[6] It is reasonable to assume that this information would strengthen Dr. Walker's reliance on Mr. Simmons' report.

23. The Referee also places more evidentiary weight on Mr. Simmons' chart note for the above-described reasons, and further because it is apparent that Mr. Simmons relied on the fact of the prior accident in rendering his diagnosis and treatment plan.

24. Claimant is a highly likeable person. However, she is not a reliable historian with respect to her medical history. Claimant's otherwise credible medical treatment records are more persuasive than the statements she has made in connection with these proceedings.

[6] Mr. Spradlin, a coworker at Super 8, testified at the hearing that, while working at Super 8, Claimant told him she had to let her prior cleaning business go due to shoulder, neck and pelvis injuries she sustained in her horse accident. His testimony is inadequate on its own to overcome Claimant's testimony on this point.

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).

OCCUPATIONAL DISEASE

The Idaho Workers' Compensation Law defines an "occupational disease" as "a disease due to the nature of an employment in which the hazards of such disease actually exist, are characteristic of, and peculiar to the trade, occupation, process, or employment …." Idaho Code § 72-102(22)(a). Further, Idaho Code § 72-439 limits the liability of an employer for any compensation for an occupational disease to cases where "such disease is actually incurred in the employer's employment."[7] If this causation criteria is met, then it must be proven that the hazards of such disease actually exist and are characteristic of and peculiar to the claimant's employment. In the present case, Claimant's occupational disease claim for benefits related to her C5-6 and C6-7 cervical disc disease must be examined in light of the above elements.

CAUSATION

25. As one of the elements of her prima facie case, Claimant must demonstrate that a causal relationship exists between the demands of her employment and the condition for which she seeks compensation. Claimant must adduce medical testimony establishing that it is more probable than not that her cervical spine condition is causally related to the demands of her

[7] For non-acute conditions, an employee must also prove that he was exposed to the hazard of the occupational disease for at least 60 days at the defendant employer's. Here, Claimant began work on April 1, 2010. Her symptoms arose approximately three weeks prior to her initial medical visit on July 1, 2010. Defendants do not dispute that Claimant satisfied the 60-day exposure requirement.

employment. *See* Langley v. State of Idaho, Industrial Special Indemnity Fund, 126 Idaho 781, 890 P.2d 732 (1995). Here, Drs. Walker, Ward and Blair are in substantial agreement that Claimant suffered from a degenerative disease of the cervical spine, which was aggravated by the demands of her employment. Indeed, Claimant argues in her post-hearing brief (at page 18) that "there was a material aggravation of her pre-existing degenerative condition which resulted in the need for surgery on her neck in November of 2010."

26. The Referee finds that Claimant's condition is the result of a permanent aggravation of her preexisting mild cervical degenerative disc disease by her work activities at Super 8.

27. Further, there is no dispute that Claimant did not suffer a workplace accident. This presents a formidable legal barrier to Claimant's case because Idaho case law recognizes compensability for "aggravation" of an underlying condition (as opposed to an underlying occupational disease that has not yet manifested, addressed below) only when such aggravation results from an industrial accident. *See*, for example, *Nycum v. Triangle Dairy Co.,* 109 Idaho 858, 712 P.2d 559 (1985); *Nelson v. Ponsness-Warren Idgas Enterprises*, 126 Idaho 129, 879 P.2d 592 (1994); and *Konvalinka v. Bonneville County*, 140 Idaho 477, 478-479, 95 P.3d 628, 629-630 (2004). This doctrine has become known as the rule of *Nelson*.

28. Claimant suggests that the *Nelson* doctrine does not apply where the preexisting condition in question was asymptomatic prior to the work-caused aggravation. *Nelson* does not establish such a requirement. Although the preexisting condition at issue in *Nelson* was symptomatic, the *Nelson* court emphasized that whether or not the preexisting condition at issue is asymptomatic is irrelevant for purposes of determining an employee's entitlement to compensation benefits. This conclusion was reiterated in the subsequent case of *Demain v. Bruce McLaughlin Logging*, 132 Idaho 782, 979 P.2d 655 (1999). In *Demain*, the evidence

established that claimant's preexisting condition (degenerative disc disease) was asymptomatic prior to the claimant's last employment. Nevertheless, the court determined that the rule of *Nelson* extends to all preexisting conditions, whether they are occupational diseases or simply weaknesses or susceptibilities. In summary, Idaho law does not support Claimant's contention that in order for the rule of *Nelson* to apply, the preexisting condition in question must have been symptomatic prior to the occupation exposure at issue.

29. Given that Claimant did not suffer a workplace accident and that the cervical spine condition for which she seeks benefits was (at most) caused, in part, by a preexisting condition, there is only one method by which she may establish her eligibility for benefits. That method is elucidated by the Idaho Supreme Court in the case of *Sundquist v. Precision Steel & Gypsum*, *Inc.*, 141 Idaho 450, 111 P.3d 135 (2005), which creates a special rule where the preexisting condition is, itself, occupational in origin. Per *Sundquist*, the rule of *Nelson* does not apply where it is demonstrated that the preexisting condition was, itself, an occupational disease that did not "manifest" until prompted by a subsequent work-related aggravation.

30. Here, the facts suggest a number of potential contributors to Claimant's preexisting condition, i.e. her documented multi-level degenerative disease of the cervical spine. Specifically, there is evidence suggesting that Claimant's pre-existing condition may have its genesis in the 2006 horse-riding accident or in the normal aging process. However, the record in this case is insufficient to establish an occupational origin. Claimant has proven that she worked heavy jobs previously, but there is scant evidence of any day-to-day or "repetitive" activities in which she may have engaged during this time frame. Moreover, there is no medical evidence that any of her prior occupational activities had any effect on the condition of her cervical spine.

Further, the record contains no evidence that Claimant ever before worked with heavy laundry or repetitive bed-making.[8]

31. The evidence fails to establish the occurrence of an "accident." The evidence further fails to establish that Claimant's preexisting condition is, itself, occupational in origin. The rule of *Nelson* applies, and Claimant's condition must be deemed non-compensable, notwithstanding that the medical evidence tends to support the proposition that Claimant's work did aggravate her underlying preexisting condition.

32. All other issues are moot.

CONCLUSIONS OF LAW

1. Claimant has failed to prove that she incurred a compensable occupational disease; therefore, her claim is barred.

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 __19th____ day of ___April_____, 2012.

INDUSTRIAL COMMISSION

/s/_____
LaDawn Marsters, Referee

ATTEST:

/s/_____
Assistant Commission Secretary

[8] Pulling tightly packed, twisted sheets from the washer is the job at which Claimant spent the most time, and which was the most difficult. She ranked bed-making second.

CERTIFICATE OF SERVICE

I hereby certify that on the __4th__ day of ____May_____, 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:

ROBERT K BECK
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sjw /s/_____

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARGIE JENSEN, Claimant, v. GOLD INN HOSPITALITY, dba SUPER 8 MOTEL, Employer, and MARYLAND CASUALTY COMPANY, Surety, Defendants.	**IC 2010-016473** **ORDER** May 4, 2012

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

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

1. Claimant has failed to prove that she incurred a compensable occupational disease; therefore, her claim is barred.

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 __4th____ day of _____ May 4, 2012_____, 2012.

INDUSTRIAL COMMISSION

/s/_____
Thomas E. Limbaugh, Chairman

/s/_____
Thomas P. Baskin, Commissioner

__Participated but did not sign_____
R.D. Maynard, Commissioner

ATTEST:

/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __4th_ day of _____May_____, 2012, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

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/s/_____