BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

SCOTT LENZ, Claimant, v. BERTRAM CONSTRUCTION INC., Employer, and STATE INSURANCE FUND, Surety, Defendants.	**IC 2005-524662** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** Filed October 31, 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 Coeur d'Alene on March 23, 2011. Claimant was present and represented by Michael J. Verbillis of Coeur d'Alene. H. James Magnuson, also of Coeur d'Alene, represented Employer/Surety. Oral and documentary evidence was presented. There were no post-hearing depositions. The parties submitted post-hearing briefs and this matter came under advisement on June 15, 2011.

ISSUES

The issues to be decided as a result of the hearing are:

1. Whether Claimant's back condition is causally related to his compensable industrial accident;

2. Whether Defendants are liable for medical treatment for Claimant's back condition;

3. Whether Claimant is entitled to temporary total disability (TTD) benefits and the extent thereof;[1]

4. Whether Claimant is entitled to permanent partial impairment (PPI) benefits and the extent thereof; and

5. Whether Claimant is entitled to permanent partial disability (PPD) benefits and the extent thereof.

CONTENTIONS OF THE PARTIES

Claimant contends that he not only suffered serious facial injuries in an industrial accident, he also injured his back. The first mention of any back injury does not appear in the medical records until about three months post-accident. However, Claimant's facial fractures were "barking the loudest," and it was not until those problems were brought under control that Claimant began paying more attention to his back. Claimant told lay people about his back problems before his medical records reflect these complaints. Further, he told his treating ENT physician (who obviously was not treating his back condition) about his back problems long before that physician recorded the complaints. According to his independent evaluator, Claimant is entitled to treatment for his back and a 5% whole person PPI rating therefore. Finally, Claimant argues he is entitled to a 25% PPD rating inclusive of PPI according to his vocational expert.

Defendants contend that, according to their independent evaluator, Claimant's back condition is not related to his industrial accident, but is a "spontaneous separate condition." The

[1] Issues 2 and 3 were not argued and are deemed waived.

examiner reached this opinion primarily due to Claimant's late reporting of any back problems. Even if related, Defendants argue there is no credible PPI rating for that condition and, without PPI, there can be no PPD.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony taken at the hearing of Claimant, Claimant's mother Jane Lenz, vocational consultant Dan Brownell, and Claimant's friend Nick Brimmer.

2. Claimant's Exhibits 1-12, admitted at the hearing.

3. Defendants' Exhibits 1-13, admitted at the hearing.

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

1. Claimant was 31 years of age at the time of the hearing and 26 at the time of his industrial accident. He resided in Coeur d'Alene at all relevant times herein. He is a high school graduate and was taking entry-level courses at North Idaho College. Claimant's pertinent work history consists of landscaping and framing houses.

2. While on a job for Employer on October 26, 2005, Claimant fell 10 – 11 feet when a catwalk collapsed. At the same time, Claimant was struck in his forehead with some swinging trusses that were being unloaded. Claimant was not sure exactly how he landed. He testified that it felt like his teeth were falling out. A co-worker took Claimant to North Idaho Immediate Care Center, where he was diagnosed with complex facial fractures involving his right frontal sinus, cribriform plate, and right superior orbital rim, as well as a sprained right

ankle.[2] Claimant was treated for his facial injuries and referred to Thomas Beaton, M.D., an otolaryngologist.

3. Claimant first saw Dr. Beaton on October 28, 2005 for his frontal sinus fracture. Dr. Beaton explained to Claimant the seriousness of a frontal sinus fracture and the importance of obtaining serial CT scans to monitor his progress. Dr. Beaton recommended conservative treatment and became Claimant's treating physician for his sinus and orbital fractures.

4. Although Claimant testified that he had back pain from either the date of his accident or shortly thereafter, the first mention of back pain noted within the medical records was a January 25, 2006 office note of Dr. Beaton wherein it is indicated that, "[h]e has had back pain since his accident." Defendants' Exhibit 7, p. 165. Dr. Beaton made a number of referrals to a back specialist and Claimant finally saw Jeffery McDonald, M.D., a neurosurgeon.

5. Claimant first saw Dr. McDonald on October 2, 2007 for evaluation of low back and leg pain that Dr. McDonald noted began about one month post-accident. Dr. McDonald considered sacroiliitis but ordered a lumbar MRI in light of the radicular component to Claimant's presentation. According to the report of Claimants' lumbar MR, "[d]egenerative disc disease and facet arthropathy cause mild to moderate bilateral neural foraminal stenosis at L4/5 and L5/S1." Defendants' Exhibit 1. p. 42. In follow-up on January 7, 2008, Dr. McDonald prescribed a series of steroid injections as well as a formal course of physical therapy.

6. On May 22, 2008, Dr. McDonald declared Claimant at MMI. Even though the epidural steroid injections were diagnostically important, they did not relieve Claimant's pain.

[2] Claimant testified that he was unaware of his ankle injury at the time of his fall due to the pain in his face from being struck by the trusses.

Claimant's only surgical option was an L5-S1 fusion, a procedure Dr. McDonald strongly advised against. Dr. McDonald suggested an IME.

7. Claimant saw J. Craig Stevens, M.D, a physiatrist, at Surety's request on July 9, 2008. Dr. Stevens examined Claimant and reviewed medical records from the date of the accident, forward. Because Claimant was not complaining of any pre-existing back problems, Dr. Stevens believed medical records pre-dating the accident were not relevant to his evaluation. Dr. Stevens also had Claimant's lumbar MRI scans. Regarding his impression, Dr. Stevens writes:

> On his date of injury of October 26, 2005, this claimant sustained a head contusion and facial fractures and orbital fractures as noted in the extensive records. The initial treatments [sic] records specifically state that there was no complaint of low back pain and symptoms did not appear until much later, long after the injury such. Over 2 years after the injury, he was sufficiently bothered that he underwent a lumbar MRI. That MRI revealed moderate lumbar degenerative disk features without traumatic factors. In particular I would have to dispute the assumption that an annular tear represents trauma, as annular tears are a frequent finding in lumbar degenerative disk disease. The claimant exhibits multilevel degenerative disk changes. I would state that the passage of significant time between the injury and the later development of back pain would greatly reduce the likelihood that any of his symptoms relate to the injury and instead represent a spontaneous separate condition not caused or permanently changed by the injury.

Defendants' Exhibit 2, p. 88.

8. On October 27, 2010, Claimant saw John M. McNulty, M.D., an orthopedic surgeon, at his attorney's request for an evaluation. Dr. McNulty examined Claimant and reviewed post-accident medical records. He reached the following diagnoses: 1. Chronic low back pain with L5-S1 annular tear documented on MRI, and 2. Chronic right-sided sacroiliitis. Claimant's Exhibit 3, p. 2. Dr. McNulty opined as follows regarding causation:

> Mr. Lenz sustained a work-related injury on 10/26/2005 when he fell from a height of 11 feet injuring his right ankle as well as sustaining facial trauma from being struck by a truss. He received initial treatments focusing on his facial and

> head injuries. The first documentation in the medical record of low back complaint was on January 25, 2006, by Dr. Beaton. That reflects the pain that Mr. Lenz was describing, low back pain ever since the accident. The mechanism of injury, falling from a height, would certainly impart forces into his lumbar spine enough to injure his lower back. Mr. Lenz was recovering from facial fractures and it was unlikely he was engaged in any activities that would have caused injury to his lumbar spine. In addition, an annular tear is not part of the aging process for a 25-year-old male. For these reasons, Mr. Lenz's injury to his lower back was the result of the work-related injury on 10/26/2005 on a more probable than not basis.

Id., p. 4.

9. Utilizing the *AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition*, Dr. McNulty assigned Claimant a 5% whole person PPI rating without apportionment.

DISCUSSION AND FURTHER FINDINGS

Back

Claimant contends that his low back injury occurred at the time of his industrial accident; Defendants contend it did not due to his late reporting of the same. In *Henderson v. McCain Foods*, 142 Idaho 559, 130 P.2d 1097 (2006) at 563, the Idaho Supreme Court noted that "a worker's compensation claimant has the burden of proving, by a preponderance of the evidence, all facts essential to recovery." (Citing *Evans v. Hara's, Inc.*, 123 Idaho 473, 479, 849 P.2d 934, 940 (1993)). Because an employer is *only* liable for medical expenses (and other benefits such as PPI and PPD) incurred as a result of an injury, a causal connection between the requested medical care and the industrial accident is an essential element for a claimant to prove. *Id*. The issue of causation must be proven by expert medical testimony or opinion. *Hart v. Kaman Bearing & Supply,* 130 Idaho 296, 299, 939 P.2d 1375, 1378 (1997).

10. Defendants rely on the opinions of Drs. Stevens and McDonald to support their position that Claimant's low back problems did not arise from his industrial accident. For the following reasons, the Referee is more persuaded by the causation opinion expressed by Dr.

McNulty. Initially, Claimant's treating physician, Dr. McDonald, opined that Claimant's back condition was related to his industrial accident. In a letter dated February 23, 2008 to Surety's claims examiner, Dr. McDonald wrote, *inter alia*:

> To the best of my knowledge, based on my review of his forwarded medical records, I do believe it is likely that Mr. Lenz [sic] complaint of back pain with lower extremity radiation is likely, on a more probable than not basis, the direct result of the industrial accident of October 16, 2005. Specifically, although Mr. Lenz noted no back, neck or lower extremity symptoms at the time of his initial evaluation at North Idaho Immediate Care on October 26, 2005, the early followup note of Dr. Beaton dated January 25, 2006 to Dr. Winters indicates that Mr. Lenz '*has had low back pain since the accident*.' Additional clinic notes from Dr. Beaton dated 12/14/06 and 9/17/07 tell a consistent story. In December of 2006, Dr. Beaton makes the statement that, '*the patient has had lower back pain that started two months following the accident, and hurts every morning*.' In September of 2007, once again Dr. Beaton noted back pain radiating down the right lower extremity, both in the morning and the evening.

Defendants' Exhibit 1, p. 31. Emphases in original.

11. As indicated in finding number 7 above, Dr. Stevens conducted a medical evaluation of Claimant at Surety's request on July 9, 2008, wherein he concluded that Claimant's back problems did not relate to his industrial accident primarily because complaints and symptoms of such ". . . did not appear until much later, long after the injury." Dr. Stevens referenced Dr. Beaton's January 25, 2006 office note regarding Claimant's complaints of back pain since the accident, but apparently chose to ignore it. Dr. Stevens also opined that Claimant's back problems arose as a result of a "spontaneous separate condition." Dr. Stevens does not explain just what that condition is. This is important because there is no evidence in this case that Claimant suffered any pre-existing back pathology or that he suffered any post-accident traumatic event that amounted to a subsequent intervening cause.

12. Surety provided a copy of Dr. Stevens' report to Dr. McDonald. Upon his review of that report, Dr. McDonald checked a box indicating, without comment or explanation, that he agreed with Dr. Stevens' findings.

13. Claimant's counsel, no doubt confounded by Dr. McDonald's sudden change of course regarding causation, wrote a letter to him seeking clarification of his opinion. Dr. McDonald hand-wrote on the bottom of Claimant's counsel's letter, *inter alia* "Sorry Michael . . . The fact is, there is no clinical documentation of lower back pain in this patient for at least 90 days following the accident (Dr. Beaton's note: 1/25/06). It won't hold water against Dr. Steven's [sic] IME conclusions." Defendants' Exhibit 1, p. 3. Dr. McDonald does not explain why failing to clinically document a back problem within 90 days of its occurrence is significant; the more important finding informing the causation analysis is whether Claimant did in fact develop low back symptoms contemporaneous with his fall, and for this finding medical testimony establishing the onset of symptomatology is not required, nor even particularly helpful.

The claimant in *Duncan v. Navajo Trucking,* 134 Idaho 202, 998 P.2d 1115 (2000), failed to document medically a back problem that occurred after his compensable knee injury, but before a swimming incident that resulted in an acutely herniated lumbar disk. Based on testimony by the claimant and his girlfriend that the claimant had complained of hip/back pain in that interval, the claimant's treating physician indicated that he would recant his lack of causation opinion[3] if the Commission found the lay testimony credible. The Commission awarded benefits for his back condition based on credible lay witness testimony regarding his

[3] The claimant's treating physician, as here, initially found causation but changed his mind when provided additional medical records that demonstrated the first complaint of back pain was not documented until after the swimming incident.

complaints and physical condition <u>before</u> he ever saw a doctor for that condition. The Idaho Supreme Court affirmed the Commission's order. Here, Claimant credibly testified that he had back pain at or near the time of his accident, but he was more concerned at that time with his serious facial injuries. It is not uncommon for more serious injuries to mask other, less serious injuries, until the more serious injuries are brought under control. Further, there is no evidence that Claimant injured his back in some other way besides his 10-to-11-feet fall.

14. Drs. Stevens' and McDonald's concerns that Claimant's "late reporting" of his back injury goes against a finding of causation are unfounded and unpersuasive. Dr. McDonald was aware that Claimant did not report his back injury to Dr. Beaton until January 25, 2006 when he first related that injury to Claimant's industrial accident. Why he suddenly changed his mind upon reviewing Dr. Stevens' report is anybody's guess.

15. Dr. McNulty,[4] on the other hand, noted that Claimant informed him that he told Dr. Beaton of his back problems early on in his treatment and Dr. Beaton responded that it was due to bad posture. As Dr. Beaton is an ear, nose, and throat doctor, he would no doubt not be too concerned with any complaints involving Claimant's back. Even after Claimant informed Dr. Beaton of his back problems, it was still over a year before Dr. Beaton referred Claimant to Dr. McDonald, which lends some credence to Claimant's testimony that he told Dr. Beaton before January of 2006. Further, Dr. McNulty persuasively opined that the mechanism of Claimant's fall would supply enough force to cause a back injury.

16. The Referee finds that Claimant suffered an industrial injury to his back on October 26, 2005.

[4] Dr. McNulty's report is summarized in finding of fact number 8.

PPI

"Permanent impairment" is any anatomic or functional abnormality or loss after maximal medical rehabilitation has been achieved and which abnormality or loss, medically, is considered stable or nonprogressive at the time of the evaluation. Idaho Code § 72-422. "Evaluation (rating) of permanent impairment" is a medical appraisal of the nature and extent of the injury or disease as it affects an injured worker's personal efficiency in the activities of daily living, such as self-care, communication, normal living postures, ambulation, elevation, traveling, and nonspecialized activities of bodily members. Idaho Code § 72-424. When determining impairment, the opinions of physicians are advisory only. The Commission is the ultimate evaluator of impairment. *Urry v. Walker Fox Masonry Contractors*, 115 Idaho 750, 755, 769 P.2d 1122, 1127 (1989).

17. The only physician to assign an impairment rating in this matter is Dr. McNulty. Dr. McNulty saw Claimant in 2010. However, because Claimant's accident occurred in 2005, he utilized the 5th Edition of the *AMA Guides to the Evaluation of Permanent Impairment* because it was being used in that time frame. Dr. McNulty places Claimant's symptom complex into DRE lumbar category II for a whole person PPI rating of 5%.[5] Based on the lack of evidence of any pre-existing back problems, Dr. McNulty did not apportion his rating. Dr. McNulty's PPI rating is reasonable and is not seriously contested.

18. The Referee finds that Claimant has suffered whole person PPI of 5% without apportionment, as a result of his October 26, 2005 industrial accident.

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[5] The range of PPI for DRE lumbar category II is 5-8% whole person.

PPD

"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. Idaho Code § 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 impairment and by pertinent non-medical factors provided in Idaho Code §72-430. Idaho Code § 72-425. Idaho Code § 72-430(1) provides that in determining percentages of permanent disabilities, account should be taken of the nature of the physical disablement, the disfigurement if of a kind likely to handicap the employee in procuring or holding employment, the cumulative effect of multiple injuries, the occupation of the employee, and his or her age at the time of the accident causing the injury, or manifestation of the occupational disease, consideration being 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, provided that when a scheduled or unscheduled income benefit is paid or payable for the permanent partial or total loss or loss of use of a member or organ of the body no additional benefit shall be payable for disfigurement.

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 non-medical factors, has reduced the claimant's capacity for gainful employment." *Graybill v. Swift & Company*, 115 Idaho 293, 294, 766 P.2d 763, 764 (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, 7, 896 P.2d 329, 333 (1995).

19. Defendants assert that Claimant can have no PPD because he has no PPI according to Dr. Stevens. However, given the findings herein that Claimant has incurred some PPI, a discussion of potential disability above impairment is necessary. Claimant retained Dan Brownell to assist him with vocational issues. Mr. Brownell was a long-time Industrial Commission Rehabilitation Division field consultant in Northern Idaho, and has testified as a vocational expert many times before the Industrial Commission. He now runs his own business in the vocational field. Mr. Brownell met with Claimant, reviewed medical records, prepared a report based on his knowledge of the relevant labor market, and testified at hearing. Mr. Brownell testified that he relied primarily on the report of Dr. McNulty for medical restrictions as it was "the last and most relevant."

20. Mr. Brownell testified as follows regarding Claimant's alleged disability:

> Okay, it is all summarized in my employability evaluation and recommendation. I reviewed his education, work history, and all of his transferrable skills, and came up with a profile for him in regards to his employability in the open labor market, competitive open labor market.
>
> The interesting part about Scott is his work history. It has always been in pretty physical activities related occupations: carpentry, garbage collection, and landscape work, all of which are pretty highly rated physical requirements for a person.
>
> And I looked at the medical. I cited mostly and looked at mostly that report, with Dr. McNulty because that seemed to reflect a match of what he was telling me subjectively and what I saw in the case, and then also all the other parts to the case. So I basically took Dr. McNulty's report, and it was the last and most relevant report.
>
> Q. (By Mr. Verbillis): Your bottom line is?
>
> A. My bottom line?
>
> Q. Yes.
>
> A. I came up with a 25 percent P-P-D [sic], inclusive of impairment.

Hearing Transcript, p. 76.

There are a number of "unknowns" in this case that present challenges in arriving at a reasonably accurate PPD rating.

21. First, at the time of the hearing, Claimant was taking college entrance courses at NIC, pursuing his vocational plan of becoming a radiology technician. Claimant admitted at hearing that he was not doing too well in that regard and that the work was a lot harder than he expected. Obviously, at this time it is unknown whether Claimant will be able to reach his vocational goal and, if he does, what effect that would have on his employability/disability.

22. Second, Claimant has some pending legal problems such as three DUIs over an approximate ten-year period, for the last of which he was still on probation at the time of the hearing. Claimant is facing a potential probation revocation hearing based on a felony charge of possession of his own prescription medication with intent to deliver. It is unclear whether he was actually charged with possession with intent to deliver, or whether that is merely the basis for his pending probation violation. Even though Claimant testified that his attorney believed they were going to "beat" the charge, there could well be some serious jail or penitentiary time if his attorney is wrong. Also, a felony conviction would impact the size of Claimant's post-accident labor market.

23. Third, there is some concern expressed by Claimant and others that he is experiencing memory and cognitive deficits. A Surety-requested psychological assessment in late 2009 and early 2010 revealed that Claimant self-medicated with alcohol, cocaine, and marijuana after his accident.[6] The psychologist concluded that any memory/cognitive deficits are unrelated to Claimant's accident and no further treatment was needed. However, in a

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[6] Claimant testified he no longer uses illegal drugs.

“Progress Note 1” following the initial evaluation, the psychologist reported that Claimant was provided contact information for local mental health care providers and Claimant indicated he would contact them. It is not known whether he did or not. See Claimant’s Exhibit 2. Also, Mr. Brownell indicated that he could not add Claimant’s mental deficits into his vocational evaluation until “. . . this is clarified.” The unknown here is the effect, if any, of Claimant’s mental deficits (whatever and to what extent they may be) on his employability (whether related to his accident or not).

24. Fourth, contrary to Mr. Brownell’s testimony, there are no medical restrictions to be found in Dr. McNulty’s report (or anywhere else in evidence). The only evidence of any “restrictions” is Claimant’s overly broad statements to Mr. Brownell that have nothing to do with lifting, bending, etc. Mr. Brownell noted in his report that Claimant had not had the opportunity to have a Functional Capacities Evaluation (FCE) performed. The unknown here is what restrictions a physician with knowledge in such matters would impose, or what an FCE would reveal, and how such restrictions would affect Claimant’s employability.

25. Fifth, Mr. Brownell’s conclusory opinions regarding the degree of Claimant’s PPD are troublesome. As mentioned above, Mr. Brownell reported and testified that he utilized the medical restrictions imposed by Dr. McNulty, yet neither he, nor any other physicians, ever imposed any restrictions. Mr. Brownell made no attempt to correlate whatever Claimant may have told him about his subjective restrictions with medical records or opinions. Further, Mr. Brownell arrives at a 25% PPD figure with little explanation. There was no loss of labor market access or loss of earning capacity analysis. The unknowns here are the specific information upon which Mr. Brownell relied in arriving at his opinions and the basis for the analyses of vocational factors he undertook.

26. The Referee is constrained to find, based on the paucity of convincing vocational evidence in the record that Claimant has failed to prove his entitlement to PPD above his PPI.

CONCLUSIONS OF LAW

1. Claimant has proven his back condition is causally related to his compensable industrial accident.

2. Claimant has proven his entitlement 5% whole person PPI.

3. Claimant has failed to prove his entitlement to PPD in excess of his PPI.

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 __7th__ day of October, 2011.

INDUSTRIAL COMMISSION

_/s/________________________________
Michael E. Powers, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the _31st__ day of ___October___, 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:

MICHAEL J VERBILLIS
PO BOX 519
COEUR D'ALENE ID 83816-0519

H. JAMES MAGNUSON
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ge Gina Espinosa

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

SCOTT LENZ,

Claimant,

v.

BERTRAM CONSTRUCTION, INC.,

Employer,

and

STATE INSURANCE FUND,

Surety,

Defendants.

IC 2005-524662

ORDER

Filed October 31, 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 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 proven his back condition is causally related to his compensable industrial accident.

2. Claimant has proven his entitlement 5% whole person permanent partial impairment (PPI).

3. Claimant has failed to prove his entitlement to permanent partial disability (PPD) in excess of his permanent partial impairment (PPI).

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

DATED this __31st___ day of __October__, 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 __31st___ day of _October__ 2011, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

MICHAEL J VERBILLIS
PO BOX 519
COEUR D'ALENE ID 83816-0519

H. JAMES MAGNUSON
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ge _/s/_________________________________