



3. A Notice of Telephone Conference was duly sent to Claimant at the above address. On June 7, 2010, Claimant failed to appear telephonically for a conference regarding scheduling of a previously vacated hearing. Claimant failed to provide a means by which he could be reached telephonically. Claimant further failed to respond to attempts by the Commission to contact him.

4. A Notice of Hearing was duly sent to Claimant at the above address. Claimant did not appear for this hearing.

### **DISCUSSION AND FURTHER FINDINGS OF FACT**

5. A claimant carries the burden of proving his claim. *See, Langley v. State, Industrial Special Indemnity Fund*, 126 Idaho 781, 785, 890 P.2d 732, 736 (1995).

6. Claimant has failed to prosecute his claim. Good cause exists for granting Defendants' motion to dismiss with prejudice. Claimant failed to establish a *prima facie* case and failed to comply with orders of the Commission.

### **CONCLUSION OF LAW**

Claimant's claim should be dismissed with prejudice for failure to prosecute his claim and attend the scheduled hearing.

### **RECOMMENDATION**

The Referee recommends that the Commission adopt the foregoing Findings of Fact and Conclusion of Law as its own and issue an appropriate final order.

DATED this 17<sup>TH</sup> day of June, 2010.

INDUSTRIAL COMMISSION

/S/ \_\_\_\_\_  
Douglas A. Donohue, Referee

ATTEST:

/S/ \_\_\_\_\_  
Assistant Commission Secretary



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

DATED this 25<sup>th</sup> day of JUNE, 2010.

INDUSTRIAL COMMISSION

/S/ \_\_\_\_\_  
R. D. Maynard, Chairman

/S/ \_\_\_\_\_  
Thomas E. Limbaugh, Commissioner

Unavailable for signature

\_\_\_\_\_  
Thomas P. Baskin, Commissioner

ATTEST:

/S/ \_\_\_\_\_  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the 25th day of JUNE, 2010, a true and correct copy of **FINDINGS, CONCLUSIONS, AND ORDER** were served by regular United States Mail upon each of the following:

Martin Magana  
224 8<sup>th</sup> Street  
Rupert, ID 83350

Scott R. Hall  
P.O. Box 51630  
Idaho Falls, ID 83405-1630

db /S/ \_\_\_\_\_