

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

PETER SNIDER,

Claimant,

v.

EMPRO EMPLOYER SOLUTIONS, LLC,

Employer,

and

STATE INSURANCE FUND,

Surety,  
Defendants.

**IC 2005-518246**

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

**11/6/2013**

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**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 on May 3, 2013. Claimant, Peter Snider, was present and represented by Robert L. Jackson of Parma. Defendant Employer, Empro Employer Solutions, LLC,<sup>1</sup> and Defendant Surety, State Insurance Fund, were represented by Gardner W. Skinner, Jr., of Boise. The parties presented oral and documentary evidence. No post-hearing depositions were taken. Briefs were later submitted. The matter came under advisement on August 1, 2013.<sup>2</sup>

**ISSUES**

The issues to be decided were narrowed at hearing and include:

1. Whether Claimant's industrial condition is medically stable;

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<sup>1</sup> Empro is a payroll servicing company with which Bruneel Tire contracts to pay its employees' wages, as well as its employment-related taxes and other costs, including workers' compensation coverage. Pro Tech is Bruneel Tire's wholesale division. All of Bruneel Tire's employees, including Craig Bruneel, are "leased" to Empro. At all relevant times, Claimant reported to work at either Bruneel Tire or Pro Tech. Employer is identified throughout as either Bruneel Tire or Pro Tech.

<sup>2</sup> On August 6, 2013, Bradford S. Eidam of Boise was substituted as Claimant's counsel in place of Mr. Jackson.

2. Whether and to what extent Claimant is entitled to permanent partial impairment benefits;
3. Whether and to what extent Claimant is entitled to permanent partial disability benefits; and
4. Whether the Commission should retain jurisdiction beyond the statute of limitations.

Although the parties did not state the issues in their briefing as specifically set forth above, these statements accurately reflect the appropriate scope and order of all of the issues to be decided presently.

### **CONTENTIONS OF THE PARTIES**

There is no dispute that Claimant suffered an industrial injury to his bilateral upper extremities while unloading tires at Bruneel Tire on August 1, 2005. Thereafter Claimant underwent six corrective surgeries by Louis Murdock, M.D. Defendants do not dispute that these procedures were required as a result of conditions related to Claimant's industrial accident.

Claimant alleges that, whether or not he has reached medical stability in the past, his condition had deteriorated by the time of the hearing such that he was no longer medically stable and thus his permanent impairment and disability cannot be determined at this time. In the event the Commission disagrees, Claimant stipulates that, as of October 29, 2012, he had permanent partial impairment of 5% of the whole person as rated by Kevin Krafft, M.D. Claimant asserts he is entitled to at least 50% permanent partial disability inclusive of permanent partial impairment and that the Commission should retain jurisdiction beyond the statute of limitations because Claimant's upper extremities may worsen with time, possibly leading to future compensable income loss and/or reduction in earning capacity. Claimant relies upon the opinion

of Dr. Murdock.

Defendants counter that Claimant was medically stable as of September 24, 2012. They assert he is entitled to 5% permanent partial impairment of the whole person, but no permanent partial disability because he continues to work in his time-of-injury job, earns approximately 30% more now than he did at the time of his industrial accident, and his loss of access to his local labor market does not exceed 5%. Further, Defendants assert there is insufficient evidence to support an order retaining jurisdiction because Claimant's condition is not progressive and it is not probable that he will require additional surgery or incur additional permanent partial impairment in the future. Defendants rely upon the opinions of Drs. Krafft and Murdock.

### **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. The Industrial Commission's legal file;
2. The testimony of Claimant and Craig Bruneel taken at the May 3, 2013 hearing;
3. Claimant's Exhibits 1 through 10 admitted at hearing; and
4. Defendants' Exhibits 1 through 16 admitted at hearing.

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 1963 and was 49 years old at the time of the hearing. He is right-handed and has resided in the Boise area at all relevant times.

2. **Background.** In 1981, Claimant graduated from Meridian High School. He went on to do construction work, and was subsequently employed by Wheel City and King's Pro Tire in Nampa. In 1986, Claimant suffered a small lumbar disc herniation. He received conservative,

non-surgical treatment and improved. He returned to his usual activities and noted occasional back-aches thereafter, but was not limited in his work.

3. In 1990, Claimant was hired by Bruneel Tire,<sup>3</sup> and he has worked there ever since. Claimant's job duties at Bruneel Tire have spanned every aspect of the tire business, including but not limited to servicing, mounting, balancing, purchasing, costing, retail and wholesale sales, distribution, and management. In approximately 2000, Claimant became the director of purchasing and inventory at Pro Tech, Bruneel Tire's wholesale division, where he supervised seven or eight employees. By August 2005, Claimant was earning approximately \$60,000 per year at Pro Tech.

4. **Industrial accident and subsequent treatment.** On August 1, 2005, Claimant injured both of his upper extremities while unloading a truckload of tires at work. He noted bilateral hand and elbow pain. His hand and elbow pain worsened and he eventually sought treatment from orthopedic surgeon Louis Murdock, M.D.

5. On February 16, 2006, Dr. Murdock performed a right carpal tunnel decompression and aspiration of Claimant's right elbow. After surgery, Claimant took sick leave briefly and returned to his usual work duties after only a few days. He neither sought nor received any temporary disability benefits. His symptoms improved and he continued performing his usual work duties for a time; however, his symptoms subsequently worsened.

6. On May 24, 2007, Dr. Murdock performed a left carpal tunnel decompression. After surgery, Claimant took sick leave briefly and returned to his usual work duties after only a few days. He neither sought nor received any temporary disability benefits. His symptoms improved and he continued performing his usual work duties for a time.

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<sup>3</sup> Bruneel Tire was founded by Frank Bruneel in 1966. His son, Craig Bruneel, is the current company president and Claimant's only supervisor.

7. In 2008, Claimant underwent C5-7 cervical fusion. After recovering from surgery he noted persisting neck stiffness but no decrease in his work capacity and he resumed his usual work duties. His upper extremity symptoms again worsened.

8. On August 5, 2010, Dr. Murdock performed an ulnar nerve decompression of Claimant's left cubital tunnel. After surgery, Claimant took sick leave briefly and returned to his usual work duties after only a few days. He neither sought nor received any temporary disability benefits. His symptoms improved and he continued performing his usual work duties for a time; however, his symptoms subsequently worsened.

9. On May 16, 2011, Dr. Murdock performed an ulnar nerve decompression of Claimant's right cubital tunnel with partial medial epicondylectomy. Dr. Murdock also revised Claimant's previous right carpal tunnel decompression. After these surgeries, Claimant took sick leave briefly and returned to his usual work duties after only a few days. He neither sought nor received any temporary disability benefits. By January 11, 2012, Dr. Murdock recorded that Claimant: "reports today that the numbness and paresthesias in both the right and left hands involving the median and ulnar nerve distributions are largely resolved. He is back to work performing full and normal workplace activities but continues to experience elbow and proximal forearm pain on the right upper extremity." Defendants' Exhibit 10a, p. 1. Dr. Murdock diagnosed right radial tunnel syndrome.

10. On February 27, 2012, Dr. Murdock performed a radial nerve decompression of Claimant's right upper extremity. Again, after surgery Claimant took sick leave briefly and returned to his usual work duties after only a few days. He neither sought nor received any temporary disability benefits. His symptoms improved and he continued performing his usual work duties.

11. Defendants do not dispute that all six upper extremity surgeries performed by Dr. Murdock are related to Claimant's 2005 industrial injury. In addition to surgical treatment, Dr. Murdock also provided Claimant multiple steroid injections to manage his elbow complaints. Defendants do not dispute that these injections are related to his industrial injury.

12. On September 24, 2012, Dr. Murdock recorded that Claimant "reports a small amount of pain and continues with chronic elbow stiffness in terms of extension lag. .... If there are additional questions or concerns I will see Pete back. Otherwise he is considered medically stationary with a rating pending at this time." Defendants' Exhibit 10a, p. 22. Dr. Murdock's September 24, 2012 note makes no mention of night time upper extremity symptoms.

13. On October 29, 2012, Claimant was evaluated by Kevin Krafft, M.D., who was aware of Claimant's relevant medical history. Claimant was taking Mobic or Advil for pain. Dr. Krafft recorded:

He does have some residual symptoms in both arms which he reports is 5/10. He notes aching in both of his arms. He has some residual numbness in the last three fingers. ... He does have difficulty with lifting. He has trouble opening a jar of pickles. He continues to manage the warehouse. He does have soreness if he has to unload a truck. He will take an extra Advil if he has increased pain. It does help. His pain reduces to a 3/10 with the medication. He notices it more after the activity. He can lift a tire without difficulty. He indicates he notices his symptoms more when he does little things....

Defendants' Exhibit 16, p. 1. Dr. Krafft's October 29, 2012 note makes no mention of night time upper extremity symptoms. Dr. Krafft determined Claimant was medically stable and assessed 5% permanent partial impairment of the whole person due to his upper extremity conditions (6% upper extremity permanent partial impairment for bilateral nerve entrapments plus 2% upper extremity permanent partial impairment for decreased bilateral elbow range of motion). Claimant continued performing his usual work duties for a time; however, his upper extremity symptoms subsequently worsened.

14. On January 2, 2013, Claimant presented to Dr. Murdock again with upper extremity complaints. Dr. Murdock prepared a corresponding chart note, and then, on the same date, he also prepared an amended chart note after discussing Claimant's case with Dr. Krafft. Dr. Murdock had then recently learned that Claimant expects "that he will be able to perform essentially an unlimited amount of lifting of tires [sic] various weights and diameters overhead and with the arm held in an extended position." Defendants' Exhibit 10a, p. 24. Dr. Murdock noted that during periods of relatively low demand or when on vacation, Claimant's symptoms improved. "Peter finds that there is a direct relationship between his work place [sic] demands and his overall level of symptomatology. This correlation began, in my opinion, as a result of his injury first reported in 2005." Defendants' Exhibit 10b, p. 1.

15. Dr. Murdock assessed chronic bilateral upper extremity tendinopathy with a history of multiple bilateral compressive neuropathies. He recommended ongoing medication and quarterly evaluations for as long as Claimant continues in his current occupation, which Dr. Murdock understood to be a very physical job at the warehouse distribution center.

16. **Current functionality.** At the time of the hearing, Claimant continued to work as the director of purchasing and inventory at Pro Tech, with pain and numbness in his upper extremities. He is one of two directors, second-in-command only to Craig Bruneel, earning \$80,000 per year plus health benefits, employer-funded 401(k) during profitable years, and employer-provided truck and fuel. Claimant's position combines the duties of several jobs including purchaser, salesman, outside salesman, delivery person and shipping/receiving clerk. He manages the purchasing and inventory, annually spending approximately \$5,000,000 and purchasing approximately 42,000 tires.

17. Craig Bruneel testified of the vital role of Claimant's tire purchasing decisions for

Bruneel Tire:

Honestly, I would struggle. I couldn't do it, because I never have. I have always had someone doing that. But we have to order right now our tires for October and November for winter tires. That's one of the important things that Pete - - that he just did is calculate, determine, buy them, they are shipped, they come, and we are kind of committed to what those are. So, seasonally, you know, our biggest times for selling tires are November - - October, November, December when it's snowing, that kind of thing. We are really slow January, February. It picks back up as snow tires come off in late March and April and, then, through the summer months it becomes a little more steady as travel and activities happen. So, we have got these kind of seasonality and understanding and anticipating those is real important.

....

The distribution side, I think, is a skill set that's more commonly available, but his training and his experience in the understanding of the tire business, the relationships with vendors, what has changed, what hasn't changed, how they approach the business, that is very valuable and I guess you said unique skill set, the ability to understand and negotiate and communicate and read the programs that manufacturers put out is very valuable.

...

Pete has a very good reputation throughout all of the vendors in the region and nationally those that we deal with.

Transcript, p. 76, l. 5 through p. 77, l. 19.

18. Claimant works hard, setting by example the standard of performance he expects of the employees he supervises. He lifts and carries tires ranging from 20-120 pounds repeatedly throughout any given workday:

...you have to pick [the tires] up, put them in the truck, stack them, and then when you get to the location that you have to - - you would have to pull them down and then unload them and, restack them. You know, when the truck comes in we have a conveyor belt that we have to put them on and take them off. So, it's a lot of lifting and pulling probably away from my body.

Transcript, p. 22, ll. 7-13. For example, Claimant moved approximately 120 tires on the day before the hearing. He also has "desk" duties that do not require heavy lifting. Claimant described a typical workday:



Well, every day is different and that's what I enjoy about my job. It's not just going to a desk and sitting there. So, I really enjoy what I do. It's a great job that's, you know, been very beneficial to me and my family. But there is [sic] a lot of different things. For instance, I will - - I have - - I come in in the morning and do all my e-mails, check - - I have to change different item numbers back and forth and I get all that done early in the morning and, then, there is [sic] sales that go on throughout the day. There may be a truck that comes in - - you know, they don't always have appointments, so sometimes they come in when the drivers are out on deliveries or out to lunch, so, then, I will jump in and try and help as much as possible to get the truck unloaded. Then I may take a delivery or two, which, you know, goes to our stores and I will make sales calls during that time. Then in the afternoon we ship north to our stores and sometimes we are - - we have guys out on deliveries and we are short-handed, so I help load the trucks that go out.

Transcript, p. 20, l. 7 through p. 21, l. 1. In addition, Claimant travels to other locations like Lewiston, checking and shifting inventory.

19. Unloading tires, as well as keyboarding, aggravates Claimant's symptoms:

Q. What's the most aggravating task and - - physically aggravating task to your body that you perform at work?

A. Well, unloading the semis, that's probably the most - - you know, you get a thousand tires in at a time, you know, you're taking on and off the conveyor belt, but I also - - you know, with the computer it causes - - you know, I have to take breaks from using my hand and stuff, because it - - get [sic] used to typing and, then, it goes numb on me.

Transcript, p. 28, ll. 3-12. Claimant estimates he spends four hours per day typing, usually in blocks of about 30-40 minutes.

20. Claimant's upper extremity symptoms improve when he does not lift tires. In addition, he understands that both Mr. Bruneel and Dr. Murdock want him to curtail his tire-lifting. However, Claimant apparently intends to continue working at his job, as he presently does it, for as long as he can. He has not as of yet limited himself to work that does not cause pain. Claimant is proud of his ability to lead a highly productive organization, and daily Mobic allows him to function. "I have gone without it, you know, just to see what it was like and it's - - you know, it's night and day for me, how I feel and how my elbows are." Transcript, p. 33, l. 25

through p. 34, l. 2.

21. Mr. Bruneel described his attempts to convince Claimant to stop handling tires. “I have commanded, asked, cajoled, said please do not roll tires. Do not move them. We have people that can do that. It’s not a requirement of your job.” Transcript, p. 82, ll. 16-18.

22. Mr. Bruneel described Claimant as bright, loyal, hard-working, trustworthy, and an asset to the business. He wants Claimant to continue working for Bruneel Tire and he has no plans to sell the business. Nevertheless, Mr. Bruneel admitted he could not guarantee Claimant employment through retirement. Even supposing Claimant ended up back in the job market, Mr. Bruneel believed Claimant would be a valuable asset and likely retained by any potential buyer of Bruneel Tire. Also, Mr. Bruneel believes Claimant could obtain comparable employment in the Boise area outside his company as a retail tire store manager, manufacturer’s sales representative, or tire purchaser.

23. At hearing, Claimant described how his upper extremity strength has decreased since his industrial injury and multiple surgeries. For instance, he can no longer open a jar of pickles or bow hunt. He can no longer mow his lawn or fish without discomfort.

24. At hearing, Claimant also testified that his bilateral arm symptoms have worsened since his January 2, 2013 visit to Dr. Murdock. Claimant has numbness in his hands and his “hands go to sleep at night,” among other symptoms. Transcript, p. 36, l. 19. He testified that most all of his work duties cause his wrists and/or elbows some discomfort. For example, even rolling down the truck window to make a bank deposit bothers his left elbow. Claimant plans to return to Dr. Murdock for treatment of his worsening symptoms.

25. **Witness credibility.** Having observed Claimant and Craig Bruneel at hearing, and compared their testimony to other evidence in the record, the Referee finds that both are

credible witnesses.

## **DISCUSSION AND FURTHER FINDINGS**

26. 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).

27. **Medical stability.** As a prerequisite to determining Claimant's permanent partial impairment or permanent partial disability, the evidence must demonstrate that his condition is medically stable. "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 non-progressive at the time of evaluation. Idaho Code § 72-422. The statute does not contemplate that a claimant must regain his pre-accident state to be considered medically stable, but only that his persisting condition is not likely to progress significantly within the foreseeable future. Of course, the persisting condition must be related to a compensable industrial accident.

28. In the present case, Claimant asserts that he is not medically stable because Dr. Murdock has opined that Claimant's work-related upper extremity conditions may worsen in the future and because his upper extremity symptoms indeed worsened between his January 2, 2013 visit with Dr. Murdock and the May 3, 2013 hearing. Claimant also urges the Commission to find he is not medically stable by taking a panoramic view of his history of one upper extremity problem after another, and projecting that he will continue to have similar problems in the future

as a result of his 2005 accident and ongoing work demands. Defendants assert that Claimant is medically stable because no physician has opined otherwise. To determine whether Claimant is medically stable, his alleged worsening conditions prior to hearing and potential for worsening conditions subsequent to hearing must be examined.

29. Worsening conditions prior to hearing. After expressly finding Claimant not medically stable in numerous examinations spanning multiple years and six surgeries related to his ongoing upper extremity complaints, Dr. Murdock found Claimant medically stable in September 2012 and referred him to Dr. Krafft for an impairment rating. Dr. Krafft determined Claimant was medically stable in October 2012. Defendants therefore assert that Dr. Murdock and Dr. Krafft agree that Claimant is medically stable in relation to his industrial conditions.

30. Although the evidence indicates that Claimant's medical condition was stable at the time of his evaluations by Drs. Murdock and Krafft in the fall of 2012, close inspection of Dr. Murdock's January 2, 2013 notes reveals a change in Dr. Murdock's appraisal of Claimant's medically stability. After evaluating Claimant on January 2, 2013, Dr. Murdock recorded:

IMPRESSION: Chronic bilateral upper extremity tendinopathy with concurrent history of median and ulnar nerve compressive neuropathies of bilateral extremities.

RECOMMENDATIONS: Today, Mr. Snider and I discussed his occupation in the scope of his work place responsibilities. It has become clear to me that Peter will continue to need anti-inflammatory medication for as long as he continues in this occupation. To date, Mobic has been successful at easing Peter's discomforts. I am compelled by Mr. Snider's work effort and desire to fulfill his workplace requirements. He willingly confronts his occupation and workplace demands despite persistent pain. I can assist Mr. Snider with the daily pain of his occupation but he would suffer even less if he were to limit or avoid tasks which require pulling, tugging, lifting objects away from his body and carrying objects the size, shape and weight of tires. His conditions are not life or limb threatening and he wishes to continue in his current capacity. If he is to do so he must continue on Mobic 15 mg and I must perform quarterly screening for hypertension and limb evaluations. Because of Mr. Snider's age I would expect that he will continue to have symptoms until his retirement. Moreover, unless the

scope of Mr. Snider's occupation changes, I would expect that as Mr. Snider ascends in age his risk for tendinopathy and related pathologies will increase. Rather than make Mr. Snider permanently medically stationary I believe it would be prudent to retain him under my supervision for quarterly evaluations. Those evaluations would be to evaluate the effects of the medication as well as to evaluate the ongoing effect of his occupation.

With regard to Dr. Krafft's examination and recommendations, I have enormous respect and trust in his professional assessment and treatment planning. Thus, I concur with Dr. Krafft in that Mr. Snider is medically stationary at this moment; however, for reasons related to his ongoing medication requirements and occupational demands, he must be examined every three to four months. Over time, as a result of the injury of 2005, it may become necessary to change medications, treat hypertension (and other related cardiovascular disease), manage GERD, intervene with workplace limitations or surgically intervene for management of physical injury. I will ask Mr. Snider to return for a follow-up evaluation in 3 months.

Defendants' Exhibit 10b, pp. 1-2 (emphasis supplied).

31. Dr. Murdock expressly limited his agreement with Dr. Krafft that Claimant is medically stationary to: "at this moment; however," and then twice insisted quarterly examinations are a "must," because of Claimant's expected increased risk for tendinopathy possibly requiring further workplace limitations and surgical intervention as a result of his 2005 industrial injury. Dr. Murdock's note conveys his conclusion that the likelihood of a change in Claimant's medical condition due to his industrial accident requires quarterly evaluations. The essence of Dr. Murdock's recommendation, as Claimant's treating surgeon, is sufficiently clear: "Rather than make Mr. Snider permanently medically stationary I believe it would be prudent to retain him under my supervision for quarterly evaluations." Defendants' Exhibit 10b, p. 1. Taken as a whole, Dr. Murdock's most recent evaluation notes indicate he hesitated to characterize Claimant's condition as truly medically stable.

32. At the time of the May 3, 2013 hearing, Claimant was experiencing upper extremity pain and numbness. Defendants note he was also experiencing at least some of these

symptoms in September 2012, when Dr. Murdock determined he was medically stable and in October 2012, when Dr. Krafft determined he was medically stable. However, at hearing on May 3, 2013, Claimant credibly testified of new and increasing symptoms developing after his January 2, 2013 evaluation by Dr. Murdock:

Q. And how long does it—well, let me ask this: Did it get—start to get worse again?

A. Well, you know, it depends on—I mean the carpal tunnel that I had that grew back, you know, they did it and it felt really good and, then, I still get the numbness back and it starts to numb up again, so they would do a nerve test and see that it blocked over again and so I have had this [left] one done, but now it's becoming numb again, you know, when I drive and when I set sit [sic] at the desk and stuff.

....

A. ... so, I have had my right one done twice and I had my left wrist done once, but it's becoming numb and I had an incision here on the right elbow on the top here, which relieved a lot of the tension, which made my elbow and wrist feel better, but I haven't had that done on the left side.

Q. Are the symptoms you're having now similar to what you experienced before they had to do surgery on your right—

A. Yes.

Q. —arm in the past?

A. I have numbness and weakness in the three fingers, the little finger and up to the middle finger.

Q. When did this increase in numbness begin in your left arm?

A. It's been since the last time I seen [sic] Dr. Murdock, so—

Q. And when did you last see him?

A. I think it was in January.

Transcript, p. 24, l. 17 through p. 26, l. 3 (emphasis supplied). Claimant also testified that in his right arm “the feelings and the numbness has [sic] got a lot more progressively worse.”

Transcript, p. 27, ll. 2-4. Additionally, Claimant testified that: “I don’t sleep very well. You know, my hands go to sleep at night ....” Transcript, p. 36, ll. 18-19.

33. In recording his January 2, 2013 evaluation of Claimant, Dr. Murdock noted: “Peter finds that there is a direct relationship between his work place demands and his overall level of symptomatology. This correlation began, in my opinion, as a result of his injury first reported in 2005.” Defendants’ Exhibit 10b, p. 1. Dr. Murdock’s note expressly references tire-lifting and bilateral arm pain, it makes no mention of hand numbness when performing computer work or that Claimant’s hands “go to sleep” at night.

34. Claimant has a documented history of stoicism. After each of his six work-related upper extremity surgeries he has taken only a few days of sick leave and then returned promptly to his usual work duties, including lifting tires. He has neither sought nor received any temporary disability benefits. Claimant has not used his industrial injury as a reason to avoid even the most physically demanding work duties. Dr. Murdock described Claimant as a patient well known to him, and after treating Claimant for six years Dr. Murdock observed in 2011: “Peter is relatively understated and offers complaints and I think that that should be taken seriously.” Defendants’ Exhibit 10, p. 75. Claimant’s hearing testimony that his upper extremity symptoms have worsened since his January 2, 2013 visit to Dr. Murdock is credible. Dr. Murdock anticipated this worsening and provided for this very scenario in his January 2, 2013 note wherein he insisted quarterly evaluations are a “must” and directed Claimant to follow-up in three or four months.

35. Given Dr. Murdock’s desire to retain Claimant under his supervision for quarterly evaluations because of concern that Claimant’s medical condition might worsen, and Claimant’s credible testimony at hearing that his upper extremity symptoms have worsened since his last

appointment with Dr. Murdock, the Referee finds that Claimant's industrial condition is not medically stable.

36. Possible future worsening. Defendants contend that Dr. Murdock's opinion, even if supportive of Claimant's position that he is not medically stable, is unpersuasive because it assumes Claimant's work duties require him to lift tires. They observe that Mr. Bruneel has urged Claimant not to lift tires, that Claimant should simply cease lifting tires, and that there is thus no actual probability that Claimant may need further medical care in the foreseeable future.

37. Dr. Murdock's note observing that Claimant's symptoms would be less if he avoided lifting tires is relatively recent and was made after the instant case was set for hearing. It is the first and only caution by a medical practitioner on this subject. Prior to that, Dr. Murdock released Claimant on September 24, 2012, stating: "The patient is advised to go forward with continued activities as tolerated." Defendants' Exhibit 10a, p. 22. As he always had after his five previous surgeries, Claimant returned to his full duty work, including moving tires—as many as several hundred per day. It was not until January 2, 2013, that Dr. Murdock cautioned that Claimant should avoid lifting tires. While not precisely a medical restriction, it is clearly a caution to limit or avoid tire-lifting. By the time of hearing, Claimant's supervisor, Craig Bruneel, had expressly directed Claimant not to lift tires. Having concluded that Claimant is not medically stable as of the May 3, 2013 hearing, there is no present need to address the probability that he will not be medically stable in the future.

38. **Permanent impairment, permanent disability, and retention of jurisdiction.** Inasmuch as Claimant is not medically stable at this time, the issues of permanent impairment, permanent disability, and retention of jurisdiction beyond the statute of limitations are not yet ripe for determination.



**CONCLUSIONS OF LAW**

1. Claimant’s industrial condition is not medically stable.
2. The issues of permanent impairment, permanent disability, and retention of jurisdiction beyond the statute of limitations are not yet ripe for determination.

**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 28th day of October, 2013.

INDUSTRIAL COMMISSION

\_\_\_\_\_  
/s/  
Alan Reed Taylor, Referee

ATTEST:

\_\_\_\_\_  
/s/  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the 6<sup>th</sup> day of November, 2013, 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:

BRADFORD S EIDAM  
PO BOX 1677  
BOISE, ID 83701-1677

GARDNER W SKINNER JR  
PO BOX 359  
BOISE ID 83701-0359

mg

\_\_\_\_\_/s/\_\_\_\_\_  
\_\_\_\_\_

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

PETER SNIDER,

Claimant,

v.

EMPRO EMPLOYER SOLUTIONS, LLC,

Employer,

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STATE INSURANCE FUND,

Surety,  
Defendants.

**IC 2005-518246**

**ORDER**

**11/6/2013**

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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 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's industrial condition is not medically stable.
2. The issues of permanent impairment, permanent disability, and retention of jurisdiction beyond the statute of limitations are not yet ripe for determination.
3. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 6<sup>th</sup> day of November, 2013.

INDUSTRIAL COMMISSION

/s/  
Thomas P. Baskin, Chairman

/s/  
R.D. Maynard, Commissioner

/s/  
Thomas E. Limbaugh, Commissioner

ATTEST:

/s/  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the 6th day of November, 2013, 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

GARDNER W SKINNER JR  
PO BOX 359  
BOISE ID 83701-0359

mg

/s/