BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

AMY E. ZIELINSKI, Claimant, v. U.S. CRISIS, INC., an Ohio Corporation, successor to A&V ACQUISITIONS, INC., an Ohio Corporation, Employer, and LIBERTY NORTHWEST INSURANCE CORPORATION, Surety, Defendants.	)	**IC 2004-517059** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** FILED MAY 16 2011

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned this matter to Referee Douglas A. Donohue. He conducted a hearing in Boise on September 21, 2010. Brad Eidam represented Claimant. Kimberly A. Doyle represented Defendants. The parties presented oral and documentary evidence, took post-hearing depositions, and submitted briefs. The case came under advisement on December 21, 2010. It is now ready for decision.

ISSUES

The issues to be resolved according to the amended notice of hearing and by stipulation of the parties are:

1. Whether the condition for which Claimant is seeking benefits was caused by the alleged industrial accident;
2. Whether apportionment for a preexisting condition under Idaho Code § 72-406 is appropriate;
3. Whether and to what extent claimant is entitled to disability in excess of impairment (including total disability);
4. Whether Claimant is entitled to permanent total disability under the odd-lot doctrine;

5. Whether Claimant is entitled to temporary disability benefits from December 5, 2005 through January 4, 2006 and from January 5, 2006 through June 27, 2006; and

6. Whether Claimant is entitled to attorney fees under Idaho Code § 72-804 for Defendants' refusal or failure to pay temporary disability benefits during the above referenced time period.

At hearing, the parties stipulated to the withdrawal of issues 1 and 2, causation and apportionment.

CONTENTIONS OF THE PARTIES

Claimant contends she is totally and permanently disabled, or at least 75% disabled, by injuries sustained to her left knee and low back in a compensable motor vehicle accident. Claimant's local labor market, Adams County, is a major factor in calculating disability. Defendants unreasonably discontinued temporary disability benefits and she is entitled to attorney fees on that amount.

Defendants contend they have paid all PPI due her and she is entitled to only a modest disability in addition, totaling 41% inclusive of PPI. Claimant's local labor market should include the area extending to Weiser and McCall, as well as Ontario, Oregon. Their discontinuance of temporary disability benefits was based upon an IME physician's opinion that Claimant was medically stable and therefore was reasonable.

EVIDENCE CONSIDERED

The record in the instant case consists of the following:

1. Hearing testimony of Claimant;

2. Joint Exhibits A – T; and

3. Post-hearing depositions of vocational experts Doug Crum and Mary Barros-Bailey.

Having examined the evidence, the Referee submits the following findings of fact, conclusions of law, and recommendation for review by the Commission.

FINDINGS OF FACT

1. Claimant worked for Employer since about 1988 as a kitchen supervisor or job manager. Employer caters primarily for firefighter crews when wildfires erupt. Employer also caters charitable bicycling or running events. For wildfires and multi-day events, Claimant would often work 18- or 20-hour days. Claimant was responsible for set-up of kitchen trailers and dining tents, menu planning, acquisition of food and supplies, invoicing, directing the preparation and serving of food, and overseeing compliance with health and sanitary regulations. Throughout all of this, she worked alongside staff in every aspect of the jobs. Using dollies, the crew moves things including refrigerators and bulk quantities of food. Additionally, at bicycling events she had to break-down the kitchen and move it daily. In the off-season she cleaned and maintained equipment and restocked inventory.

2. On August 4, 2004, Claimant was driving a 16-passenger van from a fire camp into town for additional supplies. She fell asleep, drove off the road, rolled the van, and was injured. (Other dates of accident in the medical records are in error.)

3. Claimant injured her knee and low back. She suffered additional scrapes and bruises. She was treated and released at the hospital. She sought follow-up care, initially with George Nicola, M.D.

4. She did not work again in 2004, 2005 or 2006 as she recovered from her injuries.

Medical Care

5. Emergency medical care was rendered immediately following the accident. Diagnostic imaging revealed a broken part of her tibia at her left knee and a compression fracture of her L2 vertebra.

6. Claimant's left knee required immediate surgery. James Dahl, M.D., removed the broken piece of the tibial spine; repaired the anterior cruciate (ACL), medial collateral (MCL),

and posterior collateral (PCL) ligaments; and repaired the meniscus and tibial plateau.

7. Dr. Dahl referred Claimant to George A. Nicola, M.D., and to physical therapy.

8. On August 17, 2004, Dr. Nicola began treating Claimant. On follow-up visits, he performed a diagnostic arthroscopy and diagnosed left knee instability. On February 9, 2005, he surgically debrided the knee compartment and revised the ACL repair. He also treated her with conservative measures, including continuation of physical therapy.

9. On October 8, 2004, Dr. Nicola released Claimant to return to modified duty with significant restrictions on motions such as bending, kneeling, etc. On November 5, 2004, he added a 10-pound lifting restriction. Claimant remained in treatment.

10. After the arthroscopic surgery, Dr. Nicola's associates provided follow-up care. On February 18, 2005, J. Q. Smith, M.D., examined Claimant and provided a release to return to seated work only with continuation of similar restrictions of motion. On May 13, 2005, physicians' assistant C. R. Jamison, PA-C, raised her lifting restriction to 25 pounds. Claimant's low back symptoms now eclipsed her largely resolved knee symptoms and she was referred to Patrick Ziemann-Gimmel, M.D.

11. Claimant received steroid injections on September 28 and November 4, 2005, performed by Dr. Gimmel. He prescribed additional physical therapy as well.

12. As a question about whether Claimant would require low back surgery became more pressing, Defendants hired Kevin Krafft, M.D., to perform an evaluation. On December 5, 2005, he opined Claimant to be at MMI if she did not undergo back surgery, but also opined that back surgery "may be considered." Further, he opined that a future total knee replacement would be "reasonable." He emphasized that if either surgery were to be performed, then Claimant should not be considered MMI at the date of his evaluation.

13. Dr. Krafft assessed Claimant's PPI at 16% whole person for the left knee and 20% whole person for the lumbar injury. Using the combining table he calculated Claimant's PPI related to the accident at 33%. (In an addendum dated January 6, 2006, he revised this downward to 32% based upon a miscalculation of her knee impairment.) He recommended permanent lifting restrictions of 20-25 pounds frequently and 35-50 pounds occasionally with permanent motion restrictions generally consistent with Dr. Nicola's temporary ones.

14. Claimant sought authorization for back surgery. Dr. Krafft referred Claimant to Timothy Doerr, M.D. to determine whether back surgery was required and, if so, whether Dr. Doerr would perform it.

15. Dr. Doerr became Claimant's treating physician. He first examined Claimant on April 13, 2006. He recommended lumbar decompression and fusion, L1 to L3. He did not address Claimant's work capacity until he released her from all work following surgery. The surgery was performed on June 28, 2006.

16. After several follow-up visits, on October 19, 2006, Dr. Doerr opined Claimant to be at maximum medical improvement (MMI). He released Claimant to return to work with a 30-pound permanent lifting restriction. He opined Claimant suffered a 14% whole person impairment for her low back condition without apportionment.

17. On December 14, 2006, Dr. Doer prescribed additional physical therapy. He did not see Claimant again until July 29, 2008.

18. When Claimant returned to Dr. Doerr on July 29, 2008, her low back pain and right leg radiculopathy had increased. After another trial of physical therapy and based upon a CT scan which showed L3-4 stenosis, Dr. Doerr recommended surgical decompression at L3-4. He opined the condition to be causally related to the original accident and imposed a 10-pound

lifting restriction and restrictions on motion.

19. Dr. Doer performed surgery on June 22, 2009. On August 4, 2009, he released her to return to work with a 30-pound lifting restriction. On September 15, 2009, he opined Claimant at MMI and imposed a 50-pound permanent lifting restriction and an additional 5% whole-person PPI. He did not note why the 30-pound permanent restriction which was imposed in 2006 was now a 50-pound restriction.

Non-Medical Factors

20. Born July 31, 1946, Claimant was 60 years old on the date Dr. Doerr first pronounced her at MMI on October 19, 2006.

21. For many years Claimant has lived at Mesa, Idaho. Mesa is a vicinity, not a town or village, a few miles from Council in Adams County. The population of Adams County is quite small, well under 10,000. Its major industries of logging and ranching are on the decline. Attempts at boosting tourism as an industry have not kept pace. Recent state and national economic difficulties have left Adams County hard hit as well. Unemployment rates have hovered in the teens for the last few years. Weiser is the nearest population center which offers significant choice among employment opportunities. It is too far away to make a minimum-wage job attractive after costs of a commute are considered.

22. Claimant's prior work experience and transferrable skills consist mainly of work in local restaurants, some bartending, and some hotel maid work.

23. Claimant graduated from high school. She has no college training. Vocational training consists of a certification in handling food.

24. Claimant is a widow. Her husband died while Claimant was recovering from the accident.

25. According to Social Security records, Claimant earned $43,440 in 2003, the

last full year that she worked. In 2008, her best year reported thereafter, she earned $11,530.

Vocational Experts

26. Claimant was evaluated at Defendants' request by Mary Barros-Bailey, Ph.D. Her report is dated September 10, 2010 on the first page and August 10, 2010 on each succeeding page. The September date is correct. Dr. Barros-Bailey based her opinions in part upon Dr. Krafft's lifting restrictions, upon Dr. Doerr's lifting restriction of September 15, 2009, and upon a time-of-injury wage of $17.24 per hour. She opined Claimant's permanent disability at 41% inclusive of PPI.

27. Claimant was evaluated at Claimant's request by Douglas Crum. His report is dated August 24, 2010. Mr. Crum based his opinions in part upon the same doctors' restrictions and an hourly wage of $17.47. He opined Claimant's permanent disability at 59% inclusive of PPI. He noted that if Claimant's subjective complaints of symptoms and tolerances for sitting, standing and motion were considered, she would likely be considered totally and permanently disabled. Upon request of Claimant, Mr. Crum reviewed Dr. Barros-Bailey's report and reconsidered his evaluation. He issued a second report dated September 17, 2010. He evaluated Claimant's local labor market more extensively and increased his PPD assessment to 75% inclusive of PPI. He reiterated his opinion that her subjective condition would likely show her to be totally and permanently disabled.

DISCUSSION AND FURTHER FINDINGS OF FACT

28. It is well settled in Idaho that the Workers' Compensation Law is to be liberally construed in favor of the claimant in order to effect the object of the law and to promote justice. *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, 910 P.2d 759 (1966). Although the worker's compensation

law is to be liberally construed in favor of a claimant, conflicting evidence need not be. *Aldrich v. Lamb-Weston, Inc.*, 122 Idaho 316, 834 P.2d 878 (1992).

Temporary Disability (and Attorney Fees)

29. Temporary disability benefits are payable during the period of recovery. Idaho Code § 72-408. Upon medical stability, a claimant is no longer in the period of recovery. *Jarvis v. Rexburg Nursing Center*, 136 Idaho 579, 586, 38 P.3d 617 (2001); *Hernandez v. Phillips*, 141 Idaho 779, 781, 118 P.3d 111 (2005). Although a claimant usually bears the burden of establishing he or she is in a period of recovery, a surety may be liable for temporary disability benefits if it has notice or knowledge of a need for additional medical treatment. *Paulson v. Idaho Forest Indus., Inc.*, 99 Idaho 896, 902, 591 P.2d 143 (1979).

30. Claimant was paid temporary disability until December 5, 2005. The record shows contradictory evidence as to whether this denial was effective December 5, 2005 or January 5, 2006. Exhibit C, page 17 purports to show Defendants reported that they paid TTD through January 4, 2006. Exhibit B, page 6 purports to show they stopped TTDs after December 4, 2005. Both documents were prepared by Defendants. The discrepancy between these documents of the total amount purportedly paid is $1,679.29, exactly reflecting the different dates of discontinuance of TTD benefits. However, although not evidence, the tenor of Defendants' brief suggests Defendants believe that December 4, 2005 was the cut-off date. We find temporary disability benefits were denied from December 5, 2005 through June 27, 2006, the day before she underwent the surgery performed by Dr. Doerr. Temporary disability benefits resumed as she recovered from surgery.

31. Dr. Krafft's opinion about medical stability was the basis Defendants used to discontinue temporary disability benefits. Dr. Krafft worded his opinion about medical stability as follows:

> The examinee has most probably achieved maximum medical improvement in relationship to her back and knee injury. . . . She does have ongoing symptoms and these are not expected to improve significantly with further formal physical therapy. Due to her ongoing symptoms, surgical intervention may be considered for her L2-3 segment. . . . If this course is chosen by the patient, then she would not be at MMI until after surgery for either her back or knees.

32. Therefore, as of the date of surgery, Surety had no reasonable basis upon which to maintain its continuing denial of benefits for the period of December 5, 2005 through June 27, 2006. Claimant was due temporary disability benefits throughout that period of recovery as well.

33. At the time of the initial decision to discontinue temporary disability benefits, Surety reasonably based its decision upon the opinions of Dr. Krafft. However, Defendants have a duty to continue to investigate. *Gabe 2004*, 2004 IIC 0077 (2004); *Akers v. Circle A Construction and American Motorists Ins. Co.*, 1999 IIC 0708 (1999). As events occur to reveal, in hindsight, that errors have occurred in denying all or part of a claim, Defendants have a duty to correct those errors. *Farrar v. Adecco, Inc.*, 2008 IIC 0556 (2008).

34. Attorney fees are awardable under the conditions set forth in Idaho Code § 72-804. Here, after the surgery was performed, Surety unreasonably maintained its denial of temporary disability benefits for the period in question. Surety's failure of its duty to continue to evaluate a claim was unreasonable, and Claimant should be awarded attorney fees.

Permanent Impairment

35. Permanent impairment is defined and evaluated by statute. Idaho Code § 72-422 and 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*, 115 Idaho 750, 769 P.2d 1122 (1989); *Thom v. Callahan*, 97 Idaho 151, 540 P.2d 1330 (1975).

36. The parties do not disagree about the PPI ratings opined by the physicians.

Dr. Krafft's PPI rating, although premature, was proven, in hindsight, to be correct until the additional 5% awarded by Dr. Doerr after the last surgery. Claimant suffered a 37% whole person PPI.

Permanent Disability

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

100% Total Perm Analysis

38. Idaho Worker's Compensation Law analyzes whether Claimant is 100% totally and permanently disabled, that is, unable to engage in any activity worthy of compensation. *See*, *Arnold v. Splendid Bakery*, 88 Idaho 455, 463, 401 P.2d 271, 276 (1965).

39. Lifting restrictions for medium to light work and motion restrictions do not render Claimant totally and permanently disabled. Further, since the accident, she has worked and can be expected to work for Employer when light work is available. Considering all pertinent disability factors, Claimant, although substantially disabled, is not 100% totally and permanently disabled.

Odd-lot Analysis

40. If a claimant is able to perform only services so limited in quality, quantity, or dependability that no reasonably stable market for those services exists, he is to be considered totally and permanently disabled. *Id.* Such is the definition of an odd-lot worker. *Reifsteck v.*

Lantern Motel & Cafe, 101 Idaho 699, 700, 619 P.2d 1152, 1153 (1980). *Taken from*, *Fowble v. Snowline Express*, 146 Idaho 70, 190 P.3d 889 (2008). Odd-lot presumption arises upon showing that a claimant has attempted other types of employment without success, by showing that he/she or vocational counselors or employment agencies on his/her behalf have searched for other work and other work is not available, or by showing that any efforts to find suitable work would be futile. *Boley*, *supra.*; *Dehlbom v. ISIF*, 129 Idaho 579, 582, 930 P.2d 1021, 1024 (1997).

41. Claimant has performed other work for Employer since the accident, albeit sporadically. She has been able to perform work meeting her restrictions. Claimant asserts that Employer has become a "sympathetic employer." The standard for establishing an employer as a "sympathetic employer" requires that accommodations made were "out of the ordinary." *Christensen*, *supra*. Here, Employer has provided other jobs which do not require the prior level of physical effort, but which are less frequently available than the usual run of business. Employer's accommodations are not out of the ordinary. They represent reasonable and perhaps legally required accommodations made for an employee whose core work was real and valued.

42. Claimant reports she has conducted an informal work search locally – talking to various friends and acquaintances at places where she felt she might like to work. Claimant has not demonstrated that she has conducted a sufficient work search to establish that she is unemployable or unable to compete for employment. Despite Mr. Crum's opinion that a job search would be futile, he failed to establish a credible basis for that opinion when contrasted with his opinion that she could work at a job paying up to $8.50 per hour.

43. Claimant has not shown it likely that she is totally and permanently disabled as an odd-lot worker.

Permanent Partial Disability Analysis

44. The evidence establishes that Claimant can reasonably compete for some jobs paying minimum wage up to $8.50 per hour. The low pay available and the costs of a commute are salient factors which impact the geographical range of Claimant's local labor market.

45. Indeed, the geographical range of what constitutes Claimant's local labor market is a major factor of contention in determining permanent disability. Claimant's expert argues for Adams County; Defendants' expert argues for Adams County, part of Valley County including McCall, part of Southwestern Idaho including Weiser, Payette, Fruitland, and on to Ontario, Oregon. Careful consideration of many factors including commute routes and costs of a commute reveal that a reasonable local labor market for Claimant would comprise most of Adams County including New Meadows but not points on the highway North and East of it. It would also comprise that portion of Washington County including Cambridge and Midvale but not so far away as Weiser. Claimant's local labor market is thus mostly rural, with small businesses in the little towns along the highway and the mill at Tamarack as sources of employment. No expert commented upon the availability of jobs in and about the mill.

46. The experts used differing computer models for assessing disability. Defendants argue the differences between the models. Such argument is not persuasive. Indeed, the most significant finding resulting from the use of these models is that neither is appropriately fitted to the limited availability of work in this rural labor market. As a result, they opined about percentages of overall permanent disability and loss of access that are speculatively based upon assumptions appropriate for a larger population where a more usual run of occupations and businesses is present, which assumptions are entirely unlikely to represent Claimant's local labor market. These assumptions overvalue the few jobs which come available with any regularity in this market. They do not well account for the more pointed impact of recent

general economic conditions which have depressed the major industries of that market and which, in turn, have produced a ripple effect on the small-town businesses in these communities. As a result, both opinions underestimated the extent of Claimant's permanent disability.

47. Mr. Crum provided two analyses. He significantly increased the percentage of permanent disability in his second analysis. Often, when an expert contradicts his own opinion, the persuasive value of each is undercut. Here it is not so. Compared to the facile and inapplicable computer analyses, Mr. Crum's second opinion demonstrates a greater awareness of the actual conditions Claimant faces. Indeed, he comes closer to estimating Claimant's actual permanent disability.

48. Claimant's age is a factor. Interestingly, Ms. Barros-Bailey opined that Claimant's age would be an advantage in this labor market. Upon further consideration and analysis, her point is well taken. Claimant's age and longstanding ties to the area serve to ameliorate the usually perceived disadvantage of advanced age which, in a larger community, might serve as a significant factor of disability.

49. Claimant's work history shows she is a hard worker and a valued employee. Employer has tried to allow her as much work as she can perform given her restrictions and symptoms. There simply has not been a substantial amount of light work available – only some duties, mostly preseason or postseason, are suitable.

50. Assigning a percentage to Claimant's permanent disability in this unique set of circumstances is challenging. Mr. Crum consistently held the opinion that Claimant would likely be totally and permanently disabled if her subjective symptoms were considered. He considered her loss of access, based upon a labor market that included all of Adams County, to range from 70% to 80%. Factually, Claimant's return to Employer demonstrates she is

not 100% totally and permanently disabled. It shows she can successfully work and thus does not qualify as an odd-lot worker under the test for odd-lot status. The case for odd-lot status is close. If Claimant were not such a hard worker all of her life, if she had less integrity than she does, if she were of the type who would allow her genuine and significant residual symptoms from the accident rule her life, then she might well have sat back and never returned to Employer and collected odd-lot benefits. However, the facts are that Claimant did return to work for Employer. She suffered a wage loss in her best year in excess of 73%. Her wage loss in other years was substantially higher. Her actual labor market does not include all of Adams County as considered by Mr. Crum. That crescent of geography near the highway from Midvale to New Meadows is economically depressed in greater proportion than the average in Idaho and can be expected to remain so. All things considered, Mr. Crum's 80% estimate of loss of access is simply insufficient in fully quantifying Claimant's actual permanent disability.

51. Considering all relevant factors, Claimant suffers permanent disability relating to the accident which should be rated at 85% of the whole person, inclusive of permanent impairment.

CONCLUSIONS OF LAW

1. Claimant is permanently disabled, rated at 85% of the whole person, inclusive of PPI, as a result of the compensable industrial accident;

2. Claimant is not 100% totally and permanently disabled, nor is she totally and permanently disabled as an odd-lot worker; and

3. Claimant is entitled to temporary disability benefits for the period December 5, 2005 through July 27, 2006 and for attorney fees for Defendants' unreasonable denial of those benefits.

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 25TH day of April, 2011.

INDUSTRIAL COMMISSION

/S/_____
Douglas A. Donohue, Referee

ATTEST:

/S/_____
Assistant Commission Secretary

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

AMY E. ZIELINSKI, Claimant, v. U.S. CRISIS, INC., an Ohio Corporation, successor to A&V ACQUISITIONS, INC., an Ohio Corporation, Employer, and LIBERTY NORTHWEST INSURANCE CORPORATION, Surety, Defendants.	)	**IC 2004-517059** **ORDER** FILED MAY 16 2011

Pursuant to Idaho Code § 72-717, Referee Douglas A. Donohue 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 is permanently disabled, rated at 85% of the whole person, inclusive of PPI, as a result of the compensable industrial accident.

2. Claimant is not 100% totally and permanently disabled, nor is she totally and permanently disabled as an odd-lot worker.

3. Claimant is entitled to temporary disability benefits for the period December 5, 2005 through July 27, 2006 and for attorney fees for Defendants' unreasonable denial of those benefits.

Claimant is entitled to attorney fees pursuant to Idaho Code §72-804. Unless the parties can agree on an amount for reasonable attorney fees, Claimant's counsel shall, within twenty-one (21) days of the entry of the Commission's decision, file with the Commission a memorandum of attorney fees incurred in counsel's representation of Claimant in connection with these benefits, and an affidavit in support thereof. In particular, the parties must discuss the factors set forth by the Idaho Supreme Court *Hogaboom v. Economy Mattress,* 107 Idaho 13, 684 P.2d 990 (1984). The memorandum shall be submitted for the purpose of assisting the Commission in discharging its responsibility to determine reasonable attorney fees in this matter. Within fourteen (14) days of the filing of the memorandum and affidavit thereof, Defendants may file a memorandum in response to Claimant's memorandum. If Defendants object to any representation made by Claimant, the objection must be set forth with particularity. Within seven (7) days after Defendants' response, Claimant may file a reply memorandum. The Commission, upon receipt of the foregoing pleadings, will review the matter and issue an order determining attorney fees.

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

DATED this 16TH day of MAY, 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 16TH day of MAY, 2011, a true and correct copy of **FINDINGS, CONCLUSIONS, AND ORDER** were served by regular United States Mail upon each of the following:

BRADFORD S. EIDAM
P.O. BOX 1677
BOISE, ID 83701

KIMBERLY A. DOYLE
P.O. BOX 6358
BOISE, ID 83707

db /S/_____