

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

THE ESTATE OF WILLIAM  
WEEKS/JALYN WEEKS AS WIDOW TO  
DECEDENT,

Claimant,

v.

ONEIDA COUNTY,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety, Defendants.

**IC 2021-031925**

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

**FILED APRIL 29, 2024  
IDAHO INDUSTRIAL COMMISSION**

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**INTRODUCTION**

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Sonnet Robinson. A hearing was conducted on August 4, 2023, in Pocatello, Idaho. Claimant, JaLyn Weeks, was represented by Taylor Mossman-Fletcher of Boise. James Ford of Boise represented Defendants. The parties presented oral and documentary evidence. Post-hearing depositions were taken. The matter came under advisement on February 3, 2024 and is ready for decision.

**ISSUES<sup>1</sup>**

1. Whether the Decedent incurred a compensable occupational disease as defined by Idaho Code;
2. Whether Claimant is entitled to:

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<sup>1</sup> Claimant withdrew the issue of attorney's fees at hearing.

- a. Death benefits;
- b. Medical benefits incurred before death.

### **CONTENTIONS OF THE PARTIES**

Claimant contends the Decedent contracted COVID-19 at work because there is no evidence he contracted it elsewhere. COVID-19 is an acute occupational disease within the meaning of Idaho Code § 72-102(21)(a) and § 72-438 per their plain meaning. Claimant's expert is more convincing as a researcher of COVID-19 than Defendants' expert is as a treater of COVID-19.

Defendants respond COVID-19 is not an occupational disease per Idaho Code § 72-438, nor per Idaho Code § 72-102(21)(a). Moreover, Claimant has not proven the Decedent incurred COVID-19 during his employment or was caused by his employment as required. Claimant's expert researched treatment, not incubation of COVID-19, and therefore Defendants' expert is more credible.

Claimant replies Defendants misread and misapply the relevant statutes and apply concepts of statutory interpretation where there is no ambiguity. Claimant prevails on a plain reading of the statutes that COVID-19 is an occupational disease.

### **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. Joint exhibits (JE) 1-54;
3. The hearing testimony of Claimant, JaLyn Weeks, wife of the Decedent, Ann Marie Mecham, Decedent's sister, Cherie Breann Weeks, Decedent's daughter,

William Cody Grant Weeks, Decedent's son, Diana Dredge, Decedent's supervisor, and Lance Leavitt, Decedent's co-worker.

4. The post-hearing deposition of Thomas Coffman, MD, taken by Defendants and Richard Nathan, DO, taken by Claimant.

All outstanding objections are OVERRULED.

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. The Decedent was married to the Claimant, JaLyn Weeks, and had two children, Breanne and Cody Weeks. HT 28:6-24. The Decedent was beloved by his family, very close to his sister, Ann, and stayed busy on his ranch. See HT generally. He did not do the grocery shopping, nor did he attend church other than by video. JE 37:16; HT 44:9-15; JE 26:1-8.

2. On March 23, 2020, the Oneida County Commissioners (Employer) instructed all employees to wash their hands, stay home if sick, and avoid large groups of people. JE 2:1. Social distancing was encouraged, and group meetings discouraged. *Id.* Certain critical infrastructure employees were instructed they had "a special responsibility to maintain [their] normal work schedule." *Id.*

3. The Decedent was hired May 24, 2021. JE 26:1; JE 27:23. He went to work for the county to secure health insurance. JE 28:8; 37:11.

4. Oneida County had high levels of community transmission of COVID-19 in September and October of 2021. JE 1:11-12.

5. Mrs. Weeks, the Claimant, worked as a first-grade teacher at Malad Elementary

at all times relevant to this matter; in September and October 2021, the Claimant worked in person with children, and they were not required to wear masks but did disinfect their classrooms every recess. JE 37:7-8.

6. Diana Dredge was the Decedent's direct supervisor and was promoted to this role on August 1<sup>st</sup> or 2<sup>nd</sup> after Scott Blaisdell, the former supervisor, retired. HT 129:1-14; 134:2-11. The Road and Bridge Department worked four-10s Monday through Thursday from 6am to 4pm and generally started with a morning meeting to assign jobs for the day. JE 27:25. Both Miss Weeks (Breanne) and Ms. Dredge testified that when Mr. Blaisdell ran the morning meetings they could last an hour or an hour and a half with the crew sitting around in the shop as he handed out jobs; Ms. Dredge moved the meetings to the break room/conference room with a whiteboard. See HT 102:1-146:1. Mr. Leavitt agreed the meetings with Mr. Blaisdell took "forever." HT 186:6-25.

7. Ms. Dredge continued the practice of morning meetings when she became supervisor, but they usually lasted between five and fifteen minutes per her testimony, Mr. Leavitt's, and Mr. Rowley's. JE 41:4. Mr. Rowley and Mr. Leavitt testified the meetings began when Ms. Dredge arrived at 6:00 AM. *Id.*; HT 189:4-12. Ms. Dredge and Mr. Leavitt testified consistently with each other in December 2021 when interviewed by the Surety and at hearing that this was the length of the meetings. JE 27:4-5; JE 29:3; HT 144:20-25; 189:13-21.

8. During the morning meetings, there was no assigned seating but generally people sat in the same seats. JE 29:4; HT 148:17-21. Mr. Leavitt and the Decedent sat at opposite corners of a table which sat at least 10 chairs and was 4 feet wide by 10 feet long. JE 29:4; HT 77:21-22; 144:11-12; 149:7-10; 190:15-23. The room was 18 feet wide by 30

feet long with air conditioning; whether the door was shut or open during meetings is unknown, but the windows were shut. See HT 77:13-80:15; 144:6-10; 175:8-10. After the meeting, depending on the tasks for the day, the crew would either leave immediately or prep certain tasks in the shop. *Id.* at 147:10-148:3.

9. Claimant and Decedent's daughter, Miss Weeks (Breanne), worked for the Weed Crew that summer until mid-August; during the timeframe when both Scott Blaisdell and then Diana Dredge were supervisors of the Road and Bridge Crew. HT 78:18; 96:3-97:15. Miss Weeks never attended a morning meeting but did drop off a burrito or Mountain Dew for her father a couple of times. *Id.* at 102:19-25. Miss Weeks testified that from her observation that the length of meetings and time the meetings started varied. See HT 104:2-106:10. Miss Weeks did testify that on "some days" they would not get into their trucks until 7/7:30am but the timeframe of when this occurred was unclear as both Scott Blaisdell and Diana Dredge had morning meetings. *Id.* at 106:11-25.

10. The Decedent was trying to quit chewing tobacco during this timeframe and chewed a nicotine pouch which he purchased at a gas station or his wife purchased with groceries. HT 81:20-82:2. Per Claimant, her daughter, Ms. Dredge, and Mr. Leavitt, the Decedent would occasionally go with coworkers to the gas station before getting started on his day to buy those pouches, soda, or a breakfast burrito. *Id.* at 82:9-22; 110:12-23; 161:5-20. The gas station was off the freeway and had a lot of pumps and was generally busy. *Id.* at 83:6-12; see HT generally.

11. Ms. Dredge, Mr. Leavitt, and the Decedent kept daily logs. JE 15, 16, 17. The Decedent and Mr. Leavitt did not work together on September 13, September 14, September 15, September 16, September 28, or September 29. *Id.* JE 27:9-10;48-49. HT 155:9-159:2;

166:1-22. However, they both attended morning meetings with each other on those days except September 28 when there was no meeting due to grader training. *Id.* at 179:10-19.

12. On September 20, a Monday, Mr. Leavitt called in sick and was out sick September 21, 22, 23, 27 and returned September 28. JE 15:3; JE 22:1; JE 17:4. Mr. Leavitt recalled feeling sick September 17, a Friday. JE 29:7. Mr. Leavitt did not get tested for COVID-19 while out or on his return to work, but he did assume it was COVID-19. JE 29:5; HT 193:21-194:5; 203:5-16. He agreed that when he returned to work he did not have symptoms. JE 29:5; HT 192:2-25.

13. On September 28, when Mr. Leavitt returned to work, Ms. Dredge recalled that he “was not sick” and said he would wear a mask and keep to himself; that day he trained in the grader outside at a gravel pit. JE 27:14-15, 51. Ms. Dredge did think that the Decedent could have gotten into the grader after Mr. Leavitt during the training at the gravel pit but did not specifically recall if he did. *Id.* at 51.

14. On September 18, 2021, the Decedent purchased a number of items from Hess Lumber. JE 20:1; 38:2. There are receipts from Motor Mart that are undated from the fall of 2021. JE 12; JE 38:2. The Decedent had to water his cows during this timeframe due to drought drying up their normal water source and may have had help from Logan Adler, who also had cattle in the same pasture, and Lloyd Briggs, his uncle. JE 37:10, 15-16. HT 41:2-16.

15. The Decedent began to show symptoms of COVID-19 on September 29, 2021. JE 34, 35, 28:8. He tested positive for COVID-19 on October 1, 2021. JE 50:28-35. On October 7, 2021, he was admitted to the Oneida County Hospital. JE 49:10. On October 9, 2021, he was transferred to St. Luke’s Regional Medical Center in Boise. JE 51:2. The

Decedent was not vaccinated, but the Claimant, his wife, was: “Pt states he did not get vaccinated because he ‘lives in the mountains away from everybody and didn't think I needed it.’” JE 51:10, 15. On October 15, the Decedent passed away at St. Luke’s from COVID-19. JE 51:107-108.

16. Defendants denied the claim on December 28, 2021. JE 30:1.

17. On April 28, 2022, Thomas Coffman, MD, responded to several questions posed by Defense Counsel. Dr. Coffman had reviewed the Decedent’s hospital and care records, the complaint, and Surety records. JE 53:1. Dr. Coffman wrote that the typical timeline for development of COVID-19 would be “exposure on day 0, viral detection starting day 2, and symptoms, if they develop, on day 3, no sooner.” Dr. Coffman wrote that some patients would have a slower onset of symptoms but by day 7 viral detection would have developed in close to 100% of patients, with or without symptoms. Eight days after virus detection, the virus would no longer be infectious, although patients will still test positive because the test detects fragments of the virus’ RNA. Regarding the Decedent and Mr. Leavitt in particular, Dr. Coffman opined that the Decedent could not have been exposed to the virus on September 15 or 16 due to the timeline explained above: “the exposure period is much too long.” *Id.* Further, the exposure could not have happened on September 28 or September 27 because Mr. Leavitt would no longer have been contagious. Lastly, Dr. Coffman was asked about the morning meetings:

[Q:] The likelihood an individual can be exposed to COVID-19 under similar circumstances occurring in the morning meetings (i.e. whether exposure is likely during a 5-10 minute meeting while sitting across the room from an infected individual)[.]

[A:] This is difficult to answer. It would depend on the air circulation patterns in the room, the vaccination status of the individual, the physical distance and

whether the infected individual is coughing, among other things. Actual distance between 2 individuals is also very critical.

JE 53:2.

18. On September 19, 2022, Richard Nathan, DO, responded to Dr. Coffman's opinion. Dr. Nathan reviewed the Decedent's medical records, discovery responses, claim file records, Surety interviews, and Bob Rowley's and Claimant's depositions. JE 54:4-5. Dr. Nathan opined that the Decedent did contract COVID-19 from Mr. Leavitt because they displayed similar symptoms. Dr. Nathan wrote:

It is known that Mr. Leavitt's entire family fell ill with COVID-19 symptoms in this time frame. The only virus causing entire families to fall ill in southeast Idaho in September 2021 time frame was the highly contagious Delta Variant of the Corona Virus. In addition, the fact that Mr. Leavitt and Mr. Weeks were in contact during the incubation period for the COVID-19 virus, further confirms this finding... Additionally, Mrs. Weeks tested positive for COVID-19 two days later on October 4, 2021 indicating that it was Mr. Weeks who brought COVID-19 into the home and not the other way around despite that Mrs. Weeks interacted with significantly higher number of the general public as a school teacher. What is also compelling to my findings is that Mr. Weeks did not interact with people other than through his employment. He worked during the day and tended to his cattle in the evenings. He did not go to restaurants, bars, church, social gatherings, medical facilities, or other locations that would allow any meaningful exposure to COVID-19.

JE 54:1. Dr. Nathan concluded with his opinion that the Decedent, more probably than not, contracted COVID-19 in his employment and he disagreed with Dr. Coffman's opinion. *Id.* at 2. Regarding how Dr. Nathan knew "Mr. Leavitt's entire family fell ill," Mrs. Weeks clarified at hearing she did not know if the Leavitt family's children got sick; she just knew Mr. Leavitt was sick and his daughter, who went to her school, told Mrs. Weeks her mom was also sick. HT 90:23-91:11.

19. Dr. Nathan was deposed on September 1, 2023. Dr. Nathan was a resident in internal medicine after medical school and completed a fellowship in infectious disease in



1998. He is an infectious disease specialist in private practice and an investigator for Snake River Research. Dr. Nathan is board certified in internal medicine, infectious disease, and basic cardiac life support. Dr. Nathan treated COVID-19 patients and was the principal investigator for 10 trials for “mostly treatment” of COVID-19 in rural Idaho. JE 54:6-7; Nathan Depo. 5:12-10:16. Dr. Nathan testified that he treated many patients with COVID-19 in 2021 and that the predominant variant in September 2021 was the “very infectious” Delta Variant. *Id.* at 10:2-11:10.

20. Regarding how COVID-19 was transmitted, Dr. Nathan testified it was:

generally through the air. You can get it if people are together. Talking. Coughing. Or it can hang in the air for a while after people leave the room... usually some kind of close-ish proximity to someone that has the disease... there is no distinct cutoff. Generally, the closer you are to someone who has the disease that is shedding the likelier you are of catching it.

*Id.* 12:7-13:2. It was Dr. Nathan’s understanding that the Decedent “didn’t go anywhere” other than this his home, to tend to his cows, or to his job. *Id.* at 21:22-22:7. Dr. Nathan stated his belief that the Decedent did not go to stores or go shopping. *Id.* at 22:2-23. Dr. Nathan believed that the 5-to-15-minute morning meetings were “definitely” long enough to transmit COVID-19 and was critical of the fact that they still conducted in-person meetings. *Id.* at 23:18-25. It was Dr. Nathan’s opinion that the Decedent could have caught COVID-19 from Mr. Leavitt anytime the week of September 13<sup>th</sup> through the 16<sup>th</sup> when Mr. Leavitt was asymptomatic. *Id.* at 27:10-28:15. The Decedent also could have caught COVID-19 on the 28<sup>th</sup> from Mr. Leavitt which would be a shorter incubation period, but still possible. *Id.* at 28:16-24.

21. Regarding Dr. Coffman’s opinion, Dr. Nathan disagreed with his timeframe regarding the virus. It was Dr. Nathan’s experience that not every patient had exposure on

day zero and then symptoms by day three, but not sooner: “I don’t think it is as solid as Coffman had put down...his cutoff from what we know is a little bit too rigorous.” Nathan Depo. 29:4-25; 30:14. Dr. Nathan clarified that asymptomatic patients still spread the virus in the same way a symptomatic person would, through the air; further, that it was actually easier to spread when asymptomatic because there would no signs to take precautions. *Id.* at 31:11-32:19. Similarly, Dr. Nathan disagreed with Dr. Coffman that close to 100% of symptomatic patients will present symptoms by day seven: “it is not clear that is the case... you might get sick pretty quickly. Or there might be a little bit of a lag because the patient over here was immunocompetent.” *Id.* at 33:4-15; 34:6-8. Dr. Nathan believed Mr. Leavitt “easily could have been still infectious when he came back to work.” *Id.* at 35:1-3.

22. On cross-examination, Dr. Nathan agreed COVID-19 was a pandemic in September and October of 2021. Nathan Depo. 38:16-23. Dr. Nathan agreed that COVID-19 was a “hazard common to the public in general.” *Id.* at 40:3-7. Dr. Nathan explained the high positivity rates in Oneida in September and October 2021 essentially meant the disease was extremely commonplace: “it wouldn’t even matter about the high positivity rates. Because there was so much disease.” *Id.* at 41:6-43:18. Dr. Nathan agreed that COVID-19 was not a hazard characteristic of or peculiar to being an equipment operator: “it was a hazard for everybody.” *Id.* at 43:19-24. Dr. Nathan endorsed an incubation period of 14 days or longer. *Id.* at 48:22-49:1. Dr. Nathan believed that the Decedent could have caught COVID-19 from Mr. Leavitt any time from September 13<sup>th</sup> through 16<sup>th</sup> and on the 28<sup>th</sup>, but believed the 16<sup>th</sup> was most likely the exposure date. *Id.* at 49:14-50:24. Dr. Nathan did not know anything about the room the morning meetings took place in, the size of the room, the table, or how close the Decedent and Mr. Leavitt sat; he knew they were not wearing masks. *Id.* at 50:25-

52:8. Dr. Nathan did not know that the Decedent went into convenience stores to buy snacks and chew tobacco. *Id.* at 56:20-24.

23. Dr. Coffman was deposed on November 21, 2023. Dr. Coffman was a resident in internal medicine after medical school and completed a fellowship in infectious disease in 1989. He is a partnering physician at Sawtooth Epidemiology & Infectious Diseases and the current chairman of the Infection Control Committee at St. Luke's Regional Medical Center. Dr. Coffman is board certified in internal medicine and infectious disease. Dr. Coffman's practice consists of consulting with hospitals regarding infectious diseases, including COVID-19, and treating patients with persistent infections. JE 53:3-4; Coffman Depo. 4:25-13:8.

24. Dr. Coffman agreed COVID-19 was a pandemic in Idaho in September and October of 2021. Coffman Depo. 15:22-16:25. Dr. Coffman agreed that COVID-19 was a hazard to the general public. *Id.* at 17:11-14. Dr. Coffman clarified that he reviewed Surety documents including the Claimant's, Ms. Dredge's, and Mr. Leavitt's statements, information about the meeting room, and information about Mr. Leavitt's work time frames, in addition to the records listed when issuing his initial report. *Id.* at 19:25-21:2. Dr. Coffman opined that the Decedent's symptoms appearing on the 29<sup>th</sup> meant that he was exposed on the 24<sup>th</sup>, 25<sup>th</sup>, or 26<sup>th</sup>. *Id.* at 22:1-15. Dr. Coffman did not know the exact size the meeting room was, but did understand the meetings took about 15 minutes, had about six to eight people present, and that masks were not required. *Id.* at 24:10-25:5. In forming his opinions, Dr. Coffman did assume that Mr. Leavitt had COVID-19: "anybody who had a URI [sic – upper respiratory infection] was COVID until proven otherwise." *Id.* at 25:14-26:6. Dr. Coffman knew that the Decedent and Mr. Leavitt had meetings together on the mornings of

the 15<sup>th</sup> and 16<sup>th</sup> and then didn't see each other for 10 to 12 days. *Id.* at 26:14-27:14. Regarding where the Decedent contracted COVID, Dr. Coffman testified: "Well, he could have gotten it at work, I suppose. But he didn't get it from Mr. Leavitt;" Dr. Coffman held this opinion to a high degree of medical probability. *Id.* at 27:15-25; 28:6-10. Dr. Coffman reiterated his opinion that symptoms will typically appear about three days after exposure although sometimes people would not get sick for a week: "by 10 days out or 12 days out, you've almost had to have had another exposure to get sick that far out from your first exposure." *Id.* at 28:20-29:14. Regarding the Decedent catching COVID on the 15<sup>th</sup> or 16<sup>th</sup> from Mr. Leavitt, Dr. Coffman did not think it was impossible but "maybe one percent or less" due to how long it would take the virus to replicate and present symptoms; however, regarding an exposure on the 28<sup>th</sup>, there was not enough time for the virus to replicate and present symptoms on the 29<sup>th</sup>. *Id.* at 29:15-33:11.

25. On cross-examination, Dr. Coffman added that he had also looked at Dr. Nathan's deposition, but not the hearing transcript. Coffman Depo. 34:18-36:9. Dr. Coffman agreed in general that social distancing, working outside, wearing masks, handwashing, and isolating if symptomatic would reduce the transmission of COVID-19. *Id.* at 38:23-40:4. Regarding the meeting room in particular, Dr. Coffman did not have enough information to state whether or what conditions would have reduced transmissibility; it would depend on ventilation, how confined the room was, how long they were there, and if anyone was coughing. *Id.* at 40:5-43:15. Dr. Coffman did think it was possible that a co-worker caught COVID from Mr. Leavitt, was asymptomatic, and transmitted it to the Decedent on the 23<sup>rd</sup> if that was the exposure date. *Id.* 48:15-49:2. Dr. Coffman agreed that certain professions, namely healthcare workers and first responders, were more likely to face a "peculiar risk"

for COVID-19, however, it was so prevalent that there was no group who was not at risk of catching it. *Id.* at 53:4-18. Regarding risk factors, Dr. Coffman emphasized the biggest risk was exposure to people, a large number of people, such as being a grocery store employee, even in a large store. *Id.* at 54:16-55:23. Dr. Coffman was 99.99% certain the Decedent did not get COVID from Mr. Leavitt but could not rule out or rule in that someone at work did transmit to the Decedent: “it’s a possibility.” *Id.* at 59:16-60:1. If the Decedent went to convenience stores, it would expand his potential exposure to the virus. *Id.* at 60:16-61:14.

26. **Credibility.** All the witnesses testified credibly and almost entirely consistent with any prior statements or depositions taken.

#### **DISCUSSION**

27. A worker’s compensation claimant has the burden of proving, by a preponderance of the evidence, all the facts essential to recovery. *Evans v. Hara's, Inc.*, 123 Idaho 473, 849 P.2d 934 (1993). Claimant must adduce medical proof in support of his claim, and he must prove his claim to a reasonable degree of medical probability. *Dean v. Dravo Corporation*, 95 Idaho 558, 511 P.2d 1334 (1973).

28. The Industrial Commission, as the fact finder, is free to determine the weight to be given to the testimony of a medical expert. *Rivas v. K.C. Logging*, 134 Idaho 603, 608, 7 P.3d 212, 217 (2000). “When deciding the weight to be given an expert opinion, the Commission can certainly consider whether the expert’s reasoning and methodology has been sufficiently disclosed and whether or not the opinion takes into consideration all relevant facts.” *Eacret v. Clearwater Forest Industries*, 136 Idaho 733, 737, 40 P.3d 91, 95 (2002).

29. “In workers’ compensation law, an employer’s fault is not a precondition of liability. This is because the workers’ compensation system is ultimately about allocating costs, not remedying wrongs... the purpose of the workers’ compensation system is to provide “prompt payment of benefits regardless of fault or blame” to employees injured in the course of covered employment “based on the theory that the cost of work accidents is a legitimate part of the cost of production.” Accordingly, the essential precondition of liability under the workers’ compensation law is a causal connection to an injury sustained in the course of covered employment. Idaho Code §§ 72-211; 72-102(17)(a).” *Sharp v. Thomas Brothers Plumbing*, 170 Idaho 343, 510 P.3d 1136 (2022).

30. **Occupational Disease – Actually Incurred.** Idaho Code § 72-102(21)(b) provides “‘Contracted’ and ‘incurred,’ when referring to an occupational disease, shall be deemed the equivalent of the term ‘arising out of and in the course of’ employment.”. Idaho Code § 72-439 provides that an employer shall not be liable for any compensation for an occupational disease unless such disease is actually incurred in the employer’s employment.

31. Claimant argues that it is not her burden to prove the exact source of the Decedent’s exposure to COVID, merely that it is more probable than not that he contracted it at work. Claimant points to the “powder-keg” conditions in the meeting room vs. Decedent’s other lack of exposures. Defendants argue there is no credible evidence that the Decedent contracted COVID from anyone at work. Both utilize their respective experts to support their opinions on exposure and causation.

32. Both experts are very qualified. Claimant’s argument that Dr. Nathan’s opinion is worth more than Dr. Coffman’s because Dr. Nathan is involved in research trials for treatment of COVID-19 is unpersuasive. The question is their expertise on exposure and

transmission. Both experts extensively treated patients with COVID-19 in Idaho and are board certified in infectious disease.

33. Both experts were strident in their opinions. Dr. Nathan believed the incubation period for COVID-19 was 14 days and could be longer. In other words, a host could be contagious for up to 14 days including prior to symptoms manifesting and after symptoms had ceased. Consistent with that opinion, Mr. Leavitt could have transmitted the virus to the Decedent on the 16<sup>th</sup> or 28<sup>th</sup>.

34. Dr. Coffman was 99.99% confident that Mr. Leavitt could not have been the source for Decedent's COVID-19. Dr. Coffman believed that once exposed to the virus, it took on average three days to manifest symptoms and at most five to seven days. For the Decedent to present with symptoms on the 29<sup>th</sup> meant he was exposed the 23<sup>rd</sup>, 24<sup>th</sup>, 25<sup>th</sup>, or 26<sup>th</sup> at 75% to 80% likelihood. Dr. Coffman offered the Decedent would have been very contagious on the 28<sup>th</sup> prior to his symptoms developing on the 29<sup>th</sup>. In other words, he was explaining that even prior to symptom manifestation, a person could be contagious, although it would take time for the virus to develop and begin shedding.

35. Although both experts were persuasive on certain points, Dr. Coffman's detailed explanation of RNA replication makes Dr. Coffman's opinion slightly more persuasive regarding exposure/incubation/transmission. Dr. Nathan's opinion seems to be that once exposed, a host is immediately contagious despite also acknowledging that it does take time for the virus to replicate. In line with that, Dr. Nathan did think it was much more likely that the Decedent was exposed on the 16<sup>th</sup> than the 28<sup>th</sup>. Dr. Nathan's opinion that the Decedent could have been exposed on the 28<sup>th</sup> and then shown symptoms on the 29<sup>th</sup> is rejected. Dr. Nathan's opinion that the Decedent could have been exposed on the 16<sup>th</sup> and

then shown symptoms on the 29<sup>th</sup> is “not impossible” per Dr. Coffman, but a less than 1% chance.

36. Both experts agreed that COVID-19 can be transmitted by asymptomatic individuals. Both experts agreed if someone is coughing in close proximity to another person the coughing person is more likely to transmit the virus if they are a carrier. Both experts agreed that COVID-19 was everywhere in Oneida County in September of 2021. Both experts agreed that once exposed, the virus must replicate in the host for a period of time until the host is contagious.

37. Both Claimant and Defendants focus their arguments on the Decedent catching COVID-19 from a symptomatic individual. Claimant claims Mr. Leavitt or another sick coworker<sup>2</sup> exposed the Decedent, and no other “symptomatic” individual is shown to have come in contact with the Decedent. Defendants respond that there is no evidence any of the Decedent’s coworkers were symptomatic during the relevant timeframe. Both arguments ignore that asymptomatic transmission is possible, and even more likely per Dr. Nathan’s opinion that it can linger in a room after a person has left and also that the lack of symptoms means both the host and the person potentially exposed do not know to take precautions. Merely being in close proximity to someone with asymptomatic COVID-19 is enough to contract the disease per both experts.

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<sup>2</sup> Claimant’s evidence to the contrary is speculative (Mr. Rowley had a doctor’s appointment on the 13<sup>th</sup> and was out sick for two days for “undisclosed reasons”) and directly contradictory to sworn testimony from Mr. Rowley that he never got COVID-19 until July 2022. Claimant’s argument that Davis and Esplin, other co-workers of the Decedent, could have been sources due to the “overlapping” nature of COVID also implicates the Claimant, Mrs. Weeks, as a potential source of exposure as she worked unmasked with children and spent significantly more time with the Decedent than his coworkers. However, Dr. Nathan’s conclusion that the Decedent brought COVID-19 to Mrs. Weeks based on her getting sick after him makes more sense based on both expert’s testimony and this logic applies equally to Davis and Esplin who were sick after the Decedent.



38. Direct proof of a causation could be established if the Decedent saw literally no one except work colleagues who had symptomatic COVID-19 during the relevant timeframe. (See *Pierre v. ABF Freight*, 211 A.D.3d 1284, 180 N.Y.S.3d 337 (2022)). There are many more unknowns in this case due to the fact that the Decedent cannot explain his whereabouts during the relevant time period. Circumstantial evidence and inference are required to reach any conclusion regarding causation. The known evidence and expert opinion tends to suggest that close proximity to an asymptomatic or mildly symptomatic individual was the likeliest source of the Decedent's COVID-19.

39. In the relevant time frame from September 16 to September 29, the Decedent went to work, to his home, to the lumber store, and potentially went to a convenience store, a parts store, and possibly worked with his uncle or another individual while tending to his cows to provide them water. There is no credible evidence that anyone was symptomatic with COVID-19 around the Decedent in the relevant time frame. As noted above, asymptomatic exposure is the likely source, although not the only potential source, of the Decedent's COVID-19.

40. The question is whether Claimant has proven by a preponderance of the evidence that the Decedent contracted COVID-19 from work. The undisputed facts in favor of work-relatedness are that the conditions in the meeting room were favorable to transmission and that the Decedent attended the morning meetings on the 16<sup>th</sup>, 20<sup>th</sup>, 21<sup>st</sup>, 22<sup>nd</sup>, 23<sup>rd</sup>, 27<sup>th</sup> and attended a training the morning of the 27<sup>th</sup>. There was also testimony of habit that the Decedent did not tend to socialize or otherwise go anywhere besides work/home/ranch. The facts against that finding are that the Decedent went to the lumber store on the 18<sup>th</sup>, that the Decedent may have worked with others while tending to his cows

any of the days from the 16<sup>th</sup> to the 27<sup>th</sup> and may have gone to the parts store. There was also testimony of habit that the Decedent occasionally went to the convenience store/gas station to buy nicotine pouches, soda, or burritos on days he was working.

41. Based on the evidence presented, Claimant has not proven by a preponderance of the evidence that the Decedent contracted COVID-19 from work. It is certainly possible that the Decedent contracted COVID-19 asymptotically while in close proximity to his colleagues during work meetings or while in a work truck. It is unfortunately also possible he contracted it while speaking with a cashier at the lumber store or convenience store. It is also possible the Decedent spoke to another individual unknown to any of the parties, such as his uncle while tending to his cows or the cashier at the parts store. There are simply too many unknowns for the Claimant to show that it is more likely than not that the Decedent caught COVID-19 from a work colleague vs. any other people he came in contact with.

42. Dr. Nathan's opinion relied on his understanding that the Decedent went nowhere but home/work/ranch, which is demonstrably not the case. Dr. Nathan was not asked whether the Decedent could have contracted COVID-19 from the lumber store or the convenience store or informed of other possible exposures. His expert opinion was that talking with or even entering the room after someone with COVID-19 is enough to transmit the disease (which was not contradicted by Dr. Coffman), and this opinion makes ruling out other potential exposures virtually impossible.

43. Dr. Nathan's and Dr. Coffman's testimony that the disease was extremely prevalent, easy to transmit through proximity, and that it transmitted asymptotically coupled with potential non-work-related exposures makes it impossible to prove on a more likely than not basis that the Decedent contracted COVID-19 at work. The burden to prove

causation is on Claimant; the nature of the disease and the fact that the Decedent cannot testify makes that burden extremely difficult to carry in this case, but no less Claimant's burden. Claimant has failed to prove the Decedent "actually incurred" COVID-19 arising out of and in the course of employment

**44. Occupational Disease – Hazards that are Common to the Public in General.**

To demonstrate that Decedent's illness constitutes a compensable occupational disease, Claimant would have to prove all elements of Idaho Code § 72-102(21)(a). Additionally, Idaho Code § 72-438 provides that occupational diseases shall not include "hazards that are common to the public in general." No Idaho caselaw has yet addressed whether COVID-19 is a hazard common to the public in general. The answer to this question could potentially bar any COVID-19 case, regardless of origin, from the worker's compensation system. Here however, Claimant has failed to prove Decedent's specific illness was actually incurred in his employment, and the claim fails on that basis alone. Therefore, these issues are moot and will not be addressed here.

**CONCLUSIONS OF LAW**

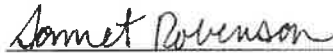
1. Claimant has not proven the Decedent incurred a compensable occupational disease under Idaho Code.
2. All other issues are moot.

## RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Referee recommends that the Commission adopt such findings and conclusions as its own and issue an appropriate final order.

DATED this 14<sup>th</sup> day of March, 2024.

INDUSTRIAL COMMISSION



Sonnet Robinson, Referee

## CERTIFICATE OF SERVICE

I hereby certify that on the 29<sup>th</sup> day of April, 2024, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail and *E-mail transmission* upon each of the following:

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ge



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

THE ESTATE OF WILLIAM  
WEEKS/JALYN WEEKS AS WIDOW TO  
DECEDENT,

Claimant,

v.

ONEIDA COUNTY,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety, Defendants.

**IC 2021-031925**

**ORDER**

**FILED APRIL 29, 2024  
IDAHO INDUSTRIAL COMMISSION**

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Pursuant to Idaho Code § 72-717, Referee Sonnet Robinson submitted the record in the above-entitled matter, together with her recommended findings of fact and conclusions of law, to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the 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 not proven the Decedent incurred a compensable occupational disease under Idaho Code.
2. All other issues are moot.


**ORDER - 1**

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

DATED this 29th day of April, 2024.



INDUSTRIAL COMMISSION

  
\_\_\_\_\_  
Thomas E. Limbaugh, Chairman

  
\_\_\_\_\_  
Claire Sharp, Commissioner

  
\_\_\_\_\_  
Aaron White, Commissioner

ATTEST:

  
\_\_\_\_\_  
Commission Secretary

## CERTIFICATE OF SERVICE

I hereby certify that on the 29<sup>th</sup> day of April, 2024, a true and correct copy of the foregoing **ORDER** was served by *E-mail transmission* and by regular United States Mail upon each of the following:

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*Gina Espinosa*