BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

THOMAS CRAWFORD, Claimant, v. DENNIS AND DELAYNE KEITH, d.b.a. DDK CONSTRUCTION, Employer, and ROBERT MCKINNON JR, Statutory Employer, Defendants.	**IC 2024-007597** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** Filed January 29, 2026 Idaho Industrial Commission

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Brian Harper, who conducted a bifurcated hearing in Boise, Idaho on August 7, 2025, with party/witness Robert McKinnon participating via ZOOM videoconferencing. Sean Wilson represented Claimant. Jason Thompson represented all Defendants. The parties produced oral and documentary evidence at the hearing, and submitted briefs. The matter came under advisement on October 31, 2025.

ISSUES

The following general issues were agreed upon at hearing:

1. Whether jurisdiction over Claimant's claim for benefits exists in Idaho;
2. Whether Claimant was an employee of Defendants Dennis and Delayne Keith, dba DDK Construction;
3. Whether Claimant was an independent contractor of any of the Defendants;
4. Whether Defendant Robert McKinnon was a statutory or secondary employer of Claimant;

5. Whether Claimant's work on Defendant Robert McKinnon's private cabin constituted casual employment;

6. Whether Claimant suffered an injury from an accident arising out of and in the course of employment; and

7. Whether Employer is liable to Claimant for the penalties set forth in Idaho Code § 72-210 for failing to insure liability.

CONTENTIONS OF THE PARTIES

Claimant asserts he was hired in Idaho by Dennis and Delayne Keith, dba DDK Construction to perform construction work in Alaska. While the scope of the work was modified over time and came to include work to be performed on property owned by Robert McKinnon in Alaska, Claimant was a travelling employee, assigned to work on McKinnon's property as well as an unrelated construction project. Claimant was injured while working on McKinnon's property. Idaho has jurisdiction over the case. McKinnon was a statutory employer because he contracted with Claimant's direct employer for the labor Claimant provided. Because all Defendants failed to carry worker's compensation employment, Claimant is entitled to Idaho Code § 72-210 penalties.

Defendants assert Dennis and Delayne Keith, dba DDK Construction, did not hire Claimant, and certainly not for any work he did on McKinnon's personal cabin. Even if the Keiths, dba DDK Construction hired Claimant, he was acting as an independent contractor for any and all work done in Alaska. Furthermore, Claimant's injury did not occur in the course and scope of any alleged employment with the Keiths, dba DDK Construction. Also, Claimant was not a travelling employee at the time of his injury, or at any time. Defendant Robert McKinnon was not a statutory employer or a direct employer of Claimant; *at most* Claimant's work on McKinnon's private cabin would be casual employment, not subject to Idaho worker's compensation laws. Finally,

in addition to all the other defenses raised by Defendants herein, the Idaho Industrial Commission lacks jurisdiction over Claimant's claim for benefits. Any employment arrangement between McKinnon and Claimant occurred exclusively in Alaska, which would be the appropriate jurisdiction for this claim.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant, Defendants Delayne Keith and Robert McKinnon, and witness Jeffrey "JD" Johnson, taken at hearing; and

2. Joint exhibits (JE) 1 through 18 admitted at hearing.

FINDINGS OF FACT

1. At the outset, given the involved nature of the factual background and relationship of the parties, it makes sense to introduce the actors with a brief description of how they fit into the development of the facts herein.[1]

- Claimant Thomas Crawford, (Claimant), age 28 at the time of hearing, an acquaintance of Jeffrey Johnson.
- Jeffrey Johnson (JD), grandson of Dennis and Delayne Keith, and co-worker with Claimant in Alaska.
- Dennis Keith, (Dennis), husband of Delayne Keith. He had no real involvement in the material aspects of this case, except as noted hereinafter.

[1] Due to the inclusion of both Dennis and Delayne Keith, and Randy and Carlene Rhodes, as well as the way the parties are identified by their first names throughout their depositions and the hearing, individuals other than Claimant will be referred to by their first names, with no disrespect intended. Dennis and Delayne Keith, when acting together, will be referred to as the Keiths.

- Delayne Keith, (Delayne), wife of Dennis Keith, founder of DDK Construction, who bid the Calder mine job, and was heavily involved in the material facts, as discussed below.
- Randy Rhodes, (Randy), deceased business partner of Robert McKinnon in the Alaska property.
- Carlene Rhodes, (Carlene), wife of Randy Rhodes.
- Adam Theroux, (Adam), supervisor on Calder mine job and acquaintance of Robert McKinnon.
- Robert McKinnon, (Rob), acquaintance of the Keiths, and on whose property Claimant was injured. He is heavily involved in the facts of this case.

2. While there is not a monumental discrepancy between the parties as to the facts, there is a significant disagreement as to the inferences which flow therefrom. The facts, and inferences drawn from those facts, as set out below, are gleaned from the entire record and are consistent with the greater weight of the evidence.

3. At the time of the hearing and for some time before, the Keiths lived part-time in Weiser, Idaho and part-time in Yuma, Arizona.

4. Rob also lived part-time in Yuma, near to the Keiths. Since 2011, he also owned a piece of property in Alaska, (the Alaska property) with co-owner Randy.

5. Rob entered into a verbal agreement with Randy to each take a 50% ownership interest in the property. Over time, they built a duplex, and began constructing a fourplex known as the lodge, and a cabin with a "granny unit" on the property. Eventually, Rob lost interest in operating the yet-to-be-built lodge. Randy still had a desire to complete the lodge, but it sat for years with little more than the foundation and floor joists. See, JE 12, p. 302. At some point

before 2023, Rob began constructing a personal cabin for himself and the granny unit (a smaller cabin) for his guests.

6. The long-range plan was for Randy and Carlene to complete the lodge, then build a personal cabin for themselves. Randy and Carlene were going to run the lodge and the duplex as a business, renting out boats and the living units to tourists. Rob was going to live part-time in the cabin he was building onsite. While Rob was not interested in taking part in the operation of the lodge, he was willing to provide maintenance assistance for Randy and Carlene's lodge business if and when they got it up and running.

7. In early 2023, while wintering in Arizona, the Keiths, the Rhodes, and Rob would at times (often over dinner) discuss construction on the Alaska lodge. Randy came to Yuma on at least one occasion that year to discuss his desire to get the lodge framed and dried in that summer. Delayne suggested her grandsons, JD and Ty, could go to Alaska to do that work, as they had been there before and were in the construction business. Also, Delayne felt the experience could help them become more established in the industry and allow them to run their own construction companies.

8. Randy agreed to hire the grandsons to do the construction work and pay them for their work, transportation, food and lodging for the six weeks they intended to work on the lodge. Delayne would get plane tickets for her grandsons, and Randy would reimburse her the cost.

9. Ty was not able to go to Alaska as envisioned by Delayne, so she asked JD if he could find anyone else who wanted to go. In approximately February 2023, JD asked Claimant, who also had construction skills, if he would like to go work on the lodge, do some fishing, and spend the summer in Alaska. Claimant readily agreed to the proposition. Claimant understood

the work entailed framing and drying in (weatherproofing) the lodge and would pay $25,000, divided between him and JD. The two would begin their work for Randy in mid-June 2023.

10. Meanwhile, in March or April 2023, Adam contacted Rob to see if Rob was interested in doing a small construction project at a mine operated by Columbia River Carbonates, located about an hour's drive from Rob's property and known as Calder mine. The job consisted of building two small buildings at the mine site, specifically an arctic room and a watershed building. Rob was not interested but told Adam he knew of someone who might be. He then relayed the information to Delayne, who mentioned it to JD, who in turn mentioned it to Claimant.

11. The Calder mine job would take a couple of weeks and would, as it was originally planned, commence after the lodge work finished. Both JD and Claimant were agreeable to this arrangement. There was a possibility the two projects would overlap, but the suggested solution was to alternate time spent on the lodge and the mine job, so they could both be completed that summer.

12. Getting the Calder mine job was not as easy as conversations over dinner. The job had to be bid. The process was involved. Delayne, having been a concrete and general contractor prior to her retirement, undertook to complete the process.

13. The application required a statement of years of experience in different aspects of construction. Delayne created DDK Construction (at times referred to as DDK) to bid the job (using her and Dennis's initials) and mentioned the years of experience she and Dennis had in construction.[2] She admitted in the application that she was retired but claimed she periodically still did some small jobs. She applied for liability insurance (required for the bid) and submitted

[2] Since DDK Construction was not a legal entity registered with the State of Idaho for the times relevant to this decision, when the term DDK or DDK Construction is used, it is done so as a dba for Dennis and Delayne Keith.

the bid to Columbia River Carbonates under the name Dennis and Delayne Keith, d.b.a. DDK Construction. Later she applied for a dba certificate with the state of Idaho in order to deposit the check from the Calder mine project, which was made out to DDK Construction. She did not apply for a dba certificate in Alaska.

14. DDK's Calder mine job bid was accepted on May 30, 2023. The plan was for JD and Claimant to do the construction work on the buildings and for the Keiths to drive their van to Alaska (with supplies they purchased for Rob at his request) to pull wire for the electrician and do the painting called for in the Calder mine contract.

15. Also on May 30, 2023, Randy passed away. His passing set in motion a number of changes in the scope and timing of the plan to send JD and Claimant to Alaska.

16. Soon after Randy's death, Carlene made it clear to Rob that she did not want to continue with construction of the lodge and did not want to continue as an owner of the Alaska property. She wanted to sell her interest and be done with the property.

17. The lodge construction project was put on hold at that time. Not long afterward, the Alaska property was divided, with Carlene getting the parcel containing the lodge and duplex, which she promptly sold to a third party, effectively ending the lodge construction project.

18. The sudden postponement and subsequent cancellation of the lodge work disrupted the travel schedule for JD and Claimant. They had planned on going to Alaska in mid-June to work on the lodge for six weeks, and then do the construction work at the Calder mine thereafter. They could not start the Calder mine job in mid-June because the needed supplies had not been delivered to the site. Also, Claimant expressed an interest in attending a family reunion which was scheduled just prior to July 4, 2023.

19. Based on these developments, JD and Claimant's departure date was moved back to July 6, 2023.

20. JD and Claimant arrived in Alaska on July 6, 2023, about ten days before the Calder mine work was set to commence. They were met at the airport by Rob and his wife, who transported them to Rob's property on Prince of Wales Island. Claimant had never met or spoken to Rob prior to arriving in Alaska. JD knew Rob from a prior trip to Alaska.

21. Rob testified that in the past, when visitors stayed at his property, they often, but not always, volunteered to assist him with various construction projects on his land. Rob called the ongoing projects his "recreation," and he was not in a hurry to finish whatever he was doing on his cabins at any given time. In 2022, when JD visited Rob with the Keiths, he and they worked on cabin construction projects, and JD expected he and Claimant would do the same in 2023. JD was not paid for the work he did in 2022.

22. From Claimant's perspective, he was in Alaska to work, fish, and see the sights. He would follow JD's lead, both at Calder mine and at Rob's.

23. During conversations with JD and Claimant, Rob outlined the fact that he was planning on putting a roof covering over the porch (also called a deck or patio in the record) on his private cabin. Rob showed JD and Claimant the materials for the job and outlined his ideas for the design. Claimant and JD discussed how to build it and began constructing the roof covering.

24. Claimant and JD worked on the roofing project and went fishing as they saw fit. They did not have a set work schedule, nor did Claimant understand there was any expectation as to how much of the project he and JD needed to complete. The construction was something "to fill [Claimant's] time" before the Calder mine job began. Crawford depo. p. 26, Tr. p. 99.

Claimant knew JD had worked on the cabins the prior year and figured his work would be an "extension of [JD's] work from the summer prior." Crawford depo. p. 27.

25. Claimant and JD erected the roof covering framework and did various other jobs on Rob's property prior to the start of the Calder mine job. They also went fishing and sightseeing as they chose. According to JD, about half the time was spent working on the cabin and half the time doing recreational activities. JE 13, p. 315.

26. Claimant and JD initially stayed in the duplex on Rob's property. Later, when the Keiths arrived, Claimant and JD, when the two of them were not working at the Calder mine, stayed in the cabin (along with the Keiths) which the Keiths had rented from Rob's neighbor.

27. During the Calder mine job Claimant and JD would stay at the mine during the week and return to the rental cabin on the weekends. Food and lodging were provided for them at the mine. When at Rob's, he and his wife would feed them meals. They also ate some meals at the rental cabin. During the entire trip, they bought their own snacks and extra food.

28. Work began at the Calder mine on or around July 16, 2023. As planned, JD and Claimant did the construction while the Keiths did the painting and some electrical work.

29. By August 4, 2023, the Calder mine job finished up. They had run out of siding material and Adam told them he would have his workers put up the remainder of the siding when it arrived on site. There was a walk through that day with Adam, and everyone from DDK. The work passed inspection.

30. On August 7, the day following Claimant's accident, the Keiths and JD returned to the jobsite to tidy up the area, put away tools, and leave the site free of construction waste material, as was customary for them to do. Nothing in the record suggests this final activity was required under the contract, or needed to be done in order to be paid, as Adam had already signed off

on their work, and everyone, including Claimant, testified the contract work was completed no later than August 4, 2023.

31. There was a plan for the Keiths, JD, and Claimant to join Rob on his boat for a fishing trip on the afternoon of August 6, 2023. Claimant testified that by mid-morning he was getting antsy to do something. He noticed the roof covering he had worked on earlier still needed some roof panels installed, so he "took it upon [himself] to get that finished." Tr. p. 70. He figured he was the youngest, most "spry guy" so it made sense for him to do the ladder work. He had the freedom to do work on the cabin if he wanted to and saw this as an opportunity to busy himself, so he got out the ladder and began the task of installing roof panels.

32. While undertaking this task, Claimant fell from the ladder and injured his back. He was treated on the island and then flown to Ketchikan where they had an appropriate brace for him to wear. Thereafter, he and JD, who had accompanied him to the mainland, took the ferry back to the island where Rob met them and took them back to his property.

33. After his accident, while still in Alaska, Claimant approached Rob about being paid for his work on Rob's cabin. It appeared to Claimant that Rob was taken off guard by the request but nonetheless seemed very understanding. Claimant estimated the hours he spent working on Rob's cabin and multiplied those hours by $20, an hourly rate he felt was fair. He also tallied JD's hours and multiplied them by $25, even though JD had not asked him to do so. Claimant just felt it would be "unfair" if he got paid and JD did not. JD testified he had not expected to be paid for working on Rob's cabin. He felt because of Rob's generosity in providing meals, lodging for some of the time he and Claimant were in Alaska, and use of his boat, helping Rob on his personal projects would be the "nice thing to do." Johnson depo. p. 22. *See also* Tr. pp. 235, 243, 244.

34. Claimant presented his tallies to Rob, who then gave Claimant a check for $500. JD also got a check.[3]

35. Claimant left Alaska on August 16, 2023, as was his original schedule. He declined the suggestion that he return to Idaho earlier due to his injuries. He primarily rested and recuperated while waiting for his flight back to the states, although he was able to go fishing and, according to JD, caught a thirty-pound halibut.

36. At some point after returning to Idaho, Claimant received a check in the sum of $10,000 from Delayne for labor on the Calder mine job.

DISCUSSION AND FURTHER FINDINGS

37. There are a number of issues for resolution, the first being a question of jurisdiction. Claimant cites to three Idaho statutes in arguing for jurisdiction – Idaho Code §§ 72-217, 72-220, and 72-221. Claimant carries the burden of proving Idaho's Industrial Commission has jurisdiction over this case.

Jurisdiction

38. Idaho Code § 72-217, as applied to these fact, provides extraterritorial coverage for an injury which occurs outside Idaho that would be compensable had it occurred in Idaho *and* one of the four following conditions are met: (1) the *claimant's* employment is "principally localized" in Idaho; (2) the contract for hire was made in Idaho and the work was not "principally localized" in any state; (3) the contract for hire was made in Idaho for work "principally localized" in another

[3] Rob testified it was his intention even before Claimant spoke with him about payment to pay JD and Claimant something for their work because he knew it would take some time for them to get paid for the Calder mine job and they could use some money in the interim.

state, the workers' compensation laws of which are not applicable to employer; or (4) the contract for hire was made in Idaho and the claimant works outside the United States and Canada.

39. Only subsection (3) of Idaho Code § 72-217 is arguably applicable in this case, as, contrary to Claimant's argument, *Claimant's work* was principally localized (in reality exclusively localized) in Alaska. [4] Assuming *arguendo* Claimant was employed by DDK Construction, his employment was done "principally" in Alaska, thus potentially triggering subsection (3), provided Alaska's worker's compensation laws were not applicable to Claimant's employer. To answer the question of whether Alaska's worker's compensation laws were or were not applicable to DDK in this situation, one must first consider Idaho Code § 72-221 prior to making a determination on the applicability of Idaho Code § 72-217(3).

40. Idaho Code § 72-221, entitled **Coverage for injuries or occupational diseases outside state presumed** provides that if an employer hires a worker in Idaho to work outside of Idaho, the employer and worker may agree that Idaho's worker's compensation statutes provide exclusive remedies for any injuries occurring outside of the state *and* arising out of and in the course of such employment. Furthermore, all contracts of hire made in Idaho are presumed to include such an agreement. As such, unless the employer and employee specifically agree *not* to rely on Idaho's worker's compensation statutes as the exclusive source for the employee's remedies for injuries arising out of and in the course of such employment, by default Idaho's worker's compensation statutes do provide the exclusive remedies for such injuries.

[4] There was no evidence Claimant's employment with DDK Construction was ever intended to continue beyond the completion of the Calder mine job and Claimant's return to Idaho, and in fact it did not.

41. If Idaho law, by default, is the exclusive source of remedies available to Claimant for any injuries arising out of and in the course of his employment with DDK, Alaska worker's compensation laws cannot be applicable. [5] If Claimant was an employee of DDK, Idaho Code § 72-217 (3) would provide the Idaho Industrial Commission with jurisdiction for any injuries suffered by Claimant which arose out of and in the course of his employment with DDK Construction (or its alter ego, the Keiths) while he was so employed. This in turn raises two questions which must be answered herein – was Claimant an employee of Keiths/DDK, and, if so, did his injury arise out of and in the course of his employment with Keiths/DDK? Only when these issues are decided can the jurisdiction question be resolved.

Credibility of Parties and Witnesses

42. For the most part all parties and witnesses appeared to be credible from an observational viewpoint at hearing. Likewise, from a substantive viewpoint, when reviewing their deposition testimony in relation to their hearing testimony no serious questions of credibility were apparent. When Claimant was responding to open-ended questions, his responses were credible. When his answers were ones where he merely agreed with suggestive questioning from his attorney, Claimant's credibility lessened somewhat, as it was at times inconsistent with his other testimony and the weight of the evidence. Less weight is placed on Claimant's "going along" responses when they were in conflict with other testimony, either from him or other parties. The same is true for any witness supplying testimony herein; direct examination (as opposed to cross examination) questions which "put words in the witness's mouth" are not weighted as heavily as responses to open-ended questions when there is an evidentiary conflict

[5] For a detailed analysis of the interplay of Idaho Code § 72-217 and Idaho Code § 72-221, see *Criddle v. Yount Enterprises,* IIC 2015-032646 (Feb. 25, 2022).

between the two types of responses. Additionally, inferences argued from facts which are contrary to the weight of the evidence are likewise given no weight.[6]

Claimant's Employment Status

43. Delayne formed DDK Construction in order to bid on the Calder mine job. In her application she listed the fact that she had two employees. DDK was awarded the bid by Columbia River Carbonates, owner of the Calder mine. DDK was responsible for constructing the buildings covered by the bid. DDK hired JD and Claimant to work on the Calder mine job. DDK received payment from Columbia River Carbonates after the work envisioned under the contract was completed. Claimant was paid the sum of $10,000 once DDK Construction cashed the check from Columbia River Carbonates.

44. Under Idaho law, an employer is one who "expressly or impliedly hired or contracted the services of another." Idaho Code § 72-102(13)(a). An employee is one who "entered into the employment of, or who works under a contract of service … with an employer." Idaho Code § 72-102(12).

45. Nothing about this arrangement suggests anything other than the reality that Claimant was an employee of DDK Construction, hired to assist in constructing the buildings at the Calder mine on behalf of DDK. DDK at a minimum impliedly hired Claimant to work on the Calder mine job. The work opportunity was offered to Claimant and he accepted, thus forming an employment contract.

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[6] Two brief examples are the argued inference by Claimant that there was a *quid pro quo* in place, whereby Rob expected assistance on his cabin in exchange for food, lodging, etc. The testimony makes such an inference unreasonable. Also, at one point in 2023 prior to Claimant arriving in Alaska, Delayne sent Rob a text wherein she mentioned the "boys" (Claimant and JD) could help Rob with his tasks. Rob testified he did not recall what tasks were contemplated in the text; it could have been his house or his boat he was working on. Delayne testified under oath the "tasks" referred to involved Rob's boat, which he was working on at the time of the text. The inference that "tasks" meant it was prearranged that Claimant would work on Rob's cabin is not supported by the record.

46. Defendants argue that Delayne "created" DDK Construction "as a means to help her grandsons get started in the construction industry" and she never intended to operate DDK Construction as a for-profit company. While that may be true, Defendants cite to no authority to support the notion that a business formed for a one-time project, or for altruistic reasons, is immune from the requirements of Idaho's worker's compensation statutes.

47. Claimant wants to have the Commission find that he was an employee of the Keiths *for any and all work* Claimant undertook in Alaska, including the "lodge job" which he argues morphed into the "work on Rob's cabin job", and finally the "Calder mine job." This characterization does not find support in the weight of the evidence when the record as a whole is studied. Instead, it relies on snippets of facts and tortured inferences from those facts.

48. Even though Delayne was instrumental in lining up work for her grandson, and by extension, Claimant, the fact remains that Randy was originally going to (or did) hire the two to complete his lodge project, but he died, and with him died the lodge project. But for the Calder mine project, there is nothing in the record to support the idea that Claimant would have gone to Alaska to work on any projects in 2023. There is no evidence to suggest Rob was specifically going to hire Claimant and JD (or DDK) to come to Alaska to work on his hobby projects.

49. Claimant has attempted to paint a scenario wherein he was "hired in Idaho to perform work in Alaska, under one continuous contract for hire, with modifications along the way." Cl. Opening Brief, p. 1. The employer for this "continuous contract for hire" was Delayne and Dennis Keith, (predominately Delayne), who supposedly hired Claimant in February to "work in Alaska." The scope of the work was "modified," but supposedly the Keiths, along with co-defendant Rob McKinnon, hired Claimant as a "travelling employee" bound for Alaska to do whatever work he was told to do by his employer(s). To summarize

Claimant's theory, he was hired by the Keiths "as an employee to travel to Alaska and be an available construction laborer." Cl. Opening Brief, p. 2.

50. This portrait is inaccurate. The Keiths did not hire Claimant to go to Alaska as their employee for the summer such that any work he did there was within the course and scope of his employment. Initially, Randy hired Claimant and JD to construct his fourplex. That job fell through. Then, DDK Construction, which clearly is an alter-ego of Delayne and Dennis Keith, hired Claimant and JD to work on the Calder mine job once DDK was awarded the contract.

51. The record does not support the determination that Claimant was an employee of the Keiths and/or DDK Construction while working at or on Rob's personal cabin. Rob did not hire or enter into a contract with the Keiths to provide construction labor for his cabin. He testified convincingly to the contrary in his deposition and at hearing. *See generally*, McKinnon Depo. pp. 34 onward; Tr. pp. 182 – 184, 188, 189, 206 – 220.

52. The weight of the evidence supports the finding that Claimant was an employee of the Keiths, dba DDK Construction, for his employment at Calder mine. The weight of the evidence does not support the idea that Claimant was an employee of the Keiths and/or DDK Construction for any work Claimant performed on Rob's cabin.

53. When the entire record is considered, Claimant has proven by the preponderance of the evidence that he was an employee of Defendants Dennis and Delayne Keith, dba DDK Construction while working on the Calder mine construction project.

Arising Out of and Course and Scope

54. For an injury to be compensable under Idaho's Worker's Compensation Act, it must have been caused by an accident both *arising out of* and *in the course of* any employment covered by the Act. I.C. § 72-102(18)(a) (emphasis added).

55. It is beyond dispute that Claimant suffered injuries to his back, pelvis, and ribs when he fell from a ladder on August 6, 2023, while working on Rob's cabin in Alaska. The issue is whether the injury arose out of and in the course and scope of his employment with DDK Construction.

56. Claimant argues that even if he was not an employee hired by the Keiths and/or DDK Construction specifically to work on Rob's cabin, (and he claims he was, which argument is rejected), he is still subject to Idaho's Worker's Compensation Act because his accident *arose out of* and *in the course of* his employment for DDK Construction. Claimant carries the burden of proving by the weight of the evidence that his fall from the ladder at a time when he was not working for DDK Construction nevertheless arose out of such employment.

57. Claimant attempts to make short work of the first prong of the test, that is whether the accident *arose out of* his employment. He argues there is no dispute that his injuries arose out of his fall from a ladder "during his work trip to Alaska." Cl. Opening Brief, p. 22. However, to make this statement true, one must accept the argument that Claimant was hired to go to Alaska and work – end of story. That argument is rejected, as set out above.

58. "Arising out of" refers to the injury's origin and cause. For an injury to "arise out of" employment, the injury must be proximately caused by the employment. An injury arises out of employment when there is a causal connection between the conditions under which the work is required to be performed and the resulting injury. *Kessler v. Payette County*, 129 Idaho 855, 860, 934 P.2d 28, 33 (1997). Determining if the accident arose in the course of employment is a question of fact for the Commission to decide. *Kessler*, 129 Idaho 855, 859, 934 P.2d 28, 32 (1997).

59. While there is a causal connection between the injury and Claimant's presence in Alaska on the date of the injury, there is no connection between "the conditions under which his work was required to be performed" and his injury. He was not required to perform any work on Rob's cabin, had no contract for hire with him, and was on the ladder because he took it upon himself to perform the ladder work. He was getting "cabin-feverish" just "sitting around" while waiting to go fishing so he figured he would use the slack time to help Rob by installing roof panels. He was not directed by either of the Keiths, or Rob, or JD, and it was not a project for which he was hired to complete. He simply volunteered to do the work.

60. Finding that Claimant's injury did not arise out of his employment precludes Claimant's argument that he suffered an accident arising out of and in the course of his employment. However, because Claimant places such great weight on the Commission's holding in *Ransom v. Atlas Bar, LLC,* IIC 2019-009638 (June 5, 2020), which discusses the second prong, or "in the course and scope of" employment, a brief discussion is warranted.

61. First, while IIC cases are persuasive, they certainly do not carry the weight of an Idaho Supreme Court decision. Secondly, whatever broad brush strokes the Commissioners painted with in *Ransom,* the facts in that case are far different than those found in the instant case. This is not a case where Claimant, while engaged in the work for which he was hired, momentarily left his place of work for a "knee jerk" response to a quickly developing situation. Instead, this is a case where Claimant, at the time of his injury, had finished, some two days previously, the construction project for which he was hired, and on that day was waiting at a rental cabin for others to get ready so they could go fishing. Ransom's brief departure from his work site while performing his regularly scheduled job is simply not comparable. Even if the broad language of *Ransom* is accepted as Idaho law, the Claimant's argument still fails.

62. In listing factors to consider when determining if any given conduct which does not in any way benefit the employer can still be considered to be "in the course of employment," the final factor listed in *Ransom* is whether the activity is "an inherent part of the condition of that employment." Claimant deciding to take it upon himself to install roof panels while killing time before going fishing is not, to any reasonable thought process, an "inherent part" of his employment, which was to build buildings at Calder mine, an hour drive from the place of his accident, and a contracted job which had concluded two days prior to the accident.[7]

63. At page 23 of his opening brief, Claimant cites to a quote from *Ransom,* which in turn cites to another IIC case from 1991, which considers the concept of "reasonableness," which the Commission ruled overrides "mechanical rules." The decision lists factors of "reasonableness." Therein, the concluding line of that quote states the employee's activity "must not be so personal that it cannot be said to have arisen out of and in the course of employment."

64. The facts of the instant case clearly establish Claimant's activities leading up to and culminating in his injuries were just that – so personal that it cannot be said to have arisen out of and in the course of employment.

65. There was no requirement for him to install the panels, either express or implied. Installing the panels was not a condition of his employment with DDK, nor was he assigned to do so. There was no timeframe for him to begin or conclude any work done on Rob's property,

[7] At several points in his arguments, Claimant emphasizes the fact that the Keiths and JD returned to the job site the day following his accident to clean up and make sure the tools were put back in the proper place. He uses this fact to support his claim the Calder mine job was ongoing when he suffered his injuries. Standing in contrast to this assertion is considerable testimony from Delayne, JD, and even Claimant himself that the Calder mine job finished up prior to Claimant's accident, and he was in Alaska on the day of the accident and for the week or so thereafter to fish, vacation, sightsee, and relax. *See, e.g.* Tr. p. 71, JE 16.

including panel installation. There was no *quid pro quo* arrangement with Rob, contrary to Claimant's argument. Claimant was not expected to work in any capacity for Rob in exchange for room, board, and use of Rob's boat and vehicle. There is nothing in the record to suggest that if Claimant had chosen not to work in any capacity on Rob's property he would not have been fed, and would not have been able to stay in Rob's dwellings prior to commencing the mine job. In reality, Claimant was bored, and being a young person with skills and abilities which he felt made him well suited to the task of putting on roof panels, he, of his own accord, decided to do so. It was personal to him, not any type of responsibility mandated, suggested, or implied by his employment with DDK Construction.

66. When the record as a whole is considered, Claimant has failed to prove by the preponderance of the evidence that he suffered an injury arising out of and in the course of his employment with DDK Construction and/or the Keiths.

Travelling Employee

67. Claimant argues that he was a travelling employee of DDK Construction and therefore was covered "portal to portal" for the entire time he was in Alaska. The only exception to this coverage, argues Claimant, is when he was engaged in a purely personal activity with "no nexus to the incidents of the employment," citing to *Ridgway v. Combined Ins. Companies of America,* 98 Idaho 410, 412, 565 P.2d 1367, 1369 (1977).

68. While the term "no nexus to the incidents of the employment" is not used in *Ridgeway*, the Supreme Court does discuss when a travelling employee might not be entitled to "portal to portal" coverage while away from home on work. The *Ridgeway* Court noted that a travelling employee who is injured while engaged in a non-business related activity, (examples of which include skiing or scuba diving, and are derived from cases from Colorado

and California, respectively), which is a distinct departure from his employment duties and which constitutes a personal errand unrelated to employment, may lose entitlement to benefits under the doctrine.

69. However, before Claimant can argue he was not on a personal errand unrelated to his employment with DDK Construction at the time he was injured, he must first establish he was a travelling employee. In support of the proposition, Claimant cites *Andrews v. Les Bois Masonry,* 127 Idaho 65, 896 P.2d 973 (1995). Therein, the Court issued the following restatement: "When an employee's work requires the employee to travel away from the employer's place of business or the employee's normal place of work, the employee will be held to be within the course and scope of employment continuously during the trip, except when a distinct departure for personal business occurs." 127 Idaho at 67.

70. Claimant argues he was required to travel away from DDK's place of business, whether that place of business was a garage in Alaska (the address used in the Calder mine application), or their home address in Idaho (where the Calder mine check was mailed and where the dba application listed). He further argues that even if "place of business" does not mean mailing address, DDK's true place of business was the Calder mine (the only place DDK Construction actually performed work), Claimant was required to travel to and from Rob's property to the mine while the construction project was ongoing (as he claims it was at the time of his accident).

71. Claimant's arguments fail for at least two reasons. First, he was not a travelling employee. Similarly to the claimant in *Andrews*, whom the Supreme Court found was not a travelling employee, Claimant was hired in Idaho to work at a remote site, namely the Calder mine in Alaska. He was not required, under his contract of hire, to work elsewhere,

and DDK's place of business was likewise the Calder mine site, the only place DDK did business. While he did on the weekends commute from his job site to a rental cabin an hour's drive from the Calder mine, commuting does not a travelling employee make. Claimant had no employment responsibilities apart from the Calder mine, and DDK did not require him to travel between what Claimant wants to call the "cabin project" and the "mine project." Such description distorts reality.

72. Second, once the Calder mine was finished, Claimant had no further employment with DDK Construction. DDK did not send Claimant to other projects on its behalf as a DDK employee. He simply was not a travelling employee.

73. Even if somehow Claimant's travel between the Calder mine and Rob's property (or the rental cabin on the adjacent lot) could be construed to confer a travelling employee status on Claimant, his injury occurred while he was on personal business. DDK had no financial interest in Claimant installing roof panels on Rob's patio roof. DDK did not instruct Claimant to do that work, nor was it incidental to Claimant's employment with DDK. Under the holding in *Andrews*, Claimant was on a "distinct departure for personal business" when the accident occurred.[8]

74. When the totality of the record is considered, Claimant has failed to prove by the preponderance of the evidence that he was a travelling employee, subject to coverage at the time of his accident.

75. If the Keiths/DDK Construction are not liable for Claimant's injuries, Claimant argues Rob McKinnon should be, either as a statutory employer or as a direct employer.

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[8] Calling the installation of roof panels a "distinct departure" from Claimant's work duties is probably somewhat inaccurate. There was no departure from his work duties since those duties concluded two days prior to his accident. In any event, Claimant was not "on the clock" for DDK and instead was on his own personal time doing a personal activity when he fell from the ladder.

Statutory Employment

76. As noted by Claimant, an employer is "any person who has expressly or impliedly hired or contracted the services of another…." The term includes "the owner or lessee of premises, or other person who is virtually the proprietor or operator of the business there carried on, but who, by reason of there being an independent contractor or for any other reason, is not the direct employer of the workers there employed." I.C. § 72-102(12)(a).

77. Statutory employers are "liable for compensation to an employee of a contractor or subcontractor under him who has not" secured worker's compensation insurance "in any case where such employer would have been liable for compensation if such employee had been working directly for such employer." I.C. § 72-216(1).

78. While Claimant discusses the evolution of what it means to be a statutory employer, the inescapable fact remains that to be an employer, or a statutory employer (which is one who, by statute, is also deemed to be an employer – along with the direct employer – for purposes of worker's compensation liability), one must either expressly or impliedly hire the worker or contract for their services.

79. For Rob McKinnon to be a statutory employer of Claimant, he must have contracted with DDK as a contractor or subcontractor. Claimant attempts to join Rob and Randy at the hip such that when Randy hired Claimant to do a construction job exclusively for Randy, paid for by Randy, and for the benefit of Randy, then Randy's conduct, by virtue of the fact he was a co-owner with Rob of the real estate on which the lodge was to be built, in effect Rob hired Claimant. Furthermore, under Claimant's theory, when Delayne discussed having her grandson and Claimant build the lodge for Randy, with Randy as the employer, the Keiths actually "procured construction labor" for Randy *and Rob*. Then, according to Claimant, when Randy died, (and the lodge

project dissolved) Rob remained "bound to the prior agreement." *See generally,* Cl. Opening brief pp. 28, 29. According to Claimant, Rob, still bound to Randy's agreement, modified the scope of work to limit it to Claimant's work on Rob's "tasks and hobby projects."

80. This entire scenario is contrary to the weight of the evidence once all of the record is examined. It is a creative attempt to create liability but lacks a firm footing in the evidence. Misconstruing testimony, such as the word "tasks," which Delayne used to discuss helping Rob with his boat, and morphing that phrase into working on Rob's cabin, or accusing Rob of a *quid pro quo* when he and Claimant testified in direct opposition to that proposition, are arguments not supported by the record, and contrary to the weight of the evidence.[9] See fn 6. In short, Rob did not contract with the Keiths/DDK for its services in "procuring labor" as the property owner, with DDK acting as the (uninsured) contractor for Rob's so-called "cabin project."

81. When the record as a whole is considered, Claimant has failed to prove by a preponderance of the evidence that Defendant Rob McKinnon was a statutory employer of Claimant.

Independent Contractor or Direct Employee

82. Throughout his briefing Claimant has argued the issues herein were a "close call" and there may be some doubt whether Claimant is entitled to benefits. However, Claimant argues he is entitled to the benefit of such doubt in this "close case," going so far as to coin a phrase for the process of resolving doubt – "the Balance-Tipping Standard." He cites to several cases where doubt was resolved in favor of claimants. In Claimant's opinion, this standard should drive the analysis regarding Claimant's right to benefits.

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[9] *See, e.g. Estate of Weeks v. Onieda County*, 2025 WL 3180471 (Nov. 14, 2025), for an example of how misconstruing terms taken out of context can lead to flawed conclusions.

83. In reality, most of the issues resolved herein were not close cases. The exception is the "independent contractor v. casual employment" issue. It has already been determined Claimant was an employee of DDK Construction for his work on the Calder mine job, and thus he is not an independent contractor *vis a vis* DDK. His relationship with Rob is a different matter.

84. Coverage under Idaho's worker's compensation framework is dependent upon the existence of an employer-employee relationship. *Anderson v. Gailey,* 97 Idaho 820, 555 P. 2d 144 (1976). It is a long-established rule that Claimant bears the burden of establishing the relationship of employee and employer in order to recover benefits. *In Re Black,* 58 Idaho 803, 80 P.2d 24 (1938).

85. An independent contractor is defined as "any person who renders service for a specified recompense for a specified result, under the right to control or actual control of his principal as to the result of his work only and not as to the means by which such result is accomplished." Idaho Code § 72-102 (16).

86. In *Burdick v. Thornton,* 109 Idaho 869, 872, 712 P.2d 570, 572 (1985), the Idaho Supreme Court held the determination of whether the injured party is an independent contractor, or an employee, is a factual one, made after consideration of the entirety of the record. The analysis should concentrate on "whether the employer assumes the right to control the time, manner and method of executing the work of the employee, as distinguished from the right merely to require certain definite results in conforming with their agreement." The *Burdick* Court noted four factors "are traditionally used in determining whether a 'right to control' exists, including, (1) direct evidence of the right; (2) payment and method of payment; (3) furnishing major items of equipment; and (4) the right to terminate the employment relationship at will and without liability." In cases

with conflicting evidence, "when doubt exists as to whether an individual is an employee or an independent contractor … the Act must be given a liberal construction in favor of finding the relationship of employer and employee." *Id.* In *Stoica v. Pocol,* 136 Idaho 661, 664, 39 P.3d 601, 604, (2001), the Idaho Supreme Court declared "[t]he Commission must balance each of the elements present to determine the relative weight and importance of each, since none of the [four] elements in itself is controlling."

87. Regarding the right to control the worker, the undisputed evidence establishes the fact that Rob had no right to control Claimant in any material way. Rob did not direct the time of day or hours Claimant could, should, or must work. Rob did not direct the method of construction; rather Claimant and JD put their heads together and came up with the building plan. Claimant brought his expertise to the jobsite. Rob spent his time working on his projects and Claimant and JD did their own work without his guidance. *Cf. Matte v. Bates,* IIC 2024-022682 (Aug 5, 2025). The vast weight of the evidence supports the fact that Rob did not have direct control of Claimant's work activities on his cabin.

88. There was no pre-arranged payment plan between Rob and Claimant. Claimant kept no track of his hours as he worked. No interim payments were provided. In reality, while Rob testified he intended to pay Claimant and JD something to hold them over until the Calder mine job check was delivered, he never intended such payment to be tied to hours worked or job completion. Claimant was the one who initiated the subject of getting paid. JD did not expect to receive any payment. In any event, the lump sum payment (without taxes withheld) at the end of Claimant's stay in Alaska does not support an employee argument and is more in line with an independent contractor.

89. It is beyond dispute Rob furnished all the materials and equipment, other than the personal tool belt type tools Claimant brought with him from Idaho. The materials and equipment were present before Claimant arrived and were not delivered onsite in the expectation that Claimant would be showing up to build the roof, but in any event, Claimant did not supply materials and the majority of his tools.

90. There was no right to terminate, as there was no obligation for Claimant to work. While Rob could always have told Claimant not to work on his house, as could any homeowner, there was no right to terminate as there was no employment relationship. Moreover, there was no obligation on Claimant's part to produce a finished product in exchange for an agreed upon price.

91. The test for determining whether a worker is an employee is "whether the contract gives, or the employer assumes, the right to control the time, manner and method of executing the work, or the employer assumes the right to control the time, manner and method of executing the work, as distinguished from the right merely to require certain definite results." *Livingston* v. *Ireland Bank*, l28 ldaho 66, 69, 910 P.2d 738, 741 (1995).

92. When all factors are considered, the relationship between Claimant and Rob has far more elements of an independent contractor than of employment. What makes this case odd is that some of the major elements of independent contractor, such as an agreed-upon price for a finished product, are missing, thus suggesting the relationship is something even less than

an independent contractor – homeowner relationship. However, the record does not support the argument that Claimant was a direct employee of Defendant Rob McKinnon. [10]

93. When the record as a whole is considered, Claimant has failed to prove he was a direct employee of Defendant Rob McKinnon.

Casual Employment

94. While Defendants argue Claimant was an independent contractor for all work done in Alaska, their "worst-case" scenario is that Claimant performed casual employment for Rob McKinnon.

95. Idaho Code § 72-212 provides that casual employment is not subject to the Worker's Compensation Act.

96. The Idaho Court has defined "casual employment" as employment that is only occasional, or comes at uncertain times, or at irregular intervals, and whose happening cannot be reasonably anticipated as certain or likely to occur or to become necessary. It is employment that arises only occasionally or incidentally and is not part of the usual trade or business of the employer. *Larson v. Bonneville Pac. Servs. Co.*, 117 Idaho 988, 989–90, 793 P.2d 220, 221–22 (1990). *Tuma v. Kosterman,* 106 Idaho 728, 682 P.2d 1275 (1984); *Wachtler v. Calnon,* 90 Idaho 468, 413 P.2d 449 (1966); *Flynn v. Carson,* 42 Idaho 141, 243 P. 818 (1926). The term

[10] While not specifically addressed in briefing, Claimant did list the borrowed servant doctrine as an issue in his request for hearing. Since that is another avenue by which Claimant could be found to be an employee of Rob's, that doctrine is considered. Under the borrowed servant doctrine, the paramount element to consider is that of "right to control," which is missing in this case. *See, e.g. Hill v. E&L Farms,* 123 Idaho 371, 848 P.2d 429 (1993). ([T]he general test is the right to control and direct the activities of the employee, or the power to control the details of the work to be performed and to determine how it shall be done, *** and where the employee comes under the direction and control of the person to whom his services have been furnished, the latter becomes his temporary employer, and liable for compensation.)

"casual" refers to the employment, not the employee. *Stringer v. Robinson,* 314 P.3d 609, 612, 155 Idaho 554, 557 (2013).

97. Defendants point to the record to establish the fact that Claimant's work on the cabin was done at his and JD's discretion, without a work schedule, agreement on pay, and there was no way to predict or anticipate when such work would take place. Such work was certainly limited to Claimant's spare time while he was in Alaska, and there is nothing in the record to establish the idea that Claimant would be returning to Alaska at some reasonably anticipated date to continue such work.

98. Claimant argues against the casual employment defense based on his interpretation of the relationship between the Keiths and Rob (and Randy). He claims his "employment" with Rob was the end result of "five months of planning by the Keiths, Rhodes, and McKinnon – whose usual business and trade was in construction." Cl. Opening brief, p. 27.

99. The facts of this case point toward the finding that Claimant was an independent contractor *vis a vis* Rob, for the reasons set out above. Assuming *arguendo* there was *any* employment relationship between Rob and Claimant, that relationship was one of casual employment. The notion that Rob, the Keiths, and for a time Randy, planned for Claimant to come to Alaska to ultimately work for Rob as hired construction labor is rejected. If there was any employee-employer relationship between Claimant and Rob, it was at most casual employment as defined by Idaho case law. The fact that Rob, prior to his retirement, held a handyman contractor's license in Alaska (with a monetary limit of projects not to exceed $10,000, and which would not include construction of a cabin) does not change the analysis.

100. Regardless of whether Claimant was an independent contractor or a worker under a casual employment arrangement with Rob makes no difference to the outcome of this case.

Under either scenario Claimant is not entitled to worker's compensation benefits for his accident in question.[11]

101. When the entirety of the record is examined, Claimant has failed to prove by a preponderance of the evidence that he was an employee, as opposed to an independent contractor, of Rob McKinnon in any capacity other than, at most, casual employment.

Jurisdiction Revisited

102. As noted at the outset of this decision, in order to determine whether Idaho has jurisdiction over this case, and/or the scope of such jurisdiction, it must first be determined if Claimant was an employee of Keiths/DDK, and, if so, whether his injury arose out of and in the course of his employment with Keiths/DDK.

103. In order to make the factual determinations and reach the legal conclusions contained herein, the Idaho Industrial Commission had to assume jurisdiction of the matter. When doing so, it determined Claimant's injuries did not arise out of and in the course of employment with Defendants DDK Construction and/or the Keiths, in spite of Claimant's arguments to the contrary. Making that determination did not divest the Commission of jurisdiction; to rule otherwise would create an impossible "catch 22" situation.

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[11] A strong argument could be made that Claimant's relationship with DDK Construction/Keiths was also one of casual employment. He was hired by DDK/Keiths for a single project, with no anticipation he would work for them again after the Calder mine project. The Keiths had for years been retired from general construction, dabbling only in small projects on occasion within the timeframes relevant to the case herein. They were not, during the timeframes in question, in the business of hiring out for construction projects. DDK Construction was formed for the Calder mine project alone, at least as it involved the Keiths. (Delayne was hopeful one or more of her grandsons would assume the business and make it a viable business entity, which apparently did not happen as of the time of hearing.) However, it is not necessary to reach a determination on whether or not Claimant's employment in Alaska constituted casual employment as it applies to the Keiths/DDK Construction, and the undersigned will not decide that issue herein.

104. The other issue is whether the Idaho Industrial Commission had jurisdiction over the work relationship with Defendant Rob McKinnon. While Claimant argued the contract for hire between himself and Rob was made in Idaho (through Delayne), the Commission ruled such contract did not exist – Rob did not contract with Claimant in Idaho, and Claimant's "employment" with Rob was not principally localized in Idaho. Any contract between Rob and Claimant was formed in Alaska, and the work was exclusively localized in Alaska. Again, this was a contested issue, thus giving rise to the Idaho Industrial Commission's right to exercise its jurisdiction over this matter. Idaho's determination that Claimant did not prove that he was an employee of Defendant McKinnon does not strip the Idaho Industrial Commission of jurisdiction.

105. When the totality of the record is considered, Claimant has proven by a preponderance of the evidence that the Idaho Industrial Commission had jurisdiction to decide the issues presented herein.

Idaho Code § 72-210 Penalties

106. Idaho Code § 72-210 provides a penalty for uninsured employers in the sum of 10% of the compensation recovered, together with costs, and attorney fees. In this case, Claimant failed to secure any compensation, and so the 10% penalty would not apply, or if applied would equal 10% of zero, which is zero. Furthermore, by failing to prove an entitlement to benefits, Claimant may not claim attorney fees. *Salinas v. Bridgeview Estates,* 162 Idaho 91, 394 P.3d 793 (2017).

107. When the record as a whole is considered, Claimant has failed to prove by a preponderance of the evidence that he is entitled to any of the penalties set forth in Idaho Code § 72-210.

CONCLUSIONS OF LAW

1. When the totality of the record is considered, Claimant has proven by a preponderance of the evidence that the Idaho Industrial Commission had jurisdiction to decide the issues presented herein.

2. When the totality of the record is considered, Claimant has proven by a preponderance of the evidence that he was an employee of Defendants Dennis and Delayne Keith, dba DDK Construction while working on the Calder mine construction project.

3. When the totality of the record is considered, Claimant has failed to prove by a preponderance of the evidence that he suffered an injury arising out of and in the course of his employment with the Keiths dba DDK Construction.

4. When the totality of the record is considered, Claimant has failed to prove by a preponderance of the evidence that he was a travelling employee, subject to coverage at the time of his accident.

5. When the totality of the record is considered, Claimant has failed to prove by a preponderance of the evidence that Defendant Rob McKinnon was a statutory employer of Claimant.

6. When the totality of the record is considered, Claimant has failed to prove by a preponderance of the evidence that he was a direct employee of Defendant Rob McKinnon.

7. When the totality of the record is considered, Claimant has failed to prove by a preponderance of the evidence that he was an employee, as opposed to an independent contractor, of Rob McKinnon in any capacity other than, at most, casual employment, for which no worker's compensation benefits are available to Claimant.

8. When the totality of the record is considered, Claimant has failed to prove by a preponderance of the evidence that he is entitled to any of the penalties set forth in Idaho Code § 72-210.

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 23rd day of December, 2025.

INDUSTRIAL COMMISSION

Brian Harper

Brian Harper, Referee

AMENDED CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of January, 2026, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by email transmission upon each of the following:

SEAN WILSON
sean@idahoinjurylawcenter.com

JASON THOMPSON
jason@thompsonlawboise.com

Jennifer S. Komperud

jsk

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

THOMAS CRAWFORD, Claimant, v. DENNIS AND DELAYNE KEITH, d.b.a. DDK CONSTRUCTION, Employer, and ROBERT MCKINNON JR, Statutory Employer, Defendants.	**IC 2024-007597** **ORDER** Filed January 29, 2026 Idaho Industrial Commission

Pursuant to Idaho Code § 72-717, Referee Brian Harper submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusions of law, to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendation of the Referee. The Commission concurs with this recommendation.

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,

IT IS HEREBY ORDERED that:

1. When the totality of the record is considered, Claimant has proven by a preponderance of the evidence that the Idaho Industrial Commission had jurisdiction to decide the issues presented herein.

2. When the totality of the record is considered, Claimant has proven by a preponderance of the evidence that he was an employee of Defendants Dennis and Delayne Keith, dba DDK Construction while working on the Calder mine construction project.

3. When the totality of the record is considered, Claimant has failed to prove by a preponderance of the evidence that he suffered an injury arising out of and in the course of his employment with the Keiths dba DDK Construction.

4. When the totality of the record is considered, Claimant has failed to prove by a preponderance of the evidence that he was a travelling employee, subject to coverage at the time of his accident.

5. When the totality of the record is considered, Claimant has failed to prove by a preponderance of the evidence that Defendant Rob McKinnon was a statutory employer of Claimant.

6. When the totality of the record is considered, Claimant has failed to prove by a preponderance of the evidence that he was a direct employee of Defendant Rob McKinnon.

7. When the totality of the record is considered, Claimant has failed to prove by a preponderance of the evidence that he was an employee, as opposed to an independent contractor, of Rob McKinnon in any capacity other than, at most, casual employment, for which no worker's compensation benefits are available to Claimant.

8. When the totality of the record is considered, Claimant has failed to prove by a preponderance of the evidence that he is entitled to any of the penalties set forth in Idaho Code § 72-210.

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

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IT IS SO ORDERED.

DATED this 29th day of January, 2026.

INDUSTRIAL COMMISSION

Claire Sharp

Claire Sharp, Chair

Aaron White, Commissioner

ATTEST:

Mary McMenomey

Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of January, 2026, a true and correct copy of the foregoing **ORDER** was served by email transmission upon each of the following:

SEAN WILSON
sean@idahoinjurylawcenter.com

JASON THOMPSON
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Jennifer S. Komperud

jsk