

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

KENNETH FULLER,

Claimant,

v.

BUGLE CONSTRUCTION JMJ, LLC,

Un-insured Employer,

Defendant.

IC 2022-004662

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

Filed
April 9, 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 hearing in Coeur d'Alene, Idaho, on January 26, 2026. Claimant represented himself *pro se*. No one was present on behalf of Employer. Oral and documentary evidence was admitted. The Claimant waived post-hearing briefing. The matter came under advisement on February 13, 2026.

ISSUES

The issues to be decided are:

1. Whether Claimant was an employee of Employer at the time of the accident, or an independent contractor;
2. Whether and to what extent Claimant is entitled to;
 - a. medical care benefits pursuant to Idaho Code § 72-432;
 - b. Temporary disability benefits, full or partial; and
 - c. Permanent partial disability, up to and including total disability under the odd lot doctrine; and
3. Whether Employer is liable to Claimant for the penalties set forth in Idaho Code § 72-210 for failing to insure liability.

CLAIMANT'S CONTENTIONS

Claimant was injured while in the course and scope of his employment with Employer when a nail penetrated his right hand. Subsequently, his index finger on his right hand became infected from the nail, and he required surgery and physical therapy, with related expenses. Claimant was an employee at the time of the injury, and was fired not long after the surgery. Employer failed to secure worker's compensation insurance, and further failed to pay any medical expenses associated with Claimant's industrial accident. Claimant is entitled to reimbursement for his medical expenses. Claimant has a permanent partial disability because he cannot bend his right index finger, which impacts his ability to perform construction activities. Employer is subject to the penalties prescribed by Idaho Code § 72-210 for failing to maintain worker's compensation insurance to cover this accident.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. Claimant's testimony, and the testimony of witness Haley Fuller, taken at hearing;
2. Claimant's Exhibits (CE) 1, consisting of 22 pages, admitted at hearing.¹

FINDINGS OF FACT

Background Information

3. On or about January 21, 2022², while framing a house under construction in the course and scope of his employment with Employer, Claimant's right hand was pierced

¹ At hearing, Claimant waived his right to brief the issues; furthermore, he waived closing oral argument.

² Claimant was not sure of the exact date of his industrial accident when testifying at hearing, although he thought it was around January 21, 2022, as noted on his complaint. Medical records suggest the accident may have occurred on January 20, 2022. This discrepancy is not significant to the decision.

with a nail from a nail gun. He removed the nail from his hand and continued working. He did not immediately seek treatment for the wound.

4. Within a few days of the accident, Claimant noticed his first three fingers on his right hand were going numb and his index finger swelled up due to infection. Claimant went to a “quick care” facility where he was given antibiotics.

5. The infection continued to progress. Claimant underwent an incision and drainage surgery on his right index finger. Subsequent medical records indicate Claimant complained of deficits in his right hand after surgery, including the inability to fully extend his right index finger, and nerve damage. He underwent occupational therapy (OT) in an attempt to increase the functionality of his right index finger.

6. Medical records from April 4, 2022 note that Claimant still was not at MMI and had limitations in his ability to function. His treating physician recommended light duty work, but opined Claimant would not be able to return to “full duties in construction.” He restricted Claimant from using vibrating and/or power tools. He was also limited in doing jobs which required forceful grip or pinching.

7. On August 3, 2022, Patrick Mullen, M.D., reported Claimant had four more weekly OT sessions remaining, and thereafter would be at MMI.

8. Claimant and witness Haley Fuller, Claimant’s wife, both testified that Claimant had permanent limitations with his right hand, most notably with his index finger.

9. Claimant has been able to find work since he reached MMI, and other than seasonal layoffs, typical of concrete contractors, Claimant has been fully employed, or at times self-employed.

10. Claimant is left with limitations in his right index finger which make tasks such as holding or using many hand tools, or running a circular saw or nail gun difficult. His finger does not extend properly. His time-of-hearing job is supervisory, and he is able to perform all necessary tasks of that position.

DISCUSSION AND FURTHER FINDINGS

Employee or Independent Contractor

11. Idaho Code § 72-102(12) defines 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.” 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).

12. 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. *See, e.g. Burdick v. Thornton*, 109 Idaho 869, 712 P.2d 570, (1985).

13. Claimant began his work relationship with Employer as a framing subcontractor. Claimant was self-employed at that time.

14. About a month prior to his industrial accident, Claimant became an employee of Employer in charge of framing. He believed he filled out a W-4 form at that time. Claimant testified that he signed a written contract. He worked set hours, which were set

by Employer. He had set days of the week in which he was expected to work. He was not allowed to set his own hours or tasks. Claimant was paid per hour, with a percentage bonus based on the profit made on each house. As he testified, Employer was “his boss.”

15. Claimant was told which houses he would be working on and when. Employer provided all materials and tools.

16. When the totality of the record is considered, Claimant has established by the weight of the evidence that he was an employee of Employer on the date of his industrial accident.

Medical Benefits

17. Idaho Code § 72-432(1) mandates that an employer shall provide for an injured employee such reasonable medical, surgical or other attendance or treatment as may be reasonably required by the employee's physician or needed immediately after an injury and for a reasonable time thereafter. If the employer fails to provide the same, the injured employee may do so at the expense of the employer.

18. Claimant testified his medical expenses exceeded \$5,000 and he asked for medical benefits in the sum of \$5,000. There were no medical bills submitted as part of his exhibits. He testified Medicaid paid his medical expenses and has a lien for its payments made on Claimant's behalf.

19. Typically, a claimant submits the bills incurred and if the employer is found responsible for payment of medical expenses, those charges are reimbursed to the claimant at full invoice value. Here, there are no medical bills submitted, and Claimant has asked for a set dollar amount, which he and his wife testified is less than the total medical expenses incurred due to his industrial accident.

20. The only option is to either award Claimant the dollar amount he seeks for his medical care, which amount is likely much less than he incurred, or to deny his medical care benefits due to a lack of proof as to their total.

21. Claimant testified convincingly that he incurred at least \$5,000 in medical expenses in treatment of his industrial injury. The medical records produced, while scant, discuss treatment modalities which included pre-surgery medical conservative treatment, what one physician labelled “extensive surgery” on Claimant’s right hand, and post-surgical occupational therapy over a period of months. It is highly unlikely that all of that medical and related care Claimant incurred would total less than \$5,000. More likely than not, his bills far exceeded that amount, although there was no record made to support that speculation.

22. When the totality of the record is considered, Claimant has proven his right to medical benefits in the sum of \$5,000.

Temporary Disability Benefits

23. Injured workers are entitled to disability benefits “during their period of recovery.” I.C. §§ 72–408, 72–423; *Hernandez v. Phillips*, 141 Idaho 779, 118 P.3d 111 (2005). The Idaho Supreme Court has found that this period “ends when the worker is medically stable.” *Hernandez*, 141 Idaho at 781, 118 P.3d at 113, citing *Jarvis v. Rexburg Nursing Ctr.*, 136 Idaho 579, 586, 38 P.3d 617, 624 (2001), noting that “medical stability” is synonymous with “maximum medical improvement”.

24. Claimant was injured on January 21, 2022. He was off work from January 24, 2022, until he was declared at MMI as of September 1, 2022. However, Claimant was not off work exclusively as a result of his work injury for all of the time between the accident

and reaching MMI. For two of those months, Claimant was in rehab for an opiate addiction which does not appear to be related to his work accident. As such, Claimant's claim for temporary disability (TTD) must account for the two-month hiatus from therapy, which delayed Claimant's recovery, as noted by Dr. Mullen. CE, p. 9. While it is impossible to know if Claimant's MMI date would have been exactly two months earlier but for his stint in rehab, it would be speculative to assume it would not. Therefore, when calculating Claimant's temporary disability benefits, that two-month period must be taken into account.

25. Claimant was released to light duty tasks as of April 4, 2022. However, the record is silent on whether Claimant was offered light duty work by Employer. Under Idaho law, once a claimant establishes by medical evidence that he is within a period of recovery from the industrial accident, he is entitled to TTD benefits *unless* and *until* evidence is presented that he has been medically released for light work and (1) that an employer has made a reasonable and legitimate offer of suitable employment to him or that (2) there is employment available in the general labor market which claimant has a reasonable opportunity of securing, and which is consistent with his physical abilities. *Malueg v. Pierson Enterprises*, 111 Idaho 789, 727 P.2d 1217 (1986).

26. The burden rests with Employer to show it made a reasonable and legitimate offer of suitable employment, or that such work was available to Claimant. Employer failed to do so. As such, Claimant is entitled to temporary disability benefits from January 24, when he was no longer able to work from his industrial accident, until September 1, 2022, with the exception of the two-month period when he was in rehab and not able to progress toward MMI with therapy sessions.

27. Claimant was paid \$30 per hour at the time of his industrial accident, plus bonuses which were based on a percentage of profit Employer made on each house sold. There is nothing in the record to allow the Referee to calculate that percentage bonus. Therefore, when calculating Claimant's temporary disability benefits, the calculation will be made on Claimant's average weekly wage, exclusive of any bonuses which may or may not have been made to him.

28. Claimant's average weekly wage at \$30 per hour over a 40-hour work week would have been, at the time of the accident, \$1200. Therefore, Claimant is entitled to \$804 per week in TTD benefits from January 24, 2022, until September 1, 2022, but subtracting out 60 days from that time period to account for the delay in recovery. At a daily rate, Claimant is entitled to \$114.857143 ($\$804/7$) for 161 days (days from January 24 to September 1, less 60 days delay in reaching MMI), for a total disability benefit in the sum of \$18,492.00.

29. When the totality of the record is considered, Claimant has proven his right to total temporary disability benefits in the sum of \$18,492.00.

Permanent Partial Disability

30. Permanent disability results when the actual or presumed ability to engage in gainful activity is reduced or absent because of permanent impairment and no fundamental or marked change in the future can be reasonably expected. Idaho Code § 72-423. Evaluation (rating) of permanent disability is an appraisal of the injured employee's present and probable future ability to engage in gainful activity as it is affected by the medical factor of impairment and by pertinent nonmedical factors provided in Idaho Code § 72-430. The test for determining whether a claimant has suffered a permanent disability greater than permanent impairment is "whether the physical impairment, taken in conjunction with

nonmedical factors, has reduced the claimant's capacity for gainful employment." *Graybill v. Swift & Company*, 115 Idaho 293, 294, 766 P.2d 763, 764 (1988).

31. Claimant seeks an award for permanent partial disability, although he acknowledged he had no PPI rating from a physician. He testified it was too expensive to obtain one, and he realized without a PPI rating he might not receive benefits for permanent partial disability.

32. In *Urry v. Walker & Fox Masonry Contractors*, 115 Idaho 750, 753, 769 P.2d 1122, 1125 (1989), the Supreme Court noted "there must be impairment for disability to exist." However, that same Court noted it is the job of the Commission, rather than a physician, to ultimately determine impairment. The physician's opinion (or lack of opinion), while helpful, is not determinative.

33. In the present case, Claimant testified to limited use of his right index finger and briefly held his hand up to show his finger to the undersigned. The extent of the limitation is unclear. Medical records admitted into evidence do not include any findings beyond 2022. His finger does not impact his supervisory employment role, as he testified he can do that job without any difficulties related to his right index finger.

34. Without a more detailed examination of Claimant's finger, and more complete medical and occupational therapy records to provide sufficient evidence to allow the undersigned to make a competent evaluation of Claimant's impairment based on substantial evidence and testimony, the Referee is disinclined to assign Claimant an impairment rating on which to base his claim for permanent disability. Without an impairment rating Claimant cannot prove permanent disability.

35. When the totality of the record is considered, Claimant has failed to prove his right to permanent partial disability benefits.

Idaho Code S 72-210 Penalties

36. Idaho Code § 72-210 allows Claimant to collect a statutory penalty equal to 10% of the compensation awarded from an uninsured employer. At the time of Claimant's industrial accident, Employer had failed to insure his liability under the Idaho Workers' Compensation Laws.

37. The record herein establishes workers' compensation benefits owing to Claimant in the sum of \$12,362. The 10% penalty owing pursuant to Idaho Code § 72-210 is \$2,349.20.

CONCLUSIONS OF LAW

1. Claimant has proven he is entitled to reasonable medical benefits for his January 21, 2022 industrial injury in the amount of \$5,000.00.

2. Claimant has proven he is entitled to total temporary disability benefits in the amount of \$18,492.00.

3. Claimant has failed to prove he is entitled to permanent partial disability benefits.

4. Claimant has proven he is entitled to a 10% penalty pursuant to Idaho Code § 72-210 in the amount of \$2,349.20.

5. The total amount of workers' compensation benefits and penalties due and owing to Claimant from Employer is \$25,841.20.

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 30th day of March, 2026.

INDUSTRIAL COMMISSION

Brian Harper
Brian Harper, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of April, 2026, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by email transmission and regular United States Mail upon each of the following:

KENNETH FULLER

[REDACTED]

Jennifer S. Komperud

jsk

cc: BUGLE CONSTRUCTION

[REDACTED]

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KENNETH FULLER,

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ORDER

Filed
April 9, 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. Claimant has proven he is entitled to reasonable medical benefits for his January 21, 2022 industrial injury in the amount of \$5,000.00.
2. Claimant has proven he is entitled to total temporary disability benefits in the amount of \$18,492.00.
3. Claimant has failed to prove he is entitled to permanent partial disability benefits.

4. Claimant has proven he is entitled to a 10% penalty pursuant to Idaho Code § 72-210 in the amount of \$2,349.20.

5. The total amount of workers' compensation benefits and penalties due and owing to Claimant from Employer is \$25,841.20.

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

IT IS SO ORDERED.

DATED this the 9th day of April, 2026.



INDUSTRIAL COMMISSION

Claire Sharp

Claire Sharp, Chair

Aaron White

Aaron White, Commissioner

ATTEST:

Mary McMenomey

Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of April, 2026, a true and correct copy of the foregoing **ORDER** was served by email transmission and regular United States Mail upon each of the following:

KENNETH FULLER

[REDACTED]
[REDACTED]
[REDACTED]

Jennifer S. Komperud

jsk

cc: BUGLE CONSTRUCTION

[REDACTED]
[REDACTED]
[REDACTED]