

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JAMES PRUDHOMME,

Claimant,

v.

HAGEMANN LLC dba HUB BAR & GRILL,

Employer,

and

STATE INSURANCE FUND,

Surety,
Defendants.

IC 2017-015276

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

**FILED
JUNE 28, 2019**

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Alan Taylor, who conducted a hearing in Boise on January 10, 2019. Claimant, James Prudhomme, was present in person and represented by Jason S. Thompson, of Boise. Defendant Employer, Hagemann LLC dba Hub Bar & Grill (the Hub), and Defendant Surety, State Insurance Fund, were represented by Paul J. Augustine, of Boise. JoAnna and Merle Hagemann participated in the hearing via audio-video conferencing. The parties presented oral and documentary evidence. Two post-hearing depositions were taken and briefs were later submitted. The matter came under advisement on March 8, 2019.

ISSUES

The issues to be decided by the Commission as the result of the hearing are:

1. Whether Claimant suffered an injury from an accident arising out of and in the course of employment; and
2. Whether Claimant is entitled to attorney fees.

CONTENTIONS OF THE PARTIES

Claimant alleges he injured his left knee on May 11, 2017, while working at the Hub. He maintains he promptly notified his employer of the accident and injury but was met with hostility and denial. He requests attorney fees for Defendants' alleged failure to adequately investigate his claim resulting in an unsupported denial of benefits and continuing delay in treating his knee injury. Defendants assert Claimant's claim is fabricated, his unwitnessed knee injury occurred at home, and he so declared to several coworkers.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. Joint Exhibits A through R, admitted at the hearing;
3. Testimony of Claimant, Claimant's wife Marlana Prudhomme, and JoAnna Hagemann, taken at hearing; and
4. The post-hearing depositions of Lacey Rice and Cameron Nolan taken by agreement of the parties.¹

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.

¹ The post-hearing depositions of Lacey Rice and Cameron Nolan were referred to at the time of their submission as Joint Exhibits Q and R, respectively. However, inasmuch as Exhibit Q (Defendants' Answers to Claimant's First Set of Interrogatories and Requests for Production of Documents to Defendants) and Exhibit R (Statement of Lacey Rice) were admitted at hearing, the post-hearing depositions of Lacey Rice and Cameron Nolan will be identified herein as Rice Deposition and Nolan Deposition respectively.

FINDINGS OF FACT

1. Claimant was born in 1979 and is right handed. He was 39 years old and had resided in Caldwell for approximately one year at the time of the hearing.

2. **Hagemann's background.** JoAnna Hagemann worked as a CNA for many years. Thereafter she worked in a gas station and was a deputy at a jail for four years in Rock Springs, Wyoming. In July 2016, she moved to Kamiah and in October 2016, JoAnna and her husband Merle became the owners of the Hub.

3. **The Hub.** The Hub is a business located in Kamiah comprised of a restaurant, bar, and bowling alley, owned and operated at all relevant times by JoAnna Hagemann and her husband. Shortly prior to May 2017, two cooks left the Hub and JoAnna had only two cooks remaining on staff—Machell Donaldson and Claimant. Machell was the morning cook and Claimant the evening cook.

4. The Hub has two front entrances—one to the bar and one to the dining room—and one rear entrance from the back alley into the kitchen. In May 2017, the Hub bar and restaurant areas were usually staffed by one or two waitresses, one bar tender, one dishwasher (on busy nights), and one cook. The Hub was equipped with a video surveillance system when JoAnna became the owner. The video surveillance monitors were located in JoAnna's office inside the Hub and the surveillance videotapes were taped over each week. Claimant was aware of the Hub's video surveillance system but unaware the videotapes were periodically taped over.

5. **Claimant's background.** Claimant came to Idaho at the age of three. He lived in Eagle and attended school through the ninth grade. In 1998, he obtained his GED.

6. At the age of 11, Claimant was diagnosed with bipolar disorder and subsequently treated with various prescription medications which he testified were not very effective.

7. In 2004, Claimant was charged with burglary and grand theft, convicted, and incarcerated for approximately one year.

8. In 2006, Claimant moved to Kamiah where he met and married his wife, Marlana. They moved to Boise, then to Lewiston, and ultimately back to Kamiah. Claimant worked as a carpenter, meat cutter at Albertsons, rental clerk at Tates Rents, carpet installer, and tattoo artist. In 2006, he worked at a steakhouse in Lewiston. He later worked at a lumber mill in Kamiah stacking wood, pulling chain, and providing mill security.

9. In approximately 2008, Claimant slipped and fell down the stairs fracturing his right ankle and lower leg. He underwent multiple surgeries, recovered, and returned to working.

10. On September 17, 2013, Claimant was evaluated by Chad Lewis, NP, in Lewiston. At that time Claimant reported he was smoking marijuana daily and was depressed. Exhibit C, p. 78.

11. In October 2013, Claimant received a prescription from Dr. Jayme Mackay, a Washington physician, for use of marijuana in Washington to manage his bipolar disorder. Claimant's testimony and records indicate that thereafter he used marijuana regularly. He testified it proved more effective in managing his bipolar disorder than previous prescription medications which he ceased taking.

12. In March 2016, Claimant began working at the Hub. He was hired as a cook by the prior owner. JoAnna Hagemann and her husband bought the Hub about two months later and took over operations. This was their first experience owning a business. As the evening cook, Claimant cooked, cleaned, organized, and put freight away. His usual shift was from approximately 1:00 until 9:30 p.m.

13. In May 2016, Claimant lacerated his right foot when he kicked a dresser at home. His right foot was sutured in the emergency room and thereafter he recovered without incident.

14. Claimant testified he had no left knee complaints and there are no medical records of any left knee symptoms or treatment prior to May 11, 2017.

15. **Alleged industrial accident and treatment.** On Thursday, May 11, 2017, Claimant worked at the Hub from approximately 1:00 until 9:30 p.m. Claimant alleges that at approximately 9:00 that evening he went to the walk-in cooler at the Hub to move some boxes as requested by the bar tender, Susan Jacobs. He “bent down to pick up those boxes” and felt a pop and immediate pain in his left knee. Transcript, p. 37, ll. 17-18.

16. On May 18, 2017, Claimant presented at the emergency room to Megan Wilson, DNP, reporting left knee pain commencing on May 11, 2017, while moving boxes at work. X-rays showed no acute abnormality and a left knee MRI was recommended. Exhibit B, p. 32.

17. On May 19, 2017, Claimant completed a First Report of Injury alleging an industrial accident and left knee injury on May 11, 2017. JoAnna doubted Claimant’s report and upon the advice of her insurance agent obtained statements from a friend and a number of her employees. Defendants denied the claim.

18. **Condition at the time of hearing.** At the time of hearing, Claimant reported continuing left knee pain, swelling, and weakness. He worked as a self-employed tattoo artist in Caldwell.

DISCUSSION AND FURTHER FINDINGS

19. The provisions of the Idaho Workers’ Compensation Law are to be liberally construed in favor of the employee. Haldiman v. American Fine Foods, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990). The humane purposes which it serves leave no room for narrow, technical

construction. Ogden v. Thompson, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996). Facts, however, need not be construed liberally in favor of the worker when evidence is conflicting. Aldrich v. Lamb-Weston, Inc., 122 Idaho 361, 363, 834 P.2d 878, 880 (1992).

20. **Occurrence of an accident.** The first issue is whether Claimant suffered an accident at work on May 11, 2017. Idaho Code § 72-102(18)(b) defines accident as “an unexpected, undesigned, and unlooked for mishap, or untoward event, connected with the industry in which it occurs, and which can be reasonably located as to time when and place where it occurred, causing an injury.”

21. In the present case, Defendants argue that Claimant’s testimony of an accident at the Hub is fabricated and that his knee injury occurred at home. The May 18, 2017 medical records, Claimant, his wife Marlana Prudhomme, Maden Mcanear, Rebecca Akins, Machell Donaldson, JoAnna Hagemann, Cameron Nolan, Kathy Hescoock, Susan Jacobs, Lacey Rice, and Carrie Roberts have addressed the circumstances surrounding Claimant’s alleged industrial accident. Each of their accounts is considered below.

22. Medical records. On May 18, 2017, Megan Wilson, DNP, examined Claimant and noted a significant limp, left knee swelling with effusion, and a positive grind test. X-ray findings included moderate-sized joint effusion distending the suprapatellar bursa, but no bony abnormality. Ms. Wilson recorded Claimant’s report that on May 11, 2017: “while working at the Hub ... he was moving some boxes. He kind of twisted and felt a pop and suddenly had pain over the medial, anterior and posterior aspects of his left knee. Since that time, the knee has been painful. He states he notified his supervisor the morning of 05/12/2017 of the incident.” Exhibit B, pp. 31-32.

23. Claimant's testimony. Claimant testified in his deposition on September 26, 2018, regarding his alleged accident on May 11, 2017:

It was literally at the end of the night, because we were closing up. Sue the bartender—here's the thing is everything was jumbled because what holds all our sandwich meats, all the vegetables, your line that you're work [sic] on was down, it wasn't being cooled and it was down for like a week. JoAnn didn't have the money to fix it.

....

So everything was in ice buckets and in boxes and stuff in the walk-in. So there was boxes in the walk-in that Sue need [sic] moved because she couldn't get to the beer cooler, so she asked us to move them. I said, "All right, I'll get them."

So I go back there to move them and that's how I hurt my knee. I bent down to move them, all I did was bend down, and I heard pop and felt a pop in my left knee. I stood up instantly, I did not grab the boxes. It hurt, and afterwards it made like a weird noise. I showed the dishwasher, and the waitress was there, but I do not remember who she was. And then I had Cameron go move those boxes because I could not.

....

I said: "Cameron, I just hurt my knee, come here and look at this." And I lifted up my pant leg, showed him, showed everybody. It should all be on camera, there was a camera there.

Exhibit L, pp. 241-242. Cameron Nolan was the dishwasher at the Hub that night.

24. Claimant testified that his limping and difficulties "should all be on camera, and the thing about it is she [JoAnna] doesn't get rid of those recordings because she's had people stealing from there, including a 50-inch flat TV. She's got recordings from years in there."

Exhibit L, p. 244.

25. At hearing, Claimant testified he also showed his knee to Rebecca Akins and Maden Mcanear the night of the accident. In his deposition, Claimant did not mention Rebecca

or Maden seeing his knee the night of the alleged accident. Transcript, p. 93, ll. 1-9. He asserts that he forgot to mention them.²

26. Claimant testified that he first reported his knee injury to JoAnna the next morning, May 12, 2017, at the Hub:

Q. (by Mr. Augustine) When was the first time you told JoAnn that you injured your knee in the cooler?

A. The 12th, that morning, 8:30 I went in the morning and that's when I knew things were fishy because when I told her, she didn't have me fill out a report, she never gave me one, and when I told her, she turned around and went back to working like she almost didn't hear me.

Exhibit L, p. 243.

27. Claimant described working in spite of his knee pain for the next several days at JoAnna's request because she had only two cooks. Finally, on May 18, 2017, Claimant called and told JoAnna that he had sought medical attention for his knee. He testified:

I told her I finally went to the hospital, that my leg, that morning after waking up, I could barely move it. She freaked out on me, yelling, saying she has no workers' comp, what is she going to do for a cook. If I remember correctly, that was the night that the hot rod crew comes in, and they needed a cook like me in there and they didn't have a cook. So she was real upset.

....

I called her on the phone so she would figure something out, and that's when she was yelling at me on the phone. From that point on I had to figure things out, and I had to start to try and file my own thing. That's when the Idaho Industrial Commission said they seen something kind of funny with her and her husband.

....

² Well prior to his deposition, Claimant disclosed Maden Mcanear as a witness who was aware of Claimant's work accident the night it occurred in Claimant's Answers to Interrogatories dated February 15, 2018:

Madden [sic] McAnear is a customer that placed his order to go towards the end of the night on May 11, 2017. When Madden was picking up his order he saw I could barely walk. He felt my knee, heard the cracking and grinding in it and asked me what happened. I told Madden about my industrial injury that happened that day.

Exhibit P, p. 389.

—because I told them the Hub Bar and Grill said they didn't have any insurance and I needed to file something. They couldn't find it either, they said, "you're right." A week later they called me and said no, they found it but it's kind of fishy because she doesn't have it under her name.

Exhibit L, pp. 244-245.

28. Claimant's testimony at hearing was consistent with his deposition. He testified:

I told her I couldn't work. That I was hurt and that's why I had to go see the doctor and, then, she told me she [had] no workmen's comp and I was like what and so she was like, yeah, I have no workmen's comp and, then later on another phone conversation that same day she called me up and said she was going to dispute this clam and said she [had] three other people that were going to write up statements against me and that I was fired for filing a false claim against her.

Transcript, p. 61, ll. 14-22. From the phone conversation Claimant understood he had been fired, although JoAnna disputed ever firing him.

29. Marlana Prudhomme's hearing testimony. Claimant's wife, Marlana Prudhomme, testified at hearing that Claimant had no prior left knee injury, was fine when she dropped him off to work at the Hub about 1:00 p.m. on May 11, 2017, but when she picked him up around 9:30 that same evening he was limping, in pain, and had difficulty getting down the steps from the Hub. Transcript, p. 104. Claimant told her he had hurt his knee at work. She testified that they went to the home of a friend, Rebecca Akins, after work that evening and there looked at Claimant's knee which was noticeably swollen.

30. Marlana also testified she overheard a telephone conversation between Claimant and JoAnna on May 18, 2017, after Claimant's visit to the emergency room for treatment of his knee. She recounted that Claimant and JoAnna "both got angry" and "I heard her on the phone yelling and screaming at my husband, saying that she didn't want him ever to come back onto the property and he didn't—or she didn't ever want him to call or contact her ever again and that

was me [sic] saying that she didn't ever want him there again. Like fired." Transcript, p. 109, ll. 3-8.

31. Marlana's account is consistent with Claimant's testimony.

32. Maden Mcanear's pre-hearing deposition testimony. Claimant deposed Maden Mcanear telephonically on December 17, 2018. He was a friend of Claimant and insofar as the record reveals has never been employed at the Hub. Maden testified he saw Claimant and ordered food at the Hub the evening of May 10, 11 or 12, 2017. He testified that when he returned to the Hub approximately 15 minutes later, around 9:15 pm:

... when I walked back in, I was like, hey James, is my food ready? And he's like yeah. And he's like, well man, I was picking up some boxes in the walk-in, and my knee just popped. And I could notice that he was limping, and he actually asked me, hey, man, can you feel this? And so I got down to his knee, and he flexed it for me, moved it up and down a couple of times, and I could feel a severe popping in it.

Exhibit K, p. 224. Maden testified that Claimant was not limping when Maden ordered his meal but was limping "pretty bad" when he returned to pick up his meal a few minutes later. Maden testified that he only felt Claimant's knee at that time and did not see it until several days later. This is consistent with Claimant's hearing testimony as well.

33. Maden's account is consistent with Claimant's testimony.

34. Rebecca Akins' pre-hearing deposition testimony. Claimant deposed Rebecca Akins telephonically on December 17, 2018. Rebecca worked as a waitress at the Hub in May 2017 and was friends with Claimant, having known him for approximately six years. In contrast to other Hub employees, JoAnna Hagemman never asked Rebecca to write a statement about Claimant's knee injury. When deposed, Rebecca no longer worked at the Hub. She testified she was not assigned to work the evening Claimant allegedly injured his knee; however:

A. James actually did come to my residence the night of the injury. He did show up at my personal residence. I actually do recall taking pictures. He sat there and his knees were really swollen. He had his leg out. We took pictures of the wounds and the swelling, and he had told me about what had happened. But other than that, I mean, like I said, I wasn't present at the time of the actual incident.
....

Q. (by Mr. Thompson) Okay. And based on your recollection, what did he tell you happened?

A. To be quite frank, I can't honestly remember or recall what he had said had happened. I just know that he had come in, and he was talking about how he had hurt himself. And when he picked up his pant leg and was showing me his leg, his knee was very, very, very swollen and probably twice to three times the size of a kneecap should be.
....

Q. Did he tell you that it happened at The Hub?

A. Yes, he did.

Q. Okay. Do you happen to have those photographs that you mentioned still?

A. Unfortunately, I do not. I have actually gone through probably three different cellphones since then, so I've lost a lot of photos.

Exhibit F, p. 150.

35. Rebecca's recollection was obviously incomplete about Claimant's report of his left knee injury other than to affirm he told her the evening of May 11, 2017, that it occurred at the Hub that very evening.

36. Machell Donaldson's pre-hearing deposition testimony. Machell Donaldson was the morning cook at the Hub in May 2017. Claimant deposed Machell on October 26, 2018. She was no longer employed at the Hub at the time of her deposition. JoAnna and Merle Hagemann attended the deposition. Machell indicated she left employment with the Hub in December 2017 on bad terms because JoAnna had abruptly dropped her wage from \$13.00 to \$10.00 per hour.

37. Concerning Claimant's report of his knee injury, Machell testified:

A. It was shift change. He came in. We always went outside and talked about what had happened during the day, and he had let me know that he had hurt his knee at work helping move boxes.

Q. (by Mr. Thompson) Did he tell you that it happened that day?

A. He told me it happened the night before.

Q. Okay. Did he tell you how it happened?

A. He said he was moving boxes for Sue.

Q. Is that all he said? Anything in particular, just moving boxes?

A. He said that he bent down, went to lift up a box, and his knee popped.

Exhibit G, p. 160.

38. At her deposition Machell confirmed JoAnna asked her to write a statement and she wrote the following statement shortly after Claimant's May 11, 2017 accident: "the week of the 10th of May James pulled me outside and told me that he hurt his knee at work I then went to Joanne [sic] and let her know because she was unaware of the situation." Exhibit G, p. 174.

Machell testified she felt pressured by JoAnna in writing her statement:

Q. (by Mr. Thompson) Okay. When Jo came in and asked you to write a statement, did she indicate what had happened, or why she was asking you to write a statement?

A. Yes.

Q. What did she say?

A. That they were—James was doing an insurance Workmen's Comp.

Q. He was making a claim?

A. Yes.

Q. Did she indicate in any way what you should put in that statement?

A. The way I felt is that we needed to write them the way she needed it because I was afraid of losing my job if I did not.

Q. Now, you said you felt that. What made you feel that? What made you feel that way about the statement that she asked you to write?

A. Because everything was so intense.

Q. Okay. Did she ever influence exactly what you should say in the statement?

A. No.

Q. She didn't tell you what to put in the statement?

A. No.

Exhibit G, p. 161.

39. On February 12, 2018, Machell wrote a second statement:

James Prudhomme came in on the 12th in the am and said we needed to talk we went outside and he explained that he got hurt and was unable to work he said he hurt himself at work moving boxes at work and was needing to talk to Jo about all this. I was made to write a statement saying he hurt himself at home for the owner Joanna Hegermann [sic].

Exhibit G, p. 175.

40. At her deposition, Machell explained that after quitting her job at the Hub she wrote the second statement at the request of Claimant who asked her to "tell the truth" because "he was going to court with the Hub." Exhibit G, p. 163. She testified:

Q. (by Mr. Thompson) And what prompted you to write this second statement?

A. Because from what James told me and from what was being said at work was two different things.

Q. Okay. What do you mean by that?

A. He had told me that he had hurt himself at work moving boxes, but there was [sic] rumors going around and people saying that he had hurt himself outside of work.

Q. Okay. And at that time did you form any opinions as to whether he hurt himself outside of work?

A. No, because he had already told me that he had hurt himself at work. I had no reason to question that.

Q. Okay. Can I just see that real quick? Okay. This statement, Exhibit 2, at the bottom says: I was made to write a statement saying he hurt himself at home for the owner?

A. I—

Q. Did you write that?

A. Yes, I did, because she was saying that he had hurt himself at home. I was afraid I was going to lose my job—

Q. Okay.

A. —and I could not afford it.

Q. Okay. So you were worried about losing your job—

A. Yes.

Q. —if you didn't say what she wanted you to say?

A. (Nods head affirmatively.)

Q. And I know it's difficult to say because she's in the room, but when you say, I was made to write a statement, did you feel you were made to write a statement? Is that a yes?

A. Yes.

Q. Okay.

A. I was afraid I was going to lose my job if I did not.

Exhibit G, pp. 161-162 (emphasis supplied). During cross-examination Machell testified:

Q. (by Mr. Augustine) Okay. So if you were afraid of losing your job and you indicated that he hurt himself at work, why didn't you lose your job?

A. It was going around, and I was still worried about losing my job. I did—
partially that led up to it.

....

Q. So when you say I was made to write a statement, you really mean that you felt Joanna [sic] wanted you to write a statement indicating that he hurt himself at home, correct?

A. Correct.

Exhibit G, pp. 163-164 (emphasis supplied).

41. Machell's statement supports Claimant to the extent of acknowledging that he told her he hurt his knee at work the previous evening. Machell feared she would lose her job for merely acknowledging this. In December 2017, Claimant filed his Complaint herein. Also in December JoAnna cut Machell's pay from \$13.00 to \$10.00 per hour and she left the Hub. JoAnna explained the pay cut was due to performance concerns.

42. JoAnna Hagemann's testimony. JoAnna Hagemann was Claimant's supervisor. She testified that Claimant did not talk to her about his alleged injury on the morning of May 12, 2017. Rather, JoAnna testified she first heard that Claimant had injured his knee when he came on shift at the Hub at approximately 2:00 pm on May 12, 2017. She wrote a statement shortly after May 18, 2017 declaring:

I, JoAnna Hagemann, was in my office on May 12, 2017 when one of my employees came in and reported that Mr. James Prudhomme had come to work limping. She stated he went outside to talk to Machell Donaldson. Soon after, Machell came into the office and told me that James had injured himself the night before. I went to the kitchen and found James there. I asked if he was ok because of what Machell had told me. He stated that he hurt himself moving boxes for Sue Jacobs, one of my bartenders. I asked him if he was ok and he stated he was fine, it happened before, and he would just ice it. I asked him if he could work and he said he could. I asked a second time if he was sure and he verified that he was.

Exhibit H, p. 198 (emphasis supplied).

43. In JoAnna's October 26, 2018 deposition she testified that she first heard of Claimant's alleged knee injury on May 12, 2017:

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A. My waitress, Holly Nolan, came in and told me that James came in limping and that he probably wouldn't be able to work. She was afraid he was going to call off.

Q. (by Mr. Augustine) Where were you at the time?

A. I was sitting in my office.

Q. And when was that approximately.

A. It would have been around 2:00.

Q. Then what happened next?

Q. She said that he was wanting to talk to Machell, and then they had went [sic] outside, and then—then Machell came in later.

Q. Where?

A. Into my office and told me that James had hurt himself in the cooler the night before.

Q. Okay. Then what did you do?

A. I got up out of my chair. I went and I talked to him. He was already at work. He was already working in the kitchen at that time.

....

Q. Okay. What did you guys discuss on May 12?

A. He was limping pretty bad. I asked him if he was okay, and he said, yeah, I've hurt it before. I'll just ice it and heat it. It's what I've done in the past. And I said, are you sure you're okay, because he was limping pretty bad.

Q. Right.

A. And he said, yeah, I'm fine. At that time I left. I went back to my office.

....

Q. Okay. Did he tell you when you had that brief conversation with him on May 12, 2017, that he hurt his knee when he bent down to pick up boxes and heard a pop?

A. No. He never told me what he did.

Exhibit H, p. 180 (emphasis supplied).

44. JoAnna testified she later heard other explanations for Claimant's knee injury from other employees:

Q. (by Mr. Augustine) Then after—during that week that he's working, do you hear anything that was different than what Machell had told you he told her had happened?

A. Yes. I heard that he was—that he had hurt himself doing something at home. I heard different stories. He was working on a car. He went through the house and kicked something. He was doing something at home.

Q. So who did you—how did you hear that?

....

A. Well, Kathy and Lacy and Carrie. I can't recall anybody else. It's been too long.

....

Q. I think James testified, that on May 18 he went to the doctor, and then had a phone conversation with you?

A. Yes.

Q. Do you recall that conversation?

A. Yes. He called me and said that he needed Workman's Comp information. The doctor did x-rays on him, and she put him on crutches, and he would not be able to come into work for a while.

....

A. I just said, okay. That's fine. I will get you the information. I didn't say anything. I don't really recall.

....

A. I went to my insurance company, which used to be right behind where I work.

....

A. His name is Mick Landmark.

....

A. I talked to him about filling out the paperwork. We filled out the paperwork. And I said, I don't believe he hurt it at work because I'm getting too many conflicting stories. That was all I told him, and he said, okay. We'll fill out the

paperwork. I need you to get statements. He called somebody, and he told me to get statements.

Exhibit H, pp. 180-181 (emphasis supplied).

45. As also indicated in Claimant's testimony, the parties' relationship soured during a telephone conversation the next day. JoAnna testified:

Q. (by Mr. Augustine) Okay. And what—why did you call him?

A. Because I was concerned that if he filed a complaint that he would get in trouble for making false accusations, and he's got five children to support.

Q. So what happened during that telephone conversation?

A. He screamed at me and called me a liar, used a lot of choice words. Said I didn't have Workmen's Comp. I was just scared because I didn't want him turning anything in because I don't have Workmen's comp. I told him that wasn't true; I have Workmen's Comp. He called me an F'ing liar, and then he proceeded to hang up on me.

....

Q. So what did you—after you had that conversation where he accused you of not having Work Comp. insurance, what happened with his employment?

A. I never fired him, but he kept sending me texts, being really rude. I couldn't talk to him. He said he was getting a lawyer. And then at one time I told him, you know, please stop calling me. You can, you know, talk to my lawyer.

Q. Did he ever threaten to sue you personally?

A. Yes, he did.

Q. And tell us about that.

A. He said that day that he was on the phone yelling at me saying I didn't have Workmen's Comp, that he was going to sue me and take everything I owned.

....

Q. Did James ever explain to you at any point in time about how he hurt himself, the circumstances of how he hurt himself?

A. No. No.

Q. It was the only time you ever heard that was from Machell?

A. Yes.

Exhibit H, pp. 181-182 (emphasis supplied).

46. At hearing, JoAnna reiterated and elaborated on her deposition testimony:

A. [Machell Donaldson] came in and told me that he had hurt himself—she said he hurt himself there in the cooler moving boxers [sic] and so, then, I got up, I went to the kitchen, he was already working at that time, said—I asked him if he was okay. He said, yes, he was fine. He was fine. He hurt himself. I don't even think he told me he hurt himself moving boxes. He just said he would ice it and heat it and her [sic] would be fine. He's done it before. It's happened before. It's an old injury. That was what he had told me. I went back to my office. That was the end of it.

Q. (by Mr. Augustine) Did he ever tell you specifically that he had injured himself in the walk-in cooler?

A. No. He never told me anything. Machell is who told me—

Q. Okay.

A. —that he hurt himself.

Q. And did she say in the walk-in cooler?

A. She said she [sic] was moving boxes. That's all she said.

Q. Okay. Now, did you ever learn from Mr. Prudhomme that he was claiming he had injured himself in the walk-in cooler?

A. No. He never told me what he did.

Q. Okay. Did he continue—if he would have said, hey, I injured myself in the walk-in cooler, could you have easily checked the surveillance to make sure that was true?

A. Yes, I could have.

Q. And would that be something that you would have done?

A. Yes, I would have.

Q. And did you—you didn't do that in this case, because you weren't notified that it happened in the walk-in cooler?

A. Yeah. I wasn't notified. I didn't even think about it, because he said it was an old injury.

Transcript, p. 134, l. 19 through p. 136, l. 8 (emphasis supplied).

47. JoAnna testified that other employees provided different accounts of the origin of Claimant's knee injury:

Q. (by Mr. Thompson) Had you been talking to people about what they knew, or were people just volunteering information to you about what they heard?

A. No, I had talked to Carrie Roberts and said that he was filing a Workmen's—or Comp thing on me, and she kind of went off Carrie way and said that that was crap; that he had—she told—or he told her that he had hurt it at home.

Q. Anybody else?

A. No.

Q. You just talked to Carrie?

A. Yeah, and then—yeah, and then everybody was coming up to me and telling me.

Exhibit H, p. 185

48. Claimant denied ever telling JoAnna or anyone else that his left knee injury was an old injury or that it happened at home.

49. JoAnna's deposition and hearing testimony are inconsistent and are contradicted in several critical aspects by her own written statement which she recorded nearer to the time of the alleged accident. JoAnna's statement acknowledged Claimant reported his accident to her the very next day but she then testified at her deposition and at hearing that he never told her what he did. Her statement records Claimant reporting he hurt his knee moving boxes, while she testified in her deposition and at hearing that he never told her how he hurt his knee. JoAnna initially acknowledged that Machell told her the accident occurred in the cooler but then

explained that she had not checked the surveillance videos because she was never notified the accident occurred in the walk-in cooler.

50. JoAnna's reason for not checking the surveillance videotapes changed over time. Initially she testified that she did not know how to check the videotapes. Later she testified that she did not know the videotapes were taped over.³ Ultimately, JoAnna testified at hearing that she did not check the videotapes because she was never notified that Claimant's alleged accident happened in the cooler, yet she also testified both at hearing and in her pre-hearing deposition that Machell told her Claimant said his accident happened in the walk-in cooler.

51. Upon close examination, there are inconsistencies in JoAnna's own statements that call into question her credibility.

52. Cameron Nolan's post-hearing deposition testimony. On January 24, 2019, Defendants telephonically deposed Cameron Nolan while he was in JoAnna's office at the Hub. He reported that JoAnna had notified him of his deposition. Cameron had been employed at the Hub for three years at the time of his deposition. He was a dishwasher at the Hub in May 2017 and a cook at the time of his deposition. Cameron did not provide a written statement regarding Claimant's alleged accident. He testified:

A. I just—I remember him coming into work complaining about a hurt knee, and I would assume it was after that.

Q. (by Mr. Augustine) Okay. So you saw him come into work limping or what?

A. I was already on shift. I'm not sure what day it was, but he came in and was complaining about having hurt his knee before at work.

Q. Okay. And did he tell you how he hurt his knee at work?

³ This was not known to Claimant as he believed and testified in his pre-hearing deposition that JoAnna would have videotape of his accident and his limping into the kitchen and showing his knee to others on the night of May 11, 2017, because she kept years of old tapes due to previous thefts.

A. I don't recall.

Nolan Deposition, p. 6, ll. 9-19.

53. Cameron also testified that Claimant contacted him via Facebook in September 2018 and "he said just to be honest in the deposition." Nolan Deposition, p. 8, ll. 20-21.

Cameron further testified:

Q. (by Mr. Thompson) You said that you didn't know anything. Is that why you didn't write a statement?

A. Yep.

Q. But you also testified earlier that James had told you that he had hurt—he came into work the next day and you saw him, and he told you he had hurt his knee at work the night before; is that right?

A. He didn't tell me he hurt his knee at work. He told me he hurt his knee.

Q. Did he ever—I thought you testified earlier that he told you he hurt it at work?

A. I mean, he said that, but I didn't see it happen.

Q. Okay. He told you that, though?

A. Yes.

Q. Now, based on that—based on him telling you that, how come you decided not to write a statement?

A. Well, just because that was all the information I had, which was what he told me.

Q. Okay. So you decided that wouldn't be helpful?

A. No.

Q. Okay. And who's the one who asked you to write the statement?

A. I believe it was JoAnna.

Nolan Deposition, p. 11, ll. 2-24.

54. The parties were not able to obtain Cameron's deposition testimony until after the hearing apparently because, as Claimant testified in his deposition, "Cameron says he wants no part of it, just to stay out of it." Exhibit L, p. 249.

55. Cameron's testimony is not inconsistent with Claimant's account.

56. Kathy Hescock's pre-hearing deposition testimony. Defendants deposed Kathy Hescock on October 26, 2018. JoAnna and Merle Hagemann were also present at the deposition. At all relevant times, including the time of her deposition, Kathy worked in the bowling alley at the Hub. Kathy testified that JoAnna asked her to write a statement of what she knew about Claimant's injury:

A. She said that James was going to file a state comp case that he hurt his leg at work that night, and I said that was not right. He come [sic] into work already hurt.

Q. (by Mr. Augustine) Okay. So let me ask you, on May 12th, we know it's a Friday, you indicated in your statement that you were talking to Machell and Holly. Who is Machell?

A. She was another cook.

Q. And who is Holly?

A. She was a waitress.

....

A. We were standing in the side kitchen, and he come [sic] in, and he was limping. And I seen [sic] he was limping, and I asked him what the Hell he did to hisself (sic).

Q. And what did he tell you?

A. He told me that when he was walking through the house at home he felt a snap and heard a pop, and the last time that happened he just put ice on it for a few days and it was fine.

Q. Okay. And did he say that to you in front of Machell and Holly?

A. Yes, he did.

Exhibit I, p. 200 (emphasis supplied). Kathy testified that Claimant then went outside to smoke with Machell.

57. Claimant denied ever making statements about hurting his knee at home. Machell testified she heard other Hub employees say Claimant told them he got hurt at home; however, she denied hearing Claimant make any such statement. Exhibit G, p. 163. The record contains no statement or testimony from Holly.

58. Kathy further testified that she saw Claimant two or three days later at a nearby casino and he was not limping. Her testimony that she later observed Claimant not limping is arguably inconsistent with Claimant's knee examination by Megan Wilson, DNP, on May 18, 2017, wherein she noted a significant limp and clear objective findings including left knee swelling with effusion, a positive grind test, and an x-ray report documenting a moderate-sized joint effusion distending the suprapatellar bursa of Claimant's left knee.

59. Kathy's testimony is directly contrary to Claimant's and Machell's testimonies and in part arguably inconsistent with the May 18, 2017 medical records.

60. Susan Jacobs' pre-hearing deposition testimony. Defendants deposed Susan Jacobs on October 26, 2018. JoAnna and Merle Hagemann were also present. Susan was a bartender at the Hub in May 2017 and continued to work at the Hub as a cook at the time of her deposition. Susan confirmed that stock probably came in on Thursday, May 11, 2017, so there might have been boxes to put away. She testified that JoAnna asked her to write a statement but did not try to influence her to write anything in particular. Susan wrote the following statement on May 24, 2017: "In regards to James (last name unknown) the cook at the Hub Bar & Grill, I am not aware of how he hurt his knee, any allegations [sic] from him that I had him moving heavy boxes is totally false I have never had him move anything heavy for me." Exhibit J,

p. 222. Susan testified that she did not remember where she heard Claimant was making allegations about moving heavy boxes. She testified there were probably four boxes that Claimant would have had to move and that she “probably did” ask him to move them, but they were not heavy. Susan testified that she did not recall Claimant complaining he had hurt his knee or limping the night of May 11, 2017. Exhibit J, p. 213.

61. Susan’s testimony is consistent with Claimant’s account that he started to move boxes at her request.

62. Lacey Rice’s post-hearing deposition testimony. Lacey Rice provided an undated written statement at JoAnna’s request declaring: “On May 12th I came to work at 2:00 pm. James was limping so I asked what he did. He stated he was doing normal activities around the house the previous evening and felt it pop.” Exhibit R, p. 418 (emphasis supplied). Lacey’s statement does not identify what “it” was that popped.

63. On January 23, 2019, Defendants deposed Lacey telephonically. Lacey testified she was familiar with the Hub: “My babysitter runs the bowling alley so I’m in there helping her and picking up my kids, and I’m friends with the owners.” Rice Deposition, p. 5, ll. 7-9. Lacey identified Kathy Hescok as the babysitter that runs the Hub bowling alley. Lacey testified she had never been employed by the Hub, but came to the Hub as much as three times per month for dinner and bowling and actually helped occasionally clearing tables and carrying dishes at the Hub when needed.

64. Lacey testified she wrote her statement approximately two weeks after Claimant’s alleged accident on May 11, 2017. She testified she saw Claimant limping at the Hub and asked him what had happened:

Q. (by Mr. Augustine) Okay. And when you asked him what had happened, he told you that he was doing normal activities around the house the previous evening and felt it pop; is that correct?

A. Yes.

Q. Did he tell you that it happened at work or at home?

A. At home.

Rice Deposition, p. 8, ll. 7-13. Lacey further testified:

Q. Did he tell you what part of his body he injured?

A. No.

Rice Deposition, p. 10, ll. 2-3.

65. On cross-examination Lacey confirmed that she had never seen Claimant limping before that day. She testified:

A. Yeah. It's a small area so he was walking kind of by, and I asked what he did to his knee, or what he did—caused him to limp.

Q. (by Mr. Thompson) Okay. And do you recall giving a statement to the Idaho State Insurance Fund over the phone?

A. I don't.

Q. Do you recall a quick telephone call with someone, a claims handler from the State Insurance Fund?

A. Right after it all happened?

Q. Yeah.

A. I might have, yeah.

Q. ... I've listened to that, and it's very short. It's only about three minutes long. But in that statement you said that James—and I'll just represent that you told the claims handler that James said he was being normal at home and it just started hurting. Is that—does that sound like what James told you?

A. Yeah.

Q. Now, did that—when he told you that did that strike you as odd? I mean, that seems like an odd thing to say, that he was just being normal at home and it just started hurting. Did that strike you as odd when he told you that?

A. Yeah.

Q. Okay.

A. Yeah, I kind of made a joke that he probably hurt it falling out of bed.

Q. Okay. Did he say anything about it popping or anything or any specific incident that occurred that caused it to hurt?

A. Not that I recall, just that it started hurting and that it would go away.

Rice Deposition, p. 13, l. 6 through p. 14, l. 9 (emphasis supplied).

66. There are inconsistencies in Lacey’s statement and deposition testimony. She testified in her deposition she had never been employed by the Hub but in her statement declared “On May 12th I came to work at 2:00 pm” and supposedly had a conversation with Claimant. Lacey’s written statement alleged Claimant told her he “felt it pop” the previous evening at home; however, she acknowledged she told the insurance claims handler that Claimant told her “it just started hurting” and in her deposition when specifically asked about “it popping,” testified she recalled “just that it started hurting.”

67. Claimant denied making any statements about hurting his knee at home.

68. Carrie Roberts’ pre-hearing deposition testimony. Defendants deposed Carrie Roberts on October 25, 2018, at the Hub. JoAnna Hagemann was also present. Carrie was employed at the Hub at the time of Claimant’s alleged accident. She had been employed at the Hub for seven years and continued to be employed as a bartender at the Hub at the time of her deposition.

69. On May 24, 2017, Carrie wrote the following statement at JoAnna’s request to set forth what she knew of Claimant’s knee injury:

I, Carrie Roberts, an employee at The Hub Bar & Grill, approximately two weeks ago, observed James Prudhomme limping in the kitchen at The Hub. I asked him what had happened and he told me he had kicked something at home and twisted his knee. James said that his knee was always popping out like that and he just would ice it. I left it at that.

Exhibit M, p. 273.

70. Carrie testified at her deposition:

... and I saw him just kind of favoring his leg, not really like gimping or anything but favoring it, and I was just like, dude, what's wrong with your leg. And that's when he told me that it was an old injury that he had kicked it or twisted it or something at his house, and he was just going to ice it and put—or ice it and take Advil because that's what he always did. And I was like, all right, and I just kind of left.

Exhibit M, p. 264. Carrie acknowledged that although she had worked with Claimant at the Hub for over a year, she had never previously seen Claimant limping or favoring his knee. Exhibit M, p. 265.

71. Carrie's testimony is directly contrary to Claimant's testimony. No other witness asserted Claimant said he hurt his knee by kicking something.

72. Further credibility findings. There is no indication in the record that Claimant limped or had any left knee symptoms prior to 9:00 p.m. on May 11, 2017. Generally, minor variations in the recollections of different witnesses are not uncommon or unexpected. However, in the present case the variations are far from minor. Many differences in the testimony of the witnesses herein are irreconcilable and critical.

73. Claimant's account is not without minor inconsistencies, but has been substantially consistent throughout. It is materially supported by the testimony of Claimant's wife Marlana, Maden Mcanear, and Rebecca Akins—all of whom are his friends. Significantly, Claimant's account is also supported to a greater or lesser extent by or consistent with the

testimony of Cameron Nolan, Susan Jacobs, and Machell Donaldson—current or former employees of the Hub.

74. JoAnna’s initial written statement: “He stated that he hurt himself moving boxes for Sue Jacobs, one of my bartenders. I asked him if he was ok and he stated he was fine, it happened before, and he would just ice it” (Exhibit H, p. 198), if not deemed to record a new industrial accident on May 11, 2017, would at least suggest the possible industrial aggravation of a pre-existing condition. Yet JoAnna testified that she did not immediately fill out paperwork for Claimant’s alleged injury because she “went immediately to talk to him, and he told me it was an old injury.” Exhibit H, p. 184. JoAnna’s written statement, deposition testimony, and hearing testimony are inconsistent even contradictory on several critical points.

75. JoAnna acknowledged she saw Claimant limping on May 12, 2017 and was aware of the date of Claimant’s alleged accident the day after it occurred. Although she later denied knowing the location of the alleged accident, she testified Machell told her it was “in the cooler.” Even had JoAnna been unaware of the location, nothing precluded her from checking all of the surveillance tapes of Claimant taken after she left at 5:00pm on May 11, 2017. JoAnna’s assertion that she did not check the surveillance videos because she was unaware of the location of Claimant’s alleged accident is unpersuasive.

76. JoAnna’s belief that Claimant’s account was false was known by her employees as she requested they provide written statements. Cameron affirmed he did not provide a statement that Claimant said he hurt his knee at work because it would not be helpful. Machell provided a statement acknowledging Claimant said he hurt his knee at work but feared she would lose her job for so doing.

77. JoAnna testified that she was hearing different accounts from her employees. It is noteworthy that she did not assert she heard the same account from different employees. JoAnna testified one employee told her Claimant said he hurt his knee working on a car. However, aside from JoAnna's reference, the record contains no testimony that Claimant reported he hurt his knee working on a car. JoAnna testified another employee told her Claimant said he hurt his knee walking through his house and kicking something. Carrie Roberts testified Claimant told her he hurt his knee walking through his house and kicking something. Claimant speculated this was a mistake arising from Claimant's account of his right lower extremity injury when he kicked a dresser at home in 2016. No other witness testified Claimant reported he hurt his knee by kicking something at home.

78. Kathy Hescoek testified Claimant said he was walking through his house and his knee popped. Kathy's statement is most similar to that of Lacey Rice, who identified Kathy as her babysitter. As discussed, Lacey's statement and deposition testimony contain inconsistencies calling it into question.

79. Certainly any concerns tending to discount JoAnna's assertions do not automatically confirm the truth of Claimant's account of his industrial accident. However, Claimant's knowledge of the existence of the Hub's video surveillance system—but not the weekly taping over of the videos—would provide strong disincentive to fabricate and thus further supports the veracity of his testimony. In contrast, the presence of the same video surveillance system would not have deterred anyone from falsely alleging Claimant told coworkers that he hurt his knee at home because there is no evidence the Hub's video surveillance system included audio recording also.

80. Claimant testified of JoAnna's reluctance to acknowledge his accident. Even ignoring Claimant's testimony that he told JoAnna of his accident at 8:30 the very next morning her own written statement establishes that she was aware of his alleged accident by 2:00 p.m. the day after and yet did not file any report thereof. Claimant sought medical treatment for his left knee on May 18, 2017, and filed the First Report of Injury himself on May 19, 2017.

81. Having observed Claimant and his wife Marlana live at hearing, and JoAnna via videoconference at hearing, and compared their testimony with other evidence of record, including all deposition testimony and statements, the Referee finds that to the extent the testimony of the witnesses is in conflict, the Referee affords more weight to the testimony of Claimant, his wife Marlana, Maden, Rebecca, and Machell than the testimony of JoAnna, Cameron, Kathy, Susan, Lacey, and Carrie.

82. Claimant has proven he suffered an accident—an untoward event—while working for the Hub on May 11, 2017, when he knelt to move boxes in the walk in cooler and felt a pop and immediate left knee pain.

83. **Causation.** Having proven the occurrence of an untoward event at work, the companion inquiry is whether the accident caused Claimant injury, specifically, whether the untoward event Claimant suffered at the Hub on May 11, 2017, caused personal injury to his left knee.

84. An injury is defined as “a personal injury caused by an accident arising out of and in the course of any employment covered by the worker's compensation law.” Idaho Code § 72-102(18)(a). A claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability. Langley v. State, Industrial Special Indemnity Fund, 126 Idaho 781, 785, 890 P.2d 732, 736 (1995). “Probable” is defined as

“having more evidence for than against.” Fisher v. Bunker Hill Company, 96 Idaho 341, 344, 528 P.2d 903, 906 (1974). Magic words are not necessary to show a doctor’s opinion was held to a reasonable degree of medical probability; only their plain and unequivocal testimony conveying a conviction that events are causally related. Jensen v. City of Pocatello, 135 Idaho 406, 412-13, 18 P.3d 211, 217 (2001).

85. Claimant herein alleges that his May 11, 2017, industrial accident caused left knee injury. There is no evidence Claimant had a left knee injury of any kind prior to May 11, 2017. Megan Wilson, DNP, who examined Claimant’s knee on May 18, 2017, noted a significant limp, left knee swelling with effusion, and a positive grind test. X-ray findings included moderate-sized joint effusion distending the suprapatellar bursa, but no bony abnormality. Ms. Wilson recorded:

The patient states that on 05/11/2017, while working at the Hub Bar and Grill in Kamiah, Idaho, he was moving some boxes. He kind of twisted and felt a pop and suddenly had pain over the medial, anterior and posterior aspects of his left knee. Since that time, the knee has been painful. It has been swollen and difficult for him to walk on it. He states he notified his supervisor the morning of 05/12/2017 of the incident.

....

Recommend outpatient MRI. This is a work related injury, per patient’s report.

Exhibit B, pp. 31-32.

86. Claimant’s report having been found to be true, it follows that the medical evidence establishes this is a work related injury.

87. **Attorney fees.** The second issue is Claimant’s entitlement to attorney fees pursuant to Idaho Code § 72-804. Attorney fees are not granted as a matter of right under the Idaho Workers’ Compensation Law, but may be recovered only under the circumstances set forth in Idaho Code § 72-804 which provides:

If the commission or any court before whom any proceedings are brought under this law determines that the employer or his surety contested a claim for compensation made by an injured employee or dependent of a deceased employee without reasonable ground, or that an employer or his surety neglected or refused within a reasonable time after receipt of a written claim for compensation to pay to the injured employee or his dependents the compensation provided by law, or without reasonable grounds discontinued payment of compensation as provided by law justly due and owing to the employee or his dependents, the employer shall pay reasonable attorney fees in addition to the compensation provided by this law. In all such cases the fees of attorneys employed by injured employees or their dependents shall be fixed by the commission.

The decision that grounds exist for awarding attorney fees is a factual determination which rests with the Commission. Troutner v. Traffic Control Company, 97 Idaho 525, 528, 547 P.2d 1130, 1133 (1976).

88. In the present case, Claimant asserts entitlement to attorney fees for Defendants' failure to investigate the accident. Defendants were prompt in obtaining written statements and all of the witnesses affirmed that JoAnna did not tell them what to write in their statements. Defendants' failure to timely check and preserve the surveillance videotapes was unfortunate. Both parties escalated their heated telephonic exchange on May 18, 2017, which did not promote a constructive exchange of information that might have rendered unnecessary the current litigation. Given the circumstances herein, including the multiple conflicting statements and Claimant's unwitnessed accident, Defendants' denial of the occurrence of an industrial accident was not unreasonable.

89. Claimant has not proven Defendants' liability for attorney fees.

CONCLUSIONS OF LAW

1. Claimant has proven he suffered an industrial accident while working at the Hub on May 11, 2017, when he bent down to move boxes and injured his left knee.
2. Claimant has not proven Defendants' liability for attorney fees.

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 ___24___ day of June, 2019.

INDUSTRIAL COMMISSION

/s/ Alan Reed Taylor, Referee

ATTEST:

/s/ Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the _28_____ day of ___June_____, 2019, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

JASON S THOMPSON
350 N 9TH STREET SUITE 500
BOISE ID 83702

PAUL J AUGUSTINE
PO BOX 1521
BOISE ID 83701

/s/

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JAMES PRUDHOMME,

Claimant,

v.

HAGEMANN LLC dba HUB BAR & GRILL,

Employer,

and

STATE INSURANCE FUND,

Surety,
Defendants.

IC 2017-015276

ORDER

**FILED
JUNE 28, 2019**

Pursuant to Idaho Code § 72-717, Referee Alan Taylor submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusions of law, to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant has proven he suffered an industrial accident while working at the Hub on May 11, 2017, when he bent down to move boxes and injured his left knee.
2. Claimant has not proven Defendants' liability for attorney fees.
3. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 28 day of June, 2019.

INDUSTRIAL COMMISSION

/s/
Thomas P. Baskin, Chairman

/s/ Aaron White, Commissioner

/s/ Thomas E. Limbaugh, Commissioner

ATTEST:

/s/ Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __28__ day of __June_____, 2019, a true and correct copy of the foregoing **ORDER** was served by regular United States mail upon each of the following:

JASON S THOMPSON
350 N 9TH STREET SUITE 500
BOISE ID 83702

PAUL J AUGUSTINE
PO BOX 1521
BOISE ID 83701

sc _____