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

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| CHRISTOPHER LINEBERRY,<br>Claimant,<br>v.<br>ELWOOD STAFFING,<br>Employer,<br>and<br>ZURICH AMERICAN,<br>Surety,<br>Defendants. | **IC 2015-028010**<br><br>**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION**<br><br>**February 2, 2018** |

## INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee John C. Hummel, who conducted a hearing in Twin Falls on July 28, 2016. Dennis R. Petersen represented Claimant, Christopher Lineberry, who appeared in person. Eric S. Bailey represented Employer, Elwood Staffing, and Surety, Zurich American (collectively "Defendants"). The parties presented oral and documentary evidence at hearing and took post-hearing depositions. The matter came under advisement on April 10, 2017.

## ISSUES

By agreement of the parties at a pre-hearing telephone conference held on January 26, 2016, and at hearing, the issues are as follows:

1. Whether Claimant incurred a compensable occupational disease;
2. Whether and to what extent Claimant is entitled to the following benefits:

a. Medical care; and

b. Temporary partial and/or temporary total disability benefits (TPD/TTD);

3. Whether Claimant is entitled to attorney fees pursuant to Idaho Code § 72-804; and

4. Whether the Commission should retain jurisdiction beyond the Statute of Limitations.

All other issues are reserved.

## CONTENTIONS OF THE PARTIES

Claimant alleges that he incurred a compensable occupational disease, acute right carpal tunnel syndrome, while working for Employer, a temporary staffing agency, during an assignment to SeaPac (a fish processing and growing business) from October 2, 2015 to October 9, 2015.[1] He claims medical treatment for that condition recommended by his treating physician Vernon E. Esplin, M.D. He further claims temporary disability benefits from October 12, 2015, the date his assignment to SeaPac ended, until he reaches medical stability. Claimant also seeks attorney fees based on Defendants' alleged unreasonable denial of his claim.

Defendants contend that there is insufficient medical evidence to find that Claimant's right-sided carpal tunnel was acute or industrially-related, thus they are not liable for further medical benefits or temporary disability benefits. They deny liability for attorney fees because they paid benefits during Surety's investigation and then denied them reasonably based upon a medical opinion by Russell Singleton, PAC, that a chronic disease process was the cause of Claimant's right-sided carpal tunnel rather than the subject employment.

[1] At hearing counsel for Claimant raised the possibility that treatment for Claimant's left-sided carpal tunnel might also be compensable. Tr., 12:16-13:19. Based upon the deposition testimony of Claimant's treating physician Vernon Esplin, M.D., however, Claimant's Post-Hearing Brief acknowledged that Defendants "would not be responsible for any treatment to Claimant's left hand." *Id*. at 20. Similarly, the brief conceded that treatment related to Claimant's right elbow would not be industrially-related. *Id*. The sole medical condition at issue in this case, therefore, is whether Claimant's right-sided carpal tunnel is a compensable occupational disease.

## EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. Claimant's Exhibits A through M, admitted at hearing;
3. Defendants' Exhibits 1 through 12, admitted at hearing;[2]
4. The testimony of Claimant, taken at hearing and at his deposition on March 30, 2016; and
5. The post-hearing deposition testimony of Douglas Stagg, M.D., taken August 25, 2016; and Vernon Esplin, M.D., taken December 21, 2016.

Having considered the above evidence and the arguments of the parties, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

## FINDINGS OF FACT

1. **Claimant's Background; Education**. Claimant was 43 years old and resided in Filer, Idaho at the time of hearing. Tr., 20:3-14. Claimant grew up in San Bernardino, California and attended high school there through the eleventh grade. *Id*. at 20:23-21:10. He later obtained a high school equivalency degree through the Job Corps in Darby, Montana. *Id*. at 25:12-26:10. Claimant also received hotel restaurant management training at Job Corps. *Id*. Claimant received a welding certificate while he was in Missouri from 1995 until 2000, but he did not keep it active. *Id*. at 30:20-31:21.

2. **Prior Vocational History**. Claimant left high school when he was 17 years old to work for McDonald's in Bullhead City, Arizona. *Id*. at 21:11-22. Between 1990 and 1995, Claimant held various bussing, serving, cashiering, and cooking positions in Arizona, Nevada, California, Utah, and Missouri. Tr., 21:13-24:15. He also made concrete molds for an outdoor landscaping business for three or four months. *Id*. 24:18-25:7.

[2] Ex. 12 is the transcript of the deposition testimony of Russell L. Singleton, P.A., taken on July 25, 2016.

3. Claimant participated in the Job Corps program from the ages of 19 through 21. Tr., 25:19-27:8. Claimant was out of the workforce from 1995 until November 2000. *Id*. at 30:20-23.

4. Claimant moved to Filer, Idaho in November 2000 and began working at a call center performing research surveys. *Id*. at 31:22-33:8. After eight months with the call center, Claimant worked for Costco in Twin Falls for the holiday season. *Id*. at 36:6-9. He returned briefly to the call center and worked as a dietary chef for Magic Valley Regional Hospital before resuming work at Costco. *Id*. at 36:9-25. Claimant worked in several departments at Costco, including the tire shop, gas station, food court, deli, meat department and bakery. He also stocked shelves, prepared food, cleaned and did merchandising. He remained with Costco for approximately four years, until July 2004. *Id*. at 33:21-36:3; 36:24-37:12. Claimant also worked part time during 2003 and 2004 at La Casita, a Mexican restaurant, preparing food, while he worked at Costco. *Id*. 40:5-41:18.

5. In mid-2004, Claimant began self-employment in a pressure washing business, which lasted about a year. *Id*. at 38:24-39:14. In 2004 and 2005, Claimant also worked for Water Tech, manufacturing boiler water treatment chemicals, and for Stanley Trenching, repairing pumps and oscillators for dairies. *Id*. at 41:10-42:14; 42:19-43:2. After Stanley Trenching, Claimant worked for four months as general manager and head chef for Home Town Cooking, performing both administrative and food prep work. *Id*. at 43:9-44:1.

6. In 2006, Claimant worked for a beef company, a concrete and excavation company, a country club, a trout packaging company, a bakery and two restaurants. *Id*. at 44:3-49:23.

7. Claimant moved to Spokane, Washington in 2008 when his wife transferred to another office for her employer. Tr., 51:21-52:1. Claimant and his family remained in Spokane through 2010. During that time, he ran his own seasonal ice cream truck business, worked in a tire service center, worked as a cook, and performed several other odd jobs. *Id*. at 52:2-53:2.

8. In 2010, Claimant and his family moved to Arizona. *Id*. at 53:3-7. There he worked as a deli prep cook and cashier for a Maverick gas station for eight months. *Id*. at 53:8-18. Claimant then started a specialized foot bath spa business. Claimant Dep., 23:9-24:10. Claimant continued this business on a part-time basis after returning to Filer in March 2013, where he also returned to work as a cook for La Casita. *Id*. at 25:5-11; Tr., 54:6-25.

9. In 2014, Claimant continued his employment as a cook at La Casita, worked for four months as a restaurant chef at the Rock Creek General Store, and then began a position for eight months at a call center. *Id*. at 55:1-56:1. In April 2015, Claimant took a managerial position at Taco Bell for four months, and then returned for a few months to his previous position at La Casita. *Id*. at 56:2-17.

10. **Prior Injuries and Medical History.** Claimant had a minor foot injury while working for Costco that resolved with orthotics. *Id*. at 37:6-15.

11. On April 6, 2002, Claimant fell asleep while driving for Costco and rolled his pickup, resulting in scratches and bruises but no significant injury. *Id*. at 37:19-38:23; Ex. 2:7.

12. On August 3, 2006, Claimant injured his right shoulder and left wrist while making a delivery for Harvest Classic Bread Company. Tr., 47:4-20; Ex. 2:8. On August 4, 2006, Samuel Booth, M.D. diagnosed Claimant with a left wrist strain with ganglion cyst and right shoulder strain. Ex. 2:38-39. Thereafter, Douglass Stagg, M.D. treated Claimant for his left wrist pain, left wrist traumatic ganglion cyst and right shoulder pain. *Id*. at 40-50. Dr. Stagg drained

the cyst and injected Claimant's right shoulder with Depo Medrol on August 23, 2006. Ex. 2:46-47; Tr., 48:11-14. On August 30, 2006, Claimant reported to Dr. Stagg that he was improved after both procedures; Dr. Stagg released Claimant back to normal work with no restrictions. Ex. 2:49.

13. On November 17, 2006, Claimant injured his left shoulder / upper arm while lifting an elk carcass for Golden Reserve Beef Company. Tr., 49:24-50:7; Ex. 2:9; Ex. 3:306-308. Mark Wright, M.D. diagnosed Claimant with a partial-thickness rotator cuff tear, impingement, and acromioclavicular arthritis of his left shoulder; on May 17, 2007, Dr. Wright performed arthroscopic surgery consisting of left shoulder partial rotator cuff tear repair with debridement, open distal clavicle excision, and subacromial decompression. Ex.4:340-342. In a post-surgical follow-up visit on June 27, 2007, Dr. Wright noted that Claimant's overall pain was decreasing and that he was "quite happy with his outcome at this point" on the left shoulder. Ex. 2:53.

14. Dr. Wright opined Claimant's right shoulder had a slap lesion, impingement with partial thickness rotator cuff tendon tear, and AC arthritis which Dr. Wright attributed to conditions pre-existing his industrial injury of November 17, 2006. *Id*. at 52-53; 4:348. Dr. Wright performed an arthroscopic slap repair, debridement undersurface of the rotator cuff tendon, subacromial decompression, and distal clavicle excision on Claimant's right shoulder on August 14, 2007. Ex. 4:348-350. In a post-surgical follow-up examination on September 4, 2007, Dr. Wright noted that Claimant was "doing well and had few complaints." Ex. 2:58.

15. In follow-up visits during October and November 2007, Claimant complained to Dr. Wright of left wrist pain, left hand weakness, numbness, and tingling. Ex. 2:59-61. Dr. Wright noted on November 12, 2007 that Claimant had few complaints about his right

shoulder, and that he would leave the continued treatment of Claimant's left wrist to Tyler Wayment, M.D. Ex. 2:62. Dr. Wright rated Claimant's right shoulder at 5% whole person impairment on November 26, 2007. *Id*. at 63.

16. Dr. Wayment examined Claimant on December 3, 2007 and January 7, 2008 and recommended surgical intervention on his left wrist ganglion cyst and probable disruption of the scapholunate ligament. *Id*. at 64-65. Lisa Rendon, M.D., conducted an independent medical examination of Claimant on February 12, 2008. *Id*. at 66-67. Dr. Rendon noted a left wrist volar ganglion cyst and possible carpal tunnel syndrome; she recommended that a carpal tunnel evaluation be conducted before surgical excision of the cyst. *Id*. at 70.

17. Dr. Wayment disagreed with Dr. Rendon because he found Dr. Rendon did not address the scapholunate tear in the left wrist observed on Claimant's MRI. *Id*. at 37. Dr. Wayment made three assessments: left scapholunate ligament tear, left volar ganglion, and possible left carpal tunnel syndrome. *Id*.

18. Claimant returned to Dr. Wright with left shoulder complaints on June 4, 2008. Dr. Wright performed a second surgery on Claimant's left shoulder on October 9, 2008. Ex. 4:367-368. On January 12, 2009, Dr. Wright rated Claimant's rotator cuff repair at 6% whole person permanent partial impairment under the *AMA Guides*, Sixth Edition. He did not indicate if he meant the right or left shoulder. Ex. 2:78. On April 3, 2009, Claimant visited Dr. Wright with left shoulder complaints. On July 1, 2009, Dr. Wright rated Claimant's shoulder at 3% whole person permanent partial impairment under the *AMA Guides*, Sixth Edition. The letter does not indicate if this is for the left or right shoulder. Ex. 2:80.

19. The Commission approved Claimant's settlement with Harvest Classic Bread, Golden Reserve Beef Company, and the Idaho State Insurance Fund on both shoulders and his

left wrist on September 30, 2009. Ex. 2:286-301. The settlement did not provide for compensation for any condition or treatment of Claimant's right hand. *Id*.

20. **Subject Employment**. Employer Elwood Staffing hired Claimant on September 25, 2015. His first day of work for Employer was October 2, 2015. Tr., 56:18-59:7. Employer assigned Claimant to work as a fish gutter at SeaPac of Idaho, a trout farm and processing business located in Filer. *Id*. at 60:1-61:11.

21. Claimant's job as a fish gutter at SeaPac was to remove the viscera of trout and tilapia as they came down into a stainless steel trough with water and ice from a cutting machine. This involved holding the fish in his left hand while pulling out the gills and guts with his right hand (dominant), without a knife. After removing the viscera, Claimant cleaned out the "blood line" of the fish with water. He was responsible to completely clean the fish before putting it on a conveyor belt for further processing. *Id*. at 61:11-69:6. Due to variations in the size of the fish, the cutting machine would occasionally fail to slice the belly, requiring Claimant to gut the fish with his right hand using a filet knife. *Id*. at 70:5-71:7. Claimant processed several hundred fish an hour in this manner, with each fish taking about ten seconds. *Id*. at 69:9-70:2. Of these, Claimant testified that he would have to gut 40 or 50 fish with a knife that had been missed by the machine each hour. When larger fish such as tilapia were being processed, a filet knife was required for all of the evisceration on the line because the cutting machine could not process them. *Id*. at 70:5-71:7.

22. Claimant worked a full 41.62 hour week at SeaPac until Friday, October 9, 2015. Ex. 9:435; Tr., 76:4-7. After Claimant informed Employer and SeaPac of his right hand pain on Monday, October 12, 2015, and Dr. Stagg gave him physical work restrictions from using his

right hand, Employer assigned him light duty of holding an advertisement sign for three consecutive Fridays before terminating Claimant on November 6, 2015. Tr., 86:11-88:13.

23. **Symptom Onset**. Claimant noticed that his right hand was a little sore beginning on Monday, October 5, 2015, with increasing stiffness and soreness throughout the week. *Id*. at 81:15-84:14. When Claimant left work on Friday, October 9, 2015, his right hand was cramping up and he felt a tingling in three fingers, his palm, and wrist that radiated into his right forearm. *Id*. at 84:25-85:17. Claimant could not really use his right hand over the weekend because of pain, tingling and discomfort. *Id*. at 85:21-86:5. He called his SeaPac supervisor early in the morning on Monday, October 12, 2015, to say that he would not be able to work that day. *Id*. at 86:11-24. Claimant then contacted Employer to say he believed he had injured his right wrist the previous week at SeaPac and was experiencing numbness and weakness. *Id*. at 86:25-87:6.

24. **Medical Care**. Employer sent Claimant to Dr. Douglas Stagg at St. Luke's Clinic in Twin Falls on October 12, 2015. *Id*. at 87:8-16. Dr. Stagg noted that the right hand and wrist showed no soft tissue swelling, that Claimant had near full range of motion with significant discomfort but had significantly weak grip strength. Claimant had a negative result on Phalen's testing but Tinel's testing was "quite positive at the right wrist." Ex. 6:398. Dr. Stagg diagnosed painful paresthesias of the right hand and wrist and expressed concern that Claimant "may have an acute carpal tunnel syndrome." Ex. D:2. He restricted Claimant from all use of his right hand and prescribed that he wear a Colles splint at all times except while bathing. Ex. 6:398.

25. Claimant followed up with Dr. Stagg on October 14, 2015. *Id*. at 403. After physical examination, Dr. Stagg prescribed a second splint and stated his intention to request approval for nerve conduction studies. *Id*. He released Claimant to modified duty work, with the restrictions of Claimant not using his right hand to grip or twist, no lifting over 5 pounds, and

refraining from use of hand tools. Ex. 6:404. Dr. Stagg continued to express concern for carpal tunnel syndrome. *Id*.

26. Claimant attended a followup appointment for his right hand and wrist, together with his supervisor from Employer on October 19, 2015. *Id*. at 406. Dr. Stagg noted there was no thenar atrophy in Claimant's right hand, that sensory function showed hypesthesia of the median nerve distribution and that Claimant tested positive in both Phalen's and Tinel's tests. *Id*. He noted that a nerve conduction study had been scheduled for November 19, 2015, but that he was going to try to schedule the test earlier. *Id*. Dr. Stagg continued Claimant's modified work status and restrictions from the prior appointment. *Id*.

27. At Surety's request, Russell Singleton, PAC, of Tripp Family Medicine examined Claimant on October 23, 2015. Ex. E:1 PAC Singleton diagnosed "acute" carpal tunnel syndrome of the right upper limb, but noted as follows: "While this may have been aggravated by his 1.5 weeks at BBSI, this strikes me as a chronic disease process related to his on and off again work as a chef." *Id*. at 3.

28. PAC Singleton referred Claimant to Dave Little, PT, CHT, for evaluation and a nerve conduction study conducted on October 28, 2015. *Id*.; Ex. F. In correspondence with PAC Singleton, Mr. Little said that his impression of the nerve conduction study results was that Claimant had "possible entrapment at or about the right wrist to the motor and sensory fibers of the median nerve at or about the carpal tunnel ligament site." Ex. F:9. Mr. Little noted an injury onset date of "10/07/2015 Insidious" and a carpal tunnel syndrome diagnosis. *Id*. at 4.

29. On the recommendation of his attorney, Claimant sought a second opinion from Vernon Esplin, M.D., on December 8, 2015. Ex. G:1. Claimant reported to Dr. Esplin that he experienced right hand numbness and tingling, most noticeable in his thumb through his middle

finger, and that the symptoms had been present for three months. Ex. G:1. Dr. Esplin noted that Claimant's nerve study report indicated carpal tunnel disease on the right side but not cubital tunnel or Guyon's canal problems on the right side. *Id*. at 2. Dr. Esplin signed a "Return to Work Note" on December 8, 2015, indicating that Claimant should restrict the use of his right hand, including limiting his repetitive grasping, pinching, and twisting. *Id*. at 5.

30. In correspondence with Claimant's attorney on December 8, 2015, Dr. Esplin diagnosed Claimant with acute carpal tunnel syndrome right upper extremity. *Id*. at 3. He opined that Claimant's denial of "any numbness or tingling in that right hand median nerve distribution prior to his working at SeaPac, especially working as a chef or as a manager for Taco Bell" and denial of "any nighttime numbness prior to this work or any numbness with activities such as driving a car, holding a book, or holding a phone to his ear" indicated that Claimant's condition seemed to be "chronologically associated with his repetitive work at SeaPac." *Id*.

31. Claimant returned to Dr. Esplin on June 30, 2016. He reported worsening symptoms since his December 8, 2015 visit, with new symptoms arising in his left hand over the prior month. Claimant reported numbness in his left fingers and thumb, cramping in the ulnar aspect of the right hand and left ulnar hypothenar eminence, as well as catching and triggering on the right and left index fingers. Dr. Esplin also noted a small ganglion cyst on Claimant's left wrist. He recommended an additional nerve study. Dr. Esplin did not offer a diagnosis on Claimant's left-sided complaints at that time. *Id*. at 6. Dr. Esplin signed a "Return to Work Note" on June 30, 2016, restricting Claimant's maximum lifting to 5-10 pounds, repetitive lifting or carrying to 0-5 pounds, and limited the grasping, pinching, and twisting use of both hands. *Id*. at 8.

32. **Claimant's Post-Injury Employment**. Claimant worked for another temporary employment agency, Gem State Staffing, in March 2016. Tr., 100:3-17. The agency assigned him to a job as a van driver. *Id*. at 19-20. Claimant quit after only a few weeks because the job only paid for the time he was actually driving the van and not for the waiting time between appointments, resulting in pay of $79.00 for a two week period. *Id*. at 101:1-24.

33. Claimant also performed miscellaneous contractual work for hire such as cleaning out a utility shed, weeding, and general tasks for an elderly couple. *Id*. at 102:3-13. Although he applied for other positions in 2016, Claimant obtained no further formal employment in 2016. *Id*.

34. **Claimant's Condition at Hearing**. At the time of hearing, Claimant's bilateral wrist symptoms had worsened into "more constant tingling and weakness and pain" in his right hand. Tr., 106:3-4.

35. **Claimant's Credibility**. The parties do not appear to dispute Claimant's credibility. Claimant's testimony during his deposition and at hearing was straightforward and consistent with medical records. To the extent that Claimant's testimony and medical records are in conflict, medical records are afforded more weight.

## DISCUSSION AND FURTHER FINDINGS

36. 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).

37. **Occupational Disease**. The Idaho Workers' Compensation Law defines an "occupational disease" as "a disease due to the nature of an employment in which the hazards of such disease actually exist, are characteristic of, and peculiar to the trade, occupation, process, or employment …." Idaho Code § 72-102(22)(a). Further, Idaho Code § 72-439 limits the liability of an employer for any compensation for an occupational disease to cases where "such disease is actually incurred in the employer's employment," and (2) for a non-acute occupational disease, where "the employee was exposed to the hazard of such disease for a period of 60 days for the same employer."

38. Furthermore, the law provides that:

> [w]hen an employee of an employer suffers an occupational disease and is thereby disabled from performing his work in the last occupation in which he was injuriously exposed to the hazards of such disease, . . . and the disease was due to the nature of an occupation or process in which he was employed within the period previous to his disablement as hereinafter limited, the employee, . . . shall be entitled to compensation.

Idaho Code § 72-437.

38. Disablement means "the event of an employee's becoming actually and totally incapacitated because of an occupational disease from performing his work in the last occupation in which injuriously exposed to the hazards of such disease," and "disability means the state of being so incapacitated." Idaho Code § 72-102(22)(c). Finally, "Where compensation is payable for an occupational disease, the employer, or the surety on the risk for the employer, in whose employment the employee was last injuriously exposed to the hazard of such disease, shall be liable therefor." Idaho Code § 72-439(3). Nevertheless, the Idaho Supreme Court has held in pertinent part as follows: "Nothing in these statutes indicates an intent to require that an employer who employs an employee who comes to the employment with a preexisting occupational disease will be liable for compensation if the employee is disabled by the

occupational disease due to an injurious exposure in the new employment." *Reyes v. Kit Manufacturing Co.*, 131 Idaho 239, 241, 953 P.2d 989, 991 (1998).

39. In summary, under the statutory scheme to prove a compensable occupational disease, Claimant must show as follows: (1) that he is afflicted by a disease; (2) that the disease was incurred in, or arose out of and in the course of, his employment; (3) that the hazards of such disease actually exist and are characteristic of and peculiar to the employment in which he was engaged; (4) that he was exposed to the hazards of such *nonacute* disease for a minimum of 60 days with the same employer; and (5) that as a consequence of such disease, he became actually and totally incapacitated from performing his work in the last occupation in which he was injuriously exposed to the hazards of such disease.

40. To prove a causal connection between the alleged medical condition and the occupational exposure, medical testimony to a reasonable degree of medical probability is required. *Langley v. ISIF*, 126 Idaho 781, 890 P.2d 732 (1995). Claimant is required to establish a probable, not merely a possible, connection between cause and effect to support his contention. *Dean v. Dravo Corp.*, 95 Idaho 558, 511 P.2d 1334 (1973). "Probable" is defined as "having more evidence for than against." *Fisher v. Bunker Hills Co.*, 96 Idaho 341, 344, 528 P.2d 903, 906 (1974).

41. There is no dispute that Claimant has the condition of right-sided carpal tunnel syndrome. Dr. Stagg, Dr. Esplin, and PAC Singleton all diagnosed Claimant with this disease. The crucial dispute is whether Claimant's condition arose from his work with Employer as acute carpal tunnel or as a chronic condition that predated his employment.

42. As noted above, for a nonacute occupational disease to be found compensable, Claimant must establish that he was exposed to those hazards for a minimum of sixty (60) days

with the same employer. Claimant, however, did not work for Employer for sixty (60) days prior to the manifestation of his right-sided carpal tunnel syndrome. For Claimant's condition to be compensable, therefore, the condition must be considered "acute," which the Idaho Supreme Court has interpreted as follows:

> The applicable dictionary definition of the term "acute" is "having a sudden onset, sharp rise, and short course." *Webster's New Collegiate Dictionary 13* (1981 ed.) Similarly, the medical world defines an "acute" disease in terms of a short and sharp course: "Of short and sharp course, not chronic; said of a disease." *Stedman's Medical Dictionary 20* (4th Lawyers Ed. 1976).

*Bint v. Creative Forest Products*, 108 Idaho 116, 118, 697 P.2d 818, 820 (1985).

43. Dr. Stagg was the first physician to examine Claimant after his symptoms began. He testified that typically patients experience symptoms for "a year or two" before they seek medical examination. Stagg Dep., 8:13-14. He diagnosed Claimant's condition as "acute" because Claimant had suffered his symptoms for "a week or less." *Id*. at 8:15. When asked what he meant by diagnosing a condition as "acute," Dr. Stagg replied, "[…] acute would be to me some time within a few weeks to a month as opposed to a year or two." *Id*. at 8:24-25. When asked whether he believed Claimant's right hand condition to be acute or nonacute, Dr. Stagg replied that it was more likely than not an acute condition. He explained his reasoning regarding acute vs. nonacute onset of carpal tunnel syndrome as follows:

> I'm not a hand specialist. And I don't know if it's appropriate to say, but I have had the discussion with several hand specialists about acute versus nonacute, and they have told me that indeed there is an acute carpal tunnel syndrome. It's not the typical one, like I mentioned, but there is such a thing as an acute carpal tunnel syndrome that I've talked with a couple different hand specialists about it. And they both say they've seen acute carpal tunnel syndrome versus kind of the more traditional that takes a year or two.

*Id*. at 18:11-22.

44. Dr. Stagg also considered Claimant's self-reported history of lack of sports or hobbies, lack of past symptoms, and medical history of "no prior problems with the hand or wrist, and he had no history of diabetes, thyroid disease or rheumatoid arthritis, and those three things can predispose to carpal tunnel syndrome." Stagg Dep., 21:5-11. Dr. Stagg acknowledged that smoking could predispose Claimant to carpal tunnel syndrome, but that he had never heard of daily smoking contributing to carpal tunnel syndrome. *Id*. at 21:1-20. He also acknowledged that "a lot of the information suggests that there is a genetic predisposition to carpal tunnel syndrome outside of work." *Id*. at 20:21-23.

45. Dr. Stagg noted a lack of thenar atrophy at the base of Claimant's right thumb, a symptom that he opined is common in carpal tunnel that has developed chronically over a longer period of time. *Id*. at 13:6-16. Dr. Stagg stated that with chronic "year or two symptoms coming on" carpal tunnel syndrome, "a splint can cause significant help within a few days" by keeping the wrist in a neutral position and alleviating inflammation and pressure on the nerve. *Id*. at 10:20-22. Claimant did not report to Dr. Stagg that he obtained relief from wearing the splint the way he would expect in a chronic carpal tunnel patient. *Id*. at 10:23-11:2.

46. Dr. Esplin noted the common risk factors for carpal tunnel, including obesity and diabetes. He also noted activities that can lead to the development of carpal tunnel, as follows: [T]he one that has been absolutely proven is the vibratory jobs [sic] of running a jackhammer. Repetitive activities, high-intensity activities are in that category that can cause carpal tunnel." Esplin Dep., 15:25-16:3. When asked if the activity of gutting fish at SeaPac caused the Claimant's right-sided carpal tunnel, he responded, "[C]ertainly the amount of the repetitive activity plays in to the equation. And the fact that within a couple of days it started, and the more he did it the more the symptoms worsened certainly can --plays in support of that." *Id*. at 11:21-

25. Dr. Esplin observed that Claimant's carpal tunnel syndrome symptoms came on suddenly, as opposed to the "more gradual, progressive course to this disorder." Esplin Dep., 12:19-20. Dr. Esplin noted that Claimant reported that he had not experienced numbness and tingling at night or when driving. He elaborated on the significance of these factors during cross-examination as follows:

> A: Basically those are symptoms that often occur, you know, before they get too bad during the day. Nighttime numbness, people usually sleep with their wrists kind of bent and curled in a fetal position. And before it really becomes evident during the daytime, carpal tunnel will often wake people up at night, and they have to move their wrists to sleep, you know. So just basically seeing if that history was a part of his overall symptom complex. And driving cars and other things like that where the wrists are in an extended position, and they're holding onto something that puts pressure on the carpal tunnel often causes the symptoms. So just looking for other symptomatology of the disease.
>
> Q: Okay. And had he responded positive to pain or numbness, tingling that woke him up at nighttime, that would be suggestive of maybe an early onset of carpal tunnel then?
>
> A: Right.

*Id*. at 23:5-24.

46. Both Dr. Stagg and Dr. Esplin concurred, therefore, that Claimant's right-sided carpal tunnel syndrome was acute and causally related to his job assignment for Employer at SeaPac. PAC Singleton also diagnosed Claimant with and acute carpal tunnel syndrome of the right upper extremity on October 23, 2015. Ex. 5:382 PAC Singleton, however, qualified his initial "acute" diagnosis in his notes, stating "this strikes me as a chronic disease process related to his on and off again work as a chef." *Id.*

47. In his deposition, PAC Singleton admitted that Claimant did not inform him what his duties as a "chef" were. Rather, PAC Singleton based his understanding of Claimant's duties in the food service industry on his own personal experience of that industry. Singleton Dep.,

16:21-17:7. He also admitted that he had no knowledge of whether Claimant had actually experienced any carpal tunnel-related symptoms prior to his work for Employer. *Id*. at 18:3-6; 20:8-14.

48. Defendants aver that Claimant's right wrist condition is due to "other causative factors," such as Claimant's pre-existing shoulder issues. Counsel for Defendants queried Dr. Esplin about shoulder issues as a causative factor, as follows:

> Q: Is there anything about pathology from post-op on a rotator cuff repair, SLAP lesions, anything like that that could cause something to develop in the lower extremity, the hand/wrist area, that would be suggestive of carpal tunnel, but it's really generated through the shoulder?
>
> A: That's a very broad question. Complications can occur from any procedure upstream from a nerve. At this point because his shoulder surgery was quite a while before his symptoms in carpal tunnel developed, I think I'd have a hard time tying his shoulder surgery to the carpal tunnel symptoms.

Esplin Dep., 25:3-16.

47. When pressed on the possibility of residual bilateral shoulder problems manifesting at the wrists, Dr. Esplin testified, "I can't rule out some contribution. But given the nerve study showing pressure at the wrist and my exam showing pressure mainly at the wrist in the carpal tunnel area, I think the main problem is at the wrist not the shoulder." *Id*. at 26:13-17.

48. The record does not support Defendants' theory that Claimant's prior shoulder issues were the primary cause of his right-sided carpal tunnel syndrome.

49. The opinions of both Dr. Stagg and Dr. Esplin are consistent and credible and support a finding that Claimant's condition was acute and causally-related to his work for Employer. The contrary opinion of PAC Singleton, who examined Claimant on only one occasion, October 23, 2015, is entitled to less weight. PAC Singleton attributed Claimant's condition to his previous work in the food service industry, despite the fact that Claimant had

worked in that industry in various capacities for many years without his right-sided carpal tunnel symptoms ever appearing in any medical records, which were extensive. Furthermore, PAC Singleton admitted that he had no knowledge of what repetitive activities Claimant would have engaged in as a chef or cook that caused his carpal tunnel syndrome. Instead, he based his opinion on his own assumptions. In so doing, PAC Singleton ignored the significant factor of Claimant's repetitive use of his right hand to gut fish while working at Sea-Pac.

50. Claimant's right-sided carpal tunnel syndrome developed as an acute condition while he worked for Employer.

51. In addition to showing that his right wrist condition is causally related to the demands of his employment, Claimant must also show that he was "actually and totally incapacitated because of an occupational disease from performing his work in the last occupation in which he was injuriously exposed to the hazards of such disease." Idaho Code § 72-102(22)(c). The Supreme Court has "interpreted the term 'disablement' as the state of becoming actually and totally incapacitated from further performing the particular tasks that induced such incapacity." *Kitchen v. Tidyman Foods*, 130 Idaho 1, 3, 936 P.2d 199, 201 (1997) (citing *Blang v. Liberty Northwest Ins. Corp.*, 125 Idaho 275, 277, 869 P.2d 1370, 1372 (1994)). Dr. Stagg gave Claimant restrictions against use of the right wrist on October 12, 2015, that made it impossible for Claimant to perform his fish gutting job at Sea-Pac. Claimant has thus satisfied his burden of proving disablement.

52. In addition to proving actual causation and disablement, which have been established, Claimant must also prove that the hazards of the disease are characteristic of and peculiar to his occupation, as follows:

> The phrase, "peculiar to the occupation," is not here used in the sense that the disease must be one which originates *exclusively* from the particular kind of

> employment in which the employee is engaged, but rather in the sense that the conditions of that employment must result in a hazard which distinguishes it in character from the general run of occupations.

*Mulder v. Liberty Northwest Insurance Co.*, 135 Idaho 52, 56, 14 P.3d 372, 376 (2000), *quoting Bowman v. Twin Falls Const. Co., Inc.*, 99 Idaho 312, 323, 581 P.2d 770, 781 (1978), *overruled on other grounds*, *DeMain v. Bruce McLaughlin Logging*, 132 Idaho 782, 979 P.2d 655 (1999) (emphasis in original).

53. Further review of *Mulder*, 135 Idaho 52, 14 P.3d 372, is enlightening. In *Mulder* the Court examined and approved the Commission's analysis and application of the "characteristic of and peculiar to" requirement. The Court stated in pertinent part as follows:

> Applying the test from *Bowman*, the Commission found the hazards that Mulder was exposed to during his work at Liberty could be distinguished from the general run of occupations. The Commission determined that exposure to long periods of repetitive upper extremity motions, including writing, keyboarding, and gripping of a steering wheel are not characteristic of all occupations. The Commission based its factual determination, in part, on the medical testimony of Dr. Lenzi and upon the description of the job duties peculiar to Mulder's position with Liberty. The Commission determined that those duties necessitated driving, handwriting and keyboarding. Though Liberty presented conflicting testimony from its expert, Dr. Richard Knoebel (Dr. Knoebel), this Court will defer to the Commission's findings as to the credibility of conflicting medical experts. [Citation omitted.] This evidence is substantial and competent, and will not be disturbed on appeal.

*Mulder*, 135 Idaho at 56, 14 P.3d at 377. It is instructive that the Court approved the Commission's focus on whether the hazard causing the disease was characteristic of and peculiar to the occupation, not on whether the frequency of the disease was greater in the occupation than other occupations.

54. Applying the *Mulder* standard for determining whether the disease of carpal tunnel syndrome was characteristic of and peculiar to Claimant's occupation as a fish gutter while working for Employer, it is reasonable to find that the hazards that cause carpal tunnel

syndrome, namely repetitive, forceful and heavy use of the hand/wrist, occurred in this case. Claimant used his right hand to manually remove the entrails and gills of hundreds of fish per hour. Tr., 69:9-70:2. Additionally, Claimant had to use a knife to gut up to forty to fifty fish per hour that were heavier and that the slicing machine missed. *Id*. at 70:5-71:7. Both Dr. Esplin and Dr. Stagg opined that such activities were sufficiently repetitive to acutely cause the onset of Claimant's carpal tunnel syndrome. Furthermore, of the six to seven people working on the same line as Claimant, three or four of them were wearing splints/braces because of carpal tunnel. *Id*. at 80:8-81:13. This undisputed fact further leads to a reasonable conclusion that the occupation of fish gutter that Claimant performed was one at particular risk for causing the condition.

55. Based on the medical opinions of Drs. Stagg and Esplin, Claimant has established that he suffers from right-sided carpal tunnel syndrome causally related to his employment. Claimant has also established through medical testimony that his right-sided carpal tunnel syndrome is an acute occupational disease, thus not requiring sixty days of exposure. Finally, Claimant has also proven that he was disabled as a result of his occupational disease and that the hazard of carpal tunnel syndrome was peculiar to or characteristic of his occupation as a fish gutter. For all these reasons, Claimant has met his burden of demonstrating a compensable occupational disease for his right-sided carpal tunnel syndrome.

56. **Medical Benefits**. An employer shall provide reasonable medical care for a reasonable time after an injury. Idaho Code § 72-432(1). A "reasonable time" includes the period of recovery before medical stability, but may include a longer period. *Jarvis v. Rexburg Nursing Center*, 136 Idaho 579, 38 P.3d 617 (2001). Reasonable medical treatment benefits may continue for life; there is no statute of limitation on the duration of medical benefits under Idaho Workers' Compensation Law.

57. Claimant bears the burden of showing that medical treatment required by a physician is reasonable. Idaho Code § 72-432(1). He must support his or her workers' compensation claim with medical testimony that has a reasonable degree of medical probability. *Hope v. ISIF*, 157 Idaho 567, 572, 338 P.3d 546, 552 (2014)(*citing Sykes v. CP Clare & Co.*, 100 Idaho 761, 764, 605 P.2d 939, 942 (1980)). The reasonableness of treatment is dependent upon the totality of the facts and circumstances of the individual being treated. *Harris v. Independent School District No. 1*, 154 Idaho 917, 303 P.3d 605 (2013).

58. It is for the physician, not the Commission to decide whether the treatment is required; the only review the Commission is entitled to make is whether the treatment was reasonable. *Sprague v. Caldwell Transportation, Inc.*, 116 Idaho 720, 779 P.2d 395 (1989). The Commission's review of the reasonableness of medical treatment should employ a totality of the circumstances approach. *Chavez v. Stokes*, 158 Idaho 793, 353 P.3d 414 (2015).

59. Surety covered Claimant's medical care until November 13, 2015, when Claimant's claim was denied. Ex. L. Claimant sought the opinion of Dr. Esplin on December 8, 2015 and again on June 30, 2016. There are no other medical records before July 28, 2016, the date of hearing.

60. With regards to future care, Claimant has established that his right-sided carpal tunnel syndrome is industrially related. Dr. Esplin opined that there are types of visible swelling and constriction once the wrist has been opened up that help identify the source of the problem. He concluded as follows:

> I really would like to have that nerve study to see how much different the parameters are because that -- although not totally predictive of success rate, if I'm seeing significant changes because he is getting some cramping and some fasciculation in some of the muscles […] on the right side. I -- I worry about some -- some maybe irreversible damage. So I think getting it released is critical to get done. I think he would have a good result. But again, without the data, I would

> have a hard time predicting. I think given his exam and his history, I think he's going to have some residual, but still should have a pretty decent function if the carpal tunnel was released and successful without any further complications.

Esplin Dep., 37:15-25; 38:1-7.

61. Dr. Esplin concluded that Claimant's need for further treatment to his right wrist is work-related. He recommended additional nerve studies, because of the length of time since he last examined Claimant, and possible future treatment of steroid injections as well as the more permanent solution of a surgical carpal tunnel release.

62. Claimant is entitled to reasonable treatment for his right wrist carpal tunnel syndrome, including but not limited to additional nerve studies, diagnostics, and a carpal tunnel release surgery.

63. **Temporary Disability**. Disability, for purposes of determining total or partial temporary disability income benefits, means a decrease in wage-earning capacity due to injury or occupational disease, as such capacity is affected by the medical factor of physical impairment, and by pertinent nonmedical factors as provided for in Idaho Code § 72-430. Idaho Code § 72-102(11). Temporary partial and total disability entitlement is evaluated according to statute. Idaho Code § 72-408. It is payable throughout the period of recovery to the date of maximum medical improvement. *Jarvis v. Rexburg Nursing Center*, 136 Idaho 579, 38 P.3d 617 (2001). Once a claimant has established by medical evidence that he is still within the period of recovery from the original industrial accident, he is entitled to TTDs unless and until evidence is presented that the claimant has been medically released for light work and that (1) his employer has made a reasonable and legitimate offer of employment to him which he is capable of performing under the terms of his light work release and which employment is likely to continue throughout his period of recovery or that (2) there is employment available in the general labor

market which the claimant has reasonable opportunity in securing and which employment is consistent with the terms of his light duty work release. *Maleug v. Pierson Enterprises*, 111 Idaho 789, 727 P.2d 1217 (1986). A refusal of an offer of suitable employment may curtail temporary disability benefits. Idaho Code § 72-403. Whether offered or procured employment is reasonable is a question of fact. *Perkins v. Croman, Inc.*, 134 Idaho 721, 725, 9 P.3d 524, 528 (2000).

64. Dr. Stagg released Claimant to modified work on October 14, 2015. SeaPac did not have work available within Claimant's restrictions. Employer made an offer of modified duty on October 13, 2015, which Claimant accepted. Claimant worked three Fridays, holding a sign for Employer, before he was terminated on November 6, 2015. Dr. Esplin also opined that Claimant could return to modified work with right hand restrictions on December 8, 2015, and with bilateral restrictions on June 30, 2016.

65. Defendants did not address why Claimant was terminated on November 6, 2015 or why another suitable position was not offered. At hearing, Claimant testified that he was verbally informed that Employer's corporate office did not want him to return to employment there. He also stated that he requested a "note of reason" for the termination, but that he never received one. Tr., 95:23. There is nothing in the record to indicate that Claimant turned down an offer of suitable work from Employer.

66. The second prong of *Maleug* states that TTDs may be curtailed if there is sufficient evidence that there is work available within Claimant's restrictions in the general labor market that he has a reasonable opportunity to procure. The burden of proof is on Defendants to establish that suitable employment was generally available in the market. *Perkins v. Croman, Inc.*, 134 Idaho 721, 9 P.3d 524 (2000). The evidence establishes that Claimant worked for

approximately two weeks as a van driver in March 2016, earning approximately $79.00. Claimant quit this job, not because it was inconsistent with his restrictions, but because it did not pay enough. While one might speculate that other work consistent with Claimant's restrictions is available in his labor market, Defendants did not produce such proof. Accordingly, Defendants are entitled to treat Claimant as though he continued to perform his driving job during his period of recovery. Claimant is entitled to TPD benefits, calculated pursuant to Idaho Code § 72-408.

67. **Attorney Fees**. Attorney fees are not granted as a matter of right, but may be recovered when circumstances specified by Idaho Code § 72-804 are met:

> 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 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.

63. Whether or not grounds exist for awarding a claimant attorney fees is a factual determination that rests with the Commission. *Davidson v. Riverland Excavating, Inc.*, 147 Idaho 339, 209 P.3d 636 (2009).

64. Claimant asserts an entitlement to attorney fees because "Defendants have unreasonably denied this claim with no other basis than the unsupported opinion of [PAC] Singleton." Defendants aver that benefits were paid to Claimant for "right wrist pain", including "initial diagnostic treatment by Dr. Stagg, Dr. [sic] Singleton, and the nerve conduction study. However, following further investigation, including taking Claimant's statement on November 12, 2013, [sic] and receipt of the medical records and EMG report, benefits were denied on November 13, 2015." Defendants' Brief at 5. Although this decision finds the opinions

of Dr. Stagg and Dr. Esplin more credible, nevertheless Defendants reasonably investigated Claimant's claim prior to terminating benefits, and reasonably relied on PAC Singleton's opinion to deny further responsibility on the claim. Therefore, Claimant is not entitled to recover attorney fees.

65. **Retention of Jurisdiction**. The final issue is whether the Commission should retain jurisdiction beyond the statute of limitations. The retention of jurisdiction is within the discretion of the Commission. When it is clear that there is a probability that medical factors will produce additional impairment in the future, it is appropriate for the Commission to retain jurisdiction. *Horton v. Garrett Freightlines, Inc.*, 106 Idaho 895, 896, 684 P.2d 297, 298 (1984). Where a claimant's medical condition has not stabilized or where a claimant's physical disability is progressive, it is appropriate for the Commission to retain jurisdiction. *Reynolds v. Browning Ferris Industries*, 113 Idaho 965, 969, 751 P.2d 113, 117 (1988). Retention of jurisdiction may be appropriate in cases where there is a probable need for future temporary disability benefits associated with surgery. *Emerson v. Floyd Smith Jr. Trucking*, 1986 IIC 0697 (Dec. 9, 1986).

66. Claimant has established through the record that he is entitled to treatment for his right wrist condition, including a potential need for surgical intervention for his carpal tunnel syndrome. Claimant has established that he is entitled to reasonable medical care related to his industrial occupational disease pursuant to Idaho Code § 72-432. Such medical benefits are not subject to a five-year statute of limitations.

67. Claimant listed additional issues regarding permanent impairment, permanent disability, and retraining in his Complaint. These issues are not yet ripe for determination. The parties agreed at hearing that additional issues are reserved. Tr., 5-6. It is appropriate for the Commission to retain jurisdiction beyond the statute of limitation.

## CONCLUSIONS OF LAW

1. Claimant has established that he incurred the compensable occupational disease of right-sided carpal tunnel syndrome while working for Employer.

2. Claimant has established he is entitled to future medical care from Dr. Esplin for his right-side carpal tunnel syndrome, including but not limited to further diagnostic testing and the suggested carpal tunnel release. After the date of this decision, any such medical expenses may be reviewed for reasonableness.

3. Claimant is entitled to TPD benefits at the applicable rates from November 6, 2015 until he reaches medical stability.

4. Claimant has not established entitlement to attorney fees pursuant to Idaho Code § 72-804.

5. The Commission will retain jurisdiction to determine all remaining issues set forth in the Complaint not decided herein.

## 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 _26th___ day of January, 2018.

INDUSTRIAL COMMISSION

_/s/_____
John C. Hummel, Referee

ATTEST:

_/s/_____
Assistant Commission Secretary

## CERTIFICATE OF SERVICE

I hereby certify that on the __2nd____ day of _February_____, 2018, 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 persons:

DENNIS R PETERSEN
PETERSEN PARKINSON & ARNOLD
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IDAHO FALLS ID 83403-1645

ERIC S BAILEY
BOWEN & BAILEY
PO BOX 1007
BOISE ID 83701-1007

sjw

_/s/_____

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

| | |
|---|---|
| CHRISTOPHER LINEBERRY,<br>Claimant,<br>v.<br>ELWOOD STAFFING,<br>Employer,<br>and<br>ZURICH AMERICAN,<br>Surety,<br>Defendants. | **IC 2015-028010**<br><br>**ORDER**<br><br>**February 2, 2018** |

Pursuant to Idaho Code § 72-717, Referee John C. Hummel 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 on the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant has established that he incurred the compensable occupational disease of right-sided carpal tunnel syndrome while working for Employer.

2. Claimant has established he is entitled to future medical care from Dr. Esplin for his right-side carpal tunnel syndrome, including but not limited to further diagnostic testing and the suggested carpal tunnel release. After the date of this decision, any such medical expenses may be reviewed for reasonableness.

3. Claimant is entitled to TPD benefits at the applicable rates from November 6, 2015 until he reaches medical stability.

4. Claimant has not established entitlement to attorney fees pursuant to Idaho Code § 72-804.

5. The Commission will retain jurisdiction to determine all remaining issues set forth in the Complaint not decided herein.

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

DATED this _2nd___ day of __February_____, 2018.

INDUSTRIAL COMMISSION

_/s/_____
Thomas E. Limbaugh, Chairman

_/s/_____
Thomas P. Baskin, Commissioner

_/s/_____
Aaron White, Commissioner

ATTEST:

_/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of February, 2018, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following persons:

DENNIS R PETERSEN
PETERSEN PARKINSON & ARNOLD
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/s/