BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

DAVID RUPERT, Claimant, v. COMPASS GROUP, Employer, and NEW HAMPSHIRE INSURANCE GROUP, Surety, Defendants.	**IC 2018-008101** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** FILED AUG 09 2021 INDUSTRIAL COMMISSION

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Brian Harper, who conducted a hearing in Boise, Idaho, on February 10, 2020. Curtis McKenzie represented Claimant. Rachael O'Bar represented Defendants. The parties produced oral and documentary evidence at the hearing, and submitted briefs. One post-hearing deposition was taken. After considerable delay, the matter came under advisement on July 13, 2021.

ISSUES

The issues for hearing were limited to:

1. Whether Claimant's need for the proposed surgery on his right knee is causally related to his accepted industrial accident; and

2. Whether Claimant is entitled to attorney fees.

The issues of future time loss benefits (TTD/TPD) and permanent disability, (PPI and PPD), as well as apportionment, are contingent on a finding of causation herein and subsequent surgery, and therefore were reserved by agreement of the parties.

CONTENTIONS OF THE PARTIES

On October 23, 2017, Claimant injured his right knee while in the course and scope of his employment. Claimant contends Defendants unreasonably delayed or denied treatment for this injury, but eventually Claimant underwent arthroscopic surgery on his knee on February 13, 2018. The surgery did not relieve all of Claimant's complaints. By late September 2018, Claimant's treating physician suggested additional surgery, the need for which he related to Claimant's work accident. Defendants wrongfully relied on an IME to deny the proposed surgery. Claimant is entitled to the proposed surgery for his ongoing knee injury. Defendants are also liable for attorney fees for unreasonable denial and delay of reasonable medical treatment.

Defendants contend they have paid for all reasonable medical care referable to the industrial accident and Claimant, at the time of hearing, was medically stable regarding any injury stemming from that accident. Claimant's proposed second knee surgery is not for conditions causally related to his work accident but rather for a new and distinct superseding injury or for progression of an underlying degenerative condition. Claimant is not entitled to attorney fees.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant taken at hearing;
2. Joint exhibits (JE) 1 through 9 admitted at hearing; and

3. The post-hearing deposition transcript of Roman Schwartsman, M.D., taken on March 19, 2021.

FINDINGS OF FACT

1. At the time of hearing Claimant was 61 years old, living in Nampa. Previously he lived in Lewiston while working as a unit director for an acute care hospital.

2. On October 23, 2017, while travelling by air from Boise to Los Angeles on business, Claimant injured his right knee as he attempted to twist his large frame (6'4" and 250 pounds) into a window seat on the airplane. He heard and felt a pop in his knee and felt immediate pain.

3. The next day Claimant told both his immediate boss and the regional manager of his injury. He also bought a knee wrap and ibuprofen to use while in California.

4. Upon returning to Idaho, Claimant first went home to Lewiston., but he did not seek care there. Instead, he waited until he was next in the Nampa area (where his wife lived) to begin treating.

5. On November 4, 2017, Claimant first presented at Direct Orthopedic Care (DOC) in Nampa for medical consultation on his right knee. He used his health insurance (Blue Cross of Idaho) for this treatment instead of going through the workers' compensation process, even though he was quite familiar with the system. He testified he chose not to seek care through Employer's doctor because "[g]oing to a quick care that would refer me to an orthopedic just didn't seem like a good use of money." Tr. p. 14.

6. Over the course of the next several weeks Claimant treated conservatively with DOC, including injections, anti-inflammatory medication, and physical therapy. He also obtained

x-rays and an MRI, which showed narrowing of the joint space and a posterior horn medial meniscus tear, grade I sprain of the medial collateral ligament, and bony contusions medially. He also had osteoarthritis in all three joint compartments, subsequently described as mild to moderate.

7. In early February Claimant was fired because he could not perform his job duties with the light-duty restrictions he was under at the time.

8. Conservative care failed to alleviate Claimant's pain and limitations, so he underwent surgery with orthopedic surgeon William Lindner, M.D., of Meridian, on February 13, 2018. The arthroscopic surgery consisted of a partial medial meniscectomy to correct a bucket handle tear which was transected and encroaching into the joint, a two-compartment synovectomy, and loose body removal.

9. After surgery a worker's compensation claim was filed. The Surety accepted the claim and paid for nearly all the medical expenses associated with Claimant's right knee treatment.[1]

10. The surgery, post-surgical physical therapy, and further injections failed to completely resolve Claimant's right knee pain complaints, although it reduced some of Claimant's symptoms and increased his knee mobility. Various activities, such as walking, stair climbing, and attempting to play golf increased his pain, and some days were worse than others.

11. In a written report dated July 12, 2018, Dr. Lindner noted Claimant did have some osteoarthritis in his right medial compartment, but in reviewing his operative notes and photos

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[1] Claimant argues the delay in obtaining worker's compensation coverage is Employer's fault. He also claims Surety did not cover all of his medical expenses, to wit, the custom knee brace he obtained after the surgery at a cost of $125.

Dr. Lindner noted there was articular cartilage damage adjacent to the transected bucket handle tear of the medial meniscus. However, the remainder of the articular surface was relatively normal. Dr. Lindner opined that Claimant's symptoms were confined to the medial compartment and "seen [sic – seem] to be related to abrasion related to [Claimant's] meniscal tear, based on my own operative note, not related to pre-existing conditions." JE 3, p. 32.

12. By mid-August 2018, Claimant reported to Dr. Lindner that he was improving, with pain between 2 and 6 on a 10 scale. Pain was medially located with burning sensation and limp at times. Claimant had full right knee flexion and extension with no instability. Some medial joint line tenderness was noted.

13. At his September 21, 2018 office visit, Dr. Lindner discussed options with Claimant such as a chondral graft or medial compartment knee replacement, both of which the doctor felt were aggressive options given Claimant's condition. Claimant was also not enthused with those options.

14. After Dr. Lindner raised the possibility of further surgery Surety scheduled Claimant for an IME with Roman Schwartsman, M.D.

15. Dr. Schwartsman saw Claimant on October 18, 2018, and ordered a repeat MRI of Claimant's right knee, which was obtained on October 30. On November 21, 2018, Dr. Schwartsman authored his final report, which in summary found no progression of Claimant's industrial injury or degenerative changes. Instead, he noted the recent MRI showed a new tear in Claimant's anterior medial meniscal horn which post-dated Claimant's prior knee surgery. Dr. Schwartsman concluded Claimant was at MMI regarding his industrial accident and

assigned him a 2% lower extremity PPI with no apportionment and no permanent restrictions. Dr. Schwartsman was deposed post hearing, and his testimony will be further discussed below.

16. On November 16, 2018, Dr. Lindner prepared his final office visit report wherein he discussed the recent MRI and various other issues. In that report, Dr. Lindner proposed an arthroscopic partial medial meniscectomy to resect Claimant's torn anterior horn. Dr. Lindner sought authorization from Surety for such procedure which was denied.

DISCUSSION AND FURTHER FINDINGS

17. The first and primary issue for resolution herein is whether the need for the proposed arthroscopic surgery discussed above is causally related to Claimant's industrial injury of October 23, 2017. Dr. Lindner opined it is related while Dr. Schwartsman opined it is not.

18. Claimant has the burden of proving the condition for which he seeks compensation is causally related to the industrial accident. *Callantine v Blue Ribbon Supply*, 103 Idaho 734, 653 P.2d 455 (1982). Claimant must produce evidence of medical opinion—by way of physician's testimony or written medical record—supporting his claim for compensation to a reasonable degree of medical probability. *See Anderson v. Harper's Inc.,* 143 Idaho 193, 196, 141 P.3d 1062, 1065 (2006). No special formula is necessary when medical opinion evidence plainly and unequivocally conveys a doctor's conviction that the events of an industrial accident and injury are causally related. *Hart v. Kaman Bearing & Supply,* 130 Idaho 296, 939 P.2d 1375 (1997). However, Claimant is required to establish a probable, not merely a possible, connection between cause and effect to support his contention. *Dean v. Dravo Corporation*, 95 Idaho 558, 560-61, 511 P.2d 1334, 1336-37 (1973). Claimant must demonstrate that there is a greater weight of

medical evidence for the proposition than against it. *Jensen v. City of Pocatello*, 135 Idaho 406, 18 P.3d 211 (2000).

19. Dr. Lindner was not deposed. As such, his medical records contain his only pronouncements of causal connection, and indeed Claimant relies on statements contained therein to support his claim for additional medical treatment. Specifically, Claimant focuses his argument on Dr. Lindner's written medical record of November 16, 2018, contained in the record as JE 3, p. 39. However, all of Dr. Lindner's medical records are examined in detail below.

Dr. Lindner's Opinions

20. Claimant testified, and Dr. Lindner's records, as well as those of the physical therapist, document that after his right knee surgery in February 2018, Claimant continued to complain of right medial compartment knee pain and discomfort even though he gained much benefit from the surgery. Claimant's pain consistently ranged from a subjective 1 to 5 on a 10 scale and was temporarily aggravated by many daily activities such as walking long distances and stair climbing. Steroid injections provided little relief.

21. In the records after Claimant's knee surgery but predating the October MRI, Dr. Lindner consistently mentioned arthritis as a major factor in Claimant's ongoing complaints. *See, e.g.,* JE 3, p. 24 (Claimant presents for injection related to pain and arthritis); *Id,* p. 25 (Diagnosis post partial meniscectomy with some osteoarthritis); *Id,* p. 27 (Diagnosis right knee pain with osteoarthritis); *Id,* pp. 28, 31 (Diagnosis right knee arthritis).

22. In a medical report dated July 12, 2018, Dr. Lindner stated under the heading DIAGNOSIS: "Persistent symptoms of arthritis, which very likely are related to [Claimant's] meniscal pathology based on my own operative report...." JE 3 p. 34. In that same report,

Dr. Lindner addressed a question (apparently propounded by Surety) of the potential for Claimant's ongoing complaints to be related to his pre-existing osteoarthritis in all three compartments. Dr. Lindner responded by noting that Claimant's only continuing symptoms were in his medial compartment, and those complaints "seen [sic – seem] to be related to abrasion related to [his] meniscal tear, based on my own operative note, not related to pre-existing conditions." *Id.*

23. Again, on August 17, 2018, Dr. Lindner listed Claimant's chief complaint as involving "some arthritis related to meniscal pathology." He diagnosed Claimant as having "some arthritis on the medial femoral condyle." JE 3, p. 36.

24. In his September 21, 2018 medical record, Dr. Lindner stated the Claimant was "identified to have grade 2 chondromalacia medial femoral condyle adjacent to his meniscal tear at the time of the initial procedure." JE 3 p. 37.

25. In his November 16 report, Dr. Lindner indicated he met with Claimant to discuss treatment options in light of the new MRI taken in late October. He did not have a copy of Dr. Schwartsman's IME report at that time.

26. Dr. Lindner indicated he had reviewed the most recent MRI and radiologist report and discussed the same with a musculoskeletal radiologist. Dr. Lindner noted the "irregularity" seen in the posterior horn of Claimant's medial meniscus was simply a postoperative change and not a structural abnormality. Dr. Lindner went on to state:

> What is, however, new … is a tear in the junction between the previous meniscal resection and the more normal-sized anterior meniscus. We actually have very good arthroscopic photographs of this area demonstrating a smooth transition zone with no re-tearing. Nonetheless, the stress in a transition zone between the smaller meniscal fragment and the larger meniscal fragment

> *has perhaps* resulted in some propagation of tearing in this region. This, in my opinion, is the only new pathology which is identified in the meniscus.

JE 3, p. 39. Italics added.[2]

27. After commenting on the new tear in the "transition zone," Dr. Lindner noted that he and Claimant discussed Claimant's condition and options moving forward. Dr. Lindner wrote;

> I have advised [Claimant] that he additionally has degenerative change within the knee, and this very likely could be the source of his symptoms. However, I cannot rule out that this area of tearing anteriorly is not symptomatic. I have advised that we could certainly resect this area, which may help improve symptoms. However, it may not improve his symptoms. We have carefully discussed the options with [Claimant]. After careful consideration he would like to proceed with knee arthroscopy with partial medial meniscectomy. I do believe the need for surgery, on a more probable than not basis, is related to [Claimant's] industrial injury.

JE 3, p. 39

Dr. Schwartsman's Opinions

28. After reviewing the MRI from October 2018 and comparing it to the MRI taken in 2017, Dr. Schwartsman prepared an addendum to his original report. Therein, Dr. Schwartsman concluded the posterior horn medial meniscectomy performed by Dr. Lindner was successful. As noted by Dr. Schwartsman, "the surgically debrided area was stable," and the "[s]ignal changes

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[2] The italics were added in the quote to highlight a troubling discrepancy between Dr. Lindner's records and Claimant's counsel's representation of what Dr. Lindner's records contained. In briefing, counsel purported to directly quote the same sentence wherein the italicized wording is found. However, counsel, using bold and underlined type to underscore the importance of the entry to his position on causation, wrote "**[T]he stress in a transitional zone between the smaller meniscal fragment and the larger meniscal fragment have resulted in some propagation of tearing in this region."** Claimant's Post-Hearing Brief, p. 7. Changing the actual phrase "has perhaps resulted" to the more definitive "have resulted," markedly alters the significance of Dr. Lindner's opinion. Claimant again used the misquoted phrase as support for causation in the "argument" section of his brief, at page 10.

Misrepresenting facts is *never* acceptable, and misstating a direct quote, if done intentionally, may well violate Idaho's Rules of Professional Conduct. *See, e.g.,* IRPC 3.3, *Candor to the Tribunal.* Counsel is strongly advised to always proofread direct quotes meticulously and never attempt to misrepresent any evidence, testimony, or documentation, as such could result in serious sanctions.

which are seen in the posterior horn and body of the meniscus are actually diminished from prior comparative studies," which led him to opine that the "previously performed medial meniscectomy has healed completely." JE 5, p. 117. However, Dr. Schwartsman identified a new, acute parrot-beak tear not present on prior studies located on Claimant's anterior medial meniscal horn. Dr. Schwartsman felt this finding would explain Claimant's complaints but was not related to an industrial accident.

29. The October 2018 MRI report noted an "[e]xtensive complex tear of the body and posterior horn medial meniscus" as well as grade 3 degenerative cartilage loss and osteophytosis in Claimant's right medial compartment. JE 5, p. 116.

30. Dr. Schwartsman was deposed on March 19, 2021. Therein, he confirmed that the new parrot-beak tear in Claimant's medial meniscal anterior horn would necessarily have required a new specific traumatic event. Since Claimant had not worked since his surgery in February 2018, Dr. Schwartsman concluded that Claimant's new mechanism of injury (traumatic event) would not have been work related.

31. Dr. Schwartsman also opined that Claimant was not a candidate for chondral graft or a knee replacement surgery, both of which had been proposed as possible, but aggressive, treatment options for Claimant. Dr. Schwartsman noted that Claimant's tri-compartmental arthritic changes were no more than moderate, and his cartilage loss was only partial thickness. However, a surgery to address Claimant's parrot-beak tear would be reasonable, but not industrially related. It would also be reasonable not to operate on the tear, as often no treatment is needed for such injury unless and until it progresses to the point of catching.

32. When asked to explain in layman's terms Dr. Lindner's November 16, 2018 office notes, Dr. Schwartsman claimed he could not, as he had trouble "following the logic" of that report. He felt there was "some laundering in contradiction" in the report.[3] When again asked to explain his concerns, Dr. Schwartsman replied in an equally ambiguous way by stating, "I think there's some reverse engineering going on here." He did finally admit that he disagreed with Dr. Lindner's conclusions, but did not explain why, as he again claimed he could not follow Dr. Lindner's logic. Schwartsman Depo. pp 17, 18.

33. Dr. Schwartsman testified that Dr. Lindner's assertion that "the stress in a transition zone between the smaller meniscal fragment and the larger meniscal fragment has perhaps resulted in some propagation of tearing in this region," was speculative and not supported by the objective findings in the MRI.

34. Dr. Schwartsman noted that Claimant's arthritic changes noted in the 2017 MRI were essentially unchanged in the 2018 MRI.

35. In cross examination, Dr. Schwartsman reiterated that the tear noted in Claimant's anterior medial meniscal horn was due to a specific traumatic event and could not be degenerative in nature. Dr. Schwartsman was unable to point to any statement made by Claimant during his IME or to any medical record wherein Claimant admitted to a traumatic event causing right knee pain after his February 2018 knee surgery.

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[3] It is not clear from the record what Dr. Schwartsman meant by that phrase, as he never clarified his thinking.

Causation Analysis

36. Since the burden rests with Claimant to prove by a preponderance of the evidence that his claim for continuing medical care, including the contemplated knee surgery, is causally related to his industrial accident in question, the logical place to start such analysis is to examine the extent of such favorable evidence. In that regard, Claimant presents a two-prong argument; first, Dr. Lindner's statement that he feels Claimant's need for surgery is related to his industrial injury, and second, Defendants' defense requires a new, discreet injury, which Claimant denies took place.

37. While it is true that Dr. Lindner states in a conclusory fashion that Claimant's need for a contemplated arthroscopy with partial medial meniscectomy surgery is more probably than not related to his industrial accident, clear, unambiguous authority for such conclusion is lacking.

38. Attempting to piece together the evidence in favor of causation, it appears from the record, using reasonable inferences, that Dr. Lindner felt that, even as of November 2018, Claimant's ongoing complaints were more likely due to degenerative changes in his medial compartment. Dr. Lindner appears to be less impressed with the idea that Claimant's tear in his anterior meniscus is the source of Claimant's pain. As noted previously, and set out again for emphasis, Dr. Lindner's stated in his November 16, 2018 report;

> I have advised [Claimant] that he additionally has degenerative change within the knee, and this *very likely could be the source of his symptoms*. However, I *cannot rule out that this area of tearing anteriorly is not symptomatic*. I have advised that we could certainly resect this area, which may help improve symptoms. However, *it may not improve his symptoms*. We have carefully discussed the options with [Claimant]. After careful consideration he would like to proceed with knee arthroscopy with partial medial meniscectomy.

JE 3, p. 39. (Emphasis added.) Dr. Lindner then goes on to opine that the resection surgery is more likely than not due to Claimant's industrial accident.

39. Going back to his medical records following Claimant's 2018 knee surgery, Dr. Lindner consistently diagnosed Claimant's complaints as being arthritic in nature. On at least a few occasions he opined that Claimant's arthritis in his medial compartment was related to his "meniscal pathology" by which Dr. Lindner appears to mean "related to an abrasion or articular cartilage damage adjacent to Claimant's tear."[4] *See* JE 3, pg. 34.

40. Dr. Lindner's causation opinion gets muddled when the October 2018 MRI and his November 16, 2018 report are considered. First, Dr. Lindner acknowledged that the area of the prior meniscal resection, *i.e.*, the posterior horn of the medial meniscus, showed no true abnormality, and in fact "appears improved in all aspects from previous MRI." JE p. 39. However, Dr. Lindner also noted a tear in the junction between the previous surgery and the anterior meniscus, which could *perhaps* account for Claimant's complaints. Unfortunately for Claimant, that opinion falls short of what is required for a causation opinion.[5]

41. While Dr. Lindner states that surgery to resect the anterior horn tear would be more probably than not related to the industrial accident, he did not first find that the anterior tear was more probably than not due to the accident in question. If the condition (tear) is not

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[4] While Claimant might wish to argue that Dr. Lindner's comments establish the doctor's belief that Claimant's medial compartment arthritis is due to the industrial accident in question, the doctor's proposed surgery is to repair Claimant's torn medial anterior horn. As such, that opinion, even if established by a preponderance of the evidence, which it was not on this record, (and further, was convincingly rebutted by Dr. Schwartsman's deposition testimony), is irrelevant to the current issues for resolution.

[5] In contrast, immediately thereafter, Dr. Lindner stated that Claimant's degenerative change within his knee *very likely* could be the source of his symptoms. (Emphasis added.)

more likely due to the accident, the surgery to correct the condition cannot be causally related to the accident. There is no medical opinion in the record that more likely than not proves Claimant's tear was related to his 2017 work accident.[6]

42. Claimant has failed to prove by a preponderance of the evidence that he is entitled to the contemplated arthroscopy with partial medial meniscectomy as proposed by Dr. Lindner.[7]

Attorney Fees

43. While Claimant makes a novel argument for attorney fees, analysis of that claim is rendered moot by the finding that Claimant is not entitled to the benefits he sought. As our Supreme Court noted in *Salinas v. Bridgeview Estates,* 162 Idaho 91, 93, 394 P.3d 793, 795 (2017), "there must be payment that is justly due and owing to allow an award of attorney's fees, no matter how unreasonably an employer or surety acted."[8] In other words, Claimant must prevail on at least one claim in order to be awarded attorney fees. Claimant did not so prevail.

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[6] At most, one might argue inferentially that when Dr. Lindner stated "the stress in a transition zone between the smaller meniscal fragment and the larger meniscal fragment *has perhaps* resulted in some propagation of tearing in this region", it is implied that Claimant's current complaints are due to changes resulting from his first knee surgery which in turn resulted in the tearing noted in the most recent MRI through the application of stress on that area. The problem with that argument is that Dr. Lindner only postulated that such stress might be the reason for such tearing. The term "perhaps" does not rise to the level of reasonable medical probability, but only suggests a possible connection.

[7] To the extent that Claimant would argue his claim also includes surgical options such as a chondral graft or a medial compartment knee replacement, there has been no medical opinion relating such proposed surgeries to the accident in question. Such surgical options were not contemplated in Dr. Lindner's report of November 16, 2018 wherein he opined on causation. The only rational reading of that report limited Dr. Lindner's opinion to the arthroscopic surgery which Claimant was seeking in November 2018. Furthermore, Dr. Schwartsman convincingly opined that Claimant's then-current condition as of November 2018 would not warrant such surgery.

[8] The Referee does not imply that Employer or Surety acted unreasonably by citing to that quote. There was no need in this case to analyze the conduct of Employer and/or Surety given the findings contained herein.

44. Claimant has failed to prove by a preponderance of the evidence that he is entitled to attorney fees under Idaho Code § 72-804.

CONCLUSIONS OF LAW

1. Claimant has failed to prove by a preponderance of the evidence that he is entitled to the contemplated arthroscopy with partial medial meniscectomy as proposed by Dr. Lindner.

2. Claimant has failed by a preponderance of the evidence to prove that he is entitled to attorney fees under Idaho Code § 72-804.

RECOMMENDATION

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

DATED this 30th day of July, 2021.

INDUSTRIAL COMMISSION

Brian Harper

Brian Harper, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of August, 2021, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by email transmission and regular United States Mail upon each of the following:

CURTIS MCKENZIE
655 East 4500 South, Ste.120
Salt Lake City, UT 84107
curt@davis-sanchez.com
cdm@mcklawid.com

ERIC BAILEY
PO Box 1007
Boise, ID 83701
wcesb76@hotmail.com
bperkins@bowen-bailey.com

Jennifer S. Komperud

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

DAVID RUPERT, Claimant, v. COMPASS GROUP, Employer, and NEW HAMPSHIRE INSURANCE GROUP, Surety, Defendants.	**IC 2018-008101** **ORDER** FILED AUG 09 2021 INDUSTRIAL COMMISSION

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

Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own. Based upon the foregoing, IT IS HEREBY ORDERED that:

1. Claimant has failed to prove by a preponderance of the evidence that he is entitled to the contemplated arthroscopy with partial medial meniscectomy as proposed by Dr. Lindner.

2. Claimant has failed by a preponderance of the evidence to prove that he is entitled to attorney fees under Idaho Code § 72-804.

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

DATED this the 9th day of August, 2021.

INDUSTRIAL COMMISSION

Aaron White, Chairman

Thomas E. Limbaugh, Commissioner

Thomas P. Baskin, Commissioner

ATTEST:

Kamerron Slay
Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of August, 2021, a true and correct copy of the foregoing **ORDER** was served by email transmission and regular United States Mail upon each of the following:

CURTIS MCKENZIE
655 East 4500 South, Ste.120
Salt Lake City, UT 84107
curt@davis-sanchez.com
cdm@mcklawid.com

ERIC BAILEY
PO Box 1007
Boise, ID 83701
wcesb76@hotmail.com
bperkins@bowen-bailey.com

Jennifer S. Komperud

jsk