

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

KRISTA SHAWN BELL,

Claimant,

v.

LOVELY NAILS DELUXE, LLC,

Uninsured Employer,

Defendant.

IC 2018-032075

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

FILED

OCT 22 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 default hearing via ZOOM videoconferencing on January 14, 2021. Reed Larsen represented Claimant. As alluded to above, Defendant was defaulted previously and was not present for the video hearing. The Claimant produced oral and documentary evidence at and after the hearing and submitted briefing. The matter came under advisement on September 21, 2021.

ISSUES

The issues for resolution listed at hearing are:

1. Whether Claimant has complied with the notice and limitation requirements set forth in Idaho Code §72-701 through Idaho Code §72-706;
2. Whether Claimant was an employee or independent contractor for Defendant at the time of her injury;

3. Whether Claimant suffered an injury arising out of and in the course of her employment;

4. Whether the condition for which Claimant seeks benefits was caused by the industrial accident;

5. Whether and to what extent Claimant is entitled to the following benefits:

- a. Medical care;
- b. Temporary total and/or partial disability benefits (TTD/TPD);
- c. Disability based on medical factors (PPI);
- d. Retraining;
- e. Permanent partial disability attributable to all factors (PPD);
- f. Attorney fees;¹ and;

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

PROCEDURAL BACKGROUND

Claimant filed a complaint in this matter on November 7, 2018. On November 25, 2018, Defendant filed an answer with owner Ken Cao appearing *pro se*. Subsequently, Defendant retained counsel and discovery was undertaken. The complaint was amended during discovery to properly designate Defendant as an uninsured LLC.

Defendant's attorneys filed a motion to withdraw, which motion was granted, and an order allowing withdrawal of attorney was issued on July 28, 2020. On August 14, 2020, Mr. Cao filed a notice of appearance *pro se*. He was informed by letter from the Commission that he was not

¹ Although attorney fees are listed as a stand-alone issue, they are taken up in the discussion of Idaho Code § 72-210 penalties.

permitted to appear *pro se* since the Defendant was an LLC. Defendant failed to appear through legal counsel despite the notice provided by the Commission regarding his obligation to do so.

On October 23, 2020, Claimant filed a notice of intent to take default, and on November 18 the Commission entered an Order of Default. On December 1, 2020, Claimant filed a request for default hearing pursuant to JRP 6C. The default hearing was held on January 14, 2021.

CLAIMANT'S CONTENTIONS

Claimant asserts she cut her thumb on January 18, 2018, while performing a pedicure on a client while in the course and scope of her employment with Defendant. The wound did not heal properly, and in July Claimant was seen in the Portneuf Medical Center with a fever, nausea, and severe pain in her left flank and low back. Blood tests confirmed staphylococcus aureus. Two days later Claimant went to Bingham Memorial suffering from fever, chills, nausea, vomiting, and intractable flank and low back pain. Early treatment and diagnosis focused on a pelvic mass, which was removed surgically. This surgery did not diminish Claimant's pain, and a subsequent CT scan revealed abnormally appearing paraspinal soft tissue at T12-S1, diagnosed as a paraspinal abscess and vertebral osteomyelitis due to a staph infection. Claimant had to travel daily from Pocatello to Idaho Falls for six weeks to complete her course of antibiotic infusions to treat her staph infection.

None of Claimant's treatment modalities to date have eliminated or substantially reduced her pain levels. At this time, her only option is pain management. Claimant's pain and physical limitations have greatly reduced her income capacity. Claimant's physician opined under oath that her staph infection and subsequent issues related thereto are more probably than not causally connected with her work injury in question and subsequent infection.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant taken at hearing;
2. Oral testimony of witnesses Whitney Munse and Vanessa Mecham taken at hearing;
3. Claimant's exhibits (CE) 1 through 26 admitted at hearing;
4. Affidavit of Ryan Hope, M.D., filed on April 2, 2021; and
5. The IIC legal file on this matter and pleadings therein.

RULE 6 DEFAULT REQUIREMENTS

JRP 6C deals with a claimant's responsibilities to obtain an award of judgment in a default proceeding. Therein, the rule requires a claimant to establish a *prima facie* case sufficient to support an award of those benefits sought. This can be done by hearing, submission of written evidence, affidavits, and medical records, or any such combination. It is up to the Commission to determine whether Claimant has made a *prima facie* showing of all elements of her claim.

Given these requirements, it is appropriate to provide those facts which establish a *prima facie* case for each of the issues in play in this proceeding. Facts which are not necessary to establish such showing may be omitted even if they would present a more complete narration of what is a complex series of events. Greater discussion will be given those elements of Claimant's claims for benefits which require an in-depth analysis for determining the extent of the benefits available to Claimant under these facts.

FINDINGS OF FACT, DISCUSSION, AND ANALYSIS

Facts and Analysis Relevant to Notice Issue

1. Claimant worked for Defendant from June 2016 until August 2018.

2. On January 18, 2018, Claimant cut her thumb while performing a pedicure at Defendant's place of business. At the time of the accident Claimant was working in the course and scope of her employment with Defendant.

3. Claimant did not file a written notice of injury. However, she told her supervisor, Diem Shina² of the injury immediately after it happened. Ms. Shina assisted Claimant in bandaging the wound. Ongoing discussion concerning the wound continued throughout the spring and summer of 2018 between Claimant and the owners and manager of Defendant.

4. Idaho Code § 72-701 provides, in pertinent part:

No proceedings under this law shall be maintained unless a notice of the accident shall have been given to the employer as soon as practicable but not later than sixty (60) days after the happening thereof, and unless a claim for compensation with respect thereto shall have been made within one (1) year after the date of the accident....

Idaho Code § 72-702 requires that the notice must be in writing. However, notice required under Idaho Code § 72-701 is sufficient, even if the formal requirements are not met, so long as "...the employer, his agent or representative had knowledge of the injury...." Idaho Code § 72-704. Notice is sufficient if it apprises the employer of the accident arising out of and in the course of employment causing the personal injury. *Murray-Donahue v. National Car Rental Licensee Association*, 127 Idaho 337, 339, 900 P.2d 1348, 1350 (1995). (Employer witnessing accident provides the requisite knowledge of the accident; in such case no formal notice is required.) *See also, Page v. McCain Foods, Inc.*, 141 Idaho 342, 109 P.3d 1084 (2005). (Where written notice is lacking a showing that employer had actual notice of injury obviates the necessity of written notice.)

² Diem Shina was referred to at the hearing by witness and co-employee of Claimant Whitney Munce as an "owner/manager" that "runs the show...." "She's the boss." HT, p. 17.

5. Claimant filed her complaint on November 7, 2018, well within the one-year statute of limitation.

6. Claimant has made a requisite *prima facie* showing that she gave timely notice of her injury and filed her claim for compensation (complaint) within the time frames set out in Idaho Code § 72-701.

Facts and Analysis Relevant to Employee v. Independent Contractor Issue

7. Idaho Code § 72-102(11) defines an employee as “any person who has entered into the employment of, or who works under contract of service or apprenticeship with, an employer.” An independent contractor is “any person who renders service for a specified recompense for a specified result, under the right to control or actual control of his principal as to the result of his work only and not as to the means by which such result is accomplished.” Idaho Code § 72-102(16).

8. The Idaho Supreme Court in *Kiele v. Steve Henderson Logging*, 127 Idaho 681, 905 P.2d 82 (1995) noted the criteria for determining whether a worker was an employee or an independent contractor. The distinction focused on whether the employer has the right to control the time, manner, and method of executing the work tasks, as opposed to simply requiring a certain result. This “right to control” has four key factors; 1) direct evidence of control, 2) method of payment, 3) furnishing major items of equipment, and 4) the right to terminate the relationship at will. When in doubt, the Act must give liberal interpretation to the statute in favor of finding an employment relationship.

9. Applying the factors and criteria set out above to the facts of this case it is apparent Claimant was an employee. Defendant controlled nearly all aspects of Claimant’s work, including hours and days worked, mandatory attendance at all meetings, even on Claimant’s

days off, and pre-excusal for time off. Defendant's manager even prevented Claimant from leaving work to visit a doctor when she cut her thumb, instead insisting that she simply bandage it and wear a glove to finish her shift. Text messages supplied by Claimant (CE 13) illustrated the fact that Defendant had significant input on when and for what hours Claimant would work, or whether she would be able to keep her job after missing time for treatment of her staph infection. Furthermore, all supplies and equipment were supplied by Defendant and the employees were not allowed to bring their own. Tips made by the employees were turned over to Defendant who paid the employees, including Claimant, with regular checks on a semi-monthly basis. Defendant withheld taxes from such payments.

10. Claimant has made a requisite *prima facie* showing that she was an employee and not an independent contractor in her employment with Defendant as defined in Idaho Code § 72-102(11).

Facts and Analysis Relevant to Whether Claimant Suffered an Injury in the Course of Employment

11. For an injury to be compensable under the Worker's Compensation Act (the Act), it must have been caused by an accident both *arising out of* and *in the course of* any employment covered by the Act. Idaho Code § 72-102(18)(a) (emphasis added). The test for determining compensability is two-pronged, and the claimant must satisfy both elements to be entitled to compensation. *Kessler v. Payette County*, 129 Idaho 855, 859, 934 P.2d 28, 32 (1997). A worker is *in the course of employment* if the worker is doing the duty that the worker is employed to perform. *Kiger v. Idaho Corp.*, 85 Idaho 424, 380 P.2d 208 (1963). An injury is considered to *arise out of employment* when a causal connection exists between the circumstances under which the work must be performed and the injury of which the claimant complains. *Kessler*, 129 Idaho 855, 860, 934 P.2d 28, 33 (1997).

12. The uncontradicted and unambiguous evidence in this case makes it clear that Claimant did suffer an injury which arose out of and took place in the course of her employment. At the time of her injury Claimant was performing a pedicure, which is one of her main employment functions for Defendant. She was clearly doing the work she was employed to perform. The injury arose out of her employment as there was a causal connection between the circumstances of her work, using nippers to cut nails, and the injury occasioned thereby. Both Claimant and her co-worker, witness Vanessa Mecham, testified regarding the occasion of the injury; both indicated it took place while Claimant was doing a pedicure while working for Defendant.

13. Claimant has made a requisite *prima facie* showing that her thumb injury arose out of and in the course of her employment with Defendant.

Facts and Analysis Relevant to Causation

14. Causation is an issue whenever entitlement to benefits is at question. *Gomez v. Dura Mark, Inc.*, 152 Idaho 597, 601, 272 P.3d 569, 573 (2012). To prove that a causal relationship is medically probable requires Claimant to demonstrate that there is more medical evidence for the proposition than against it. *Jensen v. City of Pocatello*, 135 Idaho 406, 18 P.3d 211 (2000). There must be evidence of medical opinion—by way of physician’s testimony or written medical record—supporting the claim for compensation to a reasonable degree of medical probability. *See, e.g. Hart v. Kaman Bearing & Supply*, 130 Idaho 296, 939 P.2d 1375 (1997). An employer cannot be held liable for medical expenses unrelated to any on-the-job accident or occupational disease.” *Sweeney v. Great West Transp.*, 110 Idaho 67, 71, 714 P.2d 36, 40 (1986).

15. Claimant testified that she worked for Defendant in a less-than-sanitary environment. While the employees were required to “deep clean” the facility once a week, employees were not allowed to soak tools in barbicide to sanitize them between clients, but instead they were simply wiped off with a hot wet cloth, even if the tool was exposed to human blood. Employees were instructed to recycle the acetone polish remover used to soak gel polish from clients’ fingernails, and reuse the paraffin wax by replacing it into the wax pot used for all waxing, including Brazilian waxes. Pumice stones and tweezers were not disinfected between uses, and nail files and buffers were reused as well. Pedicure bowl disinfectant was diluted prior to use. Manicure bowls were not disinfected, even with diluted cleaner. Manicure tables were not cleaned between clients.

16. After Claimant cut her thumb, she was not allowed to seek medical treatment that day. Instead, Defendant suggested she use glue to stop the bleeding. Her wound was bound, and she was given a glove to use.

17. Claimant’s thumb wound did not heal over the next several months. Ms. Meacham likewise provided testimony that Claimant’s thumb was not healing, and her hands were in bad shape during the summer of 2018.

18. Claimant experienced severe low back and left flank pain by mid-July, 2018, for which she sought treatment at Portneuf Medical Center. A CT scan revealed an ovarian mass, which was thought to be the source of Claimant’s painful condition. Blood cultures were positive for staphylococcus aureus, but Claimant was not treated with antibiotics at that time.

19. Claimant’s condition continued to worsen over the next few days, and she sought additional medical care at Bingham Hospital in Blackfoot. Physicians there scheduled

an emergency appointment for hysterectomy and removal of the ovarian mass. Surgery was performed in Boise at St. Luke's. The mass was benign.

20. The surgery did not relieve Claimant's symptoms, and on August 11, 2018, Claimant again presented at Bingham Hospital. A CT scan taken that day showed abnormal appearing paraspinal soft tissues at T12 through S1 with multiple paraspinal abscesses. Claimant was transferred by ambulance to eastern Idaho Regional Medical Center in Idaho Falls for treatment of her diagnosed abscesses, discitis, and osteomyelitis.

21. Claimant was hospitalized and treated with antibiotic therapy. Her treating physician determined her staph infection predated the surgery to remove her ovarian tumor. Claimant received a PICC line for administration of antibiotic medication. Her course of antibiotic treatment lasted for six weeks, requiring her to travel daily from Pocatello to Idaho Falls.

22. Even after her antibiotic regiment was completed and her staff infection cleared, Claimant continued to suffer ongoing back pain. She also continued to suffer pain in her hands. Claimant was referred to a hand specialist and a pain specialist for her conditions.

23. Claimant came under the care of Ryan Hope, M.D., at Vista Pain Group for treatment of her chronic back pain. Dr. Hope initially indicated Claimant's options for pain management would include pain medication, injections, or surgery. Claimant elected medial branch block injections. However, the injections were not successful, so Claimant was sent for a surgical evaluation.

24. It was determined Claimant was not a surgical candidate after examination by a local neurosurgeon. Claimant was left with medication pain management treatment for her chronic low back pain.

25. Dr. Hope prepared a sworn affidavit wherein he noted that by history Claimant had a spinal abscess dated back to 2018; he also was aware that Claimant had an incident where she had an infected right thumb in January of that year, and by August was diagnosed as having a staph infection and spinal abscess. Dr. Hope's opinion to a reasonable medical probability was that there was a causal connection between Claimant's thumb infection starting in January 2018 and the spinal abscess. Dr. Hope also testified by affidavit that because Claimant did not respond to injection therapy for her paraspinal abscess with osteomyelitis and is not a surgical candidate, she is also not a candidate for radiofrequency ablation. He testified her remaining course of treatment is simply pain management. Dr. Hope opined that absent some further intervention, currently unknown, Claimant's pain condition is permanent, as are her accompanying limitations. Dr. Hope holds his opinions to a reasonable degree of medical probability.

26. Dr. Hope's affidavit, when coupled with the facts presented hereinabove, establish a *prima facie* showing of a causal connection between Claimant's work injury, to wit, a cut on her thumb which became infected and resulted in a staph infection in her paraspinal muscles and the bones of her spine, and her current condition for which she seeks benefits.

27. Claimant has made a requisite *prima facie* showing that her condition for which she seeks benefits was caused by the industrial accident in question.

Facts and Analysis Relevant to Claims for Benefits

28. Claimant argues for benefits for medical care, time lost from work, permanent impairment, and partial permanent disability. Claimant also seeks those fees and costs mandated in Idaho Code § 72-210 for Defendant's failure to insure liability. While Claimant listed retraining as an issue, she did not argue for that benefit in briefing and it is deemed withdrawn. Each benefit will be addressed in turn below.

Medical Treatment

29. Idaho Code § 72-432(1) mandates that an employer shall provide for an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital service, medicines, crutches, and apparatus, as may be reasonably required by the employee's physician or needed immediately after an injury or manifestation of an occupational disease, and for a reasonable time thereafter. If the employer fails to provide the same, the injured employee may do so at the expense of the employer. An employer is only obligated to provide medical treatment necessitated by the industrial accident and is not responsible for medical treatment not related to the industrial accident. *Williamson v. Whitman Corp./Pet, Inc.*, 130 Idaho 602, 944 P.2d 1365 (1997).

30. Claimant's course of treatment stemming from her infection occasioned by an industrial accident is set out above. Claimant has provided medical bills and records from that course of treatment. In a separate summary of past expenses Claimant has detailed medical charges of \$170,770.38, which appropriately does not include the costs associated with Claimant's hysterectomy surgery. Additionally, Claimant provided charges associated with her transportation costs from Pocatello to Idaho Falls for her antibiotic treatments spanning a period of six weeks. Her 42 round trips of 102 miles multiplied by the IRS mileage rate of \$.56/mile total \$2,399.04.

31. Claimant has made a requisite *prima facie* showing of her entitlement to past medical charges, including reasonable travel charges, stemming from her industrial accident in the sum of \$173,169.42.

32. Claimant is entitled to reasonable future and ongoing medical care for pain management associated with her chronic low back pain.

Temporary Disability Benefits

33. Idaho Code § 72-102 (10) defines “disability,” for the purpose of determining total or partial temporary disability income benefits, as 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 § 72-408 further provides that income benefits for total and partial disability shall be paid to disabled employees “during the period of recovery.” The burden is on a claimant to present medical evidence of the extent and duration of the disability in order to recover income benefits for such disability. *Sykes v. C.P. Clare and Company*, 100 Idaho 761, 605 P.2d 939 (1980).

34. Claimant testified she was entirely unable to work from July 19, 2018 through October 10, 2018. Her testimony is supported by the produced medical records. Claimant made approximately \$3,500 per month prior to her injury. Her total temporary disability benefits for those 12 weeks is calculated at \$541.15 per week times 12 weeks for a total of \$6,493.84.

35. Claimant has made a requisite *prima facie* showing of her entitlement to benefits for temporary disability in the sum of \$6,493.84.

Disability Based on Medical Factors or Permanent Partial Impairment (PPI)

36. Permanent impairment is any anatomic or functional abnormality or loss after maximal medical rehabilitation has been achieved and a claimant’s position is considered medically stable. *Henderson v. McCain Foods*, 142 Idaho 559, 567, 130 P.3d 1097, 1105 (2006). Idaho Code § 72-424 provides that the evaluation of permanent impairment is a medical appraisal of the nature and extent of the injury or disease as it affects an injured employee’s personal efficiency in the activities of daily living, such as self-care, communication, normal living

postures, ambulation, elevation, traveling, and other activities. The Commission is the ultimate evaluator of impairment. *Urry v. Walker & Fox Masonry*, 115 Idaho 750, 769 P.2d 1122 (1989).

37. Claimant did not obtain a formal PPI rating from a physician. Instead, she correctly notes the Commission is the ultimate fact finder on impairment and requests the Commission to determine the rating. In doing so, it is noted that Dr. Hope did opine that Claimant had suffered a permanent disability resulting from her industrial injury.

38. When analyzing Claimant's impairment rating, the undersigned believes the facts of her condition should be considered and compared to similar recent cases where similar injuries were rated. For example, in *Stanley v. State of Idaho, Special Indemnity Fund*, IIC 2013-016787, (Feb. 10 2020), claimant Stanley was assigned a 6% whole person PPI rating for a permanent low back injury resulting in pain and physical limitations. In *Erickson v. Cable One*, IIC 2014-023643, (Jan. 13, 2020), claimant Erickson was assigned a 3% whole person PPI rating for her permanent low back condition. With those recent cases as guidance, the Referee finds from the totality of the evidence presented herein that Claimant suffered a 5% whole person permanent impairment from her industrial accident resulting in permanent intractable pain and physical limitations as discussed in greater detail below.

39. Claimant has made a requisite *prima facie* showing of her entitlement to benefits for permanent partial impairment equal to 5% of the whole person, which equates to \$10,353.75.

Permanent Partial Disability

40. Permanent disability results when the actual or presumed ability to engage in gainful activity is reduced or absent because of permanent impairment and no fundamental or marked change in the future can be reasonably expected. Idaho Code § 72-423.

Evaluation (rating) of permanent disability is an appraisal of the injured employee's present and probable future ability to engage in gainful activity as it is affected by the medical factor of impairment and by pertinent nonmedical factors provided in Idaho Code § 72-430. Idaho Code § 72-425. The test for determining whether a claimant has suffered a permanent disability greater than permanent impairment is "whether the physical impairment, taken in conjunction with nonmedical factors, has reduced the claimant's capacity for gainful employment." *Graybill v. Swift & Company*, 115 Idaho 293, 294, 766 P.2d 763, 764 (1988). The extent and causes of permanent disability are factual questions committed to the particular expertise of the Commission, which considers all relevant medical and nonmedical factors and evaluates the advisory opinions of vocational experts. *See Eacret v. Clearwater Forest Indus.*, 136 Idaho 733, 40 P.3d 91 (2002).

41. At the time of hearing Claimant had ceased working as a licensed cosmetologist and was working as a custodian. She testified she is unable to stand or sit for long periods of time; frequent position changes are necessary. She takes OTC pain medication and prescription Tramadol for her constant low back discomfort (7 or 8/10 on pain scale). Claimant's income varied somewhat while working for Defendant but could reach \$3,500 monthly. As a custodian Claimant makes just under \$1,200 per month.

42. Claimant's wage-earning capacity has been diminished as the result of her permanent physical limitations on standing and sitting, with the need for frequent ad-hoc position changes, as demonstrated at hearing and supported by her testimony. There is nothing in the record to suggest that Claimant was "underemployed" at the time of hearing or was capable of making more money than she made at her custodian job. As such, Claimant has demonstrated a loss of income capacity of 66%.

43. Claimant presented no evidence that her potential job market access was materially reduced as a result of her industrial accident. As such, it is not possible to determine the degree, if any, of job market access reduction confronting Claimant without resorting to speculation.

44. Averaging Claimant's loss of income capacity (66%) and her loss of job market access (0%) yields a 33% permanent partial disability rating, inclusive of her 5% PPI rating.

45. Claimant has made a requisite *prima facie* showing of her entitlement to benefits for permanent partial disability of 33% of the whole person, inclusive of her 5% impairment, which equates to \$57,981.00 (33% PPD is \$68,334.75 less \$10,353.75 PPI = \$57,981.00).

Facts and Analysis Relevant to Claims under Idaho Code § 72-210

46. Idaho Code § 72-210 provides for penalties if an employer fails to secure payment of compensation as required by the Act. In such case an injured employee shall be awarded, in addition to compensation under the Act, an amount equal to ten per cent (10%) of the total amount of her compensation, together with costs, if any, and reasonable attorney's fees if she has retained counsel.

47. Claimant retained counsel to represent her in these proceedings. The IIC file supports the proposition that Defendant was uninsured.

48. IDAPA 17.01.01.802 presumes 30% of available funds is a reasonable fee when a hearing is held and briefing submitted, such as in the present case. Evaluating the factors enumerated in *Hogaboom v. Economy Mattress*, 107 Idaho 13, 684 P.2 990 (1984), given the anticipated time, effort, and issues involved in proceeding against an uninsured employer, the fees customarily charged for workers' compensation matters, the possible recovery, the time constraints imposed, the length of the attorney-client relationship, Claimant's counsel's

extensive experience, Claimant's limited ability to pay for legal services, and the risk of no recovery given an uninsured employer, (as well as potential difficulty and effort needed to attempt collection) a fee of 30% of the recovery is deemed reasonable. No cost bill was submitted and therefore no costs over attorney fees are awarded herein.

49. Claimant is entitled to a 10% penalty on all compensation allowed herein, as well as attorney fees under Idaho Code § 72-210 in amounts as shown below.

50. The record herein establishes workers' compensation benefits due to Claimant, together with the 10% penalty, and attorney fees and costs owing pursuant to Idaho Code § 72-210 as calculated:

Amounts owing under Idaho Code § 72-432:

| | | |
|---|--------------------|---------------------|
| Past Medical expenses | \$170,770.38 | |
| Past Travel expenses | \$ <u>2,399.04</u> | \$173,169.42 |
| Amount owing for Temporary Disability | | \$ 6,493.84 |
| Amount owing for Permanent Impairment | | \$ 10,353.75 |
| Amount owing for Permanent Partial Disability | | \$ <u>57,981.00</u> |
| Total Gross Recovery for calculating penalty and fees | | \$247,998.01 |

Amounts owing pursuant to Idaho Code § 72-210:

| | | |
|-----------------------------------|---------------------|----------------------------|
| 10% penalty (.10 x \$247,998.01) | \$ 24,799.80 | |
| Attorney fees (.3 x \$247,998.01) | \$ <u>74,399.40</u> | \$ <u>99,199.20</u> |
| Total | | <u>\$347,197.21</u> |

CONCLUSIONS OF LAW

1. Claimant has made a requisite *prima facie* showing that she gave timely notice of her injury and filed her claim for compensation (complaint) within the time frames set out in Idaho Code § 72-701.

2. Claimant has made a requisite *prima facie* showing that she was an employee of Defendant at the time of her industrial accident as defined in Idaho Code § 72-102(11).

3. Claimant has made a requisite *prima facie* showing that her thumb injury arose out of and in the course of her employment with Defendant.

4. Claimant has made a requisite *prima facie* showing that her condition for which she seeks benefits was caused by the industrial accident in question.

5. Claimant has made a requisite *prima facie* showing of her entitlement to past medical charges, including reasonable travel charges, stemming from her industrial accident in the sum of \$173,169.42.

6. Claimant is entitled to reasonable future and ongoing medical care for pain management associated with her chronic low back pain.

7. Claimant has made a requisite *prima facie* showing of her entitlement to benefits for temporary disability in the sum of \$6,493.84.

8. Claimant has made a requisite *prima facie* showing of her entitlement to benefits for permanent partial impairment equal to 5% of the whole person, which equates to \$10,353.75.

9. Claimant has made a requisite *prima facie* showing of her entitlement to benefits for permanent partial disability of 33% of the whole person, inclusive of her 5% impairment, which equates to \$57,981.00.

10. Pursuant to Idaho Code § 72-210 Claimant is entitled to attorney fees in the sum of \$74,399.40, and a 10% penalty on all compensation allowed herein in the sum of \$24,799.80.

11. The sum of workers' compensation benefits, attorney fees, and penalties presently due and owing to Claimant from Defendant is \$347,197.21.

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 12 day of October, 2021.

INDUSTRIAL COMMISSION

Brian Harper

Brian Harper, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of October, 2021, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served upon each of the following by the methods indicated below:

By email and regular United States Mail:
REED LARSEN
PO Box 4229
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reed@cooper-larsen.com

By regular United States Mail:
LOVELY NAILS
c/o KEN CAO, Manager
1280 DOLOSTONE DR.
POCATELLO, ID 83201

Jennifer S. Komperud

jsk

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KRISTA SHAWN BELL,

Claimant,

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LOVELY NAILS DELUXE, LLC,

Uninsured Employer,

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ORDER

FILED

OCT 22 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 made a requisite *prima facie* showing that she gave timely notice of her injury and filed her claim for compensation (complaint) within the time frames set out in Idaho Code § 72-701.

2. Claimant has made a requisite *prima facie* showing that she was an employee of Defendant at the time of her industrial accident as defined in Idaho Code § 72-102(11).

3. Claimant has made a requisite *prima facie* showing that her thumb injury arose out of and in the course of her employment with Defendant.

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6. Claimant is entitled to reasonable future and ongoing medical care for pain management associated with her chronic low back pain.

7. Claimant has made a requisite *prima facie* showing of her entitlement to benefits for temporary disability in the sum of \$6,493.84.

8. Claimant has made a requisite *prima facie* showing of her entitlement to benefits for permanent partial impairment equal to 5% of the whole person, which equates to \$10,353.75.

9. Claimant has made a requisite *prima facie* showing of her entitlement to benefits for permanent partial disability of 33% of the whole person, inclusive of her 5% impairment, which equates to \$57,981.00.

10. Pursuant to Idaho Code § 72-210 Claimant is entitled to attorney fees in the sum of \$74,399.40, and a 10% penalty on all compensation allowed herein in the sum of \$24,799.80.

11. The sum of workers' compensation benefits, attorney fees, and penalties presently due and owing to Claimant from Defendant is \$347,197.21.

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

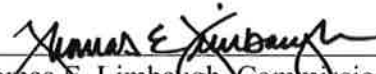
DATED this the 21st day of October, 2021.



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 22nd day of October, 2021, a true and correct copy of the foregoing **ORDER** was served upon each of the following by the methods indicated below:

By email and regular United States Mail:
REED LARSEN
PO Box 4229
Pocatello, ID 83205
reed@cooper-larsen.com

By regular United States Mail:
LOVELY NAILS
c/o KEN CAO, Manager
1280 DOLOSTONE DR.
POCATELLO, ID 83201

jsk

Jennifer S. Komperud