BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JEFFERY JORDAN, Decedent, SUE JORDAN, Claimant, v. WALMART ASSOCIATES INC., Employer, and NEW HAMPSHIRE INSURANCE COMPANY, Surety/Defendants.	**IC 2019-017748** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** **FILED NOVEMBER 19, 2021**

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Sonnet Robinson, who conducted a video hearing on June 4, 2021. Claimant, Sue Jordan, represented herself *pro se*. David Gardner of Pocatello represented Defendants. The parties presented oral and documentary evidence. The matter came under advisement on September 15, 2021 and is ready for decision.

ISSUES

1. Whether Decedent's death was caused by an accident arising out of and in the course of employment as defined by Idaho Code § 72-102(17);
2. Whether Decedent's death was caused, in whole or in part, by an injury, illness, infirmity, disease, or condition unrelated to the alleged October 31, 2018 accident;

3. Whether the claim is barred by the applicable statute of limitations of Idaho Code § 72-706;

4. Whether the Claimant is entitled to death benefits as a result of the claimed accident; and,

5. Whether Claimant is entitled to medical services pursuant to Idaho Code § 72-432 as a result of the claimed accident.

CONTENTIONS OF THE PARTIES

Claimant did not file an opening brief.

Defendants contend Claimant did not meet her burden of proof that Claimant's husband's death was caused by a work accident by way of medical evidence. Further, Claimant did not give notice and the complaint was untimely filed.

Claimant did not file a written reply.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;

2. Defendant's Exhibits (DE) 1-2, admitted[1] at hearing;

3. The testimony of Claimant, Sue Jordan, taken at hearing.

All outstanding objections are overruled.

The Commissioners have reviewed the Referee's proposed decision and agree with her ultimate conclusion but believe that slightly different treatment of the issues is warranted. Accordingly, the Commission declines to adopt the proposed decision and issues these findings of fact, conclusions of law, and order.

[1] Claimant attempted to admit three affidavits from the Decedent's coworkers, but never served these affidavits on Defendants per JRP 10(C)(1) and they were excluded from evidence.

FINDINGS OF FACT

1. Claimant, Sue Jordan, married Jeffery Jordan, (hereinafter "the Decedent,") in January of 1977. Tr. 13:4. Mr. Jordan and Ms. Jordan had one son, who was forty-three at the time of hearing. *Id.* at 13:5-8. Claimant monitored the Decedent's blood pressure regularly and gave him some of her blood pressure medication in the few weeks prior to the accident because his blood pressure was high; Claimant attributed this spike in blood pressure to the Decedent's work-related stress. *Id.* at 19:8-20:7.

2. The Decedent was working overtime in the Tire Center at Walmart on October 31, 2018 when he collapsed. DE 1:1; Tr. 13:22-14:15. Claimant's neighbor became aware that the Decedent had collapsed at work, told Claimant, and Claimant had a different neighbor drive her to Walmart; when she arrived, the Decedent was already in the ambulance. Tr. 14:7-20. The Decedent passed away on November 2, 2018 from a stroke. DE 1:2; Tr. 15:15.

3. Defendants filed a First Report of Injury (FROI) on June 25, 2019. IIC Legal File. The FROI indicates that the Claims Administrator was notified Claimant was pursuing a claim on June 21, 2019, and that Employer was notified on November 1, 2018. *Id*. The FROI notes Claimant had a brain aneurysm and collapsed. *Id*. Defendants denied the claim. *Id.*

4. Claimant filed a complaint, which was received by the Industrial Commission on November 1, 2019, as shown by the date stamp; the complaint was served on Defendants by the Commission on November 6, 2019. DE 1; DE 2.

5. Discovery requests were served by Defendants on March 23, 2020. Claimant did not respond. Defendants filed a motion to compel on July 9, 2020, which was granted by the Commission on July 30, 2020. Claimant failed to comply. Defendants filed their motion to dismiss on August 17, 2020. On September 14, 2020, the Commission directed another order to Claimant, requiring her to show cause why sanctions, including dismissal of her complaint, should not be

ordered. Claimant left a voice mail response with the Commission but took no other action. On October 26, 2020 Defendants inquired of Commission staff as to the status of the matter. The Commission advised that it was reluctant to dismiss the complaints of *pro se* litigants during the COVID-19 pandemic. This prompted Defendants to file their petition for declaratory relief under JRP 15, asking the Commission for its ruling that there is no lawful rule of order preventing the dismissal of complaints brought by *pro se* litigants, and that Claimant's complaint should be dismissed by reason of her failure to comply with the several orders of the Commission requiring her response to discovery requests.

6. In its January 29, 2021 Order on the petition for declaratory relief, the Commission recognized that while dismissal of Claimant's complaint was available as a sanction for her continued failure to respond to discovery, such a sanction should be employed with caution during the current national emergency. The Commission ordered that referees should take additional precautions during the current medical emergency before entertaining dismissal of the complaint of a non-represented party, particularly where a dismissal without prejudice is tantamount to a dismissal with prejudice. The Commission's Order did not, however, rule out dismissal of complaints where warranted by the facts of a case. Following the January 29, 2021 Order, no further action was taken in this matter by the parties until the Commission set the matter for telephonic status conference for February 8, 2021. Contemporaneous with the February 8, 2021 status conference, Defendants filed their request for calendaring. By order dated February 8, 2021, the Commission set the matter for a June 4, 2021 hearing, on the issues set forth above. Between February 8, 2021 and June 4, 2021, Defendants took no further action in pursuit of responses to outstanding discovery. As required by JRP 10, Defendants served Claimant with their proposed exhibits within ten days prior to the date of hearing. Claimant did not timely provide any JRP 10 exhibits.

7. At hearing, the Referee declined to admit the affidavits of three of Decedent's co-workers offered by Claimant, on the grounds that Claimant had not previously disclosed that she would offer these documents as exhibits. Defendants also moved the Commission for its order excluding any testimony offered by or on behalf of Claimant:

> MR. GARDNER: Oh, thank you. Yeah. We received an order compelling discovery from the Commission in this case. No discovery was ever produced. We had filed a petition for declaratory ruling asking the Commission to dismiss the case for failure to comply with the order. The Commission felt like dismissal was not the appropriate remedy, but from the decision the Commission indicated that other remedies could be considered by – by you, Referee Robinson, in terms of the case. So, we would ask – and since that order has been entered I would just indicate no additional discovery has been produced. We have received no medical records. We have received no statements from any physicians establishing a causal link to any industrial incident and – and Mr. Jordan's death and – and we have not received any information about these claims and because we have not received any discovery we would now move that any testimony be excluded. It would be unfair for us to be expected to cross-examine and consider their testimony when the discovery was never provided in this case and I would also note – we have not received any notice of any post-hearing depositions of any physicians. We do not have any medical records and where this case will likely turn on a medical opinion regarding causation, we just don't see how that testimony would be appropriately provided to this court. So, we would move to exclude any testimony and ask that – that that order be entered.

Tr. 6:12 – 7:15. The Referee granted the motion in part, and denied it in part, allowing Claimant to testify only to those matters about which she had personal knowledge.

8. **Credibility.** Claimant testified credibly. The Commission finds no reason to disturb the Referee's findings and observations on Claimant's presentation or credibility.

DISCUSSION AND FURTHER FINDINGS

9. The provisions of the 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). A worker's compensation claimant has the

burden of proving, by a preponderance of the evidence, all the facts essential to recovery. *Evans v. Hara's, Inc.*, 123 Idaho 473, 849 P.2d 934 (1993). Uncontradicted testimony of a credible witness must be accepted as true, unless that testimony is inherently improbable, or rendered so by facts and circumstances, or is impeached. *Pierstorff v. Gray's Auto Shop*, 58 Idaho 438, 447−48, 74 P.2d 171, 175 (1937).

10. In their brief, Defendants argue that they did not receive timely notice of the subject accident as required by Idaho Code § 72-701. However, the timeliness of notice is not among the issues noticed for hearing and will not be treated by the Commission. [2]

11. The third noticed issue is whether the instant claim is barred by reason of Claimant's failure to file a timely complaint as required by Idaho Code § 72-706. Idaho Code § 72-706 provides:

> 72-706. LIMITATION ON TIME ON APPLICATION FOR HEARING.
>
> (1) When no compensation paid. When a claim for compensation has been made and no compensation has been paid thereon, the claimant, unless misled to his prejudice by the employer or surety, shall have one (1) year from the date of making claim within which to make and file with the commission an application requesting a hearing and an award under such claim.
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> (2) When compensation discontinued. When payments of compensation have been made and thereafter discontinued, the claimant shall have five (5) years from the date of the accident causing the injury or date of first manifestation of an occupational disease within which to make and file with the commission an application requesting a hearing for further compensation and award.
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> (3) When income benefits discontinued. If income benefits have been paid and discontinued more than four (4) years from the date of the accident causing the injury or the date of first manifestation of an occupational disease, the claimant shall have one (1) year from the date of the last payment of income benefits within which to make and file with the commission an application requesting a hearing for additional income benefits.
>
> (4) Medical benefits. The payment of medical benefits beyond five (5) years from the date of the accident causing the injury or the date of first manifestation of an occupational disease shall not extend the time for filing a claim or an

[2] Although not at issue, the sufficiency of notice is presumed pursuant to Idaho Code § 72-228(1).

> application requesting a hearing for additional income benefits as provided in this section.
>
> (5) Right to medical benefits not affected. Except under circumstances provided in subsection (1) of this section, the claimant's right to medical benefits under the provisions of section 72-432(1), Idaho Code, shall not be otherwise barred by this section.
>
> (6) Relief barred. In the event an application is not made and filed as in this section provided, relief on any such claim shall be forever barred.

Idaho Code § 72-706.

12. In this case, the FROI was filed by Defendants with the Commission on June 25, 2019. No benefits have been paid on this denied claim. Therefore, the timeliness of the complaint filed with the Commission on November 1, 2019, is governed by Idaho Code § 72-706(1), which specifies that Claimant has one year from the date of the making of the claim within which to file her complaint with the Commission. The complaint is timely because it was filed within one year of the date of the making of the claim.

13. Even were it argued that the FROI does not acknowledge the making of a timely claim, the complaint is nevertheless timely since it was filed before the first anniversary of Decedent's November 2, 2018 death. Idaho Code § 72-701 provides:

> 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 **or, in the case of death, then within one (1) year after such death, whether or not a claim for compensation has been made by the employee.** Such notice and such claim may be made by any person claiming to be entitled to compensation or by someone in his behalf. If payments of compensation have been made voluntarily or **if an application requesting a hearing has been filed with the commission, the making of a claim within said period shall not be required.**

Idaho Code § 72-701 (emphasis supplied).

14. Pursuant to this section, the filing of a complaint within the time allowed for the filing of the claim relieves Claimant of the need to file a claim. Claimant was required to make

claim within one year of her husband's death per Idaho Code § 72-701. She filed a complaint within that timeframe. Therefore, the Complaint is timely filed.

12. Defendants argue Claimant did not "file" her claim until it was served on Defendants on November 6, 2019 by the Commission. However, per JRP 1(B), Claimant's complaint is deemed filed when it was physically received by the Commission on November 1, 2019 as shown by the date stamp appearing on the original complaint.

13. The first noticed issue is whether Decedent's death was caused by an accident arising out of and in the course of employment as defined by Idaho Code § 72-102 (17). The related second issue is whether the cause of Decedent's death is unrelated to the alleged accident of October 31, 2018. The injured worker ordinarily has the burden of proving both the "arising" and "course" components of a compensable injury. *Kessler ex rel. Kessler v. Payette County*, 129 Idaho 855, 934 P.2d 28 (1997). An injury is deemed to be in the course of employment when it takes place while the worker is performing the duty which he is employed to perform, or something reasonably incidental thereto. An injury is considered to arise out of the employment when "a causal connection is found to exist between the circumstances under which the work must be performed and the injury of which the claimant complains." *Hamilton v. Alpha Services, LLC*, 158 Idaho 683, 689, 351 P.3d 611, 617 (2015) (internal citations omitted). Special rules obtain in the case of an injured worker who is physically or mentally unable to testify about the circumstances of the injury, but whose injury is shown to have occurred in the course of employment.[3] Idaho

[3] The application of Idaho Code § 72-228 to this case is not addressed by either party. In *Deon v. H & J, Inc.*, 157 Idaho 665, 339 P.3d 550 (2014) the Court held that the Commission may not *sua sponte* raise theories of liability or affirmative defenses which were never raised by the parties to the case. Here, Defendants have requested that the Commission decide the issue of whether the accident/injury resulting in Decedent's death was one arising out of and in the course of his employment. It is conceded that Decedent collapsed while working. Therefore, the injury leading to death is in the course of employment. We cannot address Defendant's assertion that Claimant has failed to adduce proof of medical causation, i.e. that she has not satisfied the arising component, without considering the peculiar rules which apply to address the burden of proof in circumstances such as these. The consideration of Idaho Code § 72-228 does not involve consideration of a new theory or recovery or affirmative defense as was the case in *Deon*. It is necessary to our determination of the first noticed issue.

Code § 72-228(1) provides:

> In any claim for compensation, where the employee has been killed, or is physically or mentally unable to testify, and where there is unrebutted prima facie evidence that indicates that the injury arose in the course of employment, it shall be presumed, in the absence of substantial evidence to the contrary, that the injury arose out of the employment and that sufficient notice of the accident causing the injury has been given.

From the limited evidence before the Commission, it appears that Decedent collapsed at work on October 31, 2018, after suffering a stroke. He was transported from the workplace to the hospital and died at the hospital on November 2, 2018. It is unclear whether Decedent was lucid at any time between his collapse and his death. However, this is inapposite to our inquiry. The fact of Decedent's death is established, as is his inability to testify concerning the events of October 31, 2018.

14. Further, there is no dispute that Decedent's death is one occurring in the "course" of his employment. Defendants concede that "[o]n October 31, 2018, [Decedent] suffered a massive hemorrhagic stroke and collapsed while working at Walmart", citing the FROI.[4] Def. Post-Hearing Response Brief, p. 2. It is uncontested that Decedent was in the course of employment at the time of his death.

15. Having established Decedent's inability to testify, and the occurrence of the accident in the course of his employment, Claimant is entitled to the presumption that the accident was also one arising out of his employment. The nature of this presumption and how it may be rebutted has received treatment in a number of cases.

16. In *Evans v. Hara's, Inc.*, 123 Idaho 473, 849 P.2d 934 (1993), the claimant suffered an unwitnessed fall at work which rendered him unable to testify. It was conceded that his accident

[4] The Commission's FROI contains a technical error resulting from faulty data transmission. The Commission's FROI indicates that the injury did not take place at Employer's premises. The original FROI transmitted to ISO (Insurance Service Office) directly from the claims administrator does indicate the injury took place on the premises. See Addendum 1.

occurred in the course of his employment. It was argued, however, that the accident did not arise out of employment. At issue was the extent of the presumption enjoyed by the claimant, and the type of evidence necessary to rebut it. The Commission accepted as credible, evidence tending to indicate that the claimant's unwitnessed fall was precipitated by an alcohol withdrawal seizure, a cause unconnected to his employment. It found that this constituted substantial evidence that the claimant's fall did not arise out of his employment and that employer had therefore successfully rebutted the Idaho Code § 72-228 presumption. With the presumption rebutted, the Commission then found that the claimant had failed to prove that his injury arose out of employment. On appeal, the claimant argued that the Commission erred in applying the provisions of statute and that properly construed, Idaho Code § 72-228 placed both the burden of production and persuasion on employer. Therefore, per the claimant, under the facts of the case, employer had the burden to prove that the claimant's injuries were not occasioned by an employment created risk.

17. The Court rejected the claimant's preferred construction, noting that had that been the legislature's intention, it would have been a simple matter to specify that in those cases where a claimant is injured in the course of his employment, but is unable to testify about what happened, employer has the burden of disproving the claim. The Court then stated:

> Instead the legislature chose the "substantial evidence to the contrary" language suggesting that a portion of the burden would shift, but not the entire burden of both production and persuasion. Thus we conclude that once the employer has come forward with substantial affirmative evidence to indicate that the accident did not arise out of the employment, the burden shifts back to the employee to persuade the Commission that it did indeed arise out of the employment.

Evans, 123 Idaho at 478, 849 P.2d at 939.

18. The Court then ruled that to meet its burden, an employer is obligated to adduce substantial affirmative evidence that the claimant's injuries arose from a cause unconnected to his employment. Substantial evidence is such relevant evidence as a reasonable mind might accept to support a conclusion; it is more than a scintilla, but less than a preponderance. Negative evidence

alone will not suffice but may be considered by the Commission in connection with substantial affirmative evidence of a non-work-related cause. Therefore, the medical evidence adduced by employer that the claimant's fall was induced by an alcohol withdrawal seizure was substantial affirmative evidence of a non-work-related cause of the claimant's fall. It was buttressed by negative evidence tending to denigrate the proposition that the claimant's injuries were precipitated by an employment created risk. This negative evidence consisted of proof that there was nothing for the claimant to trip over at his workstation, that he was not working at any height and that there was no dangerous machinery in the vicinity of his work which might have struck him. Considering the totality of the evidence, the Court concluded that employer met its burden of rebutting the presumption. The presumption having been rebutted; the burden shifted to the claimant to prove that his injuries arose out of an employment created risk. This he failed to do. Essentially, rebutting the presumption had the effect of making the claimant's case like any other worker's compensation case; claimant bears the burden of proving that his injuries are the result of an accident arising out of and in the course of his employment.

19. In *Politte v. Idaho Department of Transportation*, 126 Idaho 270, 882 P.2d 437 (1994), the claimant suffered a stroke at the end of a routine day of work. His condition left him unable to communicate. His claim was denied by employer. The Commission determined that the claimant was unable to testify within the meaning of Idaho Code § 72-228, and that his stroke arose in the course of his employment. Therefore, the claimant was entitled to the benefit of the Idaho Code § 72-228 presumption. The Commission then considered whether employer had adduced sufficient evidence to rebut the presumption that the claimant's injury arose from an employment created risk. The Commission considered the testimony of two of the claimant's supervisors who offered testimony to the effect that there was nothing unusually stressful about the job that the claimant was performing on the day of his injury. The employer also offered the

report of a cardiovascular surgeon who opined that there was no causal relationship demonstrated between the claimant's job and his cerebrovascular injury, and that the claimant had other risk factors for such an injury, including hypertension, hypercholesterolemia, hypertriglyceridemia, and elevated blood glucose.

20. Although the testimony of the supervisors was deemed credible, the Commission found it insufficient to rebut the Idaho Code § 72-228 presumption, ruling that substantial medical evidence is required to rebut the presumption of medical causation. (The supervisors' testimony also seems to constitute merely negative evidence.) As to the report of the employer's expert, the Commission recognized that the opinion that the claimant's stroke could well be related to risk factors not connected to his employment was potentially significant. However, the expert did not adequately explain the foundation of his opinion; the record was unclear as to what medical records he consulted in formulating his opinion. Therefore, his opinion did not constitute substantial evidence. It was not evidence which a reasonable mind would accept to support a conclusion.

21. On appeal, the Court affirmed the Commission's statement of the rule for determining whether evidence is substantial. The Court, too, concluded that based on the lack of foundation for the expert's opinion, a reasonable mind would not accept that opinion as sufficient to overcome the presumption that the claimant's injuries were causally related to his employment. Further, the Commission did not err in disregarding the testimony of the claimant's supervisors since the evidence that can be considered in rebutting the presumption must be medical evidence.

22. Here, Defendants assert that Claimant's claim must be denied because she has failed to adduce any medical evidence supporting a causal relationship between Decedent's employment and his death. Def. Post-Hearing Response Brief, pp. 4-5. However, Defendants misapprehend where the burden of proof lies under the peculiar facts of this case. It is presumed that Decedent's death is causally related to his employment. To overcome that presumption,

Defendants bear the burden of adducing substantial affirmative medical evidence tending to prove that Decedent's death is related to a non-industrial cause. This, Defendants have failed to do. The only testimony potentially helpful to Defendants came from Claimant herself, who noted that Decedent had high blood pressure. If true, this might suggest that Decedent's death was related, at least in part, to a non-industrial condition. However, Claimant's testimony is anecdotal at best and does not constitute substantial affirmative medical evidence of the quality required to rebut the Idaho Code § 72-228(1) presumption. As the *Politte* Court concluded, the evidence that may be considered for the purpose of rebutting the Idaho Code § 72-228(1) presumption must be medical evidence. *Politte*, 126 Idaho at 273, 882 P.2d at 440.

23. The application of the provisions of Idaho Code § 72-228 to the facts of this case does not appear to have been anticipated by Defendants, but it should have been, inasmuch as consideration of Idaho Code § 72-228 is requisite to the first issue raised by Defendants in their request for calendaring: "Whether Claimant's [sic] death was caused by an accident arising out of and in the course of employment as defined by Idaho Code 72-102(18) [sic]." Def. Request for Calendaring, p. 2. Even so, Defendants failed to consider the impact of the circumstances of Decedent's death on the question of who bears the burden of proving the "course" and "arising" components of the case. The Dissent has argued that to burden Defendants with this outcome is unfair in view of the considerable leniency shown by the Commission to Claimant in almost every other aspect of this case. However, it is Defendants who requested that this matter be set for hearing. Between the February 8, 2021 status conference and the June 4, 2021 hearing, Defendants took no further action to obtain discovery responses or, failing that, some sanction (including dismissal) for Claimant's failure to respond. At hearing, Defendants sought to prevent Claimant from putting on any evidence in view of her failure to respond to discovery. In this, they were largely successful; Claimant was allowed to testify only as to things about which she had personal

knowledge. No other testimony or evidence was allowed. Defendants made the tactical judgment to request that this matter be set for hearing, and they also declined to initiate any further pursuit of discovery responses from Claimant prior to hearing. At hearing, they obtained a favorable ruling preventing Claimant from putting on any medical evidence in support of their claim. Defendants having chosen this path forward, the Commission is not inclined to remand this matter to the Referee for further treatment of outstanding discovery requests, or dismissal of the Complaint, as has been suggested by the Dissent.

CONCLUSIONS OF LAW AND ORDER

1. Decedent's death arose out of and in the course of employment;
2. Claimant's complaint was timely filed per Idaho Code § 72-706 and JRP 1(B);
3. Claimant is entitled to death benefits;
4. Claimant is entitled to any medical benefits which were related to the Decedent's death;
5. All other issues are moot.
6. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 19th day of November, 2021.

INDUSTRIAL COMMISSION

Aaron White, Chairman

Thomas P. Baskin, Commissioner

ATTEST:

Kamerron Slay
Commission Secretary

For the following reasons, I respectfully dissent.

In this case, Defendants made multiple attempts to procure information from Claimant prior to hearing. Claimant failed to provide Defendants with any response to their requests for discovery, and Claimant was notified that her complaint was in danger of dismissal due to her unresponsiveness. Claimant was directed "to file a Notice of Service with the Industrial Commission no later than 15 days from the date of this Order or sanctions may be imposed, including and up to **DISMISSAL OF THE COMPLAINT**." Order Granting Motion to Compel p. 1 (Emphasis original). There is no evidence that Claimant ever responded to Defendants' interrogatories or requests for production prior to hearing.

At hearing, Claimant attempted to admit three affidavits from the Decedent's coworkers, but never served these affidavits on Defendants per JRP 10(C)(1). As a result, these documents were excluded from evidence. Defendants also moved the Commission for its order excluding any testimony offered by or on behalf of Claimant, which was granted in part, and denied in part, and allowed Claimant to testify only to those matters about which she had personal knowledge. However, no further sanctions were imposed upon Claimant despite her continued disregard of the Commission's previous orders. Although the Referee ultimately decided against the dismissal of Claimant's case, to allow Claimant this extent of leniency has proven prejudicial to Defendants. I would remand the case to the Referee for further proceedings after Claimant has complied with the Commission's orders and provided responses to Defendants' discovery requests. Based on the foregoing, I respectfully dissent.

DATED this 19th day of November, 2021.

INDUSTRIAL COMMISSION

Thomas E. Limbaugh, Commissioner

ATTEST:

Kamerron Slay
Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the ___19TH___ day of ____NOVEMBER____, 2021, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** was served by regular United States Mail *and E-mail transmission* upon each of the following:

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