BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

ROBERT JETKE, Claimant, v. THE TURF CORPORATION, Employer, and STATE INSURANCE FUND, Surety, and EASTERN IDAHO TRANSPORT, LLC, Un-Insured Employer, Defendants.	**IC 2021-018425** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** FILED SEP 30 2022 INDUSTRIAL COMMISSION

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee John Hummel, who conducted a hearing in Boise on March 10, 2022. Claimant, Robert Jetke, was present in person; Taylor Mossman-Fletcher, of Boise, represented him. Neil D. McFeeley, of Boise, represented Defendant Employer, The Turf Corporation (hereinafter, "Turf"), and Defendant Surety, State Insurance Fund. Eastern Idaho Transport, LLC (hereinafter, "Eastern"), an Un-Insured Employer, was subject to an Order of Default and took no part in the hearing. The parties presented oral and documentary evidence. They also submitted post-hearing briefs. The matter came under advisement on June 10, 2022.

ISSUES

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

1. Whether Turf is subject to the provisions of the Idaho Workers' Compensation Law.
2. Whether Claimant sustained an injury from an accident arising out of and in the course of employment.
3. Whether Claimant is entitled to attorney fees pursuant to Idaho Code § 72-804.
4. Whether an employer/employee relationship existed between Turf and Claimant.

COURSE OF THE PROCEEDINGS

Claimant filed Complaints against Turf/Surety and Eastern on August 23, 2021. Turf/Surety filed an Answer on September 3, 2021. Eastern did not answer the Complaint and an Order of Default was entered against it on November 2, 2021. On November 29, 2021, Claimant filed a Motion for Extension of Time to submit its *prima facie* case against Eastern. On December 1, 2021, the Referee granted that Motion. Claimant and Turf/Surety filed calendaring requests and a Notice of Hearing was issued on November 23, 2021. The Referee held the Hearing on March 10, 2022, in which Claimant and Turf/Surety participated.

CONTENTIONS OF THE PARTIES

Claimant argues that he was an employee of Turf, and that the provisions of the Idaho Workers Compensation Law apply to Turf as they pertain to the industrial accident of May 29, 2021 in which Claimant was injured. Claimant also argues that he was injured in the course and scope of employment with Turf, and that Turf/Surety are liable for attorney fees due to unreasonably opposing his claim for benefits.

Defendants argue that at the relevant times herein, Claimant was driving a truck load for Eastern, his actual employer at the time of the industrial accident. Thus, as to the industrial

accident, Claimant was not in the employment of Turf but rather in the employment of a third party who was responsible as the employer for any injury to Claimant from the accident. Defendants deny that Claimant was either an express or implied employee of Turf at the time of the accident because there was no contractual hiring of Claimant as an employee for the truck trip in question. Defendants argue that Claimant was not acting in the course and scope of Turf's employment. Finally, Defendants deny that they acted unreasonably in denying the claim, and thus attorney fees are not owed.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. The transcript of the hearing held on March 10, 2022; and
3. Joint Exhibits 1 through 54 (JE), admitted at the hearing.

All unresolved objections made during the hearing are hereby overruled.

The Referee submitted a proposed decision for the Commissioners' review and approval. The undersigned Commissioners have reviewed the proposed decision and, although we reach the same conclusion as the Referee, we believe that this claim should be evaluated under the loaned servant doctrine as discussed in *Hill v. E & L Farms*, 123 Idaho 371, 848 P.2d 429 (1993). Accordingly, the Commission declines to adopt the proposed decision and issues these findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. **Claimant's Background**. Claimant was born in Detroit, Michigan on June 20, 1957 and was 64 years of age at the time of hearing. Tr. 13:2-5. He has resided in Boise with his spouse since 1987. Tr. 13:6-12.

2. Claimant attended and graduated from high school in Detroit. Tr. 13:22-25.

3. After high school, Claimant joined the military and served in both the Army and Air Force for twenty years. Tr. 14:1-6. Claimant was a "jack of all trades" in his military service, working various positions such as truck driving, maintenance supply, supply warehouse technician, and truck mechanic. He retired as a sergeant with an honorable discharge. He credits the military with his trucking career. Tr. 14:7-25.

4. Following his military service, Claimant worked in a number of different occupations, including making bricks for Pullman Bricks, ranching, cooking, and driving trucks. He settled on truck driving as a career, and the majority of his work since the military was in the trucking industry, a time span of approximately 30 years. His service in the trucking industry included both truck driving and truck mechanics. Tr. 15:1:19. At the time of hearing Claimant was employed as a truck driver and truck mechanic with Montana Transport Express. Tr. 15:21-24.

5. **Employer.** Darwin McKay ("McKay") is the president of Turf. Tr. 91:6-7. At all relevant times, McKay and his wife were the sole owners of the company. Tr. 91:25-92:2.

6. McKay incorporated Turf in or about 1978. Tr. 91:10. McKay had a "very keen interest in raising turf grass, turf grass sod" as a business opportunity. By 1980 Turf was marketing itself and the "company has grown slowly from there." In 2000 McKay purchased a similar company called High Desert Turf. Tr. 91:10-24.

7. McKay also owned another trucking company called AM Haul in addition to Turf and High Desert Turf. Tr. 16:6-7.

8. Turf raised turf sod, harvested it, and shipped it in its trailer trucks to end-use customers such as golf courses and industrial parks. Tr. 92:18-93:7. According to Claimant, "We hauled a lot of his [McKay's] sod down to Salt Lake, Wyoming, all over the state of Idaho." Tr. 17:16-18.

9. Turf and Claimant hauled goods besides turf. As Claimant recalled, "We went from anywhere from Quickrete Concrete. We hauled shingles. We hauled oversized loads. We hauled steel rings for the windmills. We hauled sod. We hauled fertilizer. Pallets. Farm equipment. Whatever it took to keep, you know, Darwin McKay's business going." Tr. 19:17-22.

10. At the time of hearing, Turf employed approximately ten persons, four to five of whom worked "in the field." Tr. 93:8:-15. Turf employed one local truck driver and two long distance truck drivers. Tr. 95:3-7.

11. **Claimant's Employment with Employer**. Claimant worked both as a truck driver and mechanic for Turf, High Desert Turf, and AM Haul, for approximately five years preceding the industrial accident, which would place his date of hire sometime in or about 2016. (Claimant did not offer an exact hire date and Turf did not provide relevant employment records for the record.) JE 16:1-2 (Surety investigative report); Tr. 16:4-21; 63:3-9. For the most part, according to McKay, Claimant performed the role of long-distance truck driver who sometimes performed mechanical work. Tr. 95:13-21. When acting as a truck driver, Claimant would receive compensation based upon the number of miles driven. When he performed mechanic work, Claimant received an hourly wage. Tr. 96:2-8.

12. When initially hired, Claimant filled out an application form and a W2 form with Turf. Tr. 18:8-19.

13. During his employment with Turf, Claimant never drove trucks for any other company besides Turf, AM Haul, or High Desert Turf. Tr. 19:23-20:12. Darwin McKay did not "loan out" Claimant's services. Tr. 66:4-23.

14. Claimant worked extra hours and weekends for Turf. Tr. 63:14-22.

15. In 2017, Claimant had an industrial accident involving High Desert Turf as the employer. Claimant had been rinsing wood chips out of a trailer when he lost his balance and hit his head. JE 46-49. His coworkers found him unconscious and an ambulance transported Claimant to Saint Luke's Regional Medical Center, where he received a concussion diagnosis. JE 46:2; 48:1. McKay, as the owner of High Desert Turf, did not file a first report of injury nor otherwise report the accident and injury to the workers compensation system. Rather, McKay issued a company check to pay for the ambulance and hospital bills, possibly also cutting off Claimant's right to temporary disability benefits. JE 47:2; 49:5. (There is no evidence in the record that Claimant was entitled to TTDs as a result of this accident.)

16. **David Jossi and Eastern Idaho Transport**. McKay first met David Jossi ("Jossi") of Eastern, a limited liability company owned by Jossi, approximately two and half years prior to the hearing. Tr. 96:24. In November 2020, Jossi called McKay to explore the possibility of purchasing some extra truck trailers from Turf. Jossi came out to Turf's truck yard and decided to purchase three truck trailers. McKay worked up a bill of sale, dated November 26, 2020, and they finalized the deal for three semi-trailers and one single axle dolly. The seller was Turf and the buyer was Eastern. Tr. 96:22-98:12; JE 52 (bill of sale). The bill of sale provided for monthly payments through December 2022. Jossi provided McKay with blank signed checks to pay for the trailers on a monthly basis. Tr. 99:25-100:2; JE 52. Turf would retain title to the trailers until they were completely paid for. Tr. 112:18-113:3.

17. McKay asserted that "I have no other dealings with David Jossi" other than the sale of three truck trailers and the single axle dolly. Tr. 101:3. McKay denied having any financial interest whatsoever in Eastern or otherwise in Jossi's trucking business. Tr. 101:5-11.

18. **Background Circumstances to Industrial Accident**. On or about May 27, 2021, the Thursday before Memorial Day, Jossi telephoned McKay. He told McKay that his truck was on hold at the Port of Entry in Farewell Bend, Oregon, because "there was some irregularity with his driving license and some detailed Oregon statute that they were holding him there and he could not proceed to go get his load," per McKay. Jossi asked if McKay "had anybody that could come drive for me and get this load of hay" which was located in Hillsboro, Oregon. Tr. 101:12-22.

19. McKay asserted that he made it clear to Jossi "*that if anybody did do it* [drive the load of hay] *they would be doing it on their own with him as the employer. I said I will not accept the responsibility.* And he said that's okay." Tr. 101:22-25 (Emphasis added). However, on direct examination McKay also discussed his conversation with Jossi as to how, and in what amount, Claimant would be paid:

> Q. So, what else do you remember of that conversation with Jossi? Did he say anything about how he would pay the – the driver?
>
> A. He did. He said I will compensate the driver.
>
> Q. At what amount?
>
> A. Well, it was an item of discussion, because I said this driver is earning 50 cents a mile for his driving and so you need to match that.

Tr. 102:5-12. On cross examination McKay retreated slightly from his testimony on direct, admitting only that he "suggested" to Jossi that Claimant be paid $.50/mile:

> Q. Thank you. You directed Mr. Jossi how much – or the rate of pay that he was to pay Mr. Jetke on this trip in question; correct?

A. I didn't direct it. I suggested it.

Q. So, you are saying that you did not testify that you directed Mr. Jossi how much to pay Mr. Jetke?

A. Say that last one again.

Q. You are stating now that you did not previously state that you directed Mr. Jossi how much to pay Mr. Jetke?

A. In my conversation with Mr. Jossi and even trying to help him out, I told him – I said the driver – I'm going to talk to – or refer your case to earns 50 cents a mile. He said that's fine. He says I will pay it just to get some help.

Tr. 121:2-16.

20. According to McKay, there "was no other benefit whatsoever for" Turf from having one of its drivers drive this load for Jossi. Tr. 102:23-24.

21. After receiving the request from Jossi, McKay talked to Claimant about the matter on or about May 28, 2021 in Turf's truck yard. While he does not recall "all the specifics" of the conversation, McKay recalled telling Claimant that "there is an opportunity that he could work through Memorial Day weekend if he wanted it. You make the contact [with Jossi] and you make the decision [whether to drive the load]." Tr. 104:12-17. McKay asserted that Claimant could have decided to turn down the offer, that he did not tell him that he had to drive for Jossi. Tr. 104:18-25. He further asserted that he did not tell Claimant that he [McKay] would pay Claimant for the trip but rather that Jossi would be responsible for paying him. Tr. 105:5-12.[1]

---

[1] In a statement to Surety's representative, McKay asserted that he told Claimant that he would be under the employ of Jossi/Eastern, as follows:

> Mr. McKay states that *he told Mr. Jetke that he would be under Mr. Jossi's employ and direction during this trip*. Mr. McKay states that Mr. Jetke agreed to go drive Mr. Jossi's truck.
> Mr. McKay states that Mr. Jetke was not under his employ for this trip… Mr. McKay states that this work opportunity was not connected to The Turf Corporation's payroll for Mr. Jetke's employment with The Turf Corporation. Mr. McKay states that this was communicated to Mr.

22. Claimant's recollection of how he came to drive Jossi's truck diverges from McKay's. He stated that "I was doing what Darwin McKay wanted me to do" by agreeing to drive Jossi's truck. Tr. 64:12-13. The following relevant exchange occurred between Counsel for Turf and Claimant at hearing:

> Q. Mr. McKay asked you if you wanted some extra work over that Memorial Day holiday, didn't --- didn't he?
>
> A. He said do you want to do extra work. I said yes.
>
> Q. All right. And he told you that there was an acquaintance of his that was stuck in Oregon that needed somebody to drive his trailer, correct?
>
> A. Drive his truck.
>
> Q. Drive his truck. Excuse me. Drive his truck and pull Jossi's trailer, correct?
>
> A. Correct.
>
> Q. And he asked you if you were interested in earning additional money, correct?
>
> A. He did that.
>
> Q. All right. And he told you that that pay was between you and Jossi, correct?
>
> A. No, he just said that he would pay me, but I was getting paid from what Darwin pays me.
>
> Q. And when you say he, you are saying that he – he, Mr. – Mr. McKay told you that you would get paid by Jossi what – what your normal mileage rate was for driving, correct?
>
> A. Correct.

Jetke prior to him accepting the job. [Emphasis added.]

JE 16:5. Note that this account differs materially from the account that McKay told at the hearing. At hearing McKay did not testify that he directly told Claimant that Claimant would be under the employ of Jossi.

Q. Okay. And he told you your choice, if wanted to drive or not, correct?

A. No. No. He – *he made it sound like he was giving me an assignment to do.*

Q. And – and how – tell me exactly what he said in that regard.

A. Well, he told me – he he's got -he's got a guy that purchased some trailers from us, you don't know him, but he's over there at the Oregon scale and *I want you to go there and take his truck and drive it.*[2]

Tr. 64:14-65:25 (Emphasis added.)

23. Claimant got up early on Saturday morning, May 29, 2021, to meet Jossi at the Oregon Port of Entry located in Farewell Bend, Oregon. There is no evidence supporting Defendants' assertion that Claimant and Jossi spoke at some point between Claimant's conversation with McKay and Claimant's meeting with Jossi the next morning. *See* Defendants' Response Brief p. 9. Claimant met with Jossi at 6:00 a.m. and assessed the situation. Jossi was shaking and appeared sick, which is why Claimant assumed he had been denied authorization to drive a truck in Oregon. Tr. 24:3-8. It also turned out that the fuel tank of Jossi's truck was empty and, strangely, for a truck driver contemplating a trip across the state of Oregon, Jossi was without money or other means to have it filled. Tr. 23:14-16. Claimant telephoned McKay to get permission to use the company gas card, but McKay did not answer the phone. Tr. 23:17-18. Claimant then called Leah Hyatt, Turf's office manager, who authorized using the company's gas card for the trip. Tr. 23:19-20; 25:17-25. After getting permission to proceed from the Scale Master at the Port of Entry, they put fuel in the truck using Turf's card and continued the trip to Hillsboro, Oregon. Claimant assumed that the trailer attached to the truck was one that

---

[2] In direct examination, Claimant recounted similarly, as follows:

A. Well, at that time Darwin McKay approached me out in the yard and told me – he said he had a gentleman that had bought a couple of trailers from him and he's having problems at the Oregon scale. He got shut down. *I need you to go out, meet with him, take him—load his hay and come back.*

Tr. 20:20-25 (Emphasis added).

McKay/Turf had a legal interest in because it was subject to a bill of sale that was not yet finished. Tr. 22:1-26:25. During the trip, Claimant called into Turf's office to check in. He spoke to Leah Hyatt who told him to "get the job done." Tr. 26:21-25.

24. With regard to any statements Jossi made about the employer/employee relationship, Claimant recounted in pertinent part as follows:

> Q. Upon meeting him [Jossi] did he talk to you about the employer-employee relationship?
>
> A. No. He had no – all he said that me and Darwin McKay communicated and we set this all up and this is between me and Darwin McKay. He didn't say he was going to pay me any money or anything. So, I said, well, okay and we continued on with our – our – our drive to – through Oregon.

Tr. 34:8-14.

25. Claimant did not sign any paperwork with Jossi upon meeting him, such as a W-2 form or employment application. Jossi did not pay him any cash up front, nor did he give Claimant any money for gas. The only substantive conversations that Claimant and Jossi had were about truck driving in general and Jossi's medical condition. Tr. 34:15-35:7.

26. Jossi did not testify, although his statement was taken by Surety during its investigation. Jossi confirmed that he called McKay on May 27, 2021, to see if McKay had a driver that Jossi could use over the weekend. JE 16. He also confirmed that it was contemplated that he was to pay Claimant directly for the miles driven. However, by the date of the July 22, 2021 recorded statement, Jossi had not yet paid Claimant anything for the work that had been performed almost two months earlier.

27. **Industrial Accident**. When Claimant and Jossi reached Hillsboro, Oregon on May 29, 2021, they drove to a farm where Jossi had a contract to purchase hay. They picked up "all of the hay that the man owned." Two farm hands were going into the barn to retrieve the hay

bales and Claimant was "throwing the strap" to get the load tied down in the truck. In the process of loading the hay, which Claimant had to do by himself because Jossi was too ill to help, Claimant was using a five-foot-long breaker bar used to tie down the straps on the trailer. Claimant set the metal bar up on the deck, but when he threw the strap, the bar fell off the deck and landed on Claimant's right foot. Tr. 27:2-10; 28:9-16; 29:21-24; JE 1 (first report of injury).

28. Claimant initially felt a "lot of pain" in his right foot from the bar falling on it, however he thought that he could simply "walk it off." So, he continued to work tying down the load until the job was finished. He and Jossi then drove to have the load weighed and continued on with their trip back to Idaho. Tr. 28:20-24.

29. **Circumstances Following Accident**. After returning to Boise, Claimant went into Turf's office on the first business day following the Memorial Day holiday, which was June 1, 2021. He informed Leah Hyatt that a bar had fallen on his foot and his foot was hurting badly. He then informed McKay about the accident. Neither offered to direct him to health care, so Claimant sought treatment at the VA Medical Center, where he was eligible for treatment. Tr. 30:10-22.

30. Claimant completed a "mileage card," on the form specified by Turf, with the name "The Turf Corporation" on it, for the trip to Hillsboro and turned it into Trudy Kelley, Turf's payroll officer. Jossi did not pay him for the trip. JE 27:1; Tr. 37:5-18. McKay testified that at some point he asked Claimant whether Claimant had been paid by Jossi, and on learning that Jossi had not paid Claimant, did the following:

> Q. All right. Did you learn about whether he [Claimant] had gotten paid by Jossi at some point? Did – did you learn anything about whether Mr. Jossi had paid Mr. Jetke for the work that he had done for Eastern Idaho trailer – or transient? [sic]
>
> A. My best recall is is [sic] that I asked Mr. Jetke first if he had been paid.

Q. And what did he say?

A. And he said no.

Q. And, then, what did you do?

A. What I did was -- I removed the check out of the Jossi folder and this was with Mr. Jossi's permission. I crossed out my name, put his name on it as has been already testified and we put in the proper amount that he needed to be paid. I was quite disappointed that Mr. Jossi had not handled this.

Q. So, you were upset at Mr. Jossi for not paying Jetke?

A. I did what again?

Q. You were upset –

A. Yes, I was.

Q. Okay. And so your -- I think you said you called Jossi to talk about this and he said -- what did he say?

A. He said, no, I have not paid him yet and he said use one of the checks that I have given you for a trailer payment.

Q. I would ask you to turn to Exhibit 51.

A. Yes.

Q. And is that the check that you made out to Mr. Jetke with the permission of Mr. Jossi?

A. Yes, it is.

Q. All right. And so –

A. And you will notice I even initialed the name change.

Q. So, let me make sure that I'm clear. This was one of the blank checks that Jossi had given to you in trust –

A. That is true.

Q. -- if you will, to pay for the trailers; correct?

A. Yes.

Q. But, then, you found out that Jossi hadn't paid Mr. Jetke for the trip that he took for Mr. Jossi and with the permission of Mr. Jossi you, then, crossed out your name and put in Mr. Jetke's name; correct?

A. Yes.

Q. All right. And how did you know the amount to put in?

A. Probably in communications with Mr. Jetke. Some of his notes we were able to determine the number of miles of total driving. If you will notice it says times .50, which was the number that was agreed between Mr. Jetke and Mr. Jossi and it came out to 398 dollars.

Tr. 107:25-110:9. Claimant received this check on July 23, 2021. JE 4:3. Claimant was initially concerned that the bank would not cash the check because of the crossed-out name, but the bank eventually cashed it. The check was one of a number of blank, pre-signed checks that Jossi had given McKay to pay for the trailers' purchase. Tr. 42:10-45:13. The payment occurred in this manner, according to McKay, because it "was the only way I had to see that he would get paid out of Mr. Jossi's account, which was the agreement." Tr. 119:11-13.

31. Eastern/Jossi reimbursed Employer for the gasoline that its company credit card paid for on Memorial Day weekend 2021, according to Trudy Kelley, who prepared an invoice addressed to Eastern for that purpose. Tr. 133:5-18.

32. **Medical Care**. Claimant presented to the Emergency Department of the Boise VA Medical Center on June 1, 2021. Physician Assistant Victoria Roberts examined his right foot contusion. Roberts had X-rays performed as well. P.A. Roberts observed in pertinent part as follows: Claimant "is a 63 yr. old male who presents to the ED for evaluation following dropping a 20lb bar directly on his right foot, and causing an abrasion on his right shin, on Friday (5/28/2021). Currently 10/10 pain. The shin abrasion had profuse watery discharge for the first couple days but has since healed over." JE 38:4. Claimant complained that the swelling on his

right foot had worsened over the weekend and had led to worsening pain. X-ray imaging revealed no acute bony injury. P.A. Roberts assessed a right midfoot soft tissue injury, right foot pain, right lower leg abrasion and contusion, eczema of bilateral feet. The plan was for Claimant to rest, ice, and elevate his lower right leg/foot, and to use compression socks and Tylenol for pain. JE 38:1-8.

33. Claimant returned to the clinic on June 7, 2021. His right foot remained significantly painful and he reported ongoing bruising, redness, swelling, and blisters on top of the foot. He received a diagnosis of cellulitis. The impression was increased right foot soft tissue swelling. Claimant was to return to clinic in 24 to 48 hours if no improvement or symptoms worsened. Claimant received a letter releasing him from work to present to Turf. JE 38:19-23.

34. On June 11, 2021, Claimant presented with a large superficial abscess on his right foot. He complained of having chills for two days in a row and progressive worsening of the right foot since the original injury. It was opined that Claimant's diabetes contributed to the worsening of his condition. Claimant was diagnosed with a right dorsal foot necrotic ulcer with possible osteomyelitis. He received antibiotic treatment, and surgical wound irrigation and debridement. An MRI was performed and a culture of the wound taken. Claimant was admitted to the hospital for further care. JE 38:34-38.

35. Michael T. Gregg, M.D., examined Claimant on rounds on June 12, 2021. Claimant was improving after IV antibiotics and a surgical debridement of the affected area on his right foot. JE 38:43-44.

36. Claimant remained in the VA Medical Center until June 15, 2021. He was discharged at that time because he was observed to improve clinically. He received instructions

to continue with oral antibiotics until June 20, 2021, and to follow-up with the outpatient high risk foot clinic for a dressing change on June 17, 2021. JE 38:171.

37. In a "To Whom It May Concern" letter, dated July 1, 2021, NP Amanda J. Petersen stated that Claimant had a slow-healing wound to the right foot. It was recommended that he remain non-weight bearing on the right foot and remain off work until July 8, 2021. JE 38:232. NP Petersen authored a similar letter on July 8, 2021, with a recommendation that Claimant be kept off work until July 14, 2021. JE 38:247. The Wound Team then recommended that Claimant remain off work until August 4, 2021, and for Claimant to continue elevating his right leg throughout the day and limit activities. JE 38:259.

38. References to Claimant's condition in the VA Medical Center's records now routinely referred to it as a "diabetic foot ulcer." JE 38:261.

39. Claimant was cleared to return to work without restrictions, by letter dated November 15, 2021. JE 38:285; 294.

40. Due to continued symptoms, Claimant received a recommendation from the wound care clinic for lifelong compression and elevation of his right foot. He also received periodic education about wound care, skin care and cleaning. Claimant's lack of compliance on compression was noted. JE 38:288.

41. A clinic note, dated December 7, 2021, stated that Claimant had returned to working full time. JE 38:355. There is no medical record that Claimant received an evaluation of permanent impairment or that he received instructions regarding long-term working restrictions.

42. **Credibility.** At paragraphs 42-45 of his proposed decision, Referee Hummel made his assessment of the credibility of the primary witnesses:

Credibility. Between the recollections of Claimant and Darwin McKay, contained in the hearing transcript and elsewhere in the record, the Referee assigns higher credibility to those of Claimant.

McKay's assertion that he told Jossi that Claimant would be driving his truck with Jossi "as employer" appears self serving and invented after-the-fact, as does his assertion that he gave Claimant a choice and Claimant was free to turn the driving job down. Claimant's testimony that he felt that he was receiving an assignment from McKay appears more credible in light of their five-year relationship as employer/employee.

McKay did not testify at hearing that he told Claimant he would be under Jossi's employment for the weekend, but he did so recall in a statement to Surety. The variance in his accounts raises a question about their credibility.

The evidence of McKay's prior actions in 2017 of keeping an accident and injury outside of the workers compensation system, while not proper evidence of character pursuant to IRE § 404,[3] is admissible for the purpose of credibility, and weighs against his credibility in this proceeding.

43. These findings appear to be a mix of observational and substantive credibility determinations. The Commission finds no reason to disturb these credibility determinations.

DISCUSSION AND FURTHER FINDINGS

44. The provisions of the Idaho Workers' Compensation Law are to be liberally construed in favor of the employee. *Haldiman v. American Fine Foods*, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990). The humane purposes which it serves leave no room for narrow, technical construction. *Ogden v. Thompson*, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996). Facts, however, need not be construed liberally in favor of the worker when evidence is conflicting. *Aldrich v. Lamb-Weston, Inc.*, 122 Idaho 361, 363, 834 P.2d 878, 880 (1992).

45. **Employment Relationship; Coverage of Employer**. The primary issue is whether, at the time of his accident, Claimant was an employee of Turf or a temporary employee of Eastern. "Before one can receive compensation for injuries sustained and claimed to have

[3] In any event, workers compensation proceedings under the Act are administrative proceedings that are

occurred during the course of his employment, it is axiomatic that the relationship of employer and employee must be shown to exist." *Seward v. State Brand Division*, 75 Idaho 467, 470-471, 274 P.2d 993, 994 (1954).

46. Claimant asserts that he was an employee of Turf at the time of the accident.[4] Defendants argue that Claimant was working as an employee of Eastern at the time of the accident and thus was not Turf's employee. Whether Claimant was an employee of Turf at the time of the accident is a factual issue. *See*, *Livingston v. Ireland Bank*, 128 Idaho 66, 68, 919 P.2d 738, 740 (1995). Claimant has the burden of proving this relationship.

47. Under the Idaho Workers' Compensation Law, "employee" is synonymous with "workman" and is defined as "any person who has entered into the employment of, or who works under contract of service or apprenticeship with, an employer..." Idaho Code § 72-102(11). When there is a doubt as to whether an individual is an employee, the Law "must be given a liberal construction in favor of finding the relationship of employer and employee." *Burdick v. Thornton*, 109 Idaho 869, 871, 712 P.2d 570, 572 (1985). "Employer" is defined as follows at Idaho Code § 72-102(12)(a):

> "Employer" means any person who has expressly or impliedly hired or contracted the services of another. It includes contractors and subcontractors.

---

not strictly bound by the rules of evidence applicable in civil court.

[4] In a separate complaint, Claimant alleged that Eastern/Jossi was his employer at the time of the accident. JE 3:1-3. After Eastern failed to respond to the complaint, an order entering default against Eastern was filed on November 2, 2021. JE 7. Defendants argue that, in light of the order of default, Claimant must be precluded from alleging that Turf is the responsible party, and that Claimant must prosecute his case solely against the defaulted party, Eastern, lest Claimant recover from two different sources for the same alleged damages. *See* Defendants' Response Brief pp. 12-13, 19. Defendants argument is without merit. Although an order of default has been entered against Eastern, a judgment against Eastern has not yet been entered. JRP 6 requires a claimant, once a default against a party has been entered, to establish a *prima facie* case either by submitting affidavits, depositions, and/or medical reports to the Commission, or, alternatively via a hearing, to support an award or judgment. The Commission then determines whether the claimant has established a *prima facie* case and then issues an appropriate award or judgment. As mentioned *supra*, the Referee granted a motion extending the time for Claimant to submit its *prima facie* case against Eastern for thirty (30) days following the issuance of this decision. Essentially, further action in the case against Eastern was suspended to allow Claimant the opportunity to prove that Turf is the responsible party. Once the Commission determines which party is Claimant's employer, Claimant can then pursue judgment against the responsible party.

> It includes the owner or lessee of premises, or other person who is virtually the proprietor or operator of the business there carried on, but who, by reason of there being an independent contractor or for any other reason, is not the direct employer of the workers there employed. It also includes, for purposes of section 72-438(12) and (14), Idaho Code, a municipality, village, county or fire district that utilizes the services of volunteer firefighters. If the employer is secured, it means his surety so far as applicable.

48. Claimant argues that at the time of the accident Turf was Claimant's "category one" statutory employer.[5] The argument is that as a Turf employee Claimant was directed to perform a driving job for Eastern and did so under the direction and control of Turf. Defendants counter that Claimant was actually working under a contract of hire he made with Eastern. Defendants argue that Turf was not a contractor who engaged Eastern as a subcontractor for the purposes of performing part of the work of Turf; the hauling work performed by Eastern that is the subject of these proceedings conferred no benefit on Turf.

49. It is undisputed that Turf employed Claimant for several years leading up to the Memorial Day weekend of 2021. It is also undisputed that on the occasion of his injuries Claimant was performing driving and loading work in connection with a hauling obligation undertaken by Eastern. There is a factual dispute concerning how it came to pass that Claimant performed this driving work, and who engaged him to do it. A category one statutory employer is one who directly hires a worker or who becomes an employer by operation of law through an intermediary, i.e., a subcontractor. Idaho Code § 72-102(12)(a). In the case of a category one statutory employer, the typical litigated scenario involves a contractor who engages the services of a subcontractor who is, in turn, the direct employer of a worker who is later injured. The usual fight is not over who is the direct employer of the worker, but rather over whether the relationship of the contractor and subcontractor is such that the contractor is responsible for the

[5] On September 23, 2022, Claimant filed a Notice of Supplemental Authority. Claimant cited the recent

payment of worker's compensation benefits in the event the direct employer is uninsured, or insulated from a third-party action in the event the direct employer is insured. *Kolar v. Cassia County*, 142 Idaho 346, 127 P.3d 962 (2005). Here, unlike the typical case, the instant dispute actually is over who, as between Turf and Eastern, was the direct employer of Claimant at the time of the accident. Therefore, as developed *infra*, we believe the instant fact pattern is better evaluated under the borrowed servant doctrine, a test tailored to evaluating who, as between two possible employers, can be said to be the direct employer of an injured worker, and therefore responsible for the payment of worker's compensation benefits.

50. The "loaned" or "borrowed"[6] servant doctrine has long been recognized in Idaho law. *See, e.g.*, *Pinson v. Minidoka Highway District*, 61 Idaho 731, 106 P.2d 1020 (1940); *Paullas v. Anderson Excavating*, 113 Idaho 156, 742 P.2d 411 (1987); *Hill v. E&L Farms*, 123 Idaho 371, 848 P.2d 429 (1993). In *Pinson* it was observed:

> It sometimes happens that one wishes a certain work to be done for his benefit, and neither has persons in his employ who can do it nor is willing to take such persons into his general service. He may then enter into an agreement with another. If the other furnishes him with men to do the work, and places them under his exclusive control in the performance of it, those men become pro hac vice the servants of him to whom they are furnished.... To determine whether a given case falls within the one class or the other we must inquire whose is the work being performed--a question which is usually answered by ascertaining who has the power to control and direct the servants in the performance of their work.

Pinson, 106 P.2d at 1022 (citing *Standard Oil Co. v. Anderson*, 212 U.S. 215, 29 S.Ct. 252, 254, 53 L.Ed. 480 (1909) (ellipsis in original)).

Supreme Court case of *Eldridge v. Agar Livestock, LLC*, Docket No. 49570 (Idaho Sept. 19, 2022).

[6] Defendants argue that Claimant raised the "loaned employee" doctrine for the first time in briefing. Although not raised expressly at hearing, the "loaned employee" doctrine falls squarely within the fourth noticed issue, "whether an employer/employee relationship existed between Turf and Claimant."

51. Therefore, in a two-employer, or "loaned employee" situation, the "right to control" test is the primary test relied upon to determine the employer at a particular time. *Hill v. E&L Farms*, 123 Idaho 371, 848 P.2d 429 (1993). In *Hill*, the Court stated:

> the general test is the *right* to control and direct the activities of the employee, or the power to control the details of the work to be performed and to determine how it shall be done, and whether it shall stop or continue, that gives rise to the relationship of employer and employee, and where the employee comes under the direction and control of the person to whom his services have been furnished, the latter becomes his temporary employer, and liable for compensation.

Hill, 123 Idaho at 373, 848 P.2d at 431 (citing *Pinson v. Minidoka Highway District*, 61 Idaho 731, 106 P.2d 1020 (1940) (emphasis in original)). Other factors, such as the existence of a contract for hire, express or implied, and whether the work being done is essentially that of the special employer, although relevant, are secondary to the "right to control" test. *Hill*, 123 Idaho at 373, 848 P.2d at 431; *see also Paullas v. Andersen Excavating*, 113 Idaho 156, 742 P.2d 411 (1987).

52. Control is the key characteristic of an employment relationship. The test for determining whether a worker is an employee is "whether the contract gives, or the employer assumes, the right to control the time, manner and method of executing the work, or the employer assumes the right to control the time, manner and method of executing the work, as distinguished from the right merely to require certain definite results." *Livingston*, 128 Idaho at 69, 910 P.2d at 741 (citing *Ledesma v. Bergeson*, 99 Idaho 555, 558, 585 P.2d 965, 968 (1978)).

53. The Referee determined that Claimant testified more credibly than McKay on the issue of control and at who's instance Claimant undertook the task of driving Jossi's vehicle. The Commission cannot disturb this determination to the extent that it is based on the Referee's observation of both Claimant and McKay at hearing. *Painter v. Potlatch*, 138 Idaho 309, 63 P.3d 435 (2003). The Commission is allowed to make its own assessment of the "substantive

credibility" of the testimony of a witness based on internal inconsistences or conflict with other evidence of record. Here, the Referee found that Claimant testified more credibly about the facts underlying the initiation of the Oregon trip. The Commission notes several additional facts tending to support Claimant's assertion that Turf retained the right to direct and control the details of his work while driving for Eastern. McKay testified that he did nothing but alert Claimant to a chance to make a little extra money and was very clear with both Claimant and Jossi that the agreement was to be between Claimant and Jossi, and that he (McKay) accepted no responsibility for the relationship. Tr. 101. However, in almost the same breath McKay testified that he told Jossi that Jossi would need to "match" what McKay was paying Claimant. Tr. 102. At the time Jossi contacted McKay on May 27, 2021, Jossi had been stranded for four or five days at a weigh station near Huntington Oregon. JE 16:5. He was out of fuel and without the means to buy more. There is no testimony that Jossi mentioned this additional problem to McKay, yet it seems a strange thing not to mention in view of the fact that getting a driver was not going to be of any help to Jossi without fuel for his vehicle. Claimant testified that when he discovered that Jossi was without fuel, or means to pay for it, Claimant contacted Turf. He was told to use Turf's fuel card by the office manager. Claimant testified that during the trip he also called Turf to "check-in" and was told to "get the job done" by the office manager. McKay again inserted himself in the relationship when he discovered that Claimant had not yet been paid. He undertook to get Claimant paid by using blank checks originally issued by Jossi towards the purchase of the three trailers. Taken together, these facts demonstrate that McKay did, as Claimant asserts, direct him to work for Jossi, and retained a right of control over the details of the work such that without Turf's direction and involvement the work would never have been undertaken.

54. It is reasonable to find that the errand to assist Jossi was not a mere extracurricular job opportunity that Claimant could take at his option, but rather a direction from a supervisor to a supervisee. ("I need you to go out, meet with him, take him – load his hay and come back." Tr. 20:20-25). We are not persuaded by the argument that, at most, Turf acted as a "broker" and merely introduced someone searching for work to someone seeking an employee. Turf's direction and control was central to the completion of the work.

55. Meanwhile, there is scant evidence that during the trip Jossi exercised control over Claimant that was "significant enough to create an employer/employee relationship…" *Hill, supra.* When Claimant arrived at Farewell Bend, Oregon, he observed that Jossi was "shaking" and "very sick" and Claimant could see why the "scale had closed him (Jossi) down." Tr. 24:3-8. Jossi told Claimant to speak to the scale master, and Claimant presented his driver's license and medical card to the scale master and was authorized to operate Eastern's truck. Tr. 25:8-16. Claimant called Turf's office manager, Leah Hyatt, to seek permission to use Turf's fuel card to fill up the truck with diesel. Tr. 25:17-25. Jossi traveled with Claimant to a farm in Hillsboro, Oregon. Tr. 29:1-3. Once they arrived in Hillsboro, Claimant observed that Jossi was "so sick he wasn't moving very fast. Shaking. He couldn't – couldn't hold anything down. So, he was in pretty bad shape." Tr. 27:19-23. Claimant took it upon himself to load the hay onto the trailer because McKay had taught him to "get the job done." Tr. 27:19-28:5. While Claimant was loading the hay, Jossi went inside a nearby house on the farm. Tr. 28:6-14. Claimant then drove, with Jossi as passenger, back to Idaho, filling the truck with diesel in Nampa at Jossi's request but with Turf's fuel card. Tr. 81:10-82:2. Claimant then dropped off the truck and trailer at a location in Meridian and parted ways with Jossi. Tr. 82:5-23. Claimant testified that the only

substantive conversation he had with Jossi was about truck driving and Jossi's medical issues. Tr. 34:24-35:6.

56. Although Jossi gave directions to Claimant as to the specific location in Hillsboro, Oregon and some instructions once they arrived back in Idaho, overall, Jossi did not exercise sufficient control over Claimant in order to be considered Claimant's temporary or special employer. The record establishes that Claimant drove Jossi's truck to Hillsboro, loaded hay, and back, at behest of Turf and Turf's instruction to "get the job done."

57. As to the factors of secondary importance considered by the *Hill* Court, from what has been said above, we believe that the best evidence is that the contract of hire to perform the driving work was between Claimant and Turf and was simply a continuation of their longstanding employer/employee relationship. An employment relationship may be shown by a contract of hire, express or implied-in-fact. *Kennedy v. Forest*, 129 Idaho 584, 930 P.2d 1026 (1997). The evidence does not persuade us that Jossi entered into an express contract of hire with Claimant. Indeed, upon first meeting with Jossi in Farewell Bend, Oregon, Jossi told Claimant that he (Jossi) and McKay had "set this all up" and that the arrangement was between Jossi and McKay. Tr. 34:4-14. Although the plan was for Jossi to pay Claimant, that agreement was reached between McKay and Jossi. There is no evidence that Jossi and Claimant reached a separate agreement. Jossi accepted the driver that was provided by Turf, no questions asked. This evidence, and that discussed in Paragraphs 55-56 *supra*, is likewise insufficient to support a conclusion that an implied-in-fact contract of hire can be inferred by the conduct of Claimant and Jossi.

58. As to whether the work that was to be performed was essentially that of Jossi's, it is undeniable that Jossi was the primary benefactor of the work performed by Claimant.

However, and notwithstanding numerous assertions to the contrary contained in Defendants' brief, it seems likely that McKay, too, had an interest in Jossi's completion of the delivery. Jossi was in the process of paying off his purchase of trailers from McKay, and Jossi's ability to make timely payments likely depended on his continued ability to haul freight. By helping Jossi out of his predicament McKay was, at least indirectly, advancing his own interests.

59. In conclusion, the preponderance of the evidence demonstrates that Turf retained the right to control the performance of Claimant's services during the Memorial Day weekend of 2021. Furthermore, Eastern/Jossi did not exercise significant enough control and direction to create an employer/employee relationship and liability under the worker's compensation laws. Nor do the secondary considerations referenced by *Hill* compel a different result.

60. As developed above, the *Hill* Court held that in a two-employer situation, the "right to control" test is the primary test to be applied to determine which employer is liable for the payment of benefits. The Court observed that the "right to control" in a borrowed servant case is the same test used to determine whether an injured worker is an employee vs. and independent contractor. *See Hill*, 123 Idaho at 373, 848 P.2d at 431; *see also*, *Paullas v. Anderson Excavating,* 113 Idaho 156, 742 P.2d 411 (1987). In light of this language, the Commission believes it appropriate to also analyze these facts under the "right to control" test as outlined in the employee v. independent contractor line of cases. The Commission finds that under this line of cases, too, Claimant was under the control of Turf at the time that he transported the load for Jossi on the Memorial Day weekend of 2021.

61. In employee/independent contractor cases, the Idaho Supreme Court has specified four factors to be considered in determining whether the "right to control" exists: "(1) direct evidence of the right to control the employee; (2) the method of payment, including whether the

employer withheld taxes; (3) whether the employer or worker furnishes major items of equipment; and (4) whether there is a right to terminate the employment at will and without liability." *State ex rel Industrial Commission v. Sky Down Skydiving, LLC*, 166 Idaho 564, 571, 462 P.3d 92, 99 (2020); *see also*, *Livingston*, 128 Idaho at 69, 910 P.2d at 741; *Burdick*, 109 Idaho at 871, 712 P.2d at 572; *Roman v. Horsley*, 120 Idaho 136, 137, 814 P.2d 36, 37 (1991).

62. While each of these four elements must be considered, no one of them in and of itself is controlling and one or more of the four may not be present in a given case. *Roman*, 120 Idaho at 137, 814 P.2d at 37. The Court has directed the Commission to balance each of the elements present to determine the relative weight and importance of each. *Id.* at 138, 38.

63. *Direct Evidence of the Right to Control.* Direct evidence of the right to control "includes factors that demonstrate an employer's asserted direction and control over the worker. These factors may include – but are not limited to – instructions and guidance to control the manner and method of executing the work, and control of the worker's time and scheduling." *Sky Down Skydiving*, 166 Idaho at 571, 462 P.3d at 99. Direct evidence of the right to control the manner and method of performing the work, the right to require compliance with instructions, to establish set hours of work, and to require the worker to devote substantially full time to the business are all indicative of an employment relationship.

64. As outlined in paragraphs 53-56 *supra*, the direct evidence of the right to control in this case indicates that McKay/Turf directed Claimant to perform a task for Jossi/Eastern, specified how that work should be performed, specified how much Claimant should be paid, and obtained the wages owed to Claimant.

65. *Method of Payment.* Turf withheld both state and federal taxes from Claimant's earnings; Jossi/Eastern did not. JE 22:70; JE 31:1.

66. Turf directly deposited paychecks into Claimant's account; Jossi/Eastern did not. JE 33:1.

67. On direct examination Claimant was at first equivocal on the question of who was to pay him for his services. Tr. 21:13-22:3. He later testified that he and Jossi had no communication about payment. Tr. 34:4-14. On cross examination, however, Claimant affirmed that McKay told Claimant that if Claimant wanted the work, Jossi would pay him. Tr. 57:5-19. In the recorded statement taken by Surety on July 21, 2021 Claimant affirmed that it was clear to him that Jossi was going to pay Claimant for the driving work, and that McKay was not. JE 16:2. McKay has testified that the expectation was that Jossi pay for Claimant's services. For his part, Jossi told Claimant that the deal he made to obtain Claimant's assistance was made with McKay, including by whom, and in what amount, Claimant would be paid. Jossi told Surety's investigator that the plan was for Jossi to pay for Claimant's services directly. However, as of the day of the July 22, 2021, recorded statement Jossi had yet to pay Claimant. JE 16:7. As developed above, that payment was eventually made after McKay intervened on behalf of Claimant. Immediately after the July 2021 statements were taken, McKay modified one of Jossi's pre-signed checks to strike McKay's name and insert Claimant's name as the payee. With Jossi's permission the appropriate dollar amount was filled in and the check delivered to Claimant. From the foregoing we conclude that the expectation was that Jossi would pay Claimant at the rate of $.50/mile for his driving services. However, McKay, too, was involved in getting Claimant paid for his services, even though Claimant was not paid from Turf funds. If Claimant were truly Jossi's temporary employee, it is odd that McKay would do anything to intervene in Jossi's obligation to Claimant. In his own words, McKay stated that paying Claimant in this manner was the "only way I had to see that he [Claimant] would get paid out of

Mr. Jossi's account." Tr. 119:11-12. We conclude that the fact that Claimant was eventually paid by check signed by Jossi adds little weight to the proposition that Claimant was an employee of Eastern.

68. *Furnishing Major Items of Equipment.* There is no dispute that Jossi/Eastern owned the truck that Claimant drove during the weekend of Memorial Day 2021. Further, there is no dispute that the trailer being hauled during that trip was one that was the subject of a contract of sale between McKay and Jossi. Title to the trailer still resided in McKay as of the date of the accident. However, we do not conclude that this fact amounts to proof that McKay provided major items of equipment for the trip.

69. There is one major item of equipment that Turf did provide, an item that ultimately made the difference between whether the trip took place or did not. The evidence shows that Turf provided Claimant with a company gas card as an incident of his driving responsibilities. Jossi's truck was stranded without any fuel when Claimant found him on the morning of May 29, 2021. Claimant then obtained direction from Turf's office manager to fuel the truck with the company gas card. This is evidence that Turf supplied major items of equipment for the job in question.

70. Finally, Claimant used the mileage card form supplied by Turf to account for the mileage he drove during the trip in question. Jossi did not provide Claimant with a similar form to document his mileage. This is further evidence of the right to control.

71. *Right to Terminate the Employment Relationship at Will or Without Liability.* There is insufficient evidence one way or another concerning the right to terminate the employment relationship at will. This element thus cuts both ways.

72. *Other Factors*. The four factors listed above are not controlling and the weight afforded them varies from case to case. *See State v. Sky Down Skydiving, LLC*, 166 Idaho 564, 571, 462 P.3d 92, 99 (2020). The following additional facts establish that Employer was Claimant's employer on the weekend of Memorial Day 2021: (1) Claimant submitted a job application to McKay/Turf but did not do so with Jossi/Eastern; and (2) Claimant filled out a W-2 form with McKay/Turf but did not do so with Jossi/Eastern.

73. *Conclusion*. Having balanced all the factors under the "right to control" test, none of these considerations challenge the finding that the work performed by Claimant for Eastern was done at the direction and control of Turf. Evidence on the secondary considerations discussed above does not undercut the conclusion that the right to control the activities of Claimant with regard to the Memorial Day trip resided in Turf.

74. **Course and Scope of Employment**. The Idaho Workers' Compensation Law provides that if an employee is in private employment, then their employer is subject to the provisions of the Law if the employee sustained an injury from an accident *arising out of the course and scope of employment* with employer. *See*, Idaho Code § 72-204(1).

75. It has already been established that Claimant was in the employ of Turf at the time of the industrial accident on May 29, 2021. The evidence also establishes that Claimant suffered an industrial injury on that date when the iron bar fell on his foot in Hillsboro, Oregon. Complications from the injury, as the medical evidence shows, included a serious abscess that required both in-patient and out-patient treatment.

76. There is no persuasive evidence that Claimant sustained the injury to his foot at any other place or under any other circumstances besides working on May 29, 2021 to load the truck trailer in Hillsboro.

77. Claimant has sustained his burden of proving that he suffered an injury from an accident arising out of the course and scope of employment with Employer.

78. **Attorney Fees**. The final issue is Claimant's entitlement to attorney fees. Attorney fees are not granted as a matter of right, but may be recovered only under the circumstances set forth in Idaho Code § 72-804, which provides as follows:

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

79. The evidence does not support an award of attorney fees pursuant to Idaho Code § 72-804. The standard for receiving fees is that the employer must have contested the claim for benefits "without reasonable ground." Although the Commission concludes that Claimant has prevailed in his argument that he was in the employ of Turf, Turf did not unreasonably challenge the threshold compensability of the claim. Under these circumstances, Defendants' denial of the claim was not unreasonable. Claimant is not entitled to attorney fees.

CONCLUSIONS OF LAW AND ORDER

1. Turf is subject to the provisions of the Idaho Workers' Compensation Law.

2. An employer/employee relationship existed between Turf and Claimant at the time of the industrial accident.

3. Claimant sustained an injury from an accident arising out of and in the course of employment.

4. Claimant is not entitled to attorney fees pursuant to Idaho Code § 72-804.

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

DATED this 30th day of September, 2022.

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 30th day of September, 2022, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** was served by regular United States Mail upon each of the following:

TAYLOR MOSSMAN-FLETCHER
611 WEST HAYS STREET
BOISE ID 83702
taylor@mossmanlaw.us

NEIL D MCFEELEY
PO BOX 1368
BOISE ID 83701-1368
nmcfeeley@eberle.com
tsmith@eberle.com

Kamerron Slay