

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JORGE HECTOR HERNANDEZ-GALLEGOS,
an individual, and FORGE BUILDING CO.,
LLC, as Subrogee of Jorge Hector Hernandez-
Gallegos,

Claimant and
Subrogee Statutory
Employer,

v.

MIKAN STEEL CONSTRUCTION, LLC,

Employer,
Defendant.

IC 2017-030315

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

FILED

SEP 30 2022

INDUSTRIAL COMMISSION

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Industrial Commission assigned this matter to Referee Douglas A. Donohue who conducted a default hearing in Boise on June 13, 2022. Eric Bailey represented Claimant. Defendants refused or failed to Answer or appear. Claimant presented documentary and testimonial evidence. Claimant waived filing a written brief in favor of closing oral argument. The case came under advisement on June 15, 2022. This matter is ready for decision.

ISSUES

The issues to be decided as amended at hearing are:

Whether and to what extent Subrogee Statutory Employer is entitled to subrogation against Defendant.

At hearing, Claimant withdrew the issue of attorney fees.

CONTENTIONS OF THE PARTIES

Claimant contends it is entitled to subrogation.

Defendants have not filed an Answer or entered an appearance.

EVIDENCE CONSIDERED

The record in the instant case included the following:

1. Exhibits 1 through 33.

The Referee submits the following findings of fact and conclusions of law for the approval of the Commission and recommends it approve and adopt the same.

FINDINGS OF FACT

1. Claimant Hernandez-Gallegos was injured in a compensable accident while employed by Defendant, Mikan Steel Construction, LLC.
2. Despite statutory requirements to the contrary, Defendant was uninsured.
3. Subrogee Statutory Employer, Forge Building Co. LLC, accepted liability as a statutory employer. Claimant received benefits from and entered a lump sum settlement with Subrogee Statutory Employer. (Exhibit 23). Subrogee Statutory Employer paid \$19,390.66 in medical fees, indemnity of \$19,927.43, and \$8,000 to resolve outstanding issues. (Exhibit 15). That LSSA was approved by the Commission on February 18, 2021. (Exhibit 32).
4. Subrogee Statutory Employer filed and served this Complaint pursuant to Idaho Code § 72-216(3)(a) on July 2, 2021. Subrogee Statutory Employer filed Notice of intent to take default on March 4, 2022 (Exhibit 19).
5. Defendant failed or refused to appear or Answer.
6. An order of default was entered May 11, 2022.
7. The Commission takes judicial notice of the Lump Sum Settlement and all matters

in the legal case file.

8. Subrogee Statutory Employer established a *prima facie* case. It showed that it is entitled to subrogation against Defendant in the amount of \$47,318.09.

CONCLUSION

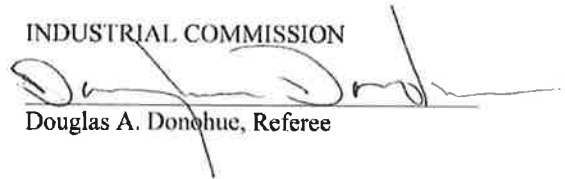
Pursuant to JRP 6 and I.C. § 72-216(3), Subrogee Statutory Employer has established a *prima facie* case for entitlement to subrogated benefits in the amount of \$47,318.09.

RECOMMENDATION

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

DATED this __31st__ day of __August__, 2022.

INDUSTRIAL COMMISSION



Douglas A. Donohue, Referee

ATTEST:


Assistant Commission Secretary



CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of September, 2022, a true and correct copy of the **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail and Electronic Mail upon each of the following:

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

MIKAN STEEL CONSTRUCTION, LLC
9929 AUTUMN CANYON
SAN ANTONIO, TX 78255

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Cm. Turner

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ORDER

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INDUSTRIAL COMMISSION

Pursuant to Idaho Code § 72-717, Referee Doug Donohue submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusions of law, to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Pursuant to JRP 6 and I.C. § 72-216(3), Subrogee Statutory Employer has established a prima facie case for entitlement to subrogated benefits in the amount of \$47,318.09.
2. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

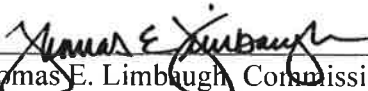
DATED this 29th day of September, 2022.

INDUSTRIAL COMMISSION





Aaron White, Chairman



Thomas E. Limbaugh, Commissioner



Thomas P. Baskin, Commissioner

ATTEST:



Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of September, 2022, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail and Electronic Mail upon each of the following:

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BOISE, ID 83701
wcesb76@hotmail.com
bperkins@bowen-bailey.com

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