

8-14-2015

Gerdon v. Con Paulos Agency's Record v. 1 Dckt. 43234

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Vol. 1 of 2

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

JOSEPH GERDON,

Claimant/Appellant,

v.

CON PAULOS, INC., Employer,

and

LIBERTY NORTHWEST INSURANCE
CORPORATION, Surety,

Defendants/Respondents.

SUPREME COURT NO. 43234

AGENCY'S RECORD

EISMANN

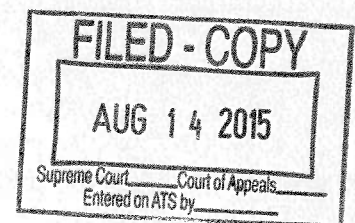
BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

Attorney for Appellant

DANIEL J LUKER
GOICOECHEA LAW OFFICES
PO BOX 6190
BOISE ID 83707-6190

Attorney for Respondent

JOSEPH M WAGER
LAW OFFICES OF KENT W DAY
PO BOX 6358
BOISE ID 83707-6358



AGENCY'S RECORD - (Docket No. 43234, RE: Gerdon) - 1

COPY

43234

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

JOSEPH GERDON,

Claimant/Appellant,

v.

CON PAULOS, INC., Employer,

and

LIBERTY NORTHWEST INSURANCE
CORPORATION, Surety,

Defendants/Respondents.

SUPREME COURT NO. 43234

AGENCY'S RECORD

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

Attorney for Appellant

DANIEL J LUKER
GOICOECHEA LAW OFFICES
PO BOX 6190
BOISE ID 83707-6190

Attorney for Respondent

JOSEPH M WAGER
LAW OFFICES OF KENT W DAY
PO BOX 6358
BOISE ID 83707-6358

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ORDER, filed April 7, 201525

WORKERS’ COMPENSATION COMPLAINT, filed September 23, 20091

LIST OF EXHIBITS

REPORTER'S TRANSCRIPT: TAKEN SEPTEMBER 5, 2014 RE: JOSEPH GERDON
TO BE LODGED WITH THE SUPREME COURT.

CLAIMANT'S EXHIBITS:

1. Matthew Jolley, MD (3/29/2011 – 7/5/2011)[sic]
2. Robert Calhoun, PhD (4/22/2009 – 7/31/14)
3. Daniel Marsh, MD (1/19/2010 – 8/19/14)
4. Bridgeway Health Services (7/25/14 – 7/31/14)
5. Jeremy Joseph Joyal, MD/Omega (8/5/14)
6. IC Hearing Transcript 1/30/2012

DEFENDANTS' EXHIBITS:

1. Medical and indemnity breakdowns
2. Medical records of Robert Calhoun, M.D., dated 04/22/2009-07/31/2014
3. Medical records of Daniel Marsh, M.D., dated 06/15/2009-07/01/2014

DEPOSITIONS:

1. Deposition of Daniel Marsh, MD, taken October 9, 2014
2. Deposition of Robert F. Calhoun, Ph.D., taken October 22, 2014

ADDITIONAL DOCUMENTS:

1. Claimant's Post-Hearing Brief, filed June 7, 2012
2. Defendants' Responsive Brief, filed July 13, 2012
3. Claimant's Post-Hearing Reply Brief, filed July 25, 2012
4. Referee LaDawn Marsters' Findings of Fact, Conclusions of Law and Recommendation, and Order, filed October 15, 2012
5. Claimant's Motion and Memorandum for Reconsideration of the Industrial Commission's Findings of Facts [sic] Conclusions of Law and Recommendation and Order, filed November 2, 2012
6. Defendant's Objection and Memorandum in Support of Objection to Claimant's Motion for Reconsideration, Etc., filed November 6, 2012
7. Order Denying Reconsideration, filed February 1, 2013
8. Notice of Hearing, filed July 17, 2014
9. Claimant's Post-Hearing Brief, filed January 9, 2015
10. Defendants' Responsive Brief, filed March 2, 2015
11. Claimant's Post-Hearing Reply Brief, filed March 16, 2015

LIST OF EXHIBITS (Docket No. 43234, RE: Gerdon) – (i)

WORKERS' COMPENSATION COMPLAINT

I.C. No. 08-019169

ORIGINAL

CLAIMANT'S (INJURED WORKER) NAME AND ADDRESS Joseph A. Gerdon C/O Jerry J. Goicoechea PO Box 6190 Boise, Idaho 83707		CLAIMANT'S ATTORNEY'S NAME, ADDRESS, AND TELEPHONE NO. Jerry J. Goicoechea Goicoechea Law Offices, Chtd. PO Box 6190 Boise, ID 83707 208-336-6400	
EMPLOYER'S NAME AND ADDRESS (at time of injury) Con Paulos 251 East Frontage Road South Jerome, Idaho 83338		WORKERS' COMPENSATION INSURANCE CARRIER'S (NOT ADJUSTER'S) NAME AND ADDRESS Liberty Northwest 6213 N Cloverdale Road, Suite 150 Boise, Idaho 83713	
CLAIMANT'S SECURITY NO. [REDACTED]	CLAIMANT'S [REDACTED]	DATE OF INJURY OR MANIFESTATION OF OCCUPATIONAL DISEASE 6/13/2008	
STATE AND COUNTY IN WHICH INJURY OCCURRED Idaho, Ada		WHEN INJURED, CLAIMANT WAS EARNING AN AVERAGE WEEKLY WAGE OF: \$3,500.00 per month PURSUANT TO 72-419, IDAHO CODE	
DESCRIBE HOW INJURY OR OCCUPATIONAL DISEASE OCCURRED (WHAT HAPPENED) On June 13, 2008, Claimant was a passenger in a vehicle, which was driven by a co-worker. Claimant and his co-worker were traveling from Spokane back to Jerome when Claimant's co-worker fell asleep, drove off an embankment and wrecked the vehicle, just north of Weiser, Idaho. Claimant suffered serious injuries as a result of the auto accident.			
NATURE OF MEDICAL PROBLEMS ALLEGED AS A RESULT OF ACCIDENT OR OCCUPATIONAL DISEASE Left ankle fractures, RSD/CRPS left foot; low back injuries (ruptured disc L3-4 and herniated discs at L4-5 and L5-S1).			
WHAT WORKERS' COMPENSATION BENEFITS ARE YOU CLAIMING AT THIS TIME? 1. Additional medical expenses; 2. Additional TTD and/or TPD benefits; and, 3. PPI and PPD after Claimant has reached maximum medical improvement.			
DATE ON WHICH NOTICE OF INJURY WAS GIVEN TO EMPLOYER 6/13/2008		TO WHOM YOU GAVE NOTICE Supervisor	
HOW NOTICE WAS GIVEN: <input checked="" type="checkbox"/> ORAL <input type="checkbox"/> WRITTEN OTHER, PLEASE SPECIFY			
ISSUE OR ISSUES INVOLVED 1. Claimant's entitlement to medical benefits; 2. Claimant's entitlement to TTD and/or TPD benefits; 3. Claimant's entitlement to PPI benefits once medically stable; 4. Claimant's entitlement to Permanent Disability benefits once Claimant is medically stable. 5. Whether Claimant is totally and permanently disabled. 6. Claimant's entitlement to an award of attorney's fees for the unreasonable termination, delay and/or denial of workers' compensation benefits.			
DO YOU BELIEVE THIS CLAIM PRESENTS A NEW QUESTION OF LAW OR A COMPLICATED SET OF FACTS? YES NO <input checked="" type="checkbox"/> IF SO, PLEASE STATE WHY.			
NOTICE: COMPLAINTS AGAINST THE INDUSTRIAL SPECIAL INDEMNITY FUND MUST BE FILED IN ACCORDANCE WITH IDAHO CODE § 72-334 AND FILED ON FORM I.C. 1002			

RECEIVED
 INDUSTRIAL DIVISION
 SEP 15 10:10 AM '08

10

PHYSICIANS WHO TREATED CLAIMANT (NAME AND ADDRESS)

1. Dr. Obuck – Weiser, Idaho
2. Dr. Johnson – Twin Falls, Idaho
3. Dr. Surbaugh – Twin Falls, Idaho;
4. Dr. Hammond – Twin Falls, Idaho;
5. Dr. Dille – Twin Falls, Idaho
6. Dr. Verst – Gooding, Idaho;
7. Dr. Coughlin – Boise, Idaho;
8. Dr. Binegar – Boise, Idaho;
9. Dr. Krafft – Boise, Idaho;
10. Dr. Calhoun – Boise, Idaho;
11. Dr. Floyd – Boise, Idaho;
12. Dr. Parent – Boise, Idaho;

WHAT MEDICAL COSTS HAVE YOU INCURRED TO DATE? Unknown
 WHAT MEDICAL COSTS HAS YOUR EMPLOYER PAID, IF ANY? Unknown
 WHAT MEDICAL COSTS HAVE YOU PAID, IF ANY? Unknown

I AM INTERESTED IN MEDIATING THIS CLAIM, IF THE OTHER PARTIES AGREE. YES X NO

DATE

9/22/09

SIGNATURE OF CLAIMANT OR ATTORNEY

PLEASE ANSWER THE SET OF QUESTIONS IMMEDIATELY BELOW
 ONLY IF CLAIM IS MADE FOR DEATH BENEFITS

NAME AND SOCIAL SECURITY NUMBER
 OF PARTY FILING COMPLAINT

DATE OF DEATH

RELATION TO DECEASED CLAIMANT

WAS CLAIMANT DEPENDENT ON DECEASED?

DID CLAIMANT LIVE WITH DECEASED AT TIME OF ACCIDENT?

Yes No

Yes No

CLAIMANT MUST COMPLETE, SIGN AND DATE THE FOLLOWING:

CERTIFICATE OF SERVICE

I hereby certify that on the 22 day of Sept. 2009, I caused to be served a true and correct copy of the foregoing Complaint upon:

EMPLOYER'S NAME AND ADDRESS

SURETY'S NAME AND ADDRESS

Con Paulos
 251 East Frontage Road South
 Jerome, Idaho 83338

Liberty Northwest
 6213 N Cloverdale Road, Suite 150
 Boise, Idaho 83713

via: personal service of process
 regular U.S. Mail

via: personal service of process
 regular U.S. Mail

Signature

NOTICE! An Employer or Insurance Company served with a Complaint must file an Answer on Form I.C. 1003 with the Industrial Commission within 21 days of the date of service as specified on the certificate of mailing to avoid default. *If no answer is filed, a Default Award may be entered!*

Further information may be obtained from: Industrial Commission, Judicial Division, 317 Main Street, Boise, Idaho 83720-6000 (208) 334-6000

(COMPLETE MEDICAL RELEASE FORM ON PAGE 3)

INDUSTRIAL COMMISSION
PO BOX 83720
BOISE ID 83720-0041

Patient Name: Joseph A. Gerdon
Address: PO Box 6190 Boise ID 8370
Phone Number: (208) 336-6400
or Case Number: _____

(Provider Use Only)
Medical Record Number: _____
 Pick up Copies or Fax Copies # _____
 Mail Copies
ID Confirmed by: _____

AUTHORIZATION FOR DISCLOSURE OF HEALTH INFORMATION

I hereby authorize _____ to disclose health information as specified:
Provider name – must be specific for each provider

To: _____
Insurance Company/Third party Administrator/Self Insured Employer/ISIF, their attorneys or patient's attorney

Street Address _____

City _____ State _____ Zip Code _____

Purpose or need for data: _____
(e.g. Workers' Compensation Claim)

Information to be disclosed:

- Discharge Summary
- History & Physical Exam
- Consultation Reports
- Operative Reports
- Lab
- Pathology
- Radiology Reports
- Entire Record
- Other: Specify _____

I understand that the disclosure may include information relating to (check if applicable):

- AIDS or I-IV
- Psychiatric or Mental Health Information
- Drug/Alcohol Abuse Information

I understand that the information to be released may include material that is protected by Federal Law (45 CFR Part 164) and that the information may be subject to redisclosure by the recipient and no longer be protected by the federal regulations. I understand that this authorization may be revoked in writing at any time by notifying the privacy officer, except that revoking the authorization won't apply to information already released in response to this authorization. I understand that the provider will not condition treatment, payment, enrollment, or eligibility for benefits on my signing this authorization. **Unless otherwise revoked, this authorization will expire upon resolution of workers' compensation claim.** Provider, its employees, officers, copy service contractor, and physicians are hereby released from any legal responsibility or liability for disclosure of the above information to the extent indicated and authorized by me on this form and as outlined in the Notice of Privacy. My signature below authorizes release of all information specified in this authorization. Any questions that I have regarding disclosure may be directed to the privacy officer of the Provider specified above.

Joe Arch
Signature of Patient

8-10-2009
Date

Signature of Legal Representative and Relationship to Patient/Authority to Act Date

Signature of Witness Title Date

ANSWER TO COMPLAINT

I. C. NO. 2008-019169

ALLEGED INJURY DATE 06/13/08

CLAIMANT'S NAME AND ADDRESS JOSEPH A. GERDON 245 S. View Rd. Jerome, ID 83338	CLAIMANT'S ATTORNEY'S NAME AND ADDRESS JERRY J. GOICOECHEA Goicoechea Law Offices P.O. Box 6190 Boise, ID 83707
EMPLOYER'S NAME AND ADDRESS CON PAULOS, INC. P.O. Box 483 Jerome, ID 833338	WORKERS' COMPENSATION INSURANCE CARRIER'S (NOT ADJUSTOR'S) NAME AND ADDRESS LIBERTY NORTHWEST INS. CORP. 6213 N. Cloverdale Rd., Ste. 150 P.O. Box 7507 Boise, ID 83707-6358
ATTORNEY REPRESENTING EMPLOYER/SURETY (NAME AND ADDRESS) E. SCOTT HARMON, #3183 LAW OFFICES OF HARMON, WHITTIER & DAY 6213 N. Cloverdale Rd., Ste. 150 P.O. Box 6358 Boise, ID 83707-6358	ATTORNEY REPRESENTING INDUSTRIAL SPECIAL INDEMNITY FUND (NAME AND ADDRESS)

The above-named employer or employer/surety responds to Claimant's Complaint by stating:
 The Industrial Special Indemnity Fund responds to the Complaint against the ISIF by stating:

RECEIVED
 INDUSTRIAL COMMISSION
 2008 OCT 28 A 10:21

IT IS: (Check One)	
Admitted	Denied
X	
X	
X	
X	
N.A.	N.A.
X	
N.A.	N.A.
	X
X	

1. That the accident or occupational exposure alleged in the Complaint actually occurred on or about the time claimed.
2. That the employer/employee relationship existed.
3. That the parties were subject to the provisions of the Idaho Workers' Compensation Act.
4. That the condition for which benefits are claimed was caused partly X entirely ___ by an accident arising out of and in the course of Claimant's employment.
5. That, if an occupational disease is alleged, manifestation of such disease is or was due to the nature of the employment in which the hazards of such disease actually exist, are characteristic of and peculiar to the trade, occupation, process, or employment.
6. That notice of the accident causing the injury, or notice of the occupational disease, was given to the employer as soon as practical but not later than 60 days after such accident or 60 days of the manifestation of such occupational disease.
7. That, if an occupational disease is alleged, notice of such was given to the employer within five months after the employment had ceased in which it is claimed the disease was contracted.
8. That the rate of wages claimed is correct. If denied, state the average weekly wage pursuant to Idaho Code, Section 72-419: \$646.44
9. That the alleged employer was insured or permissibly self-insured under the Idaho Workers' Compensation Act.

10. What benefits, if any, do you concede are due Claimant? ONGOING TTD BENEFITS AND POSSIBLE FUTURE PPI/PPD

(Continued from front)


11. State with specificity what matters are in dispute and your reason for denying liability, together with any affirmative defenses.
- A. Defendants deny all allegations of the Complaint not admitted herein.
 - B. Whether Claimant's condition is related to the alleged June 13, 2008 incident or is a result of a pre-existing or subsequent condition.
 - C. Whether Claimant is entitled to permanent partial impairment and/or disability in excess of impairment and appropriate apportionment.
 - D. Whether Claimant is entitled to TTD/TPD benefits.
 - E. Whether Claimant is entitled to additional medical benefits pursuant to I. C. §72-432.
 - F. Whether Claimant is totally and permanently disabled.
 - G. Whether Claimant is entitled to attorney fees pursuant to I. C. §72-804.
 - H. Defendants reserve the right to amend this Answer since discovery in this matter has only just begun.

Under the Commission rules, you have twenty-one (21) days from the date of service of the Complaint to answer the Complaint. A copy of your Answer must be mailed to the Commission and a copy must be served on all parties or their attorneys by regular U.S. mail or by personal service of process. Unless you deny liability, you should pay immediately the compensation required by law, and not cause the claimant, as well as yourself, the expense of a hearing. All compensation which is concededly due and accrued should be paid. Payments due should not be withheld because a Complaint has been filed. Rule III(D), Judicial Rules of Practice and Procedure under the Idaho Workers' Compensation Law, applies. Complaints against the Industrial Special Indemnity Fund must be filed on Form I. C. 1002.

I AM INTERESTED IN MEDIATING THIS CLAIM, IF THE OTHER PARTIES AGREE. YES NO

DO YOU BELIEVE THIS CLAIM PRESENTS A NEW QUESTION OF LAW OR A COMPLICATED SET OF FACTS? IF SO, PLEASE STATE.

No

Amount of Compensation Paid to Date			Dated	Signature of Defendant or Attorney
PPI	TTD/TPD	Medical		
\$0	TTD: \$26,978.60 TPD: \$1,355.46	\$92,508.31	10/27/09	

PLEASE COMPLETE


I hereby certify that on the 27th day of Oct, 2009, I caused to be served a true and correct copy of the foregoing Answer upon:

CERTIFICATE OF SERVICE

CLAIMANT'S ATTORNEY:

Jerry J. Goicoechea
Goicoechea Law Offices
P.O. Box 6190
Boise, ID 83707

via: personal service of process
 regular U.S. Mail



Signature

AMENDED WORKERS' COMPENSATION COMPLAINT

I.C. No. 08-019169

CLAIMANT'S (INJURED WORKER) NAME AND ADDRESS Joseph A. Gerdon C/O Jerry J. Goicoechea PO Box 6190 Boise, Idaho 83707		CLAIMANT'S ATTORNEY'S NAME, ADDRESS, AND TELEPHONE NO. Jerry J. Goicoechea Goicoechea Law Offices, Chtd. PO Box 6190 Boise, ID 83707 208-336-6400	
EMPLOYER'S NAME AND ADDRESS (at time of injury) Con Paulos 251 East Frontage Road South Jerome, Idaho 83338		WORKERS' COMPENSATION INSURANCE CARRIER'S (NOT ADJUSTER'S) NAME AND ADDRESS Liberty Northwest 6213 N Cloverdale Road, Suite 150 Boise, Idaho 83713	
CLAIMANT'S SOCIAL SECURITY NO. [REDACTED]	CLAIMANT'S BIRTH DATE 6/9/1978	DATE OF INJURY OR MANIFESTATION OF OCCUPATIONAL DISEASE 6/13/2008	
STATE AND COUNTY IN WHICH INJURY OCCURRED Idaho, Ada		WHEN INJURED, CLAIMANT WAS EARNING AN AVERAGE WEEKLY WAGE OF: \$3,500.00 per month PURSUANT TO 72-419, IDAHO CODE	
DESCRIBE HOW INJURY OR OCCUPATIONAL DISEASE OCCURRED (WHAT HAPPENED) On June 13, 2008, Claimant was a passenger in a vehicle, which was driven by a Josh Rydalch. Claimant and Josh were traveling from Spokane back to Jerome when Josh fell asleep, drove off an embankment and wrecked the vehicle, just north of Weiser, Idaho. Claimant suffered serious injuries as a result of the auto accident.			
NATURE OF MEDICAL PROBLEMS ALLEGED AS A RESULT OF ACCIDENT OR OCCUPATIONAL DISEASE Left ankle fractures, RSD/CRPS left foot; low back injuries (ruptured disc L3-4 and herniated discs at L4-5 and L5-S1).			
WHAT WORKERS' COMPENSATION BENEFITS ARE YOU CLAIMING AT THIS TIME? 1. Additional medical expenses; 2. Additional TTD and/or TPD benefits; and, 3. PPI and PPD after Claimant has reached maximum medical improvement.			
DATE ON WHICH NOTICE OF INJURY WAS GIVEN TO EMPLOYER 6/13/2008		TO WHOM YOU GAVE NOTICE Supervisor	
HOW NOTICE WAS GIVEN: <input checked="" type="checkbox"/> ORAL <input type="checkbox"/> WRITTEN <input type="checkbox"/> OTHER, PLEASE SPECIFY			
ISSUE OR ISSUES INVOLVED 1. Claimant's entitlement to medical benefits; 2. Claimant's entitlement to TTD and/or TPD benefits; 3. Claimant's entitlement to PPI benefits once medically stable; 4. Claimant's entitlement to Permanent Disability benefits once Claimant is medically stable. 5. Whether Claimant is totally and permanently disabled. 6. Claimant's entitlement to an award of attorney's fees for the unreasonable termination, delay and/or denial of workers' compensation benefits.			
DO YOU BELIEVE THIS CLAIM PRESENTS A NEW QUESTION OF LAW OR A COMPLICATED SET OF FACTS? YES NO <input checked="" type="checkbox"/> IF SO, PLEASE STATE WHY.			
NOTICE: COMPLAINTS AGAINST THE INDUSTRIAL SPECIAL INDEMNITY FUND MUST BE FILED IN ACCORDANCE WITH IDAHO CODE § 72-334 AND FILED ON FORM I.C. 1002			

ORIGINAL

RECEIVED
JUN 25 4 39 09
INDUSTRIAL COMMISSION

PHYSICIANS WHO TREATED CLAIMANT (NAME AND ADDRESS)

1. Dr. Obuck – Weiser, Idaho
2. Dr. Johnson – Twin Falls, Idaho
3. Dr. Surbaugh – Twin Falls, Idaho;
4. Dr. Hammond – Twin Falls, Idaho;
5. Dr. Dille – Twin Falls, Idaho
6. Dr. Verst – Gooding, Idaho;
7. Dr. Coughlin – Boise, Idaho;
8. Dr. Binegar – Boise, Idaho;
9. Dr. Krafft – Boise, Idaho;
10. Dr. Calhoun – Boise, Idaho;
11. Dr. Floyd – Boise, Idaho;
12. Dr. Parent – Boise, Idaho;

WHAT MEDICAL COSTS HAVE YOU INCURRED TO DATE? Unknown
 WHAT MEDICAL COSTS HAS YOUR EMPLOYER PAID, IF ANY? Unknown
 WHAT MEDICAL COSTS HAVE YOU PAID, IF ANY? Unknown

I AM INTERESTED IN MEDIATING THIS CLAIM, IF THE OTHER PARTIES AGREE. YES X NO

DATE

2/23/2010

SIGNATURE OF CLAIMANT OR ATTORNEY

PLEASE ANSWER THE SET OF QUESTIONS IMMEDIATELY BELOW
 ONLY IF CLAIM IS MADE FOR DEATH BENEFITS

NAME AND SOCIAL SECURITY NUMBER
 OF PARTY FILING COMPLAINT

DATE OF DEATH

RELATION TO DECEASED CLAIMANT

WAS CLAIMANT DEPENDENT ON DECEASED?

DID CLAIMANT LIVE WITH DECEASED AT TIME OF ACCIDENT?

Yes No

Yes No

CLAIMANT MUST COMPLETE, SIGN AND DATE THE FOLLOWING:

CERTIFICATE OF SERVICE

I hereby certify that on the 23 day of February, 2010, I caused to be served a true and correct copy of the foregoing Complaint upon:

EMPLOYER'S NAME AND ADDRESS

SURETY'S NAME AND ADDRESS

Con Paulos
 251 East Frontage Road South
 Jerome, Idaho 83338

Liberty Northwest
 6213 N Cloverdale Road, Suite 150
 Boise, Idaho 83713

via: personal service of process
 regular U.S. Mail

via: personal service of process
 regular U.S. Mail

Signature

NOTICE! An Employer or Insurance Company served with a Complaint must file an Answer on Form I.C. 1003 with the Industrial Commission within 21 days of the date of service as specified on the certificate of mailing to avoid default. If no answer is filed, a Default Award may be entered!

Further information may be obtained from: Industrial Commission, Judicial Division, 317 Main Street, Boise, Idaho 83720-6000 (208) 334-6000

(COMPLETE MEDICAL RELEASE FORM ON PAGE 3)

Patient Name: _____
Birth Date: _____
Address: _____
Phone Number: _____
SSN or Case Number: _____

(Provider Use Only)
Medical Record Number: _____
 Pick up Copies or Fax Copies # _____
 Mail Copies
ID Confirmed by: _____

AUTHORIZATION FOR DISCLOSURE OF HEALTH INFORMATION

I hereby authorize _____ to disclose health information as specified:
Provider name – must be specific for each provider

To: _____
Insurance Company/Third party Administrator/Self Insured Employer/ISIF, their attorneys or patient's attorney

_____ Street Address

_____ City State Zip Code

Purpose or need for data: _____
(e.g. Workers' Compensation Claim)

Information to be disclosed:

- Discharge Summary
- History & Physical Exam
- Consultation Reports
- Operative Reports
- Lab
- Pathology
- Radiology Reports
- Entire Record
- Other: Specify _____

I understand that the disclosure may include information relating to (check if applicable):

- AIDS or I-IIV
- Psychiatric or Mental Health Information
- Drug/Alcohol Abuse Information

*I understand that the information to be released may include material that is protected by Federal Law (45 CFR Part 164) and that the information may be subject to redisclosure by the recipient and no longer be protected by the federal regulations. I understand that this authorization may be revoked in writing at any time by notifying the privacy officer, except that revoking the authorization won't apply to information already released in response to this authorization. I understand that the provider will not condition treatment, payment, enrollment, or eligibility for benefits on my signing this authorization. **Unless otherwise revoked, this authorization will expire upon resolution of workers' compensation claim.** Provider, its employees, officers, copy service contractor, and physicians are hereby released from any legal responsibility or liability for disclosure of the above information to the extent indicated and authorized by me on this form and as outlined in the Notice of Privacy. My signature below authorizes release of all information specified in this authorization. Any questions that I have regarding disclosure may be directed to the privacy officer of the Provider specified above.*

Joe March
Signature of Patient

2/23/2010
Date

Signature of Legal Representative an Relationship to Patient/Authority to Act Date

Signature of Witness Title Date

ANSWER TO AMENDED COMPLAINT

I. C. NO. 2008-019169

ALLEGED INJURY DATE 06/13/08

CLAIMANT'S NAME AND ADDRESS JOSEPH A. GERDON 245 S. View Rd. Jerome, ID 83338	CLAIMANT'S ATTORNEY'S NAME AND ADDRESS JERRY J. GOICOECHEA Goicoechea Law Offices P.O. Box 6190 Boise, ID 83707
EMPLOYER'S NAME AND ADDRESS CON PAULOS, INC. P.O. Box 483 Jerome, ID 833338	WORKERS' COMPENSATION INSURANCE CARRIER'S (NOT ADJUSTOR'S) NAME AND ADDRESS LIBERTY NORTHWEST INS. CORP. 6213 N. Cloverdale Rd., Ste. 150 P.O. Box 7507 Boise, ID 83707-6358
ATTORNEY REPRESENTING EMPLOYER/SURETY (NAME AND ADDRESS) E. SCOTT HARMON, #3183 LAW OFFICES OF HARMON, WHITTIER & DAY 6213 N. Cloverdale Rd., Ste. 150 P.O. Box 6358 Boise, ID 83707-6358	ATTORNEY REPRESENTING INDUSTRIAL SPECIAL INDEMNITY FUND (NAME AND ADDRESS)

The above-named employer or employer/surety responds to Claimant's Complaint by stating:
 The Industrial Special Indemnity Fund responds to the Complaint against the ISIF by stating:

RECEIVED
 INDUSTRIAL COMMISSION
 2008 MAR 15 A 9:35

IT IS: (Check One)	
Admitted	Denied
X	
X	
X	
X	
N.A.	N.A.
X	
N.A.	N.A.
	X
X	

1. That the accident or occupational exposure alleged in the Complaint actually occurred on or about the time claimed.
2. That the employer/employee relationship existed.
3. That the parties were subject to the provisions of the Idaho Workers' Compensation Act.
4. That the condition for which benefits are claimed was caused partly X entirely by an accident arising out of and in the course of Claimant's employment.
5. That, if an occupational disease is alleged, manifestation of such disease is or was due to the nature of the employment in which the hazards of such disease actually exist, are characteristic of and peculiar to the trade, occupation, process, or employment.
6. That notice of the accident causing the injury, or notice of the occupational disease, was given to the employer as soon as practical but not later than 60 days after such accident or 60 days of the manifestation of such occupational disease.
7. That, if an occupational disease is alleged, notice of such was given to the employer within five months after the employment had ceased in which it is claimed the disease was contracted.
8. That the rate of wages claimed is correct. If denied, state the average weekly wage pursuant to Idaho Code, Section 72-419: \$646.44
9. That the alleged employer was insured or permissibly self-insured under the Idaho Workers' Compensation Act.

10. What benefits, if any, do you concede are due Claimant? ONGOING TTD BENEFITS AND POSSIBLE FUTURE PPI/PPD

⑨

(Continued from front)


11. State with specificity what matters are in dispute and your reason for denying liability, together with any affirmative defenses.
- A. Defendants deny all allegations of the Complaint not admitted herein.
 - B. Whether Claimant's condition is related to the alleged June 13, 2008 incident or is a result of a pre-existing or subsequent condition.
 - C. Whether Claimant is entitled to permanent partial impairment and/or disability in excess of impairment and appropriate apportionment.
 - D. Whether Claimant is entitled to TTD/TPD benefits.
 - E. Whether Claimant is entitled to additional medical benefits pursuant to I. C. §72-432.
 - F. Whether Claimant is totally and permanently disabled.
 - G. Whether Claimant is entitled to attorney fees pursuant to I. C. §72-804.
 - H. Defendants reserve the right to amend this Answer since discovery in this matter has only just begun.

Under the Commission rules, you have twenty-one (21) days from the date of service of the Complaint to answer the Complaint. A copy of your Answer must be mailed to the Commission and a copy must be served on all parties or their attorneys by regular U.S. mail or by personal service of process. Unless you deny liability, you should pay immediately the compensation required by law, and not cause the claimant, as well as yourself, the expense of a hearing. All compensation which is concededly due and accrued should be paid. Payments due should not be withheld because a Complaint has been filed. Rule III(D), Judicial Rules of Practice and Procedure under the Idaho Workers' Compensation Law, applies. Complaints against the Industrial Special Indemnity Fund must be filed on Form I. C. 1002.

I AM INTERESTED IN MEDIATING THIS CLAIM, IF THE OTHER PARTIES AGREE. YES NO

DO YOU BELIEVE THIS CLAIM PRESENTS A NEW QUESTION OF LAW OR A COMPLICATED SET OF FACTS? IF SO, PLEASE STATE.

No

Amount of Compensation Paid to Date			Dated	Signature of Defendant or Attorney
PPI	TTD/TPD	Medical	3/11/10	
\$0	TTD: \$26,978.60 TPD: \$1,355.46	\$92,508.31		

PLEASE COMPLETE


CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of Mar 2010, I caused to be served a true and correct copy of the foregoing Answer upon:

CLAIMANT'S ATTORNEY:

Jerry J. Goicoechea
Goicoechea Law Offices
P.O. Box 6190
Boise, ID 83707

via: personal service of process
 X regular U.S. Mail



Signature

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JOSEPH GERDON,

Claimant,

v.

CON PAULOS, INC.,

Employer,

and

LIBERTY NORTHWEST INSURANCE
CORPORATION,

Surety,

Defendants.

IC 2008-019169

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

FILED

APR - 7 2015

INDUSTRIAL COMMISSION

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee LaDawn Marsters, who conducted a hearing in Boise on September 5, 2014. Claimant was present and represented by Daniel J. Luker of Boise. Joseph M. Wager of Boise represented Employer ("Con Paulos") and Surety (collectively, "Defendants"). The parties presented oral and documentary evidence, took two post-hearing depositions and filed briefs. This matter came under advisement on March 18, 2015.

PROCEDURAL BACKGROUND AND PREVIOUS FINDINGS

A previous hearing was held in this case, on January 30, 2012, culminating in a decision issued on October 15, 2012 in which the Commission ordered that:

1. Claimant's treating physician is Dr. Marsh.

FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION - 1

2. Claimant has proven that, as a result of his industrial accident, he suffered injuries including left ankle fracture, CRPS of the left lower extremity, L3-4 disc herniation, bilateral knee osteoarthritis, and temporary thoracic spine pain (now healed).
3. Claimant has proven that he is entitled to reimbursement for past medical care for his industrial injuries including, specifically, reimbursement for:
 - a. Past medical care by Dr. Marsh;
 - b. STARS cardiac workup by Dr. Parent;
 - c. December 5, 2010 urgent care and follow-up with Dr. Coughlin;
 - d. December 19, 2011 urgent care;
 - e. Physical therapy before December 2010;
 - f. The actual reasonable cost of Claimant's wheelchair (if not already paid by Surety), wheelchair ramps and handle bars installed in his house; and
 - g. Mileage reimbursement for nine roundtrips from Jerome to Boise for medical treatment, consistent with Idaho Code § 72-432(13).
4. Claimant has failed to prove he is entitled to any additional past medical care, and any future claims for medical care incurred through the hearing date will be subject to the doctrine of *res judicata*.
5. Claimant has proven entitlement to future palliative medical care from Dr. Marsh, including Methadone therapy for pain relief; as well as periodic monitoring and evaluation of his left ankle, CRPS, L3-4 herniation, and bilateral knee osteoarthritis conditions.

6. Claimant has failed to prove he is entitled to future care consisting of sympathetic nerve blocks, a spinal cord stimulator, bariatric care, gym membership, a power chair, physical therapy, or psychological care or counseling.
7. Claimant has proven he suffered PPI due to the industrial accident in the amount of 13.5% of the whole person after apportioning 3.5% to his preexisting lumbar spine condition.
8. Claimant has failed to prove that he is totally and permanently disabled under the odd lot doctrine.
9. Claimant has proven he is 50% permanently partially disabled, inclusive of impairment, as a result of his industrial injuries.
10. Claimant has proven he is entitled to attorney fees for unreasonable denial of Claimant's claim for reimbursement of costs associated with consultations with Ms. Graf, nutritionist.

Thereafter, Claimant filed a Motion for Reconsideration regarding the disability findings, which was denied by Order dated February 1, 2013. This decision was not appealed and has become final.

ISSUES

By agreement of the parties, the sole issue to be decided is whether Claimant is *now* entitled to benefits for psychological treatment pursuant to Idaho Code § 72-451.

CONTENTIONS OF THE PARTIES

Claimant contends that he is now entitled to benefits for psychological care because his industrial injuries are the predominant cause of his depression. Defendants agree that Claimant suffers from depression and that both counseling and medication treatment are reasonable.

FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION - 3

However, they contend that Claimant's preexisting psychological deficits are equally responsible for his current mental state and, therefore, he is not entitled to benefits for psychological treatment under Idaho Code § 72-451.

OBJECTIONS

All pending objections are overruled.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. Exhibits admitted at the hearing:
 - a. Claimant's Exhibits 1-6; and
 - b. Defendant's Exhibits 1-3;
2. Testimony taken at the hearing from:
 - a. Claimant;
 - b. Rachel Gerdon, Claimant's wife;
 - c. Mickey Gerdon, Claimant's mother; and
 - d. Cody and Jessica Campbell, Claimant's friends; and
3. The post-hearing deposition testimony of:
 - a. Daniel Marsh, M.D., taken October 9, 2014; and
 - b. Robert Calhoun, Ph.D., taken October 22, 2014.

After considering all the above evidence and briefs of the parties, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

FINDINGS OF FACT

BACKGROUND

1. Claimant was 36 years of age at the time of the hearing and resided in Jerome, Idaho. His preexisting medical and psychological conditions, as well as his industrial injuries and difficult recovery, are detailed in the former recommendation and order and will not be repeated here.

2. At the recent hearing, Claimant testified that he is in constant pain from his left leg crush injury. He has regular ankle swelling from walking, tripping, and stubbing his foot. He sleeps the day away, but can only sleep for three or four hours at night, when he ruminates on what he cannot do. This leads to stress, which increases his pain. Sometimes he thinks his wife and daughter would be better off without him. Activity around him makes him cranky, mad, and mean, so he prefers to stay home. He has a quick temper which leads to arguments with his wife. He feels his brain is fuzzy, perhaps from stress, anxiety, or nerves. He feels his condition has worsened since the last hearing.

3. Claimant elected to leave the courtroom while his mother, wife, and friends testified.

4. Claimant's mother, a registered nurse, lives in Arizona three months out of the year and near Claimant during the remaining nine months. When she is in Arizona, she communicates with Claimant at least daily via telephone or Skype. He calls when he's upset, and she calls when she's worried about him. She became especially worried about him around June 2014, when she found him listless and he told her that he wanted to drive over the falls because he couldn't take the pain. She was also present at Claimant's July 1 appointment with Dr. Marsh when he reported he had thought about driving his car off into a canyon within the

previous five days. The history portion of that chart note identifies Claimant's then-current subjective state and a number of reasons for his despondency:

Patient has changed his diet and [sic] using a low carb [sic] app. He is having an increase in pain. His hips are awful and he cannot sleep. The Workers comp [sic] had not approved the diagnosis of PTSD and depression. Patient is more frustrated and more depressed which has affected his appetite and sleep. He has a 5yo girl and he is unable to participate. He has not been out of the house for 2 weeks. She [sic] has not seen his daughter do gymnastics for 4 months. She won the state championships and he was not there. He sits and stares all day and does not even watch TV. This leads to arguments. He is suicidal, it crosses his mind. He has thought of driving the car off the canyon as recently as 5 days ago. His mother has lost one child to suicide.

CE-3(33).

5. Claimant's mother, wife, and friends all testified that Claimant was an optimistic, fun-loving person with no history of anger before his industrial accident, but he became withdrawn, hostile, self-pitying, and unlikable afterward. Their testimony regarding the change in Claimant's personality following his industrial accident is undisputed and persuasive, and it need not be detailed here.

DISCUSSION AND FURTHER FINDINGS

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). However, the Commission is not required to construe facts 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).

PSYCHOLOGICAL CARE

6. *Claim preclusion.* As a result of the prior hearing, the Commission adopted the following finding regarding Claimant's general request for psychological care:

FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION - 6

Psychological care and counseling. Although Claimant seeks a determination that he is entitled to future psychological care and counseling, he has failed to address any of the requirements to prove such entitlement under Idaho Code § 72-451. Further, no on-going psychological care has been prescribed. Claimant has failed to establish entitlement to benefits for future psychological care and counseling.

7. Defendants have not raised claim or issue preclusion as a defense to this claim for psychological treatment. Therefore, this issue will not be addressed. *Deon v. H&J, Inc.*, 157 Idaho 665 (2014).

8. *Law.* In 1994, the Idaho State Legislature adopted Idaho Code § 72-451 regarding the compensability of certain types of psychological injuries. Generally, the statute recognizes the compensability of so called “physical/mental” and “mental/physical” injuries, yet forecloses claims for “mental/mental” injuries. The instant case posits a “physical/mental” injury. Compensable psychological claims, because of their subjectivity, must meet certain elements to be recognized. Specifically, the statute provides:

Psychological accidents and injuries. - - Psychological injuries, disorders or conditions shall not be compensated under this title, unless the following conditions are met:

(1) Such injuries of any kind or nature emanating from the workplace shall be compensated only if caused by an accident and physical injury as defined in section 72-102(18)(a) through 18(c), Idaho Code, or only if accompanying an occupational disease with resultant physical injury, except that a psychological mishap or event may constitute an accident where (i) it results in resultant physical injury so long as the psychological mishap or event meets the other criteria of this section, and (ii) it is readily recognized and identifiable as having occurred in the workplace, and (iii) it must be the product of a sudden and extraordinary event; and

(2) No compensation shall be paid for such injuries arising from conditions generally inherent in every working situation or from personnel related action including, but not limited to, disciplinary action, changes in duty, job evaluation or employment termination; and

(3) Such accident and injury must be the **predominant cause** as compared to all other causes combined of any consequence for which benefits are claimed under this section; and

(4) Where psychological causes or injuries are recognized by this section, such causes or injuries must exist in a real and objective sense; and

(5) Any permanent impairment or permanent disability for psychological injury recognizable under the Idaho workers' compensation law must be based on a condition sufficient to constitute a diagnosis using the terminology and criteria of the American psychiatric association's diagnostic and statistics manual of mental disorders, third edition revised, or any successor manual promulgated by the American psychiatric association, and must be made by a psychologist, or psychiatrist duly licensed to practice in the jurisdiction in which treatment is rendered, and

(6) Clear and convincing evidence that the psychological injuries arose out of and in the course of the employment from an accident or occupational disease as contemplated in this section is required.

Nothing herein shall be construed as allowing compensation for psychological injuries from psychological causes without accompanying physical injury.

This section shall apply to accidents and injuries occurring on or after July 1, 1994, and to causes of action for benefits accruing on or after July 1, 1994, notwithstanding that the original worker's compensation claim may have occurred prior to July 1, 1994.

Id., (emphases added.)

9. *Disputed element.* Of the six required elements enumerated in Idaho Code § 72-451, one is disputed by Defendants. That element is whether Claimant's industrial injuries are the predominant cause of his psychological condition.

10. Idaho Code § 72-451(3) does not present a "but for" standard of causation. The Commission described the proof necessary to establish a predominant cause in *Smith, 2009 IIC 0179.1.*:

Under the predominant cause standard, it is not sufficient that the industrial injury be merely the proverbial "straw that breaks the camel's back." Although an employer takes an employee as he is, in determining the predominant cause of a psychological condition, the contribution of all of the employee's pre-accident factors must be weighed against the contribution of the industrial accident. To be the predominant cause, the work injury must be a greater cause of the psychological condition than all other causes combined. Thus, if a percentage of contribution were assigned to each and every factor which collectively produce a claimant's psychological condition, the contribution of the industrial accident

must be more than 50% of the total of all of the causes. Against this standard, the evidence, including expert testimony, produced by the parties must be evaluated.

Id.

11. This issue turns on expert opinion evidence regarding Claimant's pre- and post-industrial injury psychological condition. Proper evaluation of the effect of Claimant's preexisting psychological condition on his post-injury condition is necessary to this determination.

EXPERT OPINIONS

12. Robert Calhoun, Ph.D., is a clinical neuropsychologist who treats patients with either psychological conditions, chronic pain, or both. Daniel Marsh, M.D., is a pain specialist who has been Claimant's treating physician since 2011. Both physicians are qualified to opine regarding Claimant's condition, and both provided post-hearing deposition testimony.

13. *Undisputed facts.* Drs. Marsh and Calhoun agree that:

- Claimant has no known history of treatment for any psychological difficulties.
- Chronic pain patients, in general, are at significantly greater risk for depression than the general population.
- Claimant suffers from depression, in part related to the chronic pain he experiences as a result of his industrial accident.
- Claimant should obtain treatment including both counseling and appropriate psychotropic medication.

14. Also, as found, above, Claimant's mental state has significantly declined since the industrial accident. Before, he was optimistic and fun-loving around his friends and mother. By the time of the hearing, his mother worried that he, like his brother, may succumb to suicide, and his friends didn't like to spend time with him anymore because he had such a negative attitude.

15. *Dr. Marsh.* Dr. Marsh specializes in treating patients with chronic pain. He prescribes certain psychotropic drugs that are also associated with decreasing pain, and he generally monitors his patients' moods – particularly those of patients, like Claimant, who are taking opioid medications. He does not treat psychological conditions.

16. Dr. Marsh opined that Claimant's industrially related chronic pain is the predominant cause of his depression. He based his opinion on his history of treating Claimant's pain and Claimant's lack of any prior treatment for psychological conditions. He was unaware of any psychological testing Claimant has undergone, or what those tests may have indicated.

17. *Dr. Calhoun.* Dr. Calhoun has formally evaluated Claimant's psychological state three times: for a work hardening program on April 22, 2009, for a spinal cord stimulator trial on May 14, 2010, and, to determine the etiology and proper treatment for his current psychological condition, on July 31, 2014. He also treated Claimant in several individual therapy sessions, and participated in working group meetings regarding Claimant's overall treatment in the work hardening program in 2009.

18. Prior to preparing his report following the July 2014 evaluation, Dr. Calhoun conducted a diagnostic interview of Claimant, reviewed his medical records (including Dr. Marsh's), ascertained the behavioral aspects of Claimant's pain problems, administered/interpreted a battery of psychological testing,¹ and developed a clinical synthesis of all of the information.

19. Dr. Calhoun explained that objective testing is important because diagnostic interviews don't always reveal more subtle psychological characteristics that the testing can identify. In Claimant's case, the 2014 testing indicated that he 1) is at high risk for

¹ Dr. Calhoun administered and interpreted Claimant's responses to the Minnesota Multiphasic Personality Inventory-2, the Millon Clinical Multiaxial Inventory-III, the Psychopathic Personality Inventory-Revised, and the State-Trait Anger Expression Inventory-2.

overexaggerating his level of experienced illness, 2) can be very self-pitying and views himself as lacking coping resources, 3) somaticizes stress, 4) is at risk for chronic low-grade depression (dysthymia) which can develop into major depressive episodes when he's stressed, 5) is very self-deprecating and will likely take out his anger on others, 6) is at risk for substance abuse, 7) was experiencing chronic and acute psychopathology, 8) was a hostile individual with anger issues and prone to depression before the industrial accident, and these traits were consistently evident through all of Dr. Calhoun's evaluations.

20. Based upon that synthesis, Dr. Calhoun opined that the industrial injury of June 13, 2008 is not the predominant cause of Claimant's present depressed state. Instead, it is 50% due to his chronic pain from his industrial injuries, and 50% due to Claimant's preexisting personality traits of hostility, anger, resentment, and dysthymia, which were consistently identified by psychological testing over time. Dr. Calhoun further opined that, even if Claimant had not suffered the industrial accident, he probably would have experienced some other event at some point in his life that would have resulted in "significant psychological decompensation." Calhoun Dep., p. 31.

21. Dr. Calhoun's opinions are credible and well-supported by his clinical experiences with Claimant, as well as his testing results over time. Dr. Marsh's opinion is credible, but it is limited by its narrow foundation. It lacks the depth of information about Claimant that Dr. Calhoun utilized, particularly in regard to Claimant's preexisting psychological condition. Whereas Dr. Marsh assumed that because Claimant had not previously received psychological treatment, he was not at higher than normal risk than other chronic pain patients for depression, Dr. Calhoun's undisputed analysis of information related to Claimant's preexisting psychological condition establishes that he was. Also, Dr. Marsh believed that the

Idaho workers' compensation law "takes a claimant as found" in regard to psychological treatment, leading him to conclude that the industrial injury was the predominant cause of Claimant's depression without the need to further assess Claimant's preexisting condition. As Defendants assert, and as set forth, above, this is an inaccurate understanding of the predominant cause standard. Because Dr. Marsh's opinion does not address the appropriate standard, it should be given little weight.

22. Claimant makes a valiant argument encouraging the Referee and the Commission to find that, within the 50% of Claimant's current depressive state that Dr. Calhoun attributes to preexisting hostility, anger, resentment, and dysthymia, at least 1% is attributable to his industrial injury and, thus, Claimant has proved the 51% necessary to meet the predominant factor standard. Such a holding, however, would require the rejection of Dr. Calhoun's well-founded, clearly stated opinion, which the evidence in the record does not justify. Also, Dr. Calhoun specifically rejected this interpretation of his opinion.²

23. The observations of Claimant's mother, wife, and friends are inadequate to overcome Dr. Calhoun's opinion as to Claimant's preexisting psychological condition.

24. The prior recommendation in this case exceeded 100 pages. The relative brevity of this recommendation should not be interpreted as dismissive of Claimant's very difficult circumstances. Instead, it is the result of the Referee's recognition that Dr. Calhoun's opinion is the only opinion that considers all of Claimant's relevant preexisting factors and the appropriate

² Claimant argues that under Idaho Code § 72-451(5), it is only where an injured worker seeks impairment/disability for psychological injury, that such claimant must prove a diagnosis under the DSM by the testimony of a duly licensed psychologist or psychiatrist. Therefore, even though Dr. Marsh is not a duly licensed psychologist or psychiatrist, his opinion should nevertheless be considered since the issue before the Referee is not Claimant's entitlement to impairment/disability for psychological injury, but only his entitlement to medical care for psychological injury. The Referee finds that this argument does not need to be addressed since even if it be assumed that Dr. Marsh is appropriately qualified under Idaho Code § 72-415(5), his testimony is wanting, as compared to the testimony of Dr. Calhoun.

legal standard and, thus, it is the only persuasive medical opinion on the issue at bar. As a result, there was much less need to parse facts and expert opinions, such as was necessary in the last recommendation. Thus, findings of fact regarding Claimant's specific symptoms, treatments, and responses to treatment, for example, were unnecessary to reach a determination. Claimant's depression is clearly a serious problem that requires immediate attention; however, he has failed to prove by clear and convincing evidence that his industrial accident was the predominant cause of his depression and, therefore, he is not entitled to additional benefits for psychological treatment.

CONCLUSION OF LAW

1. Claimant has failed to prove he is entitled to additional psychological care pursuant to Idaho Code § 72-451.

RECOMMENDATION

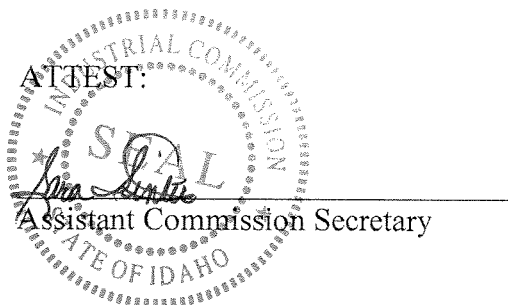
Based on the foregoing Findings of Fact, Conclusions of Law, and Recommendation, the Referee recommends that the Commission adopt such findings and conclusions as its own and issue an appropriate final order.

DATED this 7th day of March 2015.

INDUSTRIAL COMMISSION



LaDawn Marsters, Referee




CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of April, 2015, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

JERRY J GOICOECHEA
GOICOECHEA LAW OFFICES
PO BOX 6190
BOISE ID 83707-6190

JOSEPH M WAGER
LAW OFFICES OF KENT W DAY
PO BOX 6358
BOISE ID 83707-6358

sjw



BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JOSEPH GERDON,

Claimant,

v.

CON PAULOS, INC.,

Employer,

and

LIBERTY NORTHWEST INSURANCE
CORPORATION,

Surety,

Defendants.

IC 2008-019169

ORDER

FILED

APR - 7 2015

INDUSTRIAL COMMISSION

Pursuant to Idaho Code § 72-717, Referee LaDawn Marsters submitted the record in the above-entitled matter, together with her 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. Claimant has failed to prove he is entitled to additional psychological care pursuant to Idaho Code § 72-451.

ORDER - 1

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

DATED this 7th day of April, 2015.

INDUSTRIAL COMMISSION

R.D. Maynard
R.D. Maynard, Chairman

Thomas E. Limbaugh
Thomas E. Limbaugh, Commissioner

Thomas P. Baskin
Thomas P. Baskin Commissioner

ATTEST:



Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of April, 2015, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

JERRY J GOICOECHEA
GOICOECHEA LAW OFFICES
PO BOX 6190
BOISE ID 83707-6190

JOSEPH M WAGER
LAW OFFICES OF KENT W DAY
PO BOX 6358
BOISE ID 83707-6358

sjw

Sma Denton

Jerry J. Goicoechea, ISB No. 1854
Daniel J. Luker, ISB No. 7209
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Telephone: (208) 336-6400
Facsimile: (208) 336-6404
E-Mail:

Attorneys for Claimant/Appellant

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JOSEPH GERDON,
Claimant,

vs.

CON PAULOS, INC.,
Employer,

and,

LIBERTY NORTHWEST INSURANCE
CORPORATION,
Surety,
Defendants.

Supreme Court No. _____
IC No. 2008-019169

NOTICE OF APPEAL

ORIGINAL

TO: THE ABOVE-NAMED RESPONDENTS, Con Paulos Inc., and Liberty Northwest Insurance Corporation, and their attorney of record, Joseph M. Wager, P.O. Box 6358, Boise, ID 83707-6358, AND THE CLERK OF THE IDAHO INDUSTRIAL COMMISSION

NOTICE IS HEREBY GIVEN THAT:

NOTICE OF APPEAL - 1

INDUSTRIAL
RECORDS
COMMISSION
2015 MAY 14 4:38

FILED - ORIGINAL
MAY 26 2015
Idaho Court of Appeals

27

1. The above-named Appellant, JOSPEH GERDON, appeals against the above-named Respondents to the Idaho Supreme Court from the Industrial Commission's Findings of Fact, Conclusion of Law and Order entered in the above-entitled proceedings on April 7, 2015, Chairman R.D. Maynard presiding.
2. Appellant has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rules 11(d), I.A.R.
3. Preliminary statement of the issues on appeal pursuant to Rule 17(f) I.A.R.:
 - a. Whether the Industrial Commission's findings of fact do not, as a matter of law, support the Order.
 - b. Whether the Industrial Commission's factual findings are supported by substantial and competent evidence.
 - c. Whether such benefit issue should be remanded to the Industrial Commission for further deliberation.
 - d. Whether, Claimant is entitled to an award of attorney fees and costs on appeal, pursuant to Idaho Code § 72-804 or other applicable statute.
4. A Reporter's transcript is requested in its entirety from the hearing conducted on September 5, 2013.
5. Appellant requests that the following documents be included in the Clerk's record in addition to those automatically included under Rule 28, I.A.R.:
 - a. All Exhibits admitted into evidence as part of the September 5, 2013, hearing process;
 - b. All briefing submitted by the parties;
 - c. All deposition transcripts lodged with the Industrial Commission as part of the September 5, 2013 hearing process; and

- d. Industrial Commission's April 7, 2015, Findings of Fact, Conclusions of Law and Order.
 - e. Industrial Commission's October 15, 2012 Findings of Fact Conclusions of Law and Recommendation
 - f. Industrial Commission's July 17, 2014 dated Notice of Hearing.
6. I certify that:
- a. The Clerk of the Idaho Industrial Commission has been paid the estimated \$100.00 fee for preparation of the Reporter's transcript and Clerk's record;
 - b. The appellate filing fee in the amount of \$94.00 has been paid; and,
 - c. That service has been made upon the Reporter and all parties required to be served pursuant to Rule 20.

DATED this 18 day of May, 2015.

GOICOECHEA LAW OFFICES, CHTD.



Daniel J. Luker, Of the Firm
Attorneys for Claimant/Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 18 day of May, 2015, I served a true and correct copy of the foregoing **NOTICE OF APPEAL** upon the following, by the method indicated below:

Joseph M. Wager
LAW OFFICES OF KENT W. DAY
PO Box 6358
Boise ID, 83707-6358
Attorney for Defendants

U.S. Mail
 Hand Delivery
 Facsimile

M. Dean Willis
M.D. Willis, Inc.,
PO Box 1241
Eagle, ID 83616
Court Reporter - Hearing

U.S. Mail
 Hand Delivery
 Facsimile



GOICOECHEA LAW OFFICES, CHTD.

* * * Communication Result Report (May. 18. 2015 4:23PM) * * *

1) goicoechea law
2)

Date/Time: May. 18. 2015 4:22PM

File No. Mode	Destination	Pg(s)	Result	Page Not Sent
2386 Memory TX	18009723213	P. 5	OK	

Reason for error
 E. 1) Hang up or line fail
 E. 2) Busy
 E. 3) No answer
 E. 4) No facsimile connection
 E. 5) Exceeded max. E-mail size



Goicoechea Law Offices
CHARTERED

March 18, 2015

JERRY J. GOICOECHEA

DANIEL J. LUKER

JUSTIN P. AYLSWORTH

BOISE

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TWIN FALLS - BURLEY

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(208) 338-8404

EIN 82-0395236

HAND DELIVERED

Industrial Commission
Attn: Judicial Division
Post Office Box 83720
Boise, Idaho 83720
(208) 334-6018

RE: Joseph Gordon v. Con Paulos and Liberty Northwest
Insurance Corporation;
I. C. Number: 2008-019169

Clerk of the Industrial Commission:

Enclosed herewith is the original and one copy of the NOTICE OF APPEAL for filing in the above-captioned matter. Attached are Goicoechea Law Office checks in the amount of \$100.00 for the estimated cost of preparing the agency records, as well as check in the amount of \$94.00 for the appellate filing fee.

Please file the original Notice of Appeal and conform the copy, returning it to this Office.

Thank you for your time and attention to this matter. If you have any questions, or if this filing is in any way deficient, please contact me at your earliest convenience.

Sincerely,

GOICOECHEA LAW OFFICES, CHTD.

Daniel J. Luker

DJL/
Enclosures
c: Joseph M. Wager Via Fax:

1. The above-named Appellant, JOSPEH GERDON, appeals against the above-named Respondents to the Idaho Supreme Court from the Industrial Commission's Findings of Fact, Conclusion of Law and Order entered in the above-entitled proceedings on April 7, 2015, Chairman R.D. Maynard presiding.
2. Appellant has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rules 11(d), I.A.R.
3. Preliminary statement of the issues on appeal pursuant to Rule 17(f) I.A.R.:
 - a. Whether the Industrial Commission's findings of fact do not, as a matter of law, support the Order.
 - b. Whether the Industrial Commission's factual findings are supported by substantial and competent evidence.
 - c. Whether such benefit issue should be remanded to the Industrial Commission for further deliberation.
 - d. Whether, Claimant is entitled to an award of attorney fees and costs on appeal, pursuant to Idaho Code § 72-804 or other applicable statute.
4. A Reporter's transcript is requested in its entirety from the hearing conducted on September 5, 2014.
5. Appellant requests that the following documents be included in the Clerk's record in addition to those automatically included under Rule 28, I.A.R.:
 - a. All Exhibits admitted into evidence as part of the September 5, 2014, hearing process;
 - b. All briefing submitted by the parties;
 - c. All deposition transcripts lodged with the Industrial Commission as part of the September 5, 2014 hearing process; and

- d. Industrial Commission's April 7, 2015, Findings of Fact, Conclusions of Law and Order.
- e. Industrial Commission's October 15, 2012 Findings of Fact Conclusions of Law and Recommendation
- f. Industrial Commission's July 17, 2014 dated Notice of Hearing.

6. I certify that:

- a. The Clerk of the Idaho Industrial Commission has been paid the estimated \$100.00 fee for preparation of the Reporter's transcript and Clerk's record;
- b. The appellate filing fee in the amount of \$94.00 has been paid; and,
- c. That service has been made upon the Reporter and all parties required to be served pursuant to Rule 20.

DATED this 20 day of May, 2015.

GOICOECHEA LAW OFFICES, CHTD.



Daniel J. Luker, Of the Firm
Attorneys for Claimant/Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 20 day of May, 2015, I served a true and correct copy of the foregoing **AMDNDDED NOTICE OF APPEAL** upon the following, by the method indicated below:

Joseph M. Wager
LAW OFFICES OF KENT W. DAY
PO Box 6358
Boise ID, 83707-6358
Attorney for Defendants

() U.S. Mail
() Hand Delivery
() Facsimile

M. Dean Willis
M.D. Willis, Inc.,
PO Box 1241
Eagle, ID 83616
Court Reporter - Hearing

() U.S. Mail
() Hand Delivery
() Facsimile



GOICOECHEA LAW OFFICES, CHTD.

* * * Communication Result Report (May. 20. 2015 3:51PM) * * *

1) goicoechea law
2)

Date/Time: May. 20. 2015 3:50PM

File No. Mode	Destination	Pg(s)	Result	Page Not Sent
2440 Memory TX	18009723213	P. 4	OK ✓	

Reason for error

- E. 1) Hang up or line fail
- E. 3) No answer
- E. 5) Exceeded max. E-mail size

- E. 2) Busy
- E. 4) No facsimile connection

Jerry J. Goicoechea, ISB No. 1854
 Daniel J. Luker, ISB No. 7209
 Justin P. Aylsworth, ISB No. 6713
 GOICOECHEA LAW OFFICES, CHTD.
 2537 West State Street, Suite 130
 Post Office Box 8190
 Boise, Idaho 83707-8190
 Telephone: (208) 336-6400
 Facsimile: (208) 336-6404
 E-Mail:

Attorneys for Claimant/Appellant

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JOSEPH GERDON, Claimant,	}	IC No. 2008-019169
vs.		
CON PAULOS, INC., Employer,		AMENDED NOTICE OF APPEAL
and,		
LIBERTY NORTHWEST INSURANCE CORPORATION, Surety, Defendants.		

TO: THE ABOVE-NAMED RESPONDENTS, Con Paulos Inc., and Liberty Northwest Insurance Corporation, and their attorney of record, Joseph M Wager, P.O. Box 8358, Boise, ID 83707-6358, AND THE CLERK OF THE IDAHO INDUSTRIAL COMMISSION

NOTICE IS HEREBY GIVEN THAT:

AMENDED NOTICE OF APPEAL - 1

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

JOSEPH GERDON,
Claimant/Appellant,

v.

CON PAULOS, INC., Employer,

and

LIBERTY NORTHWEST INSURANCE
CORPORATION, Surety,

Defendants/Respondents.

Supreme Court No. 43234

SUPREME COURT NO. _____

CERTIFICATE OF APPEAL

MAY 26 2015
COURT OF APPEALS
CLERK OF COURT

Appeal From: Industrial Commission, Chairman, R.D. Maynard,
presiding.

Case Number: IC 2008-019169

Order Appealed from: Findings of Fact, Conclusions of Law, and
Recommendation, filed April 7, 2015; and Order, filed
April 7, 2015.

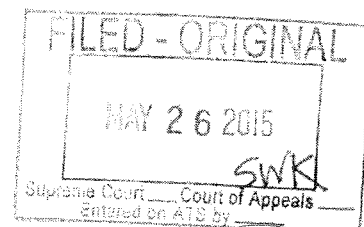
Attorney for Appellant: Daniel J. Luker
Goicoechea law offices
PO Box 6190
Boise ID 83707-6190

Attorney for Respondents: Joseph M. Wager
Harmon & Day
PO Box 6358
Boise ID 83707-6358

Appealed By: Joseph Gerdon, Claimant

Appealed Against: Con Paulos, Inc., Employer and Liberty Northwest
Insurance Corporation, Surety, Defendants

CERTIFICATE OF APPEAL OF JOSEPH GERDON - 1



Notice of Appeal Filed: May 18, 2015

Appellate Fee Paid: \$94.00

Name of Reporter: M.D. Willis, Inc.
PO Box 1241
Eagle, ID 83616

Transcript Requested: Standard transcript has been requested. Transcript has been prepared and filed with the Commission.

Dated: May 22, 2015




Sara Winter
Assistant Commission Secretary

CERTIFICATION

I, SARA WINTER, the undersigned Assistant Secretary of the Industrial Commission of the State of Idaho, hereby CERTIFY that the foregoing is a true and correct photocopy of the **Notice of Appeal filed May 19, 2015; Amended Notice of Appeal filed May 20, 2015; Findings of Fact, Conclusions of Law, and Recommendation; and Order entered April 7, 2015, and the whole thereof in IC case number 2008-019169 for Joseph Gerdon.**

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Commission this 22nd day of May, 2015.


Sara Winter
Assistant Commission Secretary

COPY

CERTIFICATION OF RECORD

I, SARA WINTER, the undersigned Assistant Secretary of the Industrial Commission, do hereby certify that the foregoing record contains true and correct copies of all pleadings, documents, and papers designated to be included in the Clerk's Record on appeal by Rule 28(3) of the Idaho Appellate Rules and by the Notice of Appeal, pursuant to the provisions of Rule 28(b).

I further certify that all exhibits offered or admitted in this proceeding, if any, are correctly listed in the List of Exhibits. Said exhibits will be lodged with the Supreme Court after the Record is settled.

DATED at Boise, Idaho, this 6th day of July, 2015.


Sara Winter
Assistant Commission Secretary



The seal is circular with a dotted border. The text 'INDUSTRIAL COMMISSION' is at the top, 'STATE OF IDAHO' is at the bottom, and 'OFFICIAL SEAL' is written across the center.

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

JOSEPH GERDON,

Claimant/Appellant,

v.

CON PAULOS, INC., Employer,

and

LIBERTY NORTHWEST INSURANCE
CORPORATION, Surety,

Defendants/Respondents.

SUPREME COURT NO. 43234

NOTICE OF COMPLETION

TO: STEPHEN W. KENYON, Clerk of the Courts; and
DANIEL J. LUKER for the Appellants; and
JOSEPH M. WAGER for the Respondents.

YOU ARE HEREBY NOTIFIED that the Clerk's Record was completed on this date and, pursuant to Rule 24(a) and Rule 27(a), Idaho Appellate Rules, copies of the same have been served by regular U.S. mail upon each of the following:

Attorney for Appellant:

DANIEL J. LUKER
GOICOCHEA LAW OFFICES
PO BOX 6190
BOISE ID 83707-6190

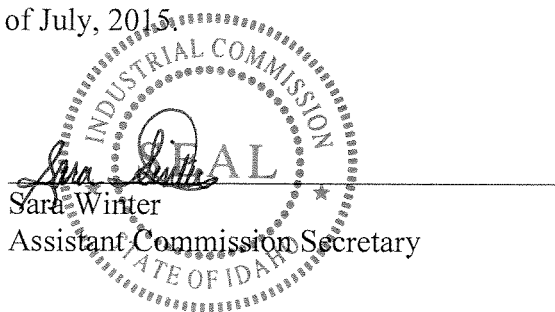
Attorney for Respondents:

JOSEPH M. WAGER
LAW OFFICES OF KENT W DAY
PO BOX 6358
BOISE ID 83707-6358

NOTICE OF COMPLETION (Docket No. 43234, RE: Gerdon) - 1

YOU ARE FURTHER NOTIFIED that pursuant to Rule 29(a), Idaho Appellate Rules, all parties have twenty-eight days from the date of this Notice in which to file objections to the Clerk's Record or Reporter's Transcript, including requests for corrections, additions or deletions. In the event no objections to the Clerk's Record or Reporter's Transcript are filed within the twenty-eight day period, the Clerk's Record and Reporter's Transcript shall be deemed settled.

DATED at Boise, Idaho, this 6th day of July, 2015.

The seal of the Industrial Commission of the State of Idaho is circular with a dotted border. The text "INDUSTRIAL COMMISSION" is at the top and "STATE OF IDAHO" is at the bottom. A central emblem features a scale of justice and a star. The word "SEAL" is written across the center. A signature is written over the seal, and a horizontal line is drawn across it.
Sara Winter
Assistant Commission Secretary