

11-18-2015

# Mayer v. TPC Holdings, Inc. Respondent's Brief Dckt. 43468

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BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

KEITH MAYER (DECEASED),

Claimant-Respondent,

v.

TPC HOLDINGS, INC., Employer, and  
LIBERTY NORTHWEST INSURANCE, Surety,

Defendants-Appellants.

SUPREME COURT NO. 43468

**RESPONDENT'S BRIEF**

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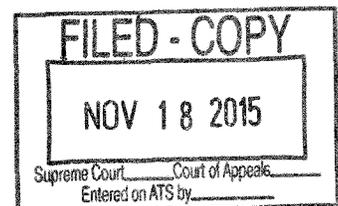
Appeal from the Industrial  
Commission of the State of Idaho

Chairman R.D. Maynard Presiding

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I.

**STATEMENT OF THE CASE**

Defendants (hereafter Employer) appealed a Decision and Order issued by the Idaho Industrial Commission in a workers' compensation case. The sole issue before the Commission was: "Whether permanent partial disability survives the death of Claimant for reasons unrelated to the industrial injury." A hearing was not held before the Industrial Commission, as the parties stipulated to the relevant facts. Following the parties' submission of post-hearing briefs, Referee Brian Harper issued his proposed Findings of Fact, Conclusion of Law, and Recommendation on April 1, 2015. Referee Harper concluded that permanent partial disability survives death under I.C. § 72-431 when the death is unrelated to the industrial injury. The Industrial Commission did not adopt Referee Harper's opinion. On July 21, 2015, consistent with Referee Harper's proposed decision, a majority of the Industrial Commission concluded that permanent partial disability less than total survives the death of the injured worker. Commissioner Thomas E. Limbaugh dissented.

As part of the Industrial Commission proceedings, the parties stipulated to the following facts:

1. On February 10, 2012 Claimant Keith Mayer (hereafter Claimant) was an employee of TPC Holdings Inc. (hereafter Employer) in Lewiston, Id. At said time, TPC Holdings Inc. was insured for its obligations under the Idaho Worker's Compensation Act by Liberty Northwest Insurance Corp. (hereafter Surety).
2. On or about February 10, 2012 Claimant, Employer, and Surety were subject to provisions of Idaho's Worker's Compensation Law.
3. Claimant suffered a compensable worker's compensation injury when he strained his

back while lifting a computer monitor. Earlier the same day, he grabbed a ladder to prevent it from falling through a window and felt a twisting in his back. Both events occurred in the course and scope of Claimant's employment with Employer on February 10, 2012. Employer is the Lewiston Tribune where Claimant worked as a maintenance worker.

4. Surety paid medical and time loss benefits to Claimant as a result of the injury to his back.
5. On August 27, 2012 Dr. Dietrich performed a lumbar decompression and decompression of the central canal lateral recess at neural foramina at L3, L4, L5, and S1.
6. On November 8, 2012 Employer discharged Claimant.
7. Dr. Dietrich deemed Claimant MMI as of September 1, 2013.
8. On October 28, 2013 Dr. Goler performed an IME at surety's request. Dr. Goler believed Claimant was medically stable and could return to full time work at least at the light or sedentary level with frequent positional changes and no lifting over 50 pounds. Dr. Goler gave Claimant a 9% WPI.
9. On December 18, 2013 Dr. McNulty performed an IME at Claimant's request. He diagnosed Claimant with: chronic low back pain status post multi-level lumbar decompression; residual left S1 radiculopathy; and spinal instability at L5-S1. Dr. McNulty recommended further diagnostic testing. Dr. McNulty assigned a 14% WPI attributable to the industrial injury. Dr. McNulty opined that Claimant was only capable of performing sedentary work on a part-time basis with no repetitive lifting and stooping and frequent positional changes. Dr. McNulty did not believe Claimant

could return to his time of injury job.

10. Dr. Dietrich concurred by letter with Dr. McNulty's IME.

11. On March 15, 2014 Claimant died of a heart attack, unrelated to the industrial injury.

Claimant was born on [REDACTED] He was 65 years old at the time of his death.

12. Surety averaged the impairment awards given by Dr. McNulty and Dr. Goler. Surety continued paying PPI after Claimant's death until the award of \$19,086.37 was paid in full. This award is equal to 52.5 weeks of benefits at \$363.55 per week.

## **II.**

### **ISSUE PRESENTED ON APPEAL**

Whether permanent partial disability survives the death of Claimant for reasons unrelated to the industrial injury.

## **III.**

### **ADDITIONAL ISSUE ON APPEAL - ATTORNEY FEES**

As set forth below, Employer has appealed an Industrial Commission decision that is consistent with Idaho law and precedent. Despite a plain and unambiguous statute, a history of Industrial Commission decisions, the Referee's decision in the current case, and the Commission's decision in the current case, Employer appealed the Industrial Commission's decision without a reasonable ground. Pursuant to I.C. § 72-804, Claimant is entitled to attorney fees and costs on appeal.

An award of attorney fees is also appropriate under I.A.R. 11.2. The Supreme Court will award attorney fees pursuant to I.A.R. 11.2 if a requesting party proves that "the other party's arguments are not well grounded in fact, [or] warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law..." Sims v. Jacobson, 342 P.3d 907

(2015). As set forth below, Employer's arguments are neither well-grounded in fact nor warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

#### IV.

#### STANDARD OF REVIEW

The Supreme Court's task on appeal is to ascertain whether the Industrial Commission properly applied the law to the facts of a case. Idaho Const. art. V, Section 9; Morgan v. Columbia Helicopters, Inc., 118 Idaho 347, 350, 796 P.2d 1020, 1023 (1990). The Supreme Court of the State of Idaho views all facts and inferences "in the light most favorable to the party who prevailed before the Commission." Taylor v. Soran Rest., Inc., 131 Idaho 525, 527, 960 P.2d 1256 (1998) (internal quotations and citations omitted).

#### V.

#### ARGUMENT

"The provisions of the Workers' Compensation Law are to be liberally construed in favor of the employee. Liberal construction in favor of the worker is required to enable the act to serve the humane purposes for which it was promulgated, 'leaving no room for narrow, technical construction.'" Sprague v. Caldwell Transp., Inc., 116 Idaho 720, 721, 779 P.2d 395, 396 (1989) (emphasis in original; citations omitted) (quoting Hattenburg v. Blanks, 98 Idaho 485, 578 P.2d 829 (1977)).

Idaho Code § 72-431 mandates the inheritability of permanent disability benefits less than total.

#### A. Idaho Code § 72-431 is plain and unambiguous.

Idaho Code § 72-431 reads:

INHERITABILITY OF SCHEDULED OR UNSCHEDULED INCOME

BENEFITS. When an employee who has sustained disability compensable as a scheduled or unscheduled permanent disability less than total, and who has filed a valid claim in his lifetime, dies from causes other than the injury or occupational disease before the expiration of the compensable period specified, the income benefits specified and unpaid at the employee's death, whether or not accrued or due at the time of his death, shall be paid, under an award made before or after such death, to and for the benefit of the persons within the classes at the time of death and in the proportions and upon the conditions specified in this subsection and in the order named:

- (1) To the dependent widow or widower, if there is no child under the age of eighteen (18) or child incapable of self-support...

The interpretation of a statute is a question of law over which the Supreme Court of the State of Idaho exercises free review. State v. Hart, 135 Idaho 827, 829, 25 P.3d 850 (2001). Interpretation of a statute begins with an examination of the statute's literal words. State v. Burnight, 132 Idaho 654, 659, 978 P.2d 214 (1999).

Employer writes: "the term 'disability' is used broadly throughout the Code in sections where it clearly is not intended to encompass any disability in excess of impairment." App. Br. pp. 11-12. In fact, "disability" and "permanent disability", as used in I.C. § 72-431, are terms of art that are defined in the Idaho Code

"Disability," for purposes of determining total or partial temporary disability income benefits, means a decrease in wage-earning capacity due to the injury or occupational disease, as such capacity is affected by the medical factor of physical impairment, and by pertinent nonmedical factors as provided in section 72-430, Idaho Code.

I.C. § 72-102(11).

PERMANENT DISABILITY. "Permanent disability" or "under a permanent disability" results when the actual or presumed ability to engage in gainful activity is reduced or absent because of permanent partial impairment and no fundamental or marked change in the future can be reasonably expected.

I.C. § 72-423. According to I.C. § 73-113(3), words and phrases that "are defined in the succeeding section, are to be construed according to such peculiar and appropriate meaning or definition." The Supreme Court of the United States wrote: "We have stated time and again that

courts must presume that a legislature says in a statute what it means and means in a statute what it says there... When the words of a statute are unambiguous, then this first canon is also the last: 'judicial inquiry is complete.'" Connecticut National Bank v. Germain, 503 U.S. 249, 112 S.Ct. 1146 (1992) (citations omitted).

Idaho Code § 72-431 is plain on its face. It allows for the inheritability of permanent disability benefits when certain criteria are met.

First the permanent disability must be less than total. The issue presently before the Court, as stipulated by the parties, is specifically about permanent partial disability.

Second, the statute requires that a valid claim be filed during the claimant's lifetime. As set forth in the Stipulation of Facts, Claimant filed a valid claim in his lifetime. R. p. 6.

Third, the claimant must die from causes other than the work injury. Claimant died of a heart attack unrelated to the work injury. R. p. 8.

Fourth, Claimant must die before the expiration of the compensable period specified. Employer was paying permanent partial impairment benefits at the time of Claimant's death. R. p. 8. Thus, Claimant was within his compensable period at the time of his death. What is more, even if impairment were not being paid at the time of Claimant's death, the statute allows for a determination of the compensable period after death.

All of the requirements of I.C. § 72-431 for inheritability of disability benefits are satisfied in the present case. As will be set forth below, both this Court and the Commission have applied I.C. § 72-431 in multiple cases without any discussion of ambiguity. Based on a plain reading of the statute, it is clear that permanent disability benefits less than total are inheritable per I.C. § 72-431.

**B. Idaho Code § 72-431 has been applied by this Court and the Industrial Commission.**

Employer contends that I.C. § 72-431 is ambiguous. Employer's position is inconsistent with the plain language of the statute and with the cases that have been before the Supreme Court of the State of Idaho and the Industrial Commission prior to the present case.

Neither the Commission nor the Employer in this case addressed the only Idaho Supreme Court case that discusses I.C. § 72-431. In Palomo v. J.R. Simplot Co., 131 Idaho 314, 955 P.2d 1093 (1998), the central issue before the Court was the application of I.C. § 72-431. The claimant in Palomo had stipulated with the surety and the Industrial Special Indemnity Fund that she was totally and permanently disabled. The surety agreed to pay 50% of Palomo's total permanent disability benefits under the Carey Formula. The Commission found that the portion of permanent disability benefits payable by the surety were inheritable. Overturning the Commission decision, the Court held: "Section 72-431, governing the inheritability of income benefits, applies only if an employee has sustained a disability less than total... Thus, we find that the Industrial Commission erred in finding that Simplot is paying partial permanent disability benefits for the purpose of I.C. Section 72-431." This Court found that I.C. § 72-431 governs when "an employee has sustained a disability less than total." Notably, this Court did not find that permanent partial disability was not entirely uninheritable. Also absent from the Court's opinion was any discussion of ambiguity.

In 1988 the Commission decided the case of Martin v. Nampa Hwy. Dist., 1988 IIC 0367 (1988). In Martin, the claimant had suffered a compensable work-related injury but died before an agreement could be reached or an order issued deciding the amount of her permanent impairment and her permanent disability. The sole issue before the Commission was: "whether

the claimant's present request for an award of permanent partial disability has survived her death from unrelated causes." Similar to the present case, Martin's employer argued that since the permanent partial disability claim had not been adjudicated at the time of claimant's death, the permanent disability claim was unspecified and not owed to the claimant. The Commission disagreed. Applying I.C. § 72-431, the Commission held:

The extent of a claimant's permanent partial disability is never finally determined until there is an award of the Commission following an evidentiary hearing or unless the parties have reached an agreement with regard to such permanent partial disability, reduced the agreement to writing and had the agreement approved by the Commission. Such approved agreement also constitutes an award of the Commission. We note that Sec. 72-431 specifically empowers the Commission to make an award both before and after the death of the claimant. We therefore conclude that 72-431 does not require that the extent of a claimant's permanent partial disability be specified by an award prior to the death of the claimant in order for the income benefits to survive the death of the claimant and be distributed to survivors.

The decision in Martin is only two pages long. Notably absent from the Commission's discussion of I.C. § 72-431 is any mention of ambiguity. The Commission in Martin found I.C. § 72-431 readily applicable to virtually the same issue that is presently before the Court.

More recently, the Commission in Havens v. ISIF, 2009 IIC 0745 (2009), reaffirmed the purpose of I.C. § 72-431: "Under Idaho Code § 72-431, disability benefits for less than total and permanent disability are inheritable."

Finally, in the case presently before the Court, the Commission held: "Permanent partial disability less than total survives the death of the injured worker." R. p. 37.

Although applied infrequently, both this Court and the Industrial Commission have previously held that permanent disability benefits less than total are inheritable under I.C. § 72-431.

**C. Statutory construction is both unnecessary and improper.**

Although neither the Court nor the Commission has found I.C. § 72-431 ambiguous, a significant portion of Employer's brief is dedicated to statutory construction. The Idaho Code addresses statutory construction:

CONSTRUCTION OF WORDS AND PHRASES. (1) The language of a statute should be given its plain, usual and ordinary meaning. Where a statute is clear and unambiguous, the expressed intent of the legislature shall be given effect without engaging in statutory construction. The literal words of a statute are the best guide to determining legislative intent.

(2) If a statute is capable of more than one (1) conflicting construction, the reasonableness of the proposed interpretation shall be considered, and the statute must be construed as a whole. Interpretations which would render the statute a nullity, or which would lead to absurd results, are disfavored...

I.C. § 73-113. Statutory construction is only appropriate when a statute is ambiguous: "If the statutory language is unambiguous, 'the clearly expressed intent of the legislative body must be given effect, and there is no occasion for a court to consider rules of statutory construction.' The plain meaning of a statute therefore will prevail unless clearly expressed legislative intent is contrary or unless plain meaning leads to absurd results" St. Luke's Reg'l Med. Ctr., Ltd. v. Bd. of Com'rs of Ada Cnty., 146 Idaho 753, 755, 203 P.3d 683 (2009) (internal citations omitted).

A statute is ambiguous when:

[T]he meaning is so doubtful or obscure that reasonable minds might be uncertain or disagree as to its meaning. However, ambiguity is not established merely because different possible interpretations are presented to the court. If this were the case then all statutes that are the subject of litigation could be considered ambiguous... [A] statute is not ambiguous merely because an astute mind can devise more than one interpretation of it.

BHA Investments, Inc. v. City of Boise, 138 Idaho 356, 358, 63 P.3d 482 (2003).

Prior to the present case, both this Court and the Industrial Commission have applied I.C. § 72-431 in a way that is consistent with inheritability of permanent partial disability benefits. As set forth in the cases above, the meaning of I.C. § 72-431 is clear. Idaho Code § 72-431 is plain and unambiguous. Employer has not documented any "clearly expressed legislative intent" that

is contrary to the plain meaning of the statute. Therefore, I.C. § 72-431 is not subject to statutory interpretation. Nonetheless, some of Employer's statutory construction arguments will be addressed below.

**1. Idaho Code § 72-431 is not a codification of the common law.**

Employer argues extensively about the common law and its application to the present case:

It is not to be presumed that legislature intended to abrogate or modify a rule of common law by enactment of statute upon the same subject; it is rather to be presumed that no change in common law was intended, unless such language employed clearly indicates such intention.

App. Br. p. 29. In fact, Title 72 explicitly abrogates the common law.

Idaho Code § 72-201 reads as follows:

**DECLARATION OF POLICE POWER. The common law system governing the remedy of workmen against employers for injuries received and occupational diseases contracted in industrial and public work is inconsistent with modern industrial conditions.** The welfare of the state depends upon its industries and even more upon the welfare of its wageworkers. **The state of Idaho, therefore, exercising herein its police and sovereign power, declares that all phases of the premises are withdrawn from private controversy,** and sure and certain relief for injured workmen and their families and dependents is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation, except as is otherwise provided in this act, and to that end **all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished, except as is in this law provided.** (emphasis added).

Idaho Code § 72-201 states in no uncertain terms that Idaho workers' compensation disputes are removed from the common law "except as provided" in Title 72. Thus, the common law is inapplicable to present case.

**2. Employer provides no evidence of legislative intent.**

Employer invokes legislative intent no fewer than nine times in its brief to support its position that disability benefits are not inheritable. For legislative intent to prevail over the plain

language of a statute, it must be clearly expressed. Noticeably lacking from Employer's brief is any reference to a source that actually documents the legislative intent. There is no citation of legislative minutes, meetings, or drafts. As noted in the Commission's Decision, "A history of discussions, debates, conferences, and legislative action leading to the comprehensive recodification of the workers' compensation laws is sadly incomplete." R. p. 31. Much of Employer's argument with respect to legislative intent is based on assumptions regarding common law. As set forth above, the Idaho legislature abrogated the common law in Title 72.

Employer also appeals to legislative intent with respect to the "Model Act". Employer argues that the Model Act proves that there was no legislative intent to make disability benefits inheritable. Employer's position is inconsistent with history and with the Idaho Code.

The only thing we know about the legislature's approach to I.C. § 72-431 with respect to the Model Act is that the legislature chose to change the Model Code's language. As set forth in the Industrial Commission's Decision, "Idaho Code § 72-431 does not address 'subsection (c)' of the Model Code. Rather, it references 'scheduled and unscheduled permanent disability less than total'". The Commission goes on to properly conclude that the Model Code is not helpful in understanding I.C. § 72-431. R. p. 33.

The only intent that can be discerned from the legislature with respect to the Model Act is that the legislature intended to depart from it, as evidenced by the I.C. § 72-431's departure from the model language.

**3. Idaho Code § 72-431 does not require that income benefits are specified and unpaid when the employee dies.**

Employer argues at length that benefits must be specified and unpaid in order for the benefits to be inheritable. Def. Br. p. 12, 22-26. In making this argument, Employer disregards

the plain language of I.C. § 72-431, which reads: "... the income benefits specified and unpaid at the employee's death, **whether or not accrued or due at the time of his death, shall be paid, under an award made before or after such death ...**" (emphasis added). As set forth by the Commission in Martin:

We note that Sec. 72-431 specifically empowers the Commission to make an award both before and after the death of the claimant. We therefore conclude that 72-431 does not require that the extent of a claimant's permanent partial disability be specified by an award prior to the death of the claimant in order for the income benefits to survive the death of the claimant and be distributed to survivors.

The plain language of I.C. § 72-431 clearly establishes that permanent disability benefits less than total are payable whether or not the benefits are accrued or due at the time of death and whether or not the benefit are awarded before or after death.

**4. Idaho Code § 72-431 does not require that damages be liquidated prior to death.**

In conjunction with its specified and unpaid argument, Employer argues that damages must be liquidated to be inheritable. App. Br. pp. 17-26. Employer's argument again revolves around the common law. As previously discussed, the Legislature explicitly rejected the common law with the adoption of Title 72. Although the rejection of the common law adequately addresses Employer's arguments, a few points regarding liquidated damages deserve attention.

Employer writes: "The award may be made after the death of a claimant, but only so long as the right to compensation is fixed by statute." App. Br. p. 17. This statement is consistent with I.C. § 72-431 and Claimant's position. In fact, every benefit available under the workers' compensation laws is "fixed by statute." As such, all permanent disability benefits, except total permanent disability, are readily quantifiable based on the average state wage and the 500 week man. I.C. § 72-426. Total permanent disability is the only benefit that is not calculated based on

the 500 week man but is paid until the claimant's death. What is noteworthy about Employer's argument is the fact that the permanent disability benefit in Idaho workers' compensation that cannot be calculated using a fixed formula is specifically excluded from I.C. § 72-431.

Employer's argument that impairment benefits should be inheritable because they can be determined with a fixed formula but disability benefits should not be inheritable because they cannot be calculated with a fixed formula is simply inconsistent with the Idaho Code, Supreme Court decisions, and Industrial Commission decisions. App. Br. pp. 18-19. Both impairment and disability benefits are calculated based on a percentage of the 500 week whole man. The Court has held that when determining impairment, the opinions of physicians are advisory only. The Commission is the ultimate evaluator of impairment. Urry v. Walker Fox Masonry Contractors, 115 Idaho 750, 755, 769 P.2d 1122, 1127 (1989).

Just like disability, impairment only becomes a "liquidated" damage once the Commission has issued a decision and order.

**D. Idaho Workers' Compensation is not governed by other jurisdictions.**

Employer's argument that the Commission's application of I.C. § 72-431 is at odds with the rest of the country is irrelevant. The rest of the country is not governed by I.C. § 72-431, and Idaho is not governed by the rest of the country.

The foregoing notwithstanding, Employer's argument is not only irrelevant, it is also misplaced. Employer cites Larson's Workers' Compensation § 98.06 entitled "Death Benefits" to support its argument that § 72-431 does not allow for inheritability of benefits. Employer, however, cites to a section of Larson's discussing death benefits. The issue presently before the Court does not pertain to death benefits but inheritability of permanent partial disability benefits less than total. Section 89 of Larson's Workers' Compensation entitled Heritability and

Assignability of Claims and Benefits appears to be more on point. According to § 89.03

Unaccrued Payments:

When, however, the award, although for a fixed number of weeks, is paid weekly or periodically, most jurisdictions **in the absence of a special statute** to the contrary have held that the heirs have no claim upon the unaccrued payments, since the award is a personal one, based upon the employee's need for substitute for lost wages and earning capacity... (emphasis added)

Larson discusses the exact scenario as it exists in Idaho. Namely, a "special statute", I.C. § 72-431, has been adopted by the Legislature to allow for the inheritability of permanent disability benefits less than total.

**E. Employer's arguments regarding Brown and Davaz are unpersuasive.**

Employer contends that it would be impermissible to award benefits posthumously, based on this Court's decisions in Davaz v. Priest River Glass Co., Inc., 125 Idaho 333, 870 P.2d 1292 (1994), and Brown v. Home Depot Co., Inc., 152 Idaho 605, 272 P.3d 577 (2012). Employer's reading of Brown and Davaz is overbroad.

In making its argument, Employer ignores the Court's discussion in both cases stating that determining disability at the time of hearing is a "general rule" that has exceptions. The Brown decision cited the Davaz decision approvingly:

Granted, there may be instances where a market other than the claimant's residence at the time of the hearing is relevant to the I.C. § 72-430(1) inquiry, and such determinations should be made on a case by case basis based on individual facts and circumstances. *See e.g. Lyons v. Industrial Special Indem. Fund*, 98 Idaho 403, 565 P.2d 1360 (1977) (court allowed evidence from market vacated by claimant after injury as well as market of residence at the time of the hearing).

The Brown and Davaz decisions readily acknowledge that it will not be appropriate in all cases to determine disability at the time of hearing.

As the Commission aptly pointed out in this case:

Were the Commission required to measure the injured worker's disability as of the date of

hearing, no disability would ever be awarded in view of the fact that claimant's death was unconnected to the work accident and constitutes a superseding intervening cause primarily responsible for the injured worker's inability work. This nonsensical result could not have been contemplated by those who drafted Idaho Code § 72-431.

R. p. 36.

Since I.C. § 72-431 specifically says that disability benefits can be awarded after death, awarding disability to the heirs of a deceased claimant is not precluded by the above decisions. Employer's arguments are inconsistent with the plain language of I.C. § 72-431 and with the principles set forth in Brown and Davaz.

**F. Idaho Code § 72-431 does not violate the equal protection clauses of the Fourteenth Amendment.**

Employer's allegation that the "Commission does not even attempt to provide a rational basis for the Equal Protection problem its interpretation creates" is unfounded. In reality, the Commission does not have jurisdiction to address constitutional challenges. Tupper v. State Farm Ins., 131 Idaho 724, 729, 963 P.2d 1161 (1998).

When a party challenges the constitutionality of a statute, the Supreme Court of the State of Idaho presumes the statute is constitutional unless that party proves otherwise. Luttrell v. Clearwater County Sheriff's Office, 140 Idaho 581, 585, 97 P.3d 448 (2004). When deciding whether a statute violates equal protection, the Court must first, identify the classification which is being challenged, and second, determine the standard under which the classification will be reviewed. Tarbox v. Tax Comm'n., 107 Idaho 957, 695 P.2d 342 (1984).

As the Workers' Compensation Law involves social and economic welfare issues, "equal protection challenges to those statutes are subject to the rational basis test." Venters v. Sorrento Delaware, Inc., 141 Idaho 245, 251, 108 P.3d 392 (2005). Thus, the Court must determine whether I.C. § 72-431 bears a rational relationship to a legitimate legislative purpose. See

Luttrell at 585. Under the rational basis test, a classification will withstand an equal protection challenge if there is any conceivable state of facts which will support it. Bint v. Creative Forest Prod., 108 Idaho 116, 120, 697 P.2d 818 (1985).

In this case, Employer is arguing that I.C. § 72-431 violates the equal protection clause because I.C. § 72-431 treats permanent partial disability different than permanent total disability.

"The Supreme Court of the United States has consistently held that the Equal Protection Clause does not prohibit states from treating different classes of people differently." Credit Bureau of E. Idaho, Inc. v. Lecheminant, 149 Idaho 467, 470, 235 P.3d 1188, 1191 (2010). In Page v. McCain Foods, Inc., 316 P.3d 671, 155 Idaho 755 (2014), the Court cited the above language to support its determination that claimants' attorneys and defense attorneys could be treated differently under the Workers' Compensation Laws, as the two classes of attorneys were treated differently by statute. In much the same manner, I.C. § 72-431 makes a distinction between injured workers with total permanent disability and injured workers with permanent partial disability. Since injured workers with disability less than total are a different class, injured workers with disability less than total can be treated differently than totally disabled workers without violating the equal protection clause.

This Court's reasoning in Meisner v. Potlatch Corp., 131 Idaho 258, 954 P.2d 676 (1998) is also instructive. In Meisner this Court was asked to decide whether I.C. § 72-413 violated the equal protection clause because it allowed for dependent children of deceased workers to receive benefits under the statute while leaving independent children without compensation. This Court reasoned:

Worker's compensation statutes must be considered in the context of the entire act. Arneson v. Robinson, 59 Idaho 223, 82 P.2d 249 (1938). The purpose of the worker's compensation act is not only to provide relief for workers but also to protect industry by providing a limit on liability. By limiting the class of people who can collect benefits, §

72-413 arguably protects Idaho industry by providing some degree of certainty in terms of liability.

By statute, "disability less than total" is limited to 499 weeks of benefits, while total disability is only limited by an injured worker's lifetime. In the case presently before the Court, it is both rational and reasonable for the legislature to limit benefits to those individuals who are less than totally and permanently disabled. By limiting the class of people who can collect benefits, I.C. § 72-431 protects Idaho industry by providing a degree of certainty with respect to disability payments.

I.C. § 72-431 bears a rational relationship to a legitimate legislative purpose. Totally and permanently disabled workers are in a different class than permanently partially disabled workers. Thus, I.C. § 72-431 does not violate the equal protection clause.

## VI.

### CONCLUSION

Consistent with a liberal construction in favor of the injured worker, the plain meaning of Idaho Code § 72-431, the Industrial Commission's past application of § 72-431, and the Commission's application of § 72-431 in the present case, Claimant respectfully requests that the Supreme Court of the State of Idaho affirm the Industrial Commission's decision and award attorney fees and costs to Claimant.

Dated this 16th day of November 2015.

GOICOECHEA LAW OFFICES, LLP

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Michael Kessinger  
Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of November 2015 I caused to be served a true and correct copy of the foregoing document via email and U.S. Mail upon:

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Michael Kessinger