

2-28-2017

# Current v. Wada Farms Partnership Clerk's Record Dckt. 44683

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Vol. 1 of 2

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

DENNIS B. CURRENT,

Claimant/Appellant,

v.

WADA FARMS PARTNERSHIP,

Employer/Respondent,

and

IDAHO DEPARTMENT OF LABOR,

Respondent.

LAW CLERK

SUPREME COURT NO. 44683

AGENCY RECORD

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

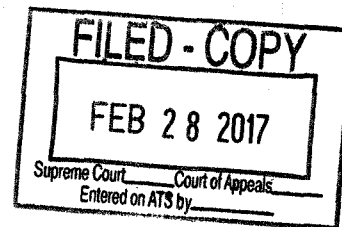
**For Claimant/Appellant**

DENNIS B CURRENT  
898 W CENTER ST  
BLACKFOOT ID 83221

**For Employers/Respondents**

WADA FARMS PARTNERSHIP  
326 S 1400 W  
PINGREE ID 83262

KARIN MAGNELLI  
DEPUTY ATTORNEY GENERAL  
IDAHO DEPARTMENT OF LABOR  
317 W MAIN STREET  
BOISE ID 83735



44683

AGENCY RECORD - DENNIS B. CURRENT

COPY

**BEFORE THE SUPREME COURT OF THE STATE OF IDAHO**

DENNIS B. CURRENT,

Claimant/Appellant,

v.

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and

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**SUPREME COURT NO. 44683**

**AGENCY RECORD**

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**AGENCY RECORD – DENNIS B. CURRENT**

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**LIST OF EXHIBITS**

HEARING TRANSCRIPT taken on 06/06/2016 will be lodged with the Supreme Court.

**EXHIBITS ADMITTED into record before IDAHO DEPARTMENT OF LABOR**

.....Notice of Telephone Hearing, mailed May 23, 2016 (pp. 1-3)

**Exhibit:**

.....Important Information About Your Hearing Read Carefully (pp. 1-2)

.....Claimant Benefit Rights, Responsibilities and Filing Instructions (pp. 3-11)

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APPEALS BUREAU  
IDAHO DEPARTMENT OF LABOR  
317 WEST MAIN STREET / BOISE, IDAHO 83735-0720  
(208) 332-3572 / (800) 621-4938  
FAX: (208) 334-6440

DENNIS B CURRENT, )  
SSN: [REDACTED] )  
Claimant )  
vs. )  
WADA FARMS PARTNERSHIP, ) **DOCKET NUMBER 421006079-2016**  
Employer ) **DECISION OF APPEALS EXAMINER**  
and )  
IDAHO DEPARTMENT OF LABOR )  
\_\_\_\_\_ )

**DECISION**

Benefits are **DENIED** effective February 28, 2016 through March 12, 2016. The claimant is also **NOT ELIGIBLE** for benefits effective May 8, 2016 through May 6, 2017.

The Eligibility Determination dated May 10, 2016, is hereby **AFFIRMED**.

Waiver of the requirement that the claimant repay benefits owed to the Employment Security Fund is **NOT GRANTED**.

The Overpayment Determination dated May 10, 2016, is **AFFIRMED**.

**HISTORY OF THE CASE**

The above-entitled matter was heard by Thomas J. Holden, Appeals Examiner for the Idaho Department of Labor, on June 6, 2016, by telephone in the City of Boise, in accordance with §72-1368(6) of the Idaho Employment Security Law.

The claimant, Dennis Current, participated in the hearing.

The employer, Wada Farms Partnership, did not participate in the hearing.

The respondent, the Idaho Department of Labor, was represented in the hearing by Leyla Barthomé.

**ISSUES**

The issues before the Department are whether the claimant willfully made a false statement or willfully failed to report a material fact in order to obtain unemployment insurance benefits,

according to § 72-1366(12) of the Idaho Employment Security Law; and whether the claimant is ineligible for waiting week credit or benefits, as a result of having willfully made a false statement or willfully failed to report a material fact, according to §§ 72-1329 and 72-1366(12) of the Idaho Employment Security Law; and whether the claimant is subject to a (25%/50%/100%) civil penalty as a result of having made a false statement or failed to report a material fact according to § 72-1369(2) of the Idaho Employment Security Law; and whether the claimant has received benefits to which s/he was not entitled, and if so, whether the requirement to repay benefits owed to the Employment Security Fund may be waived, according to §72-1369(5) of the Idaho Employment Security Law.

### **FINDINGS OF FACT**

Based on the exhibits and testimony in the record, the following facts are found:

1. The claimant underreported his earnings to the Department of Labor in two weeks.
2. The claimant was given the Unemployment Insurance Claimant Benefit Rights, Responsibilities and Filing Instructions pamphlet, which informed the claimant on how to report his earnings. The pamphlet states that if a claimant estimates earnings, the claimant must call the Department of Labor when the claimant receives the correct earnings information.
3. As part of the unemployment insurance claim filing process, the claimant viewed several pages which explained how to report earnings and what is considered fraud.
4. The claimant was overpaid benefits as a result of the misreported earnings.
5. The claimant explains that he estimated his earnings and that he did not have access to his time record information for a period of time.
6. This is the second false statement Determination that has been issued to the claimant.

### **AUTHORITY**

Section 72-1366(12) of the Idaho Employment Security Law provides that a claimant shall not be entitled to benefits for a period of fifty-two (52) weeks if it is determined that he has willfully made a false statement or willfully failed to report a material fact in order to obtain benefits. The period of disqualification shall commence the week the determination is issued. The claimant shall also be ineligible for waiting week credit and shall repay any sums received for any week for which the claimant received waiting week credit or benefits as a result of having willfully made a false statement or willfully failed to report a material fact. The claimant shall also be ineligible for waiting week credit or benefits for any week in which he owes the department an overpayment, civil penalty, or interest resulting from a determination that he willfully made a false statement or willfully failed to report a material fact.

"Willfully" implies simply a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate law, in the sense of having an evil or corrupt motive or intent. It does imply a conscious wrong, and may be distinguished from an act maliciously or corruptly done in that it does not necessarily imply an evil mind, but is more

nearly synonymous with "intentionally," "designedly," and therefore not accidental. Meyer vs. Skyline Mobile Homes, 99 Idaho 77, 589 P.2d 89 (1979).

A finding that a benefit claimant knew or thought it highly probable that he or she did not know what information a question solicited but nevertheless deliberately chose to respond without pursuing clarification would ordinarily support a conclusion of willful falsehood or concealment. Meyer vs. Skyline Mobile Homes, 99 Idaho 77, 589 P.2d 89 (1979).

Section 72-1369(2) provides: The director shall assess the following monetary penalties for each determination in which the claimant is found to have made a false statement, misrepresentation, or failed to report a material fact to the department:

- (a) Twenty-five percent (25%) of any resulting overpayment for the first determination;
- (b) Fifty percent (50%) of any resulting overpayment for the second determination; and
- (c) One hundred percent (100%) of any resulting overpayment for the third and any subsequent determination.

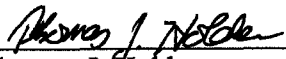
Section 72-1369(5)(a) of the Idaho Employment Security Law provides: (5) The director may waive the requirement to repay an overpayment, other than one resulting from a false statement, misrepresentation, or failure to report a material fact by the claimant, and interest thereon, if: (a) the benefit payments were made solely as a result of department error or inadvertence and made to a claimant who could not reasonably have been expected to recognize the error.

In order for repayment of an erroneously paid benefit to be waived, the claimant must show:

- (1) that such payments were not the result of a false statement, misrepresentation or concealment of a material fact by the claimant
- (2) that such payments were made solely as a result of department error or inadvertence; and,
- (3) that such payments were made to a claimant who had no way of knowing that he [or she] was receiving benefits to which he [or she] was not entitled. Blayney vs. City of Boise, 110 Idaho 302, 307, 715 P.2d 972, 977 (1986)

### CONCLUSIONS

The claimant misreported his earnings to the Idaho Department of Labor for two weeks. The claimant has not provided a reasonable explanation for failing to accurately report his earnings. It must be concluded that the claimant willfully made false statements or representations or willfully failed to report material facts in order to obtain unemployment insurance benefits. Therefore, the claimant is ineligible for benefits, and the claimant does not meet the criteria for a waiver of the requirement that he repay benefits owed to the Employment Security Fund. Penalty amounts are mandated by statute and cannot be waived or changed.

  
\_\_\_\_\_  
Thomas J. Holden  
Appeals Examiner  
Examinador de Apelaciones

Date of Mailing June 7, 2016  
Fecha De Envío

Last Day To Appeal June 21, 2016  
Ultimo Día Para Apelar

## APPEAL RIGHTS

You have **FOURTEEN (14) DAYS FROM THE DATE OF MAILING** to file a written appeal with the Idaho Industrial Commission. The appeal must mailed to:

Idaho Industrial Commission  
Judicial Division, IDOL Appeals  
P.O. Box 83720  
Boise, Idaho 83720-0041

Or delivered in person to:

Idaho Industrial Commission  
700 S Clearwater Lane  
Boise, ID 83712

Or transmitted by facsimile to:

(208) 332-7558.

If the appeal is mailed, it must be postmarked no later than the last day to appeal. An appeal filed by facsimile transmission must be received by the Commission by 5:00 p.m., Mountain Time, on the last day to appeal. A facsimile transmission received after 5:00 p.m. will be deemed received by the Commission on the next business day. A late appeal will be dismissed. Appeals filed by any means with the Appeals Bureau or a Department of Labor local office will not be accepted by the Commission. **TO EMPLOYERS WHO ARE INCORPORATED:** *If you file an appeal with the Idaho Industrial Commission, the appeal must be signed by a corporate officer or legal counsel licensed to practice in the State of Idaho and the signature must include the individual's title. The Commission will not consider appeals submitted by employer representatives who are not attorneys. If you request a hearing before the Commission or permission to file a legal brief, you must make these requests through legal counsel licensed to practice in the State of Idaho. Questions should be directed to the Idaho Industrial Commission, Unemployment Appeals, (208) 334-6024.*

If no appeal is filed, this decision will become final and cannot be changed. **TO CLAIMANT:** If this decision is changed, any benefits paid will be subject to repayment. If an appeal is filed, you should continue to report on your claim as long as you are unemployed.

## DERECHOS DE APELACIÓN

Usted tiene **CATORCE (14) DIAS DESDE LA FECHA DE ENVIO** para archivar una apelación escrita con la Comisión Industrial de Idaho. La apelación debe ser enviada a:

Idaho Industrial Commission  
Judicial Division, IDOL Appeals  
P.O. Box 83720  
Boise, Idaho 83720-0041

O ser entregada en persona a:

Idaho Industrial Commission  
700 S Clearwater Lane  
Boise, ID 83712

O puede enviarla por fax al:

(208) 332-7558.

Si la apelación es enviada por correo, la fecha en el sello del correo debe ser no más tarde de la fecha del último día en que puede apelar. Una apelación tardada será descartada. Apelaciones archivadas con la Agencia de Apelaciones o con la Oficina de Empleo no serán aceptadas por la Comisión. Una apelación archivada por medio de fax debe ser recibida por la comisión no mas tarde de las 5:00 P.M. Hora Standard de la Montaña, del último día en que puede apelar. Una transmisión de fax recibida después de las 5:00 P.M. se considerará recibida por la comisión, hasta el próximo día hábil. ***EMPLEADORES QUE SON INCORPORADOS:*** *Si una apelación es archivada en la Comisión Industrial de Idaho, la apelación tiene que ser firmada por un oficial o representante designado y la firma debe incluir el título del individuo. Si solicita una audiencia ante la Comisión Industrial, o permiso para archivar un escrito legal, ésta solicitud se debera de hacer por medio de un abogado con licencia para practicar en el estado de Idaho. Preguntas deben ser dirigidas a la Comisión Industrial de Idaho, Unemployment Appeals, (208) 334-6024.*

Si ninguna apelación se archiva, esta decisión será la final y no podrá cambiarse. **AL RECLAMANTE:** Si esta decisión se cambia, todos los beneficios pagados estarán sujetos a reembolso. Si una apelación se archiva, usted debería de continuar reportando en su reclamo mientras esté desempleado.

APPEALS BUREAU  
IDAHO DEPARTMENT OF LABOR  
317 WEST MAIN STREET / BOISE, IDAHO 83735-0720  
(208) 332-3572 / (800) 621-4938  
FAX: (208) 334-6440

**CERTIFICATE OF SERVICE**

I hereby certify that on June 7, 2016, a true and correct copy of **Decision of Appeals Examiner** was served by regular United States mail upon each of the following:

DENNIS B CURRENT  
898 W CENTER ST  
BLACKFOOT ID 83221

WADA FARMS PARTNERSHIP  
326 S 1400 W  
PINGREE ID 83262

IDAHO DEPARTMENT OF LABOR  
ATTN: LEYLA BARTHLOME  
317 W MAIN ST  
BOISE ID 837350740

A handwritten signature in cursive script, appearing to read "Phillip", is written over a horizontal line.

T.O. Idaho Industrial Commission  
Judicial Division, IDOL Appeals  
PO Box 83720 Boise, Idaho 83720-0041

From: Dennis B Current  
SSN: 521021347

~~Determination: Select~~

898 W. Center St

~~Effective and end dates must be Sunday and Saturday dates respectively.~~

~~Effective:~~

~~End:~~

Blackfoot Idaho 83221

~~DEPT (NON)MORT~~

I Dennis B. Current request an appeal  
as is my right.

Dennis B. Current

FILED

JUN 14 2016

INDUSTRIAL COMMISSION

## IMPORTANT INFORMATION ABOUT YOUR HEARING READ CAREFULLY

The Appeals Bureau's phone number is (208) 332-3572 and the Appeals Bureau's FAX number is (208) 334-6440. The mailing address is 317 West Main Street, Boise, Idaho 83735-0720. The website address is [labor.idaho.gov](http://labor.idaho.gov). Any Idaho Department of Labor Office will help you with phoning, faxing or mailing information to the Appeals Bureau.

### IMPORTANCE OF THE APPEAL HEARING

The Appeal Hearing **MAY** be your only chance to present witnesses and give evidence about your side of the issue. Except in rare circumstances, you will not be allowed to present additional evidence upon further appeal. The Appeals Examiner will make a new decision in your case based on the sworn testimony during the hearing.

### THE HEARING

**BE ON TIME! BE READY!** If you are not, the hearing will go on without you. The Notice of Telephone hearing provides the time for the Appeals Bureau office located in Boise, Idaho, which is in Mountain Time. **Parties must make the necessary adjustments with their own time zone.** Hearings are conducted in an informal but orderly manner. All testimony is taken under oath or affirmation. The hearing is recorded.

The Appeals Examiner has the sole authority for the conduct of the hearing, and will:

1. Explain the issues and the meanings of terms that you do not understand.
2. Explain the order in which you will testify, ask questions and offer opportunity for rebuttal.
3. Assist you in asking questions of witnesses.
4. Question you and your witnesses to obtain relevant facts.
5. Determine if testimony and document(s) being offered are relevant.
6. Maintain control of the hearing so it will progress in an orderly manner, protect your rights, and be completed without delay.
7. Issue a written decision following the hearing.

You have these rights in a hearing:

1. To have a representative.
2. To object to proposed exhibits.
3. To testify.
4. To present witnesses and documents.
5. To question witnesses.
6. To respond to the evidence presented.
7. To make a brief statement of your position at the end of the hearing.

FILED

JUN 14 2016

INDUSTRIAL COMMISSION

### EVIDENCE

Any documents that **YOU** want considered at the hearing must be submitted immediately to the Appeals Bureau and all other interested parties of the case. Since this is a **NEW** proceeding, information submitted for the Determination being protested may not have been forwarded to the Appeals Bureau. Please review the documents in this packet. If a document critical to your position is not included, you may get it into the record by providing a copy to the Appeals Bureau AND all interested parties.

### TELEPHONE HEARINGS

At the time scheduled for your hearing, please call **the number on your Notice of Telephone Hearing**. The hearing will begin promptly, so it is suggested that you call a few minutes prior to the start of the hearing.

You must call at the time scheduled for your hearing if you wish to participate. The Appeals Examiner will **NOT** telephone you for the hearing. Failure to follow the instructions on this Notice may result in the dismissal of your appeal or forfeiture of your right to participate in the hearing.

Secondary witnesses should not call and connect with the conference at the beginning of the hearing. Additional witnesses will be called at a later time in the hearing, if necessary.



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P.O. Box 83720  
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O ser entregada en persona a:

Idaho Industrial Commission  
700 S Clearwater Lane  
Boise, ID 83712

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

DENNIS B. CURRENT,  
SSN: [REDACTED]

Claimant,

v.

WADA FARMS PARTNERSHIP,

Employer,

and

IDAHO DEPARTMENT OF LABOR.

**IDOL # 421006079-2016**

**NOTICE OF FILING  
OF APPEAL**

FILED

JUN 17 2016

INDUSTRIAL COMMISSION

**PLEASE TAKE NOTICE:** The Industrial Commission has received an appeal from a decision of an Appeals Examiner of the Idaho Department of Labor. A copy of the appeal is enclosed, along with a copy of the Commission's Rules of Appellate Practice and Procedure.

**PLEASE READ ALL THE RULES CAREFULLY**

The Industrial Commission promptly processes all unemployment appeals in the order received. In the meantime, you may want to visit our web site for more information: [www.iic.idaho.gov](http://www.iic.idaho.gov).

The Commission will make its decision in this appeal based on the record of the proceedings before the Appeals Examiner of the Idaho Department of Labor.

INDUSTRIAL COMMISSION  
UNEMPLOYMENT APPEALS DIVISION  
POST OFFICE BOX 83720  
BOISE IDAHO 83720-0041  
(208) 334-6024

*Calls Received by the Industrial Commission May Be Recorded*

**NOTICE OF FILING OF APPEAL - 1**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 17<sup>th</sup> day of June, 2016 a true and correct copy of the **Notice of Filing of Appeal and compact disc of the Hearing** were served by regular United States mail upon the following:

**APPEAL:**

IDAHO DEPARTMENT OF LABOR  
ATTN LEYLA BARTHLOME  
317 W MAIN ST  
BOISE ID 83735-0740


DEPUTY ATTORNEY GENERAL  
IDAHO DEPARTMENT OF LABOR  
**STATE HOUSE MAIL**  
317 W MAIN STREET  
BOISE ID 83735

**APPEAL AND DISC:**

DENNIS B CURRENT  
898 W CENTER ST  
BLACKFOOT ID 83221

WADA FARMS PARTNERSHIP  
326 S 1400 W  
PINGREE ID 83262

kc

  
Assistant Commission Secretary

TO: IDOL  
317 West Main St.  
Boise, Idaho 83735-0770

6/16/2016 10:43:54 AM  
Transmission Record  
Received from remote ID:  
208 785 2665  
Inbound user ID  
APPEALSMAIL, routing code  
2083346440  
Result: (0/352;0/0)  
Success  
Page record: 1 - 1  
Elapsed time: 00:19 on  
channel 2  
ms

From: Dennis Current id# 11299599

Request to Reopen # 421006079 - 2016

for the purpose to present information  
used to establish facts in a legal investigation  
disallowed By Thomas J. Holden Appeals Examiner  
Dept of Labor June 6 2016 of a material fact

Dennis B. Current



## AUTHORITY

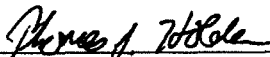
Section 72-1368(6), Idaho Code, states in part that the appeals examiner may, either upon application for rehearing by an interested party or on his own motion, rehear, affirm, modify, set aside or reverse any prior decision on the basis of the evidence previously submitted or on the basis of additional evidence; provided, that such application or motion be made within ten (10) days after the date of service of the decision.

## CONCLUSIONS

The claimant requests that the hearing held on June 6, 2016, be reopened for the purpose of providing additional evidence. It is unclear what additional evidence the claimant wants to present. In the hearing, the claimant objected to the exclusion of certain witnesses that he wanted to call, and an appropriate ruling was made on those objections. The claimant has been afforded a full and fair opportunity to provide evidence in the hearing on the appeal, and there is an insufficient basis for reopening the hearing.

The claimant's request to reopen the hearing that was held on June 6, 2016, is **DENIED**.

**No further requests to reopen the hearing will be considered by the Department of Labor. If the claimant wishes to appeal the decision further, the claimant needs to follow the "APPEAL RIGHTS" instructions listed below.**

  
\_\_\_\_\_  
Thomas J. Holden  
Appeals Examiner  
Examinador de Apelaciones

|                        |                      |                               |                     |
|------------------------|----------------------|-------------------------------|---------------------|
| <b>Date of Mailing</b> | <u>June 23, 2016</u> | <b>Last Day To Appeal</b>     | <u>July 7, 2016</u> |
| <b>Fecha De Envío</b>  |                      | <b>Ultimo Día Para Apelar</b> |                     |

## APPEAL RIGHTS

You have **FOURTEEN (14) DAYS FROM THE DATE OF MAILING** to file a written appeal with the Idaho Industrial Commission. The appeal must mailed to:

Idaho Industrial Commission  
Judicial Division, IDOL Appeals  
P.O. Box 83720  
Boise, Idaho 83720-0041

Or delivered in person to:

Idaho Industrial Commission  
700 S Clearwater Lane  
Boise, ID 83712

Or transmitted by facsimile to:

(208) 332-7558.

ORDER TO DENY RE-OPENING – 2 of 5

If the appeal is mailed, it must be postmarked no later than the last day to appeal. An appeal filed by facsimile transmission must be received by the Commission by 5:00 p.m., Mountain Time, on the last day to appeal. A facsimile transmission received after 5:00 p.m. will be deemed received by the Commission on the next business day. A late appeal will be dismissed. Appeals filed by any means with the Appeals Bureau or a Department of Labor local office will not be accepted by the Commission. ***TO EMPLOYERS WHO ARE INCORPORATED:*** *If you file an appeal with the Idaho Industrial Commission, the appeal must be signed by a corporate officer or legal counsel licensed to practice in the State of Idaho and the signature must include the individual's title. The Commission will not consider appeals submitted by employer representatives who are not attorneys. If you request a hearing before the Commission or permission to file a legal brief, you must make these requests through legal counsel licensed to practice in the State of Idaho. Questions should be directed to the Idaho Industrial Commission, Unemployment Appeals, (208) 334-6024.*

If no appeal is filed, this decision will become final and cannot be changed. **TO CLAIMANT:** If this decision is changed, any benefits paid will be subject to repayment. If an appeal is filed, you should continue to report on your claim as long as you are unemployed.

### DERECHOS DE APELACIÓN

Usted tiene CATORCE (14) DIAS DESDE LA FECHA DE ENVIO para archivar una apelación escrita con la Comisión Industrial de Idaho. La apelación debe ser enviada a:

Idaho Industrial Commission  
Judicial Division, IDOL Appeals  
P.O. Box 83720  
Boise, Idaho 83720-0041

O ser entregada en persona a:

Idaho Industrial Commission  
700 S Clearwater Lane  
Boise, ID 83712

O puede enviarla por fax al:

(208) 332-7558.

Si la apelación es enviada por correo, la fecha en el sello del correo debe ser no más tarde de la fecha del último día en que puede apelar. Una apelación tardada será descartada. Apelaciones archivadas con la Agencia de Apelaciones o con la Oficina de Empleo no serán aceptadas por la Comisión. Una apelación archivada por medio de fax debe ser recibida por la comisión no mas tarde de las 5:00 P.M. Hora Standard de la Montaña, del último dia en que puede apelar. Una transmisión de fax recibida después de las 5:00 P.M. se considerará recibida por la comisión, hasta el próximo dia hábil. ***EMPLEADORES QUE SON INCORPORADOS:*** *Si una apelación es archivada en la Comisión Industrial de Idaho, la apelación tiene que ser firmada por un oficial o representante designado y la firma debe incluir el título del individuo. Si solicita una audiencia ante la Comisión Industrial, o permiso para archivar un escrito legal, ésta solicitud se debera de hacer por medio de un abogado con licencia para practicar en el estado de Idaho. Preguntas deben ser dirigidas a la Comisión Industrial de Idaho, Unemployment Appeals, (208) 334-6024.*

Si ninguna apelación se archiva, esta decisión será la final y no podrá cambiarse. **AL RECLAMANTE:** Si esta decisión se cambia, todos los beneficios pagados estarán sujetos a reembolso. Si una apelación se archiva, usted debería de continuar reportando en su reclamo mientras esté desempleado.



APPEALS BUREAU  
IDAHO DEPARTMENT OF LABOR  
317 WEST MAIN STREET / BOISE, IDAHO 83735-0720  
(208) 332-3572 / (800) 621-4938  
FAX: (208) 334-6440

**CERTIFICATE OF SERVICE**

I hereby certify that on June 23, 2016, a true and correct copy of **Order to Deny Re-Opening** was served by regular United States mail upon each of the following:

DENNIS B CURRENT  
898 W CENTER ST  
BLACKFOOT ID 83221

WADA FARMS PARTNERSHIP  
326 S 1400 W  
PINGREE ID 83262

IDAHO DEPARTMENT OF LABOR  
ATTN: LEYLA BARTHLOME  
317 W MAIN ST  
BOISE ID 837350740

  
\_\_\_\_\_

To: Unemployment Appeals  
PO Box 83720  
Bosie Idaho 83720-0041

From: Dennis B. Current  
898 W. Center St.  
Blackfoot Id. 83221  
IDOL# 421006079-2016  
SSN 521-02-1347

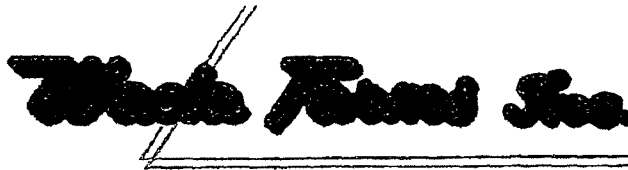
INDUSTRIAL COMMISSION

JUN 24 2016

FILED

This is documents for appeal of an unemployment insurance decision by Appeals Bureau.  
One letter dated June 9 2016 From Stacie Adams Human Resource Department and Administrator for Kronos payroll system.

Dennis B Current  
Dennis B. Current  
6/22/2016



Shipper / Grower of Quality World Famous Idaho Potatoes

June 9, 2016

RE: **Dennis Current**

To Whom It May Concern:

I am writing this letter at the request of Dennis Current in relation to his recent unemployment claim audit. Dennis has worked on a seasonal basis for Wedge Farms since September 2009. Due to the nature of his employment, his hours can vary greatly from week to week, making it difficult for him to project his weekly earnings. We have a biweekly pay schedule as well, so he will have a delay in seeing the final hours that he was paid.

In addition, Dennis was having difficulty accessing our electronic timekeeping and payroll system, KRONOS. His computer didn't support the java requirements necessary to log in off site. This was a problem for a few of our employees. In order to address this, effective April 2016 we completed an update that eliminated that issue for all users.

Dennis does reach out to the payroll department when he has questions, is actively engaged in the process, and does his best to keep accurate records. I believe any discrepancies he reported to his weekly earnings would not have been intentional or willful. Based on these facts I would recommend that the Department of Labor reverse their decision.

If I can assist in this matter further, please don't hesitate to call me at 208-684-9801.

Best Regards,

*Steve Adams*  
Steve Adams  
Human Resource Department

326 S. 1400 W. • Pingree, Idaho 83262 • Phone (208) 684-9801

To: Unemployment Appeals  
PO Box 83720  
Bosie Idaho 83720-0041

From: Dennis B. Current  
898 W. Center St.  
Blackfoot Id. 83221  
IDOL# 421006079-2016  
SSN 521-02-1347

FILED  
JUN 24 2016  
INDUSTRIAL COMMISSION

This is documents for appeal of an unemployment insurance decision by Appeals Bureau.

One letter dated June 9 2016 From Stacie Adams Human Resource Department and Administrator for Kronos payroll system.

Dennis B Current  
Dennis B. Current  
6/22/2016



Shipper / Grower of Quality World Famous Idaho Potatoes

June 9, 2016

RE: Dennis Current

To Whom It May Concern:

I am writing this letter at the request of Dennis Current in relation to his recent unemployment claim audit. Dennis has worked on a seasonal basis for Wasa Farms since September 2009. Due to the nature of his employment, his hours can vary greatly from week to week, making it difficult for him to project his weekly earnings. We have a biweekly pay schedule as well, so he will have a delay in seeing the final hours that he was paid.

In addition, Dennis was having difficulty accessing our electronic timekeeping and payroll system, KRONOS. His computer didn't support the java requirements necessary to log in off site. This was a problem for a few of our employees. In order to address this, effective April 2016 we completed an update that eliminated that issue for all users.

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If I can assist in this matter further, please don't hesitate to call me at 208-684-9801.

Best Regards,

Steve Adams

Human Resource Department

326 S. 1400 W. • Pingree, Idaho 83262 • Phone (208) 684-9801

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

DENNIS B. CURRENT,

Claimant,

v.

WADA FARMS PARTNERSHIP,

Employer,

and

IDAHO DEPARTMENT OF LABOR.

IDOL # 421006079-2016

FILED

JUN 29 2016

INDUSTRIAL COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on the 29<sup>th</sup> day of June, 2016, a true and correct copy of **Claimant's Correspondence** was served by regular United States mail upon each of the following:

WADA FARMS PARTNERSHIP  
326 S 1400 W  
PINGREE ID 83262

DEPUTY ATTORNEY GENERAL  
IDAHO DEPARTMENT OF LABOR  
**STATE HOUSE MAIL**  
317 W MAIN STREET  
BOISE ID 83735

kc

  
Assistant Commission Secretary

cc:

DENNIS B CURRENT  
898 W CENTER ST  
BLACKFOOT ID 83221

6/14

LAWRENCE G. WASDEN  
ATTORNEY GENERAL

EDITH PACILLO – ISB# 5430  
CHERYL GEORGE – ISB# 4213  
DOUG WERTH – ISB# 3660  
Deputy Attorneys General  
Idaho Department of Labor  
317 W. Main Street  
Boise, Idaho 83735  
Telephone: (208) 332-3570

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

DENNIS B CURRENT, )  
 )  
 Claimant, )  
 )  
 vs. )  
 )  
 WADA FARMS PARTNERSHIP, )  
 )  
 Employer, )  
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 and )  
 )  
 IDAHO DEPARTMENT OF LABOR. )  
 )  
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IDOL NO. 421006079-2016

NOTICE OF APPEARANCE

RECEIVED  
INDUSTRIAL COMMISSION  
2016 JUN 28 AM 9:45

TO THE ABOVE-NAMED PARTIES:

Please be advised that the undersigned Deputy Attorney General representing the Idaho Department of Labor hereby enters the appearance of said attorneys as the attorneys of record for the State of Idaho, Department of Labor, in the above-entitled proceeding. By statute, the Department of Labor is a party to all unemployment insurance appeals in Idaho.

DATED this 22<sup>nd</sup> day of June, 2016.

STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL

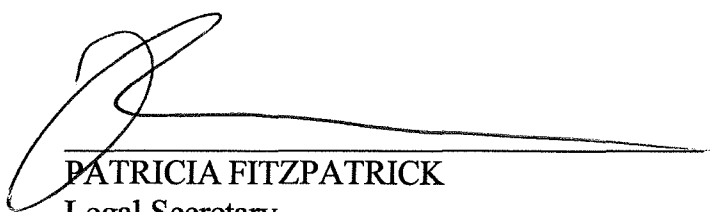
By   
DOUG WERTH – ISB# 3660  
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a copy of the foregoing NOTICE OF APPEARANCE, was mailed, postage prepaid, this 23<sup>rd</sup> day of June, 2016, to:

DENNIS B CURRENT  
898 W CENTER ST  
BLACKFOOT ID 83221

WADA FARMS PARTNERSHIP  
326 S 1400 W  
PINGREE ID 83262

  
PATRICIA FITZPATRICK  
Legal Secretary



TO: Idaho  
Industrial Commission  
Unemployment Appeals Division  
P.O. box 83720  
700 S. Clearwater Ln.  
Boise Id 83720-0041

C/O Judicial Div.  
IDOL Appeals

From: Dennis B. Current  
898 W. Center St  
Blackfoot Id 83221  
# 421006079-2016

Request Extension of time to file brief  
# 421006079-2016

Dennis B. Current  
(208) 380-8595

FILED

JUL 07 2016

INDUSTRIAL COMMISSION

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

DENNIS B. CURRENT,

Claimant,

v.

WADA FARMS PARTNERSHIP,

Employer,

and

IDAHO DEPARTMENT OF LABOR.

IDOL # 421006079-2016

FILED

JUL 11 2016

INDUSTRIAL COMMISSION

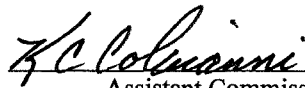
CERTIFICATE OF SERVICE

I hereby certify that on the 11<sup>th</sup> day of July, 2016, a true and correct copy of **Claimant's Request for Extension of Time to File Brief** was served by regular United States mail upon each of the following:

WADA FARMS PARTNERSHIP  
326 S 1400 W  
PINGREE ID 83262

DEPUTY ATTORNEY GENERAL  
IDAHO DEPARTMENT OF LABOR  
**STATE HOUSE MAIL**  
317 W MAIN STREET  
BOISE ID 83735

kc



Assistant Commission Secretary

cc:  
DENNIS B CURRENT  
898 W CENTER ST  
BLACKFOOT ID 83221

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

DENNIS B. CURRENT,

Claimant,

v.

WADA FARMS PARTNERSHIP,

Employer,

and

IDAHO DEPARTMENT OF LABOR.

**IDOL # 421006079-2016**

**ORDER DENYING REQUEST TO  
FILE A BRIEF**

FILED

JUL 12 2016

INDUSTRIAL COMMISSION

On June 14, 2016, Claimant, Dennis B. Current, filed an appeal with the Industrial Commission of a Decision issued by an Appeals Examiner with Idaho Department of Labor regarding his eligibility for unemployment benefits. On June 17, 2016, the Commission served the Notice of Filing of Appeal (“Notice”) and the audio recording of the Appeals Examiner’s hearing. The Notice included a copy of the Commission’s Rules.

Rule 5 (A) of the Rules of Appellate Practice and Procedure under the Idaho Employment Security Law, effective as amended September 4, 2013, provides that a party seeking an opportunity to file a brief shall have seven (7) days from the date of mailing of the record to file a written request with the Commission. In this case, the 7-day window of opportunity to file that request expired on June 28, 2016.

On July 7, 2016, Claimant filed a “Request for Extension of Time to file brief.” (Claimant’s Request.) Because Claimant’s request was filed more than seven (7) days after the Commission mailed the record, Claimant’s Request is DENIED. The Commission is currently

conducting a *de novo* review of Claimant's case. The Commission will issue a separate Decision on the merits of Claimant's appeal upon completion of that review.

DATED this 12<sup>th</sup> day of July 2016.

INDUSTRIAL COMMISSION

  
Cheri J. Ruch, Referee

ATTEST:

  
  
Assistant Commission Secretary

### CERTIFICATE OF SERVICE


I hereby certify that on the 12<sup>th</sup> day of July 2016, a true and correct copy of **Order Denying Request to Augment Record** was served by regular United States mail upon each of the following:

DENNIS B CURRENT  
898 W CENTER ST  
BLACKFOOT ID 83221

WADA FARMS PARTNERSHIP  
326 S 1400 W  
PINGREE ID 83262

DEPUTY ATTORNEY GENERAL  
IDAHO DEPARTMENT OF LABOR  
317 W MAIN ST  
BOISE ID 83735

kc

  
\_\_\_\_\_

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

DENNIS B. CURRENT,  
SSN [REDACTED]

Claimant,

v.

WADA FARMS PARTNERSHIP,

Employer,

and

IDAHO DEPARTMENT OF LABOR.

IDOL # 421006079-2016

NOTICE OF FILING  
OF APPEAL

FILED

JUL 18 2016

INDUSTRIAL COMMISSION

**PLEASE TAKE NOTICE:** The Industrial Commission has received a **Request for Extension of Time to file Brief, construed as an appeal from of Order to Deny Reopening by an Appeals Examiner of the Idaho Department of Labor.** A copy of the appeal is enclosed.

**PLEASE READ ALL THE RULES CAREFULLY**

The Industrial Commission promptly processes all unemployment appeals in the order received. In the meantime, you may want to visit our web site for more information: [www.iic.idaho.gov](http://www.iic.idaho.gov).

The Commission will make its decision in this appeal based on the record of the proceedings before the Appeals Examiner of the Idaho Department of Labor.

INDUSTRIAL COMMISSION  
UNEMPLOYMENT APPEALS DIVISION  
POST OFFICE BOX 83720  
BOISE IDAHO 83720-0041  
(208) 334-6024

*Calls Received by the Industrial Commission May Be Recorded*

NOTICE OF FILING OF APPEAL - 1

**CERTIFICATE OF SERVICE**

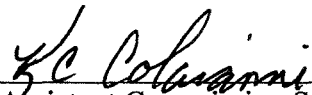
I hereby certify that on the 18<sup>th</sup> day of July, 2016 a true and correct copy of the **Notice of Filing of Appeal** were served by regular United States mail upon the following:

DEPUTY ATTORNEY GENERAL  
IDAHO DEPARTMENT OF LABOR  
**STATE HOUSE MAIL**  
317 W MAIN STREET  
BOISE ID 83735

DENNIS B CURRENT  
898 W CENTER ST  
BLACKFOOT ID 83221

WADA FARMS PARTNERSHIP  
326 S 1400 W  
PINGREE ID 83262

kc

  
\_\_\_\_\_  
Assistant Commission Secretary

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

DENNIS B. CURRENT,

Claimant,

v.

WADA FARMS PARTNERSHIP,

Employer,

and

IDAHO DEPARTMENT OF LABOR.

**IDOL# 421006079-2016**

**ORDER ESTABLISHING BRIEFING  
SCHEDULE**

FILED

JUL 18 2016

INDUSTRIAL COMMISSION

On June 14, 2016, Claimant, Dennis B. Current, appeals to the Industrial Commission a Decision issued by the Idaho Department of Labor (“Department”) ruling him ineligible for unemployment benefits. The Appeals Examiner concluded that Claimant willfully misstated material facts for the purpose of obtaining unemployment benefits. On June 16, 2016, Claimant filed a request with the Appeals Examiner to reopen his hearing for the purpose of admitting additional evidence. The Appeals Examiner denied that request on June 23, 2016. On July 7, 2016, Claimant filed a letter with the Commission stating “Request of Extension of time to file breif [sic] #421006079-2016.” (Claimant’s Request.)

Initially, Claimant’s Request filed on July 7, 2016 was interpreted as a request to file a brief in conjunction with the Appeal Claimant filed on June 14, 2016. Therefore, Claimant’s Request was denied as untimely. To the extent that it was a request to file a brief of the Appeals Examiner’s Decision issued on June 7, 2016, the request was indeed untimely. However, the Commission has since decided to treat Claimant’s Request filed on July 7, 2016 as an appeal of the Appeals Examiner’s Order to Deny Request to Reopen claimant’s hearing. To the extent

that Claimant's appeal of the Appeals Examiner's Order issued on June 23, 2016 is also a request to file a brief, that request is timely and is GRANTED.

**ORDER ESTABLISHING BRIEFING SCHEDULE**

The Commission establishes the following briefing schedule:

Claimant's brief will be due by the close of business on Monday, August 1, 2016.

The Department and Employer, through counsel, may reply within seven (7) days of the receipt of Claimant's brief, if they so choose.

DATED this 18<sup>th</sup> day of July, 2016.

INDUSTRIAL COMMISSION

  
Cheri J. Ruch, Referee

ATTEST:

  
KC Colaninzi  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the 18<sup>th</sup> day of July, 2016, a true and correct copy of **Order Establishing Briefing Schedule** was served by regular United States mail upon each of the following:

DENNIS B CURRENT  
898 W CENTER ST  
BLACKFOOT ID 83221

WADA FARMS PARTNERSHIP  
326 S 1400 W  
PINGREE ID 83262

DEPUTY ATTORNEY GENERAL  
IDAHO DEPARTMENT OF LABOR  
**STATE HOUSE MAIL**  
317 W MAIN STREET  
BOISE ID 83735

kc

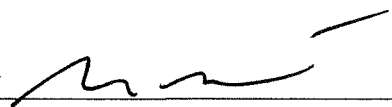
KC Colaninzi





DATED this 20<sup>th</sup> day of July, 2016.

STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL

By   
DOUG WERTH - ISB# 3660  
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a copy of the foregoing NOTICE OF APPEARANCE, was mailed, postage prepaid, this 21<sup>st</sup> day of July, 2016, to:

DENNIS B CURRENT  
898 W CENTER ST  
BLACKFOOT ID 83221

WADA FARMS PARTNERSHIP  
326S 1400 W  
PINGREE ID 83262



PATRICIA FITZPATRICK  
Legal Secretary

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BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

DENNIS B. CURRENT,  
SSN: [REDACTED]

Claimant,

v.

INDUSTRIAL COMMISSION

IDOL # 421006079-2016

NOTICE OF FILING  
OF APPEAL

PLEASE TAKE NOTICE:

**CLAIMANTS BRIEF**

**FILED**  
AUG - 1 2016  
INDUSTRIAL COMMISSION

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**ISSUES:** He or She willfully for the purpose of obtaining unemployment compensation benefits either made a false statement of representation, with actual knowledge of the falsity thereof, or withheld a material fact in order to obtain benefits.

Unemployment Insurance Code, Section: 1257a, Title: 72

**FACTS:**

Thomas J. Holden, Appeals, Examiner for the Idaho Department of Labor with de industria astute deny claimant de industria the admission of a material fact. A letter from Wada Farms Inc, dated June 9, 2016, filed before the Industrial Commission of Idaho filed June 29 2016 attached and also sent to Unemployment Appeals on June 24, 2016 attached.

**SUMMARY:**

Willfully implies of a bad or harmful act, deliberate, intentional, premeditated, and done with purpose.  
Claimants statement of hours worked was absque prudential. Fortuitus not decipio a miscalculation, non libenter.

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**ARGUMENT:**

Claimant did not have knowledge (the total of what is known) of his hours worked until last part of May 2016, stated in Phone Hearing acknowledged by Thomas J. Holden. Claimant casu; fortuito made a miscalculation sine decipio. Not obstinatus just fortuitous. Claimant did not receive page # 34 from phone hearing prior to hearing or have knowledge of page 34 prior to receiving packet from IDOL about hearing. Idol would have commission believe that Claimant had knowledge of his hours and pay for the month of March 2016, at the time Claimant filed certification for unemployment benefits. This is not true. Acknowledged by Thomas J. Holden, during Phone Hearing and in his decision.

The letter from Wada Farms Inc. dated June 9, 2016 clearly states the Issue with Kronos electronic time keeping and payroll system, which is a material fact in Docket Number 421006079-2016 was intentionally denied by Thomas J. Holden, in order to deny re-opening, mailed June 23, 2016.

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**CONCLUSION**

Claimant prays to God that the State of Idaho Industrial Commission would admit evidence of a material fact, letter from Wada Farms Inc. dated June 9, 2016.

Furthermore rescission of decision and demissio of fines and fees. With abstinatus probitas.

DENNIS B. CURRENT

898 W. CENTER ST.

BLACKFOOT, IDAHO 83221



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APPEALS BUREAU  
STATE OF IDAHO INDUSTRIAL COMMISSION  
700 So. Clearwater Ln.  
PO Box 83720  
Boise, ID 83720-0041

**CERTIFICATE OF SERVICE**

I hereby certify that on Aug 1, 2016, a true and correct copy of Claimants Brief was sent by FAXCIMILE to the following:

APPEALS BUREAU  
STATE OF IDAHO INDUSTRIAL COMMISSION  
700 So. Clearwater Ln.  
PO Box 83720  
Boise, ID 83720-0041

6



**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

DENNIS B. CURRENT,

Claimant,

v.

WADA FARMS PARTNERSHIP,

Employer,

and

IDAHO DEPARTMENT OF LABOR.

**IDOL # 421006079-2016**

FILED  
JUN 29 2016  
INDUSTRIAL COMMISSION

**CERTIFICATE OF SERVICE**

I hereby certify that on the 29<sup>th</sup> day of June, 2016, a true and correct copy of **Claimant's Correspondence** was served by regular United States mail upon each of the following:

WADA FARMS PARTNERSHIP  
326 S 1400 W  
PINGREE ID 83262

DEPUTY ATTORNEY GENERAL  
IDAHO DEPARTMENT OF LABOR  
**STATE HOUSE MAIL**  
317 W MAIN STREET  
BOISE ID 83735

kc

  
Assistant Commission Secretary

cc:

DENNIS B CURRENT  
898 W CENTER ST  
BLACKFOOT ID 83221

To: Unemployment Appeals  
PO Box 83720  
Bosie Idaho 83720-0041

From: Dennis B. Current  
898 W. Center St.  
Blackfoot Id. 83221  
IDOL# 421006079-2016  
SSN 521-02-1347

This is documents for appeal of an unemployment insurance decision by Appeals Bureau.

One letter dated June 9 2016 From Stacie Adams Human Resource Department and Administrator for Kronos payroll system.

*Dennis B Current*  
Dennis B. Current  
6/22/2016



Shipper / Grower of Quality World Famous Idaho Potatoes

June 9, 2016

RE: Dennis Current

To Whom It May Concern:

I am writing this letter at the request of Dennis Current in relation to his recent unemployment claim audit. Dennis has worked on a seasonal basis for Wedge Farms since September 2009. Due to the nature of his employment, his hours can vary greatly from week to week, making it difficult for him to project his weekly earnings. We have a biweekly pay schedule as well, so he will have a delay in seeing the final hours that he was paid.

In addition, Dennis was having difficulty accessing our electronic timekeeping and payroll system, KRONOS. His computer didn't support the java requirements necessary to log in off site. This was a problem for a few of our employees. In order to address this, effective April 2016 we completed an update that eliminated that issue for all users.

Dennis does reach out to the payroll department when he has questions, is actively engaged in the process, and does his best to keep accurate records. I believe any discrepancies he reported to his weekly earnings would not have been intentional or willful. Based on these facts I would recommend that the Department of Labor reverse their decision.

If I can assist in this matter further, please don't hesitate to call me at 208-684-9801.

Best Regards,

Stacie Adams  
Human Resource Department

326 S. 1400 W. • Pingree, Idaho 83262 • Phone (208) 684-9801

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

DENNIS B. CURRENT,

Claimant,

v.

WADA FARMS PARTNERSHIP,

Employer,

and

IDAHO DEPARTMENT OF LABOR.

IDOL # 421006079-2016

FILED

AUG 02 2016

INDUSTRIAL COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on the 2<sup>nd</sup> day of August, 2016, a true and correct copy of **Claimant's Brief** was served by regular United States mail upon each of the following:

WADA FARMS PARTNERSHIP  
326 S 1400 W  
PINGREE ID 83262

DEPUTY ATTORNEY GENERAL  
IDAHO DEPARTMENT OF LABOR  
**STATE HOUSE MAIL**  
317 W MAIN STREET  
BOISE ID 83735

kc

  
Assistant Commission Secretary

cc:  
DENNIS B CURRENT  
898 W CENTER ST  
BLACKFOOT ID 83221

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

DENNIS B. CURRENT,  
SSN: [REDACTED]

Claimant,

v.

WADA FARMS PARTNERSHIP,

Employer,

and

IDAHO DEPARTMENT OF LABOR.

**IDOL # 421006079-2016**

**DECISION AND ORDER**

**FILED**

**OCT 21 2016**

**INDUSTRIAL COMMISSION**

*Appeal of a Decision issued by an Appeals Examiner with the Idaho Department of Labor finding Claimant ineligible for unemployment benefits. AFFIRMED.*

Claimant, Dennis B. Current, appeals to the Industrial Commission a Decision issued by the Idaho Department of Labor (“IDOL” or “Department”) ruling him ineligible for unemployment benefits. The Department’s Appeals Examiner concluded that Claimant willfully made false statements for the purpose of obtaining unemployment benefits when he misreported his wages for the weeks ending March 5, 2016 and March 12, 2016. Claimant is consequently ineligible for all of the unemployment benefits he received for those weeks, as well as the fifty-two (52) week period May 8, 2016 through May 6, 2017, and Claimant is ineligible for a waiver and must repay the benefits he has received, but which he was not entitled.

Claimant and a representative from IDOL participated at the Appeals Examiner’s hearing. The hearing was conducted consistent with established procedures. There is no evidence of impropriety or irregularity. Nevertheless, Claimant asked the Appeals Examiner to reopen the

hearing so that he could obtain testimony and evidence from staff at Wada Farms to verify Claimant's assertions about his difficulty getting his time and pay records. The Appeals Examiner denied that request. Because Claimant's testimony on those points is uncontested, there is no reason to doubt it. Therefore, Claimant has been provided with due process. However, Claimant sought an opportunity to brief his arguments before the Commission and that request was granted.

The undersigned Commissioners have performed a *de novo* review of the record, pursuant to Idaho Code § 72-1368(7). Spruell v. Allied Meadows Corp., 117 Idaho 277, 787 P.2d 263 (1990). The evidentiary record in this case contains the audio recording of the hearing the Appeals Examiner convened on June 6, 2016, and the exhibits made part of the record during that proceeding. Those exhibits consist of the Notice of Telephone Hearing [pp. 1 through 3], Exhibit: [pp. 1 through 47]. Claimant's brief filed on August 1, 2016 was also considered. None of the other interested parties filed briefs.

### **FINDINGS OF FACT**

A preponderance of the evidence yields the following Findings of Fact:

1. Claimant is a seasonal employee of Employer, Wada Farms Partnership. When work slows, Claimant seeks unemployment benefits.
2. Claimant clocks in and out on a time clock. Employer deposits Claimant's pay directly into Claimant's bank account. (Audio Recording.)
3. For several months, Claimant did not have computer access to his pay stubs. Periodically, Claimant obtained hard copies of his pay stubs from Employer's accounting office. (Audio Recording.)
4. Employer changed payroll systems. Claimant received a password so that he could review his time sheets and pay stubs via computer in April 2016. However, due to other technical problems, Claimant did not have full access to the information until May 26, 2016. (Audio Recording.)
5. Claimant does not clock out for lunch during the workday. When Claimant completed his weekly claim reports, he used the total hours he had worked during the week, less an hour each day for lunch. Claimant multiplied those

- hours by his hourly wage of \$11.00 per hour and used the result to report his wages. (Audio Recording.)
6. For the week ending March 5, 2016, Claimant reported earnings of \$330.00 based on 33 hours of work. For the week ending March 12, 2016, Claimant reported \$231.00 based on 21 hours of work. (Audio Recording.)
  7. Employer paid Claimant for the hours he worked as reflected on his timecard. Employer did not deduct or adjust Claimant's time for lunch. For the week ending March 5, 2015, Employer reported Claimant earned \$397.51 based on 35.68 hours of work. For the week ending March 12, 2016, Employer reported that Claimant earned 313.59 based on 28.15 hours of work. (Exhibit: pp. 35, 37-38.)
  8. IDOL determined that Claimant willfully misstated a material fact when he reported his earnings for the weeks ending March 5, 2016 and March 12, 2016.
  9. This is the second time IDOL has ruled Claimant ineligible for benefits based on a willful misstatement of material fact.

## **DISCUSSION**

### **Willful Misstatement of Material Fact**

Claimant has been a seasonal employee of Wada Farms Partnership since September 2009. Claimant's hours vary from week to week, depending on Employer's needs. (Exhibit: p. 47.) When Claimant is laid off or work slows down, Claimant opens a claim for unemployment benefits. Claimant has received information pamphlets with each new claim. Claimant reports his work and earnings on his weekly claim reports. (Audio Recording.)

IDOL requested wage information from Wada Farms Partnership for the weeks ending November 7, 2015 through March 19, 2016. The company's payroll manager completed the request by hand and returned it to IDOL as instructed. (Exhibit: p. 35.) IDOL compared the information provided in the Weekly Earnings Request Employer completed to the information Claimant provided in his weekly claim reports for the weeks at issue. Lela Barthlomé, IDOL's

investigator found discrepancies between the wages Employer reported that Claimant had earned and the wages Claimant provided on his weekly claim reports for several of the weeks in which he sought unemployment benefits. For some weeks, the discrepancies were negligible. However, the discrepancies for the weeks ending March 5, 2016 and March 12, 2016 were significant. (Exhibit: p. 31.) Barthlomé sent a letter to Claimant on April 26, 2016 listing the weeks, the wages Claimant had reported, and the wages his employer had reported and asked Claimant for an explanation. (Exhibit: p. 34.) However, Claimant never received the letter, and therefore, did not respond. (Audio Recording.)

IDOL issued an Eligibility Determination ruling that Claimant had willfully misstated a material fact for the purpose of obtaining unemployment benefits when he underreported his wages for the weeks ending March 5, 2016 and March 12, 2016. (Exhibit: pp. 40 through 42.) The Department also sought the repayment of the benefits Claimant had received, but to which he was not entitled, plus civil penalties and interest. (Exhibit: pp. 43 through 44.) Claimant protested both Determinations. (Exhibit: pp. 45-47.)

Claimant has the burden of proving his eligibility for benefits by a preponderance of the evidence whenever the claim is questioned. Guillard v. Department of Employment, 100 Idaho 647, 653, 603 P.2d 981, 987 (1979). Idaho Code § 72-1366(12) provides that a claimant is ineligible for unemployment insurance benefits if it is determined that he or she willfully made a false statement or failed to report a material fact to IDOL. A fact is material “if it is relevant to the determination of a claimant’s right to benefits; it need not actually affect the outcome of the determination.” Meyer v. Skyline Mobile Homes, 99 Idaho 754, 760, 589 P.2d 89, 95 (1979). In this case, the wages Claimant earned in a week he sought unemployment benefits are material facts.



The term “willful” is not defined in the Idaho Employment Security Act. The Idaho Supreme Court defines “willfulness” as “imply[ing] simply a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate the law.” Current v. Haddons Fencing, Inc., 152 Idaho 10, 13, 266 P.3d 485, 488 (2011). In Meyer, the Court observed that in drafting Idaho Code § 72-1366(12), the Idaho legislature “intended to disqualify those claimants who purposely, intentionally, consciously or knowingly fail to report a material fact, not those whose omission is accidental because of negligence, misunderstanding or other cause.” 99 Idaho 754, at 761, 589 P.2d 89, at 96 (1979)(quoting, Archibald v. Huntington, 34 Idaho 558, 565, 201 P. 1041, 1043, (1921)). A conclusion of willful behavior is equally supportable when the finder of fact concludes that the claimant knew or should have known IDOL was asking and did not follow the instructions. Cox v. The Hollow Leg Pub and Brewery, 144 Idaho 154, 158 P.3d 930 (2007).

The Department provided Claimant with written instructions on how to complete his weekly claim reports in the form of a pamphlet he received. (Exhibit: pp. 3-11.) The Internet-based Claimant Portal Claimant used to complete his application for benefits and his weekly claim reports reminded Claimant of the importance of providing accurate information. (Exhibit: p. 15.) Therefore, the issue in this case comes down to assessing the probability that, given the information available to Claimant, he did not know what IDOL was asking, and, then, deliberately elected not to seek clarification. Meyer, 99 Idaho at 762, 589 P.2d at 97.

For the weeks at issue, Claimant underreported his earnings. Claimant explained that until May 27, 2016, he did not have access to his time records or his paystubs. Under Employer’s old accounting system, Claimant could not access his paystubs on his computer at

home because his computer used an older operating system. For a time, Claimant used a computer at the library to access his paystubs, but that stopped working when the library moved their computers and changed some of the settings. Periodically, Claimant obtained paper copies of his pay stubs from the payroll office. (Audio Recording.)

Claimant explained that because he could not access his time records of his paystubs, he estimated his wages when he reported them on his weekly claim reports. Claimant totaled his hours for the week and subtracted an hour each day for lunch because he did not clock out for lunch. He used the remaining hours to report his wages. (Audio Recording.) Claimant contends that he was not aware that Employer did not deduct time for lunch. (Audio Recording.)

Even if Claimant did not have ready access to his time records or his paystubs for the weeks at issue, Claimant stated that he had obtained paper copies of some of his paystubs before Employer changed over to a new accounting system in March 2016. (Audio Recording.) Therefore, Claimant knew or should have known that Employer paid him for all of the hours he was clocked in. There was no reason for Claimant to think that Employer was deducting time for lunch. Certainly, if Claimant made a habit of not clocking out for lunch and Employer expected that workers would take an unpaid lunch break, that matter would have been called to Claimant's attention.

Nevertheless, IDOL would not have penalized Claimant's wage estimates if he had made an effort to correct his estimates before IDOL audited his account. Claimant stated when he called IDOL, the consultant he talked to mentioned that he could estimate, but he would have to update the information. (Audio Recording.) The Idaho Labor Unemployment Insurance Claimant Benefit Rights, Responsibilities and Filing Instructions pamphlet Claimant was instructed to read when he opened his claim also explained that process.

Claimant argues that his actions were not willful. Rather, he made mistakes as the result of good faith efforts to calculate his earnings. (Audio Recording.) McNulty raised similar defenses in McNulty v. Sinclair Oil Corp., 152 Idaho 582, 272 P.3d 554 (2012). After IDOL discovered that McNulty had failed to report wages for several weeks, the Department issued a Determination that he had willfully withheld material information. The amounts McNulty failed to report were less than his weekly benefit amount, and, therefore, had he reported them, the income would not have reduced his benefits. McNulty reasoned that because IDOL had told him he could earn up to half of his weekly benefit amount before his benefits would be reduced, he did not need to report that income. Therefore, McNulty argued that his failure to report his work and wages was not willful because he was not trying to obtain benefits to which he was not entitled. Id. 586, 272 P.3d 589. The Court noted that the question the Department posed was clear and unambiguous, asking that “*all* earnings, regardless of whether they impact one’s [sic] benefits, must be reported when filing a claim.” Id. At 587, 272 P.3d at 559. IDOL provided McNulty with all of the information and resources the Department provided Claimant in this case to ensure proper reporting of wages.

Claimant may not have intended any “fraud” when he underreported his wages. However, he made assumptions about his hours and did nothing to verify that the wages he reported were correct. His behavior in underreporting his wages for the weeks at issue was consciously negligent and the kind of behavior Idaho Code § 72-1366(12) was intended to discourage. Consequently, the benefits Claimant received for the weeks ending March 5, 2016 and March 12, 2016 were obtained through a willful misstatement of material fact. Claimant is ineligible for *all* of the benefits he received during those weeks as well as any waiting week

credit. Claimant's conduct has also rendered him ineligible for unemployment benefits for the fifty-two (52) week period May 8, 2016 through May 6, 2017.

### **Waiver**

The Appeals Examiner also concluded that Claimant is ineligible for a waiver and must repay the benefits he received, but to which he was not entitled. Idaho Code § 72-1369(5) provides that the requirement to repay an overpayment, other than one resulting from a false statement, misrepresentation, or failure to report a material fact by the claimant, can be waived.

Claimant's overpayment in this case was the result of a false statement or failure to report a material fact. Therefore, as a matter of law, Claimant is ineligible for a waiver from the requirement that he repay the benefits that he received, but to which he was not entitled. Claimant must repay all of these benefits, along with applicable penalties.

### **CONCLUSIONS OF LAW**

#### **I**

Claimant willfully misstated material facts for the purpose of obtaining unemployment benefits when he misreported his wages. Claimant is ineligible for all of the benefits he received and any waiting week credit for the weeks ending March 5, 2016 and March 12, 2016. Claimant's conduct has also rendered him ineligible for unemployment benefits for the fifty-two (52) week period May 8, 2016 through May 6, 2017.

#### **II**

Claimant is ineligible for a waiver and must repay the benefits he received, but to which he was not entitled.

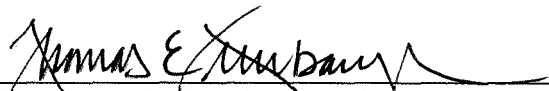
**ORDER**

Based on the foregoing analysis, the Decision of the Appeals Examiner is AFFIRMED. Claimant willfully misstated material facts for the purpose of obtaining unemployment benefits when he misreported his wages. Claimant is ineligible for all of the benefits he received and any waiting week credit for the weeks ending March 5, 2016 and March 12, 2016. Claimant's conduct has also rendered him ineligible for unemployment benefits for the period May 8, 2016 through May 6, 2017. Claimant is ineligible for a waiver and must repay the benefits he has received, but to which he was not entitled, along with applicable interest and penalties. This is a final order under Idaho Code § 72-1368(7).

DATED this 21<sup>st</sup> day of October, 2016.

INDUSTRIAL COMMISSION

  
\_\_\_\_\_  
R.D. Maynard, Chairman

  
\_\_\_\_\_  
Thomas E. Limbaugh, Commissioner

  
\_\_\_\_\_  
Thomas P. Baskin, Commissioner

ATTEST:

  
\_\_\_\_\_  
Assistant Commission Secretary



**CERTIFICATE OF SERVICE**

I hereby certify that on the 21<sup>st</sup> day of October, 2016 a true and correct copy of **Decision and Order** was served by regular United States mail upon each of the following:

DENNIS B CURRENT  
898 W CENTER ST  
BLACKFOOT ID 83221

WADA FARMS PARTNERSHIP  
326 S 1400 W  
PINGREE ID 83262

DEPUTY ATTORNEY GENERAL  
IDAHO DEPARTMENT OF LABOR  
**STATE HOUSE MAIL**  
317 W MAIN STREET  
BOISE ID 83735

kc

KC Colasanti

Dennis Current  
 898 W. Center St  
 Blackfoot, Idaho 83221

FILED

NOV 30 2016

INDUSTRIAL COMMISSION

I, Dennis Current Request Appeal to the Supreme Court of Idaho, IDOL # 421006079-2016  
 I, Dennis Current would ask the Supreme Court of Idaho for a definition of the word "willfully" as it applies to Unemployment Insurance Code, Section 1257a, Title 72 as follows: He or She willfully for the purpose of obtaining an employment compensation benefits either made a false statement of representation, with actual knowledge of the falsity thereof, or withheld a material fact in order to obtain benefits

Thank you

Dennis B. Current  
 898 W. Center St  
 Blackfoot Idaho 83221



Exhibit: Page 42 of 47

TOTAL P.01

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

DENNIS B. CURRENT,  
Claimant/Appellant,  
v.  
WADA FARMS PARTNERSHIP,  
Employer/Respondent,  
and  
IDAHO DEPARTMENT OF LABOR,  
Respondent.

SUPREME COURT NO. 44683

CERTIFICATE OF APPEAL  
OF DENNIS B. CURRENT

FILED

DEC 02 2016

INDUSTRIAL COMMISSION

RECEIVED  
IDAHO DEPARTMENT OF LABOR  
COURT DEPARTMENT  
2016 DEC 02 10:00 AM

Appeal From: Industrial Commission Chairman R.D. Maynard presiding.  
Case Number: IDOL # 421006079-2016  
Order Appealed from: DECISION AND ORDER ENTERED OCTOBER 21, 2016  
Appellant: DENNIS B CURRENT  
898 W CENTER ST  
BLACKFOOT ID 83221  
Employer/Respondent: WADA FARMS PARTNERSHIP  
326 S 1400 W  
BOISE ID 83716  
Representative/IDOL: DOUG WERTH  
IDAHO DEPARTMENT OF LABOR  
317 W MAIN ST  
BOISE ID 83735  
Appealed By: Dennis B. Current  
Claimant/Appellant  
Appealed Against: Wada Farms Partnership  
Employer/Respondent

CERTIFICATE OF APPEAL OF DENNIS B. CURRENT - 1

FILED - ORIGINAL  
DEC - 5 2016  
Supreme Court Clerk  
Entered on AFS by leg



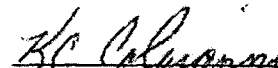
Notice of Appeal Filed: November 30, 2016

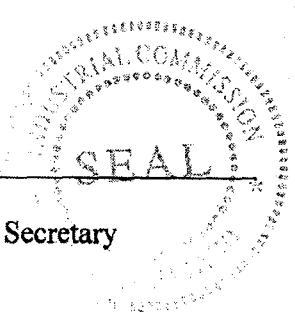
Appellate Fee Paid: Fees will follow

Name of Reporter: M DEAN WILLIS  
PO BOX 1241  
EAGLE ID 83616

Transcript: Transcript will be filed with Agency Record once fees are paid.

Dated: May 18, 2016

  
KC Colaianni  
Assistant Commission Secretary



**CERTIFICATE OF APPEAL OF DENNIS B. CURRENT - 2**

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

RECEIVED  
IDAHO SUPREME COURT  
COURT OF APPEALS

2016 DEC -9 AM 8:41

DENNIS B. CURRENT,

Claimant/Appellant,

v.

WADA FARMS PARTNERSHIP,

Employer/Respondent,

and

IDAHO DEPARTMENT OF LABOR,

Respondent.

SUPREME COURT NO. 44683

**CORRECTED  
CERTIFICATE OF APPEAL  
OF DENNIS B. CURRENT**

**FILED**

**DEC 02 2016**

**INDUSTRIAL COMMISSION**

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

Case Number: IDOL # 421006079-2016

Order Appealed from: DECISION AND ORDER ENTERED OCTOBER 21, 2016

Appellant: DENNIS B CURRENT  
898 W CENTER ST  
BLACKFOOT ID 83221

Employer/Respondent: WADA FARMS PARTNERSHIP  
326 S 1400 W  
BOISE ID 83716

Representative/IDOL: DOUG WERTH  
IDAHO DEPARTMENT OF LABOR  
317 W MAIN ST  
BOISE ID 83735

Appealed By: Dennis B. Current  
Claimant/Appellant

Appealed Against: Wada Farms Partnership  
Employer/Respondent

**CORRECTED CERTIFICATE OF APPEAL OF DENNIS B. CURRENT - 1**

**FILED - COPY**

**DEC - 9 2016**

Supreme Court Court of Appeals  
Entered on ATS by KA


Notice of Appeal Filed: November 30, 2016

Appellate Fee Paid: Fees will follow

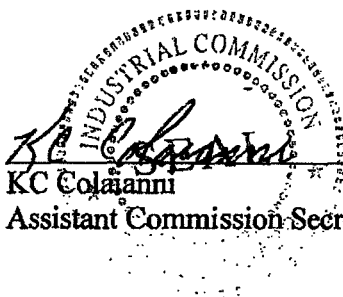
Name of Reporter: M DEAN WILLIS  
PO BOX 1241  
EAGLE ID 83616

Transcript: Transcript will be filed with Agency Record once fees are paid.

Dated: December 2, 2016



**KC Colajanni**  
Assistant Commission Secretary



**CORRECTED CERTIFICATE OF APPEAL OF DENNIS B. CURRENT - 2**

RECEIVED  
IDAHO SUPREME COURT  
COURT OF APPEALS

**BEFORE THE SUPREME COURT OF THE STATE OF IDAHO**

2016 DEC 15 AM 9:35

DENNIS B. CURRENT,

Claimant/Appellant,

v.

WADA FARMS PARTNERSHIP,

Employer/Respondent,

and

IDAHO DEPARTMENT OF LABOR,

Respondent.

SUPREME COURT NO. 44683

**\* SECOND \*  
CORRECTED  
CERTIFICATE OF APPEAL  
OF DENNIS B. CURRENT**

**FILED**

**DEC 02 2016**

**INDUSTRIAL COMMISSION**

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

Case Number: IDOL # 421006079-2016

Order Appealed from: DECISION AND ORDER ENTERED OCTOBER 21, 2016

Appellant: DENNIS B CURRENT  
898 W CENTER ST  
BLACKFOOT ID 83221

Employer/Respondent: WADA FARMS PARTNERSHIP  
326 S 1400 W  
PINGREE ID 83262

Representative/IDOL: DOUG WERTH  
IDAHO DEPARTMENT OF LABOR  
317 W MAIN ST  
BOISE ID 83735

Appealed By: Dennis B. Current  
Claimant/Appellant

Appealed Against: Wada Farms Partnership  
Employer/Respondent

**CORRECTED CERTIFICATE OF APPEAL OF DENNIS B. CURRENT - 1**

**FILED - ORIGINAL**

**DEC 15 2016**

Supreme Court \_\_\_\_\_ Court of Appeals \_\_\_\_\_  
Entered on ATS by *[Signature]*

Notice of Appeal Filed: November 30, 2016


Appellate Fee Paid: Fees will follow

Name of Reporter: M DEAN WILLIS  
PO BOX 1241  
EAGLE ID 83616

Transcript: Transcript will be filed with Agency Record once fees are paid.

Dated: December 2, 2016

*KC Colaianni*  
KC Colaianni  
Assistant Commission Secretary

The seal of the Industrial Commission of Idaho is circular. It features the text "INDUSTRIAL COMMISSION" around the top inner edge and "IDAHO" at the bottom. A five-pointed star is positioned on the right side of the seal. The word "SEAL" is printed across the center of the seal.

**CORRECTED CERTIFICATE OF APPEAL OF DENNIS B. CURRENT - 2**

**CERTIFICATION**

I, KC Colaianni, the undersigned Assistant Commission 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 November 30, 2016; Decision and Order filed October 21, 2016; and, the whole thereof, Docket Number 421006079-2016 for Dennis B. Current.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Commission this 2<sup>nd</sup> day of December, 2016.

*KC Colaianni*  
\_\_\_\_\_  
KC Colaianni  
Assistant Commission Secretary




**CERTIFICATION – DENNIS B. CURRENT**

**CERTIFICATION OF RECORD**

I, KC Colaianni, the undersigned Assistant Commission 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 Agency'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 admitted in this proceeding are correctly listed in the List of Exhibits (i). Said exhibits will be lodged with the Supreme Court after the Record is settled.

DATED this 23<sup>rd</sup> day of January, 2017.

  
KC Colaianni  
Assistant Commission Secretary



**CERTIFICATION OF RECORD – DENNIS B. CURRENT**

**BEFORE THE SUPREME COURT OF THE STATE OF IDAHO**

DENNIS B. CURRENT,

Claimant/Appellant,

v.

WADA FARMS PARTNERSHIP,

Employer/Respondent,

and

IDAHO DEPARTMENT OF LABOR,

Respondent.

**SUPREME COURT NO. 44683**

**NOTICE OF COMPLETION**

**TO:** Stephen W. Kenyon, Clerk of the Courts; and  
Dennis B. Current Claimant/Appellant; and  
Wada Farms Partnership, Employer/Respondent; and  
Douglas Wirth, for Idaho Department of Labor/Respondent.

YOU ARE HEREBY NOTIFIED that the Agency'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:

**Address for Claimant/Appellant**

DENNIS B CURRENT  
898 W CENTER ST  
BLACKFOOT ID 83221

**Address for Employer/Respondent**

WADA FARMS PARTNERSHIP  
326 S 1400 W  
PINGREE ID 83262

**NOTICE OF COMPLETION – DENNIS B. CURRENT - 1**



IDAHO DEPARTMENT OF LABOR  
DOUGLAS A WERTH  
DEPUTY ATTORNEY GENERAL  
317 W MAIN STREET  
BOISE ID 83735

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

DATED at Boise, Idaho this 23<sup>rd</sup> day of January, 2017.

INDUSTRIAL COMMISSION

  
KC Colaianni  
Assistant Commission Secretary



NOTICE OF COMPLETION – DENNIS B. CURRENT - 2