

BOISE, IDAHO, FEBRUARY 12, 2025, AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

DAVID COLER,)	
)	
Claimant-Appellant,)	Docket No. 51065-2023
)	
v.)	
)	
THE HOME DEPOT U.S.A., INC.,)	
Employer; and NEW HAMPSHIRE)	
INSURANCE COMPANY, Surety,)	
)	
Defendants-Respondents.)	
)	

Appeal from the Idaho Industrial Commission.

Goicoechea Law, LLC, Lewiston, for Appellant.

Bowen & Bailey, LLP, for Respondents.

This appeal arises from a worker’s compensation claim and subsequent order of the Idaho Industrial Commission. David Coler sustained a “crush injury” in the course of his employment with Home Depot when a 70 pound box of tile fell approximately 3 feet from a second shelf and landed on his left foot. Coler underwent multiple surgeries and experienced continuing pain from the injury.

Coler filed a worker’s compensation claim seeking several forms of relief, including: (1) a permanent partial disability rating of 83.2%, or in the alternative a finding of total and permanent disability under the odd-lot doctrine; (2) that the Commission retain jurisdiction due to the progressively worsening nature of Coler’s injury; and (3) an award of attorney fees and costs.

The referee assigned to the matter issued findings of fact and conclusions of law, which the Commission adopted. The Commission ordered that Coler was entitled to a permanent partial disability rating of 37.4% and declined to award attorney fees. The Commission declined to address the issues of total and permanent disability and retained jurisdiction based on the referee’s conclusion that neither issue was properly noticed for hearing.

Coler appeals from the Commission’s order and argues that the referee erred in several respects which errors were subsequently adopted by the Commission:

- Coler properly noticed the issue of retained jurisdiction because it is inherent to the permanent disability evaluation.
- The referee's permanent disability findings violated the Commission's "*Deon* rule" because the referee rejected an expert's calculation of permanent disability that gave greater weight to Coler's loss of labor market than to his loss of wage-earning capacity.
- The referee made evidentiary errors by sustaining objections to the expert's testimony during a post-hearing deposition.
- The referee did not act as an unbiased adjudicator.
- Coler could not have previously noticed the total and permanent disability issue because he was not aware of evidence supporting that claim until the hearing before the referee, when a Home Depot manager testified concerning Coler's work accommodations.
- Coler should have been granted attorney fees because Home Depot and the surety acted unreasonably.