

3. Whether and to what extent Claimant is entitled to the following benefits:
 - (a) permanent partial impairment (PPI); and
 - (b) permanent disability in excess of impairment (PPD).

The parties agreed Dr. Goodwin's rating constituted Claimant's PPI.

CONTENTIONS OF THE PARTIES

Claimant contends he injured his right shoulder at work on or about August 17, 2000. He underwent surgery and has suffered a permanent impairment. His postsurgical work restrictions and other factors result in a significant permanent disability which should be rated as high as 55%.

Defendants contend Claimant had prior shoulder surgeries and has significant problems therefrom. Impairment and disability should be apportioned to correctly reflect the preexisting causal factors. Moreover, Claimant's left shoulder and knee problems are unrelated to the accident. Finally, Claimant has avoided a reasonable job search because of factors unrelated to his physical condition.

EVIDENCE CONSIDERED

The record in the instant case consists of the following:

1. Oral testimony at hearing by Claimant and vocational expert Dr. Nancy Collins;
2. Claimant's exhibits 1 – 4;
3. Defendants' exhibit A; and
4. Posthearing deposition of ICRD consultant Shaun Byrne.

FINDINGS OF FACT

1. Claimant worked for Industrial Tool & Supply d/b/a Tool Liquidator. Professional Staff Management was a nominal employer which handled Tool Liquidator's

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 2

payroll and other personnel matters.

2. On August 17, 2000, Claimant was lifting a battery charger – which weighed about 70 pounds – into the back of a customer’s vehicle. The vehicle was a pickup with a utility bed and a short tailgate. The tailgate was locked, and Claimant had to lift the battery charger over it. He experienced sudden right shoulder pain and dropped the charger into the truck bed.

3. Claimant suffered a 1999 injury to his right shoulder which resulted in surgery, a rotator cuff repair. Initially diagnosing a biceps tendon strain, Stan Griffiths, M.D., treated Claimant conservatively from September 21, 1999, to March 6, 2000. On the latter date, Dr. Griffiths recommended arthroscopic surgery.

4. Arthroscopy on March 10, 2000, showed a rotator cuff tear and no problem with the biceps tendon. Dr. Griffiths repaired the anterior glenoid labral and full thickness supraspinatus tears with a “mini open” procedure. On April 18, 2000, Claimant returned to Dr. Griffiths. He described an event at home and was concerned about possibly having torn the rotator cuff again. Dr. Griffiths again treated him conservatively and noted recurring biceps tendon pain.

5. On July 11, 2000, Dr. Griffiths provided an impairment rating. That document is not of record, but Thomas Goodwin, M.D., refers to it in a later record as being 10%. The record does not reflect whether this was related to the whole person or to the right upper extremity.

6. After the subject accident, Dr. Griffiths saw Claimant on August 21, 2000. An MRI in mid-October showed a large rotator cuff tear. Surgery on November 21, 2000, revealed this tear was substantially larger and the tendon more retracted than the earlier tear.

7. Dr. Griffiths’ notes repeatedly express concern that Claimant was using his shoulder too much before it had healed from the surgeries.

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

8. Dr. Goodwin began treating Claimant on February 7, 2001. He noted that one or two days after Dr. Griffiths' surgery Claimant moved to Boise. Claimant reported no medical follow-up since. Dr. Goodwin noted that Claimant had discharged his Idaho Falls attorney. Dr. Goodwin diagnosed a possible re-tear of the rotator cuff, provided temporary restrictions, and referred him to physical therapy.

9. On August 27, 2001, Dr. Goodwin performed arthroscopic surgery. He found Claimant's rotator cuff tear to be irreparable. He found a "complete absence" of the supraspinatus "with no visualization of any aspect of that tendon. His previous sutures had pulled out of whatever [they] had been repaired to, and were left attached to the greater tuberosity and had formed some hypertrophic bone at that area." Dr. Goodwin also noted the infraspinatus was torn, atrophied, and had retracted irreparably. Dr. Goodwin smoothed and fixed what he could.

10. On October 15, 2001, Dr. Goodwin recommended continued physical therapy for three months as a "transition program."

11. On October 22, 2001, Dr. Goodwin opined Claimant at maximum medical improvement (MMI) and rated Claimant's impairment at 20% of the right upper extremity. He restricted Claimant from unassisted lifting of 25 to 30 pounds to the waist, 10 to 15 pounds to the chest, and 5 pounds above chest height. He cautioned Claimant to avoid more than "very light pushing and pulling" with his right arm, as well as climbing on unrestricted heights.

12. On November 6, 2001, Dr. Goodwin apportioned "10%" of Claimant's rating to the prior injury "as previously rated by Dr. Stan Griffiths on 8/3/00." Although the record is ambiguous because Dr. Griffiths' rating is missing, it is likely this apportionment represents half of the 20% of the right upper extremity rated by Dr. Goodwin. If Dr. Griffiths' rating had been

10% of the whole person, the apportionment would result in more than half attributed to the preexisting condition and surgery.

13. On July 12, 2002, Claimant returned to Dr. Goodwin with a left shoulder problem unrelated to the subject accident. He ordered an MRI. Subsequent treatment was for the left shoulder.

14. From February 22, 2001, through August 13, 2002, ICRD consultant Shaun Byrne worked with Claimant. He opined Claimant was employable within Dr. Goodwin's restrictions. His notes show Claimant did follow up on some job leads provided by Mr. Byrne. Claimant was also involved in personal child custody matters and was unable to "obtain his driver's license back." Claimant testified lack of transportation kept him from seeking some jobs. On July 12, 2002, after a few months of insufficient contact with Mr. Byrne, Claimant reported he had transportation and continued to look for work. Claimant reported he was buying and repairing cars for resale. On August 13, 2002, Mr. Byrne noted, "The claimant and I came to the agreement to close his file at this time as he continues with [h]is own agenda and is not fully participating in a job search at this time."

15. On February 22, 2002, Nancy J. Collins, Ph.D., evaluated Claimant's employability. Under Dr. Goodwin's restrictions and considering other factors, she opined Claimant's permanent disability at 55%. She updated her report on October 22, 2004. She stated, "My opinion has not changed relative to his loss of access or his earning capacity, but without some help he could end up totally disabled from the depression."

Discussion and Further Findings

16. Claimant suffers a significant right shoulder problem. However, at hearing he minimized his abilities and activities in a way that was not credible. Claimant's self-reported job

search does not appear genuine. He appears to have focused on his restrictions in a way to avoid job offers.

17. **Causation.** Claimant suffered a rotator cuff tear in the August 17, 2000, accident. It was repaired by Dr. Griffiths. What happened between the repair and the re-tear seen by Dr. Goodwin is a mystery. Claimant moved and did not seek appropriate follow up care. He did not give treaters a chance to specify restrictions. Dr. Griffiths had previously noted Claimant's overuse of his healing shoulder. Claimant failed to show the re-tear found by Dr. Goodwin was related to the subject accident.

18. **Apportionment and PPD.** Dr. Goodwin apportioned half of Claimant's rated impairment to Claimant's preexisting condition. Claimant failed to prove the extent to which the condition found by Dr. Goodwin was caused by the subject accident. Dr. Collins' opinion was based in part upon an absence of a record of restrictions before Dr. Goodwin imposed restrictions on October 22, 2001.

19. As a result of Claimant's failure to demonstrate a likely relationship between the subject accident and the extent of the condition Dr. Goodwin treated, Claimant's failure to make himself available for reasonable postsurgical follow-up after Dr. Griffiths' surgery, and Claimant's lack of credibility in describing his abilities, activities, and job search, as well as after consideration of apportionment and all medical and other factors, Claimant's disability related to the subject accident is determined to be 15% of the whole person, inclusive of permanent impairment.

CONCLUSIONS OF LAW

1. Claimant suffered a right shoulder injury in a compensable work accident on August 17, 2000;

2. Claimant failed to show to what extent his condition as treated by Dr. Goodwin was related to that accident;

3. Claimant suffered a permanent impairment as rated by Dr. Goodwin and permanent disability of 15%, inclusive of permanent impairment.

RECOMMENDATION

The Referee recommends that the Commission adopt the foregoing findings of fact and conclusions of law and issue an appropriate final order.

DATED this 25TH day of March, 2005.

INDUSTRIAL COMMISSION

/S/ _____
Douglas A. Donohue, Referee

ATTEST:

/S/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 11TH day of APRIL, 2005, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

David V. Nielsen
P.O. Box 1192
Boise, ID 83701

Glenna M. Christensen
P.O. Box 829
Boise, ID 83701

db

/S/ _____

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

ROBERT McKAGUE,)	
Claimant,)	IC 01-005257
v.)	
)	
INDUSTRIAL TOOL & SUPPLY, dba,)	
TOOL LIQUIDATOR,)	
)	
Employer,)	ORDER
and)	
)	
PROFESSIONAL STAFF MANAGEMENT,)	
)	FILED APRIL 11 2005
Employer,)	
and)	
)	
LEGION INSURANCE COMPANY,)	
)	
Surety,)	
Defendants.)	
_____)	

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

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

1. Claimant suffered a right shoulder injury in a compensable work accident on August 17, 2000.
2. Claimant failed to show to what extent his condition as treated by Dr. Goodwin was related to that accident.

3. Claimant suffered a permanent impairment as rated by Dr. Goodwin and permanent disability of 15%, inclusive of permanent impairment.

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

DATED this 11TH day of APRIL, 2005.

INDUSTRIAL COMMISSION

/S/ _____
Thomas E. Limbaugh, Chairman

/S/ _____
James F. Kile, Commissioner

/S/ _____
R. D. Maynard, Commissioner

ATTEST:

/S/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on 11TH day of APRIL, 2005, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

David V. Nielsen
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