

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

LAURA TAYLOR,)	
)	
Claimant,)	IC 01-502825
)	
v.)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
BENEWAH COMMUNITY HOSPITAL,)	AND RECOMMENDATION
)	
Employer,)	Filed July 27, 2006
)	
and)	
)	
LIBERTY NORTHWEST INSURANCE)	
CORPORATION,)	
)	
Surety,)	
)	
Defendants.)	
_____)	

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Alan Taylor, who conducted a hearing in Coeur d’Alene on February 15, 2006. Claimant, Laura Taylor, was present in person and represented by Bradley J. Stoddard of Coeur d’Alene; Defendant Employer, Benewah Community Hospital, and Defendant Surety, Liberty Northwest Insurance Corporation, were represented by E. Scott Harmon of Boise. The parties presented oral and documentary evidence. This matter was then continued for the submission of briefs, and subsequently came under advisement on May 11, 2006.

ISSUES

The noticed issues to be resolved are:

1. Whether Claimant is entitled to permanent partial impairment benefits, and the extent thereof; and
2. Whether Claimant is entitled to permanent partial disability in excess of permanent impairment, and the extent thereof.

ARGUMENTS OF THE PARTIES

Claimant argues she is entitled to 10% permanent impairment of the lower extremity, and 40-50% permanent disability, inclusive of impairment, due to her industrial accident. Defendants assert that Claimant is entitled to the average of 5% and 10% permanent impairment of the lower extremity—which amount Defendants have already paid—and no disability in excess of impairment.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant taken at the hearing;
2. Claimant's Exhibits A through J admitted at the hearing; and
3. Defendants Employer and Surety's Exhibits A through K admitted at the hearing.

After having fully considered all of the above evidence, and the arguments of the parties, the Referee submits the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Claimant was born in 1951. She graduated from high school in 1969 in Seattle, Washington. Following high school she attended vocational-technical training. She later obtained a degree as a licensed practical nurse (LPN) and commenced working in a long-term care facility. By

approximately 1987, she was working full-time at an acute care hospital with approximately 800 beds. Her duties required standing or walking at least seven hours of each eight-hour shift. She earned approximately \$8.00 per hour.

2. In approximately 1989 Claimant began further studies to become a registered nurse (RN). Her vocational goal was to become an RN, then gain training and skills in intensive care, emergency room care, and labor and delivery so she could work as an RN in a hospital. In pursuit of these goals, she worked part or full-time and took RN classes periodically for approximately the next eight years.

3. From approximately 1989 to 1992, Claimant worked full-time at a long-term care facility. She became the LPN charge nurse for about 90 patients. She stood or walked at least six hours per eight-hour shift. Her ending pay was approximately \$12.00 per hour. Claimant next worked as an LPN at a facility providing acute care for developmentally disabled adults. Her duties required standing at least six hours per eight-hour shift. Her departing salary was \$2600.00 per month.

4. From July 1997 until April 2000, Claimant worked as an LPN and charge nurse at yet another long-term care facility. Her duties required standing or walking at least seven hours per eight-hour shift. She worked mostly part-time as she also pursued course work for her RN degree. Her departing pay was approximately \$13.00 per hour.

5. From April 2000 until February 2001, Claimant pursued her RN studies full-time. She was enrolled in a long distance learning program and studied at home. She also found mentors in her community from which she learned the practical clinical skills necessary for her RN certificate.

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

6. In February 2001, Claimant commenced working part-time for Employer, Benewah Community Hospital, as an LPN earning \$11.50 per hour. Her duties required her to spend at least seven hours standing per eight-hour shift. Her overall health was good and other than bilateral varicose veins she had no ankle or feet problems. At that time, RNs working at Benewah Community Hospital earned approximately \$16.00 per hour.

7. On April 1, 2001, as she was leaving work, Claimant stumbled on a cement step and fell landing awkwardly with both feet under her, then falling onto her side. She noted immediate pain in both feet and ankles and was taken via wheelchair to the emergency room where Mary Jansen, M.D., diagnosed right ankle sprain and contusion of the left first metatarsal pad. Subsequent x-rays revealed a sesamoid fracture in Claimant's left foot. Claimant lived in St. Maries at the time of her accident. She was off work from April until June 2001.

8. Claimant's right foot and ankle pain resolved after a few weeks, however her left foot remained symptomatic and she was unable to walk on it. Orthopedic surgeon John McNulty, M.D., treated Claimant with medications and physical therapy, and opined that Claimant's sesamoid fracture should improve over time without surgery.

9. In June 2001, Claimant returned to part-time work at Benewah Community Hospital in spite of left foot pain. She left that employment in July 2001 because of foot pain. She was earning approximately \$13.00 per hour when she left.

10. Claimant next obtained employment with Panhandle Home Health, providing healthcare to individuals in their own homes. She earned \$13.00 per hour and worked an average of 24 hours per week. She was not required to be on her feet more than two hours per eight-hour shift and was able to alternate sitting and standing at will. Her left foot symptoms improved.

11. In August 2001, Claimant completed her RN studies and in October 2001, she successfully passed her RN boards and received her RN certification from the State of Idaho.

12. In February 2002, Claimant presented to orthopedic surgeon Roger Dunteman, M.D., with continuing left foot pain. He diagnosed left ankle tendonitis and symptomatic sesamoid fracture. He recommended physical therapy and referred Claimant to Michael Drager, DPM, for custom orthotics. Dr. Drager provided Claimant with orthotic inserts, however, Claimant did not wear them regularly because she was unable to find shoes in which her orthotic inserts would fit comfortably.

13. From May 2002 through April 2003, Claimant worked as an RN at Sacred Heart Medical Center in Spokane. She obtained experience in surgical, acute, and respiratory care. She worked 40 hours per week for the first three months, and 32 hours per week thereafter. While working at Sacred Heart, Claimant was required to be on her feet the majority of her shift and could not alternate sitting or standing at will. She experienced almost daily swelling and pain in her left foot. She elevated her left foot at each break and took Motrin regularly. Claimant was earning \$21.00 per hour when she left Sacred Heart.

14. In April 2003, Claimant commenced working full-time for Aging and Long Term Care of Eastern Washington teaching other home caregivers and providing RN home visits. She earned approximately \$3,000 per month. She was able to sit frequently and her duties required her to stand or walk only two or three hours per eight-hour shift.

15. Due to continued left foot symptoms, Claimant commenced treating with James N. Dunlap, M.D. After diagnostic testing and evaluation, he opined that Claimant's continued left foot pain resulted from left posterior tibial tendon insufficiency which developed from her altered gait

due to the sesamoid fracture sustained in her industrial accident. On June 7, 2004, Dr. Dunlap performed a left posterior tibial tendon debridement and repair, left flexor digitorum longus transfer, and left medial slide calcaneal osteotomy.

16. In September 2004, after recuperating from surgery, Claimant returned to work full-time. Although her foot symptoms improved after surgery, she continued to experience some left foot pain.

17. From November 2004 until May 2005, Claimant worked part-time as an RN for Gentiva Health Services in Spokane providing home healthcare and earning \$700.00 per week. Claimant was only required to be on her feet approximately half of her work time.

18. Since November 2005, Claimant has been working 32 hours per week as an RN for Assured Home Health earning \$18.70 per hour. Claimant does not believe she could work more than approximately 32 hours per week due to left foot pain. Her duties only require her to be on her feet two or three hours per eight-hour shift and she is able to sit or stand at will.

19. At the time of hearing, Claimant lived in Toledo, Washington, about 30 minutes south of Olympia. She worked about 20 miles from Olympia. Within the county where she works, there are several hospitals that regularly advertise employment opportunities for RNs. Claimant has not applied for work at any hospitals because she does not believe she could tolerate the prolonged standing which hospital RN work requires.

20. Claimant's activities of daily living have been impacted by her left foot condition. She can stand or walk comfortably for 15-20 minutes. She limits the time on her feet for housework and shopping. Her left foot swells throughout the day. She elevates her foot and puts ice on it several times a week. Her left ankle aches, tingles and feels unstable. Claimant feels unsteady when

walking on uneven ground, or walking down stairs. She has fallen several times in the last two years because of her left foot.

21. Prior to her industrial accident, Claimant walked, played tennis, and hiked. She now avoids being on her feet. She rides a stationary bicycle for approximately 10 minutes at a time and participates in moderate resistance exercises three times weekly.

DISCUSSION AND FURTHER FINDINGS

22. The provisions of the Workers' Compensation Law are to be liberally construed in favor of the employee. Haldiman v. American Fine Foods, 117 Idaho 955, 793 P.2d 187 (1990). The humane purposes which it serves leave no room for narrow, technical construction. Ogden v. Thompson, 128 Idaho 87, 910 P.2d 759 (1996).

23. **Impairment.** "Permanent impairment" is any anatomic or functional abnormality or loss after maximal medical rehabilitation has been achieved and which abnormality or loss, medically, is considered stable or non-progressive at the time of evaluation. Idaho Code § 72-422. "Evaluation (rating) of permanent impairment" is a medical appraisal of the nature and extent of the injury or disease as it affects an injured employee's personal efficiency in the activities of daily living, such as self-care, communication, normal living postures, ambulation, traveling, and non-specialized activities of bodily members. Idaho Code § 72-424. 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).

24. Orthopedic surgeon Stephen Sears, M.D., examined Claimant on February 4, 2005, at Defendants' request. He opined that that Claimant was capable of continuing to work without formal restrictions and rated her permanent impairment at 5% of the left ankle due to objective

swelling.

25. Orthopedist William Shanks, M.D., examined Claimant on April 14, 2005, at Claimant's counsel's request, and opined that Claimant would likely be restricted to the type of work she was then performing, and would not be able to tolerate a job requiring her to be on her feet for the majority of her shift. He rated Claimant's permanent impairment at 10% of the lower left extremity. In response to Defendants' request for an impairment rating, Claimant's treating surgeon, Dr. Dunlap, indicated he does not do impairment ratings. However on October 15, 2005, Dr. Dunlap agreed with Dr. Shanks' opinions expressed in his April 14, 2005, report.

26. Dr. Shanks' opinions regarding Claimant's limitations in her activities of daily living, including her inability to be on her feet the majority of a work shift, are consistent with Claimant's demonstrated work history since her industrial accident. The Referee finds Dr. Shanks' opinion persuasive and concludes that Claimant suffers permanent impairment of 10% of the left lower extremity due to her industrial accident.

27. **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 impairment and no fundamental or marked change in the future can be reasonably expected. Idaho Code § 72-423. "Evaluation (rating) of permanent disability" is an appraisal of the injured employee's present and probable future ability to engage in gainful activity as it is affected by the medical factor of permanent impairment and by pertinent nonmedical factors provided in Idaho Code § 72-430. Idaho Code § 72-425. Idaho Code § 72-430 (1) provides that in determining percentages of permanent disabilities, account should be taken of the nature of the physical disablement, the disfigurement if of a kind likely to handicap the employee in procuring or holding

employment, the cumulative effect of multiple injuries, the occupation of the employee, and his or her age at the time of accident causing the injury, or manifestation of the occupational disease, consideration being given to the diminished ability of the affected employee to compete in an open labor market within a reasonable geographical area considering all the personal and economic circumstances of the employee, and other factors as the Commission may deem relevant.

28. The degree of permanent disability suffered by a claimant is a factual question committed to the particular expertise of the Commission. McClurg v. Yanke Machine Shop, Inc., 123 Idaho 174, 176, 845 P.2d 1207, 1209 (1993). Wage loss may be a factor. Baldner v. Bennett's Inc., 103 Idaho 458, 649 P.2d 1214 (1982). The test for determining whether a claimant has suffered a permanent disability greater than permanent impairment is "whether the physical impairment, taken in conjunction with non-medical factors, has reduced the claimant's capacity for gainful employment." Graybill v. Swift & Company, 115 Idaho 293, 294, 766 P.2d 763, 764 (1988). In sum, the focus of a determination of permanent disability is on the claimant's ability to engage in gainful activity. Sund v. Gambrel, 127 Idaho 3, 7, 896 P.2d 329, 333 (1995).

29. In the present case, Claimant was working part-time as an LPN and earning \$11.50 per hour while pursuing her RN studies at the time of her industrial accident. Had she been working full-time, she would have been making approximately \$460.00 per week. Claimant has wisely applied herself to complete her RN training and develop very advanced and marketable nursing skills. At the time of hearing Claimant was working 32 hours per week earning \$18.70 per hour for a total of approximately \$600.00 per week. Thus, by any reasoned comparison, Claimant is earning substantially more now than at the time of her industrial injury.

30. Claimant has also relocated from her time of injury residence in St. Maries to a much

larger labor market near Olympia. She readily acknowledges a multitude of available nursing positions nearby. Nevertheless, she is aware that RNs at various hospitals in her area presently start at \$22.00 to \$24.00 per hour and may eventually make \$35.00 to \$38.00 per hour.

31. Significantly, Claimant has demonstrated that she was able to earn \$21.00 per hour when she worked as an RN at Sacred Heart Hospital after her industrial accident. For the first three months she worked 40 hours per week, and thereafter 32 hours per week. Claimant did not sustain that employment. As noted by Dr. Shanks, Claimant's left foot pain prevents her from being on her feet the majority of a shift. This effectively precludes her from competing for many higher paying hospital RN positions. Consequently, even in a larger labor market, Claimant is presently earning less than she earned as an RN at Sacred Heart Hospital post-injury.

32. Based on Claimant's impairment rating of 10% of the left lower extremity and her various medical and non-medical factors, Claimant's ability to engage in gainful activity has been reduced. Claimant has established a permanent disability of 25% inclusive of her permanent impairment.

CONCLUSIONS OF LAW

1. Claimant has proven she suffers permanent partial impairment of 10% of the left lower extremity due to her industrial accident. Defendants are entitled to credit for all permanent partial impairment benefits previously paid Claimant.

2. Claimant has proven she suffers permanent disability of 25% inclusive of her permanent impairment.

RECOMMENDATION

The Referee recommends that the Commission adopt the foregoing Findings of Fact and Conclusions of Law as its own, and issue an appropriate final order.

DATED this __17th __day of July, 2006.

INDUSTRIAL COMMISSION

_____/s/_____
Alan Reed Taylor, Referee

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __27th__ day of __July__, 2006, a true and correct copy of **Findings of Fact, Conclusions of Law, and Recommendation** was served by regular United States Mail upon each of the following:

BRADLEY J STODDARD
PO BOX 896
COEUR D'ALENE ID 83816-0896

E SCOTT HARMON
PO BOX 6358
BOISE ID 83707-6358

cjh

_____/s/_____

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 Employer,)
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 LIBERTY NORTHWEST INSURANCE)
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 Defendants.)
 _____)

IC 01-502825

ORDER

Filed July 27, 2006

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

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

1. Claimant has proven she suffers permanent partial impairment of 10% of the left lower extremity due to her industrial accident. Defendants are entitled to credit for all permanent partial impairment benefits previously paid Claimant.

2. Claimant has proven she suffers permanent disability of 25% inclusive of her permanent impairment.

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

DATED this __27th __ day of __July__, 2006.

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 the __27th __ day of __July__, 2006 a true and correct copy of **Order** was served by regular United States Mail upon each of the following:

BRADLEY J STODDARD
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____/s/_____