

accident;

2. Whether Claimant's condition is due in whole or in part to a pre-existing and/or subsequent injury/condition;

3. Whether and to what extent Claimant is entitled to the following benefits:

- a. Medical care;
- b. Temporary partial and/or temporary total disability benefits (TPD/TTD);
- c. Permanent partial impairment (PPI);
- d. Disability in excess of impairment; and

4. Whether apportionment for a pre-existing or subsequent condition pursuant to Idaho Code § 72-406 is appropriate.

In her post-hearing brief, Claimant asserts entitlement to attorney fees pursuant to Idaho Code § 72-804. This was not identified as an issue in the Notice of Hearing or at the start of the March 7, 2007, hearing when the issues were clarified with both parties. The issue of entitlement to attorney fees will, therefore, not be considered.

CONTENTIONS OF THE PARTIES

Claimant contends that Drs. Neal and Dirks provide the requisite medical causation to establish that her low back fusion / decompression at L5-S1 and right carpal tunnel surgery were necessary as a result of her August 20, 2000, industrial accident. Although Defendants' IME found Claimant stable and released her to return to work, Claimant has not been released by her treating physician or surgeon and, therefore, is entitled to additional medical and TTD benefits until she reaches maximum medical improvement. After reaching stability, Claimant will be ratable and entitled to PPI and PPD benefits.

Defendants do not dispute that Claimant fell on August 20, 2000, while working. However, Defendants argue Claimant suffered little more than a soft tissue injury to her shoulder and hip as a

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result of the fall. Any additional complaints are subjective and/or not the result of her industrial accident. Defendants contend Claimant has not proven to a reasonable degree of medical probability that her low back condition and carpal tunnel syndrome (and subsequent surgeries) are related to her August 2000 slip and fall. Defendants also point out that Claimant has offered no medical proof that she is entitled to an award of PPI benefits – and without PPI there can be no PPD. Finally, Defendants insist that they did not act unreasonably. Claimant’s benefits were terminated only after Defendants obtained several medical opinions regarding Claimant’s stability.

Claimant stresses in her reply that, although Claimant’s low back condition (anterolisthesis) was pre-existing, it was asymptomatic prior to her industrial accident. The accident aggravated the condition, which caused the condition to progress, resulting in her need for the L5-S1 fusion. The treatment and low back fusion should, therefore, be compensable.

EVIDENCE CONSIDERED

The record in the instant case consists of the following:

1. Oral testimony of Claimant, Christine E. Richter, and Carvel O’Dell taken at hearing.
2. Claimant’s Exhibits A through Q admitted at hearing.
3. Defendants’ Exhibits A through T admitted at hearing.
4. The post-hearing depositions of Thomas A. Neal, M.D., taken by Claimant on May 7, 2007; Bret A. Dirks, M.D., taken by Claimant on May 8, 2007; and Stephen Sears, M.D., taken by Defendants on May 10, 2007.

All objections made during the course of the taking of the above-referenced depositions are overruled. After having fully considered the above evidence and arguments of the parties, the Commission hereby issues its decision in this matter.

FINDINGS OF FACT, CONCLUSIONS AND ORDER - 3

FINDINGS OF FACT

1. At the time of hearing Claimant was 50 years old. She lives in Coeur d'Alene, Idaho, where she and her family have resided for the past 20 years. Claimant began waitressing at age fifteen (15) and continued to waitress throughout her adult working life. Hearing Transcript, p. 16. She is right hand dominant.

Prior Medical History

2. Claimant presented to her family physician, Thomas Neal, M.D., on October 10, 1995, with back pain that reportedly started while she was at a soccer game. Claimant stated that she "could hardly walk off [the] field." Defendants' Exhibit D. Dr. Neal diagnosed acute low back strain with radiculopathy. There are no additional medical records in evidence that reflect any follow-up visits as a result of this event.

3. On March 17, 1997, Claimant presented to Dr. Neal reporting that she had fallen 4 days prior. "She states that when she fell, she landed on her back with both arms, palms down to protect herself. She is a waitress by trade and carries her trays with her left arm. She complains of severe immobility. She has inability to use her left arm that has gotten worse over the last 4 days." Defendants' Exhibit D. Dr. Neal diagnosed thoracic strain and left shoulder strain. Claimant was prescribed medication and referred for physical therapy.

4. In November 1997, Claimant was diagnosed with tendonitis of the left shoulder and the left elbow. Dr. Neal prescribed a Medrol Dosepak with Lortab "for back up." Defendants' Exhibit D. By December, at a follow-up appointment, Claimant's symptoms had lessened, though not abated entirely. Dr. Neal noted that she was wearing a forearm brace and experienced good improvement with the Medrol Dosepak.

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5. Later, in May 2000, Claimant presented to Dr. Neal with neck pain. Dr. Neal noted “Sharon works two jobs as a waitress. No specific injury. She complains of pain in her left trapezius distribution which occurred 5/1/00. No numbness or tingling. No weakness into her arms. She has had tendonitis and shoulder pain in the past. She wears a forearm brace on the left arm for tendonitis.” Defendants’ Exhibit D. Claimant was prescribed anti-inflammatories and given a “neck-care booklet.”

Treatment Following Claimant’s 8/20/00 Industrial Accident

6. On August 20, 2000, Claimant slipped and fell on a wet and/or greasy floor at work. Claimant presented to the emergency room for assessment of her injuries. Emergency room notes reflect that Claimant fell, “injuring her right elbow and shoulder, and to a lesser extent her right hip. She was able to get up from the floor. She wasn’t knocked unconscious and denies any injuries to her chest or abdomen. She complains chiefly of a [sic] right shoulder and arm pain.” Defendants’ Exhibit E. An examination of her back revealed “some mild tenderness in the low lumbar spine, slightly more so in the right upper buttock than the left.” Defendants’ Exhibit E. She was released with a diagnosis of right shoulder and right elbow strain and contusion. The doctor prescribed a sling, ice, Tylenol, Lortab or ibuprofen for pain. Claimant was released from work for two days.

7. Claimant presented to Dr. Neal on August 21 complaining of right elbow and shoulder, hip and buttock tenderness. X-rays of the right elbow, right shoulder, hip and pelvis were negative. Claimant was diagnosed with right shoulder and right elbow contusion and given Lortab for pain. “She is to be off of work until at least the 30th, and at that time I will see her back for a recheck and possibly release her to some form of light duty depending on her progress.” Defendants’ Exhibit D.

8. Claimant returned to Dr. Neal for a follow-up appointment on August 30. Her right hip was improving, but her elbow and shoulder were still causing pain and she was experiencing diffuse tenderness of the scapula. “XR report came back from the shoulder suggesting possibly a fracture at the inferior aspect of the glenoid portion of the scapula, but equivocal.” Dr. Neal noted that he would repeat x-rays with multiple views of the shoulder to determine whether or not a fracture was present. He continued her release from work and sent her to a physical therapist to assist with range of motion exercises.

9. Physical therapy notes from September 1, 2000, reflect the main area of concern as extreme muscle guarding of Claimant’s inner scapular muscles. Trial of a TENS to decrease pain had not been successful. Defendants’ Exhibit H. By September 27, physical therapist Jason Darling (PT Darling) noted that while Claimant was responding well to therapy and her pain level was decreasing with each treatment, he would have expected less irritability and muscle guarding by this point.

10. Dr. Neal saw Claimant next on September 14, 2000. He diagnosed a right scapula fracture, continued Claimant’s release from work, and adjusted her pain medication. A September 28 notation reflected that Claimant was making “slow but steady progress.” Defendants’ Exhibit D. Dr. Neal continued Claimant’s release from work. Although he believed Claimant would be able to return to her time of injury job, he was uncertain of when she might be able to resume full duties. Dr. Neal anticipated that Claimant could be stable within two to four weeks.

11. On October 9, 2000, Dr. Neal noted at a follow-up appointment that Claimant was making no progress. She would briefly experience relief with physical therapy but get frequent spasms in the scapula area. “Repeat XR was obtained today which demonstrates healing of the

fracture line and nondisplacement of the fracture. I think that this is healing as expected. Because of the persistent symptoms I am going to suggest that we obtain an MRI of the shoulder to look for a labial tear, a supraspinatus tendon rupture, or something other than the fracture to explain her pain. Depending on the findings there she may benefit from orthopedic consultation.” Defendants’ Exhibit D. The MRI was accomplished and demonstrated thickening of the supraspinatus tendon consistent with tendinopathy but no evidence of a tendon rupture or tear in the rotator cuff.

12. Dr. Neal released Claimant to return to light duty on October 18, 2000. He recommended no lifting with the right arm and no repetitive work. Dr. Neal suggested work as a hostess.

13. Claimant’s pain continued through November and December 2000. Dr. Neal noted that her range of motion had improved, but not without pain. Dr. Neal referred Claimant for an orthopedic consultation with Roger Dunteman, M.D., explaining that “she has had good healing of the scapula fracture and follow up films demonstrate good healing. However, she is having persistence in pain and radiation of symptoms into her arm which have been unresponsive to conservative measures and physical therapy.” Defendants’ Exhibit D.

14. Claimant saw Dr. Dunteman on November 13, 2000. In reviewing Dr. Neal’s notes and films, Dr. Dunteman acknowledged that although a scapula fracture had been tentatively diagnosed, an MRI performed on 10/17/00 revealed no glenoid neck or scapula fracture. Defendants’ Exhibit F. Dr. Dunteman expected most of the symptoms secondary to a non-displaced scapular body fracture to resolve in the next month or two.

15. Cervical spine x-rays taken on November 16, 2000, revealed C5-6 and C6-7 spondylosis and degenerative disk disease at C5-6. Defendants’ Exhibit G.

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16. Dr. Neal completed another work release form on December 1, 2000, indicating that Claimant was not released to any light duty. He assessed a “persistent pain syndrome” and consulted with neurologist Michael Coats, M.D., about concerns that Claimant might have some sort of neuropathy syndrome or possibly a brachial plexus injury. Claimant’s Exhibit A.

17. Upon referral from Dr. Neal, Claimant visited Scott Magnuson, M.D., in January 2001 who noted “[h]er course with the physical therapy has been one of some improvement followed by exacerbation of her pain and really no continued overall benefit.” Defendants’ Exhibit I. Dr. Magnuson noted that Claimant’s pain was associated with “a near constant headache in the posterior aspect of the head.” He diagnosed regional myofascial pain syndrome involving Claimant’s right shoulder and the supporting musculature of her neck on the right side. Dr. Magnuson opined that Claimant’s tension headaches, sleep disturbance, and situational depression were likely secondary to the regional myofascial pain syndrome. He recommended that she remain off work until further medical workup could be completed.

18. Physiatrist Larry Lamb, M.D., evaluated Claimant on January 16, 2001, upon referral from Drs. Neal and Dunteman. Dr. Lamb’s impression, later confirmed by conduction studies, was carpal tunnel syndrome. He ordered a bone scan to definitively determine whether Claimant suffered from a non-displaced scapular fracture. The scan was read as “flat normal. She does not have a fracture of the scapula.... The hallmark of Ms. O’Dell’s presentation today is myofascial pain.” Defendants’ Exhibit J. Dr. Lamb acknowledged that “[t]reatment for this condition can be somewhat frustrating, both for patients as well as caregivers....” *Id.*

19. Additional physical therapy was authorized by Surety. Physical therapist Sandra Peterson (PT Peterson) noted on January 31, 2001, that Claimant was reporting an increase in right

upper extremity/upper back pain since the evaluation at the last session. Defendants' Exhibit H. Physical therapy sessions seemed to help Claimant temporarily, but the pain would return some time after the PT session terminated. At a March 19, 2001, appointment, Claimant was informed that her case manager, Lynn Graves, did not authorize any further PT visits. As a result, special arrangements were made with PT Peterson to allow Claimant to continue with her physical therapy sessions. PT Peterson noted that through April 2001 Claimant tolerated an increase in repetition of her physical therapy exercises well.

20. After several follow-up appointments with Claimant, Dr. Lamb concluded on March 1, 2001:

It has been over six months now. I am mystified by this patient's continued reports of disability in the face of a virtually normal MRI, a negative bone scan, and a negative EMG. We, in fact, have not been able to objectify any kind of organic pathophysiology, other than a presumptive diagnosis of myofascial pain syndrome, which should not be disabling. At this time, my recommendation is for claim closure. I have no basis on which to continue to recommend either treatment or disability. From my perspective, the claim is appropriate for closure with a nonratable PPD."

Defendants' Exhibit J.

21. Claimant returned to Dr. Neal on March 5, 2001, "distressed and having persistent pain" after meeting with Dr. Lamb who found nothing wrong with her and released her to full duty work. Defendants' Exhibit D. Dr. Neal expressed his disagreement with Dr. Lamb's assessment and reinforced that he, Dr. Neal, did not believe Claimant was yet capable of returning to work.

22. Despite his assertion that Claimant was not capable of returning to work, Dr. Neal approved a request made by Claimant to attempt some light duty work with a restriction of lifting no more than five (5) pounds at a time. Claimant's Exhibit A. He also referred Claimant to Dr. Coats for a neurological consultation.

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23. Claimant submitted to an independent medical examination on April 5, 2001, at the request of Defendants. Lewis Almaraz, M.D., and Ivar Birkeland, Jr., M.D., evaluated Claimant. Claimant identified her chief complaint as pain in the right shoulder blade. Pain behavior, grimacing and global giveaway weakness of the right upper extremity was noted. Drs. Almaraz and Birkeland could not identify any orthopedic or neurological condition to account for Claimant's chronic pain syndrome. "We do not believe that her chronic pain syndrome at this time is related to the original injury on a more probable than not basis." Claimant's Exhibit P. They opined that Claimant was stable, without any ratable impairment, and capable of returning to work without any restrictions. It was further opined that Claimant's carpal tunnel syndrome was not related to her industrial injury.

24. Dr. Coats first met with Claimant on April 11, 2001. At a May 7 follow-up appointment Dr. Coats noted that Claimant's recent cervical MRI revealed some degenerative changes but no evidence of radiculopathy. Dr. Coats diagnosed right upper extremity pain of uncertain etiology.

25. On May 4, 2001, Dr. Neal noted (for the first time since the industrial injury) low back pain radiating into Claimant's legs.

Sharon attempted to go back to work. She had worked a total of three shifts, but with each shift she had worsening pain following the work. She had worsening pain in her shoulder, but also, and the reason for the visit today, she had an onset of some low back pain. She did not have a fall or a blow to her back but comes in today with a complaint of midline, lower sacral pain with some radiation into the right leg.

Defendants' Exhibit D. Dr. Neal diagnosed low back pain, most likely secondary to deconditioning.

26. In May 2001 Claimant was discharged from physical therapy because it was no longer being accepted by Defendants. Dr. Neal noted that Claimant's last visit to physical therapy was on May 11, 2001. "She at that time was also complaining of some low back pain which is a

new complaint for her.” Defendants’ Exhibit D. Dr. Neal noted that, although it was “somewhat painful” across Claimant’s trapezius and rhomboid muscle groups, she had full range of motion in her shoulder.

27. On May 31, 2001, Claimant presented to Dr. Neal with a complaint of headaches accompanied by posterior neck pain. Her blood pressure was also elevated. Dr. Neal speculated as to whether Claimant’s persistent neck and shoulder pain was a contributing factor and/or trigger of the headache disorder.

28. On June 5, 2001, Dr. Neal responded to Drs. Almaraz and Birkeland’s April 5, 2001, IME findings. Dr. Neal disputed the conclusion that Claimant never sustained a scapula fracture. He believed the answer to Claimant’s persistent pain complaints would be revealed through the expertise of a neurologist.

29. Dr. Neal continued to treat Claimant. Her complaints of neck pain, back pain, shoulder pain and migraine headaches continued through the remainder of 2001 and into 2002.

30. In February 2002 Dr. Neal recommended repeat imaging of Claimant’s shoulder and an MRI of her lumbar spine to evaluate the radicular symptoms. The MRI revealed that Claimant’s L5-S1 disk was severely degenerated. Defendants’ Exhibit G.

31. An April 29, 2002, chart note described the following:

Sharon reinjured her low back last week. She was at home and doing the dishes and felt her back “go out”. She bent over and could not get straightened back up again.... She is complaining of increasing pain in her low back and radiating into both legs, worse on the right than on the left.

Defendants’ Exhibit D. Dr. Neal diagnosed low back pain with radiculopathy and evidence of disk disease. “It is my opinion that this is an exacerbation of her previous back injury that ultimately stems from her fall and original injury of 8/20/00.” *Id.* Dr. Neal ordered bedrest.

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32. Upon referral by Dr. Neal, neurosurgeon Bret Dirks, M.D., evaluated Claimant on May 17, 2002. Dr. Dirks commented that after review of Claimant's physical therapy notes, medical reports, and multiple imaging studies he could not reasonably explain her current symptomatology. However, he did recommend, based on her symptomatology and lumbar MRI findings of anterolisthesis, that Claimant consider a lumbar decompression and fusion at L5-S1. Defendants' Exhibit M.

33. Results of EMG and nerve conduction studies confirmed right carpal tunnel syndrome. Claimant elected to proceed with carpal tunnel surgery which was performed by Dr. Dirks on August 15, 2002. By October 2002 Claimant had recovered well from carpal tunnel surgery and indicated to Dr. Dirks that she wished to proceed with the recommended lumbar surgery. While treating Claimant, Dr. Dirks completed a fill-in-the-blank type questionnaire indicating his belief that Claimant's back, right shoulder, arm and leg conditions were directly related to her August 20, 2000, industrial injury.

34. On April 9, 2003, Dr. Dirks performed a lumbar laminectomy and fusion at L5-S1. Claimant was discharged from the hospital on April 12 "doing quite well." Defendants' Exhibit O. Further follow-up with AP and lateral lumbar spine films showed good placement of rod and screws. No hardware complications or instability patterns were noted. By June 23, 2003, Dr. Dirks noted that Claimant was "actually doing quite well" and "making excellent progress." Defendants' Exhibit M.

35. Claimant attended physical therapy with Fred Weber (PT Weber) following her lumbar surgery. PT Weber noted Claimant's assertion that the lumbar surgery had allowed her to have pain free movement.

36. A portion of physical therapy notes of PT Weber, though difficult to decipher, document a marked increase in Claimant's lower back pain and right shoulder pain in the beginning of October 2003. "S Reports vacuuming on 10-4 + kicking a ball + missing it causing a hard heel strike on 10-3 that have resulted in marked ↑ in R > L LBP + R shld pain." Defendants' Exhibit H.

37. Dr. Neal referred Claimant to yet another specialist, Michael Kody, M.D., who met with Claimant on October 24, 2003. Dr. Kody concluded:

I do not think there is any condition in her shoulder that I could improve with surgery. This does not mean that she has not had an injury. It does not mean that she does not have pain but I have explained to her the difference between things that we can objectively identify and change versus things that hurt. I think her best bet is either chronic pain management, additional physical therapy and conservative techniques or getting back in to see if Dr. Dirks can explain her interscapular pain on the basis of her neck.

Claimant's Exhibit E.

38. Dr. Neal's chart notes reflect two separate incidents (January and March 2004) where Claimant slipped on ice and hurt her back. Defendants' Exhibit D. A subsequent notation made on May 19, 2004, stated that Claimant "is very fragile and at this point just vacuuming in the house causes back pain, and she is quite limited in any ability to do physical activity because of persistent back pain." Defendants' Exhibit D.

39. In August 2004 Claimant presented to the emergency room reporting dizziness and nausea. She was diagnosed with a vertigo syndrome. A December 10, 2004, chart note of physical therapist N. Larry Toews (PT Toews) recited that Claimant "describes a history of a fall in 2000, and vertigo after same. This gradually resolved, but in August she began noting vertigo again." Defendants' Exhibit H. PT Toews also noted that Claimant has had posterior headaches since the fall.

40. Despite medical reports documenting persistent low back pain, Dr. Neal noted in May 2005 that Claimant “did Bloomsday¹ a few weeks ago and is doing quite well.” Defendants’ Exhibit D. However, by October 2005, Dr. Neal referred Claimant back to Dr. Dirks for evaluation of her persistent low back pain.

41. Claimant returned to Dr. Dirks on December 13, 2005, complaining of chronic, constant headache since her industrial accident in 2000. Although x-rays showed good evidence of fusion at the L5-S1 surgical site, she also reported that her chronic low back pain was unchanged since surgery.

42. Defendants arranged an IME for Claimant on January 13, 2006, with orthopedic surgeon Stephen R. Sears, M.D., and neurologist William R. Bozarth, M.D. Claimant reported her most bothersome complaint as constant pain in her right shoulder blade that extended up the back of her neck on the right side. Claimant relayed that she first noted back symptoms sometime in April 2001 when she was in the deep end of an exercise pool wearing flotation devices around her waist. She first noted dizziness at the time of her August 2004 emergency room visit.

43. Drs. Bozarth and Sears had no reasonable explanation for Claimant’s persistent scapular pain. Claimant’s Exhibit Q. They further opined no relationship between her various other symptoms and the August 20 work accident. The doctors reasoned that her carpal tunnel symptoms, right neck complaints, and headaches did not arise within a reasonable proximity to her August 20 fall. They found “absolutely no relationship” between her work accident and subsequent need for lower back surgery, declaring Claimant’s congenital spondylolisthesis as the reason for her lower back problems. The only diagnosis the doctors related to Claimant’s August 20, 2000, industrial

¹ “Bloomsday” is a 12 kilometer (7.46 mile) walk/run race held annually in Spokane, Washington.

accident was a minor contusion of the right hip and right scapula. “In retrospect, we believe that the treatment Ms. O’Dell underwent up to and including the time she saw Dr. Dunteman on the 13th of November 2000 was reasonable and necessary and related to the August 20, 2000, accident at work.” Claimant’s Exhibit Q. Drs. Bozarth and Sears opined Claimant was stable with no impairment and no restrictions as a result of her work accident.

44. Dr. Dirks reviewed the IME report of Drs. Bozarth and Sears. He disagreed with their conclusions and continued to relate Claimant’s need for lower back surgery to her work injury.

45. Dr. Neal also disagreed with the IME results. He believed she suffered “significant injury from her fall,” including her need for a laminectomy and fusion at L5-S1. Defendants’ Exhibit D. Dr. Neal was offended at the implication that Claimant’s problems were primarily psychological.

46. Claimant has not returned to any type of work since her attempt to return to waitressing with Employer in April 2001. As a result of her inability to work, she was awarded Social Security Disability benefits in August 2002. Claimant’s Exhibit N.

DISCUSSION AND CONCLUSIONS

47. **Medical care.** An employer shall provide reasonable medical care to an injured employee as required by the employee’s physician for a reasonable time following an injury. Idaho Code § 72-432. Claimant must provide medical evidence that supports a claim for compensation to a reasonable degree of medical probability. *Dilulo v. Anderson & Wood Co., Inc.*, 143 Idaho 829, 153 P.3d 1175 (2007). “Probable” is defined as having more evidence for than against. *Id.*

48. It is undisputed that Claimant slipped and fell on a wet/greasy floor at work on August 20, 2000. The extent and duration of her entitlement to medical (and other) benefits is at the

heart of the issues in this case. Claimant argues that, because she had no medical problems prior to her August 2000 slip and fall, essentially all of her need for medical care following her industrial injury is related thereto. Defendants contend Claimant suffered little more than a soft tissue injury that has long since healed, resulting in no impairment or disability.

Right Shoulder/Scapula

49. Immediately following her August 2000 industrial accident, Claimant complained of pain in her right shoulder, elbow, hip and buttock. X-rays of her right shoulder, right elbow, hip and pelvis were negative. Claimant was diagnosed with a right shoulder and right elbow strain and contusion. Much ado was made by medical professionals as to the existence or non-existence of a non-displaced scapula fracture. Whether or not Claimant suffered from such a fracture, the treatment surrounding Claimant's shoulder/scapula symptoms and condition clearly arose out of her August 20 slip and fall. As such, in accordance with Idaho Code § 72-432, treatment for Claimant's shoulder/scapula condition is compensable.

50. In November 2000, Dr. Dunteman expected that any symptoms secondary to a non-displaced scapular fracture would resolve in the next couple of months. By January 2001 Claimant's shoulder/scapula condition was being diagnosed as a myofascial pain syndrome. Claimant's pain would subside temporarily following physical therapy only to return several days later. Dr. Lamb concluded in March 2001 that there was no reasonable basis upon which to recommend continued treatment for Claimant. The following month Drs. Almaraz and Birkeland opined to a reasonable degree of medical probability that any chronic pain that Claimant was still experiencing was not related to the August 2000 accident. Drs. Magnuson, Lamb, Almaraz, and Birkeland believed that no more could be done for Claimant. Drs. Neal, Dirks, Bozarth, and Sears could find no reasonable

explanation for Claimant's ongoing scapular pain complaints. Furthermore, by May 2001, Claimant's primary complaint had turned to her low back. Therefore, the Commission finds that the medical treatment, including physical therapy, provided for Claimant's shoulder/scapula condition and/or myofascial pain syndrome from August 20, 2000, through April 5, 2001, was reasonable treatment that was reasonably related to the industrial accident. Claimant has failed to prove to a reasonable degree of medical probability that treatment for her myofascial pain syndrome (in relation to her shoulder/scapula) after April 5, 2001, is reasonably related to her August 2000 accident.

Low Back Condition

51. Claimant's initial emergency room exam noted some mild tenderness in her low lumbar spine. However, no subsequent notation of lumbar pain was made until more than six (6) months later in May 2001. Dr. Neal's initial diagnosis was low back pain, most likely secondary to deconditioning. Later in his treatment of Claimant's low back, Dr. Neal described Claimant's back problem as stemming from her August 20 slip and fall. However, during his deposition, Dr. Neal was unable to articulate anything more than a chronological connection between Claimant's low back problems and her August 2000 work accident.

"I can only conclude that with the fall, she may have sustained some injury to her low back, which with either deconditioning or getting back to work caused it to worsen further. [] But I'm not sure why she had a six-month period there without a lot of focus on her low back. And then lead to something without - - or lead to such a significant finding later because there's no report or visits that involved any further injury or trauma to her back."

Dr. Neal's deposition, p. 16.

52. Although Dr. Dirks adhered to his belief that Claimant's low back condition was somehow aggravated by her slip and fall, he was also unable to reconcile the time lapse between her

fall and her low back symptoms. “I appreciate what you’re saying, because if she had some sort of traumatic injury at the time of the accident which was going to cause, let’s say, some sort of ligamentous injury or cause a spondylolisthesis, she probably would have had back pain at the time of the injury. [] So, I would say that you’re probably correct in that it seems that she would have had back pain at the time of the initial injury.” Dr. Dirks’ deposition, pp. 31, 32.

53. Though magic words are not necessary to demonstrate that a doctor’s opinion is held to a reasonable degree of medical probability, there must be plain and unequivocal testimony conveying a conviction that events are causally related. *See, Jensen v. City of Pocatello*, 135 Idaho 406, 18 P.3d 211 (2001). Drs. Neal and Dirks equivocal opinions do not amount to a reasonable degree of medical probability. The coincidence of Claimant’s low back problems arising some time after her slip and fall is not enough to prove that the condition was causally related to her industrial accident.

Carpal Tunnel Syndrome

54. The closest that any doctor came to opining causation regarding Claimant’s carpal tunnel syndrome and subsequent need for surgery was Dr. Dirks. “I would say that if she caught herself - - and I don’t have records of that, so I don’t know - - but if you catch yourself on your wrist or something like that, that can be the start of carpal tunnel syndrome.” Dr. Dirks’ deposition, pp. 19, 20. This assertion does not provide the requisite causal link that Claimant’s carpal tunnel syndrome, on a more probable than not basis, was related to her August 2000 industrial accident.

Headaches, Cervical Spine and Depression

55. Claimant first complained of headaches to Dr. Magnuson in January 2001. Dr. Neal, her treating/family physician, does not note a report of headaches until late May 2001. The doctors

speculated that Claimant's myofascial pain problems could have contributed to and/or triggered her headaches. To the extent that Claimant's headaches were the result of her myofascial pain syndrome, the treatment is compensable through April 5, 2001. After that date the myofascial pain syndrome, and consequently the headaches, can no longer be reasonably related to the industrial accident.

56. Dr. Neal first noted neck pain at the same time Claimant's headaches were documented, in May 2001. A cervical MRI completed in early 2001 revealed only degenerative changes. Even with the early focus on her upper extremity shoulder/scapular area, no cervical problems were reported or noted. Claimant's cervical complaints were too remote in time from her slip and fall. In addition, she did not provide medical evidence or testimony that opines a relationship to a reasonable degree of medical probability. Claimant has failed to prove that any cervical condition is reasonably related to her industrial accident.

57. Claimant has worked the majority of her life in the restaurant industry – primarily as a waitress. Her inability to continue working and the doctors' inability to diagnose her complaints caused anxiety and depression as was noted by several of her physicians. To the extent Claimant's depression was related to her myofascial pain syndrome, the treatment is compensable through April 5, 2001. After that date the myofascial pain syndrome, and consequently the depression, cannot be reasonably related to the industrial accident.

58. **TPD/TTD benefits.** Idaho Code § 72-408 provides that income benefits for total and partial disability shall be paid to disabled employees during the period of recovery. The burden is on the claimant to present evidence of the extent and duration of the disability in order to recover income benefits for such disability. *Sykes v. C.P. Clare and Company*, 100 Idaho 761, 605 P.2d 939

(1980).

59. Once a claimant establishes by medical evidence that he is within the period of recovery from his original industrial accident, he is entitled to total temporary disability benefits unless and until evidence is presented that he has been medically released for light-duty work and that: (1) his former employer has made a reasonable and legitimate offer of employment which he is capable of performing under the terms of his release and which employment is likely to continue throughout his period of recovery, or (2) there is employment available in the general labor market which Claimant has a reasonable opportunity of securing, which employment is consistent with the terms of his light-duty work release. *Malueg v. Pierson Enterprises*, 111 Idaho 789, 791, 727 P.2d 1217, 1219 (1986).

60. Claimant maintains that she has not reached maximum medical improvement and is, therefore, entitled to ongoing TTD benefits until such time as she is deemed stable and returns to work. Defendants argue Claimant was deemed stable by numerous physicians and is no longer in a period of recovery that would entitle her to additional TTD benefits.

61. Although Claimant is still seeking treatment for various conditions and, as a result, she has not returned to any type of employment, the Commission has determined that any treatment rendered after April 5, 2001, cannot reasonably be related to her August 20, 2000, industrial accident. Accordingly, Claimant has failed to prove that any temporary disability beyond April 5, 2001, was the result of her industrial accident.

62. **PPI benefits.** An “evaluation 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,

elevation, traveling, and nonspecialized 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, 769 P.2d 1122 (1989).

63. Claimant argues that she has not yet sought a PPI rating because Defendants have denied her ongoing need for medical treatment. Claimant maintains that, once the Commission determines her treatment and condition is compensable, she will seek a rating for appropriate PPI benefits. Defendants assert that no doctor has offered a rating for PPI benefits because Claimant has no ratable impairment related to her industrial accident. Indeed, Drs. Lamb and Sears opined that Claimant suffered from no impairment as a result of her industrial injury.

64. It is Claimant's burden to prove her entitlement to benefits. The only medical evidence regarding PPI surrounds the nonexistence of any impairment related to Claimant's industrial accident and injury. Claimant did not ask that the issue of impairment be reserved. Claimant has failed to prove any entitlement to permanent partial impairment benefits.

65. **PPD in excess of impairment.** Without permanent impairment there can be no permanent disability. *Urry v. Walker and Fox Masonry Contractors*, 115 Idaho 750, 769 P.2d 1122 (1989). Apportionment pursuant to Idaho Code § 72-406 is, therefore, moot.

ORDER

Based upon the foregoing analysis, the Commission issues the following order:

1. Claimant is entitled to reasonable medical treatment provided for her shoulder/scapula condition and myofascial pain syndrome from August 20, 2000, through April 5, 2001. To the extent that Claimant's headaches and depression are related/secondary to her myofascial pain syndrome, Claimant is also entitled to reasonable medical treatment for these conditions through April 5, 2001.
2. Claimant has failed to prove that her low back condition and carpal tunnel syndrome were reasonably related to her August 20, 2000, industrial accident.
3. Claimant is entitled to TPD/TTD benefits through April 5, 2001. Claimant has failed to prove that any temporary disability beyond April 5, 2001, was the result of her industrial accident.
4. Claimant has failed to prove entitlement to permanent partial benefits for impairment or disability.
5. The issue of apportionment pursuant to Idaho Code § 72-406 is moot.
6. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all issues adjudicated.

DATED this ____ day of _____, 2007.

INDUSTRIAL COMMISSION

_____/s/_____
James F. Kile, Chairman

_____/s/_____
R.D. Maynard, Commissioner

/s/ _____
Thomas E. Limbaugh, Commissioner

ATTEST:

/s/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of October, 2007, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS AND ORDER** was served by regular United States Mail upon each of the following:

CLARK H RICHARDS
717 SPRAGUE AVE STE 1600
SPOKANE WA 99201

MONTE R WHITTIER
PO BOX 6358
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/s/ _____