



whether the Commission found the opinion of the IME panel finding no impairment more persuasive.

Defendants aver that Claimant is not entitled to impairment because the decision found that Claimant failed to establish that her limitations and restriction after her 2002 accident were substantively more onerous than before the accident. Defendants further argue that since the Commission ruled that Claimant was totally and permanently disabled prior to her 2002 accident based upon her restrictions and the opinion testimony of both vocation experts, she is not entitled to any impairment.

In this case, Claimant was found to be totally and permanently disabled prior to her 2002 accident. The decision made repeated findings that no additional substantive restrictions or limitations were imposed on Claimant following her 2002 accident. Yet, the Commission did not detail its finding of Claimant's PPI entitlement from the 2002 industrial injury. Claimant's entitlement to PPI was a noticed issue and will be addressed with the following Order Amending Decision.

Based on the foregoing, Defendant's Motion for Reconsideration is GRANTED. Accordingly, the relevant portions of the decision are amended below.

#### **ORDER AMENDING DECISION**

Based on the decision to grant reconsideration regarding the lack of a finding of Claimant's entitlement to partial permanent impairment from the 2002 accident, the Commission hereby AMENDS the decision in the above-referenced case as follows:

1. Fact 53a stated below is ADDED to the Recommendation on page 19 following paragraph 53.

53a. **Permanent partial 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 nonprogressive at the time of the 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 worker'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, 755, 769 P.2d 1122, 1127 (1989).

The IME panel, Drs. Bozarth and Adams, opined that all of Claimant's medical conditions were the result of her CMT disease, not her December 2002 industrial injuries. For that reason, the panel awarded no PPI for Claimant's December 2002 industrial injuries. None of Claimant's treating specialists imposed any new restrictions on Claimant as a result of the 2002 injuries. As discussed above, the Commission finds that no substantive restrictions or limitations were imposed following her 2002 accident. The Commission finds the panel IME more persuasive regarding PPI. Claimant may have suffered a change in her ability to perform activities of daily living, but such changes were not due to the 2002 industrial accident.

Therefore, the Commission finds that Claimant is not entitled to PPI for the December 2002 industrial accident.

2. Conclusion 2a stated below is ADDED to the Conclusions of Law on page 20 following Conclusion 2.

2a. Claimant is not entitled to permanent partial impairment for the December 2002 industrial accident.

**ORDER ON RECONSIDERATION - 3**

3. Conclusion 2a stated below is ADDED to the Order on page 2 following Conclusion 2:  
2a. Claimant is not entitled to permanent partial impairment for the December 2002 industrial accident.

IT IS SO ORDERED.

DATED this 3rd day of March, 2008.

INDUSTRIAL COMMISSION

/s/ \_\_\_\_\_  
James F. Kile, Chairman

\_\_\_\_\_  
R.D. Maynard, Commissioner

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

ATTEST:

/s/ \_\_\_\_\_  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on 3rd\_\_ day of \_\_\_March\_\_\_\_\_, 2008, a true and correct copy of the foregoing ORDER ON RECONSIDERATION was served by regular United States Mail upon each of the following:

MICHAEL J VERBILLIS  
PO BOX 519  
COEUR D'ALENE ID 83816-0519

PAUL J AUGUSTINE  
PO BOX 1521  
BOISE ID 83701

THOMAS W CALLERY  
PO BOX 854  
LEWISTON ID 83501-0854

ro/cjh

\_\_\_\_\_/s/\_\_\_\_\_