

hearing briefs. The matter came under advisement on May 5, 2008 and is now ready for decision.

ISSUES

By agreement of the parties at hearing, the issues to be decided are:

1. Whether Claimant is totally and permanently disabled, including whether Claimant is entitled to permanent total disability (PTD) pursuant to the odd-lot doctrine.

2. Whether the ISIF is liable pursuant to Idaho Code § 72-332.

3. Apportionment pursuant to the *Carey* formula.

In the event that Claimant is found to have permanent disability less than total, the parties agree that the alternate issues are:

4. Whether and to what extent Claimant is entitled to permanent partial impairment (PPI).

5. Whether and to what extent Claimant is entitled to permanent partial disability (PPD) in excess of impairment.

6. Whether apportionment for a pre-existing condition pursuant to Idaho Code 72-406 is appropriate.

CONTENTIONS OF THE PARTIES

It is undisputed that Claimant sustained a work related injury to his left knee on July 10, 2000 for which he underwent three operative procedures and reached maximum medical improvement in September 2005 with 10% PPI. It is further undisputed that Claimant experienced a total loss of vision in his right eye as the result of a childhood injury. The parties agree that Claimant had multiple prior right knee injuries which resulted in permanent partial

impairment and that Claimant had previous left knee injuries for which permanent impairment was not assigned.

The disputed issues involve the nature and severity of Claimant's *left* eye condition, the extent to which Claimant is entitled to permanent disability benefits, and apportionment of those benefits. All parties have asserted alternative arguments in order to address the various potential outcomes of this case.

Claimant contends that he is totally and permanently disabled as a result of the combined effects of pre-existing impairment and the injury of July 10, 2000. Claimant maintains that, in addition to his undisputed PPI attributable to his right eye and right knee, his pre-existing impairment includes conversion disorder which is a progressive psychological condition with resultant left eye vision loss. Claimant seeks benefits for permanent total disability apportioned between Defendants. In the alternative, Claimant seeks a permanent partial disability rating of 65% to 75% with no more than 10% attributable to pre-existing conditions.

PR contends that the percentage of permanent disability attributable to the July 10, 2000 left knee injury is minor in comparison to Claimant's multiple pre-existing conditions and restrictions. In the event that Claimant is found to be totally and permanently disabled, PR asserts that its portion of responsibility for permanent total disability benefits is limited to 27%, inclusive of 10% PPI, pursuant to the *Carey* formula. If Claimant's permanent disability is found to be less than total, PR asserts that its portion of responsibility for permanent partial disability benefits should not exceed 17%, inclusive of Claimant's 10% PPI rating.

ISIF contends that Claimant lacks credibility and points out multiple inconsistent representations by Claimant pertaining to both crucial elements of his case and incidental matters. ISIF asserts that Claimant's left eye problems reflect malingering with a volitional

component and that vision deficits of the left eye, if any, developed after the last industrial injury and do not constitute a pre-existing condition. In the event that the Commission determines Claimant's bilateral vision loss to be legitimate and/or pre-existing, ISIF maintains that Claimant's blindness alone, as opposed to his last accident combining with his pre-existing condition, renders him totally and permanently disabled.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. Joint Exhibits 1-44; and
2. Testimony at hearing of Claimant, optometrist Jason Fronk, O.D., vocational rehabilitation consultant Nancy Collins, Ph.D., Claimant's son Tory Corson, clinical psychologist Mark Snow, Ph.D., Claimant's wife Kristy Corson, and vocational rehabilitation consultant Douglas N. Crum, C.D.M.S.

Official notice was taken of the *AMA Guides to the Evaluation of Permanent Impairment, 5th Edition (Guides)*.

After having considered all the above evidence and the briefs of the parties, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

FINDINGS OF FACT

Claimant's Background

1. Claimant was born on October 16, 1963 and was 44 at the time of hearing. He completed the seventh grade and dropped out of school during the eighth grade, when he was 14. Claimant does not have a GED.

2. It is undisputed that Claimant suffered a traumatic injury to his right eye during childhood which resulted in total loss of vision to his right eye. The evidence is conflicting as to

the point in time when Claimant's right eye vision loss became total. Additionally, Claimant provided inconsistent information in past deposition testimony regarding the mechanism of his right eye injury. The Referee will not further address factual disputes surrounding Claimant's right eye condition because such findings are immaterial to this decision. The parties agree that Claimant had total loss of vision in his right eye prior to his last industrial injury of July 10, 2000 and there is no credible evidence to the contrary.

3. In 1981, Claimant completed a three month truck driving school offered by the Teamsters. He obtained a commercial driver's license (CDL) soon thereafter. It is necessary to have binocular vision in order to obtain a CDL. Claimant was able to fake his way through the vision test by sneaking peeks with his left eye during evaluation of his right eye vision. Claimant experienced problems with depth perception, but was able to self-accommodate and adapt to driving with the use of one good eye.

4. The majority of Claimant's work experience involves truck driving with a significant amount of heavy truck driving. Claimant drove dump trucks, water trucks, rock trucks, mine trucks, liquid fertilizer trucks and delivery trucks. Claimant worked briefly as a backhoe operator.

5. Claimant's non-driving employment is limited to one year as a rental agent/equipment maintainer, six months as a motorcycle dismantler at a salvage yard and approximately two years in landscaping as a self-employed bark blower.

6. Claimant worked for Bannock Paving as a dump truck and water truck driver for approximately five years in the early 1980s and for Western Construction for more than six years in the late 1980s to early 1990s. After 1993, Claimant did not hold the same job for more than two years. Some of the driving work performed by Claimant was seasonal. He left a few jobs

secondary to injuries, as described below. Claimant testified that he experienced trouble with some of his employment due to vision deficits and that he was terminated from a backhoe position because he ran into foundation walls and that he experienced difficulty reading the micro-screen when working as a motorcycle dismantler.

Family Observations

7. Claimant and Kristy Corson were married in 1986. Ms. Corson has worked as a registered nurse for the past 16 years. Claimant's right eye vision was gone by the time she married him in 1986. Ms. Corson noticed that Claimant gradually stopped participating in activities that required visual acuity, prior to 2000. Claimant used to enjoy playing video games with their oldest son, wood working, and car repair but is no longer able to participate in those activities.

8. Ms. Corson noticed that Claimant's driving skills were deteriorating in the mid to late 1990s at which time she spoke with Claimant about his vision deficits and requested that he not return to driving rock trucks. She explained that Claimant loved to drive and was stubborn about giving it up. She came across his expired license while doing laundry at some point after the 2000 injury and learned that he was unable to pass the vision test to renew his license. Claimant would drive the kids to school until Ms. Corson learned that he did not have a valid driver's license.

9. Tory Corson is Claimant's oldest son and was 27 at the time of hearing. He graduated from high school in 1998 and moved out in 1999 to attend college in Washington. He is currently attending law school. He noticed Claimant's eye sight deterioration during his senior year in high school. Claimant was unable to assist Tory on his senior project which was rebuilding a car motor. Claimant previously enjoyed mechanical activities but became unable to

perform them. Claimant prided himself on being a good driver, but backed into objects in the driveway that were in plain sight in 1997 and 2001. Claimant listens to books on tape and no longer watches movies or reads magazines.

Claimant's Previous Injuries

10. Claimant injured his left knee in 1980 as the result of a motorcycle accident. He underwent surgical intervention on July 28, 1980 at the direction of Loren D. Blickenstaff, M.D., who performed a repair of the medial and lateral menisci.

11. Claimant re-injured his left knee in 1981 while descending stairs. On March 22, 1981, Dr. Blickenstaff performed a left lateral meniscectomy with reconstruction of the anterior cruciate ligament (ACL).

12. Claimant had a successful recovery from his left knee injuries and has not been assigned PPI attributable to his left knee injuries that occurred in the 1980s. Neither of Claimant's previous left knee injuries was work-related.

13. On October 25, 1983, Claimant sustained an industrial injury to his right knee for which he underwent surgery by Dr. Blickenstaff, who performed a ligament reconstruction and meniscal repair. Claimant was off of work for six months and was assigned an 8% PPI rating. Pursuant to a lump sum settlement, Claimant was awarded benefits for disability in excess of PPI of 20%.

14. On July 11, 1985, Claimant sustained a second industrial injury to his right knee. Claimant did not undergo additional surgery but was off of work for approximately 7 months during a course of conservative treatment with Dr. Blickenstaff. Claimant was assigned an additional 6% PPI. Dr. Blickenstaff recommended that Claimant re-train to a less demanding job.

15. On December 13, 1990, Claimant was involved in a non work-related motor vehicle accident which aggravated both knees. Dr. Blickenstaff diagnosed bilateral knee contusions and did not assign additional PPI.

16. On February 17, 1993, Claimant sustained a third industrial injury to his right knee as the result of a slip and fall on ice. Claimant received treatment from Richard E. Moore, M.D., who had taken over the practice of Dr. Blickenstaff upon Dr. Blickenstaff's retirement. Dr. Moore performed a right knee arthroscopy with partial medial meniscectomy on March 3, 1993 and a right knee ACL revision on April 29, 1993. Claimant was off of work for approximately 11 months and received an additional 4% PPI.

17. Claimant was evaluated by Michael R. McMartin, M.D., on February 3, 1994 at the referral of Dr. Moore. Dr. McMartin assigned permanent light duty work restrictions to Claimant attributable to his right knee condition. Claimant was to avoid prolonged walking (more than one hour), rough terrain, stair climbing, jumping, squatting and frequent lifting, bending, or twisting. Claimant was instructed not to lift more than 50 pounds.

Injury of July 10, 2000 and Subsequent Medical Treatment

18. Claimant began working as a driver for PR in August 1999. He described his work at PR as the easiest driving job he ever had. His usual job duties did not include extensive loading or unloading and most of his time was spent driving a Dodge pick-up truck to deliver pallets.

19. On July 10, 2000, Claimant delivered a load of pallets and was standing on the pallet trailer when pallets became unstable and began to fall. Claimant jumped off of the pallet trailer and, in doing so, injured his left knee.

20. Conservative treatment did not alleviate Claimant's left knee symptoms and Dr. Curran performed surgery on February 8, 2001 in the form of a lateral ACL reconstruction, revision of bone tendon, bone allograft and removal of hardware from the left tibia. Dr. Curran performed repeat surgery on May 10, 2001 which included medial meniscus debridement and hardware removal. Claimant's left knee continued to be symptomatic and Michael J. Gustavel, M.D., performed a third surgery on January 1, 2004 in the form of an arthroscopy, debridement of partial ACL tear, debridement of lateral femoral condyle and removal of hardware from the left tibia.

21. Stanley Waters, M.D., determined that Claimant was medically stable as of September 8, 2005 with 10% PPI attributable to the injury of July 10, 2000. He declined to apportion any of the PPI to Claimant's previous left knee injuries.

Work Restrictions Following Last Surgery

22. Dr. Gustavel assigned permanent restrictions in April 2005. Claimant should limit standing or walking to less than 1/3 of his day. He should not lift more than 25 pounds on an occasional basis and not lift more than 10 pounds on a frequent basis. Claimant is able to lift up to 10 pounds throughout the day. Claimant is not able to descend stairs and should only climb stairs occasionally. Claimant should limit sitting and standing to 30 minutes at a time. Claimant is able to walk up to 30 minutes on an occasional basis. Claimant should not operate a vehicle with a standard clutch.

23. Dr. Waters assigned permanent restrictions on September 8, 2005. He determined that Claimant should limit his work day to 8 hours and that Claimant would need the option to alternate sitting and standing. Claimant should limit squatting, bending and kneeling.

24. Although Claimant had similar restrictions prior to July 10, 2000 due to previous knee injuries, his restrictions became more severe as a result of the July 10, 2000 injury.

25. Restrictions assigned by Dr. Gustavel and Dr. Waters pertain to Claimant's orthopedic injuries and do not address Claimant's vision deficits. (Restrictions attributable to Claimant's vision deficits are addressed in the next section).

Expert Opinions Regarding Left Eye Condition

James P. Tweeten, M.D.

26. Dr. Tweeten is an ophthalmologist who performed an emergency room consultation on July 23, 1990 at St. Alphonsus Regional Medical Center based on Claimant's complaints of acute onset of left eye blurriness and severe knifelike pain posterior to the left eye. Claimant's vision returned while he was in the emergency room and he was discharged in stable condition with a differential diagnosis of migraine versus functional vision loss.

27. Dr. Tweeten noted that Claimant's vision returned after being told that he would need to stay the night in the hospital for observation. Dr. Tweeten suspected secondary gain and felt that Claimant's condition might be related to the stress of Claimant's job as a logging truck driver, which required Claimant to be away from his family.

28. The emergency room visit of July 1990 is the first documentation of medical treatment solely for Claimant's left eye condition and is the first time Claimant was diagnosed with a possible functional vision loss. (Claimant was treated for debris in his left eye in October 1983 following a truck accident, but the foreign body was removed without incident and the treatment for that injury focused on Claimant's right knee.) Although secondary gain was suspected in July 1990, Dr. Tweeten did not render an opinion as to whether Claimant's functional vision loss was associated with either malingering or hysteria.

Dwight Hansen, O.D.

29. Dr. Hansen is an optometrist who evaluated Claimant at the Idaho Commission for the Blind and Visually Impaired (ICBVI) on June 19, 2006. He tested Claimant's left eye vision at 20/200. Dr. Hansen noted that Claimant was not following the treatment regimen prescribed by Dr. Tweeten for glaucoma and recommended that he do so. Dr. Hansen recommended various visual aids, including a hand held magnifier. Dr. Hansen felt that Claimant would benefit from programs offered by ICBVI.

30. Immediately preceding or during his examination by Dr. Hansen, Claimant provided responses to a questionnaire regarding his history of vision loss. Some information pertains to Claimant's overall vision and not just his left eye. Claimant reported deteriorated vision over the past two years and an inability to read or watch TV. He indicated that he saw well enough to get around outdoors and see faces.

Jason Fronk, O.D.

31. Dr. Fronk is an optometrist who was hired by Claimant to perform an impairment rating evaluation regarding vision loss. He evaluated Claimant on July 28, 2006. Dr. Fronk's opinion regarding visual impairment is based on Claimant's vision at the time of examination and Dr. Fronk was unable to give an opinion, within reasonable medical probability, as to the date on which Claimant's vision was reduced to the level demonstrated during examination.

32. Claimant demonstrated left eye visual acuity of 20/200, uncorrected, when using a standard eye chart. When using an alternate chart designed for people with poor vision, Dr. Fronk measured Claimant's left eye visual acuity at 20/240 which was worse than demonstrated on the standard chart. Claimant's best corrected left eye vision, using glasses, was measured at 20/80.

33. The state of Idaho requires that an individual have best corrected vision of at least 20/40 to drive without a restriction and will not grant a driver's license if best corrected vision is worse than 20/70. Claimant is not legally able to drive. Claimant is not employable at jobs requiring driving, reading, or close detail work.

34. Dr. Fronk defined functional vision loss as vision loss in the absence of physical findings. Functional vision loss falls into two categories, malingering and hysterical. Malingering is when an individual lies about vision loss for some type of secondary gain. Hysterical functional vision loss is when a person "really, honestly" cannot see, in spite of normal physical findings. There is generally an emotional or stress-related cause for hysterical functional vision loss. Malingering is volitional whereas hysterical functional vision loss is not.

35. Dr. Fronk believes that Claimant's left eye vision loss is emotionally based hysterical functional vision loss that is not volitional. He bases his opinion on the consistency demonstrated by Claimant during his own testing as well as was demonstrated in the medical records.

36. Considering Claimant's bilateral visual deficits, Dr. Fronk considered permanent impairment to be significant and consistent with an overall visual impairment rating of 75.9%. This assessment includes consideration of Claimant's right eye vision loss.

Mark Snow, Ph.D.

37. Dr. Snow is a clinical psychologist who initially evaluated Claimant in August of 2002 to provide behavioral therapy for depression and the psychological aspects of dealing with chronic pain. He referred Claimant to a medical doctor for anti-depressant medication and continued to provide counseling therapy to Claimant.

38. Dr. Snow administered the Minnesota Multiphasic Personality Inventory test (MMPI-2) in September 2003. The validity profile of the assessment suggested that Claimant might have attempted to present himself in a favorable light. The clinical profile demonstrated hysteria, depression, and hypochondriasis. Test results suggested a psychological component to Claimant's pain behaviors but did not reflect malingering. Dr. Snow felt that Claimant presented himself in a positive manner and had little psychological insight to his condition.

39. Dr. Snow also administered the Structured Interview of Reported Symptoms (SIRS) in September 2003 to assess systematically deliberate distortions in Claimant's self-reporting of symptoms. Results reflected that Claimant was honestly reporting his difficulties and there was no evidence the Claimant was distorting his psychological symptoms.

40. Dr. Snow concluded that Claimant was not lying or faking his symptoms. Rather, Claimant demonstrated a conversion disorder which occurs when there is a real functional loss that is not backed up by medical data.

41. Dr. Snow testified about the historical background of the diagnosis of conversion disorder as identified by Sigmund Freud and demonstrated by World War II pilots who were assigned to make long and dangerous flights over Germany and lost their vision as a result of psychological stress. Dr. Snow believes that Claimant presents a classical case of conversion disorder.

42. Dr. Snow opined that both Claimant's perceived pain and left eye vision loss are real and a result of Claimant's conversion disorder. He specifically addressed and disagrees with the opinion of Michael H. McClay, PhD.¹, that there is a volitional component to

¹ Dr. McClay is a clinical psychologist who evaluated Claimant in March 2003 as part of a panel evaluation requested by PR. His opinions are not further discussed in this section of the decision since he did not address Claimant's left eye condition.

Claimant's conversion disorder. Dr. Snow considered the possibility that Claimant was faking his symptoms which is why he administered the MMPI-2 and SIRS tests.

43. Dr. Snow agrees with Dr. McClay that Claimant's conversion disorder pre-existed his injury of July 11, 2000.

44. Claimant's conversion disorder was permanent, stable and not improving as of July 10, 2000. Claimant's conversion disorder is not likely to improve, even if he is awarded money as a result of this case.

45. Dr. Snow was the only mental health professional to address Claimant's left eye vision loss. Dr. McClay performed a psychological evaluation of Claimant in March 2003 and diagnosed conversion disorder. Dr. McClay addressed the interplay between Claimant's conversion disorder and chronic pain but did not address Claimant's left eye vision deficits which were not evaluated in this case until 2006.

James R. Swartley, M.D.

46. Dr. Swartley is an ophthalmologist who evaluated Claimant on June 26, 2007 at Intermountain Eye and Laser Centers. He tested Claimant's left eye vision at 20/200, with the best corrected left eye vision at 20/80. His examination of Claimant revealed no medical reason for Claimant's vision loss other than early stage glaucoma that would not account for the extent of loss reported. He noted that the lack of a change in the visual fields from a one meter testing distance to a two meter testing distance was suggestive of malingering. Dr. Swartley concluded that Claimant did not have visual impairment due to physiological change in the left eye.

William T. Shults, M.D.

47. Dr. Shults is a neuro-ophthalmologist who evaluated Claimant in September 2007 at the request of ISIF. He prepared a detailed report dated September 10, 2007, as well as an

addendum report of October 4, 2007. Dr. Shults performed multiple tests during which he described Claimant's behavior as cooperative. Dr. Shults accurately summarized past medical records regarding Claimant's left eye condition and spoke with both Claimant and his wife about Claimant's deteriorating vision.

48. Dr. Shults tested Claimant's left eye visual acuity at 20/200. He found a "complete absence" of physical examination abnormalities that would result in Claimant's lack of visual acuity. Dr. Shults considered and rejected the theory of Dr. Fronk that Claimant's visual field loss was associated with glaucomatous optic neuropathy. Dr. Shults felt that the absence of pathological cupping in Claimant's left eye was inconsistent with Dr. Fronk's contention that left eye glaucoma accounted for visual field loss. Dr. Shults stated with certainty that there was no physical abnormality on examination that would support Claimant's professed degree of visual impairment as being due to injury to the anterior visual pathway of the left eye.

49. Dr. Shults concluded that Claimant's left eye deficits were attributable to non-organic factors resulting in functional vision loss as demonstrated by a high false-negative error rate on testing. He felt that the non-organic factors could be the result of either hysteria or malingering. Dr. Shults admitted that he could not "get inside [Claimant's] head" and did not express a medical opinion as to whether Claimant's functional vision loss resulted from non-volitional hysteria or volitional malingering. However, he explained that he would be "cautious under the circumstances in embracing hysteria as an explanation" in light of the fact that Claimant's left eye vision loss reported at the emergency room in 1990 immediately resolved when Claimant was told that he would have to stay in the emergency room overnight.

50. Dr. Shults is a well credentialed expert and his report is based on objective medical opinion without the appearance of bias.

51. History obtained by Dr. Shults from Claimant and his wife indicates that Claimant's visual functioning declined from 2000 to 2004 and that Claimant stopped driving in 2005. Claimant's wife became increasingly concerned about Claimant's ability to safely operate a motor vehicle and observed the deterioration of his driving skills from 2000 to 2005.

Expert Vocational Opinions

Nancy Collins, Ph.D.

52. Dr. Collins is a vocational rehabilitation consultant hired by Claimant to determine the extent of his permanent disability and employability. She reviewed Claimant's medical and vocational records. She interviewed Claimant on May 10, 2006. Dr. Collins prepared an initial report of July 7, 2006 and completed an addendum report on January 10, 2008 to address recent medical opinions regarding Claimant's left eye condition.

53. Dr. Collins administered academic tests which revealed that Claimant was functioning between a fourth and eighth grade skill level. She observed Claimant's unusual reading style and suspected that Claimant was having difficulty with vision in his "good" (left) eye. It was Dr. Collins' observations that led to Claimant being tested at the low vision clinic at the ICBVI.

54. Dr. Collins described Claimant's past employment as falling into medium and heavy categories with his current knee condition limiting him to sedentary and light categories. Claimant lacks transferable skills for most types of sedentary employment and is further limited by his vision loss. Dr. Collins feels that many of the jobs identified as appropriate by Mr. Jordan, the vocational expert hired by ISIF, are not appropriate for Claimant because they require computer skills that Claimant does not possess and/or otherwise exceed Claimant's limitations regarding sitting, standing and walking.

55. Based on Claimant's knee restrictions alone (not including vision loss), Dr. Collins feels that Claimant's loss of labor market access exceeds 90% with a loss of earning capacity in the amount of 30-40%. She opined that Claimant has 65-75% permanent disability attributable to the knees, with only 10% of that rating attributable to Claimant's pre-existing conditions.

56. When considering Claimant's right eye blindness and left eye vision deterioration combined with his knee condition, lack of formal education, and chronic pain, Dr. Collins feels that Claimant is totally disabled. She commented that employment attempts would be futile and noted that the concerted effort between Claimant and Mr. Crum to find suitable employment was not successful. She testified that Claimant is totally disabled based on a combination of his pre-existing orthopedic injuries, his pre-existing right eye blindness, his left eye difficulties, the restrictions from his last industrial injury (July 10, 2000), his academic levels and his lack of skill level.

57. Based on Claimant's vision deficits alone and assuming that the vision deficits preclude Claimant from reading and driving, Dr. Collins believes that Claimant would be able to perform medium duty labor jobs that do not require visual acuity, but that such employment is precluded due to restrictions associated with the injury of July 10, 2000. Such jobs include certain types of janitorial work or labor where Claimant is paired with an assistant.

58. In the event that Claimant's left eye vision is as good as 20/40 and he is able to drive, Dr. Collins believes that Claimant's other limitations would render him hugely disabled, but still employable.

Douglas N. Crum, C.D.M.S.

59. Mr. Crum is a vocational rehabilitation consultant hired by PR to facilitate Claimant's return to work. He reviewed Claimant's medical records, Industrial Commission Rehabilitation Division (ICRD) case notes and the transcript from Claimant's deposition taken on October 21, 2003. Mr. Crum initially met with Claimant on January 18, 2005 and performed a vocational diagnostic interview. He worked with Claimant and provided job leads to Claimant through June 2006. In spite of cooperative efforts between Claimant and Mr. Crum, Claimant was not able to return to sustainable employment.

60. Mr. Crum relied primarily on Dr. Gustavel to outline Claimant's physical restrictions, but consulted Richard A. DuBose, M.D., about the impact of Claimant's medication and also sought the opinion of Dr. Waters regarding appropriate work restrictions.

61. Jobs initially felt to be within Claimant's restrictions and abilities included service writer, courier, light motorcycle repair, motorcycle sales, guard shack, apartment/property management, phlebotomist, plasma runner and medical patient shuttle driver. Claimant subsequently expressed concerns about driving for more than 30 to 60 minutes, one time per day. By August 2005, Mr. Crum became aware that Claimant's vision problems were a potential hazard and he no longer felt comfortable referring Claimant to driving jobs.

62. Some of the jobs for which Claimant applied turned out to have duties that exceeded his restrictions. Cashier jobs at convenience stores required more lifting than Claimant could perform and security/parking lot attendant jobs required more walking than Claimant could perform. The most promising job prospect identified by Mr. Crum involved emissions testing and Mr. Crum was able to arrange a period of on-the-job training for Claimant in that position. However, the job required more kneeling than Dr. Gustavel felt Claimant should perform.

Additionally, Claimant was having difficulty reading VIN numbers which was a job requirement. By April 2006, Claimant had made three attempts to pass the test required by the Air Quality Board to become an emissions tester and was unable to do so. It is unclear whether Claimant's inability to pass the test was related to vision problems or academic deficits.

63. Mr. Crum testified that Claimant is totally and permanently disabled for multiple reasons including the absence of useful vision in both eyes, lack of transferable light duty skills, lack of education, and limited literacy skills. He explained that Claimant's most significant deficits were vision loss and limited literacy with the vision and literacy problems being significant enough that Claimant would not be employable even if he was extremely physically fit.

64. Mr. Crum indicated that his opinion is based, in part, on his assumption that Claimant had no useable vision in either eye prior to the injury of July 10, 2000. His assumption that Claimant's lack of usable vision in the left eye pre-dated the July 10, 2000 injury was based, in significant part, on his evaluation of the testimony and evidence presented at hearing.² Mr. Crum testified that Claimant's bilateral vision loss prior to July 10, 2000 rendered Claimant totally and permanently disabled and that it was not necessary for the July 10, 2000 injury to combine with Claimant's pre-existing conditions to result in total permanent disability.

65. If he were to assume that Claimant retained useful vision of his left eye, he would agree with Dr. Collins that Claimant's permanent disability would be less than total and would fall into the range of 65-75%. However, Mr. Crum attributes more of Claimant's permanent disability to pre-existing conditions than Dr. Collins and estimates that pre-existing conditions account for 83% of Claimant's permanent disability, if less than total disability exists.

² Mr. Crum was the last witness to testify and was present for the majority of testimony from the other witnesses at hearing.

66. Mr. Crum disagrees with Dr. Collins that Claimant would be employable if Claimant's vision was the same as it was on the date of hearing but Claimant had not sustained the injury of July 10, 2000. He believes that Claimant could not compete in a competitive job market if he required the accommodation of an assistant to perform labor. However, he feels that Claimant's ability to perform janitorial work under the same fact scenario would depend on his degree of vision loss and whether Claimant could see what was in front of him.

William C. Jordan, M.A., C.R.C., C.D.M.S.

67. Mr. Jordan is a vocational rehabilitation consultant hired by ISIF to evaluate Claimant's permanent disability. He reviewed Claimant's medical and vocational records and attended Claimant's deposition of June 7, 2007. Mr. Jordan prepared a chronological summary of medical records from July 18, 1990 through October 4, 2007 and summarized Claimant's wage and earning history from 1979 through 2007. He prepared a detailed employability report on October 30, 2007.

68. Mr. Jordan relied on permanent restrictions and limitations as identified by Dr. Gustavel on May 13, 2005 and Dr. Waters on September 8, 2005. These restrictions pertain to Claimant's bilateral knee problems and do not take Claimant's vision loss into consideration. With regard to Claimant's vision deficits, Mr. Jordan relied on the opinion of Dr. Swartley that Claimant does not have left eye visual impairment.

69. Mr. Jordan described Claimant's past employment as medium exertion level and ranging from unskilled to semi-skilled in nature with Claimant having the current ability to perform light duty work. He noted similarities among various restrictions given for Claimant's previous knee injuries with Claimant's current restrictions and indicated that Claimant's lifting restrictions increased after the July 10, 2000 injury.

70. Claimant's non-medical disability factors identified by Mr. Jordan include education (eighth grade), age (very slight disability factor at 43), and transportation/ability to operate motor vehicles (possible inability to drive but inconsistent with video evidence of 2003).

71. Dr. Swartley reviewed job descriptions at the request of Mr. Jordan and approved the following sample occupations: van driver, taxi driver, escort vehicle driver/pilot car, customer service representative, self service gas cashier, bowling alley desk clerk, switchboard operator, small products assembler, ticket taker, receptionist/greeter, cashier, telemarketer, clothing sorter, parking lot cashier, cable TV sales representative, and child care provider. Mr. Jordan defined Claimant's labor market to include Nampa, Caldwell, Meridian and Boise, Idaho. He identified approximately 27 recent job openings in Claimant's labor market that fell into the categories approved by Dr. Swartley.

72. Mr. Jordan reviewed documentation provided by Claimant regarding 123 inquiries with prospective employers. He determined that several jobs sought by Claimant were inappropriate due to the physical requirements of the work and that Claimant demonstrated a general failure to follow up with his job inquiries.

73. Mr. Jordan opined that there are several jobs that are regularly and continuously available in Claimant's labor market that fall within his physical capabilities. He feels that Claimant is employable and could find work if he applied for appropriate employment in an on-going manner with the intention of being hired.

DISCUSSION AND FURTHER FINDINGS

Total Permanent Disability

74. A claimant may establish that he or she is totally and permanently disabled by using either of the two methodologies available to establish total permanent disability:

First, a claimant may prove a total and permanent disability if his or her medical impairment together with the nonmedical factors total 100%. If the Commission finds that a claimant has met his or her burden of proving 100% disability via the claimant's medical impairment and pertinent nonmedical factors, there is no need for the Commission to continue. The total and permanent disability has been established at that stage. *See Hegel v. Kuhlman Bros., Inc.*, 115 Idaho 855, 857, 771 P.2d 519, 521 (1989) (Bakes, J., specially concurring) ("Once 100% disability is found by the Commission on the merits of a claimant's case, claimant has proved his entitlement to 100% disability benefits, and there is no need to employ the burden-shifting odd lot doctrine").

Boley v. State, Indus. Special Indem. Fund, 130 Idaho, at 281, 939 P.2d at 857 (emphasis added).

When a claimant cannot make the showing required for 100% disability, then a second methodology is available:

The odd-lot category is for those workers who are so injured that they can perform no services other than those that are so limited in quality, dependability or quantity that a reasonably stable market for them does not exist.

Jarvis v. Rexburg Nursing Center, 136 Idaho 579, 584 38 P.3d 617, 622 (2001), citing *Lyons v. Industrial Special Indem. Fund*, 98 Idaho 403, 565 P.2d 1360 (1977). The worker need not be physically unable to perform any work:

They are simply not regularly employable in any well-known branch of the labor market absent a business boom, the sympathy of a particular employer or friends, temporary good luck, or a superhuman effort on their part.

Id., 136 Idaho at 584, 38 P.3d at 622.

75. In the present case, a determination of total permanent disability turns on the nature, severity and permanence of Claimant's left eye vision loss. If Claimant's left eye vision loss is real, properly measured at 20/200 (20/80 with corrective lenses), and is permanent, Claimant easily meets his burden of proof to establish that he is, at best, an odd-lot worker and suffers permanent total disability. However, if Claimant's left eye vision loss is fabricated and/or transitory, Claimant's disability is less than total. Such a determination is complicated by the fact that medical experts agree that there is not a medical basis for Claimant's left eye vision

loss but disagree as to whether the functional vision loss is due to conversion disorder and/or hysteria (real) or fabricated as the result of malingering (fake). The determination is further complicated because Claimant alleges a progressive left eye vision loss which pre-existed the injury of July 10, 2000, but did not preclude activities such as driving until a later date.

76. Claimant has misrepresented his visual capabilities throughout his working career and adult life. However, the credible evidence establishes that Claimant consistently represented that his visual capabilities exceeded his actual abilities. Claimant does not have a history of exaggerating his visual disability. Claimant's wife and son credibly testified about the gradual decline in Claimant's ability to participate in activities requiring useful vision.

77. The opinions of Dr. Hansen, Dr. Fronk and Dr. Shults establish that Claimant has a functional vision loss and that his best uncorrected vision in the left eye was 20/200 by mid-2006.

78. The opinion of Dr. Snow that Claimant's functional left eye vision loss is real and the result of conversion disorder is credible and is adopted over the opinion of Dr. Swartley in this regard. Dr. Snow specifically addressed and ruled out the possibility that Claimant was faking his left eye vision loss and did so based on his observation of Claimant during psychological treatment over a period of more than two years, review of medical records relating to Claimant's vision loss, and psychological assessment which included validity scales.

79. The vocational opinions of Mr. Crum and Dr. Collins establish that Claimant is totally and permanently disabled if his left eye functional vision loss is taken into consideration. The vocational opinion of Mr. Jordan hinges on the medical opinion of Dr. Swartley that Claimant does not have left eye vision impairment and is rejected.

80. Claimant has met his burden of proof to establish that his left eye vision loss is real and that he is totally and permanently disabled.

ISIF Liability

81. A party seeking to establish liability against the ISIF pursuant to Idaho Code § 72-332 carries the burden of proof. *Garcia v. J.R. Simplot Co.*, 115 Idaho 966, 772 P.2d 173 (1989) *overruled on other grounds by Archer v. Bonners Ferry Datsun*, 117 Idaho 166, 786 P.2d 557 (1990); *Boley v. State, Indus. Special Indem. Fund*, 130 Idaho 278, 939 P.2d 854 (1997). ISIF liability is triggered only upon a finding of total permanent disability of the claimant. Once an injured worker establishes total permanent disability, he or she must prove four additional conditions to establish ISIF liability under the statute:

1. That there was a preexisting impairment;
2. That the impairment was manifest;
3. That the impairment was a subjective hindrance; and
4. That the impairment combines in some way, causing total permanent disability.

Dumaw v. J. L. Norton Logging, 118 Idaho 150, 155, 795 P.2d 312, 317 (1990).

Pre-Existing Impairment that was Manifest

82. It is undisputed that Claimant had permanent impairment associated with his right knee and right eye that pre-existed his injury of July 10, 2000. However, there is a factual dispute as to whether Claimant's left eye vision loss constituted a pre-existing impairment or if the left eye impairment developed following the injury of July 10, 2000.

83. The persuasive evidence establishes that Claimant's left eye vision loss is progressive. Deficits were first documented in July of 1990 and were manifest prior to July 10, 2000. Claimant's left eye vision was impaired to the extent that it was a hindrance to his

employment at the time of the last industrial injury. Claimant's left eye vision continued to deteriorate and was found to be 20/200, uncorrected, by June of 2006 when he was tested at ICBVI.

84. There is absence of contemporaneous medical documentation regarding Claimant's progressive left eye vision loss between 1990 and 2006. However, the medical testimony of Dr. Snow and Dr. Fronk supports the lay witness testimony regarding manifest impairment prior to July 10, 2000. Examples include Claimant's inability to assist his son with projects involving visual acuity, Claimant's termination from his job as a backhoe operator because of vision problems that led to Claimant knocking down foundation walls, and Claimant's difficulty reading the micro-screen as required by his job at Cycle Salvage.

85. Idaho Code § 72-332(1) takes "permanent physical impairment from any cause or origin..." into consideration and is sufficiently broad to include progressive conditions which result in permanent physical impairment. *Colpaert v. Larson's*, 115 Idaho 825, 771 P.2d 46 (1989).

86. In *Colpaert*, the claimant had pre-existing ataxia, a progressive condition resulting in neurological and muscular degeneration. Prior to her industrial injury, the claimant had limitations attributable to her ataxia which prevented her from climbing stairs and standing for long periods of time. The claimant suffered an industrial injury to her right shoulder as the result of a slip and fall. After being medically released to return to work, the claimant returned to work for her time of injury employer for approximately three weeks before being terminated for reasons unrelated to her injury. The claimant subsequently performed part time work for an alternate employer for eight months, after which she became unable to work based on a progression of her ataxic condition. The Industrial Commission determined that the claimant

established ISIF liability because her impairment associated with ataxia was manifest prior to her industrial injury; she was totally and permanently disabled by reason of the combined effects of both her pre-existing impairment and her industrial injury; and that the claimant's ataxia constituted a hindrance or obstacle to her employment. *Id.*

87. The *Colpaert* Court affirmed the decision of the Industrial Commission and specifically rejected the ISIF's argument that a progressive condition could not constitute a permanent physical impairment sufficient to trigger ISIF liability. The Court found substantial competent evidence to support the Industrial Commission's determination that the "combined with" test was met, in spite of contrary medical evidence that the claimant would have been disabled by the natural progression of her ataxic condition alone, even without an intervening industrial injury. *Id.* at 830.

88. ISIF asserts that it is potentially liable only for qualifying pre-existing permanent physical impairments as they existed at the time of the industrial injury and that ISIF is not liable for the further deterioration of Claimant's pre-existing condition after the industrial injury, citing *Horton v. Garrett Freightlines, Inc.*, 115 Idaho 912, 772 P.2d 119 (1989).

89. The claimant in *Horton* sustained an industrial injury to his right hip in 1974 which necessitated a total right hip replacement in 1984. The claimant was diagnosed with longstanding degenerative changes and arthritic conditions to his left hip, left shoulder and spine (unrelated to the industrial injury) from 1984 through 1986. Permanent impairment to claimant's left hip, left shoulder and spine was not manifest until 1984 which was prior to his disability rating for the 1974 injury. The claimant sought recovery from the ISIF based on pre-existing permanent impairment attributable to his degenerative conditions diagnosed during and after 1984 combined with the effects of his 1974 injury.

90. The *Horton* majority opinion characterized the claimant's degenerative conditions of his left hip, left shoulder and spine as underlying conditions that had not manifested themselves at the time of the right hip injury and determined that none of the liability could properly be apportioned to ISIF.

91. In the present case, Claimant's pre-existing permanent impairment includes his right eye blindness, progressive left eye condition and right knee deficits. The last industrial injury resulted in additional permanent impairment to his left knee. The facts of this case are more similar to *Colpaert* than *Horton*. Claimant has met his burden to establish that his pre-existing permanent impairment, including bilateral vision loss and right knee deficits, was manifest prior to and on July 10, 2000. The deterioration of Claimant's vision in his left eye reflects a progressive condition as opposed to an underlying condition that had not manifested itself.

Subjective Hindrance

92. The "subjective hindrance" prong of the test for ISIF liability finds its genesis in the statutory definition of permanent impairment together with additional language enacted by the legislature in 1981:

"Permanent physical impairment" is as defined in section 72-422, Idaho Code, provided, however, as used in this section such impairment must be a permanent condition, whether congenital or due to injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining re-employment if the claimant should become employed. *This shall be interpreted subjectively as to the particular employee involved, however, the mere fact that a claimant is employed at the time of the subsequent injury shall not create a presumption that the preexisting permanent physical impairment was not of such seriousness as to constitute such a hindrance or obstacle to obtaining employment.*

Idaho Code § 332(2), Idaho Sess. Laws, ch. 261, Sec. 2, pp. 552, 554 (emphasis added). The Idaho Supreme Court set out the definitive explanation of the "subjective hindrance" language in

Archer v. Bonners Ferry Datsun, 117 Idaho 166, 172, 786 P.2d 557, 563 (1990):

Under this test, evidence of the claimant's attitude toward the preexisting condition, the claimant's medical condition before and after the injury or disease for which compensation is sought, nonmedical factors concerning the claimant, as well as expert opinions and other evidence concerning the effect of the preexisting condition on the claimant's employability will all be admissible. No longer will the result turn merely on the claimant's attitude toward the condition and expert opinion concerning whether a reasonable employer would consider the claimant's condition to make it more likely that any subsequent injury would make the claimant totally and permanently disabled. The result now will be determined by the Commission's weighing of the evidence presented on the question of whether or not the preexisting condition constituted a hindrance or obstacle to employment for the particular claimant.

93. Claimant's bilateral vision deficits and right knee impairment constituted a hindrance and was an obstacle to employment. In spite of the fact that Claimant became adept at covering up his disabilities and was able to self-accommodate for his vision loss, Claimant's pre-existing impairment made it difficult (knees) to perform more than light to medium truck work and (eyes) to operate a motor vehicle. Claimant was able to see well enough to work for PR as a driver for the 11 months preceding his last industrial injury. However, Claimant credibly testified that he was only able to do so in that position because he was able to memorize the routes and follow other vehicles.

Combined With

94. To satisfy the "combined effects" requirement in I.C. § 72-332(1), a claimant must show that *but for* the pre-existing impairments, he would not have been totally disabled. *Garcia v. J.R. Simplot Co.*, 115 Idaho 966, 772 P. 2d 1973 (1989). (Emphasis added). Although the "combined with" requirement of Idaho Code § 72-332 has generated a number of appellate decisions, most of the cases in which ISIF has been relieved of liability involve two common scenarios: (1) where the claimant was already totally disabled as an odd-lot worker prior to the last industrial injury; and (2) where the claimant became totally disabled solely as a result of the

last industrial injury. The Court has carefully laid out a framework for analyzing these two common situations and determined that the “combined with” requirement has not been met in either situation.

95. In the opinion of the Referee, the “combined with” criterion is the most challenging aspect of analysis regarding ISIF liability in this case. Certainly, Claimant would eventually have become totally disabled as the result of his bilateral vision loss alone. This was likely the case by the time of hearing in 2008. However, Claimant was able to maintain employment up until his last industrial injury of July 10, 2000 to his left knee and continued to demonstrate an ability to drive through at least 2003. Accordingly, the point in time when the “combined with” test is applied is critical.

96. In its clarification of the analysis applied in *Garcia*, the Idaho Supreme Court provided a bright line rule as to what point in time the “combined with” test should be applied:

Moreover, given the requirement in § 72-332(1) that the pre-existing impairment and subsequent injury combine to result in disability, it is implicit in the *Garcia* test that the relevant point in time is the point at which the injury occurs. Stated more specifically, the test is whether, but for the industrial injury, the worker would have been totally and permanently disabled *immediately following the occurrence of [the last industrial] injury*. This statement of the rule encompasses both the combination scenario where each element contributes to the total disability, and the case where the subsequent injury accelerated and aggravates the pre-existing impairment.

Bybee v. State, Indus. Special Indem. Fund, 129 Idaho 76, 81, 921 P.2d 1200, 1205 (1996) (emphasis added).

97. Dr. Collins’ testimony that, had it not been for the July 10, 2000 injury, Claimant would have been able to work in a janitorial position or perform labor with an assistant is credible and persuasive based on Claimant’s level of vision *immediately following the injury*. The evidence establishes that Claimant’s vision was good enough in late July 2000 to perform

janitorial work. Based on testimony of Claimant and surveillance evidence, Claimant continued to drive his personal vehicle until at least 2003.

98. Mr. Crum's testimony that Claimant was essentially blind at the time of the July 10, 2000 injury and was already an odd-lot worker is not persuasive or supported by the other evidence. Mr. Crum met with Claimant in January of 2005 and spent more than six months attempting to facilitate Claimant's return to work in positions that required some amount of useful vision, including multiple driving jobs. Vision deficit became a concern to Mr. Crum in August of 2005. Claimant demonstrated the ability to drive for PR and otherwise make do with his vision deficits during the eleven months prior to his last industrial injury.

99. Claimant was not already a working odd-lot employee immediately preceding his injury of July 10, 2000 and would not have been totally and permanently disabled immediately following his injury of July 10, 2000, if the injury had not occurred. Accordingly, Claimant has met his burden of proof to establish that his total disability resulted from the combined effects of his pre-existing conditions and industrial injury of July 10, 2000.

Apportionment

The *Carey* Formula

100. The *Carey* formula applies when a preexisting impairment combines with the current injury to create total and permanent disability. *Hamilton v. Ted Beamis Logging & Constr.*, 127 Idaho 221, 899 P.2d 434 (1995). Its purpose is to apportion the nonmedical disability factors between the employer and the ISIF. The formula comes from *Carey v. Clearwater County Road Department*, 107 Idaho 109, 118, 686 P.2d 54, 63 (1984), in which the Idaho Supreme Court held:

[T]he appropriate solution to the problem of apportioning the nonmedical disability factors, in an odd-lot case where the fund is involved, is to prorate the

nonmedical portion of disability between the employer and the fund, in proportion to their respective percentages of responsibility for the physical impairment.

Henderson v. McCain Foods, Inc., 142 Idaho 559, 567, 130 P.3d 1097, 1105 (2006).

Combined Values v. Addition

101. When determining a percentage of permanent impairment attributable to an injury or condition for purposes of Idaho workers' compensation law, the use of the AMA's *Guides to the Evaluation of Permanent Impairment* is accepted but not required. There are multiple editions of the *Guides*³ which employ evolving methods of calculation. All editions utilize the combined values chart to enable the calculating physician to account for multiple impairments without the possibility of exceeding 100% of the whole person. The chart is found at page 604 of the *Guides* and is essentially a cheat sheet for easy application of the mathematical formula $A + B(1-A)$. The *Guides* include specific instructions as to the application of the chart and the sequence in which multiple impairments should be combined in order to arrive at a whole person impairment rating. *Guides*, pp. 9-10, 604.

102. Certain permanent impairments, including total loss of vision of one eye, are enumerated in Idaho Code § 72-428 which provides a schedule of income benefits attributable to each loss or loss of use of specified body parts. The enumerated list is not exhaustive and it is often necessary to aggregate impairment pursuant to Idaho Code § 72-428 with ratings calculated in accordance with the *Guides*. The statute does not include a counterpart to the combined values chart and it is possible that aggregate impairments will exceed 500 weeks of benefits. However, Idaho Code § 72-426 specifies that a whole person (100%) shall be deemed to be 500 weeks for purposes of computing permanent impairment income benefits. In practical

³ The 6th Edition has recently been published, but the 5th Edition is utilized in this decision since it was the version relied upon by the physicians at the time Claimant reached maximum medical improvement for his last industrial injury.

application, this means that each percentage of permanent impairment is worth five weeks of benefits, but that permanent impairment benefits are subject to a 500 week cap.

103. In order to apply the *Carey* formula and apportion benefits owed between PR and ISIF, it is necessary to express Claimant's pre-existing permanent impairment as a percentage. The results of this calculation yield different results depending on whether the combined values chart is utilized (42%) or the amounts are simply added together (48%). The Industrial Commission has previously issued decisions demonstrating both methods. *Mills v. J.R. Simplot Co.*, 2007 IIC 0903 (combined values chart applied, paragraph 33); *Dutton v. ISIF*, IC 2002-519782 (filed March 3, 2008)(summation method applied, paragraph 14)⁴. The Idaho Supreme Court has approved the summation method without specifically addressing whether the combined values chart either could or should be applied. *Clark v. Idaho Truss*, 142 Idaho 404, 128 P3d 941 (2006). In *Clark*, the disputed issue regarding quantification of the claimant's pre-existing impairment involved whether collateral estoppel applied to previous lump sum settlements and not whether the combined values chart should be utilized.

104. The Referee invited legal argument from the parties on this issue and PR argued in favor of the summation method, citing *Clark*.

105. When the *Carey* formula is used to apportion liability between an employer/surety and ISIF, the proportionate shares of liability will always total 100%, as a function of the formula. Since the *Carey* formula serves to eliminate the possibility of reaching a total amount of disability that exceeds 100%, application of the combined values chart serves a redundant

⁴ Although the Industrial Commission used the word "combined", it is clear that the pre-existing impairments were added using basic summation and that the combined values chart was not applied.

purpose and is not necessary. It is appropriate to add Claimant's pre-existing impairment using the summation method.

106. It is noted that Claimant was not assigned a PPI rating based on his left eye vision deficits at any time prior to the injury of July 11, 2000. Dr. Fronk calculated a PPI rating in July 2006 based on bilateral vision deficits at the time of his examination. However, it is Claimant's PPI attributable to his vision loss immediately preceding his injury that is relevant to evaluation of his pre-existing impairment. Claimant's undisputed pre-existing loss of vision in his right eye results in a 30% PPI rating pursuant to the schedule of benefits provided in Idaho Code § 72-428. Calculation of impairment attributable to loss of visual acuity in accordance with the *Guides* is based on a functional acuity score that takes a person's bilateral visual acuity into consideration. According to the *Guides*, an individual with legal blindness (20/200) in one eye and normal vision in the other eye is considered to have Class 2 visual acuity impairment and is entitled to a PPI rating ranging from 10% to 29%. An individual with legal blindness in one eye (20/200) and some loss of visual acuity in the other eye (20/80) falls into Class 3 impairment of visual acuity and is entitled to a PPI rating ranging from 30%-49%.

107. It is not necessary to calculate a percentage of impairment specific to Claimant's left eye visual acuity loss immediately preceding his injury of July 11, 2000. The *Guides* rate visual acuity loss based on vision through both eyes. Claimant's pre-existing PPI rating of 30% for vision loss is consistent with both scheduled impairment for the loss of vision in one eye pursuant to Idaho Code § 72-428(3) and with a rating under the *Guides* for total loss of vision in one eye with moderate deficits in the other eye. At hearing, the parties agreed that Claimant had 30% pre-existing PPI based on vision deficits. There was no evidence or argument presented

that Claimant's pre-existing PPI attributable to vision loss was anything other than 30%. Accordingly, Claimant's pre-existing PPI attributable to vision loss is fairly calculated at 30%.

The Math

108. It is undisputed that Claimant's pre-existing PPI ratings translate to 30% for loss of vision, 8% for Claimant's right knee injury of 1983, 6% for Claimant's right knee injury of 1985, and 4% for Claimant's right knee injury of 1993.

109. Using the summation method (30 + 8 + 6 + 4), Claimant's pre-existing impairment totals 48%.

110. Claimant has 10% PPI attributable to the July 10, 2000 injury for a total of 58% PPI (48% pre-existing + 10% attributable to July 10, 2000 injury).

109. Applying the *Carey* Formula, ISIF is liable for 82.76% of Claimant's PTD benefits (48/58) and PR is liable for the remaining 17.24% of Claimant's PTD benefits (10/58).

CONCLUSIONS OF LAW

1. Claimant is totally and permanently disabled.
2. ISIF is liable pursuant to Idaho Code § 72-332.
3. PR is liable for 17.24% of Claimant's PTD benefits (in addition to PPI benefits already paid) and ISIF is liable for 82.76% of Claimant's PTD benefits, pursuant to the *Carey* formula.

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 23 day of May 2008.

INDUSTRIAL COMMISSION

 /s/
Susan Veltman, Referee

ATTEST:

 /s/
Assistant Commission Secretary

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MICHAEL CORSON,)
)
 Claimant,) **IC 2000-022603**
)
 v.)
)
 P. R. CORPORATION,)
)
 Employer,)
) **ORDER**
)
 AMERICAN HOME ASSURANCE)
 COMPANY,)
)
 Surety,) June 2, 2008
)
 and)
)
 STATE OF IDAHO, INDUSTRIAL)
 SPECIAL INDEMNITY FUND,)
)
 Defendants.)
 _____)

Pursuant to Idaho Code § 72-717, Referee Susan Veltman submitted the record in the above-entitled matter, together with her proposed 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 is totally and permanently disabled.
2. ISIF is liable pursuant to Idaho Code § 72-332.

3. PR is liable for 17.24% of Claimant's PTD benefits (in addition to PPI benefits already paid) and ISIF is liable for 82.76% of Claimant's PTD benefits, pursuant to the *Carey* formula.

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

DATED this 2 day of June , 2008.

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 2 day of June , 2008, a true and correct copy of the foregoing **Findings, Conclusions and Order** was served by regular United States Mail upon each of the following persons:

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 /s/ _____