

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

ISABEL B. FLORES,)
)
 Claimant,)
)
 v.)
)
 CLEAR SPRINGS FOODS, INC.,)
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 Employer,)
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 and)
)
 LIBERTY NORTHWEST INSURANCE)
 CORPORATION,)
)
 Surety,)
)
 Defendants.)
 _____)

IC 2006-510815

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

Filed: October 20, 2009

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Alan Taylor, who conducted a hearing in Twin Falls on December 2, 2008. Claimant, Isabel B. Flores, was present in person and represented by Darin Monroe of Boise. Defendant Employer, Clear Springs Foods, Inc. (Clear Springs), and Defendant Surety, Liberty Northwest Insurance Corporation, were represented by Scott Harmon of Boise. The parties presented oral and documentary evidence. Post-hearing depositions were taken and briefs were later submitted. The matter came under advisement on July 6, 2009.

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ISSUES

Claimant waived the issue of attorney fees in her opening brief. Thus, the issues to be decided by the Commission are:

1. Whether Claimant's condition is due, in whole or in part, to a pre-existing and/or subsequent injury/condition.
2. The extent of Claimant's permanent partial impairment.
3. The extent of Claimant's permanent disability in excess of impairment, including whether Claimant is totally and permanently disabled pursuant to the odd-lot doctrine or otherwise.

CONTENTIONS OF THE PARTIES

Claimant argues that she suffers permanent partial impairment of 13% of the whole person and is totally and permanently disabled due to the effects of her bilateral upper extremity overuse syndromes, including right carpal tunnel syndrome, bilateral rotator cuff tendonitis, bilateral wrist pain, and right index trigger finger, as well as significant non-medical factors including her age, 10th grade education, and lack of transferable skills. Claimant relies on the opinion of vocational expert Shannon Purvis, M.Ed., CRC.

Defendants contend that Claimant suffers permanent impairment of 9% of the whole person due to her various upper extremity conditions. Defendants rely on the opinion of vocational expert Mary Barros-Bailey, Ph.D., and assert that Claimant has no permanent disability in excess of impairment, or, at most, not more than 65% permanent disability inclusive of impairment.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;

2. The testimony of Claimant and Jeff Jermunson taken at the December 2, 2008, hearing.
3. Joint Exhibits A through P, admitted at the hearing.
4. The post-hearing deposition of Richard A. Radnovich, D.O., taken by Claimant on January 28, 2009;
5. The post-hearing deposition of Shannon Purvis, M.Ed, CRC, taken by Claimant on February 6, 2009;
6. The post-hearing deposition of William D. Lenzi, M.D., taken by Defendants on February 25, 2009; and
7. The post-hearing deposition of Mary Barros-Bailey, Ph.D., taken by Defendants on February 26, 2009.

All objections made during the depositions of Dr. Radnovich, Shannon Purvis, and Dr. Barros-Bailey are sustained. After considering the above evidence and the arguments of the parties, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

FINDINGS OF FACT

1. Claimant was born in 1949 and is right hand dominant. She is bilingual and speaks Spanish and English fluently. She attended high school through the 10th grade and has not obtained a GED. After dropping out of high school, she began working in the fields weeding potatoes, beets, onions, and peppers. Claimant's husband passed away in 2005. She was 59 at the time of hearing and had resided in Castleford since 1974.

2. Clear Springs is a fish hatchery and fish processing enterprise that raises, processes, and ships rainbow trout to retail distributors. Processing includes eviscerating, de-

boning, and packaging fish in facilities with ambient air temperatures ranging from 50 to 60 degrees Fahrenheit.

3. In 1979, Claimant began working at Clear Springs in the fish evisceration area, where fish were sorted, loaded into hoppers, and placed in an evisceration machine. Any residual viscera were removed by hand. After evisceration, the fish were inspected and placed in a chill tank. During her shift, Claimant rotated duties sorting, inspecting, and hand-weighing fish. She worked in the evisceration department for approximately 13 years.

4. In 1992, Claimant was assigned to the trimming department at Clear Springs, where she operated machines to de-bone fish and then hand-trimmed any bones still remaining in the fish. She was required to constantly reach for fish and load them. She switched from operating the de-boning machine, to inspecting deboned fish, to hand-trimming every hour throughout her shift. Claimant worked in the trimming department for approximately 10 years. Claimant sprained her right wrist while working in the trimming department when she tried to prevent a tub of fish from falling to the floor. This injury resolved. Claimant also injured her low back while trimming when a man pulled a chair out from under her, causing her to fall. She has noted some back and leg pain off and on since that time.

5. Claimant experienced intermittent hand and wrist pain during her time in the trimming department. She was advised to slow down her processing speed until her pain resolved and then return to her customary rapid pace.

6. In May 2001, Claimant was involved in a car accident. She sustained a cervical and lumbar sprain and a closed head injury. She noted some aching discomfort in her neck when trying to use her hands. She was treated conservatively for several months and released to return to her full work duties in July 2001.

7. In about 2002, Claimant began working in the Clear Springs packaging department, where she weighed, packaged, and loaded cleaned whole fish into 10 and 25 pound bags. The bags were sealed, boxed, and palletized. Palletizing required her to regularly reach and lift above shoulder height. She rotated packaging assignments every hour during her shift.

8. In 2004, Claimant was diagnosed with diabetes.

9. In approximately June 2005, Claimant began experiencing bilateral wrist pain when boxing fish. She notified her lead person, who reassigned her to a light-duty position running the bagging machine. While Claimant did not have to lift 25 pound bags, the work was still repetitive. She performed light-duty work for approximately five months and then presented to Douglas Stagg, M.D., complaining of right hand pain extending up to her shoulder. Dr. Stagg advised her to temporarily refrain from using her right hand. Claimant returned to work and performed all of her duties left-handed. Her left arm became symptomatic. She began having sharp pain at night and difficulty grasping. Claimant continued working until she could tolerate the pain no longer.

10. Dr. Stagg treated Claimant's right shoulder, arm, and wrist. He provided injections and prescribed anti-inflammatory medication. Claimant underwent bilateral upper extremity nerve conduction testing, which revealed abnormal latencies on the right. Dr. Stagg referred Claimant to Tyler Wayment, M.D., who gave Claimant bilateral wrist injections and left index and thumb injections. In February 2007, Dr. Wayment performed right carpal tunnel release surgery. Claimant's right wrist symptoms improved, but she still noted some residual pain.

11. Claimant last worked for Clear Springs in April 2007. She has not applied for any work since that time. In December 2007, Claimant was awarded Social Security disability benefits for her herniated lumbar disk, left leg pain, and bilateral upper extremity conditions.

12. At the time of hearing, Claimant continued to have pain in her left index finger and right wrist, as well as sharp pain in both shoulders and arms. Her left arm “locked” when she attempted overhead reaching and her left arm regularly hurt from the shoulder to the bicep. Claimant noted occasional shooting pain in her left elbow and wrist with activity. Claimant’s left and right ring and middle fingers occasionally went numb.

13. Claimant testified that she cannot do all her vacuuming without resting. Her granddaughter helps with vacuuming and other household chores. Claimant can no longer play baseball with her grandchildren, garden, cut the lawn, or sew.

14. Claimant testified that she enjoyed her job at Clear Springs and would like to return, but does not believe she could tolerate the work duties. She would like to work with children, from toddlers up to five years of age. However, Claimant believes she could not pick up these children and, thus, believes she would not be employable in child care work. Claimant is computer-illiterate.

15. Claimant has been advised to have a rheumatoid arthritis work-up, but is without funds to do so.

16. Having observed Claimant at hearing and reviewed the evidence, the Referee finds that Claimant is generally credible. However, William Lenzi, M.D., examined Claimant at Defendants’ request on May 22, 2008. In his subsequent deposition, Dr. Lenzi testified that during his examination of Claimant, she held her right hand in a protected and clasped position and was reluctant to allow him to touch it. Dr. Lenzi also observed Claimant immediately after she left his office and testified that Claimant opened a car door without hesitation with her right hand, seated herself in the car, and then closed the car door without hesitation with her right hand. Considering Dr. Lenzi’s testimony, the Referee concludes that Claimant’s subjective

complaints and self-expressed limitations regarding her right hand are likely overstated and not entirely reliable.

DISCUSSION AND FURTHER FINDINGS

17. The provisions of the Workers' Compensation Law are to be liberally construed in favor of the employee. Haldiman v. American Fine Foods, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990). The humane purposes which it serves leave no room for narrow, technical construction. Ogden v. Thompson, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996). Facts, however, need not be construed liberally in favor of the worker when evidence is conflicting. Aldrich v. Lamb-Weston, Inc., 122 Idaho 361, 363, 834 P.2d 878, 880 (1992).

18. **Causation.** The first issue is whether the conditions for which Claimant seeks permanent impairment and disability benefits were caused by her work at Clear Springs or by some pre-existing or subsequent event or condition. A claimant must prove not only that he or she suffered an injury, but also that the injury was the result of an accident arising out of and in the course of employment. Seamans v. Maaco Auto Painting, 128 Idaho 747, 751, 918 P.2d 1192, 1196 (1996). Proof of a possible causal link is not sufficient to satisfy this burden. Beardsley v. Idaho Forest Industries, 127 Idaho 404, 406, 901 P.2d 511, 513 (1995). A claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability. Langley v. State, Industrial Special Indemnity Fund, 126 Idaho 781, 785, 890 P.2d 732, 736 (1995). "Probable" is defined as "having more evidence for than against." Fisher v. Bunker Hill Company, 96 Idaho 341, 344, 528 P.2d 903, 906 (1974). Magic words are not necessary to show a doctor's opinion is held to a reasonable degree of medical probability; only plain and unequivocal testimony conveying a conviction that events are causally related. See, Jensen v. City of Pocatello, 135 Idaho 406, 412-13, 18 P.3d 211, 217 (2001).

19. In the present case, Claimant does not assert that her arthritis or diabetes were caused by her employment. Defendants' medical expert, Dr. Lenzi, opined that Claimant's flexor tenosynovitis in the right index, long, and ring fingers and loss of range of motion of the right index finger were caused by her work at Clear Springs. Claimant's medical expert, Richard Radnovich, D.O., testified that Claimant's bilateral rotator cuff tendonitis, right de Quervain's tendonitis, right trigger finger, post right carpal tunnel release with residual symptoms, and bilateral wrist pain were all caused by her work at Clear Springs. Dr. Stagg concluded that Claimant's bilateral rotator cuff tendinitis, right carpal tunnel syndrome, and right index trigger finger were related to her work at Clear Springs. All of these opinions are well supported in the record. There is no persuasive evidence that her upper extremity conditions are related to any non-industrial cause.

20. Claimant has proven that her bilateral rotator cuff tendonitis, right de Quervain's tendonitis, right index trigger finger, right carpal tunnel syndrome, bilateral wrist pain flexor tenosynovitis in the right index, long, and ring fingers, and loss of range of motion of the right index finger were all caused by her work at Clear Springs.

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

ultimate evaluator of impairment. Urry v. Walker & Fox Masonry Contractors, 115 Idaho 750, 755, 769 P.2d 1122, 1127 (1989).

22. On June 27, 2007, Dr. Lenzi examined Claimant at Defendants' request and diagnosed bilateral flexor tenosynovitis, bilateral tendinitis of the long head biceps, and synovitis of the PIP joint of the left long finger, MP joints of the index and long fingers, and probably the dorsal wrist and extensor carpi ulnaris on the left. Dr. Lenzi reported that Claimant could return to work at Clear Springs without restrictions.

23. On December 18, 2007, Dr. Radnovich examined Claimant at her request. He diagnosed bilateral rotator cuff tendonitis, right de Quervain's tendonitis, right trigger finger, post carpal tunnel release surgery on the right, and bilateral wrist pain—all caused by Claimant's work at Clear Springs. Dr. Radnovich rated Claimant's permanent impairment at 13% of the whole person.

24. On May 22, 2008, Dr. Lenzi examined Claimant again at Defendants' request. He concluded that Claimant suffered various conditions related to her work including flexor tenosynovitis in the right index, long, and ring fingers and loss of range of motion of the right index finger at the MCP, PIP, and DIP joints secondary to flexor tenosynovitis. He also noted early wrist arthritis—not work-related. Dr. Lenzi rated Claimant's permanent partial impairment at 9% of the whole person, all attributable to her work at Clear Springs.

25. Dr. Wayment opined that Claimant was capable of working, but could not return to her work at Clear Springs as she could not tolerate that line of work anymore. However, he opined that Claimant suffered no permanent physical impairment.

26. The ratings offered by Dr. Lenzi and Dr. Radnovich are somewhat similar. Dr. Radnovich is an independent medical examiner certified by the American Board of Independent

Medical Examiners with specific training in impairment ratings. In his deposition, Dr. Radnovich fully explained the impairment rating he assigned to Claimant's various conditions consistent with the AMA Guides, 5th Edition. Dr. Radnovich's rating is, thus, more persuasive than that given by Dr. Lenzi.

27. The record suggests that Claimant may suffer other conditions, including diabetes, arthritis, and low back and left leg pain. However, she does not assert, and the record does not contain, impairment ratings for any of these other conditions. Claimant has proven she suffers a permanent impairment of 13% of the whole person, all attributable to her work at Clear Springs.

28. **Permanent Disability.** "Permanent disability" or "under a permanent disability" results when the actual or presumed ability to engage in gainful activity is reduced or absent because of permanent impairment and no fundamental or marked change in the future can be reasonably expected. Idaho Code § 72-423. "Evaluation (rating) of permanent disability" is an appraisal of the injured employee's present and probable future ability to engage in gainful activity as it is affected by the medical factor of permanent impairment and by pertinent nonmedical factors provided in Idaho Code § 72-430. Idaho Code § 72-425. Idaho Code § 72-430 (1) provides that in determining percentages of permanent disabilities, account should be taken of the nature of the physical disablement, the disfigurement if of a kind likely to handicap the employee in procuring or holding employment, the cumulative effect of multiple injuries, the occupation of the employee, and his or her age at the time of accident causing the injury, or manifestation of the occupational disease, consideration being given to the diminished ability of the affected employee to compete in an open labor market within a reasonable geographical area considering all the personal and economic circumstances of the employee, and other factors as the Commission may deem relevant.

29. The test for determining whether a claimant has suffered a permanent disability greater than permanent impairment is “whether the physical impairment, taken in conjunction with non-medical factors, has reduced the claimant’s capacity for gainful employment.” Graybill v. Swift & Company, 115 Idaho 293, 294, 766 P.2d 763, 764 (1988). In sum, the focus of a determination of permanent disability is on the claimant’s ability to engage in gainful activity. Sund v. Gambrel, 127 Idaho 3, 7, 896 P.2d 329, 333 (1995).

30. There are two relevant methods by which a claimant can demonstrate total and permanent disability. First, a claimant may prove total and permanent disability if his medical impairment, together with pertinent nonmedical factors, totals 100%. If the claimant fails to prove 100% disability, he can still demonstrate total disability by fitting within the definition of an odd-lot worker. Boley v. State, Industrial Special Indemnity Fund, 130 Idaho 278, 281, 939 P.2d 854, 857 (1997). Claimant herein asserts she is 100% disabled, or alternatively, an odd-lot worker. To evaluate Claimant’s permanent disability, several items merit examination including the physical restrictions resulting from her permanent impairment and her potential employment opportunities as identified by vocational rehabilitation experts.

31. Physical restrictions. Claimant’s permanent physical restrictions from her industrial conditions have been evaluated by several physicians. Dr. Lenzi opined that Claimant needed rest breaks every two hours and was also restricted from repetitive hand use in temperatures between 0 and 40 degrees Fahrenheit. He did not restrict Claimant from returning to her usual duties at Clear Springs. In his deposition, Dr. Lenzi acknowledged that Claimant’s work at Clear Springs caused her various upper extremity conditions, rising to the level of a 9% permanent impairment. However, he opined that Claimant could return to that same work with only the restrictions mentioned above. Dr. Lenzi supported his decision that Claimant could

return to her time of injury work by noting that her “symptoms didn’t improve even when she was off.” Lenzi Deposition, p. 23, L. 15. Dr. Lenzi’s opinion of Claimant’s restrictions is not persuasive given that Claimant’s permanent impairment was caused by the very work activities at Clear Springs to which he opines Claimant can return.

32. Dr. Wayment opined that Claimant could not return to her work at Clear Springs. However, he did not impose any other permanent restrictions on Claimant’s activities. Dr. Radnovich restricted Claimant from work above shoulder level; repetitive gripping, handling, or fine manipulation more than 30% of the workday; repetitive pushing, pulling, or carrying more than 30% of the workday; and lifting or carrying greater than 10 pounds. He noted that these restrictions were fairly typical for a person of Claimant’s age with those kinds of chronic problems.

33. The parties dispute whether Claimant is restricted from returning to her time of injury work at Clear Springs. Jeff Jermunson, the production manager at Clear Springs, testified that the packaging duties, such as Claimant performed pre-injury, required lifting 10 five-pound trays of fish every minute. This equates to bilateral lifting every six seconds. Jermunson testified that Clear Springs maintained working temperatures of 50 to 60 degrees. Dr. Lenzi opined that Claimant could return to her regular work duties with restrictions only pertaining to repetitive grasping in temperatures less than 40 degrees. As noted above, Dr. Lenzi’s restrictions are not persuasive. Both Dr. Wayment and Dr. Radnovich opined that Claimant could not return to her work at Clear Springs. The specific restrictions imposed by Dr. Radnovich are thoroughly explained and reasonably describe Claimant’s former duties at Clear Springs, which caused her upper extremity conditions. The restrictions imposed by Dr. Radnovich are most persuasive. The record establishes that Claimant cannot return to her usual duties at Clear Springs.

34. Vocational evidence. Shannon Purvis, Claimant's vocational rehabilitation expert, acknowledged that Claimant would have no disability beyond impairment if Dr. Lenzi's restrictions were adopted. Purvis mistakenly utilized a temporary 10-pound lifting restriction imposed by Dr. Wayment to conclude that Claimant is totally and permanently disabled. Purvis also opined that Claimant is totally and permanently disabled utilizing the restrictions imposed by Dr. Radnovich. Purvis opined that Claimant's prior work experience involved repetitive manual labor, which she can no longer perform, and that Claimant does not have transferable skills to qualify her for competitive employment consistent with her physical limitations. Purvis noted that Claimant was 58 years old at the time of the injury, has a 10th grade education, has a 28-year employment history limited to intensive upper extremity work, and resides in a rural labor market that includes the Twin Falls area. Purvis opined that Claimant's restrictions limit her to sedentary work or less and that Claimant has no transferable skills not negated by her physical restrictions.

35. Purvis testified she did not locate any jobs suitable for Claimant given the restrictions imposed by Dr. Radnovich. Purvis opined that Claimant could not work in child care because she could not interact with the children or certify in CPR. She opined that Claimant would not be competitive as a greeter at Wal-Mart because she could not assist in cleaning the store or physically helping customers. Purvis testified that Claimant could not work in sedentary semi-skilled positions, such as a receptionist or file clerk, because she could not tolerate the repetitive hand manipulations required. She opined that Claimant could not work as a parking lot attendant because of the repetitive nature of operating a cash register. Purvis did not specifically address whether all of these positions would require repetitive gripping, handling, fine manipulation, pushing, or pulling for more than 30% of the work day.

36. Defendants' vocational expert, Mary Barros-Bailey, PH.D., opined that Claimant is not totally and permanently disabled. She testified that, applying the restrictions imposed by Dr. Lenzi or Dr. Wayment, Claimant had no permanent disability beyond impairment. Dr. Barros-Bailey opined, assuming Dr. Radnovich's 13% whole person impairment rating and restrictions, that Claimant is restricted to some sedentary and light-duty jobs and suffers a permanent partial disability of 65% inclusive of her impairment. Dr. Barros-Bailey concluded there is a small pool of jobs in the Magic Valley labor market, including Twin Falls, which Claimant could perform given her vocational profile and the physical restrictions imposed by Dr. Radnovich. Significantly, Dr. Radnovich did not completely restrict Claimant from any upper extremity activities, but rather instructed: "No repetitive (greater than 30% of the workday) gripping, handling or fine manipulation. No repetitive (greater than 30% of the workday) pushing pulling or carrying." Joint Exhibit K, p. 237 (emphasis supplied). Dr. Wayment opined that Claimant could use her right hand, and Dr. Lenzi observed Claimant using her right hand freely immediately after leaving his office. Dr. Barros-Bailey's conclusions rest upon a more accurate application of the restrictions imposed by Dr. Radnovich and are more consistent with Claimant's demonstrated abilities.

37. Claimant was earning \$9.75 per hour at the time of her industrial accident. Based on Claimant's total impairment rating of 13% of the whole person, her permanent work restrictions (including her inability to use her upper extremities for repetitive movements, pushing, or pulling greater than 30% of the work day and her 10-pound lifting and carrying restriction), and considering her non-medical factors (including her age of 58 at the time of manifestation, 10th grade education, computer illiteracy, very limited transferable skills in sedentary and light occupations, and her inability to return to her previous occupation),

Claimant's ability to engage in gainful activity has been significantly reduced. Claimant has established a permanent disability of 65% of the whole person, inclusive of her permanent impairment.

38. Odd-lot. A claimant who is not 100% permanently disabled may still prove total permanent disability by establishing he or she is an odd-lot worker. An odd-lot worker is one "so injured that he can perform no services other than those which are so limited in quality, dependability or quantity that a reasonably stable market for them does not exist." Bybee v. State, Industrial Special Indemnity Fund, 129 Idaho 76, 81, 921 P.2d 1200, 1205 (1996). Such workers are 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." Carey v. Clearwater County Road Department, 107 Idaho 109, 112, 686 P.2d 54, 57 (1984). The burden of establishing odd-lot status rests upon the claimant. Dumaw v. J. L. Norton Logging, 118 Idaho 150, 153, 795 P.2d 312, 315 (1990).

39. A claimant may establish total permanent disability under the odd-lot doctrine in any one of three ways:

1. By showing that he has attempted other types of employment without success;
2. By showing that he or vocational counselors or employment agencies on his behalf have searched for other work and other work is not available; or
3. By showing that any efforts to find suitable work would be futile.

Lethrud v. Industrial Special Indemnity Fund, 126 Idaho 560, 563, 887 P.2d 1067, 1070 (1995).

40. In the present case, Claimant is not able to return to her pre-injury employment. However, she has not proven that she attempted other types of employment without success. Claimant has not presented evidence of a serious but unsuccessful work search. She has

presented Purvis's expert opinion that Claimant is totally disabled and that it would be futile for Claimant to look for work. As noted above, there are conflicting opinions as to whether efforts to find work suitable for Claimant would be futile. Dr. Radnovich's opinion establishes that Claimant has the ability to perform some sedentary or light-duty work, albeit with restrictions and limitations. As noted above, the opinion of Dr. Barros-Bailey is more persuasive than the opinion of Purvis and establishes that there is employment available to Claimant in the Magic Valley labor market that is compatible with Claimant's abilities. Claimant has not proven she is totally and permanently disabled by either the 100% method or the odd-lot doctrine.

CONCLUSIONS OF LAW

1. Claimant has proven that her bilateral rotator cuff tendonitis, right de Quervain's tendonitis, right index trigger finger, right carpal tunnel syndrome, bilateral wrist pain, flexor tenosynovitis in the right index, long, and ring fingers, and loss of range of motion of the right index fingers at the MCP, PIP, and DIP joints secondary to flexor tenosynovitis were all caused by her work at Clear Springs.

2. Claimant has proven she suffers permanent partial impairment of 13% of the whole person due to her work at Clear Springs.

3. Claimant has proven she suffers permanent partial disability of 65% inclusive of her 13% permanent partial impairment. Claimant has not proven she is totally and permanently disabled pursuant to the odd-lot doctrine or otherwise.

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RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Referee recommends that the Commission adopt such findings and conclusions as its own and issue an appropriate final order.

DATED this 14th day of October, 2009.

INDUSTRIAL COMMISSION

/s/ _____
Alan Reed Taylor, Referee

ATTEST:

/s/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of October, 2009, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

DARIN G MONROE
PO BOX 50313
BOISE ID 83705

E SCOTT HARMON
PO BOX 6358
BOISE ID 83707

sc

/s/ _____

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

ISABEL B. FLORES,)
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 Claimant,)
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 v.)
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 CLEAR SPRINGS FOODS, INC.,)
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 Employer,)
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 and)
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 LIBERTY NORTHWEST INSURANCE)
 CORPORATION,)
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 Surety,)
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 Defendants.)
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IC 2006-510815

ORDER

Filed: October 20, 2009

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

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

1. Claimant has proven that her bilateral rotator cuff tendonitis, right de Quervain’s tendonitis, right index trigger finger, right carpal tunnel syndrome, bilateral wrist pain, flexor tenosynovitis in the right index, long, and ring fingers, and loss of range of motion of the right index fingers at the MCP, PIP, and DIP joints secondary to flexor tenosynovitis were all caused by her work at Clear Springs.

2. Claimant has proven she suffers permanent partial impairment of 13% of the whole person due to her work at Clear Springs.

3. Claimant has proven she suffers permanent partial disability of 65% inclusive of her 13% permanent partial impairment. Claimant has not proven she is totally and permanently disabled pursuant to the odd-lot doctrine or otherwise.

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

DATED this 20th day of October, 2009.

INDUSTRIAL COMMISSION

/s/ _____
R.D. Maynard, Chairman

/s/ _____
Thomas E. Limbaugh, Commissioner

/s/ _____
Thomas P. Baskin, Commissioner

ATTEST:

/s/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of October, 2009, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

DARIN G MONROE
PO BOX 50313
BOISE ID 83705

E SCOTT HARMON
PO BOX 6358
BOISE ID 83707

sc

_____/s/_____