

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

KALI LASATER,

Claimant,

v.

TRIPLE S. OIL & LYNCH OIL INC,

Employer,

and

WCF NATIONAL INSURANCE  
COMPANY,

Surety,

Defendants.

**IC 2020-019098**

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

**FILED**

**FEB 11 2022**

**INDUSTRIAL COMMISSION**

**INTRODUCTION**

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Sonnet Robinson, who conducted a hearing on June 30, 2021. Claimant, Kali Lasater, was present in person and represented by Daniel Luker of Boise. Michael McPeck of Boise represented Defendants. The parties presented oral and documentary evidence. Post-hearing depositions were taken. The matter came under advisement on October 5, 2021 and is ready for decision.

**ISSUES**

The issues to be decided are:

1. Whether the condition for which benefits are claimed was caused by the August 6, 2020 accident;

2. Whether and to what extent Claimant is entitled to additional medical benefits;
3. Whether and to what extent Claimant is entitled to temporary total disability and temporary partial disability (TTD/TPD);
4. Whether Claimant is at maximum medical improvement (MMI).

All other issues are reserved.

### **CONTENTIONS OF THE PARTIES**

Claimant contends she suffered an occult radial fracture when she fell at work. Claimant was issued restrictions against using her right arm, which Employer did not accommodate, and which led to the development of radial tunnel syndrome and lateral epicondylitis, a compensable consequence. Claimant is entitled to the recommended surgery to treat these two conditions and associated future time loss benefits. Claimant had to leave her employment because Employer did not accommodate her restrictions, and therefore Claimant is entitled to past time loss benefits as well.

Defendants contend the objective medical evidence does not support Claimant's claims. Defendants accepted the claim and paid for medical care, but Claimant's injury was limited to the fracture and Dr Chen's opinion refutes any connection between the work injury and Claimant's claimed conditions. Claimant voluntarily left her employment with Employer and had already reached maximum medical improvement before leaving; if she is entitled to time loss, Claimant did not provide enough evidence to appropriately calculate such time loss.

Claimant responds that Dr. Chen's opinion is flawed in several ways and Dr. Stucki's opinion is more reliable as a treating physician and an upper extremity expert. Claimant sufficiently testified to her time loss and post-separation employment to allow the calculation of time loss benefits.

### **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 2**

## **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. Joint Exhibits 1-12;
3. The testimony of Claimant, Kali Lasater, Paul Cundick, and Jenica Papp, taken at hearing;
4. The post-hearing depositions of:
  - a. Jeffrey Stucki DO, taken by Claimant on July 22, 2021;
  - b. Qing-Min Chen, MD, taken by Defendant/Employer on August 6, 2021.

All outstanding objections are overruled.

After having considered 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 hired to work for Employer on April 25, 2018 as a maintenance worker. JE 1:1. Tr. 14:21-23. While at work on February 6, 2019, Claimant dropped a 55-gallon drum of windshield washing fluid off a dolly onto her right foot, injuring it; the claim was accepted and benefits were paid. JE 2:2-3; JE 1:4. After this accident, Claimant was moved from her maintenance position to a diesel cashier and kitchen helper position to accommodate her foot injury. Tr. 15:17-16:1.

2. Claimant underwent an IME with Rodde Cox, MD, for her foot injury on June 1, 2020. JE 2. Claimant reported pre-existing shoulder complaints and eye sensitivity, and a post-industrial injury motor vehicle accident. JE 2:2. Dr. Cox observed nonphysiologic signs including nonanatomic sensory loss, diffuse giveaway weakness, and inconsistencies in strength, but noted

Claimant was a good historian and her pain drawing did not suggest symptom magnification. *Id.* at 12, 1. Dr. Cox diagnosed (1) right foot contusion; (2) lower back pain; (3) somatic symptom disorder; (4) symptom magnification; (5) probable depression; and (6) neck pain. *Id.* at 13. Dr. Cox found Claimant's foot contusion was related to the work accident and that her low back pain was related to her altered foot mechanics, in addition to her subsequent car accident. *Id.* at 14. Dr. Cox opined Claimant was an MMI, with no permanent restrictions, and rated Claimant's foot injury at 2% whole person impairment.

3. **Industrial Accident.** On August 6, 2020, Claimant went to clean up spilled Pepsi; the spill expanded while Claimant was retrieving cleaning supplies and Claimant slipped in the liquid: "my feet slipped out from underneath me and I fell backwards landing on my back, hitting my elbow on the corner of his delivery cart." Tr. 23:9-11.

4. Claimant presented to Sterling Urgent Care that same day. JE 3:1. Claimant saw Roger Malm, PA who diagnosed a closed nondisplaced fracture of the right radius. *Id.* PA Malm prescribed Norco, a long-arm splint, and a sling. *Id.* at 1-2. PA Malm recorded Claimant did not want to report the injury to worker's compensation. *Id.* at 1. Claimant explained at hearing that:

Q: [By Mr. Luker] Why -- why did you not -- initially not want to report it?

A: Because of the issues that I had had dealing with them back in 2019 with my foot.

Q: And what -- what led you to actually reporting it then?

A: Because it was not just a -- it was an actual problematic injury, I guess, versus just being bruised and sore. It was also on the advice of the PA that, hey, you are going to need to go see a specialist, because of the fracture, that we decided to go ahead and turn it into workmen's comp.

Tr. 27:7-18. At follow-up on August 10, with PA Ashley Baker, Claimant was still awaiting her orthopedic referral; PA Baker observed "no fracture or effusion" on the X-rays and re-wrapped

Claimant's ACE bandage. JE 3:5. PA Baker did observe "posterior fat pad" which indicated swelling in the elbow. *Id.*; Stucki Depo. 19:10-11.

5. Claimant saw Tyler McKee, DO, on August 13, 2020. JE 4:1. Claimant reported numbness and tingling in the tips of her fingers and pain at an 8 out of 10. *Id.* Dr. McKee ordered repeat X-rays which were negative for fracture; there was no evidence of effusion or dislocation. *Id.* at 8. Dr. McKee diagnosed an occult fracture of the radial head, continued her on a sling, and restricted her from use of her right arm. *Id.* at 6, 9.

6. Claimant followed up with Dr. McKee on August 25; Claimant continued to be symptomatic and rated her pain at 9 out of 10. *Id.* at 11. Dr. McKee recorded "I stressed no lifting or pushing with this arm. I suspect she is doing so at work." *Id.* Dr. McKee ordered another X-Ray which again showed no fracture, no dislocation, and no effusion. *Id.* at 12-13. Dr. McKee recorded Claimant's radial head was tender, that she had almost full extension, but lacked 20 degrees of supination. *Id.* at 11. Claimant left employment with Employer on September 1<sup>st</sup>, discussed further below. Tr. 45:13-15.

7. Claimant followed up on September 10, 2020 with Dr. McKee. JE 4:16. Dr. McKee ordered another X-ray which showed no fracture, dislocation, or joint effusion; Dr. McKee updated his assessment to "contusion of the right elbow." *Id.* Dr. McKee prescribed physical therapy and discontinued the use of Claimant's sling. *Id.* Claimant's restrictions were updated from no use of her right arm to lifting/pushing/pulling up to one pound with her right arm. *Id.* at 20. Dr. McKee observed Claimant was tender over her olecranon and lateral epicondyle and had minimal tenderness at her radial head and medial upper condyle. *Id.* at 16.

8. Claimant attended physical therapy on September 22, September 23, September 25, and September 28. JE 5. Claimant saw a chiropractor on September 29<sup>th</sup> and October 1<sup>st</sup> for neck pain related to her 2019 car accident and her work accident. JE 6:1.

9. Claimant returned to Anna Hawker, Dr. McKee's nurse practitioner, on October 6, 2020 and reported right wrist pain for the first time. JE 4:22. X-rays taken of the wrist showed no abnormal findings except for a small subchondral cyst, however Claimant's wrist was tender, showed mild effusion, diminished range of motion due to pain, and 4/5 strength when compared to her left hand. *Id.* Claimant's elbow had a bruise just proximal to her olecranon process, which was where she was most tender; Claimant had no effusion in her elbow and full extension and flexion with mild pain. *Id.* Hawker observed "patient has been working a great deal, repetitive use of both the injured elbow and wrist. I recommend some work restrictions and use of a volar wrist splint." *Id.* Claimant's restrictions were updated to "minimize repetitive use of wrist and elbow. No lifting greater than 20 pounds. Must wear wrist brace." *Id.* at 27.

10. At follow-up on November 3, 2020, Claimant reported she had reverted to using her sling, had pain with any lifting, worsening pain into the medial aspect of her elbow, but that her wrist pain had improved, and she had been wearing her wrist brace. *Id.* at 28. On exam, Claimant had pain and tenderness and lacked 10 degrees of terminal extension on her elbow but had no effusion. *Id.* Dr. McKee was concerned that her elbow symptoms had worsened; he continued her restrictions and requested an MRI. *Id.* at 28.

11. The MRI was conducted on December 17, 2020, and showed a small partial tear at the common flexor origin and small soft tissue swelling of the posterior subcutaneous soft tissues, but no other abnormal findings. *Id.* at 34. Claimant followed up with NP Hawker on January 5, 2021 to discuss her MRI results. *Id.* at 35. Claimant reported weakness in her wrist and elbow,

diffuse numbness and tingling in her right upper extremity, and that her arm would shake if she tried to lift anything heavy. *Id.* NP Hawker recorded:

I reviewed films at length with patient. Etiology of her continued wrist pain and increased elbow pain is unclear. Her severity of symptoms do not correlate with MRI results of small tear to the common flexor. I did recommend reinitiating physical therapy as she does complain of a lot of weakness in that upper extremity. [It] is understandable as she has been hesitant to use the arm due to pain. Her previous experience with this physical therapy made her wrist her worse. She is amenable to another trial of PT. I also discussed referral to Dr. Esplin or Dr. Stucki in Pocatello or an elbow specialist Worker's Comp preference for second opinion. She would like to pursue this...Continue with lifting restrictions no greater than 30 pounds with right upper extremity.

*Id.* at 39.

12. On January 25, 2021, Claimant presented to Jeffrey Stucki, DO. JE 8:1. Claimant reported her pain was a 9 out of 10, the pain was constant, and that symptoms were getting worse. *Id.* Dr. Stucki examined Claimant and noted resisted wrist extension did give her pain "but she cannot really isolate it any one area. She just states that it makes her elbow hurt. She is tender over the radial tunnel with direct pressure and also tender over the lateral epicondyle. She is not tender in the medial epicondyle in any way." *Id.* at 2. Dr. Stucki noted her X-rays showed a small bone spur on the end of her elbow which could be calcific tendinitis and her MRI showed partial common flexor tendon tearing, but that the tear did not correlate with her symptoms. *Id.*

13. Dr. Stucki recorded "I have a high suspicion that maybe she has developed a radial tunnel syndrome because of the forearm pain she has, but there may also be an overlapping lateral epicondylitis." *Id.* at 3. Dr. Stucki performed a diagnostic radial tunnel steroid injection to see if it provided pain relief to confirm his diagnosis. *Id.*

14. Claimant returned on February 8, 2021. Claimant reported "quite a bit of relief" from the steroid injection. However, because of that pain relief, she noticed her lateral epicondyle pain more. *Id.* at 5. Dr. Stucki recommended surgical debridement of the lateral epicondyle with

radial tunnel release and related the need for surgery on a more probable than not basis to her work injury. *Id.* at 6.

15. On February 18, 2021, Claimant presented to Qing-Min Chen, MD, for an independent medical exam (IME). JE 10:1. Dr. Chen reviewed records, performed a physical exam, and took a history from Claimant. *Id.* Claimant reported that her right elbow pain never got better, and that she started to notice numbness and tingling down her arm over time. At the time of the exam, Claimant's pain was an 8 out of 10, she had numbness on the dorsal and volar aspect of her hand as well as into her first, second, fourth, and fifth finger; she reported her right hand shook all the time and she had posterior elbow pain, right lateral arm pain, and radial proximal forearm pain. *Id.* at 2. Relevant physical findings included that Claimant was hypersensitive over her olecranon and that Claimant's pain was out of proportion to exam maneuvers; Claimant had tenderness over her lateral epicondyle, her lateral upper arm, and her lateral forearm radially; Claimant had pain with resisted motion and decreased grip strength on her right side (29 pounds) as compared to her left (66 pounds). *Id.* at 5.

16. Dr. Chen diagnosed: (1) a right radial head nondisplaced or occult fracture, work related, with MMI at November 6, 2020, three months from the date of injury; (2) right small common flexor origin tear, not work related/incidental finding; (3) right hand numbness of unknown etiology. *Id.* Dr. Chen opined that the mechanism of injury did not match Claimant's symptoms; a fracture was consistent with the mechanism of injury but would have healed within six weeks to three months. *Id.* at 6. Claimant's MRI showed no fracture, which meant it was likely healed by that time, and all other findings were incidental. Dr. Chen found no indication for a radial tunnel release or lateral epicondyle debridement because no EMG had been done and that neither procedure would not solve the numbness on the volar aspect of Claimant's hand. *Id.*



Dr. Chen also observed that Claimant's hand numbness on the first, second, fourth, and fifth digit were in a nonanatomic pattern. Dr. Chen did find Claimant's limited range of motion was due to her radial fracture. Dr. Chen opined Claimant was at MMI with 1% whole person impairment, with no need for restrictions from her workplace injury. *Id.* at 6-7.

17. Claimant's counsel wrote to Dr. Stucki on March 3, 2021 and included Dr. Chen's IME report. Claimant's counsel asked Dr. Stucki about Dr. Chen's opinions, Claimant's prognosis, any impact of delaying the recommended surgery, whether Dr. Stucki observed functional limitations, and about recovery after the surgery. JE 8:11.

18. Dr. Stucki wrote that Claimant did not suffer a nondisplaced fracture, but that she could have suffered an occult fracture. *Id.* at 14. Dr. Stucki observed that Dr. Chen did not address the calcific tendinitis shown on the X-ray, which can cause persistent pain in the lateral aspect of the elbow without the MRI indicating tearing. *Id.* Regarding causation, Dr. Stucki wrote:

I do feel that she is struggling with some lateral epicondylitis and probably a small portion of calcific tendinitis on the lateral aspect with radial tunnel syndrome. Although there are no suggestive studies that show tears, this pain, she did not have prior to her injury, and so my opinion would be on a more probable than not [sic] that these [complaints] were related to her injury, because she did not have these complaints prior to and no preexisting conditions to explain the reason for this.

*Id.* Dr. Stucki further opined that the surgery he was recommending was not time sensitive and that Claimant should limit herself from any lifting, pushing, or pulling that causes symptoms, but gave no specific weight limit. *Id.*

19. Dr. Stucki was deposed on July 22, 2021. Dr. Stucki reiterated his diagnosis was radial tunnel syndrome with overlapping lateral epicondylitis. Stucki Depo. 12:21-23. Dr. Stucki explained that radial tunnel syndrome is a neuropathy where the posterior interosseous nerve is compressed, causing forearm pain; it does not cause numbness or tingling because the posterior interosseous nerve is a motor nerve, not a sensory nerve. *Id.* at 14:17-15:17. A diagnosis of radial

tunnel is made by history and exam; imaging and EMG testing will not show it. *Id.* at 13:1-6. A steroid injection is a diagnostic tool and possible treatment for radial tunnel: “if I get improvement with that injection, it just confirms my working diagnosis of radial tunnel syndrome.” *Id.* at 13:7-18. Dr. Stucki sees lateral epicondylitis in conjunction with radial tunnel approximately 90% of the time; this was because the “same muscles and tendons that go into the lateral epicondyle are the same muscles and tendons that overlie the radial tunnel.” *Id.* at 15:11-18.

20. Regarding what causes radial tunnel syndrome, Dr. Stucki testified that a direct blow to the dorsal aspect of the arm could cause radial tunnel syndrome, however, Claimant was struck on the posterior aspect of her elbow; most radial tunnel syndrome is caused by overuse or altered/modified use of the extremity. *Id.* at 15:21-16:14.

21. Concerning Claimant specifically, Dr. Stucki opined: “[s]o the direct blow to her posterior elbow probably didn’t cause any of this. It was probably the long period of continued pain, lack of extension which changed her biomechanics, that probably all had more of kind of indirectly causing this then developing.” *Id.* at 23:4-9.

22. Regarding Claimant’s lateral epicondylitis, Dr. Stucki similarly opined that she developed that condition due to swelling, lack of motion, bruising, and altered mechanics; further, the fact that Claimant had no preexisting symptomology was significant. *Id.* at 24:8-25:11. Dr. Stucki continued to recommend surgery for both conditions because Claimant had failed conservative treatment including splinting and physical therapy. *Id.* 27:3-8. Dr. Stucki disagreed with Dr. Chen’s report regarding his diagnosis of a nondisplaced fracture; there was no evidence of that, only the possibility of an occult fracture. *Id.* at 29:5-14; 20:2-14.

23. On cross, Dr. Stucki admitted Claimant’s calcific tendonitis could have been an incidental finding. *Id.* at 32:11-13. Defense counsel asked Dr. Stucki about Claimant’s intake form

which indicated Claimant had issues with her right shoulder, right thumb, right upper arm, right index finger, right elbow, right middle finger, right forearm, right ring finger, right wrist, right small finger, and right hand. Dr. Stucki explained that that portion of the medical record is created from a patient portal where a patient can check a box listing their complaints. Dr. Stucki's dictated note is what he and Claimant actually talked about and they discussed elbow pain, not her shoulder or finger numbness. *Id.* at 34:8-36:14. Dr. Stucki did agree that Claimant's areas of numbness were in different nerve distributions, and that the radial tunnel surgery would do nothing to help the numbness in her hands. *Id.* at 36:15-37:12. Dr. Stucki testified that the diagnostic test to see what was causing Claimant's hand numbness would be an EMG to see if it was possibly carpal tunnel or "something coming from the neck." *Id.* at 37:13-38:3.

24. Dr. Chen was deposed on August 6, 2021. Regarding Claimant's numbness, Dr. Chen was not convinced it was "real" because it did not match any specific nerve distribution, was not consistent with the mechanism of injury, there was no EMG, and the MRI showed no objective results to explain it. Chen Depo. 14:4-24. Dr. Chen testified that Claimant's MRI showed no evidence of lateral epicondylitis and that it was not consistent with the mechanism of injury. *Id.* at 15:14-18. Dr. Chen explained that radial tunnel is a controversial diagnosis because it's unclear if it really exists since there is no objective evidence of it: it does not show up on EMGs or MRIs, and is mostly based on a patient's subjective pain. *Id.* at 17:10-25. However, Dr. Chen then testified:

Q: [by Mr. McPeek] Now, Dr. Stucki in this case, who was the physician who diagnosed her as having radial tunnel syndrome, performed an injection into the radial tunnel. And he said, well, that didn't give her any relief period is that any significance?

A: Personally, as a surgeon, yes. Because if we don't have any other way to judge if this is real, then one of the only ways we have to go by are injections.

Because if the injection gave some relief, then at least I would feel comfortable doing the surgery knowing that the injection helped, so maybe there's a problem.

But if she had an injection and got absolutely no relief, then I would feel very hesitant to do surgery on something that got no relief with the injection. Because that's my only thing to hang my hat on as to what could potentially be the problem here.

Again, because her pain is so nebulous, kind of up and down her arm and elbow and different areas with this numbness, I need something objective before I can dissect her arm, you know.

*Id.* at 18:1-20. Dr. Chen then explained his opinion that Claimant did not need radial tunnel surgery was also because the surgery would not solve her symptoms of numbness and tingling: “and so if I can’t have one diagnoses that fits her entire constellation of symptoms, I certainly don’t want to do surgery on her.” *Id.* at 19:16-18. Regarding the theory that inflammation in her elbow could cause her symptoms, Dr. Chen said: “You know, she did break her radial head, which is near that area, could maybe there have been some inflammation in her? But it would be very far-fetched.” *Id.* at 20:14-17. Dr. Chen reaffirmed his opinion that Claimant did not need restrictions related to her radial head fracture and that Claimant’s impairment was related to her loss of range of motion. *Id.* 21:2-18. Dr. Chen described symptom magnification as acting ridiculous and screaming in pain. *Id.* at 25:15-19. Regarding Claimant: “I still felt that even though some her responses didn’t match any anatomical connections, I still thought she was being truthful. I didn’t think she was just outright lying.” *Id.* at 25:24-26:3.

25. On cross-examination, Claimant’s counsel inquired whether Dr. Chen was aware of Claimant’s 2019 car accident wherein she had neck complaints and Dr. Chen admitted he was not aware. *Id.* at 27:1-8. Dr. Chen did agree that a patient could have multiple conditions layered on top of one another that provide a constellation of symptoms; regarding the relationship between

neck and hand problems, Dr. Chen did agree problems in the neck could cause problems in the hand but not in the distribution that Claimant was reporting. *Id.* at 27:9-23.

26. **Claimant's Separation from Employer.** Claimant injured her foot in 2019, which caused another employee, Cameron, to take over Claimant's maintenance duties. Tr. 20:13-16. After Claimant's August 2020 injury, Cameron was required to take over Claimant's kitchen duties as well. *Id.* at 32:22-33:7. Claimant continued working at the diesel counter after her injury. *Id.* at 32:20-21. Claimant reported she struggled with certain aspects of operating the diesel counter one handed, including making change, writing authorization numbers, signing her name, separating CAT scale tickets, filling cups and lids, and stocking certain food items. *Id.* at 33:13-40:15. When Claimant asked Cameron for help with these tasks, he would respond with animosity. *Id.* Claimant did talk to her supervisor, Bruce, about Cameron's attitude, but according to Claimant, nothing was ever done. *Id.* at 41:6-11.

27. Eventually Claimant's husband called Paul Cundick, who was the HR director at the time of Claimant's separation from Employer, regarding how Claimant was being treated at work. Cundick came and talked to Claimant, who explained the issues she was having with Cameron and Bruce; Cundick said he would talk to Bruce and Cameron. Tr. 41:15-42:8.

28. Cundick recalled that they discussed her pain, her restrictions, and what job duties she could perform within her restrictions. *Id.* at 76:1-10. Cundick discussed with Bruce what activities Claimant could still perform and asked Bruce to make a list; Cundick understood that Bruce had verbally told Claimant about the activities she could perform which included: ringing customers up, doing the CAT scale, answering the phone, stocking cups and lids, and wiping down the counters. Cundick did not discuss the list of activities with Claimant in detail, but recalled she did not express any reservations about performing those activities. *Id.* at 76:14-78:1.

29. Claimant testified that the work environment worsened after Cundick intervened: "it actually got worse... the animosity between not only Cameron and I, but Bruce and I, because Paul had brought into it." *Id.* at 49:16-21.

30. Claimant described her separation on September 1<sup>st</sup> as follows:

Q: [By Mr. Luker] What led to the separation?

A: I got tired of being yelled out. I got tired of being talked down to. I got tired of the comments about me getting hurt. Overall just had had enough of going home every day in tears.

...

Q: Were you worried -- were you able to abide by the no use of your right arm doing the tasks that you were asked to do?

A: No, sir.

Q: Do you recall your last day working at Mr. Gas?

A: Yes, sir.

Q: What -- what happened?

A: Cameron was mad because he was stuck in the kitchen again. I went in, was trying to do the stuff that I needed to do and trying to abide by the doctor's orders. I got told just to shut the F up and do my F'ing job and I went to take a bag of trash that was leaking all over the kitchen floor out, because it was -- even being at the diesel counter and all of the tobacco products and stuff were down at the other end, so if I needed tobacco products for a driver I had to go through the kitchen to get them. So, I took that bag of trash out. Fellow employee stopped me and asked me a question and I stopped long enough to answer her and Cameron came out and started yelling at me again, because I wasn't at the counter.

Q: So, what -- how did that interaction lead to you not working at Mr. Gas?

A: Paul showed up later on that afternoon and him and I again talked about the issues that I was having with Cameron and he told me that if I felt that it was in my best interest to leave the employment, then, I should do so, but he would make sure that I was rehireable.

Tr. 42:24-44:15. Cundick recalled Claimant was not sure if she was going to quit during this discussion, but was going to discuss it with her husband; he later learned she resigned. *Id.* at 74:14-75:7.

31. Claimant went on to work for Olive Garden part-time, but was unable to work within her restrictions and only lasted a week. *Id.* at 61:20-21; 72:6-12. Claimant then worked several short-term jobs grading potatoes, as a greeter, and as a manufacturing bagger. *Id.* at 46:21-49:6. At the time of hearing, Claimant was working for Maverick in Jerome as a cashier making \$12.25 an hour. *Id.* at 49:7-20.

32. **Condition at Hearing.** Claimant reported she continued to have pain on the bottom of her elbow, knots in her arm muscles, and arm tiredness. Tr. 55:19-56:1.

33. **Credibility.** Claimant, Paul Cundick, and Jenica Papp testified credibly. During the two-hour hearing, Claimant kept her arm and hand relatively immobile either resting between her legs or on the desk, apart from when drawing exhibit 12.

#### **DISCUSSION AND FURTHER FINDINGS**

34. **Causation.** A worker's compensation claimant has the burden of proving, by a preponderance of the evidence, all the facts essential to recovery. *Evans v. Hara's, Inc.*, 123 Idaho 473, 849 P.2d 934 (1993). Claimant must adduce medical proof in support of his claim, and he must prove his claim to a reasonable degree of medical probability. *Dean v. Dravo Corporation*, 95 Idaho 558, 511 P.2d 1334 (1973). "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 their plain and unequivocal testimony conveying a conviction that events are causally related. See, *Jensen v. City of Pocatello*, 135 Idaho 406, 412-413, 18 P.3d 211, 217-218

(2001).

35. In Idaho, the compensable consequences doctrine is recognized. Otherwise known as the direct and natural consequences rule, it addresses the proximate legal cause of a subsequent injury and evaluates the compensability of a subsequent injury or aggravation related to a prior industrial injury. “The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.” 1 A. Larson & L. Larson, *Workers' Compensation* (2011) § 10.01, pp. 10-2 through 10-3. The rationale is that the original industrial injury is the cause of all that follows. *Pickens v. Peterson Stampede Dodge*, IC 2013-032785 (November 12, 2020).

36. As an initial matter, Claimant has proven to a reasonable degree of medical probability that she suffers from radial tunnel syndrome and lateral epicondylitis. Dr. Chen and Dr. Stucki both agree that radial tunnel syndrome cannot be diagnosed by via EMG or imaging. Dr. Chen explained radial tunnel syndrome is a controversial diagnosis because it does not show up on EMGs or MRIs and is mostly diagnosed based on reported symptoms. Dr. Stucki agreed that radial tunnel is diagnosed mostly based on history and exam.

37. However, both experts agreed radial tunnel syndrome was indicated when a diagnostic injection provided relief. Dr. Chen testified: “Because if the injection gave some relief, then at least I would feel comfortable doing the surgery knowing that the injection helped, so maybe there’s a problem.” Chen Depo. 18:9-11. Contrary to Dr. Chen’s understanding, Claimant did have relief from the radial tunnel injection, and Dr. Stucki also based his diagnosis on her history and exam. Claimant has proven to a reasonable degree of medical probability that she suffers from radial tunnel syndrome.



38. Similarly, Claimant has proven to a reasonable degree of medical probability she suffers from lateral epicondylitis. Dr. Stucki is a board-certified orthopedic surgeon who specializes in the treatment of hand and upper extremity injuries and conditions. Stucki Depo. 5:12-7:23. Dr. Stucki sees lateral epicondylitis in conjunction with radial tunnel syndrome approximately 90% of the time; this was because the “same muscles and tendons that go into the lateral epicondyle are the same muscles and tendons that overlie the radial tunnel.” *Id.* at 15:11-18. Further, Claimant continued to have pain in her lateral epicondyle after the diagnostic shot for her radial tunnel syndrome. Dr. Chen objected to the diagnosis of lateral epicondylitis because the December 17, 2020 MRI did not show any changes in the common extensor tendon. Dr. Chen opined that changes in the common extensor tendon is an objective finding that would be present if Claimant was indeed suffering from lateral epicondylitis. Chen Depo. 15:14-16:13. Dr. Stucki was not troubled by the lack of such objective findings on the MRI, because that study was done four months after Claimant’s injury, and “any swelling that [Claimant] had had at the acute setting would have likely been gone by then.” Stucki Depo. 33:11-13. Dr. Stucki’s opinion as to whether Claimant qualifies for a diagnosis of lateral epicondylitis is well-reasoned, persuasive, and supported by the record. Claimant has proven to a reasonable degree of medical probability she suffers from lateral epicondylitis.

39. Dr. Chen’s objection to these diagnoses is mostly centered around Claimant’s complaints of numbness and tingling in relation to her elbow injury. Claimant’s numbness and tingling are in a nonanatomic distribution, and Claimant has complained about the numbness and tingling since her first appointment to treat this injury. However, Claimant’s belief that her numbness and tingling are related to her injury is not medical evidence. Neither Dr. Stucki nor Dr. Chen opined that the numbness and tingling are symptoms of radial tunnel syndrome or lateral

epicondylitis, and both acknowledge that Claimant's numbness and tingling could be related to other conditions, such as carpal tunnel or a cervical injury.

40. Further, Dr. Stucki clarified at deposition that the majority of what he was treating Claimant for and what Claimant was complaining about during her appointments was elbow pain. Simply put, Claimant's numbness and tingling are irrelevant in terms of whether Claimant suffers radial tunnel syndrome or lateral epicondylitis as a compensable consequence of her injury because they are not symptoms of either condition, and the surgery proposed does not treat those symptoms. Their only possible relevance relates to Claimant's credibility, and Claimant was a credible witness as found *supra*.

41. The next question is whether Claimant developed those conditions as a direct and natural consequence of her industrial injury. Claimant argues she developed radial tunnel syndrome and lateral epicondylitis as a result of her original industrial elbow injury<sup>1</sup> sustained on August 6, 2020. Claimant's theory is that while wearing her splint and/or sling, she continued to work, using her right arm to complete her light duty tasks, and changed her biomechanics to accomplish those tasks, leading to the development of radial tunnel syndrome and lateral epicondylitis. Clt's Opening Brief. p. 16. Claimant offers Dr. Stucki's opinion in support of this position.

42. Dr. Stucki initially opined that Claimant's injury was the cause of her symptoms due to a temporal relationship: Dr. Stucki wrote via letter that Claimant did not have these symptoms prior to the injury and had no pre-existing complaints which would explain her symptoms.

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<sup>1</sup> Claimant did not suffer a nondisplaced radial fracture as initially diagnosed, but could have suffered an occult radial fracture, which would not be observable on X-rays per Dr. Stucki. Claimant suffered an occult radial fracture or an elbow contusion.

43. At deposition, Dr. Stucki further explained his position. He was careful to testify that Claimant's injury did not directly cause her radial tunnel syndrome or lateral epicondylitis. Dr. Stucki testified that a direct blow to the dorsal area, overuse, or altered mechanics due to an injury could cause Claimant's symptoms. More specifically, Dr. Stucki testified:

I think most people<sup>2</sup> that develop lateral epicondylitis after an injury is kind of indirectly related to the injury in the fact that they've changed the way they're using their upper extremity so their mechanics have changed.

And because of pain or lack of motion, those mechanics - - those biomechanics of use of the hand, I think then directly cause a lateral epicondylitis.

Her radial tunnel syndrome probably is a combination of the change of mechanical - - biomechanical use; and potentially like I said, if she had - - if she really had a radial head fracture, could the bruising, the swelling ultimately have progressed in developing a radial tunnel.

Stucki Depo. 22:15-23:3. Dr. Stucki's opinion essentially boiled down to the fact that Claimant had no previous elbow pain, that she initially presented with bruising and swelling in her elbow, and that her biomechanics changed due to the injury. *Id.* at 24:13-25:5.

44. This case, as noted by Claimant's counsel, is factually similar to *Castaneda v. Idaho Home Health Inc*, IIC 1996-029370 (Issued July 27, 1999). In *Castaneda*, claimant fractured her shoulder in a work-related accident; claimant's shoulder was immobilized pre and post-surgery, but she continued to work throughout. Claimant began to experience elbow pain while working. Her treating physician diagnosed lateral epicondylitis, and recommended surgery, which employer denied. Claimant's treating physician related claimant's shoulder fracture to her lateral epicondylitis. Her treating physician explained that claimant was protective of her shoulder, and therefore put "abnormal stresses" on her elbow: "she was protecting her arm and so she was using

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<sup>2</sup> Defendants' argument that Dr. Stucki did not express his opinion to a reasonable degree of medical probability is rejected. It is clear from Dr. Stucki's deposition as a whole that he thinks Claimant's conditions were caused by her work accident and no magic words are necessary. *Jensen, supra*.

more of her wrist forearm muscles to do what she had to do in the course of the day.” The Commission accepted this reasoning, and the Court affirmed.

45. Similar to the claimant in *Castaneda*, the evidence supports a finding that Claimant altered her biomechanics because of her elbow injury. Claimant testified that “for the most part I did okay” working one-handed for Employer but struggled with certain tasks or modified them. Tr. 33:15. Claimant testified that at her first meeting with Cundick she relayed that she was “having to do things that I shouldn’t be doing with my arm, because I’m told just to do my job.” Tr. 42:5-6. Further, while Claimant was working for Employer, on August 25, Dr. McKee recorded “I stressed no lifting or pushing with this arm. I suspect she is doing so at work.” JE 4:11. On September 10, Claimant’s restrictions were updated to lifting/pushing/pulling up to one pound with her right arm. On October 6, when Claimant was working for a subsequent employer, NP Hawker recorded: “patient has been working a great deal, repetitive use of both the injured elbow and wrist. I recommend some work restrictions and use of a volar wrist splint.” JE 4:22.

46. Claimant’s testimony and contemporaneous medical records demonstrate Claimant continued to use her right upper extremity while under work restrictions for her industrial injury. By virtue of the fact that she was under restrictions for her right upper extremity, Claimant was using it abnormally, i.e., with altered biomechanics. Claimant was either trying to not use her right arm entirely until September 10, or limited to only one pound when pushing, pulling, or lifting until October 6, and thereafter limited to 20 pounds to but to avoid repetitive use of the wrist or elbow. By November 3, Claimant was in such pain she had reverted to wearing her sling and was referred for an MRI due to her increased symptomology.

47. In briefing, Claimant focuses on tasks that she performed for Employer as the cause of her claimed conditions. Claimant essentially makes the argument that Claimant exceeded her

restrictions trying to get her job done, without help, and that this caused radial tunnel syndrome and lateral epicondylitis. However, it is important to note that Claimant continued to have altered biomechanics after her separation with Employer which seemed to contribute to her increase in symptomology. Dr. Stucki did not opine that if only Employer had respected her restrictions, she would not have developed radial tunnel syndrome and lateral epicondylitis. Claimant's subsequent work clearly contributed to her conditions per Dr. McKee's observations on October 6, noted above.

48. However, Claimant's altered biomechanics, even while working for a subsequent employer, are still a result of her original industrial injury. Dr. Stucki opined that the altered biomechanics, i.e., the abnormal use of her right arm, caused Claimant to develop radial tunnel syndrome and lateral epicondylitis. Regardless of what the exact tasks were or for whom, Claimant was performing them abnormally because she was following (or struggling to follow) her restrictions given as a result of her industrial elbow injury.

49. Regarding Dr. Stucki's other stated rationales regarding the cause of Claimant's radial tunnel syndrome and lateral epicondylitis, he is also correct. Claimant had no previous history of arm, elbow, or wrist pain. There are no pre-existing conditions which could contribute to or explain Claimant's forearm pain. Claimant's elbow had swelling immediately after the injury as shown on X-ray and developed wrist effusion after weeks of working under restrictions. Claimant altered her biomechanics, had no history of pre-existing symptoms, and had swelling at the site of the injury.

50. Lastly, Dr. Chen's opinion did not contradict or undercut Dr. Stucki's opinion regarding these elements of causation; again, Dr. Chen was mostly focused on Claimant's complaints of numbness and tingling. Dr. Chen was not asked about Dr. Stucki's theory of

causation regarding altered biomechanics. Regarding whether swelling or inflammation from the original elbow injury could have caused radial tunnel syndrome, Dr. Chen only opined it was “far-fetched” without further elaboration. Dr. Chen’s testimony admits the possibility that Dr. Stucki is correct, at least regarding inflammation, and does nothing to denigrate a theory of injury regarding altered biomechanics. In sum, the evidence supports a finding that Claimant’s elbow swelled after her accident and that Claimant’s biomechanics were altered because of her injury leading her to develop radial tunnel syndrome and lateral epicondylitis, a direct and natural consequence of her elbow injury.

51. **Medical Care.** Idaho Code § 72-432(1) requires an employer to provide an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital service, medicines, crutches and apparatus, as may be reasonably required by the employee’s physician or needed immediately after an injury or manifestation of an occupational disease, and for a reasonable time thereafter. Dr. Stucki recommends a radial tunnel release and lateral epicondyle debridement because Claimant has failed conservative therapies, including physical therapy and splinting. Dr. Chen did opine that the proposed surgery was unreasonable to treat radial tunnel syndrome or lateral epicondylitis, only that Claimant did not suffer from radial tunnel syndrome or lateral epicondylitis. Claimant is entitled to a radial tunnel release and lateral epicondyle debridement.

52. **MMI.** Per the prior two findings, Claimant is not at MMI and requires surgical treatment in the form of a radial tunnel release and lateral epicondyle debridement.

53. **TTD/TPD.** Idaho Code § 72-408 provides partial or total income benefits for claimants during their recovery from an industrial injury. Idaho Code § 72-403 specifies that injured workers who receive total or partial temporary disability income benefits during a period

of recovery have an obligation to seek or accept suitable employment consistent with their restrictions. Employer bears the burden of proving that an injured worker has failed to satisfy this statutory obligation. An employer may justifiably curtail the payment of time loss benefits in two scenarios: first, if the employer can demonstrate that the injured worker has altogether refused, or failed without good reason, to seek work consistent with his restrictions and abilities, time loss benefits may be denied. Second, should someone offer or secure for claimant a job consistent with his restrictions, and which he is otherwise capable of performing, or should claimant, himself, procure such suitable employment, and then refuse, unreasonably fail, or neglect to perform such work, claimant shall not be entitled to time loss benefits during the period of such refusal. See Idaho Code § 72-403; *Roberts v. Portapros*, IIC 2019-008048 (Issued October 11, 2019).

54. Claimant seeks temporary partial disability benefits for time lost due to medical appointments, time she took off because her elbow hurt, and for her part-time work for Olive Garden. Claimant seeks temporary total disability benefits for the three weeks she was without work after she attempted work at Olive Garden but before she secured other suitable work. Claimant also seeks future temporary disability payments for her proposed surgery.

55. Claimant argues Defendants offered “unsuitable” employment while working for Employer because they did not accommodate Claimant’s restrictions. Per *Roberts*, it is Defendants’ burden to show that Claimant refused or failed without good reason to seek work. However, Defendants do not argue that Claimant unreasonably refused suitable work or failed to look for work consistent with her restrictions. Instead, Defendants argued that Claimant did not provide enough information regarding her post-employment hours to calculate her temporary disability benefits. Defendants make no argument at all regarding her missed work for medical appointments or calling out sick while employed for Employer.

56. Defendants are correct that Claimant did not provide her exact hours while working for Olive Garden or subsequent employers. However, Claimant is not seeking temporary disability benefits for subsequent employers, only for periods while she worked for Employer, was unemployed, or only employed part-time for Olive Garden. Defendants seem to concede these benefits are owed in the event Claimant's claim is found compensable.

57. Regarding Claimant's time at Olive Garden, the Commission is not required to determine an exact dollar amount for past owed temporary disability benefits. (See most recently *Jordan v. Hecla Mining Company*, IIC 2012-027819 (Issued September 4, 2020)). Further, there is no ripe controversy regarding the amount, only missing information to determine the amount. Claimant did not fail to prove entitlement, only failed to provide time sheets to determine an exact calculation of her entitlement.

58. Claimant is entitled to past temporary partial or total disability benefits for her time loss for medical appointments, calling out sick, part-time work at Olive Garden, and three weeks of unemployment. Claimant's entitlement to time loss benefits for her proposed surgery is not in controversy and therefore, not yet ripe.

#### **CONCLUSIONS OF LAW**

1. Claimant suffers radial tunnel syndrome and lateral epicondylitis, and these conditions are a direct and natural consequence of Claimant's August 6, 2020 elbow injury;
2. Claimant is entitled to the surgeries proposed by Dr. Stucki to treat these conditions;
3. Claimant is not at maximum medical improvement;
4. Claimant is entitled to past temporary disability benefits;
5. All other issues are moot.

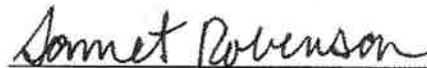


## RECOMMENDATION

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 9th day of February, 2022.

INDUSTRIAL COMMISSION



Sonnet Robinson, Referee

## CERTIFICATE OF SERVICE

I hereby certify that on the 11<sup>th</sup> day of February, 2022, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by *E-mail transmission* and regular United States Mail upon each of the following:

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**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

KALI LASATER,

Claimant,

v.

TRIPLE S. OIL & LYNCH OIL INC,

Employer,

and

WCF NATIONAL INSURANCE  
COMPANY,

Surety,

Defendants.

**IC 2020-019098**

**ORDER**

**FILED**

**FEB 11 2022**

**INDUSTRIAL COMMISSION**

Pursuant to Idaho Code § 72-717, Referee Sonnet Robinson submitted the record in the above-entitled matter, together with her 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 recommendation 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 suffers radial tunnel syndrome and lateral epicondylitis, and these conditions are a direct and natural consequence of Claimant's August 6, 2020 elbow injury.
2. Claimant is entitled to the surgeries proposed by Dr. Stucki to treat these conditions.
3. Claimant is not at maximum medical improvement.
4. Claimant is entitled to past temporary disability benefits.
5. All other issues are moot.
6. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 11th day of February, 2022.

INDUSTRIAL COMMISSION



\_\_\_\_\_  
Aaron White, Chairman

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

\_\_\_\_\_  
Thomas P. Baskin, Commissioner

ATTEST:

\_\_\_\_\_  
Assistant Commission Secretary

## CERTIFICATE OF SERVICE

I hereby certify that on the 11<sup>th</sup> day of February 2022, a true and correct copy of the foregoing **ORDER** was served by *E-mail transmission* and regular United States Mail upon each of the following:

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