BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

SHERRI POTTS, Claimant, v. ADP TOTALSOURCE 1, INC., Employer, and NEW HAMPSHIRE INSURANCE COMPANY, Surety, Defendants.	**IC 2013-009799** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** **Filed July 10, 2015**

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Michael E. Powers, who conducted a hearing in Boise on January 7, 2015. Claimant was present at the hearing and represented by Bruce D. Skaug of Nampa. W. Scott Wigle of Boise represented the Employer ("Overland Court") and Surety (collectively, "Defendants"). The parties presented oral and documentary evidence. Two post-hearing depositions were taken, and post-hearing briefs were filed. The matter came under advisement on May 8, 2015.

ISSUES

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

Whether and to what extent Claimant is entitled to benefits for:

a. Permanent partial impairment ("PPI"); and

b. Permanent partial disability ("PPD") in excess of permanent partial impairment ("PPI").

CONTENTIONS OF THE PARTIES

Claimant suffered an industrial injury to her right rotator cuff and biceps tendon when, performing her duties as a CNA at Overland Court, a patient grabbed her right arm as he lost his balance sitting into a wheelchair. Claimant seeks a determination that she has suffered 60% PPD, inclusive of 12% PPI, due to persistent pain which limits her ability to perform any jobs outside the "sedentary" and "light" categories. She primarily relies upon the opinions of Charles Riddle II, P.T., stated in his June 12, 2014 Functional Capacity Evaluation ("FCE"); Ryan Marsh, P.T., her treating physical therapist; and Mark Williams, D.O., who conducted an independent medical evaluation ("IME") on November 18, 2014.

Defendants counter that the objective medical evidence in the record fails to establish that Claimant's ongoing dysfunction is related to her industrial injury. Along those lines, Jeffrey Hessing, M.D., Claimant's treating shoulder surgeon, opines that she is motivated by secondary gain. Further, Claimant remains employed by Overland Court, performing modified duty, even though Dr. Hessing released her from his care on March 5, 2014 without any medical restrictions. Defendants have paid 5% PPI as per Dr. Hessing's assessment, as well as all appropriate benefits that accrued before Claimant reached medical stability. They contend that they owe Claimant no more.

OBJECTIONS

All pending objections preserved in the deposition transcripts are overruled.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony taken at hearing of Claimant, Neal Potts, Tashena Potts, Sandra Estrada, and Ryan Marsh, P.T.

2. Claimant's Exhibits ("CE") 1 through 14 admitted at the hearing;

3. Defendants' Exhibits ("DE") 1 through 15 admitted at the hearing; and

4. The transcripts of the depositions of Mark Williams, D.O., taken January 22, 2015, and Jeffrey Hessing, M.D., taken March 12, 2015.

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

FINDINGS OF FACT

VOCATIONAL BACKGROUND

1. Claimant, who is right hand dominant, was 57 years of age at the time of the hearing and residing in Boise. She graduated from high school near Blackfoot in 1977 with good to fair grades (Bs and Cs). Her strongest subject was English, and her weakest was science.

2. Claimant began working when she was 17, doing farm labor. At 19, she worked in a fast food restaurant for about one year. Thereafter, she worked as a waitress, a potato processor, a convenience store assistant manager, and a cook.

3. In 1988 or 1989, Claimant testified, at first, that she spent one-and-a-half years taking a paralegal course and completing an externship to obtain her paralegal certification. On cross-examination, she said she never completed an externship. In any event, Claimant never worked as a paralegal. She explained, "I didn't believe - - I don't have much faith in the legal system." TR-50.

4. In the past, on a typewriter, Claimant could type 65 to 70 words per minute. Now, she thinks she can only type 35-40 words per minute. She regularly uses a computer at

work and at home, but she no longer writes business letters, and she would need a refresher course to work with Excel spreadsheets.

5. In 2000 or 2001, Claimant obtained her certified nursing assistant ("CNA") license. For four years, she worked at a nursing home with an Alzheimer's unit where she operated Hoyer lifts to lift patients, changed colostomy bags, prepared patients for injections, cleaned and helped dress wounds, and performed other caregiving functions.

6. In January 2005, Claimant took a CNA job at Overland Court (called "Paramount Park" when she started and, later, "Autumn Years"). There, she assisted patients with all of their daily needs, such as transfers, dressing, toileting, and showering. Claimant was still employed at Overland Court at the time of the hearing.

7. Three or four years ago, Claimant obtained her medical technician ("med tech") certification, which allows her to administer medications prescribed by physicians. At Overland Court, the med techs supervise the caregivers by making sure they perform their jobs thoroughly and safely.

8. Claimant also obtained her certification as a medical assistant, following a year and a half of night classes plus an externship with a physician. This credential qualifies her to administer injections and suture wounds.

9. Claimant averaged about 42 hours per week at Overland Court before her industrial injury. Her time-of-injury wage was $10.75 per hour. She had benefits including employer-provided health insurance, for which she contributed $87 per month, plus paid personal time off.

10. Claimant's pre-industrial injury hobbies included crochet, needlework, and gold panning.

MEDICAL HISTORY

11. Claimant has a history of carpal tunnel syndrome in her left hand and she is a Type II diabetic. She developed spots of numbness on her heels four or five months before the hearing. Otherwise, Claimant was in good health at the time of her industrial accident.

INDUSTRIAL INJURY AND TREATMENT

12. On April 8, 2013, Claimant was assisting a large male resident into a wheelchair. When the chair tipped slightly, the resident grabbed Claimant's right arm. Claimant instantly felt pain in her right shoulder and was unable to move her right arm. She reported her injury to her supervisor, who had Claimant complete an incident report before sending her to Primary Health for treatment.

13. Claimant recalled being examined, x-rayed, and drug tested. She left with her right arm in a sling, a prescription for narcotic pain medication, and a temporary lifting restriction.

14. Claimant returned to work the next day with her right arm in the sling, but without the aid of prescription pain medication. "The pain pills they had me on would knock me out and I couldn't work under those conditions, so I couldn't take my pain pills." TR-71.

Dr. Hessing

15. Claimant continued to receive treatment at Primary Health until June 2013, when she began seeing Jeffrey Hessing, M.D., a board certified orthopedic surgeon specializing in shoulder treatment. Following his schooling, a rotating internship, and his residency, Dr. Hessing began a general orthopedic practice 1985. For the last twelve years, he has narrowed his practice to shoulder treatment only. He performs surgical procedures on about 300 shoulders each year.

16. Dr. Hessing initially evaluated Claimant on June 5, 2013. Following an intake interview, examination, and review of Claimant's MRI taken May 6, 2013, Dr. Hessing diagnosed a tear in the superior labrum of Claimant's right shoulder as a result of her April 8, 2013 industrial injury. Dr. Hessing described the labrum:

> The labrum is a little cartilage rim that goes around the cup. I like to tell patients it's like the "bumper pad" in a bowling lane that the kids put up to keep the ball from falling into the gutter. If that ball gets jarred or jammed, it can certainly tear that labrum as it helps resist the ball from coming out of the socket.

Hessing dep., p. 7. He also described the potential for shoulder instability as a result of a labrum tear:

> Q. Okay. When the labrum tears, does that create the potential for some instability in the shoulder?
>
> A. Well, it depends on where it is. You know, most instability is caused by torn labra up on the anterior side or down on the posterior side on the face of the cup.
>
> Sheri's [*sic*] tear was up in the very top part. We don't see a lot of instability from that.
>
> The problem with that injury is that the long head of the biceps tendon courses over the top of the ball, pierces into the joint, and hooks right up there on the top of the cup where that superior labrum is.
>
> So often with superior labral tearing you will see biceps tearing, which has then its own issues with pain and weakness.

Id.

17. Dr. Hessing administered conservative treatments. When they failed, he recommended arthroscopic surgery.

18. On July 11, 2013, Claimant underwent an IME by Timothy Doerr, M.D., an orthopedic surgeon, at Surety's request. He opined that Claimant's right shoulder impingement and biceps tendinosis/tearing was likely related to her industrial injury, that her treatment to that point had been reasonable, and that Claimant did not demonstrate evidence of functional

interference, symptom magnification, or secondary gain motivation. He concurred in Dr. Hessing's surgical recommendation. He did not thereafter evaluate Claimant or provide any opinions in her case.

19. On August 1, 2013, Dr. Hessing performed arthroscopic surgery to repair Claimant's torn labrum. At his deposition, he described his surgical procedure and findings in detail. He observed tearing of Claimant's superior labrum with fragments hanging up in the socket, grade one or two cartilage changes on the face of the cup, about a 10% tear in her biceps tendon, a fair amount of debris and cartilage floating around in the socket, cuff impingement due to inflammation and/or debris, calcium deposits jamming up the subacromial space around the rotator cuff tendons, and spurs on the very tip of her collar bone that could potentially irritate her cuff tissue. Dr. Hessing repaired, decompressed, and/or cleaned out these structures. He opined the procedure "went pretty routinely." Hessing dep., p. 11. He did not anticipate that Claimant would need to be returned to surgery because he has a motto – "One time, that's all." *Id.*

20. After two weeks, Claimant could raise her right arm to about shoulder height, but Dr. Hessing likes to see a greater range of motion by that point in a patient's recovery, so he sent her to physical therapy. Dr. Hessing sends about half of his patients to physical therapy for that reason.

21. Claimant began physical therapy with Ryan Marsh, P.T., on August 15, 2013. By September 13, 2013, he noted in a report to Dr. Hessing that Claimant was progressing. Dr. Hessing was concerned that the progress was too slow. Claimant only had 30 degrees of motion above shoulder level, for a lift span of only 120 degrees. Dr. Hessing encouraged Claimant to work harder in physical therapy and prescribed anti-inflammatory medication.

22. By October 21, 2013, Claimant's therapist had noted no significant gains, so, on November 14, 2013, Dr. Hessing placed Claimant under anesthesia and manipulated her shoulder to free it up. He expected resistance from scar tissue, but found none. "…I was quite surprised - - as I pushed it, it just came right up."[1] Hessing dep., p. 13. Since scar tissue was not limiting Claimant's motion, Dr. Hessing opined that swelling was the obstacle. He explained that swelling can cause a patient's muscles to prevent full shoulder motion, and he believed this may have been happening with Claimant after determining that scar tissue was not blocking her.

23. Dr. Hessing's November 27, 2013 chart note states that Claimant reported she awoke the day after the manipulation with full right shoulder motion and no pain. At the hearing, Claimant confirmed that she had full range of motion and very little pain immediately following the manipulation. Her physical therapy records agree, although she still had some swelling in her shoulder. On exam on November 27, Dr. Hessing confirmed that Claimant had a full 180 degrees of motion and her rotation motion was only minimally limited. Claimant was pleased that she was feeling better.

24. Claimant recalled that she returned to work following the manipulation, but she modified her activities consistent with Dr. Hessing's temporary right-sided lifting restriction of no more than five pounds. She tried to push the med cart left-handed or else had coworkers move it for her. She pushed wheelchairs with her left hand and her stomach. She limited her lifting. She continued to treat with Mr. Marsh, who noted increased functionality and pain

[1] Later in his deposition, Dr. Hessing admitted that he really was not at all surprised that he could freely manipulate Claimant's shoulder. "You know, I've not really gone there, Counsel, but if you want to push me, I can tell you that I think that it's a lot in her head, and that's why she wouldn't give me a full effort in the office. Once I put her head out of the equation, I could move her with no problems. … So I think, yeah, a very, very subjective and a very difficult patient to evaluate, and I believe that's why I manipulated her because, quite frankly, I thought I would find that I could restore motion to her shoulder without any effort whatsoever, and I did." Hessing dep., p. 28.

improvement through December 16, 2013. Then, on December 19, Claimant appeared for her session feeling sick and unable to do much. Mr. Marsh noted that she was having pain and lack of motion. Claimant cancelled her December 20 session. On December 23 she was, again, reporting slow, steady improvement. On December 27, Claimant reported she was sore, was having a difficult day due to social stressors at home, and was numb and tingly in her second third and fourth digits. On December 30, Mr. Marsh again noted steady improvement, but on January 3, 2014, he opined that Claimant was regressing. "Pt has increased swelling in her GH joint and pain with activity. Pt has new pain down her arm that was not previously there. Pt's job requirements are causing her increased symptoms." CE-112.

25. On January 6, 2014, Mr. Marsh authored a progress note to Dr. Hessing in which he advised, "At this time Sherri [*sic*] is still having moderate swelling in her shoulder. Pt is having some pain and numbness into her arm and hand with functional activities, specifically at work." CE-114, TR-77. Claimant's passive range of motion in the supine position measured 155 degrees (flexion), 120 degrees (abduction), and a full 80 degrees (internal and external rotation). Also, "Pt is able to achieve close to full shoulder AROM [active range of motion] in flexion while standing." *Id*.

26. Claimant was next evaluated by Dr. Hessing on January 7, 2014. She recalled at the hearing that she was still having trouble with swelling, pain, and numbness, and that Dr. Hessing told her there was nothing more he could do for her, that she would need to learn to live with the swelling and pain, and that the numbness would resolve with time. This is generally consistent with Dr. Hessing's contemporaneous chart note. On exam, he noted fuller range of motion than did Mr. Marsh on the prior day. "…she has about full ROM and use with 180 degrees of flexion and nearly full rotation. She lacks only a few degrees on internal rotation.

Swelling and bruising are absent. Crepitus is minimal. Neurovascular status is intact in the hand and arm with a strong pulse at the wrist. Strength is good through all major muscle groups." CE-31. Dr. Hessing discontinued Claimant's physical therapy, recommended strengthening exercises, scheduled her for a progress check visit in four weeks, and returned her to full-duty work.

27. According to ICRD notes (see below), Claimant returned to full-duty on January 8, 2014. Then, on January 20, 2014, Claimant received emergent treatment at St. Luke's Urgent Care for straining her arm while transferring a patient. Claimant was assessed vague medical restrictions and, thereafter, was again placed on light duty work at Overland Court. No records pertaining to this treatment are in evidence.

28. Claimant did not appear for her follow-up appointment with Dr. Hessing on February 25, 2014. On that same day, Claimant's attorney authored a letter to Dr. Hessing in which he advised that he was convinced Claimant could not perform her job duties and that Claimant was not medically stable. He provided check-boxes for Dr. Hessing to indicate, on response, whether an FCE would be helpful, whether Claimant should be assessed lifting restrictions, and whether Claimant should be lifting patients, given her right shoulder condition. On March 4, 2014, Dr. Hessing responded in the triple negative, adding in handwriting that he does not use FCEs, and that he believes the shoulder is medically stable. He further explained in a note to Claimant's attorney:

> When I manipulated Sherri's [*sic*] shoulder on 11/14/13 she demonstrated minimal restriction to her motion with her asleep. This was in stark contrast to her limited motion with her awake (50%). I can only assume this is related to lack of effort and motivation on her part. I feel she needs to be pushed on. I doubt significant weakness at limitations at this point.

CE-35.

29. Claimant was last evaluated by Dr. Hessing on March 5, 2014. Claimant was still having some discomfort with vigorous activities that she treated with over-the-counter medication. Dr. Hessing believed she was feeling quite a bit better, but Claimant testified that she was still experiencing swelling at the top front part of her shoulder, along with pain that was not necessarily worse than it was immediately following the manipulation, but "more amplified." TR-76. On exam, Claimant had minimal crepitus in the subacromial space, mild limitation of range of motion and function (170 degrees of flexion, 40 degrees of extension, 160 degrees of abduction, 30 degrees of adduction, 70 degrees of external rotation, and 70 degrees of internal rotation). "Her strength is quite good with minimal tenderness today." CE-36.

30. Dr. Hessing opined Claimant had reached maximum medical improvement ("MMI") and assessed 5% upper extremity PPI, consistent with the *Guides to the Evaluation of Permanent Impairment, Sixth Edition* ("6th Edition"). He released her from care, with no permanent medical restrictions, but suggested she return if necessary in the future.

31. Dr. Hessing elaborated on his view of medical restrictions. He assesses them, if necessary, to prevent patients from further impairing themselves. However, following shoulder surgery, it is best to keep the shoulder moving, so he does not limit his patients. "I think it's a mistake to take a shoulder down for one day. Every day you take a shoulder down, it takes three days to get it back." Hessing dep., p. 17. Where Claimant is concerned, following his review of her FCE, Dr. Hessing did not believe she was at risk for further injury from performing her full duties at work, so he did not assess permanent restrictions.

32. Also on March 5, 2014, after reviewing a job site evaluation ("JSE") regarding Claimant's job requirements at Overland Court, Dr. Hessing executed a form prepared by the

Industrial Commission Rehabilitation Division ("ICRD") confirming that Claimant could return, to her time-of-injury job duties without restrictions.

33. Claimant confirmed at the hearing that she only has numbness – in her thumb and "lower two fingers" once in awhile. TR-79. She is not sure exactly how often, notwithstanding her attorney's prompts for her to confirm more specific information. She "[k]ind of just ignored it over the last year." *Id.* The numbness arose in physical therapy sometime after the manipulation.

34. Notwithstanding her continued right shoulder complaints, by the time of the hearing, Claimant had not returned to Dr. Hessing – or anyone – for further evaluation or treatment.

35. Claimant described her ongoing pain at the hearing:

> Oh it aches and throbs all the time. There are times when I can reach out and there will be no pain and it will be fine and do it again and there is a sharp pain in my upper arm. I tease people about having medically induced Tourette's, because it's so unexpected that it makes you want to cuss. There has been a time or two that it made me tear up, because it was so severe. I can't reach over my head to get files.

TR-80. Later, Claimant clarified that she has constant pain in her shoulder, with sudden sharp pain in her upper arm.

36. Claimant's testimony regarding her current range of motion was unclear:

> Q. …Dr. Hessing thought that the range of motion would improve over time. Has it improved, stayed the same, or gotten worse?
>
> A. About the same.
>
> Q. As when you last saw him?
>
> A. No. It's gotten worse since I seen him.
>
> Q. Well, that's my question.
>
> A. But it was gradually getting worse, yes.

TR-80, 81.

37. Regarding her strength, Claimant testified:

> I can't lift very much at all with my right hand. My right arm. I have to keep my elbow tucked into my body to try to lift things. But even, gosh, a gallon of milk is very hard and I have dropped it a couple of times trying to lift a gallon of milk.

TR-81.

38. Claimant's testimony regarding the change in her daily living activities since the industrial injury was consistent with that of her husband and daughter (see below). She added that she can write short notes, but if she writes a full page, her hand goes numb and she cannot hold the pen for very long. Also, she cannot type with her right hand, so must hunt-and-peck with her left hand, reducing her typing speed from the 30-35 words she previously testified she could presently do.

39. Claimant keeps her right hand in the pocket of her smock or, sometimes, she holds it.

> A. If I just let my arm hang it hurts extremely. I mean there is a lot of pulling - - if [*sic*] feels like pulling in my shoulder in the joint. It just feels really heavy. And so I wear stuff that has pockets and I use my smock pocket and I have noticed that when I walk - - normally your arms swing with your gait of your walk. My left arm will swing, by [*sic*] my left one doesn't.
>
> Q. You mean your right arm?
>
> A. My right arm doesn't. My left arm swings naturally.

TR-86.

POST-RECOVERY EMPLOYMENT

40. Claimant does not believe she could perform her job, as she did before her industrial injury, without daily assistance from her coworkers. She also does not believe she could return to jobs she has done in the past. She does not think she could lift to stock shelves or put freight away like she did as a convenience store assistant manager, or perform the functions

of a potato sorter, which requires constant throwing and lifting. She does not believe she could lift pots to return to working as a cook, or return to work in a nursing home like Life Care due to the lifting required. Claimant thinks she could probably work in a fast food restaurant, if she were not required to put away freight.

41. At the time of the hearing, Claimant was only getting 28-32 hours per week at Overland Court. She feels like there is a target on her back – that her employer wants her to quit her job. Since her industrial injury, she has been written up several times. Once, she was written up because she could not work when called in on her day off. That day, she had to attend her deposition in this case.

42. Claimant has not sought additional treatment for her right upper extremity symptoms since Dr. Hessing released her from care in March 2014. She has not taken narcotic pain medication "for a long time," and she has not missed any regularly scheduled work due to her industrial injury. TR-98. She does not take over-the-counter pain medication because it could interfere with her diabetes medication (Metformin), though she was unable to articulate why she thought she should not mix these medications. When prompted by her attorney, Claimant testified that her eldest son has been diagnosed with end-stage renal failure due to overuse of Naproxen and other pain medications related to knee and ankle injuries over the years.

LAY WITNESS TESTIMONY

43. Neil Potts. Neil Potts is Claimant's husband of 36 years. Neil and Claimant have a 32-year-old son who lives with them. He has Tourette's Syndrome, which affects his ability to communicate and breathe. They are in the process of applying for Social Security Disability

Insurance ("SSDI") benefits for him. Neil and Claimant also have a daughter who lives with them, along with her partner and three children.

44. Neil has been disabled since an electrocution injury in 1988 which caused severe nerve damage and a "dead spot" in his brain. TR-17. His recovery involved paraplegia and 12 years in a wheelchair, and he still has trouble with short-term memory loss and deteriorating joints as a result of the electrocution. He cannot be left alone. According to Claimant:

> …he has a dead spot about the size of your thumb and I believe it's on the left side of the brain and it causes him short-term memory loss and you can't send him to the store because he will forget where he's going or even what he's supposed to be getting. Sometimes he will have tools in his hands and forget what he's doing and he has had injuries because of that. We have to have someone with him all the time.

TR-48, 49. Neil receives SSDI benefits related to this disability.

45. Neil has been concerned about his ability to take care of himself as he ages and his joints deteriorate, and he is even more so since Claimant's industrial injury. Nevertheless, Neil and Claimant have lived a relatively healthy, active life together. He does not believe it would be particularly helpful to have Claimant at home, since she is the primary breadwinner for the household.

46. He recalled that Claimant fell on some ice, sustaining a back injury requiring surgery soon after he was disabled, but nothing else. He testified that Claimant was not having trouble with her back at the time of her industrial injury.

47. On the day of her industrial injury, Neil recalled that Claimant came home with a sore right arm that she could not raise. Before then, he and Claimant spent their weekends, plus two weeks straight each year, rock hounding (gathering and digging with a pickaxe for stones),

fishing all year 'round, and camping. Now, Neil mostly goes by himself.[2] "She can't - - she can hardly even take a dirt road anymore. … It's just - - just the shock to her shoulder. You know, if she - - she will hang onto it, but it still - - you know, she still feels it." TR-21, 22. Now, instead of digging for rocks, Claimant just looks for what is lying on the ground. When fishing, either Claimant will try to cast her line left-handed, or else Neil will cast it for her. They bought a tent trailer to make camping easier for Claimant.

48. Neil has observed that Claimant is unable to do household chores like she used to. She no longer uses the Rainbow vacuum, her preference, because only the upright can be fully operated left-handed. His daughter does a lot of the cooking now because Claimant cannot lift the heavy pots. He assists Claimant in applying ice and/or heat packs to her shoulder, usually every night after work. He sleeps on the other side of the bed now to accommodate Claimant's need to sleep on her left side, and he hears her shoulder cracking:

> …At nighttime I have - - sometimes have a hard time sleeping, so I will sit and watch her sometimes, and when she moves you can hear her shoulder. It just - - it's like - - it's like breaking chicken bones, small chicken bones. It just - - it cracks. Her movements at night, they don't - - they are not very - - they are not like they used to be. We used to sleep together. I would hug her and she would hug me. That's - - that no longer happens, because she can't get in that position anymore […because of her shoulder]."

TR-24, 25.

49. Tashena Potts. Tashena, Claimant's 33-year-old daughter, lives in Claimant's household. She, as well as everyone Neil identified, above, also lived with Claimant in 2013. Tashena helps out with her dad (Neil). She receives no outside financial assistance related to these efforts, and she is not otherwise employed.

[2] This is contrary to Claimant's testimony that Neil cannot be left alone.

50. Tashena recalled that Claimant had no shoulder problems before her industrial injury, but since then, Claimant does not do as much as she used to.

> We used to go camping every - - every other weekend or every weekend if we could and she used to be the first one in the truck. Help us load it. First one out of the truck. She would cook while we were there and [*sic* – "she"] never had any complaints or anything.
>
> • • •
>
> Now everyone else loads the truck. We help load my mom into the truck. When we get there we unload the truck. We set up the camp. We cook. When we go rock hounding she sits on the side.

TR-31, 32.

51. Tashena confirmed Neil's testimony that, when Claimant fishes, she tries to cast left-handed, often snagging her line in the trees or on the ground because she is not very adept with her left hand. Also, Tashena misses her mom's cooking and does not like cooking every night. Tashena described how Claimant cannot go "mudding" anymore:

> ...We used to go mudding. You know, take the four wheel drives out to the mud packs and have fun and she can't go with us anymore. When we hit a bump she quickly grabs her arm and she just like winces and she - - sometimes she makes a noise and, then, if it gets too bad she makes us pull over and stop. So, it's kind of difficult to do anything outside anymore with her.

TR-33.

52. Tashena has observed Claimant walking with her shoulders "down a little bit more" and making wide turns to be sure she has plenty of clearance and does not bump anything with her shoulder. TR-33.

53. Sandra Estrada. Sandra worked as a caregiver and medical technician at Overland Court for almost eight years. Claimant was already employed at Overland Court when Sandra was hired. Sandra's employment at Overland Court ended due to disability from carpal tunnel syndrome in May 2014.

54. Sandra saw Claimant at work regularly after her first couple of years at Overland Court. They worked on the swing shift together. Like Claimant, Sandra assisted patients with various activities and passed out medications from a "big long square" medical cart on rollers that was also heavy. TR-37.

55. Sandra testified at first that Claimant had trouble with her shoulder before her industrial accident. But she changed her testimony, twice, after Claimant's attorney corrected her as to the intended time period for his questions. She said Claimant did whatever she had to do before her shoulder injury, and that she was a good coworker and employee. She was unaware of Claimant being the subject of any workplace discipline, and she appeared to enjoy her work.

56. After the industrial injury, Sandra testified that Claimant "couldn't really" lift her arm to do things, was placed on light duty, and could not lift patients. TR-40. Sandra was also on light duty at the time. She also recalled that Claimant couldn't push wheelchairs. "…[S]he would kind of like move her arm, you know, a little bit, so she would try to do it with one and, you know, then, we would all jump in and try to help her." TR-42. Also, Sandra and her coworkers would push the med cart for Claimant. Sandra also testified that she did not think Claimant could vacuum or clean the dining room tables. She did not provide a basis for these beliefs.

57. At the time of the hearing, Sandra had a workers' compensation claim pending against Overland Court. Another attorney in Claimant's attorney's firm is representing her. If Claimant has agreed to testify in her case, should it go to a hearing, Sandra is unaware of it.

PHYSICAL THERAPIST OPINIONS

58. Ryan Marsh, D.P.T. Mr. Marsh graduated with a doctorate of physical therapy in 2000, then went into private practice at Rehab Authority. In 2012 he became the director of the outpatient clinic, and in 2013, he obtained a certification in mechanical diagnosis and therapy. Mr. Marsh treats patients every workday, and he has worked with patients recovering from shoulder surgeries and manipulations. Mr. Marsh has known Claimant and her husband for a few years because, in addition to treating Claimant, he is also her husband's physical therapist. Mr. Marsh is qualified to render a physical therapy opinion in this case.

59. Mr. Marsh first treated Claimant on August 15, 2013, when she was recovering from her right shoulder arthroscopic surgery. She had constant, consistent pain that she rated at "7" on an escalating scale from one to ten. Lifting overhead, getting dressed, reaching forward, lifting any sort of weight, and sleeping were all especially difficult. Mr. Marsh found these complaints consistent with her post-surgical condition. He developed a treatment plan including passive manipulation followed by strengthening exercises. Mr. Marsh, like Dr. Hessing, believes that a shoulder recovering from surgery must keep moving to preserve range of motion.

60. No matter what Mr. Marsh tried – gentle activities or more aggressive ones – Claimant's shoulder inflammation remained. He explained that some patients, for whatever reason, have more swelling than others, and that the surgery, itself, creates inflammation.

> … What happens with a decompression surgery is - - whether it's a bone spur, inflammation, impingement, swelling, the doctor will go in, shave down what they need to create more room. With that sometimes that creates more inflammation just because you're creating more of an injury in that area and so with Sherri, her inflammation just didn't want to go away. …

TR-108.

61. Dr. Marsh surmised that Claimant was one of the 15% of patients that, for whatever reason, do not fully recover from shoulder surgery. He also presumed that, over the weeks following her surgery, Claimant had developed a frozen shoulder. At the same time, he acknowledged that he could not be sure of what was going on in Claimant's shoulder because he could not see inside.

> Q. Do you know why that shoulder wasn't responding?
>
> A. I mean I can't give you an exact answer just because I can't see in [the] shoulder. However, it - - some shoulders just don't want to do it. I think I saw a study that 85 percent of shoulders after a surgery like that get very close to normal limits, but some don't, and it's for a myriad of factors, whether it's inflammation and, again, sometimes when you go and do a surgery, especially in the shoulder, there is -- there is so little room and it's the most - - the joint has the most movement of any joint in our body, so there is a lot going on and inflammation and scarring can just continue to make that shoulder less and less - - be able to move less and less and so I think what happened with her is she developed what they call adhesive capsulitis or a frozen shoulder. Sometimes that's idiopathic, which means they don't know why, and also because surgery can cause that and so her shoulder just was stuck.

TR-109. When advised that Dr. Hessing had not, in fact, found evidence of frozen shoulder or scar tissue adhesions, Mr. Marsh was mildly surprised. "Just because of the fact that you would think passive range of motion while under anesthesia and when I was feeling it would be close and hers was not. She - - when I - - when we were working together she - - her joints and soft tissues were - - were not cooperating." TR-121.

62. Mr. Marsh saw Claimant a few days after Dr. Hessing manipulated her shoulder under anesthesia. Claimant still had swelling, but her pain was limited to the end range of motion. She had almost normal ranges of motion, but very limited internal and external rotation.

63. Claimant continued to attend physical therapy with Mr. Marsh until her last visit, on January 6, 2014. She had been compliant, had given full effort, and had appeared for her sessions ready "to work." TR-112. Her swelling had fluctuated, but had never completely

resolved. Mr. Marsh opined that Claimant had lost about 50% of the improvement she gained immediately following the manipulation.

64. Mr. Marsh's last chart note indicates that Claimant still had moderate swelling, with some pain and numbness in her arm and hands which was decreasing her functional activities at work. He opined that Claimant's work activities contributed to the setback in her recovery:

> ...She – she had – with her job lifting, pushing, pulling and with this surgery and the injury, lifting overhead or even simply using your arms over your head for any sort of activities, is the absolute reason why these things happen and linger and you can't improve and so I do remember a lot of visits where she - - sometimes we would make some headway as in my notes stated and, then, she would fall back and that was because of the repetitiveness of her job duties.

TR-115. He also opined that the manipulation procedure, itself, could be a contributor:

> And, again, with - - with the shoulder manipulation ripping scar tissue and, then, moving it back and forth, the shoulder will scar down even worse. There - - there has been some studies that have shown that doing the manipulation doesn't show - - when someone is awake doesn't show that it improved it at all. By ripping scar tissue you're just creating more scar tissue. So, when she back slid that I talked about, it's very common after a manipulation.

TR-123.

65. Mr. Marsh believes that if he could have worked with Claimant for two more months, he could have improved her functioning. However, he recognized that a patient's treating physician is ultimately responsible for determining when to end physical therapy.

INDEPENDENT MEDICAL EVALUATOR'S OPINION

66. Mark Williams, D.O. Dr. Williams is board certified in family practice with a special added qualification in sports medicine. He first began performing medical examinations and assisting in orthopedic surgeries in 2002, in private practice with an orthopedic surgeon. Since 2003, he has been certified as an independent medical evaluator. Dr. Williams refers

patients for surgery, when necessary. He is not a surgeon, and aside from assisting in surgery, he provides only non-surgical orthopedic care to patients with broken bones that don't require surgery; injuries of the knee, back, shoulder, and neck; and musculoskeletal injuries of any type for either initial workup or nonsurgical care.

67. Dr. Williams previously practiced in Kansas, where he sometimes conducted IMEs at the request of a workers' compensation judge. He distinguished these IMEs from those performed at the request of a party, but he did not elaborate.

68. On November 18, 2014, Dr. Williams evaluated Claimant, at her request. Prior to authoring a report, he reviewed Claimant's medical records, took her medical history, and examined her.

69. On exam, Dr. Williams found decreased range of motion in the shoulder which, he recognized, seemed different than her condition when she last saw Dr. Hessing. Claimant had trouble forward flexing and extending; tenderness to palpation across the acromioclavicular joint; moderate tenderness at the bicipital groove; normal stability tests, consistent with her prior medical records; tenderness across her biceps tendons with Speed's test, painful impingement signs indicating some pinching inside the shoulder by Hawkins' and Neer's tests; pain at the acromioclavicular joint when she reached across her body; pain on O'Brien's test with thumb up; normal neck exam; normal neurological upper arm exam; quite a bit of pain with movement; pain with even light touch; and "a kind of global pain that still remained present when I distracted her attention." Williams dep., p. 11.

70. Also, Dr. Williams noted no gross muscle atrophy in the right shoulder; normal skin tone, texture, and color; and no significant swelling or edema, though Claimant had reported right lateral upper arm swelling. Also, her grip strength was normal.

71. Claimant's pain behavior on exam was atypical. Instead of pulling away during palpation of her right (painful) shoulder, which Dr. Williams often sees, Claimant dropped her left shoulder. "I don't have evidence with studies or any other type of evidence to say that that tells me anything other than it was a little different exam." Williams dep., p. 13.

72. Dr. Williams knew of no reason to doubt Claimant's reports of pain and reduced functionality even though, based on his report, he was aware of Dr. Hessing's findings of no apparent arthrofibrosis on manipulating Claimant's shoulder under anesthesia. He does not address the inconsistency raised by Dr. Hessing in Claimant's reported symptoms and the findings on manipulation.

73. Charles Riddle, P.T. At Claimant's request, Mr. Riddle performed a one day FCE on June 12, 2014. Mr. Riddle's report of the FCE indicates Claimant was unable to lift heavy objects, unable to lift light objects overhead, and that she had trouble reaching overhead. On exam, Claimant had right shoulder flexion to 165 degrees and abduction to 130 degrees (compared to 180 degrees each on the left), an 8-inch loss in functional internal rotation compared to the left, and 3/5 strength in right shoulder abduction, flexion, and external rotation (compared to 4+/5 on the left).

74. Based upon Claimant's performance on 13 tests, Mr. Riddle opined that she was significantly restricted in her right upper extremity motion and strength such that she could do no more than "light" work with reduced elevated arm activity. Mr. Riddle reported that Claimant gave full effort on all test items, though he did not state his basis for this conclusion. Similarly, he did not provide any methodology or reasoning to support his opinions regarding Claimant's functional abilities outside her performance on the tests he administered.

75. Mr. Riddle's measurements of Claimant's efforts during these 13 tests are undisputed. However, the scant foundation for his methodology renders Mr. Riddle's opinions conclusory and, therefore, they will be given little weight in determining Claimant's actual functional abilities.

VOCATIONAL EVIDENCE

76. ICRD. From October 14, 2013 until April 9, 2014, Claimant received vocational assistance from Greg Herzog, vocational consultant at the Industrial Commission Rehabilitation Division ("ICRD"). He performed a job site evaluation ("JSE") of Claimant's pre-injury position with the aid of Jim Varnadoe, Overland Court executive director, on October 17, 2013. Mr. Herzog reviewed the JSE with Claimant on October 18, 2013, and Dr. Hessing signed copies upon releasing Claimant to full-duty work in January and March 2014.

77. Mr. Herzog closed Claimant's ICRD file because Claimant had no medical restrictions that would preclude her from her time-of-injury work. Also, "The claimant began working as a Med Tech on 3-6-14 and her status and wage were restored." CE-161. She was earning $512.32 per week ($10.75 per hour) both pre and post-injury.

78. By the time of hearing, Claimant's hours at Overland Court had been reduced; she was no longer working 40 hours consistently each week. The facility was running below capacity.

DISCUSSION AND FURTHER FINDINGS

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). However, the Commission is

not required to construe facts 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).

PERMANENT PARTIAL IMPAIRMENT

79. 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 the evaluation. Idaho Code § 72-422. "Evaluation (rating) of permanent impairment" is a medical appraisal of the nature and extent of the injury or disease as it affects an injured worker's personal efficiency in the activities of daily living, such as self-care, communication, normal living postures, ambulation, elevation, traveling, and on 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. *Waters v. All Phase Construction*, 156 Idaho 259, 262, 322 P.3d 992, 995 (2014).

80. There are four opinions bearing upon the determination of Claimant's PPI. Dr. Hessing assessed 5% whole person PPI on March 5, 2014. On November 18, 2014, Dr. Williams assessed 8% whole person PPI. Dr. Williams relied upon Mr. Riddle's June 12, 2014 FCE findings in assessing some PPI to Claimant's functional limitations outlined therein. Mr. Marsh's testimony and chart notes suggest that Claimant was not as functional as Dr. Hessing opined, which tends to support Dr. Williams' assessment.

81. In December 2014, Dr. Hessing reviewed Dr. Williams' IME report, as well as Mr. Riddle's June 12, 2014 FCE report, provided by Surety. He responded via letter that this information did not change any of his opinions in Claimant's case. Dr. Hessing disagreed with Dr. Williams' PPI assessment because "he combined a couple of different diagnoses, which is

not allowed by the Sixth Edition." Hessing dep., p. 20. "You have to pick the most significant and encompassing diagnosis and use that." *Id.* Also, Dr. Hessing opined that Dr. Williams based his PPI opinion upon some clinical findings that were unreliable. "I knew her motion was already unreliable because I manipulated her with very little findings, and so I didn't believe you could rely on her motion at all. So it was absolutely inappropriate to give her a rating for her motion loss." *Id.*

82. Upon considering Dr. Hessing's criticism, Dr. Williams subsequently amended his PPI rating to 7% of the whole person. In amending his PPI assessment, Dr. Williams recalculated Claimant's PPI based upon the most significant diagnosis, as Dr. Hessing and the Sixth Edition recommended.

83. Dr. Williams' PPI assessment is still higher than Dr. Hessing's because he included Claimant's functional changes as per Claimant's report, Mr. Riddle's FCE, and his own clinical exam. Dr. Hessing, on the other hand, discounted Claimant's reports because he believes she is motivated by secondary gain, and he does not rely upon FCEs. He explained:

> •••
>
> You know, I believe that the Functional Capacity Evaluation [*sic*] is still a very subjective measure of an individual's willingness to use the arm.
>
> In my practice, I really found it more confusing than helpful - - and I haven't used them in my practice for the last ten years - - because I found myself always trying to justify the result of an FCE with what I saw in front of me.
>
> When you have patients that you believe are not giving you their best effort with evidence in the past that they didn't give me their best effort, I don't know how in the world an FCE helps you, so I don't use them.
>
> •••
>
> Everybody recovers so differently. Everybody interprets pain so differently. You know, I do the same thing to the same people, and it amazes me - - one person will take one pain pill, and one will take them for six months.

> So, you know, I rely on looking at people, examining people, and my clinical impression After taking care of over 5,000 shoulders in the last 15 years, I think I have a pretty good read on how people should do.

Hessing dep., pp. 18-20. Further, Dr. Hessing posits that his March 5, 2014 exam of Claimant (as well as his history of treating her) supports his assessment.

84. Although Dr. Williams relied upon Mr. Riddle's FCE results in determining Claimant's functional limitations, he also acknowledged that FCEs have limitations. "FCEs can vary from person to person who runs it and the types, but I think in general it does measure some sort of work capacity and activity capacity that we don't get just examining the person in the room. So I think that they have value." Williams dep., p. 18. Also, Dr. Williams apparently accepted Mr. Riddle's results without familiarizing himself with the methodology by which they were produced.

85. Mr. Marsh worked closely with Claimant throughout her recovery period. However, to the extent his opinion regarding the etiology of Claimant's ongoing pain conflicts with Dr. Hessing's opinion, it is less persuasive. Mr. Marsh did not visualize the shoulder at surgery or perform the repairs. He was not aware that Claimant's shoulder evidenced no adhesions when Dr. Hessing passively manipulated it under anesthesia. He did not evaluate Claimant after January 6, 2014; whereas, Dr. Hessing last examined Claimant on March 5, 2014.

86. Dr. Williams and Mr. Riddle last examined Claimant more proximally to the hearing date than did Dr. Hessing; however, each only met and examined Claimant on one occasion. As determined, above, Mr. Riddle's opinion carries little weight herein because he did not identify or describe his methodology, or otherwise provide sufficient reason why his conclusory opinions as to Claimant's ability to function at work should be deemed reliable. Dr. Williams' PPI opinion similarly suffers because it is largely founded upon Mr. Riddle's opinion.

See Williams dep., p. 25. Dr. Williams also performed his own examination, which yielded significantly different results than Dr. Hessing's. However, he could not, to a reasonable degree of medical probability, identify any particular reason for the differences. Instead, he suggested that another MRI should be performed, and that Claimant should be evaluated by a surgeon to rule out additional injury.

87. Along those lines, Dr. Williams posited that Claimant's biceps tendon injury was not fully addressed at surgery because she had pain to palpation across her biceps (a positive Speed's test). Based upon his experience attending biceps tendon repair surgeries and working with such patients in recovery, Dr. Williams suggested that procedures could have been performed to prevent the pain Claimant described, but were not. "[W]hen there's a partial rupture or a near complete rupture, which is what was reported in the op note, many times those biceps will be either cut, which is called tenolysis, or cut and tacked back down, which is called tenodesis, during surgery, which will relieve pain deep inside the shoulder caused by that partial tear." Williams dep., p. 14. He recommended a surgical evaluation of Claimant's biceps tendon, which Claimant has not acted upon.

88. Notwithstanding Dr. Williams' opinion, Dr. Hessing convincingly testified that he fully addressed Claimant's 10% biceps tendon tear at surgery. According to the operative report:

> The biceps insertion was involved about 10% and therefore, I debrided this area. The … insertion was certainly adequate so I did not transfer it. The intra-articular portion of the tendon was frayed up. I smoothed this down removing about 10% of its volume. The edges were beveled and the tendon looked good as it exited the joint.

CE-39. Dr. Hessing provided further insight into his approach to Claimant's biceps tendon injury at his deposition:

> She also did have about a 10 percent tear of her biceps insertion. As I've already mentioned, that hooks right up there with the labrum, and often they get torn hand-in-hand.
>
> The good news was it was not torn more than 10 percent. If they're torn less than 50 percent, I leave the bicep where it is and just debride or clean off the torn part, which we did in her case, and left the bicep still hooked at the top of the cup. That did not require us to transfer it out and hook it somewhere else like sometimes we'll do.

Hessing dep., p. 9.

89. The Referee finds that Dr. Hessing's general experience concentrating solely on shoulder treatment (including surgery) for 12 years, as well as his specific experience treating Claimant's shoulder injury, renders him better qualified to opine as to her shoulder mechanics than Dr. Williams, Mr. Riddle, or Mr. Marsh. Dr. Hessing has opined that Claimant's shoulder is only minimally mechanically limited in function, and that no medical restrictions are necessary. The Referee finds Dr. Hessing's opinion in this regard most persuasive.

90. The Referee also finds the weight of the evidence in the record is sufficient to establish that Claimant has some additional limitations, beyond mechanical limitations, due to her subjective persistent pain experience related to her industrial injury. However, considering Claimant has not sought additional treatment for her shoulder symptoms, from Dr. Hessing or anyone else, and that she works without the aid of even an over-the-counter analgesic, Claimant's pain limitations are likely not as significant as Dr. Williams opines.

91. According to Rules 17.02.04.281.02 and -.03 of the *Administrative Rules of the Industrial Commission Under the Workers' Compensation Law*, when multiple PPI ratings have been given by more than one evaluating physician, those ratings should be converted to whole person ratings and averaged to determine the applicable rating, unless manifest injustice would result. Here, no manifest injustice would result by averaging Dr. Hessing's 5% whole person

rating and Dr. Williams' 7% whole person rating. Therefore, the Referee finds that Claimant has suffered 6% whole person PPI as a result of her industrial injury.

PERMANENT PARTIAL DISABILITY

92. "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.

93. 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 nonmedical factors, has reduced the claimant's capacity for gainful employment." *Graybill v. Swift & Company,* 115 Idaho 293, 294, 766 P.2d 763, 764 (1988). 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. 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). Wage loss may be a consideration. *Baldner v. Bennett's Inc.*, 103 Idaho 458, 649 P.2d 1214 (1982).

94. **Maximum medical improvement (MMI).** As a prerequisite to determining Claimant's PPI or PPD, the evidence must demonstrate that she is medically stable. To wit, "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. Dr. Hessing's opinion that Claimant was medically stable as of March 5, 2014 is unrebutted by the weight of the medical evidence in the record. The Referee finds Claimant has been medically stable since that date.

95. **Time for determining PPD.** The proper time for determining Claimant's PPD is the time of the hearing. *Brown v. Home Depot,* 152 Idaho 605, 272 P.3d 577 (2012). There is no dispute regarding this point. Claimant's PPD, if any, will be determined as of the hearing date.

96. **PPD.** Claimant bears the burden of proving her disability. No vocational consultant opined as to Claimant's PPD, and Claimant's attorney's loss of labor market access argument based upon statistics from the May 2014 *State Occupational Employment and Wage Estimates for Idaho From the Bureau of Labor Statistics* and the *Dictionary of Occupational Titles* is unpersuasive. It cannot be concluded that Claimant lost access to 38% of *her* local labor market simply because light and sedentary jobs (the only jobs Claimant asserts she is capable of working) make up 62% of the jobs existing in the Boise Valley. First, there is insufficient medical basis to establish that that Claimant is relegated to sedentary and light positions. Even if she were, there is no basis for finding either that

Claimant's pre-injury local labor market included all of the jobs in the Boise Valley, or that it is comprised of a combination of jobs made up of 62% sedentary and light positions.

97. Claimant has established that she experiences some residual pain from her industrial injury that inhibits her from performing some of the tasks, like transferring patients, that she regularly performed pre-injury. She is likely to have a lower tolerance for performing such tasks as a result of her industrial injury which bears upon her ability to maintain gainful employment. Her experience, education, and certifications qualify her to continue working, without wage loss attributable to the industrial injury, for her time-of-injury employer, without performing all of her pre-injury duties. However, she has likely lost access to part of her pre-injury labor market as a result of the pain she experiences.

98. Claimant has failed to establish she has suffered, or is likely to suffer, any wage loss. Further, Claimant remains employed at her time-of-injury-job, albeit with accommodations.

99. Claimant has established entitlement to 5% PPD, in addition to 6% PPI, as a result of her industrial right shoulder injury.

CONCLUSIONS OF LAW

1. Claimant has established she is entitled to whole person permanent partial impairment of 6%.

2. Claimant has established she is entitled to permanent partial disability of 5% in excess of permanent partial impairment.

RECOMMENDATION

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

DATED this __2nd___ day of __July____, 2015.

INDUSTRIAL COMMISSION

__/s/_____
Michael E. Powers, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the __10th___ day of __July__, 2015, 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:

BRUCE D SKAUG
1226 E KARCHER RD
NAMPA ID 83687

W SCOTT WIGLE
PO BOX 1007
BOISE ID 83701-1007

ge

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

SHERRI POTTS, Claimant, v. ADP TOTALSOURCE 1, INC., Employer, and NEW HAMPSHIRE INSURANCE COMPANY, Surety, Defendants.	**IC 2013-009799** **ORDER** **Filed July 10, 2015**

Pursuant to Idaho Code § 72-717, Referee Michael E. Powers 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 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 has established she is entitled to whole person permanent partial impairment of 6%.

2. Claimant has established she is entitled to permanent partial disability of 5% in excess of permanent partial impairment.

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

DATED this __10th___ day of ___July____, 2015.

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 __10th___ day of ___July____ 2015, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

BRUCE D SKAUG
1226 E KARCHER RD
NAMPA ID 83687

W SCOTT WIGLE
PO BOX 1007
BOISE ID 83701-1007

ge _____/s/_____