BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

GLENN GOODWIN, Claimant, v. ALLIED UNIVERSAL, Employer, and XL INSURANCE AMERICA, Surety, and STATE OF IDAHO, INDUSTRIAL SPECIAL INDEMNITY FUND, Defendants.	**IC 2018-027119** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** **FILED JULY 7, 2022**

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Industrial Commission assigned this matter to Referee Douglas A. Donohue who conducted a hearing in Boise on June 9, 2021. Dan Luker represented Claimant. Janine Reynard represented Employer and Surety. Paul Augustine represented ISIF. The parties presented oral and documentary evidence. Post-hearing depositions were taken. Afterward, Employer and Surety settled with Claimant for a lump sum. Claimant and ISIF submitted briefs. The case came under advisement on February 23, 2022. This matter is now ready for decision.

ISSUES

The issues to be decided according to the Notice of Hearing are:

1. Whether Claimant suffered an accident on or about the time claimed in his complaint;

2. Whether the condition for which Claimant seeks benefits was caused by the alleged industrial accident;

3. Whether Claimant is medically stable and, if so, on what date;

4. Whether and to what extent Claimant is entitled to:

a) Temporary disability,
b) Permanent partial impairment,
c) Permanent disability in excess of impairment, including total permanent disability,
d) Medical care, and
e) Attorney fees.

5. Whether Claimant is entitled to permanent total disability under the odd-lot doctrine;

6. Whether apportionment is appropriate under Idaho Code § 72-406;

7. Whether ISIF is liable under Idaho Code § 72-332; and

8. Apportionment to establish ISIF's share of liability under *Carey v. Clearwater County Road Dept.*, 107 Idaho 109, 686 P.2d 54 (1984).

As a result of the settlement, the remaining parties agree that the issues have narrowed to Issue numbers 1, 2, 5, 7, and 8 identified above. (Nevertheless, Claimant's brief argues for 100% total permanent disability. That aspect of Issue number 4(c) remains under consideration here.)

CONTENTIONS OF THE PARTIES

Claimant contends he is totally and permanently disabled both 100% and as an odd-lot worker. His permanent impairments before the accident include a back injury and diabetes requiring dialysis until he received a kidney transplant. He received SSD benefits on those bases. Liver and kidney transplants were performed, and his health improved. SSD became SSI benefits when he reached age 65. On September 16, 2018 he suffered a low back injury—an L4-5 disc herniation—moving a sliding gate which became stuck. A job search, personally and with the assistance of ICRD, as well as attempts at employment after low back surgery were all unsuccessful.

Claimant further contends ISIF is liable. Claimant's low back, diabetes, and other pre-

existing conditions have been rated for permanent impairment by Dr. Friedman. All other prerequisites to ISIF liability are established by the evidence. Claimant does not suggest numbers for *Carey* apportionment.

Claimant finally contends that Claimant's inconsistencies reasonably and naturally arise from normal human memory limitations. These are *de minimus* and hardly irreconcilable. Claimant is credible if not perfectly consistent.

ISIF contends Claimant's testimony about the accident has been inconsistent. The inconsistencies preclude Claimant from showing an accident by a preponderance of the evidence. The irreconcilable evidence all comes from the same source, Claimant's reports to physicians and testimony.

ISIF contends Claimant failed to carry his burden of proof to establish total and permanent disability by either method. Claimant's own vocational expert, Mr. Porter, calculated PPD at 61.5% with Claimant having access to almost 1200 jobs in his local labor market. Mr. Porter's analysis requires assigning significant weight to Claimant's subjective perceptions of functional tolerance—perceptions not encompassed by physicians' restrictions—to approach odd-lot status. Also, Claimant has not conducted a reasonable job search. Claimant's job search was limited, in part, by the increased health risks he faced as a diabetic during the COVID-19 pandemic. Many of the jobs he once considered unsuitable are suitable now, as wages and hiring opportunities have increased since the time of injury. His job search was limited by his desire for only part-time work. Claimant is retired and enjoys hobbies compatible with retirement. Some of these hobbies are demonstratively physical. Before and since the accident he sought only part-time jobs. In the nine months of 2018 before the accident Claimant worked only 559 hours. Even if Claimant's evidence

is deemed to shift to ISIF the burden of showing that suitable work is regularly and continuously available the ICRD consultant and Employer's and Surety's vocational expert have done so.

ISIF further contends that the four factors required to determine ISIF liability have not been established. Claimant fails the *Bybee* "but-for" test and cannot show the prior and accident-related conditions combine to cause total and permanent disability. If the Commission deems the *Carey* formula to be applicable, Claimant has failed to show qualifying pre-existing PPI upon which ISIF would bear a portion of the liability.

EVIDENCE CONSIDERED

The record in the instant case included the following:

1. Oral testimony at hearing of Claimant, his wife JoAnne Goodwin, Employer's account manager Christopher Lutes, and Surety's third-party adjustor Barbara McFedries;

2. Joint exhibits A through NNN (comprising over 9000 pages in 11 binders of documents); and

3. Post-hearing depositions of physicians Robert Friedman, M.D., Rodde Cox, M.D., Michael Foutz, M.D., and of vocational experts Delyn Porter and John Janzen.

All objections raised in post-hearing depositions are OVERRULED.

The Referee submits the following findings of fact and conclusions of law for the approval of the Commission and recommends it approve and adopt the same.

FINDINGS OF FACT

Introduction and Accident

1. On the night of September 16, 2018 Claimant worked for Employer at the Expo Idaho site in Garden City. He hired on about April 6, 2017 after retirement boredom set in. He testified, "[T]here is only so many things you can do around the house. So many fish you can catch." He sought a strictly part-time job to supplement his retirement. The job was to provide

occasional security for events at Expo Idaho or Barber Park, often overnight as a night watchman. Shifts were sometimes 12 hours or more and often involved occasional walking.

2. Around 10:00 p.m. on or about September 16, 2018, Claimant was alone pulling on a vehicle gate. It got stuck. As he tugged on it, he felt back pain. He testified that he sat in his truck by the gate for the rest of his shift.

3. Claimant's wife noticed a significant difference when she next saw him. He told her about the stuck gate. For a few days afterward they had discussions as Claimant delayed seeking medical attention while he tried to sort out whether his pain was temporary, was a flare up of prior back pain, and whether it was caused by the gate or not.

Medical Care

4. Medical benefits are not at issue. The evidence includes a large number of medical records. All medical records were reviewed and considered, but unless germane and significant to essential elements of proof herein, will not be mentioned.

Pertinent medical care: September 16, 2018 through December 31, 2018

5. On September 18 Claimant visited David Jessop, D.C. He reported that the symptoms began a week and a half before, that the condition was not new, and that it was not injury related.

6. On September 24 Claimant visited St. Luke's Meridian emergency. He reported the gate incident as precipitating his symptoms. X-rays showed an old compression fracture at L2 and mild multilevel facet joint hypertrophy. The doctor saw no reason to suggest further treatment beyond an anti-inflammatory. St. Luke's records began carrying a note describing Claimant as being "normally independent in all his activities of daily living."

7. On October 2 Hala Rafia, PA-C noted Claimant's history of the gate incident dated

September 16. Dr. Rafia examined Claimant, noted the X-ray was unrevealing of an acute injury, and ordered an MRI. St. Luke's occupational health facility physicians imposed temporary work restrictions of seated/sedentary work only.

8. On October 4 a lumbar MRI showed no soft tissue swelling or inflammation. It showed the old L2 compression fracture. It showed degenerative joint disease in the lumbar spine. It showed a disc bulge at L4-5 touching the right L5 nerve.

9. Sets of physical therapy records, both pre-surgery and post-surgery sessions, show Claimant was reasonably but imperfectly cooperative. He exhibited slow but steady improvement. Some post-surgical therapy included STARS work-hardening program.

10. On December 11 treating physician Rodde Cox, M.D. refused to approve Claimant's return to his time-of-injury duties based upon a job-site evaluation (JSE). He did approve a return to modified duty, four hours per day, with a 10-pound lifting, pushing, and pulling restriction. These restrictions were affirmed through the date of surgery. Allowance for Claimant to use his own chair was included as a restriction because of the height of the arm rests on it.

11. Successive treatment visits to Dr. Cox included a steroid injection which provided minimal pain relief. Dr. Cox approved the referrals to surgeons Kenneth Little, M.D. and later Paul Montalbano, M.D.

Medical care: 2019

12. On January 25 Claimant reported to his long-time treating physician Michael Foutz, M.D. that Dr. Little refused to perform back surgery because Claimant is immunocompromised.

13. From January 29 through February 4 Claimant was hospitalized for an infected wound which produced an old suture rising to the surface. This right hip wound was accompanied

by other wounds along his right lower extremity. Claimant expressly denied back or neck pain. During this stay he occasionally complained of right calf or ankle pain with weakness. Swelling was noted there. Such pain was linked to deep vein thrombosis (DVT) and was not linked by any physician to any back condition or injury. Claimant's diabetes complicated all wound care. Claimant received follow-up wound care at successive visits through April.

14. Claimant did return to work a few 4-hour shifts in March and April.

15. On April 6 another lumbar MRI showed the disc bulge impinging the right L5 nerve root and all the degenerative changes noted before.

16. On April 29 Dr. Montalbano performed a discectomy at L4-5 on the right. He removed the disc herniation and found no free fragment or need to further remove annulus in the L4-5 disc space.

17. The first thing Claimant noticed after back surgery was that he could tie his own shoes. His wife had to tie his shoes from the date of the accident until shortly after the date of the surgery.

18. On May 29 Dr. Cox increased the weight Claimant was allowed to lift to 20 pounds and to push or pull to 30 pounds.

19. On July 8 Dr. Foutz examined Claimant for a DOT physical. Claimant had decided to renew his CDL. He answered questions, and Dr. Foutz okayed a one-year CDL renewal without restrictions.

20. On July 23 Dr. Montalbano provided return to work restrictions including a 25-pound lifting limit and a four-hour workday. Despite opining that Claimant was medically stable at that time, Dr. Montalbano expressly noted these restrictions were temporary to allow

Claimant to safely rejoin the work force with expectation of easing restrictions until a permanent restriction was determined.

21. On August 20 Robert Calhoun, Ph.D. evaluated Claimant psychologically for purposes of entering the STARS work-hardening program. He diagnosed a somatoform disorder but deemed it did not disqualify Claimant from the program. Claimant was reasonably compliant during the program. On October 9 the physical therapist at STARS discharged Claimant. He had reached his pre-injury work capacity.

22. On September 14 Claimant reported he fell. He thought he broke a rib. X-rays were negative. Dr. Foutz diagnosed a rib contusion.

23. On October 4 Dr. Cox imposed a 25-pound lifting restriction on a likely permanent basis.

24. On November 14 Dr. Foutz, apparently at Claimant's request, issued a restriction requiring 15-minute breaks every hour. It is unclear whether this was intended to be temporary or permanent or whether it related to the recent fall and rib pain or the subject industrial accident. Dr. Foutz's records are unrevealing. This restriction is not again mentioned in the record.

25. A November 26 St. Luke's visit for diabetes care included consideration of lumbar radiculopathy on the right. On examination Dr. Cox noted absent reflexes in bilateral lower extremities with hypersensitivity and weakness in the right lower extremity. Dr. Cox provided restrictions including no lifting over 25 pounds, sit and stand as needed, limit work to 4 hours per day. Dr. Cox also deemed "reasonable" Claimant's desire to bring his own chair, a canvas camping chair with arms. Dr. Cox opined the earlier 4-hour-per-day limit to be "multifactorial," related in part to back issues, but also to "multiple other comorbidities." He lifted this restriction and allowed

Claimant to work full shifts. Claimant reported subjective tolerances suggesting greater limitations. Dr. Cox explained to Claimant why subjective tolerances were not a basis for assigning permanent impairment.

26. On December 6 a radiologist interpreted a new lumbar MRI. He noted the surgical changes and degenerative conditions.

27. On December 12 Dr. Foutz noted the MRI showed "resolution of the L4-5 disc with no ongoing recurrent disc or significant scarring noted." He deemed Claimant at MMI with a 13% PPI, 8% from the industrial injury, 5% pre-existing. He affirmed his earlier restrictions and included Claimant's prn use of his AFO and walking stick. He lifted the 4-hour restriction.

28. On December 12 Dr. Cox affirmed the 25-pound lifting restriction as permanent along with ad lib position changes. He rated PPI of Claimant's low back at 13% whole person, 5% preexisting, 8% from the industrial accident.

29. The following day Claimant returned to St. Luke's for wound care, an ulcer on his heel. Follow-up visits continued into 2020.

Medical care: 2020 to hearing

30. On February 12, 2020, Dr. Foutz issued correspondence to the school bus company where Claimant was attempting to get hired. He reported Claimant's pain was at a level that narcotics were not needed and that he was discontinuing Claimant's prescription for them in order to allow Claimant to pass the mandatory pre-employment drug screen. When Claimant did not get the job, Dr. Foutz resumed the Norco prescription on March 4.

31. On May 5, 2020, after examining Claimant the day before, Dr. Foutz responded to questions from Claimant's attorney. He opined Claimant had "not returned to his baseline

function" with respect to right lower extremity radiculopathy. He opined that the accident exacerbated the foot drop. He opined that peripheral neuropathy is generally bilateral. Claimant's right leg is much worse than his left, and therefore peripheral neuropathy is not the sole cause of his right leg condition. Dr. Foutz described Claimant's reported tolerances but did not issue restrictions on those bases.

32. On December 15, 2020, Dr. Cox opined that pain management treatment was not unreasonable, but that its relationship to the industrial accident was "likely multifactorial related to his previous lumbar radiculopathy as well as his multiple significant comorbidities."

33. On March 29, 2021, Robert Friedman, M.D. reviewed records and examined Claimant for forensic purposes at the request of Employer and Surety. Claimant reported low back, right leg, and right foot pain and described the gate incident. Dr. Friedman opined Claimant's current low back and leg pain, after marked improvement of radiculopathy from surgery, was caused by the gate accident. Claimant had been using an AFO for his right ankle before the accident. Right ankle pain, foot drop, and continued use of Norco, gabapentin, and tizanidine were not caused by the gate accident. These are caused by his diabetic peripheral neuropathy. No future medical care is necessary or anticipated. Dr. Friedman concurred with Dr. Cox's MMI date of December 12, 2019. Dr. Friedman opined 7% PPI for Claimant's low back and right leg condition, apportioned 60% preexisting and 40% from the accident, resulting in a 3% whole person PPI from the accident. He opined that restrictions from this injury are the same as should have been provided after his first back surgery in 2005—lifting 50 pounds occasionally, 25 pounds repetitively, no twisting or torquing of his low back. Dr. Friedman rated Claimant's preexisting conditions as follows: 5% prior low back surgery, 8% for diabetes, 15% for peripheral

neuropathy and associated balance issues, 1% thyroid, 2% hypertension, and 2% atrial fibrillation.

34. On April 16, 2021, Mark Harris, M.D. examined Claimant on referral from Dr. Foutz for his sciatica and/or peripheral neuropathy. Dr. Harris became Claimant's treating physician concerning diabetes issues. He reviewed old MRI and X-rays and other diagnostic imaging. Dr. Harris noted Claimant's reported tolerances. He did not opine about causation or restrictions. He suggested a new AFO which would be a lifetime appliance.

35. On April 30, 2021, Dr. Friedman responded to questions by opining that Claimant needs no additional medical care including no more pain management related to the gate accident.

36. On May 10, 2021, Claimant again visited Dr. Harris for examination and diabetes management. On May 17, 2021, Dr. Harris responded to questions. He opined that neither neuropathy nor foot drop were related to the gate accident. He opined that ongoing pain management was not related to the gate accident.

37. Both Claimant and his wife believe his foot drop is worse since the gate accident.

Specific prior medical records

38. Claimant suffers from longstanding hypertension since at least 1983.

39. Claimant's Diabetes Type II has been uncontrolled for decades despite oral medications and later insulin. He has known about his diabetes at least since 1994.

40. While in California driving company trucks for various employers Claimant underwent bilateral carpal tunnel surgeries and a right shoulder surgery. These were work-related injuries. After surgical recovery the carpal tunnel conditions caused him no difficulty. After surgical recovery the shoulder condition is occasionally mildly painful, particularly with overhead activities, but does not hinder them. In deposition Claimant could not recall any other injuries arising during those years.

41. Claimant later drove truck as an independent owner-operator. He had back surgery in August 2005 after catching a watermelon dropped from the top of a big rig. The pre-surgical MRI showed degenerative disc disease L3-S1 but also an acute nerve compression at L4-5. Surgeon James Tate, M.D. released him to return to full duty without restriction. For a few months after returning to work he tried to avoid loads that required manual handling of a tarp. More years later he found that long periods sitting in a truck brought on back pain.

42. Claimant's diabetes and resultant kidney failure was a factor in his decision to sell his truck. As diabetes progressed Claimant began occasional use of an AFO for foot drop. His right foot was weaker. His condition deteriorated for about seven years, during which kidney issues eventually required dialysis.

43. In March 2008 Claimant underwent right hip surgery, drainage of an abscess, following a MRSA infection likely caused by a barbed wire puncture. By June he had returned to full-duty work.

44. In November 2008 lumbar X-rays showed degeneration with disc narrowing and end plate osteophytes at L3-4-5.

45. In February 2009 Claimant was diagnosed with end stage liver cirrhosis, secondary to hepatitis C. Liver transplant was recommended. His condition progressively worsened until he received a transplant in August 2015.

46. In March 2009 a Mayo clinic visit focused on ameliorating hepatitis C to make Claimant eligible for a liver transplant. Claimant told the Mayo clinic he had used intravenous methamphetamine, "on weekends," from age 27 to 35. In other medical records over the years he has inconsistently mentioned or failed to mention it when asked about substance use. The record

consistently supports his assertion to Mayo physicians that he had not used it after age 35. Claimant testified that he used meth a couple of times in his life. Similarly, his reports of long-ago marijuana use are shown occasionally inconsistent. A rare few drug screens showed such use within the last 10 years, although most were negative.

47. Vertigo was diagnosed in 2010. At hearing Claimant testified about ongoing balance issues. The record does not show that these result in permanent impairment.

48. A 2012 lung surgery was the first of several procedures to correct pleural effusion or clear viral and/or bacterial lung infections. Hospitalization for lung conditions over the years included different procedures at different times. All resolved. None resulted in physician-imposed restrictions.

49. A 2013 MRI showed "notable" stenosis L3-S1 and a straightened lordotic curve. Dr. Tate opined in favor of a "relatively limited" [duration] of a narcotic prescription for back pain.

50. In July 2015 Claimant was injured in a car accident. Diagnostic imaging coincidentally revealed gallstones and other gallbladder issues. No permanent symptoms or impairment remained after treatment.

51. After about three years of dialysis Claimant obtained a kidney and liver transplant in August 2015. The gallbladder was removed as well. Mayo clinic in Arizona was chosen because Mrs. Goodwin's health insurance covered that facility's bills 100%. She credits Mayo clinic for saving his life. Diabetes caused a need for wound care at least since 2006, including care to his right thigh in 2011 and also in 2010 and again in 2012 for a toe he had slightly injured but which became infected. After the transplants, Claimant experienced dramatic improvement, but complications ensued. An abscess developed in his liver. The abscess was treated successfully.

52. A June 7, 2016, note from St. Luke's Meridian emergency identifies "daniel goodwin" as a patient alias. This statement is without explanation therein or confirmation elsewhere in the record.

53. In July 2016 a cervical spine MRI showed moderate to severe spondylitic changes throughout accompanied by stenosis.

54. On August 24, 2018, Dr. Foutz treated Claimant's diabetic neuropathy which affected his feet.

55. During the 10 years before the accident Claimant's weight fluctuated between 180 and 240 pounds.

56. Claimant obtained Social Security Disability benefits. The original determination was effective back to July 2008 based primarily upon his end-stage renal disease. Months later the determination backed to a March 2008 effective date based primarily on his liver condition. He also identified MRSA right hip, "back problems," and hepatitis C as conditions contributing to his disability. He also began receiving Medicare benefits about that time. At age 65 SSD changed to Social Security Retirement Income benefits.

57. Claimant has no restrictions relevant to his thyroid, hypertension, or atrial fibrillation conditions. Dr. Friedman testified that he included a PPI rating for each because Claimant takes a prescription medication for each.

58. Other pre-existing conditions were mentioned in the record but are not set forth in these findings. All of these were either temporary only or, if chronic, did not result in permanent physician restrictions.

59. Claimant testified that he does not claim any pre-existing conditions worsened as a

result of the accident. Nevertheless, he and his wife testified that his foot drop has worsened.

Physicians' Deposition Opinions

60. In deposition on July 12, 2021, Dr. Foutz testified that he first treated Claimant a few months after his organ transplants. Peripheral neuropathy from diabetes is a progressive condition. It does not "wax and wane," but symptoms may sometimes be more intense depending upon blood sugar level and other factors. Claimant first visited Dr. Foutz about the gate accident 10 days after it happened. Claimant had recovered from the 2015 transplants to his comfort level of activity well before that date. He worked a part-time job. His chronic preexisting conditions continued to be monitored and treated. Dr. Foutz described the differences between neuropathy and radiculopathy. Neuropathy originates in the nerve where it is sensed. Radiculopathy originates elsewhere, travels along a nerve, and produces sensation at an end place. Generally, neuropathy begins at an extremity and progresses over time to areas closer to the core whereas radiculopathy begins nearer the core and travels toward the end of an extremity. Generally, neuropathy gets worse over time, radiculopathy somewhat better. Claimant has worn an AFO for right foot drop since August 2017. Use of a walker was new after the gate accident. Dr. Foutz expected this to be temporary, but Claimant did continue with a cane after he discontinued using the walker. About one month after the April 2019 back surgery Dr. Foutz observed that Claimant's sciatica from the gate accident had lessened but his foot drop and neuropathy from diabetes remained progressive. Still, the sciatica hindered treatment for the neuropathy. Claimant is "variably compliant" with diet and exercise needed to control diabetes. Dr. Foutz agrees with other physicians who have characterized Claimant as being "resistant to aggressive … diabetes management." Recently, Dr. Foutz came to understand that Claimant believed other physicians

had recommended he keep his blood sugar above 200 because too high is safer than too low for transplanted organs. Dr. Foutz has tried to adjust Claimant's understanding. Dr. Foutz deferred to Dr. Harris for causes of continued pain management. Dr. Foutz recalled ordering a left foot AFO before the gate accident for left foot drop but cannot recall whether Claimant ever used one.

61. In deposition on July 13, 2021, Dr. Cox testified that he began treating Claimant on December 12, 2018 for right leg and hip pain. Claimant described the gate accident and linked it to his then current pain. Dr. Cox examined Claimant and found radiculopathy in the right L5 distribution. Based upon the MRI Dr. Cox would call the disc extrusion a "severe herniation." Disc material had extruded beyond the disc bulge and into the area of the right L5 nerve. Although a similar finding might be asymptomatic in some patients, Dr. Cox opined that for Claimant it was consistent with an acute nerve impingement and consistent with being the source of his pain. Claimant's initial response included failure to recognize the need for treatment immediately and was not inconsistent with his description of the gate accident or the MRI findings. Dr. Cox found it "concerning" that Claimant denied an accident to the chiropractor he first visited after the gate accident. Nevertheless, Dr. Cox opined that the disc herniation and radiculopathy were caused by the gate accident. Dr. Cox examined Claimant and treated him for post-surgical symptoms. He found Claimant to be at MMI on December 12, 2019. He rated PPI at 13% whole person for his low back condition and apportioned it based upon a prior back surgery. He opined that some of Claimant's foot drop could be caused by a L5 radiculopathy. He restricted Claimant from lifting more than 25 pounds occasionally and noted Claimant would require ad lib position changes. Other considerations included use of his own chair and a walking stick. These and the AFO were mentioned for the comorbidities as much as the back condition. On cross-examination Dr. Cox

backed off his opinion about the chair—any chair with armrests would probably do as well. Dr. Cox lifted the temporary restriction of a four-hour shift to allow a shift of any length. At the time Claimant felt his tolerance was less than a full shift, but Dr. Cox found no medical basis for imposing such a restriction. Later, Dr. Cox concurred with Dr. Foutz's recommendation for pain management for the combination of work-related and non-work-related conditions. Dr. Cox would defer to Dr. Harris about causation for additional pain management.

62. In deposition on September 1, 2021, Dr. Friedman testified that he concurred with Dr. Cox about a December 12, 2019 MMI date. He confirmed his opinions as expressed in his written report. Dr. Friedman did not rate Claimant's shoulders for PPI because there was no apparent reason to do so. Some PPI assignments for conditions other than musculoskeletal conditions merely represent the fact that Claimant takes lifelong medication for them, hypertension and thyroid for example. These do not cause a need for any restrictions. Claimant's abilities exceed his belief in his abilities.

Vocational Factors

Generally

63. Born May 1, 1953, Claimant was 68 years old at the time of hearing.

64. He attended 12th grade but did not graduate. He earned a GED later.

65. Claimant began a law enforcement officer course which would have qualified him to become a reserve deputy sheriff but did not finish it.

66. He received on-the-job training to become a commercial truck driver. He maintained his CDL until he left California for Idaho.

67. Claimant's time and earnings records are in the record. His W-2 for work for

Employer in 2017 shows earnings of $3314.00 and in 2018 shows earnings of $5643.00. Claimant does not dispute that he worked 559 hours in 2018 before the accident of September 16, 2018.

68. For a portion of Claimant's owner-operator days he hired his son to drive a second truck.

69. Claimant has minimal computer skills. He learned to look up warrants as a volunteer for Tehama County Sheriff's Department in Red Bluff, California. As a trucker he learned to perform basic data entry for loads he delivered. ICRD noted he was able to perform an online job search.

70. Claimant does "everything around the house" including vacuuming, laundry and cooking. Before his accident he replaced a deck and built a shed.

Return to work/Restrictions

71. ICRD consultant Sarah Koseki assisted Claimant from November 1, 2018, through April 7, 2020. She noted Claimant's permanent restrictions/limitations did not prevent his return to work for Employer at his time-of-injury job.

72. Employer's representative, Mr. Lutes, testified that Claimant only worked the Expo Idaho and Barber Park events. Employer would accommodate Claimant's lifting, ad lib position change, AFO, and chair use restrictions. Employer was aware Claimant used his walking stick at work. The temporary four-hour restriction was problematic when Claimant's demeanor with the public was considered. Changing personnel in the middle of the night was problematic. Day work, when the public was present, was problematic. "[T]ouching with the public and that just wasn't a success factor for Glenn." (Tr. p.152). Both venues responded to incidents involving Claimant's interaction with others by requesting that Claimant not be used for security there. Employer did

not document either incident in Claimant's personnel file. While Mr. Lutes hopes to be able to have Claimant work overnight security in the future, no venue is available to Claimant for that as of the time of hearing. Mr. Lutes described Claimant as very honest, very reliable, and a good employee.

73. Before the industrial accident the record does not show that any physician had rated Claimant for permanent impairment under any State's workers' compensation system despite having some workers' compensation claims. Despite allegations about PPI from a right shoulder injury the record shows no physician's note doing so. Whether work related or not no physician is shown to have imposed permanent restrictions before the industrial accident.

74. On occasion over the years one physician or another has cautioned him that the lifestyle and diet of a truckdriver is not helpful to his diabetes, but no restriction has been made against it. Similarly, at times both before and after the industrial accident Claimant was advised not to drive while taking Norco.

Job Search

75. At some point after the accident Chris Lutes stopped responding to Claimant's texts messages about returning to work.

76. Claimant applied to be a Caldwell school bus driver, interviewed, took a one-day training course, and discovered he could not bend down to secure a wheelchair to the bus floor. He failed the drug test because of his prescribed Norco. A bus monitor accompanies a driver for school children who require wheelchairs or who have other conditions. Claimant testified he could have performed the monitor position. On February 12, 2020, Dr. Foutz sent the bus company a letter affirming that Claimant's drug test results arose from a prescribed medication and that in

order to facilitate pre-employment testing Dr. Foutz was discontinuing Claimant's narcotic prescription.

77. Claimant worked one day, October 19, 2020, a four-hour shift, at Swan Falls High School as a janitor. He felt he worked too slowly and needed more breaks than allowed. He told the supervisor he could not do the job and did not work there again.

78. Claimant worked watering plants for the Kuna Ridley's grocery store for a season. When he returned the next season a new manager offered him work which exceeded his restrictions and ability.

79. Claimant applied to work as a security guard or food server for Boise Rescue Mission but did not receive a response.

80. Claimant applied to work at Walmart, Kuna's Dollar Store, and Table Rock Trucking but did not receive a response.

Vocational Experts

81. On June 30, 2020, Delyn Porter issued a vocational report at Claimant's request. He interviewed Claimant remotely by video. He reviewed medical and vocational records. He deemed Dr. Cox's allowance that Claimant bring his own chair to work a probable tipping point favoring total and permanent disability. He opined about odd-lot disability and ISIF liability—essentially legal issues about which he has not been shown qualified to opine. It is the province of the Commission, not the vocational expert, to conclude whether ISIF liability (or another legal conclusion) has been reached. In other words, it is for the Commission to determine whether the vocational expert's methods were sufficient to qualify as meeting the necessary criteria in order to arrive at said legal conclusions. Nevertheless, Mr. Porter emphasized that pre-existing medical

factors without medically documented restrictions or impairments were not considered in his consideration of total and permanent disability. Mr. Porter opined that excluding the requirement of bringing his own chair to work, Claimant had post-accident access to 1,195 of the 6,645 pre-accident jobs in the local labor market—an 82% loss of access. He opined Claimant suffered no loss of wage-earning capacity. He opined overall permanent disability to be *at least* 61.5% (emphasis his).

82. On March 5, 2021, Delyn Porter issued an addendum report at Claimant's request. He reviewed additional records. He clarified that Claimant's local job market access pre-injury amounted to only 1.8% of the total local market. He affirmed his earlier opinions.

83. On April 27, 2021, Jon Janzen issued a report at Employer's request. He conducted a telephone interview with Claimant and reviewed records. He deemed it appropriate to reduce Claimant's pre-injury local labor market access to 2,770 jobs rather than Mr. Porter's reported 6,645. This resulted in a loss-of-access calculation to show 58% loss of access. He opined that if Dr. Friedman's pre-injury projected restrictions were considered, then Claimant suffered no additional loss of labor market access as a result of this industrial accident. He opined that jobs remained regularly and continuously available to Claimant. Considering only Dr. Cox's restrictions, Mr. Janzen found a 35% loss of access which averaged to a 17.5% overall disability when the absence of wage loss was factored in.

84. On April 29, 2021, Mr. Porter issued another addendum report at Claimant's request. This time he considered Claimant's subjective tolerances as limitations to be equated with restrictions. He criticized Mr. Janzen's report as "simplistic." Mr. Porter maintained his opinion that Claimant qualified as an odd-lot worker. He maintained his opinion of disability rated at

61.5%.

85. In deposition on October 1, 2021, Mr. Porter testified that despite an absence of physician-imposed restrictions before the gate accident he assumed that Claimant was limited to medium-duty work as a result of his pre-existing conditions. Mr. Porter did not find such restrictions relating to Claimant's right shoulder. Mr. Porter based his analysis on Dr. Cox's restrictions. Dr. Friedman had not yet performed his IME at that time. Mr. Porter was tasked to review and opine, not to find Claimant a job. Mr. Porter distinguishes between "medical restrictions" and "functional restrictions." The latter represent Claimant's personality, attitudes, and beliefs about his abilities and tolerances. Mr. Porter calculated Claimant's overall permanent disability at 61.5%. He weighted loss of labor market access more heavily than loss of wage-earning capacity. Including Claimant's functional restrictions Mr. Porter believes Claimant would qualify as an odd-lot worker. Labor market data provides "no real statistics" about part-time work—numbers or types of jobs.

86. In deposition on October 25, 2021 John Janzen testified that in the interview Claimant expressed a disability conviction inconsistent with Dr. Cox's restrictions. Mr. Janzen assumed Claimant's pre-existing conditions limited him to light-duty work. Using Dr. Friedman's restrictions Claimant suffered no permanent disability in excess of PPI. Mr. Janzen opined that a significant amount of regular and continuously available work exists for Claimant using Dr. Cox's restrictions. Claimant suffered no loss of wage-earning capacity as a result of the gate accident. Claimant is not totally and permanently disabled.

DISCUSSION AND FURTHER FINDINGS OF FACT

87. The provisions of the Idaho 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).

88. Facts, however, need not be construed liberally in favor of the worker when evidence is conflicting. *Aldrich v. Lamb-Weston, Inc.*, 122 Idaho 361, 363, 834 P.2d 878, 880 (1992). A claimant must prove all essential facts by a preponderance of the evidence. *Evans v. Hara's, Inc.*, 123 Idaho 472, 89 P.2d 934 (1993).

89. Uncontradicted testimony of a credible witness must be accepted as true, unless that testimony is inherently improbable, or rendered so by facts and circumstances, or is impeached. *Pierstorff v. Gray's Auto Shop*, 58 Idaho 438, 447−48, 74 P.2d 171, 175 (1937). *See also Dinneen v. Finch*, 100 Idaho 620, 626−27, 603 P.2d 575, 581−82 (1979); *Wood v. Hoglund*, 131 Idaho 700, 703, 963 P.2d 383, 386 (1998).

90. Claimant's demeanor appeared credible. He made a good first impression in a terse, curmudgeonly way. He did not focus carefully on questions asked and sometimes had to be brought around to answering a question. He exhibited increased wariness upon cross-examination. At times he willfully answered questions in a truthful but misleading way. For example, when asked about methamphetamine use, he testified that he had never injected himself with meth. After pointed follow-up questions he admitted somebody else always injected the meth for him. His falsehoods to physicians and testimonial minimization about his drug use history affect how his other testimony is weighed, but he has not used meth since age 35, and abstinence counts in his favor. Moreover, the medical records show very few—and usually temporary—instances in which Claimant has asked for an increase in his narcotics prescription. To the contrary, he has shown a long-term propensity for reducing his dosage where possible. Claimant does not exhibit drug-

seeking behavior. Claimant does tend to pick-and-choose what history or symptoms he reports to different physicians at different times, but was honest about that when testifying. So, while his comments in medical reports may not always receive full weight, his testimony under oath appears credible.

91. One other small point: A June 2016 note reports that Claimant used an alias for medical care, "Daniel Goodwin." While it is hard to imagine that the 9000+ pages of mostly medical records which have been admitted fail to contain some medical fact Claimant would want to hide, the use of an alias suggests it may be possible. Nevertheless, no party noted this alias. If relevant, some party should have mentioned it. Thus, it carries no weight.

Accident Occurrence

92. A compensable accident must be reasonably located as to place and time. Idaho Code § 72-102(18)(b).

93. The accident occurred on or about September 16, 2018. Claimant's various descriptions of the gate incident are not unreasonably inconsistent, nor do they raise objective doubt about whether it occurred. The third-party administrator was aware of the claim and took a recorded statement from Claimant on September 27, 2018. Claimant frankly testified that he may or may not be exhaustively accurate when providing a history to a physician. Claimant's mere checking of a box on a chiropractor's medical record, is an insufficient basis to outweigh the substantial testimonial evidence about how and when the accident occurred. Claimant's report to the chiropractor that symptoms arose earlier and that the condition was not new are, to use Dr. Cox's word "concerning." However, Claimant testified that he was still sorting out in his own mind whether this was a serious problem and that he did not always tell his doctors everything.

94. Claimant's consistent description over repeated tellings is deemed to carry more weight than his initial uncertain approach to treatment by a single chiropractor visit.

Causation

95. A claimant must prove that he was injured as the result of an accident arising out of and in the course of employment. *Seamans v. Maaco Auto Painting*, 128 Idaho 747, 751, 918 P.2d 1192, 1196 (1996). Proof of a possible causal link is not sufficient to satisfy this burden. *Beardsley v. Idaho Forest Industries*, 127 Idaho 404, 406, 901 P.2d 511, 513 (1995). A claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability. *Langley v. State, Industrial Special Indemnity Fund*, 126 Idaho 781, 785, 890 P.2d 732, 736 (1995). 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. *Jensen v. City of Pocatello*, 135 Idaho 406, 412-13, 18 P.3d 211, 217-18 (2001). Aggravation, exacerbation, or acceleration of a preexisting condition caused by a compensable accident is compensable in Idaho Worker's Compensation Law. *Nelson v. Ponsness-Warren Idgas Enterprises*, 126 Idaho 129, 879 P.2d 592 (1994).

96. Here, the preponderance of medical opinion shows the gate accident is consistent with the L4-5 disc herniation and likely caused it. There is a split of medical opinion about whether Claimant's lower leg issue and right foot drop issue were caused by the accident or are artifacts of pre-existing low back and/or diabetes conditions. There is a split of medical opinion about whether Claimant's continued use of Norco and pain management are caused, in part—that is exacerbated by—the accident or are entirely pre-existing after the MMI date of December 12, 2019.

97. Dr. Foutz shows himself to be a patient advocate in this record. In the face of recent

surgery and myriad pre-existing comorbidities, he okayed Claimant for a CDL renewal without restriction in a July 2019 DOT physical. He told the school bus company that Claimant no longer needed Norco when it posed an obstacle to obtaining a job, but promptly resumed the prescription when that opportunity did not come to fruition. Although a treating physician being a patient advocate is generally a good thing, it does tend to undercut the weight assigned to opinions which have a direct bearing upon Claimant's entitlement to benefits.

98. Both Drs. Foutz and Cox opined that because Claimant's abnormal sensation and weakness is worse on the right than the left, the accident plays a role. Both acknowledge that Claimant had pre-existing sciatica on the right and that his diabetic peripheral neuropathy is significant. Both rely upon Claimant's subjective report that as of each of their last visits Claimant's paresthesia and weakness was worse on the right than the left. It is this absence of equal bilateral symptoms that is the primary stated basis for their opinions. However, Claimant's weakness and foot drop has been greater on the right than the left since at least 2008, a decade before the gate accident.

99. Claimant's subjective reporting has been shown to be of equivocal value. His belief, even if genuinely held, has been occasionally inaccurate. Thus, the bases for Dr. Foutz's and Cox's opinion is entitled to less weight.

100. Moreover, both Drs. Foutz and Cox testified that they would defer their opinions on this matter to Dr. Harris. Dr. Harris was not equivocal when he opined that Claimant's then current right lower leg paresthesias and foot drop are all pre-existing and unrelated to the gate accident and subsequent surgery. Dr. Friedman concurs. Drs. Harris' and Friedman's opinions carry greater weight.

101. At any rate, this difference of opinion is largely immaterial. Claimant's physician-imposed restrictions are not greater or lesser depending upon causation of his right lower leg and foot drop conditions.

Permanent Impairment

102. Permanent impairment is defined and evaluated by statute. Idaho Code §§ 72-422 and 72-424. When determining impairment, the opinions of physicians are advisory only. The Commission is the ultimate evaluator of impairment. *Urry v. Walker & Fox Masonry*, 115 Idaho 750, 769 P.2d 1122 (1989); *Thom v. Callahan*, 97 Idaho 151, 540 P.2d 1330 (1975). Impairment is an inclusive factor of permanent disability. Idaho Code § 72-422.

103. Claimant suffered PPI as a result of the gate accident and subsequent surgery.

Permanent Disability

104. **"**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 as provided by Idaho Code § 72-430.

105. 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, 766 P.2d 763 (1988). In sum, the focus of a determination of permanent disability is on a claimant's ability to engage in gainful

activity. *Sund v. Gambrel*, 127 Idaho 3, 896 P.2d 329 (1995).

106. Permanent disability is defined and evaluated by statute. Idaho Code §§ 72-423 and 72-425 *et. seq.* Permanent disability is a question of fact, in which the Commission considers all relevant medical and non-medical factors and evaluates the purely advisory opinions of vocational experts. *See*, *Eacret v. Clearwater Forest Indus.*, 136 Idaho 733, 40 P.3d 91 (2002); *Boley v. ISIF*, 130 Idaho 278, 939 P.2d 854 (1997). The burden of establishing permanent disability is upon a claimant. *Seese v. Idaho of Idaho, Inc.*, 110 Idaho 32, 714 P.2d 1 (1986). Where preexisting impairments produce disability, all impairments and disability should be accounted for with a subtraction back for the compensable portions. *Page v. McCain Foods, Inc.*, 145 Idaho 302, 179 P.3d 265 (2008). An employer takes an employee as he finds him. *Wynn v J.R. Simplot Co.*, 105 Idaho 102, 666 P.2d 629 (1983).

107. Clamant is not 100% totally and permanently disabled. This is not a close case. ICRD noted Claimant's permanent restrictions and limitations did not preclude him from returning to work for Employer at his time-of-injury job. Employer explained how the nature of the work allowed Claimant to bring a chair, a walking stick, and receive additional accommodations before and after the industrial accident. Claimant's actions involving the public, unrelated to his physical conditions, caused Employer's client to request that Claimant not be returned to either location. Moreover, the preponderance of the evidence shows that other suitable jobs are regularly and continuously available to Claimant within his physician-imposed permanent restrictions.

108. Mr. Porter found 1195 jobs available to Claimant. His overall disability rating diverged from the convention of averaging the market access and wage loss components. That approach would result in 42% disability, inclusive of PPI, not 61.5%. Whether one agrees or

disagrees with the idea that labor market access is more or less important than Claimant's ability earn as much as he did pre-accident, Mr. Porter's decision to weight labor market access loss is unpersuasive. His math is arbitrary in contravention of accepted norms.

109. Mr. Janzen opined that Claimant was not totally and permanently disabled. He described the availability of suitable jobs within Claimant's restrictions. He opined Claimant's accident-related disability to be 17.5% inclusive of PPI.

110. Social Security Disability is determined under an approach which does not translate to Idaho workers' compensation disability. Each individual, underlying condition is a subject for analysis to determine whether and to what extent that factor may weigh into a decision regarding workers' compensation permanent disability. Moreover, after the liver and kidney transplants in 2015, Claimant's ability to work and function improved dramatically.

111. Claimant made no apologies for being retired and seeking only part-time work before and after the accident. Thus, his age is less a factor establishing disability than an indicator supporting volitional self-limitation of labor market. No vocational expert could quantify part-time jobs available before or after the accident.

112. For purposes of ISIF liability, assigning a number under 100% to Claimant's disability is not pertinent. Nevertheless, the preponderance of the evidence supports Mr. Janzen's number, 17.5% inclusive, better than it supports Mr. Porter's.

113. Also considered in the context of permanent disability is the nature and extent of Claimant's Norco dependence, and whether it was iatrogenically caused as a result of the accident. Claimant has been taking Norco regularly since 2013 when Dr. Tate prescribed it for degenerative lumbar stenosis. Before that, Claimant received prescriptions for Tylenol 3 with codeine for pain

from pre-existing conditions.

114. Considering all medical and nonmedical factors, Claimant failed to establish that he is totally and permanently disabled by this accident or coupled with his pre-existing conditions and comorbidities.

Odd-lot analysis

115. If a claimant is able to perform only services so limited in quality, quantity, or dependability that no reasonably stable market for those services exists, she is to be considered totally and permanently disabled. *Id.* Such is the definition of an odd-lot worker. *Reifsteck v. Lantern Motel & Cafe*, 101 Idaho 699, 700, 619 P.2d 1152, 1153 (1980); *also see, Fowble v. Snowline Express*, 146 Idaho 70, 190 P.3d 889 (2008). Odd-lot presumption arises upon showing that a claimant has attempted other types of employment without success, by showing that she or vocational counselors or employment agencies on her behalf have searched for other work and other work is not available, or by showing that any efforts to find suitable work would be futile. *Boley, supra.*; *Dehlbom v. ISIF*, 129 Idaho 579, 582, 930 P.2d 1021, 1024 (1997).

116. Upon establishing the presumption, the burden shifts to a defendant to show suitable work is regularly and continuously available. *Rodriguez v Consolidated Farms, LLC.*, 161 Idaho 735, 390 P.3d 856 (2017).

117. Mr. Porter argues for odd-lot status based upon his acceptance of Claimant's reports of subjective tolerances as if these were an objective factor.

118. Claimant successfully returned to work for Employer for a time after the accident. Only the client's request that he not be employed at those locations prevented his continued employment. Physical restrictions from the accident did not affect this work.

119. Claimant's job search shows minimal effort. Despite making few applications, he obtained a job for a day performing janitorial work. Although he deemed it too much, the record does not show that it was beyond his actual capability. He also obtained a job "for a season" watering plants at Kuna Ridley's. The record does not show the job was unsuitable. Rather, the record shows it likely that Claimant can readily obtain any suitable job with a reasonable job search.

120. The totality of facts of record do not support a finding that he is so noncompetitive in the job market that attempts would be futile. This is not a close case.

121. Claimant failed to show it likely that he qualifies as an odd-lot worker.

ISIF ISSUES

122. Idaho Code § 72-332(1) provides the criteria upon which ISIF liability is predicated. The statute requires:

> If an employee who has a permanent physical impairment from any cause or origin, incurs a subsequent disability by an injury or occupational disease arising out of and in the course of his employment, and by reason of the combined effects of both the pre-existing impairment and the subsequent injury or occupational disease or by reason of the aggravation and acceleration of the pre-existing impairment suffers total and permanent disability, the employer and surety shall be liable for payment of compensation benefits only for the disability caused by the injury or occupational disease, including scheduled and unscheduled permanent disabilities, and the injured employee shall be compensated for the remainder of his income benefits out of the industrial special indemnity account [fund].

(brackets in original). A four-factor test has long been employed in this analysis. The test includes, (1) a preexisting physical impairment which was (2) manifest and (3) subjectively hindered Claimant's employment and (4) combined with the compensable industrial impairment to render a claimant totally and permanently disabled. *Dumaw v. J.L. Norton Logging*, 118 Idaho 150, 795 P.2d 312 (1990). A "but for" test is required to establish the "combined with" element. *Bybee v.*

ISIF, 129 Idaho 76, 921 P.2d 1200 (1996). This is the first prong of a disjunctive test for ISIF liability. *Aguilar v. ISIF*, 164 Idaho 893, 436 P.3d 1242, (2019).

123. A progressive, preexisting physical impairment shall be considered in evaluating ISIF liability and *Carey* apportionment. *Colpaert v. Larson's, Inc.*, 115 Idaho 825, 771 P.2d 46 (1989). The second *Aguilar* test adds "or by reason of the aggravation and acceleration of the pre-existing impairment suffers total and permanent disability …" (*See Aguilar*, *supra*.)

124. Here, even if the diabetic peripheral neuropathy is deemed to have been exacerbated or aggravated by the gate accident, Claimant has not established total and permanent disability, either 100% or as an odd-lot worker. Thus, the threshold for ISIF liability has not been established.

125. Without ISIF liability, *Carey*, formula apportionment is moot.

CONCLUSIONS

1. Claimant suffered a compensable accident and injury on September 16, 2018;

2. Claimant suffered Permanent Partial Impairment (PPI) in an amount no more than 13% as a result of the accident;

3. Claimant failed to show he is totally and permanently disabled either 100% or as an odd-lot worker;

4. ISIF is not liable;

5. All other issues are moot.

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 ___13th_____ day of April, 2022.

INDUSTRIAL COMMISSION

Douglas A. Donohue, Referee

ATTEST: M. McMenomey
Assistant Commission Secretary

INDUSTRIAL COMMISSION SEAL STATE OF IDAHO

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of ___July_____, 2022, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail and Electronic Mail upon each of the following:

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_Mary McMenomey___

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

GLENN GOODWIN, Claimant, v. ALLIED UNIVERSAL, Employer, and XL INSURANCE AMERICA, Surety, and STATE OF IDAHO, INDUSTRIAL SPECIAL INDEMNITY FUND, Defendants.	**IC 2018-027119** **ORDER**

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

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

1. Claimant suffered a compensable accident and injury on September 16, 2018;

2. Claimant suffered Permanent Partial Impairment (PPI) in an amount no more than 13% as a result of the accident;

3. Claimant failed to show he is totally and permanently disabled either 100% or as an odd-lot worker;

4. ISIF is not liable;

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 7th day of July, 2022.

INDUSTRIAL COMMISSION

Aaron White, Chairman

Thomas E. Limbaugh, Commissioner

Thomas P. Baskin, Commissioner

ATTEST:

Kamerron Slay
Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of July, 2022, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

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