BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

KATHLEEN HANSON, Claimant, v. UNITED PARCEL SERVICE, Employer, and LIBERTY INSURANCE CORP., Surety, and STATE OF IDAHO, INDUSTRIAL SPECIAL INDEMNITY FUND, Defendants.	**IC 2007-038562** **2009-025929** **2010-014499** **2010-016099** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** May 14, 2014

INTRODUCTION

Pursuant to Idaho Code § 72-506, the above-entitled matter was assigned to Referee LaDawn Marsters, who conducted a hearing on March 22, 2013 in Boise, Idaho. Claimant was present in person and was represented by Richard S. Owen of Nampa. Employer (UPS) and Surety (collectively referred to as Defendants) were represented by Susan R. Veltman of Boise. The State of Idaho, Industrial Special Indemnity Fund (ISIF) was represented by Paul J. Augustine. Oral and documentary evidence was admitted, and post-hearing depositions were taken. Claimant's Motion to Reopen the Record was granted on June 25, 2013, and additional evidence was admitted. Briefing was completed and the matter came under advisement on November 27, 2013. The case is now ready for decision.

ISSUES

The parties seek adjudication of the following issues:

1. Whether the conditions for which Claimant seeks benefits were caused by any of the industrial accidents;
2. Whether apportionment for a preexisting condition pursuant to Idaho Code § 72-406 is appropriate;
3. Whether and to what extent Claimant is entitled to benefits for disability in excess of impairment, including total permanent disability pursuant to the odd-lot doctrine or otherwise;
4. Whether ISIF is liable under Idaho Code § 72-332; and
5. Apportionment under the *Carey* formula.

CONTENTIONS OF THE PARTIES

Claimant contends she is totally and permanently disabled as a result of her industrial permanent impairments, medical restrictions and limitations related to her 2009 head injury, and her 2010 right knee, low back and left shoulder injuries, plus her preexisting sight limitations including, among other things, diplopia (double vision). She also asserts that, as a result of her May 2010 industrial right knee injury, she has incurred permanent partial impairment (PPI).

Defendants counter that Claimant is likely totally and permanently disabled, not due to any industrial cause, but solely as a result of her preexisting vision impairment, multiple sclerosis (MS), and limited labor market. Therefore, they are not liable for Claimant's benefits. In the event the Commission disagrees, Defendants argue that Claimant's preexisting permanent impairments total 63% of the whole person. Therefore, at most, Defendants are only liable for 37% of her benefits for total disablement.

ISIF asserts that, whether or not Claimant is totally and permanently disabled, ISIF is not liable. In addition to arguing that Claimant is totally and permanently disabled solely as a result of her preexisting conditions and non-medical factors, ISIF also advances several separate positions from which it asserts that there was no combination of preexisting and industrial impairments such as to establish ISIF liability under Idaho Code § 72-332.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The prehearing deposition testimony of Claimant taken November 1, 2012;

2. Joint Exhibits (JE) numbered 1 through 35, Claimant's Exhibits (CE) lettered A through F, and ISIF Exhibits (ISIF) numbered 1-2 admitted at the hearing;

3. The testimony of Claimant taken at the hearing;

4. The post-hearing deposition testimony of:

    a. Paul C. Collins, M.D., taken April 9, 2013;

    b. Daniel E. Iwasa, D.O., taken April 12, 2013;

    c. Nancy J. Collins, Ph.D., taken April 16, 2013;

    d. John Q. Smith, M.D., taken May 13, 2013; and

    e. Douglas N. Crum, CDMS, taken May 15, 2013;

5. The Fourth, Fifth, and Sixth Editions of the *AMA Guides to the Evaluation of Permanent Impairment,* admitted by Order dated May 8, 2013;

6. Claimant's Exhibits (CE) lettered G through I, admitted by Order dated August 27, 2013;

7. Because a number of differing opinions as to the distance and drive times between Unity, Oregon and surrounding towns appear in the record, the Referee *sua sponte*

takes judicial notice of Google Maps, to which the Idaho Department of Transportation website directs inquirers, and which Douglas Crum, CDMS, referenced in his testimony; and

8. Because Claimant's ability to drive in the dark is in question, yet no evidence as to when the sun sets in any given location at any given time was admitted, the Referee *sua sponte* takes judicial notice of the United States Navy Oceanography Portal website (http://aa.usno.navy.mil/data/docs/RS_OneYear.php) and sunrisesunset.com.

OBJECTIONS

All pending objections are overruled.

FINDINGS OF FACT

CLAIMANT'S RESIDENCE: UNITY, OREGON

1. Claimant, 56 years of age at the time of the hearing, has resided in Unity, Oregon since approximately 2000. Unity is located in a rural area with a population of approximately 100-125. Claimant and her husband, who both worked in Payette through the time of Claimant's relevant industrial accidents, carpooled to work. Claimant would drive in the morning, while her sight was fresh, and her husband would drive at night. Unity, by car, is located approximately:

- 1 hour, 12 minutes from Baker, Oregon
- 2 hours, 19 minutes from Burns, Oregon
- 2 hours, 18 minutes from Emmett, Idaho
- 19 minutes, from Hereford, Oregon
- 58 minutes from John Day, Oregon
- 2 hours, 21 minutes from Nampa, Idaho
- 1 hour, 40 minutes from Ontario, Oregon
- 1 hour, 47 minutes from Payette, Idaho

2. Unity is located on the eastern side of the Pacific Time Zone. Between the beginning of November, when Daylight Savings Time expires, and the end of January, the sun

rises in and around Unity between approximately 6:30 a.m. and 7:30 a.m. It sets between approximately 4:15 p.m. and 5:00 p.m. During this period, there are roughly nine to ten hours between sunrise and sunset each day.

3. Mr. Crum described the immediate Unity labor market:

> There are very few employers in Unity, Oregon. As far as I know or as near as I can tell, there are 117 residents in Unity [*sic*] Oregon.
>
> The local community consists of a store that I believe is operated on a part-time basis by family. It has a small hotel that I believe is also family-operated, and I'm not sure it runs [year-round]. The business there locally or the economy there locally is almost exclusively agricultural.
>
> There is a small, one- or two-room school there. It's the Burnt River School District. They employ a couple of teachers, an administrator, a janitor. The only reason I know that is I looked on the website for their school district at one point because I was curious.
>
> And that that's about it. The rest of it is farming and ranching in that area.

Crum Dep., p. 19.

VOCATIONAL BACKGROUND

4. Claimant was born in Nyssa, Oregon, and raised on a farm. She graduated from high school in 1975, then studied computer science and business administration for a couple of years at Eastern Oregon State College and Oregon State University. She did not obtain a degree.

5. Claimant began her worklife sampling a variety of positions. She worked for the Federal Bureau of Land Management. She maintained secretarial and dispatch positions for a trucking company. She worked as a cashier, bank teller, Avon home sales representative, bean cannery laborer, and a title clerk. Then she obtained a commercial drivers' license (CDL) and drove truck over-the-road in a team with her then husband. Although that marriage did not last,

Claimant's love for driving did. She had discovered her life's vocation, and soon found employment with UPS.

6. Before her employment with UPS, Claimant had not incurred any permanent physical impairments.

CLAIMANT'S WORK AND HEALTH AT UPS

7. Claimant's tenure at UPS began with a temporary driver position during the Christmas season at the Payette, Idaho office in 1979. In 1980, she was hired as a full-time permanent package car[1] driver. After several years, Claimant was given her own route.

8. Claimant's workday varied, depending upon the number of package deliveries and pick-ups on her route. In a typical day prior to 1999, Claimant would spend an hour and a half sorting packages off of a roller/conveyor and loading them, six to seven hours delivering packages, and however long it took to complete her pick-ups. Eventually, UPS limited the maximum number of hours any employee could work in a day to 12.

9. Over the years, the upper weight limit on packages shipped by UPS increased, from 50 pounds when Claimant started, to 70 pounds in the late 1980s, to 150 pounds in the late 1990s. Ultimately, Claimant's job required her to lift up to 70 pounds on her own, and up to 150 pounds with assistance. She had help in the mornings when she needed it, from coworkers. On deliveries, she sometimes sought assistance from customers. Claimant also had a handcart to assist with very heavy loads.

[1] The parties herein call UPS' ubiquitous big brown trucks "package cars."

10. Claimant believed, reasonably, that she would lose her job as a package car driver if she were to incur any permanent medical restrictions – in particular, any prohibitions on lifting over 70 pounds.

CLAIMANT'S PREEXISTING CONDITIONS AND ACCOMODATIONS

11. Claimant incurred some injuries on the job and off the job through 1999. These injuries did not significantly impact her ability to do her job.

12. On July 3, 1999, Claimant suffered a subarachnoid hemorrhage, broken ankle and other injuries when she rolled her ATV. As a result of her traumatic brain injury, Claimant was left with palsy of her fourth cranial nerve, manifesting in permanent diplopia (double vision) in her right and right downward gazes, among other things. After more than a year off work, Claimant learned to tilt her head to correct her vision. Her treating optometrist, Daniel W. Iwasa, O.D., opined that her ability to correct for her condition through positional change was both uncommon and unsustainable over the long run. However, Claimant pleaded to be released to work.

> Q. (Mr. Owen) Did he release you back to your job?
>
> A. (Claimant) Yes.
>
> Q. Did you beg him?
>
> A. Yes.
>
> Q. Was - - do you recall if there was any discussion about your visual problems as it related to your ability to work?
>
> A. He – he knew I wanted to go back to work really really bad. We changed - - he worked with me so much. He changed the power of my contacts. He changed - - he gave me exercises to do. Different vitamins to do to try to build up this muscle. But he said there is nothing we can do with that nerve damage. It was - - it was permanent. But, yeah, I begged him and we got to where I was safe enough I said I can do this. I'm safe enough to do this and I did.

Q. That was your idea?

A. That was my idea.

Tr., p. 56-57.

13. Dr. Iwasa released Claimant to full duty work in September 2000. She subsequently passed DOT and UPS driver testing. Although Claimant's diplopia interferes with her ability to back-up a vehicle, UPS does not allow its drivers to back the package cars, so this functional deficit did not present an insurmountable obstacle to returning to work.

14. Claimant returned to her job, with accommodations. She was no longer required to sort packages because they came from the right, making her dizzy due to her double vision and causing her to fall down on more than one occasion. Also, the packages came too fast for her brain to perceive and process each zip code while keeping up with the sorting process. Her route and hours were shortened to about 40 stops/eight hours per day because she tired more quickly and her vision worsened with longer hours.

15. Claimant had persistent right knee pain from her ATV accident as well as memory problems. She worked hard to overcome them and continue working. In 2004, she began taking medication for hypertension.

16. According to Claimant, her sight was as good as it ever got (following her ATV accident) in 2004 or 2005. After that, it slowly got worse.

17. In January 2005, Claimant was diagnosed with a T8-9 disc protrusion compressing the spinal cord and radiculopathy symptoms. Howard Shoemaker, M.D., her treating orthopedic surgeon, related Claimant's symptoms to a 2003 lifting injury at work. MRI imaging also revealed degenerative changes at T7-8 and T9-10. Dr. Shoemaker released

Claimant to work on March 31, 2005 without restrictions, but he advised her to obtain assistance lifting anything over 70 pounds. Claimant had previously obtained assistance at work if she needed to move a package in excess of 70 pounds.

18. Claimant was treated for left shoulder pain, which she attributed to her 1999 ATV accident, in September 2005. Dr. Nicola diagnosed impingement and administered a cortisone injection, which relieved Claimant's symptoms. X-rays were suspicious for a prior dislocation.

19. In November 2005, Claimant was involved in an industrial motor vehicle accident (MVA) deemed avoidable by UPS. The Auto Accident Prevention Report describes the event: "Driver traveling N. on Hwy 95. Looked down at clock. Looked up to see car in front of her stopped trying to turn left. Driver hit breaks & swerved to the right spining [*sic*] car around backwards and hitting front bumper of 3rd car waiting on Grandview." JE-266. (Altered from original printed in all capital letters). Claimant described the event differently at the hearing:

> I was on Highway 95 and in a hurry to make my next pick up stop and I knew that there was a car about a mile in front of me and there was a lot of dips on Highway 95 between Parma and Nyssa and I just - - I was looking off the cross street and I - - I didn't see it until I was just right there…That [*sic*] when I was - - started to worry about my vision getting worse again.
>
> I just - - I didn't see it down lower. I just - - I didn't see it until I was right there.

Tr., p. 57-58.

20. Dr. Iwasa's records do not mention this event, and he did not discuss it in his deposition. Apparently, Claimant did not sustain any injuries, and she retained her job. Dr. Iwasa testified that, had he known Claimant thought her diplopia had interfered with her vision such that she got into a car accident, he would have restricted her from driving. He also

believes he told Claimant that if she felt her diplopia was interfering with her driving, then he would restrict her from driving. (*See*, Iwasa Dep., pp. 63-64.)

21. Claimant wrote a letter to Dr. Carroll (in June 2007) regarding events she had recorded in her journal that she believed "injured [her] brain some more." JE-884. She reported that in summer 2006 she passed out in the doorway of her package car on a hot day, awakening with bruises on her left side. She had dizziness, trouble concentrating, and her legs felt like "gumby rubber." *Id.* Also, Claimant had headaches for a month following that event and dissociative symptoms. "I started to get the feeling that I wasn't myself after that. It is like I am in one place and the rest of my mind is next to me, but not quite with me or that things happening to me aren't really happening to *ME*." *Id.* At the hearing, Claimant reported that she was having a bout of increased vision problems, as well:

> …I remember, now, that the heat had started to really bother my vision. I had, actually, passed out. On the way back to my package car from a stop, all I remember is reaching for the handle and then waking up on the asphalt.
>
> I thought that my vision was having a lot more problems. Looking back, that was probably a relapse from the MS, from the heat. So I went to [Dr. Redshaw] to see if maybe my head injury - - I still thought this was all from my head injury.
>
> I think we did an MRI, but he - - he and I didn't get along either. He said, "No, this isn't from your head injury. That's all healed up." I got better, and so I didn't ever go back until 2010, I think - - or '11."

Cl. Dep., p. 97.

22. Claimant also wrote in her letter to Dr. Carroll that, in fall 2006, her car hood fell down onto her head while she was working on her car. Claimant became sick to her stomach and had a headache for two days. She wrote: "During Christmas season I had several evenings of my vision going cloudy. Each eye individually was fine, but together it seemed like one eye is seeing fog." *Id.*

23. In or around 2007, Claimant lost most of her accommodations at UPS due to new supervision. The town of Wilder was added to her route, approximately doubling her delivery stops and extending her workday to 10-12 hours. Claimant was again required to sort packages; however, she was allowed to take them off the conveyor from the left. Although Claimant was motivated to meet these new challenges, the added work took a heavy toll on her vision within a couple of weeks.

> Q. (Mr. Owen) …How did it work when you went back to the extra - - the extra duties, the original drops?
>
> A. At first I was happy to challenge myself and thought this will [*sic*] just fine, I am just going to be just as tough as I used to be, and it didn't take maybe a week or two of that and I just - - my vision was getting worse. I was just too tired. There was too much more for me to do.
>
> Q. What happens at the end of the day to your vision?
>
> A. This - - whatever runs this eye and makes it actually focus, just - - it gets so tired it just slowly quits working. It - - I believe I was told that the nerve signals don't go through as fast.
>
> Q. And you're motioning to you [*sic*] left eye?
>
> A. Yes.
>
> Q. Does it make it so that you can't focus on the road ahead?
>
> A. I have to compensate so much that I can't - - I probably can't safely see the things in periphery that I should, but it was - - it was going slow, slowly and I didn't want to give up.
>
> Q. Okay. When you got tired did the field of vision problems get more difficult to deal with?
>
> A. Yes. Over - - over time I was losing more of that field of vision…to the right and to the bottom…I'm getting more of the dark gray fuzzy spots, but they - - the spots are growing larger in my field of vision.

> Q. Okay. How about your double vision…is that affected by the length of time you're working?
>
> A. Oh, yes.

Tr,. pp. 63-65.

> I had been used to kind of having my accommodations and I was doing well with that. I didn't really want to learn anything new. It'd taken me a long time to learn what I had. It took me a year and a half of looking things up on the map every day because I could not remember. I am just now remembering that I couldn't remember where the roads were, and Parma is a small area. To have me have more, it was just hard on me. It was hard on me to change and hard on me to learn something new.

Cl. Dep., pp. 86-87.

24. Around this time, Claimant and her husband rented a house in Ontario so they would not have to make the 3-hour roundtrip daily. Their Unity home remained their primary residence.

25. Claimant reported to Dr. Iwasa in March 2007 that her vision was worsening. Also during that month, Claimant told Dr. Carroll, her personal physician, that she was having increased stress and, therefore, increased vision impairment, because she was having to learn new routines. Dr. Redshaw, a neurologist, evaluated Claimant in May 2007. MRI and EEG testing returned normal results. At her deposition, Claimant testified that her vision improved for a time after this. Although Claimant became eligible to retire during this period, she wanted to keep earning for a variety of reasons. "I still wanted to do the job. I still liked it. I wasn't ready to retire. I still, of course, had the mortgage payment I intended on having paid off. Pure stubbornness." Tr., p. 114.

26. Claimant attributed an increased tendency to trip and fall to her vision problems. "I was having a lot more problems. I [*sic*] having to look down more and, then, I - - of course I

run my head into things and if I wasn't - - was watching where I was going sometimes I wouldn't even notice something and fall over it, you know." Tr., p. 65. Along those lines, in November 2007, Claimant jammed her fingers when she tripped and fell at a customer's home. That event is the subject of the earliest case consolidated herein. Then, in 2008, Claimant slipped and fell at home, injuring her left shoulder and necessitating rotator cuff repair surgery.

27. Claimant was worrying about her sight, given her increased work demands, but she found ways to do her job:

> Q. (By Mr. Owen) Was there anything that you felt that the job required you to do, between 2000 and 2007, that you did not feel that you could really do, from a safety standpoint?
>
> A. (By Claimant) It wasn't - - no. I just pushed myself to do things and figure out a way to do things to get the job done.
>
> My vision? I was starting to worry about it, but that was because I was getting more hours and getting more tired. I kept hoping and hoping and hoping that that's not going to totally shut me down because I really wanted my job. I really liked it.

Cl. Dep., p. 95-96.

28. On September 30, 2009, Claimant was involved in another industrial MVA, the subject of the second case consolidated herein. A farm tractor she was passing turned into her, rolling her package car onto the driver's side and causing her to hit her head on the pavement, among other things. Claimant did not report the event to Dr. Iwasa, and her medical treatment records do not indicate that her vision was affected by it. She did, however, report head and neck aches, and other symptoms. Diagnostic studies (including a head CT) were negative for injury to Claimant's chest, cervical spine, lumbar spine, elbows and head. A physician's assistant, who treated her in follow-up on October 2, 2009, characterized her head injury as "atraumatic." JE-817.

29. Rodde Cox, M.D., a physiatrist, treated Claimant for residual pain and tightness in her neck and right shoulder, and headaches. The intake questionnaire Claimant filled out for Dr. Cox on October 30, 2009 indicates she had no new changes in her vision since her 1999 ATV accident. Claimant testified at the hearing, however, that after a couple of weeks of improved vision following that accident, she noticed that her diplopia had worsened.

30. Dr. Iwasa testified that, had he known that Claimant's double vision worsened following her 2009 MVA, he would have restricted her from driving commercially at that time. *(See* Iwasa Dep., p. 62.)

31. Claimant's stress, fatigue and, consequently, her vision problems, continued to escalate, but she persevered. During the first part of 2010, Claimant had more trouble with tripping and she had to remember to keep one eye closed a lot to avoid dizziness. As of May 2010, she would not have been able to make the daily commute to work without her husband's driving assistance, particularly during the after-work dark hours.

32. On May 24, 2010, Claimant incurred her third subject industrial accident and injuries when she tripped and fell over a parcel in the back of her package car, injuring her knees, elbows and back. Most significant was Claimant's right knee injury; she still had right knee pain at the time of the hearing. Claimant was treated by Ralph Sutherlin, D.O., a family physician, for her bilateral knee, bilateral elbow and low back symptoms. Dr. Sutherlin diagnosed bilateral knee contusions and strains, resolving elbow contusions, and a right middle finger abrasion. He also opined that Claimant's underlying knee arthritis was contributing to her pain. Claimant's supervisor accompanied her on her exam and, as a result of his influence on Claimant or Dr. Sutherlin or both, Dr. Sutherlin agreed to release Claimant to work without restrictions. Claimant returned to work, but continued to have trouble with her knees, more on

the right. On a follow-up visit, Dr. Sutherlin diagnosed bilateral patellofemoral arthritis. Claimant followed up with John Q. Smith, M.D., an orthopedic surgeon, after Surety denied further treatment based upon Dr. Sutherlin's full-duty release.

33. Claimant continued to have problems with her knees, more with the right. In July 2010, MRI imaging demonstrated degenerative changes bilaterally. Even so, Dr. Smith opined that surgical intervention was unwarranted.

34. Claimant was not yet medically stable from her May 2010 injuries when she incurred her fourth and final subject industrial injuries on June 24, 2010. On that day, Claimant felt a "pop" in her left shoulder as she pushed a package down the skate. She was diagnosed with left rotator cuff tear.

35. Following her 2010 industrial injuries, Claimant was placed on "light duty" that she believes worsened her condition. Her last day of actual work for UPS occurred in July 2010.

36. Claimant underwent repair surgery by Dr. Smith (her second on the left rotator cuff) in August 2010.

37. In October 2010, Claimant reported ongoing neurological difficulties to Dr. Cox. She testified that she started to have "more noticeable crawling, itchy, numb feelings" in her feet and legs in 2009. She believes these sensations began in her fingers in or around 2007. Claimant again filled out an intake questionnaire; this time, among other things, she indicated that her vision had worsened over the prior year.

38. Dr. Cox ordered a brain MRI that returned results suggestive of a primary demyelinating disease (like MS), so he sent her to James D. Redshaw, Ph.D., M.D., a neurologist, and Robert F. Calhoun, Ph.D., a psychologist, for further evaluation.

39. Dr. Redshaw administered testing which he concluded in November 2010, which did not establish an MS diagnosis. "Ms. Hanson has an unusual neurological examination, which I believe does represent some embellishment and non-neurological features." JE-950. Claimant sought a second opinion from Lawrence E. Green, M.D., a neurologist (see below).

40. Dr. Calhoun conducted a psychological pain evaluation in November 2010. Based upon valid results from the Minnesota Multiphasic Personality Inventory – 2 (MMPI-2), Claimant's testing indicated she was overwhelmed emotionally and having feelings of depression and anxiety, along with thought process disruptions. Concentrating, remembering and problem solving were difficult for her, and she was concerned about her physical functioning. Also, Claimant presented with somatoform tendencies, making it likely that stress exacerbates her physical symptoms. "However, this does not preclude the significance of a physiologically based medical disorder. She does prefer to be independent. She is not one who will be comfortable relying on others. Her coping skills are very minimal currently." JE-1138. Dr. Calhoun assisted Claimant with cognitive restructuring techniques, then released her to full-time work from a neuropsychological standpoint. He noted that if Claimant does not have MS, she may remain prone to conversion disorder-type symptoms.

41. In December 2010, Claimant entered a work hardening program under Dr. Cox's referral. On December 15, Dr. Smith opined Claimant was medically stable from her left shoulder surgery and he released her back to full-duty work with respect to that condition without restrictions. He assessed 5% left upper extremity PPI.

42. At some point in early 2011, Claimant attempted, but failed, her DOT physical. She could not read the eye chart that day and she believes her blood pressure was too high.

Consequently, she was unable to renew her CDL and she has not done so since. Claimant's most recent prior CDL renewal occurred in 2008.

43. On February 2, 2011, Claimant underwent a functional capacities evaluation (FCE) by Suzanne Kelly, P.T., assessment specialist, following a work hardening program. Ms. Kelly opined that Claimant could return to the primary duties associated with her time-of-injury job (at a medium-heavy work level). Peggy Wilson, P.T., Claimant's treating physical therapist, concurred that Claimant could work at a medium-heavy work level, but noted in her work hardening discharge report that Claimant "indicated that she does not anticipate she will be able to return to work driving for UPS due to recently diagnosed vision problems." JE-1195.

44. On February 7, 2011, acknowledging mixed test results, Dr. Green opined that Claimant likely has MS. His opinion was based, in part, on his findings from the eye exam he conducted on January 24, 2011. "Her visual findings are suggestive of an internuclear ophthalmoplegia bilaterally which is almost pathognomonic [specifically characteristic] for multiple sclerosis…" JE-1206. Although a follow-up evaluation by Dr. Green, as well as a follow-up by David B. Christie, M.D., ophthalmologist, failed to confirm Dr. Green's findings in this regard, he noted that these symptoms can "come and go." JE-1210. "I think considering her symptoms, her physical examination and the elevated myelin basic protein, I discussed again with Kathleen that I think there is more of a likelihood that she has MS than not." *Id.*

45. As to the effect of MS on Claimant's abilities, Dr. Smith initially opined that it impacts lower extremity strength and, based upon Claimant's complaints, that her MS is likely a factor contributing to her loss of function. However, he did not evaluate her for MS and he clarified that he only knew that Claimant had a possibility of MS, and not a definitive diagnosis. As well, he acknowledged that MS is a very unpredictable disease and that he would be unable

to predict how it may affect Claimant. Similarly, Dr. Paul Collins, orthopedist who performed an IME at Claimant's Request, did not assess Claimant's MS. Dr. Green, her treating physician, has not assessed any PPI to Claimant's MS.

46. On February 9, 2011, Dr. Cox released Claimant back to work in terms of her May 2010 right knee and other injuries. However, he noted that she may have other, non-industrial, issues (like her DOT test failure) that would preclude her from returning to work.

47. Claimant reported to Dr. Christie on February 11, 2011 that her diplopia had become constant. Dr. Iwasa opined on February 22, 2011 that Claimant should no longer drive commercially due to her vision impairment. He wrote to Claimant's counsel that Claimant's increased diplopia could be due to either aging or a systemic disease like MS.

48. On March 18, 2011, Dr. Green opined that Claimant could no longer work as a driver due to MS.

49. Claimant was ultimately terminated from her employment in April 2011. At termination, Claimant earned approximately $30 per hour. Subsequently, Claimant worked at the U.S. Post Office in Unity and Hereford for approximately two hours per week, doing office work. She had hoped to gain more hours in that position; however, the position was ultimately eliminated altogether, and she was laid off in July 2012. Claimant tried to find alternate employment with UPS, but she was unsuccessful. She has been unable to secure any other employment.

50. In March 2013, Dr. Iwasa opined that Claimant was not safe to drive at night. Claimant had not felt safe driving at night since 2007 or so; however, there is no indication Dr. Iwasa was aware of this before 2013.

51. Claimant maintained a valid Oregon Driver's License at the time of the hearing. However, she rarely drives and, when she does, she drives only short distances. She is uncomfortable driving in traffic, and backroads make her nervous because she is afraid someone may pull out from the side into her. At the hearing, she described her fear of driving as it relates to her vision: "I don't think I'm safe enough to and I don't. I have driven eight miles into town maybe three or four times since last summer, but I am so afraid that somebody is going to pull out and run into me that - - plus my vision field being - - I just don't feel I'm safe." Tr., p. 112.

VOCATIONAL CONSULTANTS

52. Two vocational consultants analyzed Claimant's employability. They each reviewed Claimant's provided medical and vocational records, interviewed Claimant, and utilized vocational analytical software, databases and other authoritative information, in developing their opinions.

53. **Nancy J. Collins, Ph.D.** In a report dated January 11, 2012, Dr. Collins opined that Claimant is totally and permanently disabled due to a combination of her industrial left shoulder and right knee conditions, and her preexisting sight, right shoulder and spine impairments. She included Burns and John Day in Claimant's labor market. She erroneously believed Burns was a 50-60 minute drive from Unity, and that John Day was 40 minutes away.

54. Although Claimant was employed by the Unity Post Office after her last industrial accident, this position only provided two hours of work per week until it was eliminated. Dr. Collins opined that this is not a regularly available job.

55. At one point, Dr. Collins opined that Claimant would not be totally and permanently disabled due to her industrial injuries alone. "[S]he could have done local, like farm truck driving jobs or courier jobs, all kinds of driving. Over-the-road driving

jobs…anything where she…could sit most of the time and she didn't have to lift over 40 pounds." Collins Dep., p. 21. Along those lines, Dr. Collins identified two job openings for drivers that Claimant may have qualified for in Baker, Oregon and Emmett, Idaho. However, she acknowledged in her report that Claimant's MS would preclude her from all driving jobs.

56. Dr. Collins also opined that Claimant would not be totally and permanently disabled due to her preexisting impairments, alone. "But for the physical limitations from her shoulder and knees, she would have been able to perform retail type work closer to home and her visual problems would not have been so significant." JE-557. However, Dr. Collins did not identify any specific retail jobs for which Claimant would be a competitive candidate.

57. **Douglas Crum, CDMS.** In a report dated March 12, 2013, Mr. Crum opined that, depending upon which medical opinions are applied, Claimant either could return to her job at UPS (Dr. Cox and FCE), or else she is totally and permanently disabled (Dr. Paul Collins). In developing his opinions, Mr. Crum looked at both the Ontario/Payette and Unity labor markets. Given Dr. Collins' restrictions, Mr. Crum opined that Claimant would be unable to earn more than $9 per hour, rendering the commute to Ontario/Payette economically unfeasible. Further, based upon Dr. Collins' walking restriction (no more than 15-20 minutes without a break), "I believe that it is highly unlikely that the Unity, OR labor market area has any permanent, non-seasonal, non-part-time, non-driving jobs that allow for those limited periods of time on the worker's feet." ISIF-12.

58. Mr. Crum further opined at his deposition that if Claimant could not drive at night, she would most likely be totally and permanently disabled because the commute to Payette/Ontario for full-time work would necessarily require some driving in the dark.

CLAIMANT'S CREDIBILITY

59. After observing Claimant at the hearing and comparing her testimony with the other evidence in the record, the Referee finds Claimant is a credible witness in terms of her sincerity and forthrightness as she articulated her difficulties over the years and her determination to overcome them. However, Claimant readily admitted that she has had memory problems since her 1999 ATV accident. This condition could affect the accuracy of her recollections. Therefore, where Claimant's testimony regarding dates or treatment details conflicts with otherwise credible contemporaneous documentary evidence, the documented facts will be given more weight. As discussed below, however, Claimant's testimony regarding the effect of her vision impairment (as well as her other conditions) on her abilities, is persuasive and carries more weight than do her medical records, when those records are silent on the subject.

60. Throughout her testimony, Claimant described and demonstrated determination and an attitude of strength. The record is replete with references to her unwavering commitment to continue working for UPS until she could physically no longer do so. She was earning nearly $30 per hour, with benefits including a pension, and she was set on keeping her job.

61. When necessary, Claimant pleaded with her physicians for full-duty medical releases. She had pain and incurred injuries periodically, but, for the most part, she worked through them. Ever-present after 1999 was her vision impairment, yet Claimant went to great efforts to compensate. As time passed and her vision predictably worsened, Claimant did not report all of her relevant concerns to her treating optometrist. Her failure in this regard complicates this case because Dr. Iwasa persuasively testified that he would have restricted Claimant from driving earlier, had she reported either that her vision impairment contributed to

an accident, or that her impairment worsened following another head injury – both of which she testified to at the hearing. Complicated though it may be, there is insufficient evidence from which to find that Claimant intentionally misled Dr. Iwasa, or any of her medical care providers. More likely, Claimant's can-do attitude prevented her from fully comprehending – or accepting – the extent of her difficulties until she lost her ability to compensate altogether.

62. Claimant attributes her efforts to keep her job, come what may, to stubbornness. However this trait is characterized, the evidence establishes that Claimant's zeal to maintain her earnings motivated her to accept some workplace risks prior to her subject industrial accidents that her physicians could have reasonably advised against had she not intervened, or would have reasonably advised against, had they known all of the material facts. For this reason, Claimant's testimony about her difficulties and struggles at work was credible even though her subject medical records – particularly Dr. Iwasa's records – failed to note them all.

DISCUSSION AND FURTHER FINDINGS

63. 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). 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).

CAUSATION

64. The Idaho Workers' Compensation Act places an emphasis on the element of causation in determining whether a worker is entitled to compensation. In order to obtain workers' compensation benefits, a claimant's disability must result from an injury, which was

caused by an accident arising out of and in the course of employment. *Green v. Columbia Foods, Inc.*, 104 Idaho 204, 657 P.2d 1072 (1983); *Tipton v. Jannson*, 91 Idaho 904, 435 P.2d 244 (1967).

65. The claimant has the burden of proving the condition for which compensation is sought is causally related to an industrial accident. *Callantine v. Blue Ribbon Supply*, 103 Idaho 734, 653 P.2d 455 (1982). Further, there must be medical testimony supporting the claim for compensation to a reasonable degree of medical probability. A claimant is required to establish a probable, not merely a possible, connection between cause and effect to support his or her contention. *Dean v. Dravo Corporation*, 95 Idaho 958, 560-61, 511 P.2d 1334, 1336-37 (1973). See also *Callantine*, *Id*. A claimant must prove not only that he or she suffered an injury, but also that the injury was the result of an accident arising out of and in the course of employment. *Seamans v. Maaco Auto Painting,* 128 Idaho 747, 918 P.2d 1192 (1996). Proof of a possible causal link is not sufficient to satisfy this burden. *Beardsley v. Idaho Forest Industries*, 127 Idaho 404, 901 P.2d 511 (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, 890 P.2d 732 (1995). "Probable" is defined as "having more evidence for than against." *Fisher v. Bunker Hill Company*, 96 Idaho 341, 528 P.2d 903 (1974). An employee may be compensated for the aggravation or acceleration of a preexisting condition, but only if the aggravation results from an industrial accident as defined by Idaho Code § 72-102(18)(b).

66. The Idaho Supreme Court has held that no special formula is necessary when medical opinion evidence plainly and unequivocally conveys a doctor's conviction that the events of an industrial accident and injury are causally related. *Paulson v. Idaho Forest*

Industries, Inc., 99 Idaho 896, 591 P.2d 143 (1979); *Roberts v. Kit Manufacturing Company, Inc.*, 124 Idaho 946, 866 P.2d 969 (1993). The Industrial Commission, as the factfinder, is free to determine the weight to be given to the testimony of a medical expert. *Rivas v. K.C. Loggin*g, 134 Idaho 603, 7 P.3d 212 (2000). The Commission can accept or reject the opinion of a physician regarding impairment. *Clark v. City of Lewisto*n, 133 Idaho 723, 992 P.2d 172 (1999). The Commission's conclusions as to the weight and credibility of expert testimony will not be disturbed unless such conclusions are clearly erroneous. *Reiher v. American Fine Food*s, 126 Idaho 58, 878 P.2d 757 (1994). "When deciding the weight to be given an expert opinion, the Commission can certainly consider whether the expert's reasoning and methodology has been sufficiently disclosed and whether or not the opinion takes into consideration all relevant facts." *Eacret v. Clearwater Forest Industries,* 136 Idaho 733, 40 P.3d 91 (2002). Unless a decision to render no weight to a medical expert opinion was clearly erroneous, it will be affirmed. *Id.*

67. Claimant's accidents and injuries related to her four subject consolidated claims are addressed below, in turn.

68. **Ring finger and bilateral shoulders – November 7, 2007 (IIC Case No. 2007-038562)**. Claimant tripped going upstairs. Her complaint, filed April 19, 2011, alleges she injured her ring finger and both shoulders. Claimant testified that her injuries resolved without any lasting symptoms. No restrictions or impairment have been assessed. The Referee finds Claimant fully healed from her injuries related to this claim, incurring no permanent impairment, restrictions or limitations on her ability to work.

69. **Bilateral elbows, head impact – September 30, 2009 (IIC Case No. 2009-025929)**. Claimant attempted to pass a tractor when it turned left into her package car, knocking

it over. Claimant's Complaint, filed April 19, 2011, alleges she injured both elbows. Currently, Claimant alleges her preexisting diplopia was permanently aggravated by her 2009 MVA.

70. *Permanent aggravation of preexisting diplopia.* Claimant was initially treated for her 2009 MVA injuries by emergency care providers at West Valley Medical Center, follow-up care providers at Dominican Health Services, and then by Dr. Cox. On initial evaluation, Claimant was diagnosed with a mild closed head injury without loss of consciousness, left elbow abrasion and contusion, and hypertension. She complained of neck and left elbow pain. Cervical x-rays were negative. On follow-up a few days later, Claimant reported neck pain and headaches, and cervical strain was diagnosed. A couple of weeks later, she reported headache, neck pain, right shoulder pain, shakiness, and that she was having trouble getting words out. Diagnoses at this time were neck pain, low back pain, and paresthesias in her right arm and leg. Claimant was referred to Dr. Cox for ongoing care.

71. Dr. Cox treated Claimant from October 30, 2009 through December 2, 2009 for her 2009 MVA injuries. Claimant reported on her intake questionnaire that she had double vision from her 1999 accident, but she did not suggest any change in that condition due to the 2009 accident. Dr. Cox ordered a head CT scan to investigate Claimant's other symptoms. It ruled out subdural or other head trauma. On December 2, 2009, noting that she was medically stable, Dr. Cox released Claimant to full-duty work with no restrictions and no impairment. Dr. Cox's records throughout her treatment period are silent as to any new vision issues.

72. Dr. Christie's November 2010 chart notes strongly suggest that Claimant believed her vision impairment became an obstacle to employment in May 2010 ("off work since May [secondary to] balance problems & diplopia"). JE-1214. Dr. Christie did not testify, and his notes are difficult to read. It can be discerned, however, that Claimant also reported "no

head trauma" from her 2009 MVA; that her diplopia started 6 years previously "on & off"; and that her diplopia had become constant ("all the time now"). JE-1214. These notes do not suggest that either Claimant or Dr. Christie suspected a nexus between Claimant's worsening vision and her September 2009 MVA.

73. Claimant was still under the care of Dr. Iwasa for her on-going vision problems throughout her period of recovery from the 2009 MVA. Dr. Iwasa could not recall when he first learned about this accident, or how. His first recorded contact with Claimant following the 2009 accident occurred on November 22, 2010, when she reported her diplopia was worsening. There is no indication that she reported the 2009 MVA at that visit.

74. Had Dr. Iwasa been aware that Claimant's vision had appreciably worsened following a blow to the head, he would have restricted her from driving commercially then (in 2009), rather than when he did (in February 2011). Dr. Iwasa's testimony on this point is persuasive evidence that he was unaware of the 2009 MVA before the end of February 2011, at the earliest. This is when he opined that Claimant's vision deterioration was possibly due to aging and/or MS.

75. Claimant's Complaint fails to allege a worsened vision condition, strongly supporting the position that, as of April 2011, Claimant, herself, still did not believe that the 2009 MVA played a part in the deterioration of her vision.

76. Dr. Iwasa's later opinion is based on new information. Thus, it is not necessarily inconsistent with his earlier opinion. The crux of Dr. Iwasa's testimony in support of his opinion that the 2009 MVA was a causal factor in Claimant's deteriorating diplopia condition follows:

Q. (By Ms. Veltman) …Do you have an opinion one way or another of a cause or the causes in Ms. Hanson's situation?

A. I would certainly say time and age. And she had the accident before that. Certainly a major accident or head trauma.

Q. And which accident are you speaking of?

A. I guess it would be her second accident. Not the four-wheeler accident. But the accident when she - - while at work.

Q. She did have one where her truck did roll on the side.

A. Yes.

Q. And is there any way to quantify how that truck falling on the side incident changed her condition?

A. If she had head trauma I would certainly say yes. Because that is what could more damage that nerve.

Q. And if there was additional head trauma is that something that you would expect to be picked up on diagnostic studies of the brain?

A. Yes.

Q. And have you reviewed any studies of the brain after that work-related injury where she fell?

A. No.

Q. Or where the truck was on its side?

A. No.

Q. If the diagnostic studies - - and I'll ask it as a hypothetical so I don't have to dig through and find the studies. If they showed no significant changes would that modify your opinion as to the significance of that incident?

A. Well, like I said earlier, I [*sic* – can't (?)] quantify a cranial nerve damage. But it has been definitely shown in other history of injuries that the fourth cranial nerve is very susceptible to being damaged from any kind of trauma. So even if the MRIs and CT scans said everything was negative I would say that's fine. But it certainly wouldn't be the reason why she couldn't have more damage done to that nerve.

Iwasa Dep., pp. 42-44.

77. Dr. Iwasa clearly states his opinion; unfortunately, it is founded upon an assumption that Claimant suffered another head trauma that permanently accelerated her diplopia. Following a careful review of the record, the Referee finds Dr. Iwasa's causation opinion lacks sufficient foundation and, therefore, recommends that it be given no weight, for the following reasons:

- There is insufficient evidence in the record to establish that Dr. Iwasa had reviewed the medical records pertaining to Claimant's 2009 MVA prior to rendering his opinion. Therefore, his assumptions regarding the type and severity of the head injury Claimant actually incurred were speculative.

- He testified that a "major accident or head trauma" could affect Claimant's vision and that he would expect head trauma to be picked up on diagnostic brain studies; however, no diagnostic studies confirm that Claimant incurred additional head trauma, and her studies from fall 2010 were negative for additional trauma. None of her treatment records evidence head trauma from the 2009 MVA.

- He testified that diagnostic imaging is not sensitive enough to rule out additional fourth cranial nerve damage. This partially answers the challenge presented by the lack of supporting objective evidence, discussed above, by establishing that such lacking evidence does not beg the conclusion that Claimant did *not* incur a new injury to her fourth cranial nerve. It is insufficient, however, to establish that she did.

- Dr. Iwasa offers only anecdotal evidence of other histories of injuries that have shown that the fourth cranial nerve is very susceptible to damage from any kind of trauma, plus Claimant's long after-the-fact self-report, to support his opinion that it is more likely than not that Claimant's 2009 knock to the head affected her vision. Even assuming such anecdotal evidence could form a legally sufficient scientific basis upon which to form an opinion about Claimant's specific case, Dr. Iwasa does not attempt to describe how Claimant's case is like the others (and therefore begs a consistent causation opinion), other than that all of the individuals had a head injury. Dr. Iwasa did not opine that every head injury results in fourth cranial nerve injury, yet he did not distinguish Claimant's head injury from a head injury that was not likely to result in further fourth cranial nerve damage.

- All along, Dr. Iwasa expected Claimant's diplopia to worsen over time to the point where she would no longer be able to compensate, as a natural progression of her condition. Thus, he expected that Claimant's vision would worsen due to aging,

alone. Consistently, in 2011 he opined that aging was a likely cause of her worsened vision. He also allowed for the possibility that MS was playing a part, even though his own testing apparently ruled out such involvement. When Dr. Iwasa added the 2009 accident to his list of likely causal factors, he did not differentiate amongst them or in any way identify or quantify the contribution of each; thus, he did not rule out the possibility that aging, alone, or aging and MS, may be the sole cause(s), even though his prior opinion endorsed these positions. Thus, the evidence in the record suffices to establish that any of these factors *could* have contributed to Claimant's 2013 vision condition; however, it is insufficient to establish by a preponderance of the evidence that the 2009 accident actually did cause her diplopia to worsen.

· Claimant reported a number of symptoms in the aftermath of her 2009 MVA, yet she did not report worsened vision until well after she was determined medically stable. Claimant's testimony as to the acceleration of her vision impairment following the 2009 MVA is inconsistent with her credible medical records which reasonably should have evidenced her concerns in this regard, had they occurred to her at the time. There is little doubt that Claimant's vision was deteriorating before the 2009 MVA and that it continued to do so afterward. However, the weight of the evidence establishes that it is likely that Claimant did not contemporaneously appreciate any acceleration in the *rate* of deterioration of her vision as a result of that event. Since Dr. Iwasa's opinion is based upon Claimant's report that her vision deteriorated faster as a result of the 2009 MVA, the likelihood that Claimant did not actually appreciate any worsening at the time brings her perception into question and undercuts his conclusion.

· A comparison between Claimant's and Dr. Iwasa's testimony indicates that her vision impairment was worse than what she reported to him, from approximately 2005 onward. As a result, Dr. Iwasa's opinion as to the cause, or causes of her condition as of the time of the hearing is based upon incomplete and, therefore, inaccurate information.

78. Following consultation with Dr. Iwasa, Dr. Krafft assessed 19% whole person PPI to Claimant's vision condition. However, he did not reference the 2009 MVA as a causal factor, and he did not apportion any of his impairment rating to that event. No other physician assessed any PPI to Claimant's 2009 head injury.

79. Claimant has failed to prove that the 2009 MVA caused her preexisting diplopia to worsen, or caused any other vision condition. Claimant fully healed from her 2009 MVA injuries by the time of the hearing with no resulting PPI, medical restrictions or permanent limitations.

80. **Bilateral knees and elbows, low back – May 28, 2010 (IIC Case No. 2010-014499)**. Claimant tripped over a package at work and fell onto her hands and knees. Her complaint, filed February 3, 2011, alleges she injured both knees and elbows, and her low back. Currently, Claimant alleges that her right knee was permanently injured in this accident and that she will likely require additional medical care in the future, specifically including a right knee surgery.

81. Claimant had right knee problems following her 1999 ATV accident. X-rays taken in August 2000 demonstrate some ossification at the insertion of the quadriceps tendon on her superior patella, extending along the inferior surface into the patellar tendon. In May 2008, Dr. Smith diagnosed Claimant with right knee arthritis after she injured herself falling in the bathtub.

82. Dr. Smith treated Claimant following her industrial knee injuries in May 2010. Although Claimant's industrial accident caused a pain flare-up in both knees, Dr. Smith opined that she suffered no PPI as a result. He also opined that surgical intervention was not warranted, and that Claimant's pain would subside if she minimized her activity.

83. In February 2011, following a work hardening program, Dr. Cox (treating physiatrist) determined Claimant had no work-related PPI or restrictions related to her industrial injuries. On March 1, 2011, he assessed 1% whole person PPI to her persistent industrial low back pain.

84. In December 2012, Kevin Krafft, M.D., also a physiatrist, concurred with Dr. Cox's right knee opinion following a review of Claimant's medical records. He acknowledged that Claimant reported continuing symptoms, but he did not address these

because he saw no evidence of new objective findings. He assessed no PPI to Claimant's left knee, and he did not address industrial low back PPI.

85. On August 23, 2011, Paul Collins, M.D., an orthopedist, following an IME, opined that Claimant sustained a permanent aggravation of her preexisting right knee arthritis related to her industrial fall. Further, she "may at some point require surgical patellofemoral treatment up to and including a lateral patellar release on the right." JE-1219. Although her MS may complicate the advisability of such surgery, that is a decision for Claimant and her medical care provider when the time comes. He assessed restrictions including no squatting or kneeling, no continuous ambulation for more than 15-20 minutes without rest, and no lifting in excess of 40 pounds, and rated her PPI related to her right lower extremity at 25%, with 18% apportioned to preexisting conditions. Dr. Collins did not relate any other permanent condition to Claimant's May 2010 industrial accident. Dr. Smith testified that Dr. Collins could not have appropriately measured the loss of cartilage over Claimant's patella such as to arrive at a 25% assessment; he posited that Claimant's condition, based on the objective evidence, would warrant no more than 24% PPI, at the most.

86. Although Dr. Smith's critique is well-taken, Dr. Collins' opinion is most persuasive. Although he only evaluated Claimant once, he fully considered Claimant's condition before and after her industrial injuries, and he adequately explained the physiological mechanism by which Claimant's right knee was most likely physically altered such that her preexisting knee arthritis became permanently painful. Also, Dr. Collins' opinion best accounts for why Claimant's right knee remains symptomatic, while her left knee does not.

87. Dr. Collins opined that he could determine Claimant's cartilage loss by palpation. Dr. Smith disagrees and points out that the *Guides* require a more objective evaluation; however,

no such evidence exists to rebut Dr. Collins' opinion. The Referee is persuaded that Dr. Collins arrived at his opinion following a thorough and objective evaluation.

88. The Referee finds Claimant sustained a permanent aggravation of her preexisting right knee arthritis as a result of her May 2010 industrial accident. As a result, Claimant is medically restricted from squatting or kneeling, continuous ambulation for more than 15-20 minutes without rest, and lifting in excess of 40 pounds. Claimant has PPI related to her right lower extremity of 25%, with 18% apportioned to preexisting conditions. She also has whole person PPI of 1% related to her low back pain, with no restrictions or limitations.

89. **Left shoulder – June 24, 2010 (IIC Case No. 2010-016099)**. Claimant felt pain in her left shoulder while pushing packages down a roller. Dr. Smith released Claimant back to work without restrictions on December 15, 2010 and assessed permanent impairment of 5% of the left upper extremity without apportionment. He did not apportion Claimant's PPI because she had healed and done well following her previous left shoulder repair. After learning of Claimant's work hardening program participation, he opined Claimant reached MMI on February 2, 2011.

90. Dr. Collins did not independently assess PPI. However, in August 2011, he assessed restrictions, including no lifting at all above shoulder level, and no lifting in excess of 40 pounds to mid-chest level, or 10 pounds from mid-chest to shoulder level. He noted that these restrictions are only industrially applicable to Claimant's left shoulder; however, the same restrictions would apply to her right shoulder due to her subsequent non-industrial condition (see below). He also noted that Claimant's left shoulder condition would limit her ability to do her time-of-injury job.

91. At his post-hearing deposition, Dr. Collins concurred in Dr. Smith's PPI assessment (*see* Collins Dep., pp. 15-16). Somewhat inconsistently, however, he also opined that he would place limitations on an individual who had undergone a left rotator cuff repair and strongly implied that Claimant's re-tear may have been related to her activities in excess of such limitations (*see* Collins Dep., pp. 32-33).

92. Dr. Krafft, in December 2012, opined following a records review that Claimant's PPI related to her industrial left shoulder condition should be 4% of the upper extremity based upon her lack of significant symptoms and good functioning. However, he assessed her preexisting upper extremity PPI at 5%. Dr. Krafft ultimately opined that Claimant has left shoulder PPI of 5%, all attributable to her previous non-industrial left rotator cuff repair.

93. Dr. Krafft's ultimate PPI assessment is most persuasive because, according to all of the evidence in the record, it best accounts for Claimant's preexisting shoulder condition. Dr. Collins' testimony establishes that he believes post-surgical restrictions are necessary to protect against further injury. Dr. Collins' reasoning supports Dr. Krafft's opinion.

94. Dr. Smith explained that he may not issue restrictions if they will interfere too much with a patient's quality of life, and he was aware that Claimant wished to get back to work following her first left shoulder surgery. Such an approach is understandable, from a clinical perspective; however, in these proceedings, a PPI assessment refers objectively to the quantification of the loss of function of an anatomical structure, not to a subjective determination of the acceptable risk of further injury versus the benefit of increased short-term functioning. Here, the medical evidence establishes that 5% PPI represents the loss of function attributable to a shoulder following rotator cuff surgery. Although Claimant did not appreciate a loss of function immediately following her 2008 left rotator cuff repair, this is because she did

not reduce her use of the shoulder consistent with appropriate medical restrictions. As per Dr. Collins' suggestion, had she done so, she may not have experienced a re-tear three years later. In any event, the fact that she was able to use her shoulder like she did before her first rotator cuff injury is insufficient to establish that she had not incurred PPI. The Referee finds the opinions of Drs. Krafft and Dr. Collins more persuasive than that of Dr. Smith.

95. The Referee finds Claimant incurred 5% upper extremity PPI due to her left shoulder condition, all attributable to her preexisting non-industrial shoulder condition. She incurred no additional impairment as a result of her industrial injury. As a result of her impairment, Claimant is medically restricted from lifting anything above shoulder level, more than 10 pounds from mid-chest to shoulder level, or in excess of 40 pounds from waist or below to mid-chest level.

TOTAL PERMANENT DISABILITY

96. "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. Permanent disability is a question of fact, in which the Commission considers all relevant medical and nonmedical 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. State, Industrial Special Indem. Fund,* 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).

97. "Permanent impairment" is any anatomic or functional abnormality or loss after maximal medical rehabilitation has been achieved and which abnormality or loss, medically, is

considered stable or non-progressive at the time of evaluation. Idaho Code § 72-422. "Evaluation (rating) of permanent impairment" is a medical appraisal of the nature and extent of the injury or disease as it affects an injured employee's personal efficiency in the activities of daily living, such as self-care, communication, normal living postures, ambulation, traveling, and non-specialized activities of bodily members. Idaho Code § 72-424. When determining impairment, the opinions of physicians are advisory only. The Commission is the ultimate evaluator of impairment. *Urry v. Walker & Fox Masonry Contractors*, 115 Idaho 750, 755, 769 P.2d 1122, 1127 (1989).

98. Claimant argues she is totally and permanently disabled. There are two methods by which a claimant can demonstrate that he or she is totally and permanently disabled. First, a claimant may prove a total and permanent disability if his or her medical impairment together with the nonmedical factors total one hundred percent. If the claimant has met this burden, total and permanent disability has been established. If, however, the claimant has proved something less than one hundred percent disability, he or she can still demonstrate total disability by fitting within the definition of an odd-lot worker. *Boley v. State, Industrial Special Indemnity Fund*, 130 Idaho 278, 281, 939 P.2d 854, 857 (1997).

99. **Time of disability determination.** The Idaho Supreme Court in *Brown v. The Home Depot,* WL 718795 (March 7, 2012) held that, as a general rule, Claimant's disability assessment should be performed as of the date of hearing. Under Idaho Code § 72-425, a permanent disability rating is a measure of the injured worker's "present and probable future ability to engage in gainful activity." Therefore, the Court reasoned, in order to assess the injured worker's "present" ability to engage in gainful activity, it necessarily follows that the labor market, as it exists at the time of hearing, is the labor market which must be considered.

The record divulges no reason why Claimant's ability to engage in gainful activity would be more accurately measured at any time other than the date of the hearing. Therefore, Claimant's disability will be determined as of the hearing date.

100. **Local labor market.** At the time of the industrial accidents in question and at the time of the hearing, Claimant resided in Unity, Oregon; therefore, her disability will be determined with respect to her employability in the Unity local labor market.

101. **Nonmedical factors.** 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 the claimant's ability to engage in gainful activity. *Sund v. Gambrel*, 127 Idaho 3, 896 P.2d 329 (1995).

102. 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 should also be 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. Idaho Code §§ 72-425, 72-430(1).

103. Claimant's relevant nonmedical factors follow:

a. Local labor market: Pursuant to *Combs v. Kelly Logging,* 115 Idaho 695, 769 P.2d 572 (1989) and its progeny, Claimant's local labor market consists of Unity

and surrounding locations within a reasonable geographical distance. The *Combs* court held that a labor market 129 miles from the claimant's home was not within a reasonable distance and, therefore, was not to be considered part of Claimant's local labor market. Claimant resides closer than 129 miles to towns with more to offer in the way of employment than Unity. However, the long driving times required of Claimant in order to consider work elsewhere (one hour, minimum, one-way), along with Unity's small size and rural nature, significantly reduce her employment opportunities.

b. Driving limitations: Claimant was restricted from driving as a vocation by Drs. Green and Iwasa in early 2011, and from night driving by Dr. Iwasa in 2013. Even before her last industrial accidents in 2010, Claimant no longer felt safe to drive long distances or at night, particularly after a long or stressful day at work, and she ceased doing so. Given Claimant's medical and vocational history, and her testimony admitted at the hearing, the Referee finds Claimant's self-imposed limitations were reasonable for the safety of herself and others. In consideration of Claimant's residence in Unity, located at least an hour from the nearest town with potential job prospects and within the eastern part of the Pacific Time Zone, in which only 9-10 hours of daylight prevails during the late fall and early winter months, Claimant's driving limitations are pivotal obstacles to her ability to obtain gainful employment.

c. Age: Claimant is 56. As an older worker with few transferrable skills, Claimant's age reduces her employability.

d. Education: Claimant completed high school and some college; however, she never obtained a degree. She has no specific computer or keyboarding skills. She maintained a CDL for many years. Her ability to learn has been negatively impacted by her memory problems attributable to her 1999 ATV head injury, reducing her employability.

e. Work experience: Claimant has significant experience as a UPS driver for 32 years. She has also worked as a post office clerk, shortly, and in a number of other occupations, many years ago. She has been a motivated worker, but has limited transferrable skills.

f. Disfigurement. Claimant has no disfigurement related to her preexisting impairments. However, she does use a cane to ambulate as a result of either her MS or her right knee impairment, which could discourage some employers from hiring her.

104. **Preexisting PPI and restrictions/limitations.** Preexisting impairments include those that existed prior to Claimant's last relevant industrial accident. Here, the last industrial accident in which Claimant sustained any additional permanent impairment occurred on May 28, 2010. Claimant had preexisting permanent impairments including:

105. *Vision impairment (diplopia) (19% WP)* - PPI of 19% of the whole person (as found, above).

106. Claimant's relevant restrictions and limitations related to her vision impairment at the time of hearing include Dr. Iwasa's restriction on commercial driving in February 2011, Dr. Green's restriction on driving as a vocation in March 2011, and Dr. Iwasa's restriction on night driving in 2013.

107. These restrictions were appropriate earlier, as well. Dr. Iwasa relied upon Claimant's self-reports to determine whether commercial driving restrictions were appropriate. Given Claimant's and Dr. Iwasa's testimony and the weight of evidence in the record, driving restrictions were likely appropriate as early as 2005 or 2007, and were undoubtedly appropriate by May 2010, when Dr. Christie's records indicate that Claimant, herself, believed her vision had become an obstacle to her ability to return to work, and also that by November 2010, her diplopia was constant. Claimant only continued to drive for a living because Dr. Iwasa had not been fully apprised of the extent of her difficulties. Night driving restrictions were likely appropriate soon after Claimant returned to work following the removal of her accommodations. Claimant tired by the end of her long work days, and fatigue brought increased vision impairment. When they decided to return home to Unity after work (in the dark), Claimant's husband had to drive. They rented a house in Ontario for the sole purpose of alleviating their commute. Claimant determined that she was not safe to drive at night well before her 2010 industrial accidents. Dr. Iwasa relied upon Claimant's self-reports and so does the Referee. A night driving restriction would have been appropriate prior to Claimant's last industrial accidents.

108. Vocationally, Claimant's vision impairment constitutes a significant limitation. Dr. Collins (Nancy) opined that, prior to June 2010, following full disclosure, employers would have been reluctant to hire Claimant for a driving job due to her sight problems. Dr. Collins' testimony is persuasive in this regard.

109. *MS (None)* – Claimant's MS was diagnosed after her last industrial accident, at about the same time she reached medical stability from her May 28, 2010 injuries, but before the hearing. Although there is some evidence suggesting that Claimant was experiencing symptoms

of MS prior to her relevant industrial accidents, no physician has opined as to an onset date. Also, no physician has assessed any PPI. Although Claimant has suffered PPI due to her MS, as evidenced by her vocational driving restriction by Dr. Green, no physician has quantified her impairment. The evidence in the record is insufficient either to establish that Claimant's MS should be considered a preexisting condition, or to allow the Referee to quantify Claimant's MS-related PPI. Claimant's only restriction related to her MS, as established by the record, is her driving restriction.

110. *Left shoulder impairment (5% LUE)* – PPI of 5% of the left upper extremity (as found, above). Due to Claimant's preexisting left shoulder impairment, appropriate restrictions include no lifting at all above shoulder level, and no lifting in excess of 40 pounds to mid-chest level, or 10 pounds from mid-chest to shoulder level.

111. *Right knee impairment (18% RLE)* – PPI of 18% of the right lower extremity (as found, above). No physician assessed any restrictions to Claimant's preexisting right knee condition.

112. *Right arm and shoulder (3% RUE)* – Claimant slipped and fell at work on January 17, 1986. She was diagnosed with right shoulder impingement, among other things, and received conservative treatment for more than three years. Claimant was ultimately returned to work without restrictions and she settled her related workers' compensation claim without payment for permanent impairment or disability.

113. In December 2005, Claimant was treated by Dr. Nicola for right shoulder impingement. A cortisone injection provided no relief. She returned for a second injection in August 2006. MRI imaging revealed bursitis and minimal joint effusion.

114. Claimant underwent a non-industrial right shoulder repair in 2011. Neither Defendants nor ISIF are liable for benefits for Claimant's PPI, if any, from this condition.

115. In December 2012, following a records review, Dr. Krafft assessed 3% upper extremity PPI to Claimant's preexisting right shoulder impingement. The Referee finds this assessment is supported by a preponderance of evidence in the record. Prior to her subject industrial accidents, Claimant had no RUE restrictions.

116. *Neck (2% WP)* – In April 2001, Claimant attended physical therapy for neck symptoms. In early 2005, Claimant experienced cervical spine symptoms as well as numbness in her face and hands. In September 2006, MRI imaging of Claimant's cervical spine revealed facet arthropathy, a disc bulge at C3-4 without compression of the spinal cord, a disc protrusion at C4-5, and some minor disc degeneration.

117. Dr. Krafft assessed 2% whole person PPI for Claimant's cervical spine condition. The Referee finds this assessment is supported by a preponderance of evidence in the record. Prior to her subject industrial accidents, Claimant had no cervical spine/neck restrictions.

118. *Low back (7% WP)* - Claimant strained her low back while lifting a package at work on September 22, 1992. UPS accommodated her ongoing back pain by providing her with a different seat for her package car and allowing her to take a break every couple of hours to stretch. Claimant was released to full duty work on December 17, 1992.

119. In September 2000, Claimant attributed low back pain to her ATV accident on a UPS medical history form.

120. In September 2006, Claimant sought treatment for increasing pain in her neck and upper spine, right shoulder and arm, and lower spine (see below) from Dr. Verska. She also had bilateral leg pain, worse on the right, with numbness and tingling into her foot. She reported

she had been raised on a farm and had been bucked off of horses and cows. Her symptoms had gradually worsened since 1978. MRI imaging of her lumbar spine demonstrated facet arthropathy, a disc bulge at L3-4 without spinal cord compression, a disc protrusion at L4-5, and a disc bulge at L5-S1 with neural foraminal stenosis compressing the spinal cord. Dr. Verska recommended treatment, but Claimant apparently did not follow up.

121. Dr. Krafft assessed preexisting 7% whole person PPI following a records review, based on Claimant's 2006 records with Dr. Verska and an MRI. The Referee finds this assessment is established by a preponderance of evidence in the record. Prior to her subject industrial accidents, Claimant had no low back restrictions.

122. *Left ankle fractures and syndesmosis (5% LLE)* - While elk hunting in November 1993, Claimant fractured her fibula and medial malleolus. She was placed in a cast and eventually returned to work without restrictions. Claimant fractured her talus in her 1999 ATV accident. She underwent arthroscopic repair surgery in February 2000. In May 2008, Claimant again injured her left ankle when she fell in the bathtub.

123. Dr. Krafft opined in December 2012 following records review that Claimant sustained 5% lower extremity impairment as a result of her left lower extremity injuries and related syndesmosis. The Referee finds this assessment is supported by a preponderance of evidence in the record. Prior to her subject industrial accidents, Claimant had no left ankle restrictions.

124. *Thoracic spine (8% WP)* - In January 2005, Claimant was diagnosed with a T8-9 disc protrusion compressing the spinal cord and radicular symptoms. Dr. Shoemaker released Claimant to work on March 31, 2005 without restrictions, but he advised her to obtain assistance

lifting anything over 70 pounds. In September 2006, MRI imaging revealed facet arthropathy of the thoracic spine.

125. Dr. Shoemaker assessed 8% whole person permanent impairment, utilizing the *AMA Guides, Fifth Edition.* Dr. Krafft assessed 4% following a records review. Dr. Krafft was requested to utilize the *Guides* in developing his assessments; however, assuming he followed those instructions, he did not identify which edition(s) he consulted. The Referee finds Dr. Shoemaker's assessment is more persuasive because he treated and is more familiar with Claimant's condition and, further, the analytical framework underlying his opinion is better developed and presented than that employed by Dr. Krafft. Prior to her subject industrial accidents, Claimant had a 70-pound lifting limitation due to her thoracic spine condition.

126. *Hypertension (17% WP)* - Claimant has taken medication to control hypertension since approximately 2004. She reported in her 2011 SSDI application and at the hearing that her hypertension is one reason she did not pass her 2011 DOT physical. Dr. Krafft assessed 17% whole person permanent impairment. The Referee finds Claimant had whole person PPI related to her hypertension of 17% of the whole person. Prior to her subject industrial accidents, Claimant had no restrictions due to her hypertension.

127. *Headache (5% WP).* Claimant sustained headaches following her closed head injury resulting from her 1999 ATV accident. In May 2007, Dr. Redshaw ordered an MRI to assess Claimant's headache symptoms, among other things. The MRI images looked normal. Following her 2009 MVA in which she hit the left side of her head, Claimant was again treated for headaches. Again, her imaging looked normal and, in 2011 following work hardening, she was not given an impairment rating for headaches by Dr. Calhoun. In December 2012, following a records review, Dr. Krafft assessed 5% whole person permanent impairment to

Claimant's preexisting headache condition. The Referee finds Dr. Krafft's opinion is supported by a preponderance of the evidence. Prior to her subject industrial accidents, Claimant had no restrictions due to her headaches.

128. **Additional permanent impairment and medical restrictions/limitations due to industrial accidents.** Claimant incurred no PPI as a result of either her 2007 or 2009 industrial injuries. Claimant has 7% whole person PPI due to her industrial right knee condition and 1% whole person PPI due to her industrial residual low back pain (assessed by Dr. Cox on March 1, 2011), both related to her May 2010 industrial slip and fall accident. She had a subsequent industrial accident and left shoulder injury in June 2010, but she incurred no additional PPI from that event.

129. Claimant has no additional restrictions or limitations related to her low back impairment.

130. As for her right knee impairment, the Referee adopts Dr. Collins' assessment of restrictions, all industrially-related, including no squatting or kneeling, no continuous ambulation for more than 15-20 minutes without rest, and no lifting in excess of 40 pounds. These are Claimant's only industrially-related restrictions.

131. **100% method.** Defendants and ISIF both argue that Claimant was 100% totally and permanently disabled by the 100% method notwithstanding her subject industrial impairments; therefore, she is not entitled to total permanent disability benefits. The Referee agrees, as discussed, below.

132. Because the ability to drive dictates Claimant's ability to work, due to both her transferrable skills as a professional driver for more than 30 years and her remote rural residence, this case turns sharply on Claimant's vision impairment due to diplopia.

Unfortunately, Claimant's diplopia cannot be corrected. Dr. Iwasa persuasively opined that adding prisms to her glasses will not correct her condition. And, while wearing an eye patch or closing one eye will alleviate her double vision, these options will create difficulties in Claimant's depth perception, which is necessary for safe driving.

133. Claimant's ability to drive professionally is also curtailed by her MS, due to its unpredictable and variable nature.

134. At the time of the hearing, Claimant was medically restricted from driving at night and professionally. As a result of her night driving restriction, Claimant must fit her work and commute hours into a window of daylight that shrinks to 9-10 hours during the late fall and early winter months. Further, Claimant testified persuasively that she cannot drive long distances. Therefore, her vocational opportunities are limited to Unity and its immediate sparsely populated surroundings.

135. Along these lines, Mr. Crum persuasively opined that, given her night driving restriction, Claimant is totally and permanently disabled because no suitable employment is available to her in or close to Unity and she is unable to commute to suitable jobs elsewhere wholly in daylight.

136. Dr. Collins opined Claimant could do retail work, but she did not believe any such work was regularly available closer than John Day. John Day is an hour's drive each way. Claimant likely could not maintain the long roundtrip drive time. Also, she could not work regular full-time hours because she would have to drive in the dark for several weeks every year. Finally, Claimant's lifting restrictions due to her preexisting left shoulder condition would reduce the number of retail jobs, if any, otherwise available to her. Given these restraints, Claimant would most likely be relegated to less than full-time work, at about one-third of her

prior hourly wage. At the same time, she would incur significant commuter costs. As Mr. Crum opined in a similar hypothetical, employment under these conditions would not be economically feasible and, therefore, would not be suitable.

137. If she could ride to and from work with her husband, some vocational opportunities may open up for Claimant. Claimant's husband now works in John Day, a town of about 1,700-1750; however, no evidence of any actual job in John Day for which Claimant is competitive has been presented. Moreover, while Claimant's access to regularly available alternative transportation (like a bus or reliable community administered ride share program) should be considered in determining her ability to work, there is insufficient evidence from which to find that Claimant's husband should be expected to reliably provide her with transportation to work for the remainder of her worklife. There is likewise no evidence suggesting that any regularly available alternative transportation exists in or around Unity. Notwithstanding the general problems associated with making another person responsible for Claimant's commute, without evidence of an actual available job, this inquiry cannot even be approached. Although Claimant and her husband commuted together for approximately ten years between Unity and Payette in order to preserve Claimant's high earnings with UPS, Claimant is no longer eligible for such high-paying positions due to her vision impairment. Therefore, the incentive system underlying the measures they took to keep Claimant employed in the Payette area has changed. It cannot be assumed that Claimant will always have a ride to work and the evidence of record is insufficient to establish this fact.

138. The evidence in the record establishes that there is no employment regularly available to Claimant in Unity and its closely surrounding areas. Although Claimant worked two hours per week at the Unity and Hereford U.S. Post Offices before her position was

eliminated, Dr. Collins persuasively opined that such work is not regularly available employment. Employment in John Day, or elsewhere, is not a viable option due to Claimant's sight limitations, the distance from Unity, and the commuter problems they together present.

139. Claimant's loss of access to employment at the time of hearing due to her preexisting vision and left shoulder impairments and her non-medical factors render her 100% totally and permanently disabled. Because Claimant is totally and permanently disabled without considering any industrial impairment, neither Defendants nor ISIF are liable for benefits for Claimant's total permanent disability.

140. All other issues are moot.

CONCLUSIONS OF LAW

1. Claimant has proven that she sustained injuries from industrial accidents on November 7, 2007, September 30, 2009, May 28, 2010, and June 24, 2010 that were treated and had healed by the time of the hearing.

2. Claimant has proven that her preexisting right knee degenerative condition was permanently exacerbated by her industrial accident on May 28, 2010.

3. Claimant has proven that she sustained permanent impairment of 7% of the right lower extremity (25%, with 18% apportioned to preexisting condition) due to her right knee injury and 1% of the whole person due to her low back injury, both from her May 28, 2010 industrial accident.

4. Claimant has proven that she is totally disabled under the 100% method.

5. Claimant has failed to prove that her industrial impairments contributed to her total and permanent disability; therefore, neither Defendants nor ISIF are liable for disability benefits.

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 8th day of December, 2013.

INDUSTRIAL COMMISSION

/s/
LaDawn Marsters, Referee

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of May, 2014, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

RICHARD S OWEN
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/s/

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

KATHLEEN HANSON, Claimant, v. UNITED PARCEL SERVICE, Employer, and LIBERTY INSURANCE CORP., Surety, and STATE OF IDAHO, INDUSTRIAL SPECIAL INDEMNITY FUND, Defendants.	**IC 2007-038562** **2009-025929** **2010-014499** **2010-016099** **ORDER** May 14, 2014

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

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

1. Claimant has proven that she sustained injuries from industrial accidents on November 7, 2007, September 30, 2009, May 28, 2010, and June 24, 2010 that were treated and had healed by the time of the hearing.

2. Claimant has proven that her preexisting right knee degenerative condition was permanently exacerbated by her industrial accident on May 28, 2010.

3. Claimant has proven that she sustained permanent impairment of 7% of the right lower extremity (25%, with 18% apportioned to preexisting condition) due to her right knee injury and 1% of the whole person due to her low back injury, both from her May 28, 2010 industrial accident.

4. Claimant has proven that she is totally disabled under the 100% method.

5. Claimant has failed to prove that her industrial impairments contributed to her total and permanent disability; therefore, neither Defendants nor ISIF are liable for disability benefits.

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

DATED this __14th____ day of ____May_____, 2014.

INDUSTRIAL COMMISSION

_/s/_____
Thomas P. Baskin, Chairman

_/s/_____
R.D. Maynard, Commissioner

__/s/_____
Thomas E. Limbaugh, Commissioner

ATTEST:

_/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __14th_ day of _____May_____, 2014, 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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