

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JULIE JERALDS,

Claimant,

v.

HENDERSON HOSPITALITY,

Employer,

and

TOWER INSURANCE COMPANY
OF NEW YORK,

Surety,
Defendants.

IC 2012-014708

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

Filed November 6, 2014

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Alan Taylor, who conducted a hearing in Coeur d'Alene, Idaho on May 7, 2014. Claimant, Julie Jeralds, was present in person and represented by Richard Wallace, of Coeur d'Alene. Defendant Employer, Henderson Hospitality (Henderson), and Defendant Surety, Tower Insurance Company of New York, were represented by Edgar Annan, of Spokane, Washington. The parties presented oral and documentary evidence. Post-hearing depositions were taken and briefs were later submitted. The matter came under advisement on August 20, 2014.

ISSUES

The issues to be addressed are:¹

1. Claimant's entitlement to additional medical benefits;
2. Whether the condition for which Claimant seeks benefits was caused by her industrial accident;
3. The extent of Claimant's permanent partial impairment; and
4. The extent of Claimant's permanent partial disability in excess of impairment.

CONTENTIONS OF THE PARTIES

All parties acknowledge that Claimant sustained an industrial injury on June 4, 2011, when she struck her right elbow and contused her ulnar nerve at work. Defendants authorized medical care and Claimant performed modified work until July 11, 2011, when she was released to full-duty work. Defendants later provided additional medical care through September 12, 2012 and paid 2% permanent partial impairment of the upper right extremity for Claimant's residual right ulnar neuropathy.

Claimant now requests additional medical benefits for treatment required for her industrial injury after September 12, 2012. She alleges that her work ability continues to be limited. Defendants deny responsibility for further benefits.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

¹ Claimant's reply brief asserts she "was out of work for three years and had lost wages of \$14,330." Claimant Jeralds' Post-Hearing Reply Brief, p. 1. However, Claimant's Request for Hearing did not identify temporary disability as an issue for hearing, thus the Commission's Notice of Hearing did not list it. Idaho Code § 72-713 requires the Commission give all parties "at least ten (10) days' written notice of the time and place of hearing and of the issues to be heard," thereby precluding consideration of this issue herein.

Additionally, at Defendants' request, Claimant's average weekly wage was noticed as an issue for hearing. However, neither party addressed this issue at hearing or in post-hearing briefing; hence the issue is deemed abandoned.

1. The Industrial Commission legal file;
2. Claimant's Exhibits A-D, admitted at the hearing;
3. Defendants' Exhibits 1-11, admitted at the hearing;
4. The testimony of Claimant and her husband, Anthony Jeralds, taken at the May 7, 2014 hearing;
5. The post-hearing deposition of Eric N. Verhaeghe, P.T., taken by Claimant on May 19, 2014; and
6. The post-hearing deposition of Spencer Greendyke, M.D., taken by Defendants on May 20, 2014.

All objections made during the depositions are overruled. The undersigned Commissioners have chosen not to adopt the Referee's recommendation and hereby issue their own findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. Claimant was born in 1984. She is right-handed. She was 29 years old and lived in Post Falls at the time of the hearing. At the time of her industrial accident in 2011, she lived in Coeur d'Alene.

2. **Background.** Claimant attended high school through the tenth grade in Rathdrum. She later worked at a sawmill. In 2003, she worked as a cashier at Walmart for approximately one year. In 2004, she obtained her GED. Claimant worked for three years sizing wood at Precision Wood Products. She also worked at Pita Pit, Ross Department Store, and at a shipping and receiving warehouse. In 2008, she worked the drive through window at Skippers. In 2010, she worked as a housekeeper at the Holiday Inn.

3. On May 5, 2010, Claimant was hired by Employer, Henderson Hospitality, to work as a housekeeper at the Holiday Inn Express in Coeur d'Alene. Her duties included cleaning hotel rooms, hallways, and stairwells. She regularly moved furniture to vacuum beneath it and flipped mattresses as part of preparing rooms. She had no right upper extremity symptoms or limitations. Claimant earned \$8.00 per hour and worked approximately 25 hours per week.

4. **Industrial accident and treatment.** On June 4, 2011, Claimant was working when she reached to catch a stack of cups falling from her cleaning cart and forcefully struck the inside of her right elbow on a vacuum cleaner handle. She felt immediate pain, as if she had struck her “funny bone,” and noted pain and numbness throughout her right arm and hand. Her supervisor witnessed the accident. The pain persisted and Claimant sought medical attention that same day at Kootenai Medical Center. Right elbow x-rays were negative for fracture. Claimant was treated by Jeffrey Givens, M.D., who diagnosed peripheral neuropathy and contusion with abnormal tenderness, range of motion, and swelling in her right elbow. Dr. Givens prescribed medications, placed Claimant’s right elbow in a posterior fiberglass long arm splint and sling, and released her to light-duty one-handed work. Claimant returned to work within her restrictions.

5. On June 7, 2011, Claimant presented again to Dr. Givens who noted continuing abnormal tenderness, range of motion, and swelling in her right elbow. Claimant continued to work within her restrictions.

6. On June 11, 2011, Dr. Givens examined Claimant again and noted her contused right elbow with abnormal range of motion, tenderness, and swelling. Dr. Givens recorded abnormal neurologic exam with paresis, decreased strength, and decreased tactile sensation in

Claimant's right hand. He continued Claimant's prescription medications and her light-duty work release. She continued to work within her restrictions.

7. On June 17, 2011, Dr. Givens examined Claimant and found significant improvement in her right elbow range of motion and tenderness. He indicated Claimant could return to full-duty work and take Tylenol as needed. However, on June 21, 2011, Claimant presented to Dr. Givens with increased arm symptoms. He found abnormal mild swelling of Claimant's right wrist, tenderness in her right elbow and ulnar nerve. Dr. Givens suspected increased ulnar nerve irritation from overuse and recommended decreased use. He also prescribed a short course of Prednisone. Claimant continued to work within her restrictions.

8. On July 11, 2011, Claimant returned to Dr. Givens who released her to full-duty work. Dr. Givens reported: "Patient states that elbow and numbness is all better. Basically doing normal job and ready to be released. Pt. states she is much better but its [sic] difficult to close her pinkie by herself." Defendants' Exhibit 2, p. 2. Dr. Givens recorded that Claimant's peripheral neuropathy was resolving. He recommended she drink plenty of fluids and get extra rest. Dr. Givens determined that she had reached maximum medical improvement and released her to full duty work. He noted no permanent impairment. Claimant returned to full-duty work.

9. **Discharge from employment and further treatment.** After her splint and sling were removed, Claimant returned to her usual hotel cleaning duties. However, due to persisting intermittent right arm pain and numbness that worsened with activity, she could not perform her work as quickly as before. She could no longer clean an entire hotel room in 15 minutes. She required 45 minutes to clean each room and consequently began passing some of her work assignments to co-workers. Employer was not satisfied with Claimant's performance and

terminated her employment on September 11, 2011. Claimant has not returned to any type of employment since that time.

10. By October 2011, Claimant's upper right extremity symptoms increased. She also noticed a bump on her right wrist which developed into a right wrist ganglion cyst. The cyst was tender to the touch and Claimant initially believed the cyst was caused by her industrial accident and was the source of her persisting right upper extremity symptoms. However, after the cyst spontaneously resolved she continued to have intermittent debilitating right upper extremity pain and numbness. Subsequent medical records indicate the cyst was still present at least until October 2013.

11. Claimant received no medical treatment from July 11, 2011, until May 29, 2012. Although her intermittent right arm symptoms persisted, she did not seek further medical care during this time because Dr. Givens had advised her that nerve injuries heal slowly and she could expect continued improvement over the course of a year.

12. By May 29, 2012, Claimant's right arm symptoms had not resolved and she presented to Warren Keene, M.D., at Kootenai Medical Center. He assessed "right arm pain neuralgia, with possible long-term nerve injury." Defendants' Exhibit 3, p. 31. Dr. Keene reviewed medical records from the date of Claimant's industrial accident and recorded:

On 6/4/2011, she was injured at work at the Holiday Inn express [sic] and banged her left [sic] elbow into a vacuum cleaner. She had a contused elbow and some ulnar-nerve damage, and she was told that it would get better with time, but she is still having pain with it. She has had intermittent pain, a kind of a warm feeling on the ulnar side of her forearm and some numbness on the top of her hand, with pain on the wrist that sometimes extends up into her arm. It is kind of sharp and aching in nature 5 out of 10 on the pain scale. Nothing else has made her any better. Sometimes she cannot even open a bottle for her baby.

Defendants' Exhibit 3, p. 31.

13. Dr. Keene noted a ganglion cyst on the dorsum of Claimant's right wrist, but found her wrist and hand grip strength normal. He prescribed Tramadol and referred Claimant to Michael Ludwig, M.D., and James Lea, M.D., for nerve-conduction studies. Dr. Keene restricted Claimant to modified duty work with pushing and pulling of no more than 15 pounds and lifting of no more than 10 pounds. He suggested she wear a sling for comfort. Defendants' Exhibit 3, p. 34.

14. On June 20, 2012, Claimant presented to Dr. Ludwig reporting her June 4, 2011, industrial accident with resulting intermittent right upper extremity pain and numbness. Dr. Ludwig restricted Claimant to modified work and directed her to avoid lifting, pushing or pulling more than 10 pounds.

15. On June 21, 2012, Defendants' claims adjuster advised Dr. Ludwig that Claimant did not complain of wrist issues in 2011. Defendants' Exhibit 4, p. 74. That same day, Dr. Ludwig opined that Claimant's right wrist ganglion cyst was not related to her industrial accident. It is unclear what medical records were available to Dr. Ludwig when he made this determination. Contrary to Defendants' adjuster's representation, Claimant had right wrist swelling on June 21, 2011, as documented by Dr. Givens' notes.

16. On June 28, 2012, Dr. Ludwig examined Claimant and noted a positive Tinel's test at the right cubital tunnel. He performed bilateral nerve conduction testing at Claimant's wrists and elbows which documented mild right ulnar neuropathy. Dr. Ludwig determined the ulnar neuropathy was related to Claimant's industrial accident, but concluded surgical debridement or ulnar transposition was unnecessary. He declared Claimant medically stable as of June 28, 2012. On July 2, 2012, Dr. Ludwig rated Claimant's permanent impairment due to

her industrial accident at 2% of the upper extremity. He placed no permanent restrictions on Claimant's activities. Defendants' Exhibit 4, p. 67.

17. After her initial visit with Dr. Ludwig, Claimant received temporary disability benefits for approximately one month. Approximately June 28, 2012, Defendants terminated Claimant's temporary disability benefits because Dr. Ludwig had declared her medically stable.

18. On July 10, 2012, Claimant met Industrial Commission rehabilitation consultant Roy Murdock. Claimant testified that she could not even lift five pounds with her right arm at that time. On July 13, 2012, consultant Murdock closed Claimant's file because she had been declared medically stable, released to work without restrictions, and had declined vocational services indicating she had "decided to remain at home in support of her family." Defendants' Exhibit 9, p. 100. Claimant had two young children at that time.

19. Claimant talked with Surety's claims adjuster in August 2012, requesting additional medical treatment for her persisting right upper extremity pain and weakness. The adjuster told her to be patient because nerve injuries took time to heal. Claimant later called Surety again and asked for a second opinion. Surety scheduled her for an evaluation with board certified orthopedic surgeon Spencer Greendyke, M.D.

20. On September 12, 2012, Dr. Greendyke examined Claimant at Defendants' request. He diagnosed EMG-documented right elbow ulnar neuropathy and history of right dorsal carpal ganglion cyst which developed four months post-accident. Dr. Greendyke observed a one centimeter dorsal carpal ganglion cyst but did not believe Claimant's cyst was related to her industrial injury. Greendyke Deposition, p. 12. He noted Claimant was mildly tender at the dorsal carpal ganglion and at the right cubital tunnel. He believed Claimant was medically stable, did not need further treatment due to her industrial accident, and could return to

her prior work duties without restriction. Dr. Greendyke concurred in the 2% upper extremity permanent impairment rating provided by Dr. Ludwig for Claimant's persisting right ulnar neuropathy.

21. **Defendants' refusal and Claimant's search for further treatment.** Claimant's intermittent right upper extremity pain persisted such that she felt incapable of working. She again requested additional medical care. At hearing, Claimant testified that several days after her appointment with Dr. Greendyke, she telephoned Defendants' adjustor: "I told him that my arm was still hurting and that it was not healed, I needed to see more doctors, and he told me that I wasn't allowed to, I just needed to go back to work." Transcript p. 45, l. 25 through p. 46, l. 4. Claimant indicated the telephone conversation deteriorated into an argument: "I told him that my arm was still hurting, I still needed to see a doctor, there was still something wrong. And he told me that I was just after the insurance company's money and that I was a liar and I just needed to go back to work." Transcript, p. 55, ll. 8-14. Thereafter Surety refused to pay for any further medical care or authorize Claimant to see any other doctors.

22. Claimant's right upper extremity symptoms persisted and on September 30, 2012, she presented to Jeffrey Zurosky, M.D., at Kootenai Medical Center, who diagnosed chronic right wrist pain. Dr. Zurosky recorded: "patient is a 28-year old who comes in today with right wrist pain over the past year from an industrial accident." He prescribed Ultram and recommended "following up with her worker's [sic] comp doctor." Defendants' Exhibit 3, p. 29.

23. On October 4, 2012, Claimant presented to Stuart Denny, M.D., at Kootenai Urgent Care, complaining of a tender right wrist ganglion. Dr. Denny noted that Claimant had normal range of motion, no swelling, no tenderness, and a negative Tinel's sign over the ulnar nerve at the right elbow. He found Claimant's ganglion cyst very tender to palpation and

recorded: “Her symptoms are centered around the ganglion, with pain, tenderness, tightness, and pulling on the tendons around the ganglion.” Defendants’ Exhibit 6, p. 89. Dr. Denny opined Claimant’s ganglion cyst was not related to her industrial accident. He referred Claimant to hand surgeon Patrick Mullen, M.D.

24. On November 13, 2012, Claimant presented to Dr. Mullen who found residual right ulnar neuropathy but was doubtful that surgical release would improve Claimant’s condition. Whereas some physicians had related her ongoing right arm pain to the dorsal ganglion cyst, Claimant testified that Dr. Mullen advised her: “No, that’s not the cyst.” Transcript, p. 60, ll. 6-7. He recommended hand therapy and rheumatoid serologies to determine whether any of Claimant’s ongoing right arm symptoms might be due to rheumatoid arthritis. Blood testing was performed by Pathology Associate Medical Labs. On November 21, 2012, a serology panel was reviewed. Dr. Mullen directed Claimant to Dustin Dinning, D.O.

25. On February 14, 2013, Dr. Dinning examined Claimant, and diagnosed undifferentiated connective tissue disease. He started Claimant on Plaquenil and tapered steroids. Claimant paid \$162.75 out of her own pocket for this visit. She took prescription medications for rheumatoid arthritis for approximately three months without any benefit. On May 14, 2013, Dr. Dinning, after trial of arthritis medications did not improve Claimant’s right upper extremity symptoms, concluded that Claimant’s symptoms did not arise from a connective tissue disorder.

26. On June 24, 2013, Claimant presented to Dr. Lea for additional nerve conduction studies. The studies showed no evidence of right cervical radiculopathy.

27. On June 26, 2013, Claimant returned to Dr. Mullen for follow up of her nerve conduction studies by Dr. Lea. She continued to complain of right hand weakness and

numbness. However, Dr. Mullen was hesitant to recommend surgical release and determined to send Claimant to Gregory Keese, M.D., for a second opinion.

28. On June 26, 2013, Claimant returned to Dr. Dinning, who affirmed that her persisting upper extremity symptoms were not caused by rheumatoid arthritis.

29. On July 31, 2013, Claimant presented to Dr. Mullen, concerned that she might be developing complex regional pain syndrome (CRPS) in her right hand. He noted that she complained of right hand tremors when her right hand was extended, but experienced no tremors when her right hand was at rest. Dr. Mullen recorded that all of Claimant's finger tips on her right hand were noticeably colder than on her left. However, absent abnormal nail or hair growth, he was doubtful that Claimant suffered CRPS. Dr. Mullen elected to await Dr. Keese's opinion concerning ulnar nerve decompression at the elbow.

30. On September 4, 2013, Claimant presented to Dr. Keese, at Dr. Mullen's direction, for a second opinion. Dr. Keese performed an extensive and detailed examination. He diagnosed right ulnar nerve chronic neurapraxia at the elbow, related to Claimant's industrial accident, and resting right upper extremity tremor and right wrist dorsal ganglion cyst, both unrelated to her industrial accident. Dr. Keese agreed with Dr. Greendyke's causation opinion and impairment rating, and opined that no further medical intervention, such as surgical decompression or transposition, was indicated. Dr. Keese noted: "the results of cubital tunnel release in the context of a direct impact contusion are far less predictable than traditional compressive neuropathy at the cubital tunnel." Defendants' Exhibit 8, p. 98.

31. On September 9, 2013, Claimant returned to Dr. Mullen who, having considered Dr. Keese's opinion, advised her that he had no surgical or other further treatment to offer her. Dr. Mullen declined Claimant's request for pain medication and recommended she establish

treatment with a primary care doctor or with a pain specialist to prescribe chronic pain medication.

32. Pursuant to Dr. Mullen's suggestion, Claimant sought a primary care giver and treated with Shaun Brancheau, D.O., on October 3, 2013, and October 10, 2013. Dr. Brancheau referred Claimant to Eric Verhaeghe, P.T., for a functional capacity evaluation (FCE). Doctor Brancheau's medical records are not part of the record in this case. Nor does it appear that Mr. Verhaeghe reviewed records from Dr. Brancheau, or from any other medical provider. Per Mr. Verhaeghe's records, Claimant's presenting diagnosis was ulnar nerve neuropathy.

33. On December 16, 2013, Claimant underwent an FCE during which Mr. Verhaeghe noted signs of thoracic outlet syndrome on the right. Claimant paid \$720.00 out of her own pocket for the FCE. Mr. Verhaeghe reported his findings, most significantly Claimant's thoracic outlet symptoms, to Dr. Brancheau, who then referred Claimant to Mr. Verhaeghe for physical therapy for treatment of her thoracic outlet syndrome.

34. On January 21, 2014, Claimant commenced physical therapy with Mr. Verhaeghe for treatment of thoracic outlet syndrome. Physical therapy helped reduce her pain to a five or six on a scale of one to ten and her functionality improved. After 16 physical therapy sessions Claimant was able to lift a gallon of milk with her right hand and her right hand grip strength improved until it was comparable to that of her left hand. Mr. Verhaeghe ceased supervised therapy and instructed Claimant in a home exercise program.

35. **Condition at the time of hearing.** Although her condition had improved, at the time of hearing Claimant continued to have intermittent right upper extremity pain, numbness, and difficulty using her right hand and arm. Her pain worsened with activity but also recurred multiple times daily regardless of her activity. She testified her symptoms were like hitting her

“funny bone,” but commenced 15 to 25 times each day without Claimant’s right elbow contacting anything. The symptoms persisted for a few seconds to several minutes each time. Transcript pp. 58-59. She took Tramadol to manage these symptoms.

36. At hearing Claimant testified that she planned to start cosmetology school on May 12, 2014, with emphasis on hair cutting and styling. Cosmetology will be less physically demanding than hotel housekeeping. She will not have to flip mattresses, move furniture to vacuum under it, or scrub toilets and showers as she did as a hotel housekeeper. Given her persisting right upper extremity symptoms, Claimant did not believe she could currently perform the duties of a hotel housekeeper. She struggled just to keep her own home clean.

37. **Credibility.** Having observed Claimant and her husband at hearing and compared their testimony with other evidence in the record, the Referee found that both are credible witnesses. The Commission finds no reason to disturb the Referee’s findings and observations on Claimant’s presentation or credibility.

DISCUSSION AND FURTHER FINDINGS

38. 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).

39. **Additional medical treatment and causation.** The first two issues are interrelated and address whether Claimant is entitled to additional medical treatment due to her industrial accident. Claimant requests benefits for medical expenses she incurred after

September 12, 2012, while seeking additional treatment for her right upper extremity. Defendants argue that Claimant was medically stationary before September 12, 2012, and merely went “doctor shopping” thereafter. They note that she did not petition for a change of physician or otherwise provide notice prior to obtaining further medical treatment and thus should be denied additional medical benefits.

40. In Reese v. V-1 Oil Co., 141 Idaho 630, 115 P.3d 721 (2005), Mr. Reese suffered a work-related injury and the surety paid for a lumbar surgery. Unfortunately, Reese’s debilitating back pain persisted and the surety refused to provide further medical treatment as recommended by his physician, Dr. DuBose. Reese ultimately underwent a second lumbar surgery without prior notice to or approval by the surety. His condition improved. The Industrial Commission denied benefits for the second surgery based upon Idaho Code § 72-432(4)(a), noting Reese: “could have (1) asked a treating doctor for a referral, (2) asked Defendants for a change, or (3) sought a change of physician under Rule 20, J.R.P. Instead, he went out on his own and failed to disclose the fact to Defendants until after the surgery was performed.” Reese, 141 Idaho at 633, 115 P.3d at 724. On appeal, the Idaho Supreme Court construed Idaho Code §72-432(1) broadly, concluded Reese was entitled to benefits for the second surgery, and declared:

Idaho Code § 72–432(1) requires an employer to provide an injured employee “such reasonable medical, surgical or other attendance or treatment, nurse and hospital service, medicines, crutches and apparatus, as may be reasonably required by the employee's physician or needed immediately after an injury or manifestation of an occupational disease, and for a reasonable time thereafter.” There is no difference between failing to provide medical treatment that is “reasonably required by the employee's physician or needed immediately after an injury” and failing to provide such treatment “for a reasonable time thereafter.”

Once an employer wrongfully fails to provide medical treatment, “the injured employee may do so at the expense of the employer.” Reese was entitled

to obtain, at V-1's expense, any medical care "as may be reasonably required by the employee's physician or needed ... for a reasonable time" after the injury. The Commission found that the need for Reese's second surgery was caused by his work-related injury. It noted that Dr. Jorgensen had testified that in his opinion the L3-4 level in Reese's spine was either injured in the original accident or destabilized during the first surgery and that the fusion at L4-5 had placed additional mechanical stress on L3-4.

V-1 argues, "[T]he Idaho Code provides a clear option for a workers compensation claimant dissatisfied with his or her physician or the physician's recommendations, and if Mr. Reese had followed that procedure, he would not have been faced with the 'harsh results.'" Once it refused to authorize the treatment recommended by Dr. DuBose, V-1 was, in effect, no longer providing a physician for Reese. There is no practical difference between not authorizing the treatment recommended by a physician and not providing the physician. Once V-1 had ceased providing a physician, Idaho Code § 72-432(1) authorized Reese to obtain medical care at V-1's expense. He was not required to seek permission to change physicians because V-1 was no longer providing a physician who could treat him.

Reese v. V-1 Oil Co., 141 Idaho 630, 634, 115 P.3d 721, 725 (2005).

41. In the present case, Defendants correctly observe that Claimant did not give notice of or request a change of physician. Nevertheless, as in Reese, Claimant herein was not required to give prior notice or seek permission for a change of physician because Defendants, through their adjustor, had expressly refused to provide or authorize any further medical treatment in spite of Claimant's continued symptoms and repeated requests. Idaho Code § 72-432(1) authorized Claimant to obtain medical care, but only that needed for her industrial accident.

42. **Causation.** It is well settled that "An employee's employer and surety are only liable for medical expenses incurred as a result of 'an injury' (i.e. an employment related accident), or 'disability from an occupational disease.' I.C. § 72-432(1). An employer cannot be held liable for medical expenses unrelated to any on-the-job accident or occupational disease." Henderson v. McCain Foods, Inc., 142 Idaho 559, 563, 130 P.3d 1097, 1102 (2006). Thus

Claimant must provide medical testimony that supports her 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 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 (2001).

43. Claimant does not assert that her right wrist ganglion cyst is related to her industrial accident. Dr. Greendyke, Dr. Mullen, and Dr. Keese opined that her cyst is unrelated to the industrial accident. Dr. Greendyke opined that Claimant's right hand tremors were not related to her industrial accident. Dr. Keese diagnosed resting right upper extremity tremor unrelated to her industrial accident. No medical practitioner has related her right hand tremors to her industrial accident. However, several medical practitioners have specifically considered the relationship between Claimant's need for additional medical care for treatment of thoracic outlet syndrome after September 12, 2012, and her industrial accident. Their opinions are examined below.

44. *Dr. Greendyke.* Dr. Greendyke examined Claimant at Defendants' request on September 12, 2012, and diagnosed EMG-documented right elbow ulnar neuropathy and history of right dorsal carpal ganglion cyst which developed four months post-accident. He did not believe Claimant's right hand tremor or ganglion cyst were related to her industrial injury. Dr. Greendyke initially opined that Claimant's right upper extremity symptoms resolved within four to six weeks after her accident. However, he acknowledged that approximately one year later ulnar neuropathy was still evident on EMG testing. He opined that Claimant reached maximum medical improvement when she was found medically stable by Dr. Ludwig in June

2012. Dr. Greendyke noted that Claimant reported right palm and forearm tingling, and right arm pain to the shoulder in what he characterized as a stocking glove distribution. He testified that Claimant's pain complaints were non-dermatomal and non-anatomic. Greendyke Deposition, p. 10. He concluded Claimant did not need further treatment due to her industrial accident, and could return to her prior work duties without restriction. Dr. Greendyke concurred in the 2% upper extremity permanent impairment rating given by Dr. Ludwig. Dr. Greendyke saw Claimant on only one occasion.

45. In his post-hearing deposition, Dr. Greendyke expressed surprise that Claimant's symptoms improved with physical therapy in early 2014. He opined it was "extremely remotely possible" that Claimant developed thoracic outlet syndrome due to her industrial accident and subsequent casting or splinting. Upon learning Claimant wore the half cast or splint on her right elbow for nearly six weeks after her industrial accident, Dr. Greendyke testified that he would not have continued Claimant in a splint for that long of a time. Greendyke Deposition, p. 21. However, Dr. Greendyke also testified that in his long experience as an orthopedist, he had never seen or heard of thoracic outlet syndrome arising following the application of long-arm casts on patients. Greendyke Deposition, p. 16, ll. 13-19. He affirmed that he did not notice evidence of thoracic outlet syndrome when he examined Claimant; however, Dr. Greendyke acknowledged: "But I did not specifically document any testing like an Adson's test for thoracic outlet syndrome." Greendyke Deposition, p. 15, ll. 5-6.

46. *Eric Verhaeghe, P.T.* Eric Verhaeghe is a physical therapist and treated Claimant from January through April 2014. Mr. Verhaeghe observed positive Adson's and Roos' tests that corroborated Claimant's thoracic outlet syndrome on the right. After completing a functional capacity evaluation, Mr. Verhaeghe concluded that Claimant was able to work a full

eight-hour day but was limited to lifting 17 pounds. Verhaeghe Deposition, p. 7. Both Claimant and Mr. Verhaeghe testified that the physical therapy he provided significantly improved Claimant's condition and increased her functionality. Through physical therapy Claimant's right hand grip strength, which had been significantly weaker, increased until it equaled that of her left. She progressed from not being able to lift five pounds, to lifting a gallon of milk with her right arm. However, Mr. Verhaeghe testified that he could not be any more specific about Claimant's functional abilities following the completion of physical therapy since he did not retest her via a second functional capacities evaluation. Verhaeghe Deposition, p. 11. Ll. 6-18.

47. Mr. Verhaeghe's note of January 21, 2014, related Claimant's thoracic outlet syndrome to her industrial accident of June 4, 2011. Furthermore, when deposed about the relationship between Claimant's industrial accident and her thoracic outlet syndrome Mr. Verhaeghe identified the tests he performed that corroborated both vascular and neurogenic thoracic outlet syndrome:

A. (by Mr. Verhaeghe) Yeah. The two tests that were positive were clavicular compression and the pectoralis minor stretch, so one of those is vascular and one is neurogenic.

Q. (by Mr. Annan) Okay. And as a physical therapist, you're not here to testify that the thoracic outlet syndrome is related to the industrial injury, are you?

A. No.

Q. Okay. And as I---

A. I will say this, though, that in talking with Ms. Jeralds and her treatment, her course of treatment, she was cast and immobilized and then did not use her arm for a period of time, and we determined that part of her thoracic outlet was because of that lack of use of her arm over the course of time, and that is why her symptoms developed.

Q. Okay. But is it fair to say that as a physical therapist you can't really testify to the causal relationship; would you agree with that?

A. No.

Verhaeghe Deposition, p. 14, l. 15 through p. 15, l. 8 (emphasis supplied).

48. Mr. Verhaeghe testified that Claimant was not able to perform all of the FCE protocols because of pain/discomfort. She completed only 13 tests, and of these, her testing was found to be valid on only 6 tests. Mr. Verhaeghe acknowledged that based on the way the validity measures are graded, Claimant's FCE was technically "invalid", suggesting that she gave less than full effort during the exam. Notwithstanding these technical findings, however, Mr. Verhaeghe testified that Claimant was "reliable" in the sense that he felt she gave good effort during testing. As noted above, Mr. Verhaeghe provided treatment to Claimant on 15 or 16 occasions following the FCE. He testified that Claimant put forth a good effort during therapy, and that she attempted to do everything that was asked of her. Based on his observations of Claimant, and on the fact that she demonstrated significant improvement during physical therapy, he concluded that her presentation during the FCE, and thereafter, was reliable. Verhaeghe Deposition, p. 22, l. 22 – p. 24, l. 23.

49. *Weighing the medical opinions.* Although Dr. Greendyke did not relate Claimant's thoracic outlet syndrome to her industrial accident, he acknowledged that Claimant's arm was immobilized after her accident and he documented no testing to diagnose thoracic outlet syndrome. Mr. Verhaeghe specifically tested for thoracic outlet syndrome and expressly related Claimant's thoracic outlet syndrome to the immobilization and limited use of her right arm following her industrial accident. When the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of employment unless it is the result of an independent intervening cause attributable to the claimant's own intentional conduct. A. Larson, The Law of Workmen's Compensation, § 13,

Gerdon v. Con Paulos, IC 2008-019169, 2012 WL 5398867 (Idaho Ind. Com. Oct. 15, 2012).

Claimant has proven that her right thoracic outlet syndrome, and thus her need for additional medical treatment after September 12, 2012, is related to her industrial accident.

50. Past medical expenses. Claimant specifically requests benefits for medical expenses incurred as follows:

Pathology Associates Medical Labs	743.45
Urgent Care	219.00
Kootenai Health	304.00
Kootenai Medical Center	311.00
Dr. Dinning	151.00
Dr. Keese	1,137.00
Dr. Mullen	336.00
Dr. Brancheau	488.00
Dr. Lea	476.00
River City Physical Therapy	810.00
FCE by Eric Verhaeghe	<u>720.00</u>
Total	\$6,195.45

Each expense must be examined to determine whether it constitutes treatment related to Claimant's industrial accident.

51. Claimant's treatment on September 30, 2012, by Dr. Zurosky at Kootenai Medical Center for "right wrist pain over the past year from an industrial accident," is related to her industrial accident. Defendants' Exhibit 3, p. 29. The bill from Kootenai Medical Center for this treatment totaled \$331.87 (including \$20.79 of interest as of the date of hearing). Claimant's Exhibit A, p. 12. Claimant has proven Defendants' liability for this medical expense.

52. Claimant treated on October 4, 2012, with Dr. Denny at Kootenai Urgent Care for a tender right wrist ganglion. Dr. Denny found her symptoms centered around the ganglion cyst which was not related to her industrial accident. The bill from Kootenai Urgent Care for this treatment totaled \$239.16 (including \$20.16 of interest at the time of hearing). Claimant's

Exhibit A, p. 9. Dr. Denny did not relate the treatment he provided to Claimant's industrial accident. Claimant has not proven Defendants' liability for this expense.

53. Dr. Mullen examined Claimant on November 13, 2012, at Kootenai Physician Clinics seeking to identify the generator of her ongoing right arm pain, whether due to the ulnar neuropathy, ganglion cyst, or another source. He ordered rheumatoid serologies to rule out rheumatoid arthritis as the source of her symptoms. The bills for this service total \$322.75 (including \$20.75 of interest at the time hearing). Claimant's Exhibit A, p. 10. The blood testing was performed by Pathology Associate Medical Labs on November 21, 2012, and the cost of the testing ordered by Dr. Mullen totaled \$743.45. Claimant's Exhibit A, p. 2. As a diagnostic examination and procedure to determine the etiology of her right arm symptoms persisting since her accident, this was related to Claimant's industrial accident. Claimant has proven Defendants' liability for these medical expenses.

54. The record contains a bill for service to Claimant on November 28, 2012, at the Kootenai Physician Clinics. The bill for this service was \$109.01 (including \$7.01 in interest as of the date of hearing). Claimant's Exhibit A, p. 11. No other records appear to correspond to this date of service and Claimant has cited to none. The record appears insufficient to determine what medical service Claimant received and whether this expense is related to her industrial accident. Claimant has not proven Defendants' liability for this expense.

55. Dr. Dinning examined Claimant on February 14, 2013, diagnosed undifferentiated connective tissue disease and started Claimant on Plaquenil and tapered steroids. He also diagnosed post-traumatic ganglion cyst. Claimant paid \$162.75 out of her own pocket to Kootenai Health for this visit. Claimant's Exhibit A, p. 19. On May 14, 2013, Dr. Dinning concluded that Claimant's symptoms did not arise from a connective tissue disorder. Kootenai

Physician Clinics' bill for this visit totaled \$155.82 (including \$4.82 of interest as of the date of hearing). Claimant's Exhibit A, p. 13. As a diagnostic procedure, these bills are related to Claimant's industrial accident. Claimant has proven Defendants' liability for this medical expense.

56. On June 3, 2013, Claimant presented to Dr. Mullen at Kootenai Physician Clinics. The bill for this visit totaled \$114.84 (including \$2.84 of interest as of the date of hearing). Claimant's Exhibit A, p. 14. No other medical records appear to correspond to this date of service and Claimant has cited to none. The record appears insufficient to determine what medical service Claimant received from Dr. Mullen this date and whether this expense is related to her industrial accident. Claimant has not proven Defendants' liability for this expense.

57. Dr. Lea ruled out right cervical radiculopathy by nerve conduction testing on June 24, 2013, at Kootenai Physician Clinics. The bill for this service totaled \$482.57 (including \$6.57 in interest as of the time of hearing). Claimant's Exhibit A, p. 15. As a diagnostic procedure to determine the etiology of her right arm symptoms persisting since her accident, this expense is related to Claimant's industrial accident. Claimant has proven Defendants' liability for this medical expense.

58. Claimant presented at Kootenai Physician Clinics to Dr. Mullen on June 26, 2013, for follow up of her nerve conduction studies by Dr. Lea. The bill for this service totaled \$113.55 (including \$1.55 of interest as of the time of hearing). Claimant's Exhibit A, pp. 6 and 16. As part of a diagnostic procedure, this bill is related to Claimant's industrial accident. Claimant has proven Defendants' liability for this medical expense.

59. The record appears to provide no bill for Claimant's June 26, 2013, visit to Dr. Dinning, and Claimant has cited to none.

60. Dr. Mullen examined Claimant on July 31, 2013, at Kootenai Physician Clinics to evaluate her for CRPS in the aftermath of her industrial accident. The bill for this medical service totaled \$113.55 (including \$1.55 of interest as of the time of hearing). Claimant's Exhibit A, p. 18. As a diagnostic examination, this bill is related to Claimant's industrial accident. Claimant has proven Defendants' liability for this medical expense.

61. Dr. Keese examined Claimant on September 4, 2013, pursuant to Dr. Mullen's request for a second opinion. Dr. Keese diagnosed right ulnar nerve chronic neurapraxia at the elbow, related to Claimant's industrial accident, and right upper extremity tremor and wrist ganglion cyst, both unrelated to her accident. He ruled out right ulnar release or transposition. Claimant paid \$500.00 out of her own pocket as a down payment for this evaluation. Claimant's Exhibit A, p. 19. At the time of hearing, Claimant still owed a balance of \$1,137.00 for this evaluation. The bill for this medical examination totaled \$1,637.00. As a diagnostic examination to determine the etiology of her right arm symptoms persisting since her accident, this bill is related to Claimant's industrial accident. Claimant has proven Defendants' liability for this medical expense.

62. The record appears to provide no bill for Claimant's September 9, 2013, visit to Dr. Mullen, and Claimant has cited to none.

63. Claimant treated with Dr. Brancheau on October 3 and 10, 2013. The bills from Dr. Brancheau are for a new patient office visit on October 3, 2013, in the amount of \$337.00 and for an established patient office visit on October 10, 2013, in the amount of \$151.00 for a total of \$488.00. Claimant's Exhibit A, p. 5. Claimant has not cited to Dr. Brancheau's medical records, which are apparently not contained in the record in this case. Thus it is not clear what treatment he provided on October 3 and 10, 2013, and to what extent the treatment was related to

Claimant's industrial accident. Eric Verhaeghe testified Dr. Brancheau referred Claimant to him for an FCE, performed December 16, 2013, and later for physical therapy commencing in January 2014, to treat her thoracic outlet syndrome which Mr. Verhaeghe persuasively related to Claimant's industrial accident. However, the present record does not establish whether Claimant's October 3 and 10, 2013, visits to Dr. Brancheau are related to Claimant's industrial accident. Claimant has not proven Defendants' liability for this medical expense.

64. Claimant paid \$720.00 out of her own pocket for the December 16, 2013, FCE performed by Mr. Verhaeghe. Claimant's Exhibit A, p. 19. He reported his findings, most significantly Claimant's thoracic outlet symptoms, to Dr. Brancheau, who then referred Claimant to Mr. Verhaeghe for physical therapy for thoracic outlet syndrome. As determined above, Claimant's thoracic outlet syndrome is related to her industrial accident. This expense is from a diagnostic procedure to ascertain her condition and treatment required for her industrial accident. Claimant has proven Defendants' liability for this medical expense.

65. Mr. Verhaeghe supervised Claimant in 16 physical therapy sessions at River City Physical Therapy commencing January 21, 2014, for treatment of her thoracic outlet syndrome. The bill for physical therapy totaled \$810.00 and, as determined above, is related to Claimant's industrial accident. Claimant has proven Defendants' liability for this medical expense.

66. Claimant has proven Defendants' liability for additional medical expenses totaling \$5,593.31. Claimant has not supported her request for additional medical benefits beyond this amount by citations to the record and the record does not appear to establish such.

67. **Permanent partial impairment.** The next issue is the extent of Claimant's permanent impairment. "Permanent impairment" is any anatomic or functional abnormality or loss after maximal medical rehabilitation has been achieved and which abnormality or loss,

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

68. In the present case, Dr. Ludwig and Dr. Greendyke have both concluded that Claimant sustained a permanent impairment of 2% of the upper extremity, i.e. 1% of the whole person, due to her diagnosis of ulnar nerve compression.

69. With respect to Claimant's diagnosis of thoracic outlet syndrome, we conclude that Claimant reached medical stability from this condition on or about April 10, 2014, the approximate date she completed treatment with physical therapist Verhaeghe. As developed above, Mr. Verhaeghe testified that by April 10, Claimant was no longer in need of continued care. She was released to a home exercise program after demonstrating significant improvement in her grip strength and other functional abilities. Verhaeghe Deposition, p. 10, l. 11 – p. 11, l. 3; p. 22, ll. 8-19. Although we conclude that Claimant reached a point of medical stability on or about April 10, 2014, we are unable to find that she is entitled to an impairment rating for her thoracic outlet syndrome. Neither Mr. Verhaeghe, nor any other physician rendered an opinion on the question of whether or not Claimant's thoracic outlet syndrome entitles her to an impairment rating.

70. Based on the foregoing, we conclude that Claimant suffers a 1% whole person rating for the effects of her work accident.

71. **Permanent disability.** The final issue is the extent of Claimant's permanent disability. "Permanent disability" or "under a permanent disability" results when the actual or presumed ability to engage in gainful activity is reduced or absent because of permanent impairment and no fundamental or marked change in the future can be reasonably expected. Idaho Code § 72-423. "Evaluation (rating) of permanent disability" is an appraisal of the injured employee's present and probable future ability to engage in gainful activity as it is affected by the medical factor of permanent impairment and by pertinent nonmedical factors provided in Idaho Code § 72-430. Idaho Code § 72-425. Idaho Code § 72-430 (1) provides that in determining percentages of permanent disabilities, account should be taken of the nature of the physical disablement, the disfigurement if of a kind likely to handicap the employee in procuring or holding employment, the cumulative effect of multiple injuries, the occupation of the employee, and his or her age at the time of accident causing the injury, or manifestation of the occupational disease, consideration being given to the diminished ability of the affected employee to compete in an open labor market within a reasonable geographical area considering all the personal and economic circumstances of the employee, and other factors as the Commission may deem relevant. In sum, the focus of a determination of permanent disability is on the claimant's ability to engage in gainful activity. Sund v. Gambrel, 127 Idaho 3, 7, 896 P.2d 329, 333 (1995). The proper date for disability analysis is the date of the hearing, not the date that maximum medical improvement has been reached. Brown v. Home Depot, 152 Idaho 605, 272 P.3d 577 (2012).

72. In the present case, Dr. Ludwig and Dr. Greendyke released Claimant to return to work without restrictions. However, Dr. Greendyke's and Dr. Ludwig's opinion that Claimant

could work without restrictions is unpersuasive because Claimant actually lost her job at Holiday Inn Express because she could not clean rooms fast enough. After being released to full duty after her accident, she required 45 minutes to clean hotel rooms that she had cleaned in 15 minutes before her accident.

73. In December 2013, the FCE conducted by Eric Verhaeghe found Claimant capable of lifting and carrying 17 pounds. Following the completion of physical therapy, Mr. Verhaeghe testified that Claimant showed significant improvement in her grip strength such that her bilateral grip strength was equal. Claimant also reported improvement in her functional ability to perform activities at home, such as lifting a gallon of milk and doing other activities around the house. However, without a second functional capacities evaluation performed after the completion of physical therapy, it is difficult to quantify the extent, if any, to which Claimant continued to have residual functional limitations. For her part, Claimant testified that although her condition improved following physical therapy, it had not improved sufficient to allow her to return to her time of injury position as a hotel house keeper.

74. Claimant has basic computer and typing skills. Industrial Commission consultant Roy Murdock noted that Claimant has transferable skills in customer service and light production assembly. Defendants' Exhibit 9, p. 106. Claimant's work history included rigorous manual labor jobs before her industrial accident. She is more limited now. Fifteen to 25 times each day she experiences spontaneously recurring debilitating pain as if she had struck her "funny bone." This pain lasts from several seconds to several minutes.

75. Based on Claimant's permanent impairment of 1% of the whole person for her right ulnar neuropathy, her diagnosis of thoracic outlet syndrome, credible testimony of her recurring right upper extremity pain, and considering her non-medical factors including but not

limited to her age of 26 at the time of the accident and 29 at the time of the hearing, GED, pre-injury work experience in manual labor, and her demonstrated inability to competitively return to her time of injury employment, the Commission concludes that Claimant's ability to compete for regular gainful employment in the open labor market in her geographic area has been reduced. Claimant has proven that she suffers permanent disability of 9%, in addition to her permanent impairment of 1% of the whole person.

CONCLUSIONS OF LAW AND ORDER

1. Claimant has proven that her diagnoses of ulnar nerve neuropathy and thoracic outlet syndrome are causally related to the subject accident.
2. Claimant has proven Defendants' liability for past medical expenses totaling \$5,593.31.
3. Claimant has proven she sustained permanent partial impairment of 1% of the whole person due to her industrial accident.
4. Claimant has proven she sustained permanent disability of 9%, in addition to her permanent partial impairment, due to her industrial accident.
5. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 6th day of November, 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 6th day of November, 2014, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** was served by regular United States Mail upon each of the following:

RICHARD P WALLACE
2370 N MERRITT CREEK LOOP STE 1
COEUR D'ALENE ID 83814

EDGAR L ANNAN
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/s/