

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

RAUL LOPEZ TORRES,

Claimant,

v.

ALBRIGHT FARMS, INC.,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,
Defendants.

IC 2005-526199

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

Filed November 7, 2014

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Industrial Commission assigned the above-entitled matter to Referee Douglas A. Donohue. He held a hearing in Boise on November 6, 2013. Rick Dredge represented Claimant. Bridget Vaughan represented Defendants Employer and Surety. The parties presented evidence, took post-hearing depositions, and submitted briefs. The case came under advisement on August 20, 2014 and is now ready for decision.

ISSUES

The issues to be decided according to the Notice of Hearing and as agreed to by the parties at hearing are:

1. Whether and to what extent Claimant is entitled to benefits for:
 - a) Temporary disability (TTD/TPD),
 - b) Permanent partial impairment (PPI),
 - c) Permanent partial disability in excess of impairment,
 - d) Medical care; and
 - e) Attorney fees.
2. Whether Claimant is totally and permanently disabled as an odd-lot worker.

The parties expressly agreed that causation was not at issue.

CONTENTIONS OF THE PARTIES

On November 18, 2005—his 26th birthday—Claimant was seriously injured when his arm caught in the mechanism of a manure spreader. Despite attempts to reattach his hand, Claimant suffered a below-the-elbow amputation.

Claimant contends he is totally and permanently disabled, either 100% or as an odd-lot worker. Attempts to retrain Claimant to be a truck driver were misguided. Defendants acted unreasonably in delaying and failing to treat PTSD and depression arising from the accident.

Defendants contend they have paid all medical and TTD benefits due Claimant. They acknowledge Claimant suffered significant permanent disability—perhaps 72 to 80 percent—but deny that Claimant is an odd-lot worker. Defendants acted reasonably at all times.

EVIDENCE CONSIDERED

The record in the instant case included the following:

1. Oral testimony at hearing of Claimant, of former supervisor Dennis Garretson, and of former trainer and family friend Carlos Ramirez;
2. Claimant's Exhibits A1 through A3 (all with subparts) and B (actual prescription bottles);
3. Defendants' Exhibits 1 through 16; and
4. Posthearing depositions of treating physiatrist Kevin Krafft, M.D., Surety adjustor Teresa Raymond, counselor Jose Valle, and vocational expert Bill Jordan.

All objections in 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 worked for Employer as a farm worker. On November 18, 2005 while cleaning a manure spreader his gloved right hand caught in the rotor blade. His hand was torn off above the wrist. Because of the noise of the machine, coworkers were not immediately aware he was being injured. He was caught in the machine for perhaps 15 minutes before being extricated.

2005 Medical Care

2. Claimant's medical history reveals no significant pre-accident conditions or injuries.

3. Immediately after the accident Claimant was transported to St. Alphonsus ER in Boise. Steven Care, M.D., was contacted and informed of Claimant's imminent arrival. He arrived shortly after and performed emergency surgery to attempt to reconnect Claimant's hand. Claimant suffered respiratory failure during surgery. Claimant was intubated and placed on a ventilator overnight. Muscles and tendons of Claimant's right forearm were so torn they were essentially unusable to reconnect Claimant's hand. Because of the extensive damage, the initial surgery attempted mainly to restore circulation without attempting to reconnect nerves or muscles fully. Dr. Care hoped to be able to restore partial function, but told Claimant full function would be impossible to restore. During this surgery Dr. Care's repeated attempts to restore arterial blood flow to the hand were of limited success, but eventually accomplished the goal.

4. Two days later Dr. Care performed a second surgery. It included some tendon and muscle repairs and a skin graft. "Massive" swelling made the job more difficult.

5. On the third day post-accident a physician consulted about managing infection

resulting from the manure spreader.

6. Late evening of the fourth day, Claimant lost blood flow to his hand. By 1:00 a.m. of the fifth day, Claimant was in emergency surgery to try and save it. Despite the introduction of a PICC line to administer antibiotics to reduce infection, by morning it was obvious to Dr. Care that Claimant's hand could not be saved. That afternoon, Dr. Care removed Claimant's nonviable right hand and part of his forearm.

7. The next day, November 24, Claimant began pain management for stump pain and phantom limb pain. He was discharged on November 28 with instructions for outpatient follow-up visits with Dr. Care.

8. Dr. Care's follow-up included recommendations for occupational and physical therapy. Sandy Baskett of ICRD assisted.

Medical Care: 2006

9. By January 9, 2006 Dr. Care noted that Claimant had weaned himself from narcotic analgesics. He noted Claimant could perform one-handed work, but was not ready to use his stump or prosthesis for "any useful functions."

10. From 2006 to the date of hearing Brownfield's has provided prosthetics and adjustments. Claimant has used both a mechanical prosthesis and a myoelectric one. Each is superior to the other at times, depending upon what he needs to do. The record shows the myoelectric prosthesis required many repairs and adjustments for fit and function. Damp environment and specific exposure to water adversely affect the myoelectric prosthesis. These were complicated and delayed by the fact that Brownfield's needed both a physician's prescription and Surety's approval for nearly every repair and adjustment. In May 2009 Brownfield's reported that Claimant's repair needs were excessive—even unprecedented—and

related to Claimant's improper use of the myoelectric prosthesis in water, despite Brownfield's warnings to him.

11. On February 7, 2006 Dr. Care reviewed a handful of job site evaluations (JSE) and noted required modifications with his approvals. In related correspondence he noted Claimant's permanent restrictions would be dependent upon his ability to use a prosthesis and tolerate prosthetic pressure—factors unknown as of that date. Dr. Care noted full recovery might take one to two years; this duration primarily because the stump was expected to change size and shape for a considerable length of time.

12. On February 27, 2006 Dr. Care summarized his conversation with Claimant and Ms. Baskett about possible employment including retraining as a truck driver. One month later Dr. Care noted early use of a myoelectric prosthesis appeared promising. Wet environments and application of tire chains were complicating factors in Claimant's attempt to become a truck driver. Claimant was contemplating a visit to family in Mexico.

13. On May 22, 2006 upon return from Mexico, Claimant's use of prosthesis was good but it had loosened with stump atrophy. Readjustment of fit was recommended by Dr. Care. Retraining issues were evaluated.

14. On September 18, 2006 Dr. Care cleared Claimant to work as a truck driver. He rated Claimant's permanent impairment at 94% of the upper extremity for the amputation and 8% of the upper extremity for the loss of elbow range of motion. Using the combined values chart in the *AMA Guides*, a 94% upper extremity PPI resulted. Dr. Care expressly noted that future medical care, including multiple prosthetic replacements—perhaps annually—would be required for life. Dr. Care released Claimant to return prn.

15. Claimant worked the 2006 harvest as a truck driver.

Medical Care: 2007

16. On June 20, 2007 Claimant made a one-time visit to Eddie Rodriguez-Lopez, M.D., at Valley Family Health Care. Claimant thought his stump had become infected. Dr. Rodriguez-Lopez diagnosed cellulitis.

17. Dr. Care did not see Claimant between September 2006 and June 25, 2007 when he treated a possible infection.

18. Follow-up evaluation suggested a possible foreign body was causing the infection and pain.

19. On September 20, 2007, Dr. Care removed a permanent implant and some sutures in Claimant's stump which were initially thought to be contributing to infection and stump pain.

20. On October 1, 2007, Dr. Care's PA performed a follow-up evaluation of the stump revision. Dr. Care's PA recommended no work for two more weeks and reported a temporary restriction—no right-arm lifting over 10 pounds with the prosthesis in place.

21. Although Claimant still had some discomfort and symptoms, he did not seek care between October 29, 2007 and August 25, 2008.

Medical Care: 2008

22. Beginning August 25, 2008 Dr. Care resumed treating Claimant's stump issues, but deferred treatment of right shoulder symptoms.

23. On September 12, 2008, an MRI showed neuromas at the median and radial nerves at the amputation site.

24. On September 20, 2008, Dr. Care's PA attempted to assist Claimant with paperwork to qualify for renewal of a license as a truck driver. However, the paperwork was

deferred.

25. On September 22, 2008, Dr. Care opined that an MRI confirmed the presence of neuromas at the stump. Dr. Care expressed concern that surgical intervention might only make them worse. Moreover, symptoms from the neuromas were unpleasant but tolerable to Claimant, making surgery less desirable an option.

26. On October 7, 2008, upon referral from Dr. Care, Claimant began treating with Kevin Krafft, M.D. Dr. Krafft evaluated Claimant's stump and shoulder. Claimant stated he could probably return to field work. Dr. Krafft noted that Claimant reported some depression and difficulty sleeping. This is the first medical indication of emotional or psychological issues arising from the accident.

27. Claimant travelled to Mexico to visit family and stayed from about November 2008 to April 2009. No medical records are available throughout these dates, if any exist.

Medical Care: 2009 - Hearing

28. Dr. Krafft evaluated Claimant on May 15, 2009. They discussed Claimant's difficulty using his prosthesis to shift gears while driving truck. Dr. Krafft cleared Claimant to work as a truck driver.

29. Visits to Dr. Krafft in September 2010 involved neuropathic pain primarily in Claimant's neck and shoulder. Dr. Krafft opined these were likely related to the accident.

30. A January 14, 2011 visit to Dr. Krafft revealed continuing need for pain control and prosthetic adjustment.

31. Claimant's March 29, 2011 right shoulder MRI showed trace amounts of fluid but was otherwise normal.

32. On April 11, 2011, Kirk Nilsson, M.D., evaluated Claimant's right shoulder.

He diagnosed adhesive capsulitis. He noted the MRI taken March 29, but stated that an arthrogram would be the best diagnostic imaging and should be performed.

33. Drs. Nilsson and Krafft offered somewhat differing opinions about the extent to which Claimant's shoulder condition was related to the accident.

34. On May 6, 2011, Dr. Care, in correspondence with Claimant's attorney, expressed willingness to provide a referral for evaluation of possible neck and shoulder problems, but disclaimed competence in performing such evaluation himself.

35. Dr. Krafft performed follow-up evaluations, one each in June, August, and September 2011. His pain control prescription changed to Lyrica.

36. On August 10, 2011 Michael Curtin, M.D., performed a subacromial decompression on Claimant's right shoulder. He opined the need for surgery was caused by traction on Claimant's right arm at the time of the accident.

37. On October 20, 2011 Dr. Curtin opined Claimant was medically stable regarding his shoulder surgery. He deferred PPI rating to Dr. Krafft.

38. On December 8, 2011 Dr. Krafft rated Claimant's shoulder. He opined a 5% upper extremity rating which converts to a 3% whole person PPI, was appropriate. It was related to the accident without apportionment. Dr. Krafft recommended that Claimant drive trucks with automatic transmission when using Claimant's hand prosthesis, but allowed operation of manual transmissions using Claimant's "Otto Bock claw" attachment. Dr. Krafft opined Claimant had no restrictions related to the shoulder. Dr. Krafft also noted that Claimant was pursuing PTSD treatment. Oddly, Dr. Krafft's record ends with boilerplate indicative of an IME physician rather than a treating physician.

39. On December 20, 2011 Dr. Krafft noted Claimant's difficulty with adverse

reactions to medication.

40. Beginning September 8, 2012 Claimant visited counselor Jose Valle for counselling recommended by Craig Beaver, Ph.D. Claimant attended and cooperated in these sessions for about two months, then went to Mexico to visit family for about two months.

41. Claimant resumed counseling in February 2013. Sessions continued through May 2013.

Medical Opinions

42. Psychiatrist Kevin Krafft, M.D., opined in September 2010 that Claimant's neck and shoulder symptoms were likely related to the accident. In October 2010 he noted Claimant's continuing stump pain and need for recurrent adjustments of his prosthetics and for pain medication—Celebrex and Neurontin—for pain control.

43. Orthopedist Michael Curtin, M.D., opined on September 8, 2011, that Claimant's "emotional issues" were caused by the amputation. Although not trained in psychiatry, he considered Claimant's symptoms "would likely be consistent" with PTSD and anxiety. Dr. Curtin recommended evaluation and counseling.

44. On December 6, 2011, Craig Beaver, Ph.D., evaluated Claimant's psychological status at Surety's request. He reviewed medical records and administered tests. Dr. Beaver characterized Claimant's effort as "variable" and noted some testing, including the MMPI-II, was invalid. Testing for PTSD showed exaggeration, but also showed indications—"mild elevations"—to support that diagnosis. Claimant reported subjective symptoms not verified by testing. Dr. Beaver noted specific cautions relating to secondary gain, including the fact that Claimant expressed no significant psychological symptoms until relatively recently. Nevertheless, he diagnosed PTSD of "uncertain severity" and adjustment disorder with

depressed mood. Dr. Beaver recommended medication and a counselor. He opined Claimant's psychological condition was not at MMI yet.

45. On December 7, 2011, psychiatrist Vic Kadyan, M.D., evaluated Claimant at Surety's request. He reviewed records, administered tests, and examined Claimant. He diagnosed the amputation, neuropathic pain, the shoulder surgery, and PTSD. He opined Claimant's subjective complaints were consistent with objective findings and found no symptom magnification. He opined all related to the accident. He opined Claimant was not medically stable.

46. Dr. Krafft noted at a March 5, 2012 follow-up visit that Claimant's commercial driver's license (CDL) had been suspended from disuse; Claimant had not worked for too long. Dr. Krafft expressed his intention to assist Claimant in reinstating it.

47. A June 5, 2012 medical record of a visit contains Dr. Krafft's first mention of left shoulder symptoms. Dr. Krafft noted, "This is likely secondary to overuse while he could not use his right shoulder."

48. On February 21, 2013, Dr. Beaver again evaluated Claimant's psychological condition. He reviewed additional recent records. A second MMPI was also invalid. In Dr. Beaver's opinion, Claimant's psychological condition was essentially unchanged and still not stable.

49. On May 8, 2013 Dr. Krafft opined about Dr. Beaver's report. Essentially, he agreed with Dr. Beaver except that Dr. Krafft opined that Claimant's pain was real, even if overstated, and was related to the original accident.

50. On September 18, 2013 Dr. Beaver again evaluated Claimant's psychological condition. He reviewed additional recent records. Repeat testing showed invalidity of effort and

exaggeration of symptoms. Dr. Beaver opined that Claimant had reached MMI. Still, Claimant would benefit from additional counseling, both psychological and vocational. Dr. Beaver rated Claimant's psychological PPI at 15% of the whole person all attributable to the accident.

51. On September 20, 2013, Richard Radnovich, M.D., evaluated Claimant at Claimant's request. Dr. Radnovich identified specific medical records which he reviewed. He rated Claimant's PPI consistently with other physicians as discussed below. He restricted Claimant from overhead work, heavy machinery or farm equipment due to Claimant's PTSD, and imposed a 20-pound lifting restriction.

Vocational Factors

52. Born November 18, 1979, Claimant turned 26 on the date of the accident and was 33 on the date of hearing.

53. Claimant's stump is obvious as is scarring and disfigurement on the arm above it.

54. Educated in Mexico, Claimant is articulate and literate in Spanish. He reads and speaks English on a limited, non-fluent basis.

55. Claimant has performed various farm work and has worked as a firefighter with BLM. He has also performed other manual labor in various industries. He has worked as an equipment operator and an agriculture truck driver; a CDL was not required.

56. After the accident, Claimant obtained a CDL and worked the harvest season of 2006 driving truck. He worked as a truck driver for a farmer for one week in August 2009 or 2010. He has not otherwise been employed.

57. Claimant's driver's license from Oregon, current on the date of hearing, showed an endorsement allowing him to drive farm vehicles as well as regular highway automobiles.

58. Claimant formerly worked seasonally in the United States and returned to Mexico

annually. At the time of hearing Claimant and his family resided full time near Ontario, Oregon.

59. ICRD consultant Sandy Baskett began helping Claimant in December 2005. Conversations with trucking companies and truck-driving schools suggested Claimant's right arm amputation did not preclude success in this field. The ICRD closed its file in February 2007 when it appeared Claimant had work as a truck driver. Subsequent contacts with Claimant, attorneys and Surety are noted before ICRD reopened Claimant's file in February 2008. Work driving truck was pursued. In October 2009 ICRD closed its file noting that Claimant had "not followed through with the offered vocational assistance."

60. On June 29, 2009, Douglas Crum evaluated Claimant at the request of Claimant's former attorney. Mr. Crum erroneously ascribed a time-of-injury wage of \$15.00 per hour instead of the actual \$10.00. He reviewed records and interviewed Claimant. He opined Claimant had lost 75% labor market access. He opined Claimant was never an appropriate candidate for truck driving.

61. In April 2009, Surety recruited William Jordan to provide vocational rehabilitation assistance. Mr. Jordan began coordinating this effort through the office of Claimant's prior attorney. The attempt was made to renew Claimant's CDL. About May 15, 2009, Mr. Jordan evaluated Claimant. He continued to assist Claimant's return to work thereafter. Claimant's CDL was reinstated from Mid-June 2009 through mid-June 2011. In September 2013, Mr. Jordan identified several jobs Claimant could perform within physicians' restrictions. In deposition Mr. Jordan testified about regularly available jobs within Claimant's restrictions.

62. On August 27, 2013, Mary Barros-Bailey, Ph.D., evaluated Claimant at Surety's request. Her report is dated September 13, 2013. She reviewed records and interviewed

Claimant. She opined Claimant has lost about 88% labor market access. Combined with a lesser wage loss, Dr. Barros-Bailey opined Claimant's overall disability at 72.5%.

63. Barbara Nelson evaluated Claimant at Claimant's request. She evaluated Claimant with Mr. Jordan on May 8, 2013. Her report is dated November 1, 2013. She reviewed records and jointly interviewed Claimant. She questioned whether Claimant was sufficiently English-literate to qualify as a truck driver. She questioned whether Claimant's CDL allowed interstate employment versus intrastate within Oregon only. She opined Claimant was essentially unemployable and an odd-lot worker.

DISCUSSION AND FURTHER FINDINGS OF FACT

64. 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).

65. Claimant made a good first impression. His demeanor appeared credible. His testimony about being willing to work was persuasively sincere. He evinced pride when testifying about his ability to be the best worker. As he testified it was clear he believes in duty to work as a core value. Generally on the stoic side, Claimant had some difficulty controlling his serious emotional reaction to the initial reference to the date of the accident. However, he quickly overcame this and presented testimony in a forthright manner. This demeanor was evident despite the necessity of an interpreter to convey the content of his testimony. Moreover, based on cadence and ease of delivery, Claimant is intelligent and articulate in Spanish. The Commission finds no reason to disturb the Referee's findings and observations on Claimant's presentation or credibility.

Medical Care

66. An employer is required to provide reasonable medical care for a reasonable time as recommended by an injured worker's treating physician. Idaho Code § 72-432(1).

67. The record demonstrates Claimant's ongoing need for adjustments, repairs, and replacements of his prosthetic devices as well as for care of problems relating to his amputation site. Despite having reached medical stability, Claimant is entitled to future medical benefits for these conditions. All such medical benefits are and will continue to constitute reasonable care related to the accident.

68. Moreover, these benefits should be provided on a timely basis. Surety is cautioned against future delays in authorization or payment of these reasonable medical benefits.

Temporary Disability

69. Eligibility for and computation of temporary disability benefits are provided by statute. Idaho Code §72-408, *et. seq.* A claimant is entitled to temporary disability benefits only while he is in a period of recovery. *Otero v Briggs Roofing Co.*, 2007-016876, 2011 IIC 0056 (August 12, 2011). Upon medical stability, eligibility for temporary disability benefits ceases. *Jarvis v. Rexburg Nursing*, 136 Idaho 579, 38 P.3d 617 (2001). An injured worker who is unable to work while in a period of recovery is entitled to temporary disability benefits until he has been medically released for work and Employer offers reasonable work within the terms of the medical release. *Malueg v. Pierson Enterprises*, 111 Idaho 789, 727 P.2d 1217, (1986).

70. The record does not reveal the existence of a dispute between the parties about the amount of TTD paid or due Claimant.

Idaho Code § 72-451

71. A physical-mental claim is compensable pursuant to I.C. § 72-451 when the following conditions are satisfied:

- 1) The injury was caused by an accident and physical injury or occupational disease or psychological mishap accompanied by resultant physical injury;
- 2) The injury did not arise from conditions generally inherent in every working situation or from a personnel related action;
- 3) Such accident and injury must be the predominant cause as compared to all other causes combined of any consequence;
- 4) The causes or injuries must exist in a real and objective sense;
- 5) The condition must be one which constitutes a diagnosis under the American Psychiatric Association's most recent diagnostic and statistics manual, and must be diagnosed by a psychologist or psychiatrist licensed in the jurisdiction in which treatment is rendered; and
- 6) Clear and convincing evidence relates the psychological injury to the accident.

On December 06, 2011, February 21, 2013, and September 18, 2013, Craig W. Beaver, Ph.D., evaluated and examined Claimant's psychological status. The first examination dealt primarily with concerns about ongoing pain and possible psychological difficulties related to Claimant's traumatic right upper extremity amputation. As part of his evaluation, Dr. Beaver reviewed medical records and administered psychometric tests with the assistance of an interpreter. Following the December 2011 evaluation, Dr. Beaver opined that Claimant qualified for the following psychological diagnoses: posttraumatic stress disorder (uncertain severity) and adjustment disorder with depressed mood. Exh. A.1(f), pp. 10-11. Dr. Beaver's diagnoses were made under the Fourth Edition of *The Diagnostic and Statistical Manual of Mental Disorders* (DSM). Claimant's neurocognitive testing showed mixed effort and a tendency to exaggerate or

overstate symptomatologies. Dr. Beaver recommended additional individualized counseling and medication.

72. Dr. Beaver's February 21, 2013 evaluation addressed whether Claimant required ongoing care and treatment, whether he was at maximum medical improvement on his psychological issues, and if so, whether he had suffered impairment related to his condition and return-to-work issues. Dr. Beaver opined that Claimant's posttraumatic stress disorder and depression were directly related to the industrial accident, but that Claimant's pain disorder was not predominantly caused by his industrial accident. Dr. Beaver anticipated that Claimant would reach maximum medical improvement by June 1, 2013, after additional psychotherapy sessions. Dr. Beaver opined that Claimant's psychological conditions were significant enough to warrant a permanent restriction, namely avoiding mechanized machinery environments similar to the machinery on which he was injured (auger-type equipment). Exh. A.1(f) p. 26. Dr. Beaver did not restrict Claimant from returning to commercial driving of equipment and/or, delivery and pickup at farming or industrial operations that may have auger-like machines.

73. Claimant completed several counseling sessions following Dr. Beaver's February 21, 2013 evaluation and received follow-up medical care with Dr. Krafft.

74. On May 8, 2013, Kevin R. Krafft, M.D., reviewed Dr. Beaver's IME. Dr. Krafft acknowledged Claimant's tendency to overstate the severity of his complaints, but considered Claimant's neuropathic pain symptoms in the upper right extremity to be real. Dr. Krafft agreed with Dr. Beaver's diagnosis of the PTSD condition, and deferred to Dr. Beaver on the impairment rating.

75. Based on the foregoing, we find that the evidence clearly and convincingly establishes that the subject accident is the predominant cause, as compared to all other causes combined, of Claimant's diagnosis of PTSD.

76. Dr. Beaver's September 18, 2013 evaluation concerned Claimant's status following the additional treatment. Although Dr. Beaver believed Claimant would benefit from additional counseling sessions and antidepressant medication usage, Dr. Beaver opined that Claimant had reached maximum medical improvement. Again, Dr. Beaver cautioned Claimant against working in a mechanized environment as a permanent restriction. Dr. Beaver issued a 15% whole person impairment rating for Claimant's psychological conditions related to the industrial accident under the Sixth Edition of the *AMA Guides to the Evaluation of Permanent Partial Impairment*.

77. Claimant retained Richard Radnovich, D.O., for the purpose of an IME and impairment rating. Dr. Radnovich issued his report on September 20, 2013. Exhibit A.1(i). Dr. Radnovich also permanently restricted Claimant from working around mechanized farm equipment to prevent aggravation and exacerbation of PTSD. Utilizing the Sixth Edition of the *AMA Guides to the Evaluation of Permanent Partial Impairment*, Dr. Radnovich opined that Claimant had 15% impairment for his PTSD. The Commission finds that Claimant suffered a compensable psychological injury of PTSD under Idaho Code § 72-451, entitling him to 15% permanent impairment.

PPI and Permanent Disability

78. Permanent impairment is defined and evaluated by statute. Idaho Code §§ 72-422 and 72-424. When determining impairment, the opinions of physicians are advisory only. The Commission is the ultimate evaluator of impairment and disability. *Urry v. Walker*

& *Fox Masonry*, 115 Idaho 750, 769 P.2d 1122 (1989); *Thom v. Callahan*, 97 Idaho 151, 540 P.2d 1330 (1975).

79. Dr. Care rated Claimant's permanent impairment at 94% of the upper extremity for the amputation and 8% of the upper extremity for the loss of elbow range of motion. Dr. Care's 94% upper extremity PPI rating converts to a $(300 \times .94 = 282 \text{ weeks})$ 56.4% whole person rating. See, Idaho Code § 72-428(1). Although Dr. Care's ratings are correct upper extremity ratings under the *AMA Guides to the Evaluation of Permanent Impairment*, Claimant's amputation is statutory. Statutory PPI for the amputation is 270 weeks or 54% of the whole person. Idaho Code § 72-428(1). Dr. Care provided an 8% upper extremity rating for Claimant's elbow, which must be converted to a whole person rating of 4.8%. Dr. Care's rating did not consider psychological or left shoulder PPI.

80. Dr. Krafft issued a 2% whole person rating for Claimant's left upper extremity. Dr. Krafft testified that using the combined values table was appropriate and standard when there is more than one impairment, or if there is more than one impairment in a certain region or different regions. Krafft Depo. p. 16, ln. 3-17.

81. Dr. Radnovich agreed on a 57% PPI for the amputation, but added 15% for psychological impairment and 2% for the left shoulder.

82. All physicians who rated Claimant rated him consistently within a few percentage points. Claimant's amputation is statutory and equates to 270 weeks. Applying the combined values chart to Claimant's statutory rating would introduce an unauthorized reduction of the statutory impairment. Therefore, it is appropriate to apply the three non-statutory ratings to the combined values chart and add the total to the statutory amputation rating. Dr. Care's 8% upper extremity rating converts to a 4.8% whole person impairment rating. Next, the 4.8% whole

person impairment rating is combined with the 15% psychological impairment. Per the *Sixth Edition of the AMA Combined Values Chart*, Claimant would then have 19% whole person PPI¹. Thereafter, Claimant's 2% whole person rating for his left shoulder combines with the previous non-statutory ratings for 21% whole person PPI. Claimant's combined non-statutory rating of 21% (upper extremity, psychological, shoulder) equates to 105 weeks. Adding Claimant's non-statutory ratings with the statutory amputation (105 weeks + 270 weeks) equals 375 weeks (divided by 500) for a total of 75% whole person PPI. The Commission is persuaded that Claimant has a PPI rating of 75% of the whole person.

83. Claimant showed he is well motivated to work. During the first year after the accident Claimant expressed willing enthusiasm and a "can do" attitude about the potential for a return to work. Over the years, his mood and frustration with delays in adjustment and repairs to his prosthesis have understandably diminished his enthusiasm for the prospect of a return to long-term work. His perception of his disability has increased since.

84. Claimant has expressed frustration about the number of repairs and adjustments required for his prosthetics and the delays in obtaining repairs. He has expressed dissatisfaction with their usefulness. He has complained about discomfort when wearing a harness and other aspects of wearing these prostheses. Claimant has expressed a preference for going without prostheses entirely.

85. Claimant is not medically restricted from using his prosthesis. Claimant's objections and preferences do not serve to increase his permanent disability. A prosthetic arm with appropriate hand attachment is a device to facilitate productive function, no less than an artificial hip that restores an individual's ability to walk. A worker who could not perform

¹ Claimant's 4.8% whole person rating was rounded to 5% for the combined tables calculation.

certain physical tasks without a prosthesis should not be evaluated based upon its absence. Drs. Care and Krafft reviewed JSEs in which use of a prosthesis was considered, and upon which approval was predicated.

86. Nevertheless, with or without prosthetic assistance, the weight of opinion from vocational experts of record shows that Claimant suffered a significant disability as a result of the accident.

87. As discussed above, vocational expert Dr. Barros-Bailey opined Claimant has lost about 88% labor market access, and his overall disability is at 72.5%. Mr. Jordan identified several jobs Claimant could perform within his restrictions, and that the same are regularly available. Mr. Jordan included driving jobs in his report. On the other hand, Ms. Nelson testified that Claimant is unemployable and is an odd-lot worker. Mr. Crum criticized the appropriateness of driving jobs for Claimant, and opined that Claimant has lost 75% of his labor market access and 50% of his wages. Mr. Crum overstated Claimant's wage loss, as Claimant's time-of-injury job paid less than \$15.00 per hour. Mr. Crum opined that Claimant's overall disability is at 80%.

88. Claimant does not have any restrictions against using his prosthetic arm. Although acknowledging that Claimant has had difficulties with the same, the Commission is more persuaded by the medical opinions of Drs. Beaver, Care, Kadyan and Krafft, all of whom encouraged Claimant's use of the prosthetic device and approved the vocational goal of truck driving for Claimant. The Commission recognizes that Claimant has significant non-medical factors that impact his disability, specifically his limited English-speaking skills, basic academic achievement in Spanish and English, very limited transferrable skills, and an obvious, visible disability. For those reasons, the Commission finds that Claimant has suffered permanent

disability rated at 7% of the whole person in excess of 75% PPI.

Odd-Lot Considerations

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

90. Claimant asserts that he is an odd-lot worker. The vocational experts acknowledge that Claimant suffered significant permanent disability from the accident. Ms. Nelson opined that Claimant is an odd-lot worker and quoted the legal definition. However, Ms. Nelson disregarded Claimant's physician-given restrictions when evaluating whether or not he is an odd-lot worker, and she did not address his post-accident employment as a truck driver. Ms. Nelson insisted that Claimant's restrictions did not address difficulties that Claimant will have. Ms. Nelson acknowledged that the psychological restrictions from Dr. Beaver were not "over-limiting" but, again, she believed that Claimant's should have more profound vocational restrictions. Ms. Nelson did not address the findings that Claimant overstates the severity of his complaints, nor is she more persuasive than the medical opinions on Claimant's restrictions.

91. In fact, Claimant did attempt truck driving and performed successfully

for a harvest season. Mr. Jordan sought and identified jobs available to Claimant upon which Claimant did not follow-up. Claimant failed to show attempts to find suitable work would be futile. Claimant failed to show it likely he is entitled to odd-lot presumption. The preponderance of evidence from vocational experts opining shows it likely that Claimant can compete for jobs regularly available in his local labor market. Claimant is not an odd-lot worker.

Attorney Fees

92. Attorney fees are awardable where the criteria of Idaho Code § 72-804 are met.

93. Surety claims examiner Teresa Raymond's testimony shows Surety acted within the bounds of reasonableness. Surety relied upon physicians' opinions and recommendations. Surety acted in response to efforts of Mr. Jordan and ICRD and upon their recommendations. Surety attempted to retrain Claimant and place him as a truck driver based upon Claimant's stated preference at the time.

94. Acknowledging that delays occurred, Claimant failed to show such were caused by unreasonable action or inaction by Defendants. Some portion of these delays occurred when Claimant made trips to Mexico. Claimant failed to show it likely that Claimant is entitled to an award of attorney fees under Idaho Code § 72-804.

CONCLUSIONS OF LAW AND ORDER

1. Claimant is entitled to all medical care, including psychological care, provided to the date of hearing. He is entitled to all future medical care relating to his amputation stump and to adjustments, repairs, and replacements of prosthetic devices for his right arm;

2. Claimant is entitled to PPI rated at 75% of the whole person;

3. Claimant is entitled to permanent disability rated at 7% in excess of PPI;

4. Claimant failed to show it likely that he is totally and permanently disabled or that he qualifies as an odd-lot worker;

5. Claimant failed to show he is entitled to attorney fees under Idaho Code § 72-804.

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

DATED this __7th__ 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 __7th__ day of _November_____, 2014, a true and correct copy of **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** were served by regular United States Mail upon each of the following:

RICHARD K. DREDGE
802 W. BANNOCK ST., STE. 101
BOISE, ID 83702

BRIDGET A. VAUGHAN
1311 NORTH 25TH STREET
BOISE, ID 83702

dkb /s/ _____