BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

DEBRA STYHL, Claimant, v. IDAHO STATE UNIVERSITY, Employer, and IDAHO STATE INSURANCE FUND, Surety, Defendants.	**IC 2011-013302** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** Filed October 10, 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 Pocatello on December 3, 2013. Reed Larsen represented Claimant. M. Jay Meyers represented Defendants Employer and Surety. The parties presented evidence, took post-hearing depositions, and submitted briefs. The case came under advisement on May 13, 2014 and is now ready for decision.

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.

ISSUES

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

1. Whether Claimant complied with the notice and limitations requirements of Idaho Code § 72-701 through -706 and whether the limitations are tolled under Idaho Code § 72-604.
2. Whether the condition for which Claimant seeks benefits was caused by the alleged industrial accident.
3. 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, including total permanent disability;
d) Retraining; and
e) Medical care.

4. Whether Claimant is totally and permanently disabled as an odd-lot worker.

5. Whether apportionment for a preexisting condition under Idaho Code § 72-406 is appropriate.

CONTENTIONS OF THE PARTIES

Claimant contends she was exposed to chemicals working as a janitor for Employer for 24 years. On or about May 19, 2011 a particular exposure caused injury. She sought medical treatment but returned to work and to continued exposure. By May 31, 2011 she was unable to work as a result of this injury. The injury precludes her return to work as a janitor. Combined with non-medical factors—she was 62 at the date of hearing; she has no meaningful transferrable skills; she has failed attempts to develop transferrable skills—Claimant is totally and permanently disabled or should be deemed so as an odd-lot worker.

Defendants contend her claim is inapposite under an accident-and-injury theory. Regardless, she failed to give timely notice and failed to file a timely claim. Causal connections linking any cleaning product to actual, harmful exposure and then to any alleged physical condition are less than probable. Harm to Claimant, if any, was transient; Claimant recovered without a need for restrictions. Because no physician has opined that Claimant suffered a permanent impairment, no disability is awardable. Claimant's age- and obesity-related conditions preexist her claim; Defendants are not liable for these. Claimant failed to meet required criteria to qualify as an odd-lot worker. Claimant seeks to retire; she is not disabled.

EVIDENCE CONSIDERED

The record in the instant case included the following:

1. Oral testimony at hearing of Claimant;

2. Claimant's Exhibits A – I (including exhibits I-1 through I-55 which are Material Safety Data Sheets ("MSDS") for various cleaning products;

3. Defendants' Exhibits 1 – 9; and

4. Posthearing depositions of internist Linda Babbitt, M.D., internist and pulmonologist Steven Krawtz, M.D., and internist, allergist, and immunologist Emil Bardana, Jr., M.D., and vocational experts Delyn Porter and Nancy Collins, Ph.D.

All objections in depositions are OVERRULED except: objections on pages 20 and 21 in Dr. Babbitt's deposition are SUSTAINED.

After having fully considered the above evidence and arguments of the parties, the Commission hereby issues its decision in this matter.

FINDINGS OF FACT

1. Claimant worked for Employer as a janitor for 24 years. She has used myriads of cleaning products during that time.

2. Claimant's medical records before May 2011 are replete with notations of recurrent sinus and respiratory conditions. As early as August 1981 Claimant suffered from occasional bronchitis, runny nose, and similar symptoms.

3. Claimant has received treatment from Linda Babbitt, M.D., for age- and obesity-related conditions since 2006. She also received treatment for occasional flare-ups of a chronic sinus condition. As early as 2009 Claimant complained of malaise or fatigue with increased activity. Recurring sinus symptoms were considered by Dr. Babbitt to be caused by seasonal allergies or viruses before May 2011.

4. On May 18, 2010 Claimant visited Courtland Carbol, M.D., complaining of sinus congestion and drainage which had persisted for 10 days. He diagnosed upper respiratory infection.

5. On September 15, 2010 Claimant visited Dr. Carbol complaining of sinus

congestion and drainage which had persisted for one to two weeks. He diagnosed bronchitis.

6. On January 7, 2011 Claimant visited Dr. Carbol complaining of cough and sinus congestion and discharge. He diagnosed upper respiratory infection.

7. On April 8, 2011 Claimant visited Dr. Carbol for sinus congestion and drainage which had persisted for three months "since Christmas." Dr. Carbol prescribed medication and a daily saline nasal wash. He diagnosed sinusitis.

8. Claimant testified that she has long thought her recurring bronchitis and sinus conditions might be related to exposure to chemicals at work. Medical records do not indicate that she said so before May 2011. Before June 2011 no physician had expressed agreement with this proposition. Foamy Q&A (MSDS I-21) is the product Claimant believes injured her respiratory system in May 2011. The MSDS does not explicitly warn of particular health symptoms which might result from exposure. The record does not provide persuasive testimony which likely links any chemical in this product to Claimant's symptoms or conditions.

9. At times during her employment, Claimant could walk up eight floors without stopping to rest. In early May 2011 she could only walk up four floors. In late May 2011 she could only walk up one flight of stairs without stopping. At hearing, Claimant testified she must stop at least once while walking up the 10 steps to her front door.

10. On May 19, 2011 Claimant thought she was having heart issues related to her high blood pressure. She sought treatment at Portneuf Medical Center ER. The notes do not record any sinus or respiratory complaints, except for a single nurse's note which includes "dyspnea." The only test relevant to this matter was an oxygen saturation test which produced normal results. The final diagnosis was epigastric pain.

11. On May 26, 2011 Claimant visited Dr. Babbitt. She complained of blood pressure issues and trouble sleeping. No complaint or examination finding related to any possible respiratory or sinus problem. They discussed the May 19 ER visit. In deposition, Dr. Babbitt recalled a conversation with Claimant during the May 26 visit in which Claimant described recently working with some particularly strong chemicals and having some difficulty afterward.

12. On May 31, 2011 Claimant visited Portneuf Medical Center ER complaining of dyspnea and chest discomfort with general malaise. An initial nurse's note states:

> 60 y/o single female resides locally, employed with ISU as custodian for last 20 yrs, feels chemicals she has used over the years has affected her health, indicates wants to get a medical disability so can retire.

Claimant was admitted and treated through June 2nd. Claimant was evaluated by Linda Babbitt, M.D., who took the following history from Claimant:

> The patient states that she has not been feeling well for about 2 weeks and that her symptoms had gotten progressively worse the last two-to-three days.
>
> . . .
>
> Overall, the patient has been having a general feeling of malaise. She works doing cleaning at the University. Most recently they have been cleaning out the student housing apartments and she has been exposed to significant numbers of strong cleaning agents, including various solvents. She has found it more difficult to do her job due to fatigue and malaise most recently.

A cardiac workup including echocardiogram showed normal results. Pulmonary testing showed mildly reduced mid-flow rates; oxygen saturation was initially low. The presence of a nasal polyp was noted. Dr. Babbitt referred Claimant to pulmonologist Stephen Krawtz, M.D., for further evaluation. On May 31, 2011, Dr. Krawtz recorded the following history concerning the onset of Claimant's symptoms:

> This 60-year-old Caucasian female presented to the emergency room because of increasing dyspnea. She was also to the emergency room on 05/19 with the same symptoms. She has been working in housekeeping at ISU for 24 years. She has been chronically irritated by the cleaning solutions that are used for the bathrooms and showers. She does this on a daily basis. She has been more involved with cleaning the bathrooms now that the semester has ended. She has always noticed that these cleaning solutions will cause nasal irritation with a clear rhinitis, occasionally eye irritation with tearing and throat irritation. She also has had some chronic cough and dyspnea. She had an episode of increasing cough last summer and was given a diagnosis of bronchitis at an urgent care center. However, she felt that this was related to her work. Medical treatment did not improve her cough, bit it did eventually improve over time.
>
> However, she has been especially worse over the past 3 weeks since she has been more actively cleaning. She has had more trouble with her sinuses and feels like her sinuses, throat and lungs are "coated". She has had a nonproductive cough without sputum or fever. She has been more short of breath. This has been the worst she has been. The symptoms have been chronic, although getting worse. She states she has used up all of her medical leave in the past couple years. Her symptoms do not improve over the weekend off. She has been out as much as a week with symptoms and her sinopulmonary symptoms have improved somewhat over a week, but have not resolved. They recur as soon as she returns to work.

13. Dr. Krawtz noted the presence of ground-glass opacities and diagnosed small airways disease with a bronchodilator response. Linda Babbitt, M.D., became the attending physician. Dr. Babbitt diagnosed "1. small airways disease due to bronchiolitis secondary to inflammatory injury from chemical agents. 2. Mass in the right posterior nasal airway."

14. On July 11, 2011 Dr. Krawtz recorded restrictions as follows "avoid work-related cleaning solutions" and "cannot be around any number of cleaning solutions."

15. Ear, nose, and throat physician David Donaldson, M.D., provided a second opinion in July 2011. He confirmed Dr. Babbitt's diagnoses, recommended medication for Claimant's sinus condition and dietary precautions for her GERD. He did not opine about causation.

16. On November 11, 2011 Claimant visited Portneuf Medical Center ER for

what was diagnosed as high blood pressure and anxiety. In addition to her primary complaints relating to high blood pressure the record states, "She has hst of lung problems and [is] convinced she has ground glass in her lungs from cleaning solutions." The review of symptoms states, "Historian denies dyspnea on exertion . . . Historian denies cough, Historian denies shortness of breath, Historian denies wheezing." Although not the primary concern, the examination notes no significant nasal or respiratory findings upon examination.

17. On October 3, 2011 Emil Bardana, M.D., evaluated records and examined Claimant at Defendants' request. He found insufficient indicators to opine in Claimant's favor. He noted the absence of scientific data to support Claimant's claim of industrial exposure and identified alternate possible causes for her complaints.

18. On January 25, 2012 Dr. Krawtz summarized his care, opined on Claimant's conditions, and criticized Dr. Bardana's report.

19. On August 28, 2013 Dr. Krawtz examined Claimant for shortness of breath which Claimant related to asphalt work being performed outside her window. He noted, "ASSESSMENT: 1. History of irritant-induced bronchiolitis (2011), now resolved . . ."

20. Claimant has not worked since she was hospitalized at the end of May 2011.

Medical Opinions

21. As noted, on January 25, 2012, Dr. Krawtz authored a letter criticizing certain aspects of Dr. Bardana's opinion concerning the cause of Claimant's respiratory condition. He was especially critical of what he perceived to be Dr. Bardana's minimization of Claimant's long-term exposure to respiratory irritants at work. In this regard, Dr. Krawtz stated:

> I fully disagree with Dr. Bardana. He has an elegant 30-page dissertation on this patient's evaluation. He minimized her work exposure to chemicals and cleaners she has used for the past 24 years and places blame on other etiologies for this patient's chronic health problems.

. . .

> Dr. Bardana does not give an accurate accounting of the patient's work related symptoms for the past 24 years. The patient clearly stated in my original history and physical that she was better when away from work and worse at work. She has been having chronic increasing and persistent sinopulmonary symptoms for the past 2 years. Rather, Dr. Bardana he discusses other problems that the patient could possibly have and places much more weight on their significance to explain the patient's signs and symptoms.
>
> . . .
>
> In my medical opinion, this patient cannot return to her work environment as a house cleaner at Idaho State University because of the chemical and irritant exposures that occurs on a daily basis, which have resulted in significant health problems for this patient for the past 24 years, ending on May 31, 2011. She should not be exposed to these chemicals to any degree in the future. In mo opinion she is totally disabled from her current job and is unable to fulfill her job description because of the chemical exposures.

Therefore, foundational to Dr. Krawtz's ultimate opinion on causation is his understanding that Claimant was exposed to respiratory irritants over a period of 24 years which caused gradually worsening symptoms over time. However, he also noted that her symptoms worsened in May of 2011 "because of increased exposure to these chemicals." Dr. Krawtz's deposition was taken on January 2, 2014. In his testimony Dr. Krawtz explained Claimant's findings on x-ray and CT examination. The CT showed "ground glass infiltrates", which describes an abnormality at the alveolar level of the lungs. The causes of this condition are many, but based on Claimant's history and exam Dr. Krawtz diagnosed her as suffering from chemically-induced pneumonitis caused by her exposure to cleaning compounds. He reiterated his criticism of Dr. Bardana by again referencing Dr. Bardana's failure to consider Claimant's 24-year history of exposure to chemical irritants and the symptoms she had developed over the course of that exposure. He noted that Claimant told him that she had been experiencing escalating problems over the 2-year period prior to her hospitalization in May 2011. (Krawtz Deposition 45/6-19).

22. Dr. Krawtz testified that with Claimant's removal from exposure to chemical irritants her condition substantially improved. By August 28, 2013 he noted that Claimant's exertional dyspnea had improved, but not totally resolved. (Krawtz Deposition 36/23 – 37/13). Elsewhere, Dr. Krawtz testified that as of August of 2013 Claimant's pulmonary testing was essentially normal, as were her spirometry and other objective test results. In response to the question of whether Claimant had residual findings that would warrant an impairment rating, Dr. Krawtz responded, "Yes and no." (Krawtz Deposition 58/12-18). By this he meant that while Claimant had no objective findings that suggested the presence of residual lung injury, it was nevertheless important for her to avoid exposure to irritants because of the possibility that her symptomatology would return. Finally, Dr. Krawtz testified that while he is not an ENT, it is his belief that the hypertrophic mucosa in Claimant's nose is related to chronic irritant exposure in the course of Claimant's employment at ISU. (Krawtz Deposition 45/23 – 47/7).

23. In her February 1, 2012 letter, Dr. Babbitt reported that she took a slightly different history from Claimant concerning the onset of her symptomatology. Claimant gave an initial history of symptoms which started 12 days prior to May 31, 2011 and had progressively worsened. In this regard, Dr. Babbitt stated:

> This was an acute presentation with no similar events anywhere in her prior history. She told me she had been working with very strong cleaning solutions in her job at Idaho State University (ISU) and for the last several weeks she had been getting progressively more short of breath, along with weakness and a general feeling of ill health.

She expressed her agreement with Dr. Krawtz's diagnosis based on Claimant's history and the acute onset of severe symptoms after being exposed to more potent chemicals in the spring of 2011.

24. Dr. Babbitt's deposition was taken on February 7, 2014. She testified that when she saw Claimant prior to her hospitalization on May 26, 2011, she remembered that Claimant had reported not feeling well owing to cleaning apartments with strong chemicals. However, Dr. Babbitt reported no findings which would be suggestive of a respiratory problem. When Claimant was seen at the hospital on May 31, 2011, Dr. Babbitt reported that Claimant exhibited symptoms which had never been seen by her in connection with her treatment of Claimant since 2006. (Babbitt Deposition 19/6-11). However, Dr. Babbitt also testified that she thought that Claimant's symptoms had been progressive over time as she was progressively exposed. (Babbitt Deposition 22/16 – 23/22). Ultimately, she agreed with Dr. Krawtz that Claimant had been exposed to chemicals in her occupation that caused the lung condition from which she was suffering in May 2011. (Babbitt Deposition 23/14-19).

25. Dr. Babbitt testified that Claimant has made improvement since avoiding exposure to chemical irritants. Dr. Babbitt acknowledged that certain notes generated by both her, and other providers prior to May 2011 demonstrate that Claimant did present with certain symptoms similar to those with which she presented in May 2011. She also acknowledged that Dr. Krawtz recorded a history of respiratory symptoms which pre-dated Claimant's May 2011 hospitalization for a period significantly longer than what Claimant reported to Dr. Babbitt. On the issue of Claimant's current condition, Dr. Babbitt stated that while she would defer to Dr. Krawtz on this, she did not believe that Claimant had returned to her "baseline." (Babbitt Deposition 25/11-16). On August 28, 2013, Dr. Krawtz stated that from a pulmonary standpoint Claimant's exertional dyspnea had improved, but not totally resolved. Dr. Babbitt stated that this came as no surprise to her since Claimant has had exertional dyspnea from the outset of her relationship with Dr. Babbitt, going back to 2006. (Babbitt Deposition 46/8-19). Dr. Babbitt

proposed that this exertional dyspnea may be related to other physical conditions with which Claimant struggles. Dr. Babbitt recognizes that the objective findings on x-ray and CT have resolved and that Claimant has no current evidence of injury to her lungs. (Babbitt Deposition 41/25 – 42/8). However, like Dr. Krawtz, she believed it imperative for Claimant to refrain from further exposure to respiratory irritants against the chance that she would experience the recurrence of symptoms and injury. (Babbitt Deposition 48/6-12). Dr. Babbitt has no reason to disagree with Dr. Krawtz's finding that Claimant's irritant-induced bronchiolitis has not resolved. (Babbitt Deposition 48/21 – 49/6).

26. Dr. Bardana opined: ground-glass opacification is a non-specific finding which does not, by itself, support a finding of bronchiolitis; bronchiolitis is a general term involving several diagnoses; by itself, bronchiolitis does not indicate chemical exposure; without a biopsy, a causation opinion based upon ground-glass opacification and/or bronchiolitis is speculative.

27. Dr. Bardana agreed that Claimant should not return to her job—not because of any work injury, but because of her age- and obesity-related conditions. She could perform sedentary work.

28. Dr. Bardana identified five sources of alternate causation applicable to Claimant. The dispute about whether Claimant told him she had used Afrin nasal spray is not dispositive to any issue.

Vocational Opinions

29. Nancy Collins, Ph.D., evaluated Claimant at Claimant's request. Dr. Collins opined Claimant would not be competitive for any employment and was, therefore, an "odd-lot worker." She criticized the analysis of Delyn Porter.

30. Mr. Porter evaluated Claimant, opined that she presented a significant partial disability, and identified jobs she could perform.

DISCUSSION AND FURTHER FINDINGS OF FACT

31. 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).

32. At hearing, Claimant demonstrated that she is a very nice lady. Her demeanor showed she truthfully believes every statement she made. Claimant's understanding of medical terms and concepts is limited as is her insight into matters of causation. Where medical records are inconsistent with her testimony, the records receive more evidentiary weight.

Notice

33. The issue before the Commission is whether the condition for which Claimant seeks benefits is causally related to a discreet accident in May 2011. While the parties queried Claimant's treating physicians on facts relevant to the manifestation of an occupational disease (*See* Krawtz Deposition 49/15 – 51/25), such inquiries are inapposite to the accident/injury claim before us. We do not have before us the issue of whether Claimant suffered a compensable occupational disease. We are only concerned with ascertaining whether Claimant suffered an injury as a result of the accident occurring in May 2011, and whether notice was given as required under Idaho Code § 72-701, or should be excused under Idaho Code § 72-704. We think the record is clear that as of early June 2011, Claimant gave notice required by statute to employer. We find that notice is timely.

Causation

34. A claimant has the burden of proving the condition for which compensation is sought is causally related to an industrial accident. *Callantine v Blue Ribbon Supply*, 103 Idaho 734, 653 P.2d 455 (1982). Further, there must be evidence of medical opinion—by

way of physician's testimony or written medical record—supporting the claim for compensation to a reasonable degree of medical probability. No special formula is necessary when medical opinion evidence plainly and unequivocally conveys a doctor's conviction that the events of an industrial accident and injury are causally related. *Paulson v. Idaho Forest Industries, Inc.*, 99 Idaho 896, 591 P.2d 143 (1979); *Roberts v. Kit Manufacturing Company, Inc.*, 124 Idaho 946, 866 P.2d 969 (1993). A claimant is required to establish a probable, not merely a possible, connection between cause and effect to support his or her contention. *Dean v. Dravo Corporation*, 95 Idaho 558, 560-61, 511 P.2d 1334, 1336-37 (1973).

35. As noted above, the question in this case is whether Claimant suffered injury as a consequence of the May 2011 accident. One of the problems with addressing this question is that while there is ample medical testimony supporting the proposition that Claimant has a chemical-induced pneumonitis or bronchiolitis, there is very little evidence which addresses the specific question of whether the accident of May 2011 accident, versus Claimant's 24-year exposure history to irritants, caused the injury in question. For example, after describing the history he took from Claimant concerning working with irritating chemicals over the course of 24 years with slightly greater exposure in the spring of 2011, Dr. Krawtz offered the following opinions on the cause of Claimant's injury:

> Q. And so does that history in and of itself provide the basis for a diagnosis or causal connection?
>
> A. Well, in this case, and in my opinion, I felt that there was a causal relationship between the cleaning solution she worked with and the symptoms she was complaining of and the hypoxia that was documented during the hospitalization.
>
> …
>
> Q. So at that point did you formulate a diagnosis with reasonable medical probability for Ms. Styhl?

> A. Well, yes. Based on her history and the findings in my examination, I thought the patient had a pneumonitis, which means inflammation of the lung tissue. And I felt it was chemically induced, based on her history. So I gave her a diagnosis that there was likely a chemical pneumonitis based on the cleaning compounds that she had been working with.
>
> …
>
> Q. And at this point in time in June of 2000—June 21st of 2011 did you form an opinion with reasonable medical probability as to whether or not Ms. Styh;'s lung condition that she was presenting you with was related to an industrial exposure at her work?
>
> A. Yes. In my opinion I did feel that her work-based exposures were the explanation for her sinus and pulmonary symptoms.

(Krawtz Deposition 18/17-23 … Krawtz Deposition 20/24 – 21/8 … Krawtz Deposition 29/7-14).

It is also important to recall that Krawtz attaches considerable significance to the entirety of Claimant's exposure history, since he was very critical of Dr. Bardana for downplaying Claimant's 24-year history of exposure to chemical irritants in her job as a housekeeper.

36. From the questions posed to Dr. Krawtz, and from the answers he gave, however, it is very difficult to tease out whether, or to what extent, he felt that the specific accident of May 2011 was responsible for causing or contributing to Claimant's respiratory condition. Dr. Krawtz's January 25, 2012 critique of Dr. Bardana's report is, however, somewhat more helpful in revealing his opinions on the significance of the May 2011 accident. There, Dr. Krawtz stated:

> This patient does have irritant-induced hypertrophic rhinitis and cough. She had transient bronchiolitis because of the chemicals at work. She worsened in May because of increased exposure to these chemicals. She is clearly improved symptomatically with removal from the work environment and no other specific therapy, despite ongoing chronic reflux and hypertensive problems.

We believe this establishes that Dr. Krawtz is of the view that the increased chemical exposure to which Claimant was subjected to in May 2011 caused additional injury or a "worsening" of her symptoms. We find this statement persuasive and not inconsistent with anything to which Dr. Krawtz testified in the course of his deposition.

37. Claimant gave Dr. Babbitt a slightly different history of onset, and Dr. Babbitt testified that the conditions with which Claimant presented in May 2011 were entirely new, and different from the symptoms previously observed in Claimant. She too believed that the condition observed in May 2011 was caused by exposure to chemical irritants, but neither did she, in her testimony, distinguish between long-term exposure, and the May 2011 accident. Only in her February 1, 2012 letter did she emphasize that Claimant, at least, related her increasing problems to the more intense exposure she suffered towards the end of the spring semester.

38. Finally, we must consider the fact that immediately following Claimant's removal from exposure to respiratory irritants, her condition began to improve. This is strongly suggestive of the existence of a causal relationship between Claimant's respiratory condition and the chemical irritants to which she was exposed; but not as helpful in teasing out whether the May 2011 accident, versus Claimant's 24-year exposure history,is responsible for the objective findings noted in May 2011.

39. On balance, we believe that the testimony and records of Dr. Krawtz are sufficient to establish that Claimant did suffer an injury to her lungs as a consequence of the May 2011 accident, but, as developed below, we find no evidence that the accident resulted in a permanent injury. For the reasons developed by Dr. Krawtz, we do not find the opinions of Dr. Bardana to be particularly persuasive in this matter.

Medical Care

40. 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).

41. Physicians' attempts to diagnose her complaints, sort for causation, and treat Claimant's bronchiolitis and ground-glass opacities constituted reasonable medical care. It should be compensable until she reached medical stability for these transient conditions which were caused by the acute industrial exposure. Treatment for chronic and/or recurrent sinus and respiratory conditions after medical stability was not reasonably related to the May 2011 exposure. A preponderance of evidence shows that treatment provided after medical stability has not been established as compensable.

Temporary Disability

42. 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 the period of recovery. *Otero v Briggs Roofing Co.*, 2007-016876, 2011 IIC 0056 (August 12, 2011). Upon medical stability, eligibility for temporary disability benefits does not continue. *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 under the statutes 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). The statute requires a five-day waiting period before temporary benefits become payable but once exceeded benefits are payable for that time. Idaho Code § 72-402.

43. Dr. Krawtz testified that as of August 28, 2013, Claimant had no objective findings suggestive of respiratory injury. Her dyspnea was significantly improved, "but not

totally resolved." Dr. Babbitt testified that while she agreed that Claimant's bronchiolitis had resolved, she was not surprised that Claimant continued to have some dyspnea as of August 2013. She testified that from the beginning of her relationship with Claimant, Claimant had always had some exertional dyspnea, perhaps related to her weight or general deconditioning. Therefore, we find that Claimant reached a point of medical stability on August 28, 2013 from the effects of the May 2011 accident. Claimant is entitled to the payment of TTD benefits through her date of medical stability pursuant to Idaho Code § 72-408 and Idaho Code § 72-409 as interpreted by *Malug, supra*.

PPI and Permanent Disability

44. Permanent impairment is defined and evaluated by statute. Idaho Code §§ 72-422 and 72-424. When determining impairment, the opinions of physicians are advisory only. The Commission is the ultimate evaluator of impairment. *Urry v. Walker & Fox Masonry*, 115 Idaho 750, 769 P.2d 1122 (1989); *Thom v. Callahan*, 97 Idaho 151, 540 P.2d 1330 (1975). Permanent impairment is prerequisite to permanent disability. Idaho Code § 72-423. The extent of a Claimant's permanent disability is determined on the date of hearing. *Brown v Home Depot*, 152 Idaho 605, 272 P.3d 577 (2012).

45. No physician has provided a permanent partial impairment (PPI) rating for Claimant's bronchiolitis and ground-glass opacities which were causally related to the acute industrial exposure in May 2011. Indeed, all physicians opining on the subject have reported that these have resolved with time away from the exposure.

46. While we appreciate that Claimant has been given restrictions against returning to work in an environment which would expose her to irritants of the type to which she was exposed while working for employer, the record does not reflect that such restriction is due to

the specific May 2011 accident, versus Claimant's 24-year exposure history. We conclude that Claimant has failed to demonstrate that she has suffered permanent physical impairment as a consequence of the specific accident of May 2011. Without a finding of permanent injury, the question of permanent disability referable to the accident of May 2011 is moot. *Urry v. Walker and Fox Masonry Contractors*, 115 Idaho 750, 764 P.2d 1122 (1989).

CONCLUSIONS

1. Claimant gave timely notice of the May 2011 accident;

2. The May 2011 accident caused/contributed to Claimant's lung injury diagnosed in June 2011;

3. Claimant is entitled to medical care and temporary disability benefits through August 28, 2013, the date of medical stability;

4. Claimant failed to show she is entitled to PPI; and

5. Claimant failed to show she is entitled to disability, there being no impairment referable to the subject accident.

ORDER

1. Claimant gave timely notice of the May 2011 accident;

2. The May 2011 accident caused/contributed to Claimant's lung injury diagnosed in June 2011;

3. Claimant is entitled to medical care and temporary disability benefits through August 28, 2013, the date of medical stability;

4. Claimant failed to show she is entitled to PPI;

5. Claimant failed to show she is entitled to disability, there being no impairment referable to the subject accident; and

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

DATED this __10th_ day of __October_____, 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 _10th_____ day of __October_____, 2014, a true and correct copy of FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER was served by regular United States Mail upon each of the following:

REED W. LARSEN
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ka _/s/_____