BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

SHELLY JEANNE CASH, Claimant, v. ST. LUKE'S REGIONAL MEDICAL CENTER, Self-Insured Employer, Defendant.	**IC 2003-010907** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** Filed: December 7, 2010

Pursuant to Idaho Code § 72-506, the Industrial Commission assigned this matter to Referee Rinda Just, who conducted a hearing in Boise, Idaho on April 6, 2010. Claimant appeared *pro se*. Alan K. Hull and Rachael M. O'Bar represented Defendant. The parties presented oral and documentary evidence at the hearing. Post-hearing depositions were taken, and the parties submitted post-hearing briefs. The case came under advisement on August 26, 2010, and is now ready for decision.

ISSUES

After due notice and by agreement of the parties at hearing, the issues are:

1. Whether Claimant has complied with the notice limitations set forth in Idaho Code § 72-701 through Idaho Code § 72-706, and whether these limitations are tolled pursuant to Idaho Code § 72-604;

2. Whether and to what extent Claimant is entitled to the following benefits:

    a. Medical care;

    b. Permanent partial impairment (PPI);

c. Permanent partial disability in excess of impairment, including total permanent disability pursuant to the odd-lot doctrine;

3. The extent and nature of the injuries actually suffered by Claimant in the accident of August 30, 2003;

4. The extent that Claimant's condition or conditions pre-existed her accident of August 30, 2003;

5. Whether a portion or all of Claimant's condition is compensable pursuant to the provisions of Idaho Code § 72-451; and

6. The extent of the medical and/or psychological conditions caused by the accident alleged to have occurred on August 30, 2003.

CONTENTIONS OF THE PARTIES

Claimant argues that she is entitled to additional medical treatment as a result of her August 30, 2003 accident. Claimant asserts that she has spine and neck conditions, bilateral knee conditions, reflex sympathetic dystrophy (RSD), bladder dysfunction, and psychological trauma as a result of her industrial accident. Claimant contends she is entitled to additional medical benefits, including past and present prescription medications, doctor visits, and lab and radiological services. Claimant asserts that she has permanent restrictions because of her accident, and she requests retraining because she believes nursing is too physically demanding for her physical condition.

Defendant contends it provided reasonable medical care to Claimant after her industrial accident. Defendant accepted Claimant's claim, and paid benefits. Defendant asserts it is not responsible for the additional medical treatment that Claimant seeks, as her treating physicians released Claimant from care and found her medically stable from her accident. Defendant

contends that Claimant has failed to demonstrate that she is entitled to any further benefits in connection with her industrial injuries. Finally, Defendant contends that Claimant is not a reliable witness—she is a poor historian and her testimony was inconsistent.

EVIDENCE CONSIDERED

The record in this instant case consists of the following:

1. Oral testimony of Claimant, and her husband, Steve Cash, at hearing;
2. Claimant's Exhibits 5, 9 and 10, admitted at hearing;
3. Defendant's Exhibits 1 and 2, and 4 through 36, admitted at hearing;
4. Post-hearing depositions of Beth Ambrose Gray, FNP, taken April 19, 2010; Robert Calhoun, Ph.D., taken May 3, 2010; and Rodde Cox, M.D., taken May 4, 2010; and
5. The Industrial Commission legal file.

At hearing, Defendant objected to several proposed exhibits from Claimant, including advertisements for a local chiropractor, the American Medical Association Code of Medical Ethics, and articles on whistle blowing. The Referee allowed Claimant the opportunity to lay a foundation for the admission of her exhibits, but Claimant failed to do so either at hearing or during the post-hearing depositions. As a result, Claimant's Exhibits 1 through 4 and 6 through 8 are not a part of the record. After having fully considered the above evidence and arguments of the parties, the Referee hereby submits her recommendation in this matter.

FINDINGS OF FACTS

1. Claimant was forty-nine years old at the time of hearing. She is married to Steve, and they have one minor child living at home. Steve has been disabled since the late 1970s, and Claimant is the primary breadwinner for the family.

EDUCATION

2. Claimant attended Umpqua Community College in Roseburg, Oregon, and received an Associate of Arts in general studies, an Associate of Science with a pre-vocation in nursing, and an Associate of Applied Science with a registered nursing degree. Claimant went on to complete her education at the Southern Oregon State College in Ashland, Oregon, earning her bachelor's degree.

WORK HISTORY

3. Claimant's past work experience includes positions in food service and nursing, but most of her career has been in the nursing field. At the time of her industrial accident, Claimant worked as a nurse for Defendant in the medical surgical department. Claimant earned an average weekly wage of $1,057.33. Claimant worked twelve-hour shifts, and was responsible for treating post-operative, ill, or injured patients arriving from the emergency room or directly admitted for hospitalization.

ACCIDENT

4. Claimant's accident occurred on August 30, 2003 while she assisted a co-worker move a morbidly obese patient. Claimant and her co-worker had difficulty positioning the patient on a bariatric bed. They made several attempts to transfer the patient. Claimant described the process of lifting the patient's legs onto the bed as both difficult and strenuous. Claimant felt an unusual sensation or strain in her entire left side after repositioning the patient's legs. Claimant also testified that, in the process of moving the patient, she came in close proximity to the patient's pannus, a large tumor filled with waste products.[1] After the lifting incident, Claimant sat in the break room for approximately fifteen to thirty minutes. When she

[1] Claimant testified that the tumor weighed forty pounds after its removal.

left the break room, Claimant noticed pain as she walked to her next patient's room. After completing her shift, Claimant sought treatment at St. Luke's Meridian Emergency Room.

MEDICAL CARE

5. Neeraj Soni, M.D., evaluated Claimant at St. Luke's Meridian Emergency Room. Claimant reported nonspecific back pain and mild discomfort with standing or walking, with no radicular symptoms. On exam, she exhibited tenderness over the femoral triangle. Dr. Soni's report does not reference any knee complaints. Robert Hilvers, M.D., reviewed Dr. Soni's report, and diagnosed a left fascial hip strain with suspected femoral hernia.

6. Claimant received additional treatment at St. Luke's Occupational Health Services and Employee Health and Wellness with Paige Cline, P.A.C. On September 3, 2003, Claimant complained of right-sided low back pain, and reported that the radiation of pain into her toe had resolved at the time of evaluation. Claimant denied weakness in the lower extremities, and denied problems with bladder or bowel function. Claimant had full range of motion in her back and hip. Ms. Cline noted that there was tenderness in the femoral triangle, but no swelling or palpable deformity. Ms. Cline found Claimant had a stable gait, and released her to modified work duties, pending further evaluation by Jon Getz, M.D., and Ralph Sutherlin, D.O.

7. On September 5, 2003, Beth Gray, F.N.P., saw Claimant and recorded the following complaints:

- Pinching sensation in left groin with weight-bearing;
- Right back and hip pain;
- Gait disturbance;
- Left knee symptoms;
- Difficulty walking, with pain shooting from big toe through inside of the left leg and progressing to the inside of the right leg; and
- Left shoulder pain with constant left hand numbness distal from the elbow.

Ms. Gray did not find any limitations in Claimant's range of motion of the cervical area, the shoulder area, the elbows, wrists, trunk, or knees. Neither did she notice any complaints or abnormalities during Claimant's squatting test for her knees. Ms. Gray did note that Claimant had complaints when she made a lateral movement, which indicated pain in her back. Claimant was negative for sciatica during straight leg raising test, and her left knee test did not indicate any abnormalities. Ms. Gray assessed lumbosacral strain and left ulnar radiculopathy, but referred Claimant to Dr. Sutherlin for consideration of a possible left femoral hernia. Ms. Gray placed Claimant on modified work duty with restrictions of no lifting over fifteen pounds, no repetitive stooping, bending, or twisting, no prolonged vibration, no pushing or pulling of more than fifteen pounds, and frequent position changes.

8. On September 8, 2003, Dr. Sutherlin recorded Claimant's complaints of left forearm pain radiating toward her hand together with continuing pain in her left groin. Dr. Sutherlin recommended a general surgical consultation to determine whether Claimant had a femoral hernia. Scott Henson, M.D., of Boise Surgical Group found Claimant did not have a femoral hernia. On September 15, 2003, Dr. Sutherlin found Claimant's left shoulder pain was resolved, and that her left groin muscular strain was improving. Dr. Sutherlin released Claimant to full-duty work, and advised Claimant to contact him after her two-week vacation in Hawaii.

9. On October 14, 2003, Dr. Sutherlin noted Claimant was doing better, but she reported persistent numbness in the left hand and aching and discomfort in the large toes, with occasional numbness. Claimant reported that while in Hawaii, she snorkeled, but denied surfing or mountain climbing. Dr. Sutherlin ordered an MRI of the cervical and lumbar spine to assuage Claimant's concerns about acute changes to her spinal cord. Claimant's cervical and lumbar spine MRIs showed mild degenerative changes. Dr. Sutherlin placed Claimant on modified

work restrictions of no lifting over thirty pounds, no repetitive stooping, bending, or twisting, and no pushing or pulling over thirty pounds. Dr. Sutherlin referred Claimant to Michael Weiss, M.D., for a second opinion.

10. On October 22, 2003, Dr. Weiss diagnosed Claimant with myofascial pain syndrome following her industrial accident. He released her to light-duty work, pending physical therapy for her left arm and bilateral toe symptoms.

11. On November 5, 2003, Claimant reported to Dr. Weiss she was experiencing throbbing spasms in her back and into her posterior thighs, with throbbing and numbness over her anterior legs, weakness over her abdominal muscles and burning inside her groin. Dr. Weiss determined that Claimant was having myofascial back pain; he continued her physical therapy, and modified her work release from light-to-medium level work. Dr. Weiss noted that Claimant had no atrophy of fasciculations, good range of motion, symmetrical reflexes, and a normal functional evaluation. Dr. Weiss observed that Claimant's pain diagram responses were somewhat bizarre. (*See,* Def. Exh. 12, p. 23). Dr. Weiss referred Claimant to Howard King, M.D., for a surgical evaluation.

12. Claimant was dissatisfied with Dr. Weiss' treatment. She believed he was "very unapproachable" and "very abusive." (Cl. Depo., p. 257). Claimant testified that Dr. Weiss became upset when she reported having problems with bladder incontinence and spasms. Claimant also insists she told Dr. Weiss that her arm turned into a "cold claw" with horrible pain radiating through the area.

13. Claimant sought a second opinion by Samuel Jorgenson, M.D., on November 17, 2003. Dr. Jorgenson noted that Claimant reported neck, left shoulder, and left arm complaints. Claimant indicated that her left arm was cool, and possibly atrophying. Claimant also reported

pain in the left posterior buttock and left groin, pain down her left leg, and some numbness and tingling sensations in both feet. Dr. Jorgenson assessed cervical spondylosis, lumbar spondylosis, and possible Reflex Sympathetic Dystrophy (RSD) or Chronic Regional Pain Syndrome (CRPS).

14. On November 20, 2003, Dr. King reviewed Claimant's medical history and noted that she complained of numbness along her little finger and her left little toe, as well as daily aching pain, numbness, paraesthesias, weakness, and bladder retention. Dr. King assessed back pain, lumbar strain, possible RSD, and neck and upper back pain. Dr. King felt Dr. Jorgenson's suggestion of RSD was interesting, giving Claimant's unusual pain pattern, and noted that Claimant's complaints were not supported by the objective findings. Finally, Dr. King opined that no surgical intervention was required, and her symptoms did not align with the described industrial injury.

15. On December 2, 2003, Dr. Weiss re-evaluated Claimant. Claimant reported that her left shoulder was "out" and that her husband had tried to manipulate the shoulder into its proper position. Dr. Weiss referred Claimant to David Price, D.C., for chiropractic treatment for two weeks.

16. On December 4, 2003, Dr. Price began chiropractic treatment with Claimant. Unfortunately, Claimant had "such a large array of symptomatology covering such a broad area that it [was] somewhat difficult for [Dr. Price] to get a good 'finger' on it." (Def. Exh. 17, p. 11). Claimant reported steady improvement with her chiropractic treatment, until she started taking the antidepressant medication, Wellbutrin.

17. Around this time, Claimant sought treatment from Michael McClay, Ph.D. Claimant was unimpressed with Dr. McClay's treatment, and declined further visits. Claimant

was expecting biofeedback and an anti-depression medication from Dr. McClay, rather than the "virtual reality" treatment she received. Claimant did not trust the virtual reality treatment and surmised that it could have been "hypnotism or something so I wouldn't file a claim." (Cl. Depo., p. 288).

18. On January 28, 2004, Claimant had her final visit with Dr. Weiss. Dr. Weiss reviewed a pain diagram from Claimant that rated her pain as "8" on a scale of 1 through 10. Claimant reported:

- Stabbing intermittent pain in her chest;
- Burning pain in her left shoulder;
- Locking sensations in her left shoulder scapular area, left lateral chest wall, and left lateral forearm;
- Spasms and stiffness in her right buttock area; and
- Burning and pinching in the left groin area.

Claimant reported that her physical condition had not improved with the chiropractic treatments with Dr. Price. Dr. Weiss found Claimant had myofascial pain with continued somatization disorder. Claimant strongly disagrees with Dr. Weiss' assessment that she did not have RSD. She believes Dr. King told her and her husband that she had RSD. After a flurry of internet research on RSD, Claimant determined that RSD requires a "compassionate caregiver" and confronted Dr. Weiss to encourage him to be "not psychotic." (Cl. Depo., p. 296). Claimant maintains that Dr. Weiss lied to her, and became irate at her for reporting her symptoms. Dr. Weiss referred Claimant to Paul Collins, M.D., for a second opinion.

19. Dr. Collins evaluated Claimant in February 2004, and concluded that Claimant did not have RSD. Claimant was upset with Dr. Collins' conclusion on RSD, and theorized that Dr. Weiss influenced Dr. Collins' conclusion about the appropriate treatment for her case. Dr. Collins ordered physical therapy for Claimant.

20. In a letter to Defendant dated February 17, 2004, Dr. Weiss declared Claimant at maximum medical improvement with no ratable impairment. Defendant accepted Claimant's claim and paid benefits until Dr. Weiss found Claimant had reached MMI and gave her permanent restrictions. Claimant was able to continue performing her time-of-injury job despite her restrictions.

POST-MMI MEDICAL CARE

21. After being released from care by Dr. Weiss, Claimant continued to seek treatment on her own. Defendant did not receive a petition for a change of physician from Claimant and did not pay for medical treatment Claimant pursued following her release by Dr. Weiss. Despite Claimant's insistence to the contrary, Defendant did not authorize a request by Claimant to receive further evaluation from a six-doctor panel.

22. On March 16, 2004, Richard DuBose, M.S., a pain management specialist, evaluated Claimant regarding her complaints of low back pain, mild radicular leg pain, and left arm pain. Dr. DuBose found lumbar spondylosis with multiple bulging discs, cervical spondylosis and low back pain. Dr. DuBose did not think Claimant had RSD. Claimant alleges that Dr. DuBose had financial incentives to find she did not have RSD, because he would not make money on her RSD treatment. In the alternative, Claimant alleges that Dr. DuBose did not even look for evidence of RSD.

23. Dr. DuBose performed an L4-5 lumbar epidural steroid injection. When Claimant reported some improvement, Dr. DuBose provided a second L4-5 injection on April 12, 2004. By May 12, 2004, Dr. DuBose noted that Claimant was off her medications and continued to work without new complaints. Dr. DuBose released Claimant with instructions to complete additional exercises and therapy as needed.

24. On May 23, 2004, Stanley Moss, M.D., evaluated Claimant for her knee complaints. Claimant told Dr. Moss that Dr. Jorgenson had recommended surgery. Claimant reported to Dr. Moss that she twisted her knee and fell at the beach, and noted an increase in symptoms.

25. On December 14, 2004, Claimant had cervical and lumbar spine MRIs ordered by Dr. Jorgenson. The C-spine MRI showed straightening of the normal cervical lordosis consistent with muscle spasm, posterior non-compressive annular disc bulging at C4-5, and small posterior non-compressive central/left paramedian disc protrusion at C5-6. The L-spine MRI showed posterior non-compressive annular disc bulging with annular tear and disc desiccation at L-4, degenerative disc disease with posterior annular disc bulging and non-compressive medial neural foraminal narrowing at L4-5, and degenerative disc disease and posterior non-compressive annular disc bulging with annular tear and non-compressive medial neural foraminal narrowing.

26. Karen East, M.D., was Claimant's primary care physician from July of 2003 until November of 2004 when Gregory Thompson, M.D., took over her primary care. Both Drs. East and Thompson practice at St. Luke's Internal Medicine. These two physicians evaluated Claimant for a plethora of medical complaints, including pelvic adhesions, hypothyroidism, reflux, and depression. Dr. Thompson also provided referrals to Dr. King, Christian Gussner, M.D., and Timothy Johans, M.D., for Claimant's alleged chronic neck pain, back pain, left knee pain and left foot pain.

27. On May 16, 2005, Dr. Gussner evaluated Claimant for possible epidural steroid injections. After reviewing Claimant's 2003 and 2004 MRI studies and Claimant's previous medical records, Dr. Gussner diagnosed lumbar degenerative disc disease with annular tears at L3-4 and L5-S1 which may have contributed to her chronic back and left sciatica, chronic left

knee pain with degenerative arthritis, and cervical degenerative arthritis. On May 28, 2005, Dr. Gussner administered a left L5 transforaminal epidural injection. On June 8, 2005, Claimant reported complete relief of her low back pain, and improvement of her left leg pain.

28. Claimant advised Dr. Gussner that Dr. Moss had scheduled her for left knee surgery, and that she was told she needed back surgery to correct the dragging of her left leg and twisting of her left ankle. Claimant also complained to Dr. Gussner of intermittent episodes of hearing loss of her left side. Dr. Gussner noted that Claimant's 2004 MRI showed degenerative disc bulges with annular tear without nerve compression, and that Claimant's complaints of left distal lower extremity numbness and bilateral arm pain and weakness of unclear etiology did not correlate with the MRI findings.

29. Dr. Gussner suggested a head MRI for Claimant to eliminate the possibility of a brain tumor or demyelinating disease. Dr. Gussner also referred Claimant for an EMG of the left lower extremity and bilateral arms. Claimant's head MRI and the EMG study results were normal and showed no evidence of left cervical radiculopathy, left or right median neuropathy or left lumbar radiculopathy. Dr. Gussner released Claimant to an independent home exercise program with follow-up on an as needed basis.

30. Per his October 17, 2006 note, Dr. Thompson suspected Claimant had a somatization disorder. Dr. Thompson continued to encourage Claimant to pursue mental health care treatment.

31. Dr. Johans evaluated Claimant on June 4, 2008, and observed that Claimant had numerous complaints. Dr. Johans obtained a new cervical spine MRI, which showed mild disk degeneration with mild diffuse disk/osteophyte at C5-6 and C6-7 with mild impression on the adjacent thecal sac, and no significant foraminal stenosis. Dr. Johans opined that neck surgery

was not warranted, and released Claimant. Claimant maintains that Dr. Johan told her she had a closed-head injury.

IME--RODDE COX, M.D.

32. Dr. Cox completed an independent medical evaluation (IME) on March 15, 2010 at the request of Defendant. Dr. Cox is board-certified in physical medicine and rehabilitation, electrodiagnostic medicine, and independent medical examinations. Prior to the IME, Dr. Cox reviewed Claimant's medical history. Dr. Cox noted that prior to her industrial accident, Claimant complained of pain in her right lower quadrant, constipation, eye irritation, decreased hearing, occasional wheezing, shortness of breath with exertion, light-headedness, tingling in her fingers, depression, extreme fatigue, easy bruising, excessive bloating, swollen glands in the neck, sensitivity to temperature change, frequent urination, nocturia and hot flashes. Dr. Cox considered Claimant generally cooperative during the examination, but her stated history often differed from the medical records and reports.

33. During the IME, Claimant reported pain in her left arm, left back, left leg, left foot, left groin, and left-sided vaginal pain. Her Oswestry Function Test indicated Claimant believed she had severe disability. Dr. Cox observed that Claimant's initial presentation of left groin pain had evolved into widespread pain complaints. Dr. Cox found Claimant had chronic pain syndrome, probable somatization disorder, and symptom magnification. He was unable to identify any physiological pain generators that could be causing Claimant's pain symptoms. Dr. Cox opined that Claimant's left knee surgery was not related to the industrial accident, and that Claimant did not suffer a cervical or lumbar injury, ankle instability, right hip injury, right knee injury, aggravation of any preexisting condition, bladder instability, hearing loss, or RSD as a result of the claimed industrial accident of August 30, 2003. Dr. Cox was unable to find any

reference to Claimant's complaint of left vaginal pain in her post-accident medical records, and opined that there was no causal relationship between Claimant's vaginal pain and her industrial accident.

34. Dr. Cox indicated that Claimant was at MMI with respect to her industrial injuries, and she was not entitled to any permanent physical impairment or permanent restrictions related to her industrial accident.

IME--ROBERT CALHOUN, PH.D.

35. Defendant sent Claimant to Dr. Calhoun for a psychological pain evaluation. Dr. Calhoun conducted his evaluation on March 9 and March 16, 2010. The evaluation included a clinical interview, a behavioral analysis of Claimant's pain issues, and a mental status examination. During the evaluation, Dr. Calhoun observed that Claimant attributed a host of physical maladies to her industrial accident, and was angry with the handling of her workers' compensation claim and medical treatment. Claimant also reported difficulties with her minor daughter who has bipolar disorder and ADD, and her disabled husband. Claimant suffered physical and sexual abuse in her childhood. She reported to Dr. Calhoun that she was ordered to have anger management counseling several years ago, but was evasive about the circumstances.

36. Dr. Calhoun found Claimant showed significant depression, somatoform tendencies, compulsive personality trends, and tendencies toward grandiose thinking.

> A. [Calhoun]: What struck me most was that there were significant psychological and behavioral factors impacting her pain problem at the level of physical debilitation. And certainly most notable was her heightened somatoform tendencies. And that is validated both in the psychological testing and her medical record. And also in Dr. Cox's medical evaluation. That she is at high risk for developing pain exacerbations and other physical problems when under emotional distress.
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> . . . .
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> Q. Did you find from what you did that she had any cognitive impairment?

A. I did not see evidence of cognitive impairment in Ms. Cash.

Q. You indicate in consideration/recommendation number four that she has a tendency to seek out ongoing medical attention because of multiple physical problems, at least as she perceives them; is that correct?

A. Correct.

Q. And you were with Dr. Cox when he found that there is nothing physically wrong with her now and she doesn't need any more medical care?

A. Right. Dr. Cox indicated that there were no objective medical findings that would substantiate how she presents her symptoms or experiences them.

Q. And would a person with her psychological state, in your opinion, is she able to accept that? Or will she continue to seek care until finally someone says you are just not going to get any more?

A. She'll continue to seek care, I believe, until she finally reaches that point where the health care providers come together and tell her that there is nothing treatable medically.

Q. You are aware, though, she just keeps seeking out new ones; correct?

A. Correct.

Q. And if the Commission were to say you are not going to get any more medical care would that actually benefit her from a psychological situation getting on with the rest of her life?

A. I think it could actually help her move on in her life; yes.

Q. You indicate in number four that somatization disorder results in ongoing pain focus. A tendency to seek out ongoing medical attention. And you have described that; is that correct?

A. Correct.

Dr. Calhoun Depo., pp. 24; 29-30.

37. Ultimately, Dr. Calhoun opined that Claimant might benefit from psychological treatment, but that Defendant should not be held responsible for such treatment.

CLAIMANT'S PRE-EXISTING CONDITIONS

38. Claimant sustained multiple injuries in a motor vehicle accident in 1979. She was ejected through the windshield and experienced periodic episodes of increased pain in her left neck. Claimant suffered a low back strain during her nursing training at Southern Oregon State College in Ashland, Oregon around 1990. She received anti-inflammatory medication, muscle relaxers, and physical therapy. Claimant denied any impairment or restrictions related to her back injury. Claimant received medical treatment for a right lumbar strain when she worked at Valley View nursing home. In 1996 or 1997, Claimant received treatment for sciatic symptoms. Claimant had chiropractic treatment by Dr. Neil King in 1999 for left scapular pain that she related to being playfully tackled by her husband.

39. Claimant testified that she has thyroid problems as a result of being downwind from the Hanford nuclear power plant. She stated that she was a member of a class action suit against Hanford, but was dropped because she was "there at the wrong time." Claimant also asserts that she has Raynaud's syndrome, for which she receives no treatment. She reports difficulty swallowing certain foods that caused her to have her esophagus stretched. Claimant also reported that she had tinnitus prior to the industrial accident.

CLAIMANT'S CREDIBILITY

40. The Referee finds that Claimant's description of medical treatment and symptoms varies greatly from the record. When confronted with these inconsistencies between her account and the medical record, Claimant insisted her medical providers did a poor job of reporting her complaints. It is not typically the case that a caregiver ignores a patient's history, or intentionally records inaccurate or misleading information in the chart notes. Given the number of providers from whom Claimant sought care, and given the frequency with which Claimant's testimony is

wildly at odds with the medical records, it would suggest a vast medical conspiracy indeed. In large part because Claimant appeared *pro se*, much of her testimony was elicited on cross-examination. Claimant was reluctant to answer questions and often evaded questions with vague and incoherent responses. The Claimant is neither a reliable witness nor an accurate historian. The medical record provides the only reliable evidence in this proceeding.

DISCUSSION AND FURTHER FINDINGS

NOTICE LIMITATIONS

41. As set forth in the notice of hearing, the parties included the issue of notice limitations set forth in Idaho Code § 72-701 through Idaho Code § 72-706, and whether these limitations are tolled pursuant to Idaho Code § 72-604. However, none of the parties argued the issue in their briefs. Therefore, the Referee deems the issue waived.

CAUSATION/MEDICAL CARE

42. The burden of proof in an industrial accident case is on the claimant.

> The claimant carries the burden of proof that to a reasonable degree of medical probability the injury for which benefits are claimed is causally related to an accident occurring in the course of employment. Proof of a possible causal link is insufficient to satisfy the burden. The issue of causation must be proved by expert medical testimony.

Hart v. Kaman Bearing & Supply, 130 Idaho 296, 299, 939 P.2d 1375, 1378 (1997) (internal citations omitted). "In this regard, 'probable' is defined as 'having more evidence for than against.'" *Soto v. Simplot*, 126 Idaho 536, 540, 887 P.2d 1043, 1047 (1994).

43. In this case, the expert medical testimony does not support Claimant's assertions regarding the nature and extent of the physical injuries attributed to her industrial accident. No medical expert has opined that Claimant's many physical complaints, including cervical or

lumbar injury, ankle instability, right hip injury, right knee injury, bladder instability, hearing loss, RSD, or any aggravation of any preexisting condition, are more likely than not the result of her industrial accident. Overall, the objective medical findings do not support Claimant's assertions regarding the extent of her injury or a connection between her reported symptoms and the industrial accident. Further, Dr. Calhoun's testimony supports Claimant's propensity to seek out medical treatment without an objective basis, and her somatization issues. The Referee finds that Claimant's left knee surgery was not related to the industrial accident, and that Claimant did not suffer a cervical or lumbar injury, ankle instability, right hip injury, right knee injury, aggravation of any preexisting condition, bladder instability, left vaginal wall injury, hearing loss or RSD due to her industrial accident. The medical record supports that Claimant had left groin pain as a result of her industrial accident. Defendant has provided reasonable treatment for this condition, and Claimant is not entitled to further medical treatment in connection with her industrial accident.

PPI

44. "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 nonprogressive at the time of the 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 worker's personal efficiency in the activities of daily living, such as self-care, communication, normal living postures, ambulation, elevation, traveling, and nonspecialized 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).

45. Dr. Cox opined that Claimant was not entitled to any permanent physical impairment or permanent restrictions related to her industrial accident. (Cox Depo., p. 33-34; Def. Exh. 29, p. 24). Claimant returned to her time-of-injury employment, and worked there for six years following her industrial accident. Claimant has not proven her entitlement to permanent physical impairment.

PPD

46. The degree of an injured worker's permanent disability, and the cause or causes of a disability, are factual questions committed to the discretion of the Industrial Commission. A claimant has permanent disability 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 reasonably be expected. *See*, Idaho Code § 72-423. A permanent disability rating is the appraisal of a claimant's present and probable ability to engage in gainful activity as it is affected by the medical factor of permanent impairment and by pertinent non-medical factors as provided in Idaho Code § 72-430. Per Idaho Code § 72-425, the central focus of the disability evaluation is on the ability to engage in gainful activity. *See*, *Smith v. Payette County*, 105 Idaho 618, 671 P.2d 1081 (1983); *Baldner v. Bennett's, Inc.*, 103 Idaho 458, 649 P.2d 1214 (1982).

47. In *Davidson v. Riverland Excavating, Inc.*, 147 Idaho 339, 209 P.3d 636 (2009), the Court found that without impairment there can be no disability. "[D]isability only results when the claimant's ability to engage in gainful activity is reduced or absent 'because of permanent impairment.' Only after the impairment reduces the claimant's earning capacity do

the pertinent nonmedical factors come into play." *Rivas v. K.C. Logging*, 134 Idaho 603, 608, 7 P.3d 212, 217 (2000) (quoting I.C. § 72-423).

48. However, even if Claimant had been able to establish the existence of a ratable impairment, her claim for disability would still fail because she has not established a loss of functional capacity that affects her ability to engage in physical activity. Indeed, a loss of functional capacity figures prominently in all cases involving a determination of an injured worker's disability in excess of physical impairment. Absent some functional loss, it is hard to conceive of a factual scenario that would support an award of disability over and above impairment; if the injured worker is physically capable of performing the same types of physical activities as he performed prior to the industrial accident, then neither wage loss nor loss of access to the labor market is implicated.

49. Claimant argues that she is severely disabled from her various ailments, an assertion which is unsupported by the objective medical record. Claimant was released to full-duty work and has continued to work at her time-of-injury employment for the past six years.

50. Having found no PPI or loss of functional capacity that reduces Claimant's ability to engage in physical activity, the Referee finds Claimant is not entitled to PPD benefits.

ODD-LOT

51. Claimant argues that her physical conditions, including her RSD, make it impossible to secure other employment. Claimant is displeased with Defendant's handling of her workers' compensation claim, and wishes to pursue other employment. Because the Referee finds that Claimant has neither PPI nor PPD, the Referee does not reach her claim that she is totally and permanently disabled under the odd-lot doctrine.

RETRAINING

52. Idaho Code § 72-450 provides:

> **Retraining.** Following a hearing on the motion of the employer, employee, or the commission, if the commission deems a permanently disabled employee, after the period of recovery, is receptive to and in need of retraining in another field, skill or vocation in order to restore his earning capacity, the commission may authorize or order such retraining and during the period of retraining or any extension thereof, the employer shall continue to pay the disabled employee, as a subsistence benefit, temporary total or temporary partial disability benefits as the case may be.

Since Claimant failed to establish disability, retraining is not available.

CONCLUSIONS OF LAW

1. Claimant suffered left groin pain as a result of her industrial accident. Defendant accepted this claim, and provided appropriate medical care.

2. Claimant is not entitled to further medical care.

3. Claimant has not proven her entitlement to PPI.

4. Claimant has not proven her entitlement to PPD.

5. Claimant has not shown she is an odd-lot worker.

6. Claimant has not proven her entitlement to retraining.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Referee recommends that the Commission adopt such findings and conclusions as its own and issue an appropriate final order.

DATED this 23 day of November, 2010.

INDUSTRIAL COMMISSION

/s/_____
Rinda Just, Referee

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

SHELLY JEANNE CASH, Claimant, v. ST. LUKE'S REGIONAL MEDICAL CENTER, Self-Insured Employer, Defendant.	)	**IC 2003-010907** **ORDER** Filed: December 7, 2010

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

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

1. Claimant suffered left groin pain as a result of her industrial accident. Defendant accepted this claim, and provided appropriate medical care.
2. Claimant is not entitled to further medical care.
3. Claimant has not proven her entitlement to PPI.
4. Claimant has not proven her entitlement to PPD.
5. Claimant has not shown she is an odd-lot worker.
6. Claimant has not proven her entitlement to retraining.

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

DATED this 7 day of December, 2010.

INDUSTRIAL COMMISSION

/s/_____
R.D. Maynard, Chairman

/s/_____
Thomas E. Limbaugh, Commissioner

/s/_____
Thomas P. Baskin, Commissioner

ATTEST:

/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 7 day of December, 2010 a true and correct copy of **FINDINGS, CONCLUSIONS, AND RECOMMENDATION** was served by regular United States Mail upon:

SHELLY JEANNE CASH
3244 N LINDA VISTA PL
BOISE ID 83704

ALAN K HULL
RACHAEL M O'BAR
PO BOX 7426
BOISE ID 83707-7426

/s/_____