BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARIA SALCIDO, Claimant, v. CALDWELL HOUSING AUTHORITY, Employer, and IDAHO STATE INSURANCE FUND, Surety, Defendants.	**IC 2010-020050** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** FILED JAN 17 2013 INDUSTRIAL COMMISSION

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Alan Taylor, who conducted a hearing in Boise, Idaho on April 18, 2012. Claimant, Maria Salcido, was present in person and represented by Darin G. Monroe, of Boise. Defendant Employer, Caldwell Housing Authority, and Defendant Surety, Idaho State Insurance Fund, were represented by Jon M. Bauman, of Boise. The parties presented oral and documentary evidence. Post-hearing depositions were taken and briefs were later submitted. The matter came under advisement on October 2, 2012.

ISSUES

The issues to be decided by the Commission are:

1. Whether Claimant's industrial accident caused her need for bilateral knee surgery;
2. Claimant's entitlement to temporary disability benefits;
3. Claimant's entitlement to permanent partial impairment;
4. Claimant's entitlement to an award of attorney fees; and

5. Whether any of the benefits Claimant would normally be entitled to should be denied pursuant to Idaho Code § 72-801.

CONTENTIONS OF THE PARTIES

Claimant alleges she twisted her right ankle and also twisted and injured her knees when she stepped in a hole at work on August 17, 2010. She asserts entitlement to medical benefits for bilateral knee surgery; temporary disability benefits from September 28, 2010, through February 14, 2011, permanent partial impairment of 1% of the whole person for each knee, and an award of attorney fees for Defendants' unreasonable denial of these benefits.

Defendants acknowledge Claimant's August 17, 2010 industrial accident, but argue that her accident caused only a minor right ankle injury and did not cause injury to her knees. They maintain she suffered pre-existing osteoarthritis, her accident did not cause her need for bilateral knee surgery, and their denial of additional benefits is justified.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. Claimant's Exhibits A & B and Defendants' Exhibits 1-4 and 6-7, admitted at the hearing;
3. The testimony of Claimant[1], Juan Jose Mora, Theresa Villa, Mary Ann Valenzuela, Brenda Boles, Cecelia Flores, and Michael U. Dittenber, taken at the April 18, 2012 hearing;
4. The post-hearing deposition of John Q. Smith, M.D., taken by Claimant on June 18, 2012; and

[1] Claimant testified at hearing only through a Spanish interpreter.

5. The post-hearing deposition of J. Gerald McManus, M.D., taken by Defendants on July 12, 2012.

All pending objections are overruled. After having considered the above evidence and the arguments of the parties, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

FINDINGS OF FACT

1. Claimant was born in 1967. She was 44 years old and had lived in Caldwell for six years at the time of the hearing. She is approximately five foot five inches tall.

2. **Background.** On September 16, 1998, Claimant asserted she slipped and fell on the stairs while working for a prior employer. On September 18, 1998, she sought medical treatment reporting bilateral knee pain and popping in her right knee. Her symptoms improved and she resumed working.

3. On December 13, 2000, Claimant complained of foot swelling. At that time she weighed 302 pounds. At hearing Claimant denied she weighed that much and disputed that the examining physician had even weighed her.

4. At hearing Claimant denied having any knee problems before April 2010.

5. On April 16, 2003, Claimant began working for Defendant Employer Caldwell Housing Authority (CHA). At CHA Claimant's duties included working at the laundromat for the renters. She handed out change, cleaned the machines, waited on customers, mopped, and swept. This required bending, stooping, and kneeling. She testified that she had no knee pain while performing these duties. In approximately 2005, she commenced painting and cleaning empty apartments. She mopped, swept, cleaned, carried paint up and down two stories, and delivered letters to renters. She used ladders frequently to access and clean windows and upper

cabinets. She also had to go up and down stairs to upper apartments. She worked 40 hours per week for $11.59 per hour.

6. In 2008, Claimant injured her neck at work. She received medical treatment and continued working. By December 2008, Claimant weighed 320 pounds. By October 2009, she weighed 330 pounds. By March 2010, she weighed 342 pounds.

7. **Claimant's accident.** Claimant testified that on August 17, 2010, while working for CHA, she walked across a large lawn between two apartments and stepped in a hole in the grass with her right foot, twisted her right ankle and twisted both of her knees. She testified that she heard her knees pop or crack and her right knee immediately began to hurt. Claimant went to the CHA convenience store where she encountered CHA director, Michael Dittenber and Cecilia Flores, manager of the CHA convenience store. Flores interpreted for Claimant as Claimant reported her accident to Dittenber and described what had happened. Claimant testified that she immediately told Dittenber and Flores that she had stepped in a hole and twisted her ankle and afterwards her knees started to hurt. Claimant denied that Dittenber offered or encouraged her to obtain medical treatment. Claimant testified she tried to go back to work after her accident, but the pain was significant. She testified that her right knee began to hurt immediately after stepping in the hole and a few hours later her left knee began to hurt. She asserted that her right ankle also hurt, but her knees hurt more.

8. On August 18, 2010, CHA administrative assistant Brenda Boles filled out an accident report for Claimant. Carlie Gutierrez, a coworker and fluent Spanish speaker, interpreted as Claimant provided information about the accident to Boles. Claimant testified that she told Gutierrez that her knee hurt and she had twisted her ankle and hurt her knees in the accident. Claimant testified that either that same day or a few days later she told her direct

supervisor, Juan Mora, that she had stepped in a hole and her foot and ankle twisted and her knees started hurting.

9. Claimant testified that her knee pain worsened over time and became unbearable, with stabbing knife-like pain. Her knee pain increased until she could not tolerate it and Claimant told Mora she was going to the doctor. Claimant testified that she delayed seeking medical treatment after the accident because Dittenber held an employee meeting and told the CHA employees that anyone taking sick leave or absent for medical appointments would be fired. At hearing Claimant initially testified that she sought medical treatment two weeks after the accident. However, upon closer questioning she acknowledged that she did not seek medical attention until approximately six weeks after her accident.

10. **Medical treatment.** On September 28, 2010, Claimant presented to Kevin Chicoine, M.D., reporting that about a month earlier she was walking in some grass, stepped in a hole and twisted her right knee. She reported feeling some right knee pain at that time and slight left knee pain. Bilateral knee x-rays disclosed mild arthritic changes in both knees but no joint effusion. Dr. Chicoine diagnosed bilateral knee strain, prescribed physical therapy, and provided work restrictions.

11. On September 30, 2010, Claimant presented to Rulin Hawks, P.T., reporting that she fell on the grass and that she heard a pop in her left knee. Hawks recorded that Claimant was five foot, three inches tall and weighed 340 pounds. He recorded Claimant's report that she delayed seeking medical attention because she believed her knee pain would resolve on its own. At hearing Claimant disagreed with that portion of Hawks' notes. Hawks also recorded that there were no visible signs of redness, bruising, or swelling. At hearing Claimant expressly disagreed with this portion of Hawks' notes and asserted that her knees were swollen.

12. Claimant's last day of work at CHA was October 18, 2010, after which CHA could not accommodate her work restrictions.

13. By November 4, 2010, Claimant reported to Hawks that her knees were feeling better and rated her bilateral knee pain at 3/10. At hearing, Claimant disagreed with Hawks' note that her knees were feeling better. On November 9, 2010, Claimant underwent a left knee MRI that revealed a high-grade tear of the medial meniscus and a medial collateral ligament sprain. Claimant then came under the care of Melissa Park, M.D., who ordered a right knee MRI. On November 16, 2010, Claimant underwent a right knee MRI that revealed a degenerative medial meniscus with complex radial and oblique tears, sprains and mild chondromalacia. Dr. Park referred Claimant to orthopedic surgeon John Q. Smith, M.D.

14. On November 17, 2010, Claimant presented to Dr. Smith reporting that she "slipped in a small hole and twisted her right knee. She had quite a bit of pain and discomfort to this side immediately following the injury associated with some swelling." Exhibit 3, p. 255. On November 23, 2010, Dr. Smith performed left knee arthroscopic partial medial meniscectomy.

15. On December 6, 2010, Claimant's employment with CHA formally ended because CHA could not accommodate her work restrictions.

16. On December 28, 2010, Dr. Smith performed right knee arthroscopic partial medial meniscectomy. Both of Claimant's knee surgeries were covered by her personal health insurance.

17. Dr. Smith found Claimant medically stable on February 14, 2011. On August 22, 2011, Claimant presented again to Dr. Smith complaining of bilateral knee pain which was "very irritating and aggravating. …. She says that her knees want to lock or catch on her, mainly

related to pain." Defendants' Exhibit 3, p. 319. Dr. Smith talked to her about losing weight to take care of her knees. Claimant denied that Dr. Smith ever told her about losing weight and denied that Dr. Smith ever told her that her weight was causing her knee pain or problems.

18. At the time of the hearing, Claimant's continued to have bilateral knee pain and stiffness. She is not able to sit or stand for long periods. She testified that she could no longer perform the duties or her job. Claimant testified that she had no knee problems before the accident. She denied ever limping, using a knee brace, cane, or walker before her accident in August 2010. Claimant denied missing any work before her industrial accident due to knee pain.

19. **Witnesses' testimonies.** Several witnesses testified at hearing regarding Claimant's pre-accident activities and the circumstances surrounding her accident.

20. Cecelia Flores. Flores was the CHA convenience store manager at the time of the accident. At the time of hearing she was employed at CHA supervising inmate workers. She speaks Spanish and English fluently. Flores communicated with Claimant daily during their work at CHA. Flores testified that before Claimant's industrial accident, she complained about her knees being painful, tired, and achy. Claimant complained that her knees hurt and would rub both of her knees with her hands. Flores testified that she saw Claimant wear a knee brace on one occasion on her left knee, but never observed Claimant use a cane or a walker. She affirmed that before August 2010, Claimant commonly walked slowly, as if she were tired.

21. Flores testified that on August 17, 2010, Claimant limped into the CHA convenience store. Claimant told Flores that she had tripped and fallen into a hole and twisted her ankle. Flores translated this information to Dittenber who told Claimant to go to a doctor if she needed medical attention. Claimant declined. Flores prepared a bag of ice and put it on

Claimant's right ankle. Flores testified that Claimant never mentioned anything about her knees or either of them hurting.

22. Having observed Flores at hearing and compared her testimony to other evidence of record, the Referee finds that Flores is a highly credible witness.

23. Juan Mora. Mora was Claimant's direct supervisor at CHA on August 17, 2010. He is speaks Spanish and English fluently. He has known and attended church with Claimant for 20 years. Claimant occasionally had lunch with Mora during her work at CHA. Mora testified that Claimant was a good worker, had no knee problems, never complained about her knees, and never used a knee brace, cane, or walker before her accident. Mora testified that Claimant told him she fell in a hole and hurt her ankle. At hearing, Mora testified that a couple days later Claimant mentioned that she also hurt her knees and Mora told her to go to the doctor when he saw her limping. However, in his statement to Dittenber on October 19, 2010, Mora made no mention of Claimant reporting any injury except to her ankle. Claimant went to a doctor in September 2010 without Mora's prior knowledge. Mora testified that he told Dittenber about Claimant's knee problems.

24. In May 2011, Mora was terminated by Dittenber because several female CHA employees alleged that Mora sexually harassed them. After his termination, Mora commenced a legal proceeding against CHA but subsequently dropped it. Having observed Mora at hearing and compared his testimony to other evidence of record, the Referee finds that Mora's impartiality is subject to serious question and his credibility is suspect.

25. Theresa Villa. Villa is Claimant's adult daughter and regularly attended Claimant's doctor's appointments with her. Villa is a medical assistant and speaks Spanish and English fluently. She testified that Claimant had no knee complaints prior to her accident, that

Claimant never limped, used a walker, or owned a knee brace prior to the accident. Villa testified that Claimant said she stepped in hole, twisted her foot, and twisted both of her knees and they both popped and started to hurt. Villa encouraged Claimant to see a doctor. Villa asserted that during her medical appointments, the doctors never talked to Claimant about her obesity, other than to tell her how much she weighed. There is no indication Villa has worked with Claimant at CHA.

26. Mary Ann Valenzuela. Valenzuela performed community service at CHA from August through November 2009 and was employed at CHA from November through February 2012. Valenzuela worked with Claimant while doing community service in 2009. Valenzuela testified that in 2009, Claimant said she had a knee brace and was overweight and her weight was deteriorating the cartilage in her knee and she was going to have to have surgery. Valenzuela testified she saw the black knee brace on Claimant's left knee, but that she did not see Claimant use a cane or a walker. Valenzuela performed community service for possession of methamphetamine, theft of DVDs, and driving without privileges. Claimant denied any conversation with Valenzuela.

27. The Referee finds credible Valenzuela's testimony that Claimant used a knee brace well before her industrial accident.

28. Brenda Boles. Boles is an employee of CHA. She handles accounts payable and receivable as well as workers' compensation claims. Boles affirmed that Claimant reported a work injury to her in August 2010. Carlie Gutierrez translated for Claimant and Boles prepared the first report of injury on-line. Boles testified that Claimant mentioned no knee pain to Boles when reporting the accident.

29. Boles testified that some time prior to Claimant's accident, Dittenber held an employee meeting in which he cautioned employees against a growing trend of abusing sick leave time. Boles affirmed that Dittenber never threatened to fire anyone that filed a workers' compensation claim or took legitimate medical leave. Boles testified that Dittenber conducted the meeting in English and his remarks were translated by bilingual employees to their co-employees.

30. Having observed Boles at hearing and compared her testimony to other evidence of record, the Referee finds that Boles is a credible witness.

31. Michael Dittenber. Dittenber has served as the executive director of CHA since 2007. CHA manages housing for approximately 1,300 people. Dittenber oversees 13 full-time staff and two part-time seasonal staff. When Dittenber became the CHA director, he required greater attention by his staff to facility repair and repainting than had the prior director. Dittenber conducted periodic staff meetings and utilized bilingual staff, including Juan Mora, to interpret his instructions. Dittenber had observed some questionable use of sick leave among his staff and addressed the proper use of sick leave in an employee meeting some time prior to August 2010. He reminded his staff to notify him if they were sick or on vacation. Dittenber testified that he never told anyone they would be fired if they legitimately took sick leave time or filed a workers' compensation claim. Dittenber testified that Claimant used leave time as she earned it and did not accumulate any substantial amount of sick leave or vacation time.

32. Dittenber interacted with Claimant daily at CHA. He noted that she never complained about her weight but said she was trying to lose weight. She walked often with a cane, using either a long wooden stick or a metal cane. Dittenber saw Claimant use a metal walking aid with a single long shaft sporting three short legs.

33. On August 17, 2010, Dittenber saw Claimant seated in the CHA convenience store with her leg elevated while icing her ankle. Flores translated Claimant's account of her accident. Flores told Dittenber that no one saw Claimant fall. Dittenber immediately asked Claimant whether she desired medical attention and she declined, indicating that she would "walk it off." Dittenber testified that Claimant did not tell him that day she had any knee symptoms.

34. Shortly after learning that Claimant had stepped in a hole in the lawn, Dittenber and the chairman of CHA's board searched the lawn extensively but could find no hole. Dittenber acknowledged that he is a stickler about the condition of the lawn. Approximately 700 children play on the lawn regularly and Dittenber takes great care to ensure the lawn is free of hazards such as holes. Dittenber testified that in June 2010, part of the lawn was under construction during the building of a fountain. However, construction was completed and the area thoroughly cleaned and prepared for safe use well before July 4, 2010.

35. Dittenber first became aware Claimant alleged knee injuries due to her accident on October 1, 2010, when he was contacted by the Surety. Dittenber then inquired of two bilingual CHA employees whether, in translating Claimant's initial accident report, the Spanish word for "knee" might have been confused with the word for "ankle." He was advised that those translating Claimant's account were very fluent and no translation error had occurred.

36. Having observed Dittenber at hearing and compared his testimony to other evidence of record, the Referee finds that Dittenber is a highly credible witness.

37. Claimant's credibility. Claimant's credibility is crucial to resolution of the issues presented. Claimant's accident was unwitnessed and it is concerning that Dittenber and the chairman of CHA's board diligently searched for but could not find the hole that Claimant

allegedly stepped in and twisted her knees. Dittenber recognized that such a hole would be a significant safety hazard for the 1,300 residents at CHA facilities, especially the 700 children regularly using the lawn and fountain area.

38. Claimant denied any knee pain or problems prior to her industrial accident. The medical records establish that she suffered knee pain after a fall in 1998. This event is very remote in time from her 2010 accident and weighs only minimally in evaluating her present claim. However, Flores testified credibly that while working at CHA before the accident, Claimant complained her knees were painful and often rubbed her knees. Claimant denied ever limping before her accident. Dittenber testified credibly that he saw Claimant limping before her accident. Claimant denied ever wearing a knee brace before her accident. Flores and Valenzuela testified credibly that they saw Claimant wear a black knee brace on her left knee before the accident. Claimant denied ever using a cane before her accident. Dittenber testified credibly that he saw Claimant use at least two different canes before her accident. The fact that Villa and Mora testified they never saw Claimant use a knee brace or cane before her accident does not necessarily establish that Claimant did not do so. The Referee finds that Claimant had knee pain, limped, used a knee brace, and used a cane on occasion prior to her industrial accident.

39. Claimant testified that she reported her knee pain to Dittenber and Flores the day of the accident and to Boles the day after the accident. The first report of injury makes no mention of knee pain or injury. Dittenber, Flores, and Boles testified credibly that Claimant did not mention any knee pain to them on the day of the accident or the day thereafter. It was not until approximately six weeks after the accident that any of them were aware Claimant alleged any knee pain or injury due to her industrial accident. Mora's testimony that Claimant reported knee pain to him within several days of the accident is contrary to his statement to Dittenber on

October 19, 2010, and is suspect. The Referee finds that Claimant did not report any knee pain or knee injury at the time of her industrial accident on August 17, 2010, or on the day after. Claimant first reported knee pain allegedly due to her accident on September 28, 2010, to Dr. Chicoine.

40. Having observed Claimant at hearing and compared her testimony with other evidence in the record, the Referee finds that Claimant is not a credible witness.

DISCUSSION AND FURTHER FINDINGS

41. The provisions of the Idaho Workers' Compensation Law are to be liberally construed in favor of the employee. Haldiman v. American Fine Foods, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990). The humane purposes which it serves leave no room for narrow, technical construction. Ogden v. Thompson, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996). Facts, however, need not be construed liberally in favor of the worker when evidence is conflicting. Aldrich v. Lamb-Weston, Inc., 122 Idaho 361, 363, 834 P.2d 878, 880 (1992).

42. **Causation.** The first issue presented is whether Claimant's August 17, 2010 industrial accident caused her bilateral knee condition. An employer is obligated to provide medical treatment necessitated by an industrial accident. Idaho Code § 72-432. The employer is not responsible for medical treatment not related to the industrial accident. Williamson v. Whitman Corp./Pet, Inc., 130 Idaho 602, 944 P.2d 1365 (1997). A claimant must prove not only that he or she suffered an injury, but also that the injury was the result of an accident arising out of and in the course of employment. Seamans v. Maaco Auto Painting, 128 Idaho 747, 751, 918 P.2d 1192, 1196 (1996). Proof of a possible causal link is not sufficient to satisfy this burden. Beardsley v. Idaho Forest Industries, 127 Idaho 404, 406, 901 P.2d 511, 513 (1995). A claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of

medical probability. Langley v. State, Industrial Special Indemnity Fund, 126 Idaho 781, 785, 890 P.2d 732, 736 (1995). "Probable" is defined as "having more evidence for than against." Fisher v. Bunker Hill Company, 96 Idaho 341, 344, 528 P.2d 903, 906 (1974). Magic words are not necessary to show a doctor's opinion was held to a reasonable degree of medical probability; only their plain and unequivocal testimony conveying a conviction that events are causally related. See, Jensen v. City of Pocatello, 135 Idaho 406, 412-13, 18 P.3d 211, 217 (2001).

43. In the present case, two physicians have opined regarding the causation of Claimant's bilateral knee complaints. Their opinions are examined below.

44. Dr. Smith. John Smith, M.D., testified in behalf of Claimant. Dr. Smith is board certified in orthopedic surgery. He is a general orthopedic surgeon and Claimant's treating surgeon. He found no effusion in Claimant's knees when he first examined her on November 17, 2010, and testified that she did not report to him that she experienced a pop in her knee at the time of her accident. Dr. Smith performed Claimant's left and right knee arthroscopies and meniscectomies on November 23, and December 28, 2010, respectively. Dr. Smith testified that during arthroscopy: "Her [left] knee looked really pretty good, with the exception of the medial meniscus. And by 'pretty good,' I mean, there were not the expected wear and tear changes of the cartilage surfaces that we typically see with a degenerative injury pattern. And so that left me to conclude that it was more of an acute type of finding." Smith Deposition, p. 9, ll. 7-14. He testified that Claimant's right knee findings during arthroscopy were: "[s]imilar to that of the left [knee]. The articular surfaces looked to be fairly intact with only mild changes and the medial meniscus was torn." Smith Deposition, p. 10, ll. 2-4. Dr. Smith testified he was surprised at the minimal degenerative changes noted during surgery given Claimant's obesity. He found Claimant medically stable on February 14, 2011, and rated her total permanent

impairment at 2% of the whole person, 1% for each knee. Dr. Smith noted that even after recovering from surgery Claimant continued to have pain associated with activity related to her obesity. He testified that were it not for Claimant's obesity, she would not have permanent limitations or restrictions. Dr. Smith affirmed—although Claimant denied—that in his meeting with Claimant and her daughter on August 22, 2011, he emphasized "weight loss as a large part of taking care of [her] knees." Defendants' Exhibit 3, p. 319.

45. Based upon Dr. Smith's examination of Claimant, her arthroscopies, and the history he obtained from Claimant, he opined that Claimant's need for bilateral knee surgeries was caused by her work injury. He recorded:

> She had a Work Comp [sic] claim, which was denied citing reasons of degenerative changes. This is verbiage used by the radiologist to describe these tears. Ms. Salcido did not have any real symptoms of pain prior to the injury and it is quite conceivable that the twisting fall may have resulted in a meniscus tear.

Defendants' Exhibit 3, p. 256.

46. In rendering his causation opinion, Dr. Smith repeatedly referred to Claimant's accident as a "fall" although she testified she did not fall. Furthermore, in formulating his causation opinion, Dr. Smith was not aware that Claimant's first report of injury did not mention anything about her knees. He was not aware that Claimant had been morbidly obese for 10 years prior to her accident. Dr. Smith acknowledged that he had not reviewed Dr. Chicoine's, Dr. Park's, or therapist Hawks' chart notes prior to rendering his opinion. Dr. Smith acknowledged that he had only Claimant's reported history and bilateral knee MRIs available when he concluded that Claimant's accident caused her need for knee surgery:

> Q. Are there any other factors besides her subjective complaints that leave you to associate the left knee injury, for which you operated, with this episode?

> A. Only the statement that she made that she did not have symptoms of pain or problems to either knee prior to her fall. And the fact that she had MRIs already obtained, which demonstrated meniscus tears to both knees.

Smith Deposition, p. 33, l. 22 through p. 34, l. 5.

47. Dr. Smith's causation opinion rests upon incomplete information; most significantly, the inaccurate premise that Claimant had no pre-accident knee complaints and reported the onset of knee symptoms at the time of her accident.

48. Dr. Smith acknowledged that many findings from Claimant's right knee MRI were consistent with degenerative change and morbid obesity as opposed to trauma, including: (1.) mild partial thickness cartilage fissuring along the lateral patellar facet, (2.) mild partial thickness cartilage fissuring along the lateral patellar facet, (3.) nonspecific mild prepatellar edema and bursitis, and (4.) early mild chondromalacia in the lateral patellar facet. Dr. Smith also acknowledged that the following finding from Claimant's left knee MRI was consistent with degenerative change and morbid obesity as opposed to trauma: mild cartilage thinning at the medial compartment, suggestive of mild osteoarthritis. Dr. Smith further confirmed that the following findings from Claimant's right knee MRI could be consistent with either degeneration or trauma: (1.) diminutive body segment medial meniscus, (2.) combined oblique and radial tear at the junction of the anterior horn of the medial meniscus (causing truncation along the free edge), (3.) small focal area of intermediate signal in the proximal medial collateral ligament without adjacent soft tissue edema, and (4.) trace joint fluid. Finally, Dr. Smith confirmed that the small joint effusion observed in Claimant's left knee MRI could be consistent with either degeneration or trauma.

49. Dr. McManus. Dr. McManus is a board certified orthopedic surgeon. He has performed approximately 1,000 knee arthroscopies including hundreds involving meniscal

injuries. Dr. McManus did not examine Claimant, but authored a report on January 17, 2012, after reviewing all of Claimant's medical records from 1997 through August 2011, including the records of Drs. Chicoine, Parks, and Smith.

50. Dr. McManus questioned the accuracy of Claimant's description of her accident. He found unusual the fact that Claimant did not report a pop in either of her knees when she recounted her accident to Dr. Chicoine on September 28, 2010, but reported a pop in both of her knees when she recounted her accident to physical therapist Rulin Hawks on September 30, 2010. Dr. McManus testified that Claimant's right knee MRI showed a small focal area of subchondral reactive marrow edema showing bone marrow edema. He testified that in his experience, he had never seen a patient having marrow edema from trauma that did not have "a lot of symptoms right from the beginning." McManus Deposition, p. 16, l. 23. Dr. McManus noted that Claimant's MRIs showed only slight effusion and "if in the injury she had torn her meniscus, and that meniscus was the cause of all her symptoms, then I would have expected to see an effusion in her knee. And I would have expected to have symptoms of mechanical derangement, and so forth, and those weren't described." McManus Deposition, p. 20, ll. 12-17. Dr. McManus would have expected to find symptoms of locking and giving way in Dr. Chicoine's earliest post-accident notes. Although Claimant had been examined repeatedly by Dr. Chicoine, therapist Hawks, and Dr. Parks, there was no record of locking or giving way in either knee until her examination by Dr. Smith on November 17, 2010. He testified that the presence of a meniscus tear absent mechanical problems suggests Claimant's problems were likely attributable to osteoarthritis. He testified that performing a partial medial meniscectomy under those circumstances is controversial and observed that Dr. Smith's November 2010 and

August 2011 notes document that Claimant reported nearly identical knee symptoms both before and after her knee surgeries.

51. Dr. McManus opined that considering Claimant's prolonged history of obesity he would have expected to find osteoarthritis developing in her knees. He noted that x-rays taken by Dr. Chicoine six weeks after the accident showed osteoarthritis in her knees which would have pre-existed her accident. Dr. McManus observed that Dr. Smith did not take any weight-bearing x-rays which would have allowed precise evaluation of knee cartilage thinning and the extent of Claimant's osteoarthritis. However, he testified that using the plain non-weight bearing films taken, and considering the degree of cartilage compression measured with a probe during similar knee surgeries, the extent of Claimant's pre-accident cartilage loss could be reliably estimated:

> And it'd be nice if we had a video of the arthroscopy. But you can take a probe, which is usually about two millimeters thick, and you can indent the articular cartilage one to two millimeters on a normal knee on both sides, the upper and lower.
>
> So you can basically compress it up to four millimeters, the joint space. So if she had 4.2 millimeters on plain films without weight bearing, and then if we—you can—you can calculate, I guess, that if it –just with the pressure of a probe at arthroscopy, you can indent it a millimeter or two. You can—you can assume that if they'd taken weight bearing films, she would have had at most a three millimeter joint space, which would have been a significant impairment, and a ratable impairment under the AMA Guides.

McManus Deposition, p. 25, ll. 8-22. Dr. McManus testified that unless there is a defect in the cartilage, cartilage thickness cannot be measured simply by looking through the arthroscope. Thus Dr. McManus was not persuaded by Dr. Smith's conclusion that Claimant's knee pathology visualized during arthroscopy was more likely related to trauma than degeneration.

52. After reviewing Claimant's medical records, Dr. McManus testified that Claimant had weighed approximately 300 pounds for the 10 years prior to her accident and weighed nearly

340 pounds at the time of the accident. Dr. McManus testified that next to heredity, obesity is the leading cause of osteoarthritis. Based upon significant research of the medical literature, Dr. McManus testified regarding Claimant's risk of osteoarthritis: "if she only weighed half as much as she did—if she only weighed 149 pounds given her height, her odds ratio for developing osteoarthritis is about 18 times the normal person, and yet she weighed twice that much." McManus Deposition, p. 74, ll. 16-20. Dr. Smith also readily acknowledged that obesity is a leading risk factor for osteoarthritis and osteoarthritis is a leading risk factor for degeneration of the meniscus of the knee, particularly the medial meniscus.

53. Having considered Claimant's medical history, including the records of Dr. Chicoine and Parks, her pre-accident knee complaints and post-accident MRIs and plain films, and her persisting bilateral knee complaints even after recovery from medial meniscectomy surgery, Dr. McManus opined that Claimant's bilateral meniscus tears were more likely due to osteoarthritis than to her industrial accident.

54. The Referee finds Dr. McManus' opinion concerning the cause of Claimant's bilateral knee meniscal tears more persuasive than that of Dr. Smith. Claimant has failed to prove that her 2010 industrial injury caused her need for bilateral knee surgery.

55. **Other issues.** Having failed to prove a causal relationship between Claimant's 2010 industrial accident and her bilateral knee surgery, all other issues are moot.

CONCLUSIONS OF LAW

1. Claimant has failed to prove that her 2010 industrial injury caused her need for bilateral knee surgery.

2. All other issues are moot.

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 __14th____ day of January, 2013.

INDUSTRIAL COMMISSION

_____/s/_____
Alan Reed Taylor, Referee

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __17th__ day of ____January____, 2013, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

DARIN G MONROE
PO BOX 50313
BOISE ID 83705-0966

JON M BAUMAN
PO BOX 1539
BOISE ID 83701-1539

kh _____/s/_____

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARIA SALCIDO, Claimant, v. CALDWELL HOUSING AUTHORITY, Employer, and IDAHO STATE INSURANCE FUND, Surety, Defendants.	**IC 2010-020050** **ORDER** FILED JAN 17 2013 INDUSTRIAL COMMISSION

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

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

1. Claimant has failed to prove that her 2010 industrial injury caused her need for bilateral knee surgery.
2. All other issues are moot.
3. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this __17th____ day of _____January_____, 2013.

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 _17th_ day of ___January_____, 2013, a true and correct copy of the foregoing **ORDER** was served by regular United States mail upon each of the following:

DARIN G MONROE
PO BOX 50313
BOISE ID 83705-0966

JON M BAUMAN
PO BOX 1539
BOISE ID 83701-1539

kh

_____/s/_____