

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

SU WARREN,

Claimant,

v.

WILLIAMS & PARSONS PC CPAS,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,  
Defendants.

**IC 2007-003559**

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

**FILED MAR 27 2013**

**INTRODUCTION**

Pursuant to Idaho Code § 72-506, the Industrial Commission assigned the above-entitled matter to Referee Douglas A. Donohue who conducted a hearing in Coeur d'Alene on May 10, 2012. Claimant was represented by Ned Cannon. Defendants Employer and Surety were represented by H. James Magnuson. The parties presented oral and documentary evidence. Subsequently posthearing motions and a telephone conference ensued. (See Order on Claimant's Motion to Stay Proceedings and Amended Brief Schedule, October 15, 2012.) The parties later submitted briefs. The case came under advisement on December 5, 2012. This matter is now ready for decision.

**ISSUES**

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

1. Whether the condition for which Claimant seeks benefits was caused by the alleged industrial accident;
2. Whether apportionment of permanent disability for a pre-existing condition pursuant to Idaho Code § 72-406 is appropriate; and
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,
- (d) Retraining,
- (e) Medical care, and
- (f) Attorney fees.

### **CONTENTIONS OF THE PARTIES**

Claimant contends that she suffered an injury to her cervical spine as a result of a work accident which occurred on January 23, 2007. A car struck a wall of the building in which she worked. Force of the impact transferred to her desk which stood against the wall. The force drove her and her chair across the room. She still has sequelae from the accident and C5-6 fusion surgery performed to alleviate the disk herniation which she suffered as a result of the accident. She still has physical and psychological injuries from it. Because she is not psychologically at MMI, the hearing in this matter should have been stayed. Defendants have acted unreasonably and attorney fees should be awarded.

Defendants contend that Claimant's injuries resolved about one year after the accident. They have paid all compensable benefits. Other problems are preexisting or the result of a motorcycle accident which occurred in June 2008. Claimant declined an offer of palliative pain management and education about chronic pain. That offer remains open. The offer of palliative care does not undercut medical evidence that Claimant is medically stable.

### **EVIDENCE CONSIDERED**

The record in the instant case included the following:

1. Oral testimony at hearing of Claimant and Dennis Robert Brown, Claimant's companion;
2. Claimant's exhibits 1, 3-11, 13-18, admitted at hearing;
3. Defendants' exhibits 1-26, admitted at hearing;
4. Post-hearing depositions of Craig Beaver, Ph.D., and vocational expert Douglas Crum.

Objections made in all depositions are OVERRULED.

Claimant's exhibit 1, page 66, appears to relate to someone other than Claimant and is not relevant.

Claimant's exhibit 2 pp. 47-57, exhibit 12 pp. 48-69, and exhibit 19 were produced untimely without good cause under JRP rule 10. Defendants objected to the admission of these documents. Despite the fact that the production of these exhibits was manifestly untimely, the Referee reserved ruling on admissibility at hearing in order to allow more thorough review. After further review, in a telephone conference with the parties on June 7, 2012, the Referee SUSTAINED Defendants' objections.

The Referee submits the following findings of fact and conclusions of law for the approval of the Commission and recommends it approve and adopt the same.

## **FINDINGS OF FACT**

### **The Accident**

1. On January 23, 2007, Claimant was seated in a wheeled office chair at her desk at work. A vehicle outside the building struck the wall near the desk. Claimant and the chair were propelled across the room by a combination of the force of the vehicle which struck the wall which struck the desk which struck the chair and of Claimant's surprised physical reaction to the accident.

2. Although the building was significantly damaged at the point of impact, the car did not actually break through the wall into the interior of the building. Claimant's exhibit 15 contains photographs of the vehicle and wall after the accident. These provide some perspective on the forces involved in the accident.

3. Claimant's employment was terminated on March 13, 2007. Although Employer claimed Claimant's performance had suddenly deteriorated more than four months before the

work accident, none of this was documented before the accident. Claimant had worked for Employer since October 2003.

#### **Post-Accident Medical Care**

4. Claimant immediately sought medical care. Claimant initially complained of dizziness, left facial pain and left hand pain. X-rays of her left wrist and hand were negative. Scott Burgstahler, M.D., who had been Claimant's primary treating physician for a decade, treated her. He noted her primary complaint related to her left hand. He also noted some "subtle evidence" for cognitive impairment or decreased concentration ability.

5. Claimant attended four chiropractic visits between the date of the accident and the end of February 2007.

6. A CT scan on Claimant's head was taken one week later, on January 30. It showed no abnormality.

7. By the time of a February 9, 2007, follow-up visit, Dr. Burgstahler opined Claimant had "recovered nearly fully" despite a "huge list of symptoms" and recommended "a little bit" of physical therapy for her left shoulder.

8. Physical therapy began February 12, 2007. Claimant reported some left neck and shoulder pain, with lesser pain in her thoracic and lumbar spine. She reported her headaches from the accident had subsided. The therapist noted poor posture, diminished range of motion with pain on motion, and Claimant's report of early morning neurological symptoms in her left arm. On another visit, Claimant reported continuing headaches and some short-term memory loss. Claimant was given exercises and taught about posture and ergonomics. Claimant reported that she fell on March 1 and that she felt better afterward. Overall, Claimant's symptoms waxed and waned throughout physical therapy. By March 15, Claimant had improved

substantially and was discharged from physical therapy.

9. On June 9, 2007, Claimant reported some paresthesias in her hands and thumbs bilaterally. Despite the lack of objective findings on examination, Dr. Burgstahler recommended an MRI.

10. On July 13, 2007, Claimant underwent a C-spine MRI. It showed mild bony narrowing at C3-4 and a small degenerative disc protrusion at C5-6, neither of which could be correlated to her complaints.

11. On August 13, 2007, neurosurgeon Jeffrey McDonald, M.D., examined Claimant. He noted diminished sensation in Claimant's first finger on the right, but no other atypical findings on examination. He noted a C-spine MRI showed a "moderately large" disk herniation at C5-6 with a probable annular tear. He noted that he viewed this MRI abnormality to be more substantial than the radiologist's description. He opined Claimant's symptoms to be consistent with and explainable by the observed disk condition. He recommended surgery.

12. On September 4, 2007, Claimant underwent an anterior cervical discectomy and fusion at C5-6. Dr. McDonald and his nurse practitioner Tawnya Bowman provided follow-up care. Physical therapy was recommended to aid in reducing post-surgical pain complaints.

13. Claimant's X-rays six months after surgery showed good stability and alignment. This was confirmed by a CT scan one week after the X-rays. Dr. McDonald noted that the fusion was "incompletely ossified" although it appeared to be healing without unwanted motion or instability. He remained concerned about her pain and loss of range of motion.

14. In January 2008, Dr. McDonald prescribed a TENS unit to ameliorate Claimant's continuing pain.

15. On May 12, 2008, Claimant reported generalized fatigue and neck pain.

Dr. Burgstahler diagnosed “fatigue, myalgias, following a cadaveric bone grafting.” Dr. Burgstahler’s records do not identify another visit for nearly one year, until April 30, 2009.

16. On June 19, 2008, Claimant reported significant improvement albeit with some residual muscle tightness. Three months’ use of a bone stimulator had been helpful.

### **Motorcycle Accident and Medical Care**

17. On June 29, 2008, Claimant was involved in an accident in which a motorcycle hit a deer. Claimant was a passenger on the motorcycle which was driven by her companion, Mr. Brown. She was not wearing a helmet. In that accident, she dislocated her left shoulder, broke bones in her left leg, and suffered several scrapes, lacerations, and bruises.

18. Upon hospitalization after the motorcycle accident, Claimant “denie[d] headache, neck pain, difficulty breathing, chest pain, abdominal pain, vomiting.” X-rays showed no fractures of her pelvis or hip joints. The emergency room examination noted “Neck is nontender. Painless range of motion.” No evidence of trauma to Claimant’s head was found. Dr. DiBenedetto, on examination, stated, “By the way she has a neurovascularly intact left upper extremity with all motion of the fingers. She has intact sensation of her lateral deltoid and over the biceps.”

19. Also on June 29, 2008, a left shoulder X-ray after a reduction of Claimant's shoulder dislocation showed appropriate alignment. Comminuted fractures of the tibia and fibula were surgically repaired. Both procedures were performed by Dr. DiBenedetto. He also repaired an ankle fracture.

20. On August 1, 2008, Dr. DiBenedetto examined Claimant and her major complaint was loss of strength and range of motion in her left arm. She reported pain like she “has never had” before.

21. Also on August 1, 2008, Dr. McDonald provided a follow-up examination. Claimant was continuing to use the bone stimulator. She reported no neck or upper extremity symptoms. She reported the intervening motorcycle accident and left shoulder dislocation. X-rays showed the ossification remained incomplete, but alignment and stability remained good.

22. On August 14, 2008, Claimant's left shoulder MRI showed healing from trauma and a full thickness tear of the anterior supraspinatus tendon. Dr. DiBenedetto provided follow-up care of her torn rotator cuff.

23. On September 23, 2008, Dr. DiBenedetto repaired Claimant's torn rotator cuff. Bruce Demko, CRNA, performed a left interscalene block for postoperative pain management. Dr. DiBenedetto opined that the rotator cuff repair was made necessary by the motorcycle accident.

24. On October 28, 2008, a C-spine X-ray showed no problem with the alignment or condition of Claimant's neck or the fusion appliances.

25. Physical therapy was recommended, but Claimant declined because of her lack of health insurance and inability to pay out of pocket.

#### **Additional Medical Care**

26. On October 30, 2008, Dr. McDonald recommended Claimant discontinue use of the bone stimulator. Claimant reported dramatic improvement had occurred since August.

27. On December 23, 2008, physiatrist J. Craig Stevens, M.D., evaluated and examined Claimant's condition at the request of Defendants. He opined Claimant suffered a cervical disk herniation as a result of the work accident. He opined she was fixed and stable on the date of this examination. He opined she suffered permanent partial impairment rated at 5% of the whole person as a result of the injury, surgery, and continuing subjective complaints

of nonverifiable mild residual radiculopathy. He did not recommend specific work restrictions.

28. On April 30, 2009, Claimant returned to Dr. Burgstahler. She complained that “her neck really hasn’t been right ever since” the work accident and fusion surgery. Claimant informed Dr. Burgstahler that she “was rated for disability at 5% and she is convinced that her disability is significantly higher than that.” Dr. Burgstahler okayed a referral to neurosurgeon John Demakas, M.D., who had been recommended by Claimant’s attorney.

29. June through November 2009, Claimant underwent acupuncture with Mika Tsongas. Claimant has embraced other nontraditional therapeutic options as she has attempted to recover from her injuries.

30. On October 20, 2009, Dr. Burgstahler recorded Claimant’s representation that she believes she has shown “a little dysphoria” with reduced cognitive awareness since the work accident. This despite her satisfactory performance in her new job as county clerk in Ponderay.

31. Dr. Demakas performed a consultation with Claimant. He agreed Claimant’s fusion looked “fine.”

32. On December 3, 2009, Claimant's C-spine MRI showed minimal degenerative changes at levels other than the stable fusion.

33. On April 9, 2010, Dr. McDonald responded to correspondence from Surety. He disputed Claimant’s report to Dr. Burgstahler that her neck had never really improved. He recited his historical record of visits which showed Claimant had almost completely improved by at least August or September 2008. He opined his concurrence with Dr. Stevens’ IME of December 2008. He opined December 2009 MRI findings showed no new problem or change in her neck condition.

34. On May 20, 2011 and again on August 5, 2011, Craig Beaver, Ph.D., evaluated



and examined Claimant's mental and psychological status at the request of Defendants. The first evaluation dealt primarily with emotional issues. The second evaluation dealt primarily with Claimant's assertions of diminished cognitive functioning.

35. Of the four tests which, in part, measure a patient's magnifying or overreporting of mental or cognitive symptoms, three indicated Claimant was consciously or unconsciously overreporting her symptoms. One indicated no such overreporting. Dr. Beaver opined that Claimant's overreporting of symptoms was not done on an intentional basis.

36. Dr. Beaver diagnosed Claimant as qualifying for the following psychological diagnoses:

- a. Dysthymic Disorder,
- b. Pain disorder associated with psychological factors and medical condition,
- c. Adjustment disorder with anxious mood.

37. Although Dr. Beaver thought Claimant met some of the criteria for PTSD, she ultimately did not qualify for this diagnosis. As well, although Dr. Beaver considered whether Claimant warranted a personality disorder diagnosis, he ultimately concluded that she merely had somatization tendencies. Dr. Beaver did not opine that the subject accident was the predominant cause of Claimant's somatization tendencies.

38. Concerning Claimant's Axis 1 diagnoses, Dr. Beaver felt that although the subject accident did contribute, in some respect, to the three diagnoses he made, he clearly expressed his view that the subject accident was not the predominant cause, as compared to all other causes combined, of the three psychological diagnoses. According to Dr. Beaver, the work accident made its most significant contribution to Claimant's diagnosis of adjustment disorder with anxious mood. His report reflects that 50% of the cause of this diagnosis is referable to the subject accident.

39. Dr. Beaver also testified that the three psychological diagnoses he entertained were not significant enough to warrant either impairment ratings or restrictions. He noted that Claimant appeared to be functioning well in her new position with the City of Ponderay, her psychological diagnoses notwithstanding.

40. Dr. Beaver did testify that Claimant might benefit from a chronic pain management program as part of an effort to resolve some of Claimant's pain complaints related to her psychological pain disorder. Explaining the substance of a chronic pain management program, Dr. Beaver testified that one of the aims of such a program is to improve a person's function by employing strategies to reduce pain.

41. In accordance with his opinion that Claimant's pain disorder was only partly, but not predominantly, related to the subject accident, Dr. Beaver testified that the need for the chronic pain management program was only partly related to the subject accident.

#### **Other History and Prior Medical Care**

42. Claimant received occasional medical care through Bonner General Hospital from 1986 through 1994. These records are only partially legible. They do not appear to record any fact relevant to Claimant's head or neck.

43. Episodes of treatment for depression or anxiety or both appear occasionally in the pre-accident records.

44. Claimant visited chiropractor Gregory Dutson, D.C., for neck and upper back pain. The chiropractor's notes show one visit in 1996, one in 1998, two in 2004, two in 2005, and two in 2006. The last pre-accident visit occurred on November 20, 2006.

45. Claimant first visited Dr. Burgstahler in April 1997 for a cough and sinus symptoms. He has been her primary treating physician since that time.

46. In 1999, Claimant injured her left foot, knee and left shoulder in a bike accident. Only symptoms of foot pain persisted; the rest resolved quickly.

47. In November 2000, Claimant's lumbar X-ray showed degenerative problems with retrolisthesis. She complained of back pain with L5 radiculopathy down the right leg. A Lumbar MRI identified mild disc bulges and some straightening of normal curvature in an otherwise negative scan. Also in November 2000, an upper GI scan showed a small hiatal hernia which was exacerbating some reflux symptoms.

48. In May 2002, Claimant's appendix was removed.

49. On March 2003, Claimant was hospitalized briefly for symptoms which were diagnosed as sinusitis. Also noted among the records for this visit was a complaint of continuing occasional low back pain.

50. In May 2006, Dr. Burgstahler treated Claimant for fatigue and malaise. In September 2006, he treated her for respiratory tract infection and vertigo. In November 2006, he treated her for back and neck pain and headaches.

#### **Vocational Factors**

51. Born January 22, 1957, Claimant was 55 years of age on the date of hearing.

52. On the date of the accident, Claimant earned \$14.00 per hour on a full-time basis. She worked overtime each tax season.

53. Claimant is a high school graduate and has taken some internet courses—bookkeeping, accounting, tax, etc.—but has never enrolled in college.

54. Claimant has worked as a secretary/receptionist and bookkeeper for a veterinary hospital. Most jobs during her life related to bookkeeping. On the date of hearing, she worked as a county clerk, earning \$18.43 per hour plus full-time benefits on a 32-hour work week.

Her work as county clerk involves substantial attention to a broad range of detail. It requires initiative in exercising judgment. Additionally, while county clerk, she also worked part-time for a winery.

55. From the date of the work accident until she was terminated two months later, Claimant worked steadily for Employer.

56. Claimant was evaluated by vocational expert Doug Crum. He opined Claimant likely suffered no loss of access to her local labor market and no loss of wage-earning potential as a result of the work accident.

#### **DISCUSSION AND FURTHER FINDINGS OF FACT**

57. 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).

58. Claimant appears credible at hearing. She is an average historian. She does not appear to be intentionally exaggerating her history or symptoms. Her testimony is largely consistent with the available record. Claimant has been a good and hard worker throughout her adult life.

#### **Causation**

59. 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).

60. Claimant showed it likely that she suffered a C-spine injury as a result of the work accident. She showed it likely that she suffered a temporary aggravation of underlying depression and anxiety as a result of the work accident. She showed it likely that she retains some persistent sensation abnormalities in her upper extremities, particularly certain fingers.

61. Under Idaho Code § 72-451, psychological conditions sufficient to constitute a diagnosis under the DSM-IV-TR are compensable if certain conditions are satisfied. Of central importance, Claimant must demonstrate that the subject accident is the “predominant cause as compared to all other causes combined” of the psychological injury in question. (Idaho Code § 72-451(3)). Here, the evidence fails to establish causation per this elevated burden of proof; it is not disputed that the subject accident is, in some respect, responsible for contributing to the psychological diagnoses referenced by Dr. Beaver, but the evidence fails to establish that the subject accident is the predominant cause of those conditions.

#### **PPI and Permanent Disability**

62. 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).

63. Dr. Stevens is the only physician who provided a PPI rating for Claimant’s

physical condition. That rating is well supported by the evidence of record. Claimant suffered PPI rated at 5% of the whole person as a result of the work accident.

64. Claimant failed to show she suffered permanent partial impairment of a mental or emotional or psychological nature as a result of the work accident. Dr. Beaver's assessment appears well supported by the evidence of record and is uncontradicted. Claimant's suggestion that she might show psychological PPI if given more time is unpersuasive. This accident occurred in 2007. A hearing was originally set for August 16, 2011, but was vacated and reset at Defendants' request. As the reset date of the hearing—March 27, 2012—approached, Claimant requested additional time. The case was again vacated and reset for May 10, 2012. Claimant's belated attempts to produce evidence supporting a theory of a psychological injury requiring treatment and causing permanent impairment do not explain her failure to produce timely records.

65. "Permanent disability" or "under a permanent disability" results when the actual or presumed ability to engage in gainful activity is reduced or absent because of permanent impairment and no fundamental or marked change in the future can be reasonably expected. Idaho Code § 72-423. "Evaluation (rating) of permanent disability" is an appraisal of the injured employee's present and probable future ability to engage in gainful activity as it is affected by the medical factor of permanent impairment and by pertinent nonmedical factors provided in Idaho Code § 72-430.

66. The test for determining whether a claimant has suffered a permanent disability greater than permanent impairment is "whether the physical impairment, taken in conjunction with nonmedical factors, has reduced the claimant's capacity for gainful employment." *Graybill v. Swift & Company*, 115 Idaho 293, 766 P.2d 763 (1988). In sum,

the focus of a determination of permanent disability is on the claimant's ability to engage in gainful activity. *Sund v. Gambrel*, 127 Idaho 3, 896 P.2d 329 (1995).

67. Permanent disability is defined and evaluated by statute. Idaho Code § 72-423 and 72-425 et. seq. Permanent disability is a question of fact, in which the Commission considers all relevant medical and non-medical factors and evaluates the purely advisory opinions of vocational experts. *See, Eacret v. Clearwater Forest Indus.*, 136 Idaho 733, 40 P.3d 91 (2002); *Boley v. State, Industrial Special Indem. Fund*, 130 Idaho 278, 939 P.2d 854 (1997). The burden of establishing permanent disability is upon a claimant. *Seese v. Idaho of Idaho, Inc.*, 110 Idaho 32, 714 P.2d 1 (1986).

68. Here, Claimant has returned to work at a more complicated and demanding job than her time-of-injury job. The new job pays significantly more. Also, she works a second job at a winery. Claimant has shown she is capable of seeking work, obtaining work, and working. No physical restrictions have been recommended. The vocational expert opined Claimant suffered no disability in excess of PPI. Claimant failed to show she suffered permanent partial disability in excess of PPI.

69. Claimant suggests she should be entitled to additional evaluation for PPI or permanent disability or both at a later date. Claimant argues that if the chronic pain management program improves Claimant's functional ability, then this may make it necessary to reevaluate Claimant's impairment/disability after the completion of the program.

70. We are unpersuaded that it is necessary to defer the question of whether Claimant is entitled to an impairment rating for her psychological diagnoses. Claimant has not demonstrated that the underlying psychological condition to be addressed in the chronic pain management program is causally related to the subject accident under the standard set by Idaho

Code § 72-451. Absent proof of a causal connection between the Claimant's alleged psychological condition and the subject accident, the date of medical stability for conditions causally related to the subject accident stands at December 23, 2008.

#### **Medical Care**

71. An employer is required to provide reasonable medical care for a reasonable time. Idaho Code § 72-432(1).

72. Claimant established that she is entitled to benefits for all medical care related to the work accident, received through December 23, 2008, the date of medical stability. Defendants are not liable for medical care related to the motorcycle accident.

73. Defendants have expressed willingness to provide for certain medical care, including a pain management program. However, Defendants have no legal obligation to provide the same.

#### **Retraining**

74. Claimant declined to address this issue in briefing. Claimant did not present evidence of a plan for retraining nor did she make a showing of probable need for retraining. This issue is deemed waived.

#### **Attorney Fees**

75. Claimant raised facts and issues in briefing pertaining to subrogation of a related claim for liability of the person who drove the car that caused the work accident. These issues were not noticed for hearing.

76. Claimant failed to show that Defendants' unreasonably denied or delayed this claim. Claimant failed to show a basis for an award of attorney fees under Idaho Code § 72-804.



### CONCLUSIONS

1. Claimant injured her neck as a result of the work accident;
2. Claimant is entitled to TTD/TPD during the period of recovery;
3. Claimant is entitled to medical care received, related to the accident, through December 23, 2008;
4. Claimant has not shown her entitlement to medical care in the form of a pain management program;
5. Claimant is entitled to PPI rated at 5% of the whole person;
6. Claimant failed to show it likely she is entitled to permanent disability in excess of PPI;
7. Claimant failed to show entitlement to retraining benefits;
8. Claimant failed to show a basis for an award of attorney fees under Idaho Code § 72-804.

### RECOMMENDATION

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

DATED this 4<sup>TH</sup> day of March, 2013.

INDUSTRIAL COMMISSION

/S/ \_\_\_\_\_  
Douglas A. Donohue, Referee

ATTEST:

/S/ \_\_\_\_\_  
Assistant Commission Secretary      dkb

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

SU WARREN,

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v.

WILLIAMS & PARSONS PC CPAS,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,  
Defendants.

**IC 2007-003559**

**ORDER**

**FILED MAR 27 2013**

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Pursuant to Idaho Code § 72-717, Referee Douglas A. Donohue 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 injured her neck as a result of the work accident.
2. Claimant is entitled to TTD/TPD during the period of recovery.
3. Claimant is entitled to medical care received, related to the accident, through December 23, 2008.
4. Claimant is entitled to palliative medical care in the form of a pain management program as offered by Defendants, if Claimant timely elects to receive it.
5. Claimant is entitled to PPI rated at 5% of the whole person.
6. Claimant failed to show it likely she is entitled to permanent disability in excess of PPI.

7. Claimant failed to show entitlement to retraining benefits.
8. Claimant failed to show a basis for an award of attorney fees under Idaho Code § 72-804.
9. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 27<sup>TH</sup> day of MARCH, 2013.

INDUSTRIAL COMMISSION

/S/ \_\_\_\_\_  
Thomas P. Baskin, Chairman

PARTICIPATED BUT DID NOT SIGN

\_\_\_\_\_  
R. D. Maynard, Commissioner

/S/ \_\_\_\_\_  
Thomas E. Limbaugh, Commissioner

ATTEST:

/S/ \_\_\_\_\_  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the 27<sup>TH</sup> day of MARCH, 2013, a true and correct copy of **FINDINGS, CONCLUSIONS, AND ORDER** were served by regular United States Mail upon each of the following:

NED A. CANNON  
508 EIGHTH STREET  
LEWISTON, ID 83501

H. JAMES MAGNUSON  
P.O. BOX 2288  
COEUR D'ALENE, ID 83814

dkb

/S/ \_\_\_\_\_