

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

SHASTA DELOIS PROULX (formerly
FIGUEROA),

Claimant,

v.

SAVEWAY MARKET, INC.,

Employer,

AMTRUST INSURANCE CO. OF KANSAS,
INC.,

Surety,
Defendant.

IC 2019-036146

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

FILED

MAR 04 2024

INDUSTRIAL COMMISSION

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Industrial Commission assigned this matter to Referee Douglas Donohue. He conducted a hearing in Pocatello on March 9, 2023. James Arnold represented Claimant. Eric Bailey represented Defendants. The parties offered testamentary and documentary evidence. They took a post-hearing deposition and submitted briefs. The case came under advisement on October 4, 2023, and is ready for decision.

The undersigned Commissioners have chosen not to adopt the Referee's recommendation and hereby issue their own findings of fact, conclusions of law and order.

ISSUES

The bifurcated issues to be decided are:

1. Whether the condition for which Claimant seeks benefits was caused by the industrial accident; and
2. Whether and to what extent Claimant is entitled to the following benefits:
 - a.) Medical care (including *Neel* effect),
 - b.) Temporary disability, and
 - c.) Attorney fees.

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At hearing, the parties withdrew an issue pertaining to whether the accident arose out of and in the course of employment. All other issues are reserved.

CONTENTIONS OF THE PARTIES

Claimant contends she was injured when a fifty-pound box of potatoes which she was lifting gave way. The accident jerked her left arm causing pain in and around her neck and left shoulder blade. Her physicians in Salmon provided significant, temporary, left arm restrictions and soon after added a restriction regarding her work hours. An IME physician declared her to be at MMI and issued a 4% whole person rating. Still hurting, Claimant sought out Benjamin Blair, M.D. for treatment. He disagreed with the prior MMI opinion and recommended surgery. Claimant underwent a second IME examination. Dr. Blair performed a C6-7 fusion and later extended the fusion to C5-6.

Claimant contends that physicians agree she suffered an injury. Dr. Blair opined that the injury included a herniated disc in her neck. She should be entitled to past and future medical care at the *Neel* rate for her neck injury. She should be entitled to temporary disability benefits from May 8, 2020 when Employer sent her home for lack of available light-duty work. Defendants' actions were unreasonable in their denial of medical care based upon unreasonable medical IME opinions as well as in their stoppage of temporary disability benefits. Claimant should be entitled to attorney fees under Idaho Code § 72-804.

Defendants contend Claimant's medical care has all been paid by themselves or by Medicaid. The shoulder injury was accepted. Claimant has failed to show her neck symptoms and surgeries are accident related. Moreover, surgery was obtained outside the chain of referral. Therefore, medical care benefits are not due and owing. Even if the unpaid medical care is deemed compensable, it should be paid at the Medicaid rate. *Neel* should not apply to situations where

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medical care has been paid by a third party like Medicaid. It should apply only in cases of uncompensated medical bills or where an injured worker might be liable for balance billing. Medicaid does not allow balance billing.

Defendants contend that temporary disability benefits are not due and owing. Claimant was offered light-duty work approved by her treating physician. After briefly accepting it, she declined to perform it. Even if she had not refused such work, Dr. Vallin declared her medically stable on May 26, 2020. No temporary disability can accrue after medical stability. Defendants' actions were reasonable at all times.

EVIDENCE CONSIDERED

The record in the instant case included the following:

1. Testimony of Claimant,
2. Joint exhibits 1 through 14, and
3. Post-hearing depositions of orthopedic surgeons Benjamin Blair, M.D. and Lynn Stromberg, M.D.

FINDINGS OF FACT

1. Claimant began working for Employer on October 30, 2019. JE 2:28.
2. On December 16, 2019, Claimant asked for Christmas Eve off. JE 2:3-6. At the time of the request, Employer was uncertain whether that could be accommodated. *Id.*
3. On December 17, 2019, Claimant lifted a 50-pound box of potatoes from the floor. Deposition of Shasta Figueroa ("Claimant Dep."), 27; Hearing Transcript ("Tr."), 17-18. The wet cardboard box gave way. *Id.* Her left arm was painfully jerked as potatoes suddenly fell out. *Id.*
4. Claimant was off work the next day as previously scheduled. Tr. 19, JE 2:3-6.
5. On the second day after the accident, when she returned to work, Claimant reported the accident and sought medical care. Claimant Dep. 28; Tr. 19.
6. On December 19, 2019, Claimant visited Brenda Arrington, CFNP. Tr. 18, 20; JE

3:106. Claimant reported left shoulder pain with an inability to turn her head without pain. *Id.* She reported an inability to lift her arm overhead. *Id.* Examination noted “slight” swelling to the anterior shoulder, with reports of pain in her neck and left shoulder, but no weakness or impingement. JE 3:108. X-rays were negative. *Id.* NP Arrington diagnosed a shoulder strain and allowed Claimant to return to light duty, no lifting over 5 pounds. JE 3:109, 111.

7. On December 20, 2019, NP Arrington noted that Claimant reported that her pain increased during her light-duty shift at work. JE 3:113. Claimant had mild swelling in her left hand. JE 3: 115. Arrington took Claimant off work for the week, until December 27. JE 3:117.

8. On December 26, 2019, Claimant returned to NP Arrington who noted weakness in Claimant’s left arm. JE 3:119. She extended Claimant’s off-work status about another week, through January 3, 2020. JE 3:121.

Light Duty and Medical Care: 2020

9. On January 8, 2020, NP Arrington noted that Claimant was negative for continuing neck pain. JE 3:125. Radiologist Peter Vance, M.D. reviewed an MRI fluoroscopic arthrogram of the left shoulder. JE 3:124. He found it negative for rotator cuff tear, negative for degenerative disease, and positive for mild bursitis. JE 3:125, 128. Examination showed Claimant’s strength was back. JE 3:125. Arrington recommended physical therapy and allowed Claimant to return to light duty, no lifting over 5 pounds. JE 3:123, 129.

10. On January 14, 2020, Claimant visited Heather Whitson, PA-C. JE 3:130. Whitson noted that Claimant complained of left shoulder and neck pain arising with any left upper extremity activity. JE 3:130. Claimant’s report of slight numbness and tingling in her fingers was a new complaint. JE 3:130. PA Whitson allowed Claimant to return to work with no lifting involving her left arm. JE 3:136.

11. No later than January 17, 2020, approximately one month after the accident, Employer memorialized Claimant's notice of accident. JE 2: 5. Employer's version links Claimant's dissatisfaction over Employer's response to her request for time off Christmas Eve as a basis for Claimant's report of accident. JE 2:5-9. Employer reviewed store surveillance video which reportedly showed the potato box intact. *Id.* Employer documented a conversation which occurred shortly after January 2, 2020, when Claimant allegedly gave an inconsistent version of when the accident occurred. *Id.*

12. On January 20, 2020, Hal Richins, M.D. noted that Claimant reported that work using only her right arm increased her pain. JE 3:137. He noted that Claimant denied numbness and tingling in her left arm and hand. *Id.* He noted the MRI and x-rays did not show acute findings. *Id.* On examination he noted complaints of "extreme" pain with motion but found no objective indications of injury. JE 3:139. He emphasized that despite Claimant's reports of pain with shoulder motion, Claimant insisted that she had no shoulder pain, only neck pain. JE 3:143. He observed she was able to remove and to put on her sling without difficulty using the same motions she had complained of causing extreme pain on examination. *Id.* He noted, "I am not confident that her presentation isn't slightly exaggerated." *Id.* He allowed Claimant to return to light-duty work, lifting, pulling, and pushing up to 5 pounds with her *right* arm but no use of her *left* arm. JE 3:142.

13. On February 4, 2020, X-rays showed some "straightening of the normal cervical lordosis" but were negative for any disc or soft tissue problems. JE 3:147. PA Whitson deferred to the physical therapist for a work release in two weeks. JE 3:148.

14. In February, Claimant reported positive results in physical therapy. JE 5:231; JE 3:150. However, beginning in March Claimant began reporting increases in pain which she

significantly tied to any activity during the day. JE 3:158; JE 5:259. The therapist responded by recommending shorter work shifts while at the same time reporting that her tolerances were improving. JE 2:50; JE 5:236; JE 3:157; Tr. 24-25. On March 25, 2020, in the therapy record, the therapist recommended a trial increase in work hours, to go up to five hours, reporting Claimant was on track with the typical time frame expected for healing. JE 5:273. The next day however, on March 26, 2020, Dr. Richins Jr. records that her physical therapist “feels like Shasta can only work a maximum of 4hrs a day and should have that divided.” JE 3:167.

15. On March 5, 2020, PA Whitson, in collaboration with the physical therapist, allowed Claimant to return to light-duty work effective March 9, 2020, up to 3 hours per day, 5-pound limit for all left arm usage, no “awkward, prolonged” positions or prolonged cervical flexion. JE 3:157.

16. Despite PA Whitson’s approval of the light-duty work offered by Employer, Claimant chose which parts of her light-duty work she would or would not do. Tr. 26-27. For example, Claimant testified that she could not use her right arm to remove the pieces of cardboard from high shelves of canned goods because it hurt her neck. Tr. 35-36.

17. On March 10, 2020, Claimant left work without telling anyone and without doing the light-duty work assigned to her. JE 2:64.

18. On March 12, 2020, PA Whitson allowed Claimant to return to light-duty work, up to 3 hours per day, with the previous weight, position, and motion restrictions. JE 3:161.

19. On March 26, 2020, PA Whitson noted Claimant’s range of motion was normal during conversation but reduced during examination. JE 3:165, 167. Whitson noted that if a CT was normal, she would likely release Claimant to work without restrictions. JE 3:167.

20. On April 2, 2020, a CT showed her cervical spine to be entirely normal according

to radiologist Michael Biddulph, M.D. JE 3:166, 170, 193.

21. On April 9, 2020, PA Whitson allowed Claimant to return to light-duty work, limited to 5 hours per day, with the previous weight, position, and motion restrictions. JE 3:171. Positive progress was noted through April, but Claimant reported it was taking longer for pain to calm down after work shifts. JE 5:278, 283.

22. On April 27, 2020, PA Whitson's examination noted full range of motion in Claimant's neck and left arm, despite Claimant's reluctance and refusal to complete flexion stating anything further would cause pain. JE 3:176. PA Whitson stated Claimant demonstrated without abnormal effect or abnormal behaviors. *Id.* She allowed Claimant to return to light-duty work, limited to 6 hours per day, with the previous weight, position, and motion restrictions. JE 3:172.

23. On April 30, 2020 PA Whitson discussed ameliorating restrictions, but Claimant newly claimed an inability to use her right hand—a complaint not supported by physical therapy records. JE 3:177. Nevertheless, Whitson allowed additional physical therapy for this “acute flare.” *Id.*

24. Employer proposed light duty to be reviewed by PA Whitson. JE 2:81. This involved facing product on shelves and removing empty cardboard. JE 2:81; Tr. 37. Employer described in detail the motions and weights Claimant would be asked to make and lift, including opening the door to the freezer displays. *Id.* On April 30, 2020, PA Whitson specifically reviewed the description of the work, and checked the box that it was acceptable for six hours a day. JE 2:3, 81.

25. On May 1, 2020, Claimant reported her boss required her to do tasks she was not ready for and had been in pain since then. JE 5:291. PA Whitson and Bryan Hill, LPN released Claimant from work from April 30, 2020, through May 5, 2020. JE 2:76.

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26. On May 7, 2020, PA Whitson allowed Claimant to return to light-duty work effective May 8, 2020, limited to 6 hours per day, and to 8 pounds lifting and motion with her *right* arm and 3 pounds with her *left*, with the previous motion and position restrictions. JE 3:195.

27. On May 8, 2020, Employer and Claimant met to discuss available light duty within Claimant's restrictions. JE 2:9. At the meeting, Claimant reported she was unable to perform the proposed work. *Id*; Tr. 26-27. Despite the fact her provider had specifically permitted intermittent cervical flexion, Claimant interpreted the restriction on "awkward positioning" to exclude work-related twisting of her neck. JE 2:9, 83. She stated that she was however, permitted to bend her neck to tie her shoes or such. JE 2:9. Employer sent her home. *Id*. Claimant has not worked since. At her physical therapy appointment on May 12, 2020, she reported her boss sent her home as he had nothing for her to do that would accommodate her restrictions. JE 5:302.

28. Surety paid TTD benefits through May 8, 2020 and discontinued them based upon Claimant's refusal to perform the light-duty work offered within her restrictions. JE 13:1000; JE 14:1005.

29. Positive progress was observed in therapy on May 19, 2020. JE 5:304. Claimant continued to attend physical therapy intermittently to June 4, 2020. JE:314.

30. On June 2, 2020, physiatrist John Vallin, M.D. reviewed records and performed a forensic examination at Surety's request. JE 6:343. He opined Claimant suffered a strain or sprain to the muscles of her left shoulder in the accident with injury to the shoulder girdle. JE 6:354-55. He opined that a confirmatory MRI would be advisable, but that if negative, it would show her to be at MMI. JE 6:356. He could not opine her to be at MMI without it. *Id*.

31. On July 6, 2020, a cervical spine MRI, interpreted by radiologist James Schmultz, M.D. showed "slight" straightening of cervical lordosis, "minimal" bilateral foraminal stenosis at

C3-4, “[m]ild-to-moderate” bilateral foraminal stenosis at C4-5, a midline posterior disc protrusion at C5-6 contacting and slightly flattening the anterior surface of the spinal cord, a broad-based midline posterior disc protrusion at C6-7 effacing subarachnoid fluid anterior to the spinal cord possibly slightly flattening the anterior surface of the spinal cord, and a “shallow” posterior disc bulge at C7-T1. JE 3:193-94.

32. On July 7, 2020, having reviewed the MRI report, Dr. Vallin opined Claimant was at MMI and that her symptoms were unrelated to the degeneration seen in the MRI. JE 6:358. He recommended no future medical care. JE 6:360. He opined a 4 percent whole person PPI based upon her reduced range of motion. *Id.* He opined that there was no objective basis for imposition of restrictions. JE 6:361.

33. Surety paid PPI based upon Dr. Vallin’s rating. JE 13:1000; JE 14:1006-07.

34. On August 20, 2020, Claimant visited Benjamin Blair, M.D. for the first time. JE 9:362. Dr. Blair uses a voice-recognition system that at times makes his reports difficult to decipher. JE 9:374. He examined Claimant, reviewed diagnostic imaging, and recommended an epidural steroid injection. JE 9:363. He later recommended additional imaging to help with a decision about possible surgery. JE 9:367.

35. On September 30, 2020, Claimant returned to Dr. Blair for the injection. JE 9:364-65.

36. On October 29, 2020, a fluoroscopic myelogram showed “normal for age” at all levels of Claimant’s cervical spine. JE 8:399-400. Radiologist David Cameron, M.D. reported “no stenosis or nerve root encroachment.” *Id.* According to Dr. Cameron a CT post-myelogram showed a mild central C6-7-disc bulge with slight impression on the ventral thecal sac and mild narrowing of the spinal canal. JE 8:402, 406. He identified “[m]ild spinal stenosis” in a separate

note. *Id.* at 402. The cord shape and signal were maintained, with no neural foraminal narrowing. *Id.*

37. On November 4, 2020, after telemedicine contacts necessitated by Covid-19, Dr. Blair deemed conservative measures including the injection to have failed. JE 9:371. He recommended surgery. *Id.* Notes show he anticipated an anterior discectomy and fusion. *Id.* Dr. Blair was aware that Claimant was a smoker. JE 9:389. He suggested she stop smoking for a period before and after the surgery. *Id.* In deposition Claimant testified that Dr. Blair recommended she “cut back” on her smoking and that she did so before surgery. Claimant Dep. 42. In deposition Dr. Blair testified that he was aware that she smoked and “warned her of the risks” without demanding she stop before surgery. Deposition of Benjamin Blair, MD March 29, 2023 (“Blair Dep.”), 49.

Medical care: 2021

38. On some date soon after January 14, 2021, Lynn Stromberg, M.D. reviewed records and performed a forensic examination at Surety’s request. JE 4:210. Dr. Stromberg’s report erroneously identifies 2020 as the date of examination, but the report also repeatedly shows this examination occurred in 2021. Claimant self-reported “severe” symptoms. JE 4:213. Dr. Stromberg noted nerve conduction and EMG studies showed no abnormal findings. *Id.* On examination Claimant exhibited range of motion limitations comparable to the first few days after the alleged industrial accident, but inconsistent with physical therapy notes only a few weeks afterward. JE 4:212-13. Dr. Stromberg noted she showed better range of motion when getting back into her car after the examination. JE 4:213-14; Stromberg Dep. 24. He opined that her examination showed “significant inconsistencies.” JE 4:214. He erroneously stated that her “original complaint was strictly of left shoulder pain.” *Id.* He opined that the degeneration shown in her neck upon MRI “could not product [sic] the reported symptoms.” *Id.* He opined that she

showed “significant signs of symptom magnification.” *Id.* He erroneously failed to note the temporal relationship between the accident and NP Arrington’s mention of “neck pain” among the constellation of shoulder symptoms which Claimant reported on December 19, 2019. *See* JE 3:108. He opined the absence of radiculopathy or myelopathy on examination. JE 4:214. He opined that the accident caused shoulder strain which had reached MMI without permanent impairment. JE 4:215. He opined that, regardless of cause, consideration of future invasive procedures was to be “discourage[d]” based upon the absence of objective findings on MRI imaging and EMG testing. *Id.*

39. In deposition, Dr. Stromberg explained he had read Dr. Blair’s deposition and disagreed with his opinions. Deposition of Lynn J. Stromberg, M.D. June 8, 2023 (“Stromberg Dep.”) 7-9, 34-36. Dr. Stromberg reviewed the CT myelogram and opined showed a normal neurological presentation in Claimant’s cervical spine. He opined the foramen was “wide open” showing no indication of nerve compression. *Id.* at 10. The CT does not show any basis for pain or symptoms either chronic or acute. *Id.* at 18. Nothing shown on the CT indicates a need for surgery. Moreover, when Dr. Stromberg examined Claimant, she reported non-anatomical paresthesias in her left third and fourth fingers. *Id.* at 18; JE 4:212, 214.¹ Her claimed symptoms do not correlate with a cervical spine condition. *Id.* at 18-21. They do not correlate with an ulnar nerve condition. *Id.* Moreover, the EMG/NCV studies support an absence of any condition which might relate to her reported symptoms. *Id.* at 20-21.

¹ The fact that the sensation is only reported in the third and fourth digits, rather than the left hand generally, is significant. In his IME report dated May 26, 2020, Dr. Vallin also recorded Claimant as experiencing intermittent tingling sensations in only the third and fourth digits. JE 6:347. Physical therapy records also put the pain at Claimant’s third and fourth digits. JE 5:316. However, Dr. Blair’s records simply refer to “radicular symptoms of the left hand.” JE 8:472.

40. Dr. Stromberg opined that only specific local lacerations of discrete nerves in the fingers themselves could explain Claimant's non-anatomical complaints. *Id.* at 19. Claimant's nerves were not cut. *Id.* at 21.

41. Dr. Stromberg explained that physicians having examined a patient may disagree with the adjectives used by a radiologist who reads diagnostic imaging. *Id.* at 25-26. Here, he opined that the one radiologist who reported bulges and stenosis was over-aggressive in his description. *Id.*

42. Dr. Stromberg opined that Claimant did not suffer a cervical injury in the accident. *Id.* at 26-27. Therefore, cervical surgery was unrelated to the accident. *Id.* Nothing in the films he reviewed suggested that the first surgery was a reasonable option. *Id.* at 26.

43. Dr. Stromberg testified that smoking one pack of cigarettes every three days would decrease the likelihood of success of a fusion surgery from the mid-90 percentiles to the low 70s. *Id.* at 33.

44. On February 23 and 24, 2021, RehabAuthority performed a forensic functional capacity evaluation at Claimant's request. JE 7:964. The evaluator found her cooperative but noted her perceived abilities were below her actual abilities. *Id.* at 966. Nevertheless, the evaluator found Claimant able to perform only sedentary work. *Id.* at 967.

45. On May 5, 2021, Dr. Blair reviewed records and examined Claimant. JE 10:970, 973-75. He opined that Claimant suffered a herniated disc at C6-7 caused by the accident. JE 10:976. He opined that she did not suffer a shoulder injury. *Id.* He opined that Claimant was not yet medically stable. *Id.* He opined that if she did not seek further medical treatment she would be rated at 8% whole person PPI. JE 10:977. Dr. Blair agreed with the RehabAuthority results. *Id.*

46. On May 5, 2021, Dr. Blair ordered an MRI of Claimant's cervical spine and brain.

JE 9:383. Radiologist Christopher Harker, M.D. reported no evidence of “acute intracranial process.” JE 3:199. The MRI of Claimant’s cervical spine showed no change from the July 6, 2020, MRI and was termed “mild multilevel degenerative changes.” *Id.* at 201.

47. On June 7, 2021. Claimant reported to Dr. Blair an incident involving a “pop” in her neck and worsening of symptoms. JE 9:384. Dr. Blair discussed surgical fusion even though the disc bulge was “relatively small” and “may not improve her overall symptomatology.” JE 9:385.

48. Claimant testified that before her first surgery her neck got so bad that she was unable to lift her head. Tr. 32. This statement is not supported by medical records. *Also see Blair Dep.* 16-18.

49. On July 27, 2021, Dr. Blair performed the discectomy and anterior fusion C6-7. JE 8:467.

50. On August 11, 2021, X-rays showed the surgical changes. JE 3:202-03.

51. In September physical therapy resumed. JE 5:316. When it ended in December Claimant reported extreme inability to perform minimal activities of daily living. JE 5:339.

Medical Care: 2022

51. On February 2, 2022, Dr. Blair released Claimant to “activities as tolerated.” JE 9:395.

52. On April 13, 2022, Dr. Blair noted Claimant’s post-surgical symptomological progress had plateaued. JE 9:397.

53. The fusion did not fuse. JE 8:652, 54. Healing bone growth which was expected to fuse the vertebrae did not occur. Blair Dep. 12. Claimant’s condition was not ameliorated by the surgery. JE 8:648.

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54. On October 6, 2022, Dr. Blair noted “I believe patient’s ongoing symptoms are due to nonunion cervical spine.” JE 8:652, 54.

55. On November 2, 2022, Dr. Blair considered re-fusing C6-7 and extending the fusion to C5-6. Ex. 8:658.

56. On November 28, 2022, hospital medical personnel performed pre-admission testing before Claimant’s scheduled second surgery. They—the nurse practitioner or M.D. physician, the record is unclear—noted, “Patient is still somewhat active and can climb stairs. Patient does light farm work with the help of a wagon.” JE 8:682.

57. On November 29, 2022, Dr. Blair performed a discectomy and fusion at C5-6 and a second fusion at C6-7. JE 8:770-71. At the time of discharge Claimant reported that she could function and that her children could provide whatever help she needed at home. JE 8:887-88. She expressly mentioned that her children could provide transportation by automobile if necessary. *Id.*

DISCUSSION AND FURTHER FINDINGS OF FACT

58. 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). Uncontradicted testimony of a credible witness must be accepted as true, unless that testimony is inherently improbable, or rendered so by facts and circumstances, or is impeached. *Pierstorff v. Gray’s Auto Shop*, 58 Idaho 438, 447–48, 74 P.2d 171, 175 (1937). *See also Dinneen v. Finch*, 100 Idaho 620, 626–27, 603 P.2d 575, 581–82 (1979); *Wood v. Hoglund*, 131 Idaho 700, 703, 963 P.2d 383, 386 (1998).

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59. The Commission finds no reason to disturb the Referee's findings and observations on Claimant's presentation or credibility, made as follows: Claimant makes an equivocal first impression. She wore a neck brace to the hearing and appeared to be making a show of how slowly she walked and moved. Nevertheless, while it did not appear to be a credible response to pain, Claimant's demeanor credibly represented her fear of pain. Her use of extreme adjectives in describing her history of pain was inconsistent with medical records where her contemporaneous descriptions of pain varied greatly from visit to visit. Where contemporaneously made medical records are inconsistent with Claimant's memory on testimony, medical records carry more weight.

Causation

60. A claimant must prove that she was injured as 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). Magic words are not necessary to show a doctor's opinion is held to a reasonable degree of medical probability; only their plain and unequivocal testimony conveying a conviction that events are causally related. *Jensen v. City of Pocatello*, 135 Idaho 406, 412-13, 18 P.3d 211, 217-18 (2001). Aggravation, exacerbation, or acceleration of a preexisting condition caused by a compensable accident is compensable in Idaho Worker's Compensation Law. *Nelson v. Ponsness-Warren Idgas Enterprises*, 126 Idaho 129, 879 P.2d 592 (1994).

61. The preponderance of the evidence supports a finding that Claimant injured her

shoulder in the accident. Early treating physicians and Dr. Vallin agree.

62. Dr. Blair opined the accident also caused Claimant's neck condition. Dr. Vallin and Dr. Stromberg disagreed. Weighing the opinions of Drs. Blair, Vallin, and Stromberg, Claimant has not proven her work accident caused a neck injury and need for surgery.

63. Dr. Stromberg and Dr. Vallin have well explained their opinions that Claimant has not suffered a neck injury from the work accident. Dr. Vallin observed tenderness in soft tissue and muscles consistent with a shoulder injury. JE 6:354. He noted Claimant's neurologic exam was not clinically suggestive for acute cervical, thoracic, or lumbar radiculopathy or myelopathy. *Id.* Before finalizing his opinion, Dr. Vallin requested the opportunity to review a cervical MRI, which was later provided and he found did not support a cervical injury. JE 6:359. He diagnosed a left shoulder soft tissue sprain/strain based on the symptom onset and pain presentation. JE 6:355.

64. Both Dr. Vallin and Dr. Stromberg found Claimant's reports of pain do not anatomically correlate with any cervical injury. In his deposition, Dr. Stromberg very emphatically and specifically stated that the particular pain distribution Claimant reported regarding the numbness or tingling in her third and fourth digits would have to come from a nerve lower in the hand. A cervical problem does not explain the symptoms. Dr. Stromberg's initial opinion about causation of a neck injury failed to appreciate that Claimant included a complaint of neck pain in her initial presentation to NP Arrington. However, in deposition Dr. Stromberg opined that *if* Claimant suffered a neck injury it was merely a strain which should have resolved within a few days or weeks. Her diagnostic imaging showed no evidence of injury which could have resulted in long-term complaints. This latter opinion carries significant weight.

65. In contrast, Dr. Blair's opinion that Claimant has suffered a cervical injury, with no shoulder strain, is inconsistent with diagnostic tests and suffers from over reliance on Claimant's

subjective reports. Dr. Blair's only response to the anatomical critiques leveled by Dr. Stromberg is a generic conclusion that he thought Claimant's symptoms to be consistent with a C6-7 injury. Blair Dep. 34-36.

66. Most concerning, all radiologists but one read the diagnostic imaging as showing degeneration "normal for her age" or "mild" or "slight" degeneration which they believed to be a contraindication against the likelihood of Claimant's neck being a cause for her pain complaints. Only Dr. Blair opined, reading the same diagnostic imaging, that he saw a surgical problem. Additionally, neurologic testing, the nerve conduction testing and EMG results, did not indicate a nerve problem.

67. Dr. Blair's opinion relies heavily upon Claimant's subjective reports. Claimant testified that she has fundamental difficulty performing basic activities of daily living. Her boyfriend and three children do everything, including brushing her hair and shaving her legs for her. Tr. 28-29. However, there is a lack of objective explanation for how Claimant's condition is causing this extreme inability to function. Claimant has also exaggerated her symptoms – wearing a neck brace when Dr. Blair has stated she should not – and multiple care providers have observed that Claimant has difficulty assessing her own capabilities. *See* Blair Dep. 56; *see generally* Findings of Fact. Depending on when and where she is being examined or tested, Claimant has displayed different capabilities. In one example she put her sling on with a motion she could not perform during the test. Dr. Blair's opinion is weakened in consequence.

68. As an additional observation, Dr. Blair's surgery did not relieve Claimant's symptoms. Because the first fusion failed to take, it is impossible to say with certainty whether that surgery should have relieved Claimant's symptoms per Dr. Blair's diagnosis. As to the second surgery, Claimant was not yet at MMI at the time of hearing or Dr. Blair's deposition. However,

at three months after the second surgery (again, at time of hearing), healing indicators are comparable to healing indicators seen three months after the first surgery, which is not promising. Even if Claimant's symptoms resolve later in her recovery, this would still not be sufficient to prove Claimant's case given the diagnostic imaging, nerve testing, soft tissue findings upon physical examination, and subjective nature of Claimant's symptoms.

69. Compared to Dr. Stromberg and Dr. Vallin, Dr. Blair is not persuasive. Claimant has not proven she suffered a neck injury caused by the work accident.

Temporary Disability

70. Idaho Code § 72-408 provides income benefits "during the period of recovery." The burden is on a claimant to present medical evidence of the extent and duration of the disability. *Sykes v. C.P. Clare and Company*, 100 Idaho 761, 605 P.2d 939 (1980). Once a claimant attains medical stability, he is no longer in the period of recovery. *Jarvis v. Rexburg Nursing Center*, 136 Idaho 579, 38 P.3d 617 (2001). Further, a claimant's refusal of an offer of light-duty work suitable to Claimant's restrictions ends his entitlement to temporary disability. I.C. § 72-403.

71. Surety paid temporary disability benefits through May 8, 2020. On that day, Claimant rejected Employer's offer of light duty work. Employer had conscientiously tailored a light-duty position to allow Claimant to work within her restrictions, which covered Claimant's neck as well as the compensable shoulder injury. While Claimant told employer the offer was outside her restrictions, her medical provider had approved the work. This refusal of suitable employment ended Claimant's eligibility for any additional temporary disability benefits.

72. Per the findings in Dr. Vallin's independent medical examination report dated June

2, 2020,² Claimant's shoulder has reached medical stability. Therefore, Claimant is not eligible for any additional temporary disability benefits.

Medical Care

73. An employer is required to provide reasonable medical care for a reasonable time. Where an employer fails to provide reasonable medical care, the injured employee may seek it at the expense of the employer. Idaho Code § 72-432(1). Reasonableness of medical care is determined by a totality of the facts and circumstances. *Chaves v. Stokes*, 158 Idaho 793, 353 P.3d 414 (2015). One factor among many in determining whether care is reasonable is based upon whether it is helpful, that is, whether a claimant's function improves. *Sprague v. Caldwell Transp., Inc.*, 116 Idaho 720, 591 P.2d 143 (1979) (overruled on other grounds by *Chaves v. Stokes*, 158 Idaho 793, 353 P.3d 414 (2015)).

74. Dr. Vallin opined Claimant's shoulder had reached medical stability and that her neck condition was not caused by the accident. He opined against invasive neck treatment. Thereafter, Claimant sought medical treatment outside of the chain of referral. She visited Dr. Blair. Dr. Blair opined that her neck was the source of her problem and that it was injured by the accident. Dr. Stromberg opined the diagnostic imaging did not support any surgery as being reasonable. He did not expect fusions to help her.

75. As explained above, Dr. Stromberg and Dr. Vallin are more persuasive in this matter. Claimant has not proven she suffered a neck injury caused by the work accident. The surgery was also not reasonable treatment in the face of radiologists' interpretations, physicians'

² The page captions and a post-signature paragraph are dated May 26, 2020, but it is likely these reflect the time the document was first created or drafted. JE 6:357. The document was more likely finalized on the date on the introductory page, June 2, 2020. JE 6:343.

skepticism of whether her complaints were entirely genuine, and the opinions of Drs. Vallin and Stromberg that invasive treatment should, in this case, be discouraged. Therefore, Claimant has not shown entitlement to any additional medical treatment for her neck.

76. Neither Dr. Stromberg nor Dr. Vallin recommended any additional medical treatment for Claimant's shoulder. Dr. Blair opined there was no shoulder injury and relied entirely on the diagnosis of a neck injury. Therefore, Claimant is not entitled to any additional medical treatment for her shoulder at this time.

77. Defendants have also raised an argument pertaining to *Neel v. W. Const., Inc.*, 147 Idaho 146, 149, 206 P.3d 852, 855 (2009). Because the issues have been decided in Defendants' favor, this issue is moot.

Attorney Fees

78. Attorney fees become payable where an employer unreasonably denies or delays payment of benefits due and owing. Idaho Code § 72-804; *Salinas v. Bridgeview Estates*, 162 Idaho 91, 394 P.3d 793 (2017).

79. Here Surety paid temporary disability, medical care, and permanent impairment. Only after Claimant rejected a suitable light-duty job did temporary disability benefits cease. Only after Dr. Vallin opined Claimant to be medically stable did medical benefits cease. Claimant has failed to prove eligibility for attorney fees.

CONCLUSIONS AND ORDER

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

1. Claimant injured her shoulder in the work accident.
2. Claimant has not proven she suffered a neck injury caused by the work accident.
3. Claimant has not proven entitlement to additional medical benefits.
4. Claimant has not proven entitlement to additional temporary disability benefits.

Temporary disability was appropriately paid related to Claimant's shoulder.

5. Claimant failed to show she is entitled to attorney fees under Idaho Code § 72-804.
6. All other issues remain reserved.

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

DATED this 4th day of March, 2024.



Attest:

Kamerron Slay
Commission Secretary

INDUSTRIAL COMMISSION

Thomas E. Limbaugh
Thomas E. Limbaugh, Chairman

Claire Sharp
Claire Sharp, Commissioner

Aaron White
Aaron White, Commissioner

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of March 2024, a true and correct copy of the **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** was served by email upon each of the following:

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