

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

JEFFREY BROWN,

Claimant,

v.

LOWE’S HIW, INC.,

Employer,

and

NEW HAMPSHIRE INSURANCE COMPANY,

Surety,  
Defendants.

**IC 2019-013446**

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

**FILED**

**SEPTEMBER 3, 2024**

**IDAHO INDUSTRIAL COMMISSION**

**INTRODUCTION**

Pursuant to Idaho Code § 72-506, the Industrial Commission assigned this matter to Referee Alan Taylor. Upon his retirement this case was assigned to Douglas A. Donohue who conducted a hearing in Boise on June 6, 2023. Bryan Storer represented Claimant. Nathan Gamel represented Employer and Surety. The parties presented oral and documentary evidence. A post-hearing deposition was taken. The parties submitted briefs. The case came under advisement on April 8, 2024. This matter is now ready for decision.

**ISSUES**

The issues to be decided according to the Notice of Hearing are:

1. Whether Claimant suffered an injury caused by an accident arising out of and in the course of employment;
2. Whether the condition for which Claimant seeks benefits was caused by the alleged industrial accident;
3. Whether and to what extent Claimant is entitled to:
  - a) Temporary disability,
  - b) Permanent partial impairment,
  - c) Permanent disability in excess of impairment,
  - d) Medical care, and
  - e) Attorney fees,
4. Whether apportionment is appropriate under Idaho Code § 72-406.

In briefing, the parties agree that the first issue is conceded by Defendants. The issue of attorney fees includes consideration of this Referee's deferral of a decision about attorney fees in relation to a Motion to Compel which arose during the discovery phase of this litigation. Moreover, Defendants' Brief includes a Motion for Sanctions and Motion to Strike. Defendants' motion alleges improper contact which Claimant's attorney initiated with Surety after Surety had retained counsel. Defendants move to strike allegations and evidence of and generated by these contacts.

Defendants' Motion to Strike is DENIED. Defendants' Motion for Sanctions is GRANTED to the extent that granting it serves to admonish Claimant's counsel for directly communicating with a represented party. No further sanctions appear warranted in this litigation on this basis.

### **CONTENTIONS OF THE PARTIES**

Claimant contends that after a career mostly as a mechanic, Claimant returned to the workforce in 2018. Despite the inclusion of the term "manager" or "supervisor" in many jobs, all involved heavy labor. Claimant suffered a compensable industrial accident on May 7, 2019. He injured his back uncrating a yard tractor. He reported the accident and went home. Despite an attempt to return to work the next day, he has not worked for Employer since. He experienced low back and left leg pain. Later, right leg pain arose as well. Three surgeries later, Claimant requires continuing pain management therapy. Whether considered a new injury or an aggravation, acceleration or exacerbation of an earlier back injury and surgery, the May 7, 2019 event is compensable. Multiple physicians have opined in favor of a causal connection of injury to work event. Entitlement to TTDs should extend through December 17, 2021 at least. Claimant's counsel secured TTDs which were inconsistently and untimely paid. PPI was rated at 7 and 17 percent by differing physicians. An FCE showed physical limitations including occasionally

### **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 2**

lifting 25 pounds floor to waist. Dr. Manning restricted Claimant to frequent lifting up to 25 pounds and occasionally to 50. Dr. Willims restricted Claimant from any lifting over 40 pounds. His loss of labor market access ranges between 24 and 85 percent depending upon whose restrictions are considered. Delyn Porter's weighting of access versus wage loss was reasonable. Cali Eby's unweighted averaging—which resulted in a PPD range of zero to 35 percent—was not. Claimant urges a finding of 63.8 percent permanent partial disability, inclusive. Defendants have failed to pay some medical bills. They should pay, and attorney fees should be awarded for their continuing unreasonable recalcitrance. Surety's claim of MMI status as a basis for denying that treatment and for continuing palliative care is also unreasonable. Finally, attorney fees should be awarded based upon the Referee's reservation of this issue following Claimant's Motion to Compel and the Order which resulted.

Employer and Surety contend that Claimant's skills and experience as a supervisor and manager are significantly greater than represented. His labor market is much greater than Mr. Porter's opinions suggest. Claimant was retired for years before he began working for Employer in a job which should be seen as underemployment. Claimant was released to return to light-duty work as early as November 5, 2019, but he made no such attempt. His job search was only 1.5 hours long, and he contacted only 5 potential employers. All TTDs have been paid. Claimant failed to identify specifically any amounts or dates of unpaid TTDs. Ms. Eby's assessment of PPD is more reliable than Mr. Porter's. Mr. Porter made math mistakes, unsupported weighting decisions, and he lacked pertinent job history information. Nevertheless, after correcting adjustments, both vocational experts' numbers are not far apart. Finally, given Dr. Manning's opinions and looking at the facts as they arose, Defendants were reasonable in what

### **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 3**

they paid and what they denied.

### **EVIDENCE CONSIDERED**

The record in the instant case included the following:

1. Oral testimony at hearing of Claimant, his wife Carolyn Brown, and his daughter Nikki Mastin;
2. Joint exhibits 1 through 19; and
3. Post-hearing deposition of Delyn Porter.

Due to a technical problem in copying the exhibits, many pages of the exhibits are difficult to read and a few are unreadable. Nevertheless, after diligent effort, the Referee finds the record adequate to offer a complete understanding of the facts presented. 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**

#### **Introduction and Accident**

1. On May 7, 2019, Claimant injured his lower back uncrating a riding lawnmower.

#### **Medical Care: Accident date through 2019**

2. On May 8, Claimant visited Stephen Martinez, M.D., at Primary Health. He reported low back pain radiating into his right thigh. Objective examination findings were consistent with Claimant's reported symptoms. Initial temporary work restrictions were imposed including occasional lifting greater than 10 pounds.

3. On June 4, an MRI showed prior L4-5 surgery and disc disease. The report did not comment about acute versus degenerative findings.

4. On June 14, Claimant visited Dr. Martinez for follow-up. After examination Dr. Martinez diagnosed lumbar strain and degenerative lumbar disc disease. After another follow-

### **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 4**

up visit the following day, Dr. Martinez issued temporary work restrictions including no lifting over 10 pounds.

5. On September 5, Claimant underwent a lumbar epidural steroid injection at L5-S1.

6. On October 24, Claimant visited St. Luke's in Meridian for follow-up. Based upon the 2017 surgical result which relieved left leg radicular pain, Greg Harrison, M.D., recommended "redo" surgery at L5-S1 with fusion to relieve right leg radicular pain. Dr. Harrison had performed the 2017 surgery which included a laminectomy at L4-5 and L5-S1.

7. Fusion surgery was performed on December 4. The surgery included laminectomy, laminotomy, and discectomy at L5-S1 on the right. Dr. Harrison's observations during surgery were well documented.

8. On December 19, Claimant reported "complete resolution of the leg pain after surgery." However, a staph infection arose and complicated Claimant's recovery.

#### **Medical Care: 2020**

9. On January 2, a lumbar MRI showed some fluid above the fusion. This was thought to be a possible seroma or abscess.

10. On January 10, a lumbar CT showed a "satisfactory appearance" of the fusion.

11. On January 15, Claimant underwent wound incision and drainage for the infection in his low back.

12. On February 16, another MRI showed interval resolution of earlier fluid collections and decreased stenosis.

13. On February 25 the infected lumbar wound was again treated. Treatment required weeks of antibiotics and implementation of a PICC line. It required another surgery.

#### **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 5**

14. On March 27, A CT angiogram showed minimal atherosclerotic calcification in the aortic arch, but the lower extremities appeared normal. Thus, concern about plaque detaching and settling in Claimant's legs and feet was ameliorated. Roger Turcotte, Jr., M.D. provided Claimant with literature about CRPS which became a candidate diagnosis with the encouraging angiogram results.

15. On April 22, Travis Williams, D.O., evaluated Claimant for possible CRPS or neuropathy or both.

16. On June 3, Dr. Williams examined Claimant and treated him for chronic pain syndrome, neuropathic left foot pain, and SI joint dysfunction. However, the note reveals that Dr. Williams' primary focus was on Claimant's opiate analgesic use.

17. On June 17, the toxicology test showed unexpected presence of amphetamines. Claimant denied using them. The lab denied the possibility of a false positive.

18. On July 28, an NCV/EMG showed mild slowing of nerve conduction in the left leg. This was interpreted as evidence of old, chronic radiculopathy L4-S1, "with no evidence of acute denervation." Dr. Williams could not attribute it to the 2019 fusion versus prior back injury.

19. On September 1, X-rays of the SI joints showed mild to moderate degenerative joint disease including demineralization of the bones.

20. On October 23, orthopedic surgeon Scott Tintle, M.D., reviewed records and conducted a forensic examination of Claimant at the request of Surety. Claimant reported continuing low back pain. Dr. Tintle conducted range-of-motion testing and other relevant tests. He diagnosed a residual pseudoarthrosis at L5-S1 overlaying a preexisting lumbar spondylosis with degeneration. He opined the conditions at L5-S1 to be related to the industrial accident. He

opined that the accident permanently aggravated the preexisting degeneration and spondylosis. He opined that Claimant was not at maximum medical improvement (MMI) because of the pseudoarthrosis. He opined that a revision fusion would be a reasonable curative treatment. He suggested restrictions including no lifting over 25 pounds, “[e]ssentially ... a sedentary job.”

21. On December 10, Claimant visited Greg Harrison, M.D. at St. Luke’s in Meridian. Claimant reported continuing back pain in the year since the last surgery. He reported a recent episode of left foot pain which Dr. Harrison said “sounds neuropathic in nature.” Dr. Harrison acknowledged reports of possible CRPS. A CT scan showed good fixation but uncertain maturing of the L5-S1 fusion with possible pseudoarthrosis.

#### **Medical Care: 2021**

22. On March 17, Thomas Manning, M.D., performed a surgical “redo” of the 2019 L5-S1 fusion with laminectomies at L3-4 and L4-5 and with a left L4-5 fusion.

23. On May 24, Dr. Manning allowed Claimant to return to light duty, no lifting over 20 pounds, with certain motion restrictions. He prescribed physical therapy.

24. On July 19, Dr. Manning adjusted his restrictions by limiting lifting to 15 pounds and limiting duration to 4-hour workdays with “short breaks every hour.”

25. On December 17, Dr. Manning noted that the physical therapist found Claimant able to work medium duty, but that such ability was still less than Claimant’s pre-injury job. He followed the physical therapist’s recommendation for permanent restrictions including frequent lifting up to 25 pounds and up to 50 pounds occasionally. Dr. Manning opined Claimant was medically stable and assigned a 7% whole person PPI rating.

### **Medical Care: 2022**

26. On August 26, Mark Williams, D.O. reviewed records and performed a forensic examination of Claimant at Claimant's request. He found Claimant medically stable. He rated PPI at 19% whole person, of which 2% was preexisting. He suggested restrictions including no lifting over 40 pounds, limited positions and motions, no prolonged standing over 30 minutes.

### **Medical Care: 2023**

27. In the Spring of 2023 Claimant underwent substantial rehabilitation therapy at St. Luke's facility in Eagle. He was taught exercises for a home exercise program.

### **Relevant Prior Medical Care and Conditions**

28. Claimant underwent low back surgery, an L5-S1 laminectomy, in 2017.

### **Vocational Factors**

29. Born January 25, 1954, Claimant was 69 years old at the date of hearing.

30. Claimant earned a high school diploma and attended one year of college.

31. He worked most of his adult life as an automotive mechanic and related jobs, including managerial and supervisory positions.

32. He came out of retirement to work for Employer. Initially intending only part-time employment, he continued working after the job became full-time.

33. Claimant receives SSI benefits in excess of \$1,700 per month.

34. On December 2, 2022, Delyn Porter issued his vocational report. He interviewed Claimant, reviewed records, and assessed his permanent disability. Claimant reported subjective limitations significantly more hindering than his physician-imposed restrictions. Based upon Dr. Manning's restrictions Mr. Porter calculated a loss of labor market access at 23.9%. Based



upon the FCE report he calculated a loss of labor market access at 73.4%. Based upon Dr. Williams' restrictions Mr. Porter calculated a loss of labor market access at 85.1%. There was no loss of wage-earning capacity regardless of which set of restrictions was considered. Mr. Porter weighted, instead of averaged, these factors. In deposition he explained that as a loss of labor market access rises, he will rate that factor more heavily compared to a small loss of wage earning capacity. Deviation from averaging of the two factors is an exercise for the Industrial Commission, although an expert's factual bases for such deviation are considered when well expressed. Weighting of either factor as opposed to the straight averaging which is traditional and customary among vocational experts in the workers' compensation field should not happen often and is to be used only to avoid an unjust result. Here, Mr. Porter weighted these factors unequally based upon insufficient factual criteria. Therefore, his weighted-average numbers are not entitled to significant weight.

35. On April 28, 2023, Cali Eby issued a vocational report. She reviewed records, interviewed Claimant, and assessed permanent disability. Claimant described his subjective limitations consistently with his report to Mr. Porter. She opined that using Dr. Manning's restrictions Claimant's loss of labor market access was 5.7%; using the FCE, 60%; using Dr. Williams', 68.2%. She found no loss of wage-earning capacity. She averaged the two factors as is customary for vocational experts in workers' compensation settings.

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

36. 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).

#### **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 9**

37. 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). A claimant must prove all essential facts by a preponderance of the evidence. *Evans v. Hara's, Inc.*, 123 Idaho 472, 89 P.2d 934 (1993).

38. 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).

39. Claimant appeared to give thoughtful consideration when answering questions at hearing. He was articulate. He appeared unselfconsciously uncomfortable after about the first half-hour on the witness stand, thereafter making occasional position and postural changes. His demeanor was credible. Leading questions from his attorney on direct examination complicated the credibility assessment, but Claimant's forthright answers on cross-examination further supported an inference of credibility.

#### **Causation: Certain Medical Treatment**

40. A claimant must prove that he 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 his or her plain and unequivocal testimony conveying a conviction that events are causally related. *Jensen v. City of Pocatello*, 135 Idaho 406, 18 P.3d 211 (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).

41. The parties do not significantly disagree that Claimant's condition is work related, either as a new accident and injury or as an event that accelerated, aggravated, or exacerbated a preexisting condition.

#### **Temporary Disability**

42. 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. *Malueg v. Pierson Enterprises*, 111 Idaho 789, 727 P.2d 1217 (1986).

43. Claimant does not argue that he is owed TTD benefits in any specific amount. Rather, he contends that TTDs sometimes were paid late and only after demands from his attorney.

44. The period of recovery ended when Claimant became medically stable as of December 17, 2021, and Dr. Manning's rating. Medical stability does not mean Claimant was pain free then. Indeed, he is expected to have ongoing pain and symptoms in the future,

particularly with strenuous activity. Dr. Williams' later confirmation in August 2022 that Claimant was medically stable does not show that he was not stable as of the earlier date. Eligibility for any TTDs must run from the date of accident to December 17, 2021. Claimant has not shown entitlement to any unpaid TTDs in that period.

45. Claimant has not established by a preponderance of evidence that he is entitled to additional TTD benefits. The question of payments will be further addressed as a factor regarding attorney fees.

### **Medical Care**

46. An injured worker is entitled to reasonable and necessary medical care related to the industrial injury for a reasonable period of recovery. Idaho Code § 72-432. This medical care may include palliative care after an individual has reached medical stability. *Rish v. The Home Depot*, 161 702, 390 P.3d 428 (2017).

47. Claimant's low back injury and treatment included a fusion, a surgical cleanout for the infection, and a repeat fusion and extension of fusion to ameliorate pseudoarthrosis from the initial fusion. Both infection and psuedoarthrosis are known complications of such surgery. They represent compensable consequences of the injury and first surgery after the accident. These three surgeries and all related medical care through the date of medical stability was reasonable and necessary according to all physicians who expressed opinions of record. Claimant is entitled to medical care benefits to the date of hearing despite the intervening date of medical stability.

48. No future surgery has been recommended nor was contemplated at the time of hearing. Although Claimant retains some symptoms which may wax and wane in the future, the preponderance of evidence does not support an expectation of future palliative medical treatment.

Although this does not exclude the possibility of occasional future palliative treatment, Claimant's preexisting and progressive degenerative condition is a complicating factor to be assessed if and when such future treatment may be sought.

### **Permanent Impairment**

49. 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). Impairment is an inclusive factor of permanent disability. Idaho Code § 72-422.

50. Here, Dr. Manning rated a 7% PPI, Dr. Williams, 17% related to this accident. As Dr. Williams treated Claimant both before and after Dr. Manning's evaluation, Dr. Williams' rating is accepted as having greater weight. Moreover, three surgeries with a fusion redo and extension to a second level implies a more significant PPI.

### **Permanent Disability and §72-406 Apportionment**

51. "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 as provided by Idaho Code § 72-430.

52. 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 a claimant's ability to engage in gainful activity. *Sund v. Gambrel*, 127 Idaho 3, 896 P.2d 329 (1995).

53. 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. ISIF*, 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). Where preexisting impairments produce disability, all impairments and disability should be accounted for with a subtraction back for the compensable portions. *Page v. McCain Foods, Inc.*, 145 Idaho 302, 179 P.3d 265 (2008). An employer takes an employee as it finds him or her. *Wynn v. J.R. Simplot Co.*, 105 Idaho 102, 666 P.2d 629 (1983).

54. Here, the vocational experts' opinions are relatively consistent. Defendants suggest a mathematical averaging after certain adjustments would yield an appropriate permanent disability number. While the concept is attractive given the discrete sets of restrictions and relatively short range of numbers given, the statute requires an analysis that considers all relevant medical and non-medical factors. It seems to this Referee that the Defense offers a tempting short-cut, but a short-cut nevertheless.

55. Claimant's age and having retired are salient nonmedical factors. His chronic symptoms from the accident and postsurgical condition of his back are salient medical factors. All

other medical and nonmedical factors of record are of lesser relevance, although some more than others. The work of both vocational experts contributes substantially to the analysis. Considering all such factors, Claimant should be deemed to be 35% permanently partially disabled, inclusive of 17% PPI. This essentially represents Ms. Eby's opinion based upon Dr. Williams' restrictions, with slight rounding upward to avoid a false over-precision inherent in the results of successive long-division calculations in arriving at loss of labor market access and later arriving at the averaging of that factor with loss of wage-earning capacity.

### **Attorney Fees**

56. Attorney fees are awardable for unreasonable denial or delay of benefits due and owing to a claimant. Idaho Code § 72-804; *See, Salinas v. Bridgeview Estates*, 162 Idaho 91, 394 P.3d 793 (2017) ("due and owing" analysis). Moreover, the Referee expressly deferred ruling on Claimant's request for attorney fees related to his Motion to Compel which motion was granted during the discovery phase of the litigation.

57. Claimant failed to show by a preponderance of evidence the amount of medical care and/or TTDs due and owing. Defendants did not act unreasonably in relying upon Dr. Manning's MMI date of December 7, 2021. The mere fact that additional medical care arising after that date is deemed compensable after hearing does not retroactively make unreasonable Surety's actions. That Claimant made demands for TTD payments or that such payments may have on a few occasions been paid a bit late does not *per se* establish unreasonableness. When brought to Surety's attention all TTDs appear to have been paid.

58. Defendants timely complied with the Referee's Order compelling discovery responses. No compelling basis for attorney fees has been established.


## **CONCLUSIONS**

1. Claimant suffered a compensable accident and injury to his low back for which he is entitled to medical treatment from the date of the accident to the date of the hearing. Future medical care is not expected. If such arises, any disputed claim for eligibility may be brought;
2. Claimant is entitled to temporary disability benefits from the date of the accident to the date of medical stability on December 7, 2021. Unpaid amounts, if any, should be promptly paid;
3. Claimant is entitled PPI in the amount of 17% of the whole person and to permanent partial disability in the amount of 35% of the whole person, inclusive of PPI; and
4. Claimant did not establish entitlement to an award of attorney fees under Idaho Code § 72-804 or as a sanction for conduct during the discovery phase.

## **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 21<sup>st</sup> day of August 2024.

INDUSTRIAL COMMISSION  
  
Douglas A. Donohue, Referee



## CERTIFICATE OF SERVICE

I hereby certify that on the   3rd   day of   September  , 2024, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States mail and Electronic Mail upon each of the following:

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

JEFFREY BROWN,

Claimant,

v.

LOWE'S HIW, INC.,

Employer,

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NEW HAMPSHIRE INSURANCE COMPANY,

Surety,  
Defendants.

**IC 2019-013446**

**ORDER**

**FILED  
SEPTEMBER 3, 2024  
IDAHO INDUSTRIAL COMMISSION**

Pursuant to Idaho Code § 72-717, Referee Douglas 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 suffered a compensable accident and injury to his low back for which he is entitled to medical treatment from the date of the accident to the date of the hearing. Future medical care is not expected. If such arises, any disputed claim for eligibility may be brought;
2. Claimant is entitled to temporary disability benefits from the date of the accident to the date of medical stability on December 7, 2021. Unpaid amounts, if any, should be promptly paid;
3. Claimant is entitled PPI in the amount of 17% of the whole person and to

permanent partial disability in the amount of 35% of the whole person, inclusive of PPI; and


4. Claimant did not establish entitlement to an award of attorney fees under Idaho Code § 72-804 or as a sanction for conduct during the discovery phase.

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

DATED this   3rd   day of   September  , 2024.



INDUSTRIAL COMMISSION

  
\_\_\_\_\_  
Thomas E. Limbaugh, Chairman

  
\_\_\_\_\_  
Claire Sharp, Commissioner

  
\_\_\_\_\_  
Aaron White, Commissioner

ATTEST:

  
\_\_\_\_\_  
Kamerron Slay  
Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the   3rd   day of   September  , 2024, a true and correct copy of the foregoing **ORDER** was served by regular United States mail and Electronic Mail upon each of the following:

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