

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

GLEN MCREA,

Claimant,

vs.

MOUNTAIN WEST, LLC,

Employer

and

BERKSHIRE HATHAWAY HOMESTATE  
INSURANCE COMPANY.

Surety,  
Defendants.

**IC 2021-024387**

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

**FILED  
SEPTEMBER 20, 2024  
IDAHO INDUSTRIAL COMMISSION**

**INTRODUCTION**

Pursuant to Idaho Code § 72-506, the Industrial Commission assigned this matter to Referee Douglas Donohue. He conducted a hearing on August 17, 2023. James Arnold represented Claimant. Susan Veltman represented Employer. The parties offered testamentary and Documentary evidence and later submitted briefs. The case came under advisement on March 20, 2024, and is ready for decision.

**ISSUES**

The bifurcated issues to be addressed are:

1. Whether the condition for which Claimant seeks benefits was caused by the alleged industrial accident; and
2. Whether Claimant is medically stable, and if so, the date thereof; and
3. Whether and to what extent Claimant is entitled to the following benefits:
  - a. Temporary partial and/or temporary total disability benefits (TPD/TTD)
  - b. Medical care.

All other issues are reserved.

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION - 1**

## CONTENTIONS OF THE PARTIES

Claimant seeks a cervical spine fusion and temporary time loss benefits (TTDs). He contends his pre-existing cervical stenosis became symptomatic as a result of the convulsions of the front-end loader he drove for Employer on September 8, 2021, plus some weeks prior. He had a pre-existing shoulder injury in 2017, but it was stable well before the accident on September 8, 2021. To the extent there are common symptoms between the 2017 left shoulder injury and the 2021 alleged neck injury, Claimant proffers factual and legal arguments favoring compensation for the surgery at this time: Claimant's credible symptomology testimony, the clinical progress of treating doctors' care, Claimant's recorded symptom history, and the opinions of Drs. Cooper, Blair, and Bates. Furthermore, Dr. Stromberg specifically ruled out the possibility of a cervical injury in 2018. Claimant had an asymptomatic cervical condition, and employers must take employees as they find them. As for the Defendants' expert medical opinion, Dr. Bailey ignores the timing of Claimant's neck complaints and all the other doctors' diagnoses and opinions. When medical care for the left shoulder ended, Claimant was able to work heavy labor for MacKay Livestock without restrictions for one-and-a-half years and without seeing treating doctors for the upper extremity problems for nearly three years. As for a vomiting incident which occurred after the alleged industrial injury, it is a compensable consequence - a part of the human condition similar to the sneeze scenario discussed in *Sharp*. Finally, Claimant contends his cervical injury (including radiculopathy and left ulnar nerve irritation) has not reached maximum medical improvement (MMI). Thus, TTD benefits are owed from July 8, 2022, through some future date of medical stability after cervical surgery.

Defendants contend the accident caused a mere shoulder sprain which was deemed stable February 14, 2022, by Dr. Bailey. Claimant's is a chronic degenerative cervical spine. Pre-injury

and post-injury MRIs show no acute interval changes in the cervical spine after the accident. Pre-injury and post-injury EMGs do not rule out sensory neuropathy prior to the industrial injury. Combined, the weight of the credible medical evidence shows that Claimant's cervical condition is not caused by or permanently aggravated by the industrial accident. The work for MacKay only lasted one-and-a-half years. Drs. Bates and Blair erroneously believed Claimant had no radicular symptoms before the 2021 accident. Neither of those doctors address the significant increase in neck symptoms which Claimant incurred after vomiting in August 2022. This event represents a subsequent intervening event which could be the cause of the current symptoms. Defendants contend Dr. Bailey's medical opinion carries more weight than Dr. Cooper's because Dr. Bailey has a more thorough foundation. Cervical surgery is neither reasonable nor necessary because the medical providers cannot identify the level of the spine causing the symptoms. Dr. Dickinson, who proposed the surgery, even warns against it. Dr. Blair agreed four pinched areas of the spine were present before the injury in 2021. He also agreed the EMGs show the cervical radiculopathy could have been present prior. Claimant's testimony about the shoulder having gone back to normal after the second shoulder surgery - and prior to the industrial accident - is contradicted by the first post-accident medical record in which Claimant reported having symptoms on-going for the prior one to two months. Claimant's TTDs were paid per Dr. Bailey's medical opinion through the end of Claimant's physical therapy on February 14, 2022, when the shoulder sprain resolved and only ulnar nerve symptoms remained, which had been present before the injury. There has been a significant overpayment of \$7,588.29 for TTDs for the time period of March 1, 2022, through July 8, 2022.

## **EVIDENCE CONSIDERED**

The record in the instant case includes the following:

1. The Idaho Industrial Commission legal file;
2. Testimony of Claimant taken at hearing;
3. Post-hearing testimony of Benjamin Blair, M.D., and James Bailey, M.D.; and
4. Joint Exhibits 1 – 19, including the pre-hearing deposition of Claimant.

Exhibit 6 includes correspondence between an employee of Mountain View Health Hospital, Claimant, and Surety's adjuster. Although admitted without objection, much is hearsay which receives little weight except as otherwise indicated hereinbelow.

Referee Donohue 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**

1. All findings herein apply only to the issues under consideration. No finding should be construed to bind the Commission or any party regarding any issue which may come under consideration in a later proceeding, nor to indicate or influence any fact pertinent to any issue which may later come under consideration.

2. At the time of hearing, Claimant was fifty-eight years old, living in Rexburg, Idaho. He graduated from high school. His work history, mainly agricultural, includes driving trucks, tractors, combines, and loaders. Claimant has been injured many times during his work life. A 2010 industrial accident resulted in blindness in his left eye. Claimant is ambidextrous.

### **Pre-Existing Left Shoulder Injury.**

3. On May 28, 2017, Claimant injured his left shoulder using a prybar to open a boxcar while working for Valley Wide Coop. His job at Valley Wide involved regularly operating a small

1.5-yard loader. He worked six days a week, 14-16 hours a day.

4. On June 1, 2017, Claimant received an MRI of the left shoulder without contrast. Radiologist, Dr. Peter L. Vance MD reported calcific tendonitis of the infraspinatus tendon and a labrum slap lesion.

5. On June 27, 2017, Dr. Kevin M. Lee, MD an orthopedic shoulder surgeon at Upper Valley Orthopedic, began treating Claimant. A steroid injection in the left shoulder did not improve Claimant's shoulder problems, which were: achiness at night in the deltoid region, positive impingement signs, and significant pain in the subacromial space with overhead activities. Dr. Lee diagnosed left shoulder impingement syndrome and calcific tendinitis.

6. On August 1, 2017, Dr. Lee performed arthroscopic left shoulder rotator cuff surgery. On August 15, 2017, Dr. Lee noted minimal pain in the left shoulder and ordered physical therapy (PT).

7. On August 16, 2017, Claimant began PT with Shane Schulthies. Clinic records from that day include pain, numbness and tingling in the hand. Mr. Schulthies wrote to Dr. Lee on September 20, 2017, indicating Claimant had "quite a bit of pain," progress was acceptable, and that he would like to continue to treat for range of motion and strength. This was the last PT record generated for the 2017 shoulder surgery.

8. On November 2, 2017, Dr. Lee mentioned changed sensation in the fourth and fifth digits of the left hand that occasionally extended up into the low ulnar side of Claimant's forearm.

9. On November 14, 2017, Dr. Lee assessed acute pain of the left shoulder. Claimant had felt a pop in his shoulder when he rolled over in bed. On November 30, Dr. Lee noted Claimant needed "to chase the source of his pain and limitations more aggressively."

10. On December 5, 2017, a left shoulder MRI without contrast was taken per Dr. Lee's

request. The radiologist noted the prior surgery, a partial tear of the distal supraspinatus tendon, and AC joint degenerative joint disease. Dr. Lee performed a subacromial injection on December 7.

11. Dr. Lee recommended a repeat arthroscopy to repair the rotator cuff.

12. On January 4 and January 23, 2018, Dr. Lee's notes reflect numbness and tingling in Claimant's left hand ulnar nerve distribution ongoing and worsening.

13. On January 24, 2018, Dr. Lee performed the second left shoulder rotator cuff surgery.

14. On March 1, 2018, Dr. Lee noted a persistent, mild change in sensation in the ulnar nerve distribution of the left hand.

15. On April 17, 2018, Dr. Lee noted Claimant had pain and weakness with good range of motion, and mild tenderness over the ulnar nerve at the cubital tunnel. Claimant was placed on light-duty work restrictions.

16. On May 29, 2018, Dr. Lee noted ulnar nerve distribution numbness and tingling persisted in the left hand and forearm, though it was anticipated to improve with range of motion and strength. Cubital tunnel ulnar nerve appeared stable, with no hand muscle weakness.

17. On June 19, 2018, Claimant underwent an EMG/NCV which came out normal. There was no electrodiagnostic evidence of ulnar neuropathy, median neuropathy, or cervical radiculopathy. The radiologist noted, "Normal EMG study does not rule out a sensory only radiculopathy. If there is concern for a left C8/T1 radiculitis, consider MRI C-spine."

18. On June 21, 2018, Dr. Lee released Claimant to full-duty work, no restrictions, but he deferred a permanent physical impairment (PPI) rating. Despite absence of support from the EMG/NCV Claimant continued to have intermittent tingling and numbness in the ulnar nerve.

## **FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION - 6**

19. On August 14, 2018, a cervical MRI showed mild disc space narrowing at C2-3, 3-4, 4-5; mild-to-moderate at C7-T1, foraminal canal narrowing C5-6, 6-7, left C7-T-1, moderate bilateral canal narrowing C4-5, moderate to severe left canal narrowing C3-4, and multilevel small disc bulges mildly effacing the left ventral thecal sac.

20. Also on August 14, 2018, a cervical X-ray showed C2-5 mild disc space narrowing, C5-7 severe disc space narrowing, C7-T1 mild-to-moderate disc space narrowing, and C5-6 prominent anterior and posterior osteophytes, all with no evidence of instability.

21. On August 16, 2018, Claimant saw Lynn Stromberg, M.D., an orthopedic spine surgeon, on referral from Dr. Lee. In the MRI Dr. Stromberg saw foraminal stenosis at C5-6 and C6-7 on the left and C6-7 on the right. On examination Claimant's symptoms included itching in the ulnar aspect of his hand and two fingers. Dr. Stromberg could not explain the symptoms Claimant was still experiencing in his left ulnar forearm, hand, ring, and pinky fingers. In fact, Dr. Stromberg was "highly skeptical of [Claimant's] presentation" because Claimant was scratching in the ulnar distribution of his hand and two digits in a highly subjective way which did not correlate with exam complaints or nerve conduction studies. Dr. Stromberg opined that Claimant had a chronic degenerative cervical spine and that he could not associate Claimant's symptoms with a cervical etiology.

22. On September 8, 2018, an X-ray of the left shoulder was taken, and a report was written by James B. Harris, M.D. There were no fractures or malalignment. There were mild degenerative changes at the acromioclavicular and glenohumeral joints.

#### **Gap in Cervical Symptoms & Medical Treatment.**

23. On September 12, 2018, Rodde Cox, M.D., reviewed records and performed a forensic examination at the request of Defendants. Dr. Cox deemed Claimant "a fair historian."

Dr. Cox recorded no current symptoms.

24. Dr. Cox opined Claimant's left shoulder medically stable with a 2% whole person PPI rating for shoulder impingement and no apparent apportionment.

25. After the second surgery Claimant returned to work for Valley Wide running the loader and bagging 50-pound sacks of fertilizer. The process involved a machine that poured the fertilizer and Claimant then lifting and tossing the bag onto a pallet. Claimant stopped working for Valley Wide in March 2020.

26. Claimant testified that he had a little numbness in his index finger after the second surgery, but that it went away once the shoulder healed. He stated that once the shoulder injury healed, he "never had a problem. I spent a year and half at MacKay's unloading 50 to 100-pound bags of feed off the pickup or trailer onto another pallet in someone's yard. I never had a problem with my shoulder or my neck until I started running loader" for Employer.

27. Sixteen clinical notes by Fall River Family Medicine (FRFM) providers were dated between December of 2018 and May of 2021. Although the notes are not in the exhibits, they were summarized in Dr. Bates' IME record review. Except for one mention of headache in June of 2020 these notes give no indicia of symptoms possibly related to neck or shoulder issues.

28. Approximately two years and nine months passed between Claimant's September 2018 shoulder impairment rating and his employment with Employer.

29. Claimant next worked one-and-one-half years for Mackay Livestock Supply (MacKay). The company delivers livestock supplies to farmers, ranchers, and stores. Claimant disassembled pallets and loaded and delivered 50- to 100-pound bags of feed. He testified he had no left shoulder, arm, or neck problems during this employment.

30. After leaving MacKay Claimant received unemployment benefits for about three



months, during which he had no issues with his neck or left shoulder. Claimant testified that he had no neck or shoulder problems until he began operating the loader for Employer in 2021.

**Employment for Mountain West/Employer.**

31. Claimant began working for Employer in Summer 2021. He operated a loader, a 966 Cat, with a 6-yard bucket. The loader had hydraulic steering which malfunctioned, mostly after turning left. It would malfunction and jerk hard 5-12 times whenever he brought the steering wheel back to straight.

32. Claimant's neck or left shoulder symptoms began two weeks after he began operating the convulsive loader with the worn-out hydraulic pump. He believed the intense jerking of the loader caused his neck and shoulder, arm and hand symptoms. He acknowledged his limited vocabulary to describe the location of the injury. At hearing he went into great detail describing the past and current symptoms, their intensity, and their location in his neck, left shoulder, arm, and hand, including his ring and pinky fingers. He stated he has had headaches. He also stated his thumb would "freeze over against my index finger." He described it this way, [the loader] "just throws you – totally just whips you back and forth." Claimant said he experienced headaches and arm numbness also. He experienced these sorts of symptoms until he could no longer endure them.

**Industrial Injury September 8, 2021.**

33. On September 8, 2021, he reported the pain to his supervisor, Shane Clements, and went to Community Urgent Care for treatment.

**Gap in Symptoms Ends with new Medical Treatment.**

34. At Community Urgent Care on September 8, Claimant complained of left shoulder pain for the past month, worse that day "as steering wheel jerks hard in his equipment." The provider noted jerking exacerbated his left shoulder with pain felt in the back of his left shoulder,

left forearm, and numbness in his 4<sup>th</sup> and 5<sup>th</sup> digits. Left shoulder X-rays were taken. Dr. Harris recorded patient history as “two months of left shoulder pain, numbness, and loss of ROM from jarring in the loader he drives at work.” The X-rays revealed no acute fracture or malalignment, mild-moderate degenerative changes at the acromioclavicular and glenohumeral joints, with no evidence of calcification tendinitis. Claimant was diagnosed at Community Urgent Care with a left shoulder injury, given work restrictions and referred to his prior shoulder surgeon, Dr. Lee, for further evaluation.

### **MEDICAL CARE: POST-ACCIDENT 2021**

35. On September 30, 2021, Claimant saw one of Dr. Lee’s physician assistants, PA-C Zackery J. Cleverly, for a left shoulder injury. He noted good strength and excellent range of motion, but with tenderness and some sensory anomalies. Physical therapy was prescribed for the upper and middle trapezius, work restrictions were issued, and an EMG was ordered.

36. Between October 4, 2021, and February 14, 2022, Claimant attended physical therapy by therapist Bryce Woodfield 38 times.

37. On November 4, 2021, PA-C Cleverly noted physical therapy was not helping Claimant’s pain or strength, and that he continued having symptoms in the 4<sup>th</sup> and 5<sup>th</sup> digits. In addition to an unspecified injury of the left shoulder, Cleverly suspected ulnar nerve palsy.

38. November 10, 2021, was the last day Claimant worked for Employer. Benefits payments stopped effective November 11, 2021, and a temporary partial disability (TPD) overpayment was documented.

39. On December 2, 2021, an EMG showed mild carpal tunnel syndrome in the left with no evidence of ulnar neuropathy, brachial plexopathy, cervical radiculopathy or other peripheral nerve lesion on the left upper extremity.

### **FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION - 10**

40. On December 7, 2021, Dr. Lee and Claimant discussed the EMG and a potential diagnosis of cervical radiculopathy at the C8 nerve root.

41. On December 22, 2021, a cervical MRI showed stable moderate-to-severe degenerative spondylosis and neural foraminal canal narrowing, with no interval changes when compared to the MRI of August 14, 2018.

42. On December 23, 2021, PA-C Cleverly stated that the facts “indicate he does have a pathology of cervical nerve roots at the C7 and C8 nerve root. [This is] high grade evidence of impingement of the nerve root and that correlates with the weakness and numbness of the upper left extremity and hand.... Refer to a spine specialist.”

#### **MEDICAL CARE: 2022**

43. On January 14, 2022, PT Woodfield reported progress. He reported objective findings including 41 lbs. grip strength in the left, 75 lbs. on the right, 165 degrees of flexion and abduction, and a positive cervical compression distraction test. On January 24, 2022, Woodfield added cervical maneuvers to the therapy regimen.

44. On January 25, 2022, P.A. Cleverly noted that “any shoulder pathology has been ruled out and his symptoms coincide with cervical nerve root impingement.”

45. On February 17, 2022, Claimant saw Andrew Cooper, D.O., He diagnosed cervical radiculopathy, spondylosis, and occipital neuralgia. Bilateral occipital nerve blocks were performed. After the nerve blocks were deemed ineffective, Claimant was referred to a neurosurgeon, John Dickinson, D.O.

46. On April 5, 2022, Claimant returned to Dr. Cooper for treatment.

47. On July 7, 2022, Dr. Cooper assessed cervical radiculopathy, cervical spondylosis, numbness & tingling, pain of the left upper extremity, and impingement of the left ulnar nerve.

Claimant was again referred to Dr. Dickinson.

**Dr. James Richard Bailey Defendants' IME, July 8, 2022.**

48. James Bailey, M.D., reviewed records and conducted a forensic examination of Claimant at Defendants' request. He found tenderness on Claimant's left side cervical paraspinals and trapezius muscle, breakaway weakness on all left side upper extremity muscle groups, tremor greater on the left than right. Dr. Bailey noted Claimant rubbed his hand on his pants throughout the exam due to numbness and tingling. There was decreased sensation to touch from left ulnar forearm to ulnar digits, and a decrease in pinprick sensation in the left arm. Some tenderness to palpation over the parascapular muscles on the medial scapula.

49. He opined a left shoulder sprain caused by the September 8, 2021, industrial injury. He opined that the condition was stable and issued a 0% PPI rating. He diagnosed severe multilevel cervical spondylosis and neural foraminal narrowing as being preexisting. He also diagnosed continued multilevel severe degenerative disc disease with severe bilateral neural foraminal stenosis C5-C7 and severe left-sided neural foraminal stenosis C7-T1, which was not caused or permanently aggravated by the industrial injury. Dr. Bailey diagnosed a pre-existing the numbness and tingling in the ulnar nerve digits, which was not caused by or permanently aggravated by the industrial injury. He opined that any permanent work restrictions would be secondary to the pre-existing degenerative cervical spine conditions, not the September 8, 2021, industrial injury.

50. On August 17, 2022, Surety issued to Claimant a notice of claims status. Based on Dr. Bailey's July 8, 2022, IME opinion, Claimant's benefits ceased effective February 14, 2022.

**Employment for Wilcox Farms.**

51. In August of 2022 (after a period of unemployment that had begun in November

2021), Claimant began working for Wilcox Farms. He earned \$16 per hour working 70 hours per week plowing fields, or \$17 per hour working 40 hours per week driving short haul truck. Claimant testified his neck hurt when he drove truck and rolled tarp for Wilcox Farms.

**Subsequent Vomiting Event.**

52. On August 18, 2022, Claimant went to Community Care urgent care center for neck and left arm pain, and left arm/hand numbness after vomiting. He said he had been dealing with his neck for the last year, and that when he vomited four days prior it really triggered the pain. The provider assessed cervical radiculopathy.

53. Also on August 18, 2022, Claimant saw Dr. Cooper for neck pain after the vomiting incident. Dr. Cooper assessed cervical radiculopathy and sent Claimant to Dr. Dickinson.

54. On August 22, 2022, a cervical MRI showed severe bilateral neural foraminal stenosis at C5-6 and C6-7, severe neural foraminal stenosis on the left and moderate on the right C7-T1, and moderate to severe bilateral neural foraminal stenosis C4-5. It also showed joint spurring at C5-7, disc protrusions C3-4 and C4-5, and disc space narrowing C5-6 and 6-7.

55. On August 30, 2022, a cervical spine X-ray showed no acute osseous findings, mild straightening of the cervical lordosis, severe disc space narrowing C5-6 and 6-7, and mild C2-3-, 3-4-, and 4-5-disc space narrowing.

**Dr. James H. Bates IME, September 20, 2022.**

56. James Bates, M.D., reviewed records and conducted a forensic examination of Claimant at Claimant's request. Claimant reported left side neck pain radiating up to the head and across the scapula and posterior shoulder, into his left arm with numbness and tingling in the 4<sup>th</sup> and 5<sup>th</sup> digits. Dr. Bates considered Claimant "a good historian." Pertinent history included two shoulder surgeries from which Claimant reported doing "real well," and without limitation of the

left shoulder. Dr. Bates' records review included the medical records generated during the gap between September 12, 2018, and approximately July 5, 2021. These were Fall River Family Medicine providers' notes dated December of 2018 to May of 2021 which are not separately of record herein. Dr. Bates opined the September 8, 2021, accident caused injuries including cervical radiculopathy and left ulnar nerve irritation. He opined the symptoms had been consistent with cervical injuries "from the very beginning." This was because: PA Cleverly had requested an EMG to differentiate nerve impingement from mechanical injury; Dr. Cooper noted the symptoms closely resembled a cervical radiculopathy; the first specialty evaluation involved questions of neurologic involvement; and Claimant had a cervical ulnar nerve lesion.

57. Dr. Bates opined that Claimant was not medically stable. He needed appropriate medical care including surgical spine evaluation to determine if surgery likely could help and physical therapy directed at the neck rather than the shoulder. If Claimant received no additional treatment, he would not be expected to improve. In that event, PPI for the neck would be 11% whole person, and 3% for an ulnar nerve lesion, which would combine for 13% total PPI. Permanent restrictions would include no overhead work, lift occasionally up to 25 pounds, change positions as needed between sitting, standing, and walking.

58. On September 22, 2022, Claimant saw Dr. Dickinson, ordered nerve root blocks, a CT and EMG. Three nerve root blocks were performed at levels C5-6, 6-7, and C7-T1. Claimant experienced no relief.

59. On September 28, 2022, a cervical CT showed multi-level degrees of moderate to severe neural foraminal narrowing, degenerative facet and disc changes, and grade 1 anterolisthesis of C7 on T1.

60. On October 20, 2022, Claimant saw Dr. Cooper who noted that he and Dr.

Dickinson were in agreement that Claimant is “likely to require surgical intervention.” Dr. Cooper assessed cervical spinal stenosis and cervical degenerative disc disease.

61. On October 27, 2022, EMG/NCV showed a technically normal study. After reviewing the EMG, Dr. Dickenson opined that although it suggested nerve irritation at the C8 nerve root, this was not a true “radiculopathy.” There was no evidence of carpal tunnel syndrome, ulnar neuropathy or other peripheral nerve problems.

62. On the morning of December 6, 2022, Claimant saw therapist Noah P. Bernal. In the evening, Claimant returned to Dr. Dickinson. He assessed cervical nerve root compression, cervical spinal stenosis, cervical radiculopathy, cervical degenerative disc disease, and spondylolisthesis of the cervical region. He reviewed recent diagnostic imaging and noted the EMG and weakness on examination suggested a C8 radiculopathy. Because the injections were inconclusive, Dr. Dickinson equivocated about the likelihood of a positive surgical result. As for surgery, he noted that Claimant’s size, the location of the spinal defect at C7-T1 and the position of the clavicle may make it impossible to go in through the front. Consequently, surgery may need to be performed from the back. Claimant wished to proceed with surgery despite the offer of more conservative care.

### **MEDICAL CARE: 2023**

#### **Dr. Cooper’s Letter on January 31, 2023.**

63. Dr. Cooper responded to a letter from Claimant’s attorney. He stated his working diagnosis was cervical radiculopathy and opined that Claimant’s current symptoms were caused by the industrial accident. He opined that Claimant was not medically stable.

#### **Dr. Benjamin Blair IME, March 7, 2023.**

64. Benjamin Blair, M.D., reviewed records and conducted a forensic examination of

Claimant at Claimant's request. By history, Claimant denied having cervical injury or symptomatology before September 8, 2021. He reported the 2016 left shoulder injury. He told Dr. Blair the current symptomatology was significantly different from the shoulder pain he experienced at that time.

65. In response to written questions, Dr. Blair opined the industrial injury caused permanent aggravation of an underlying asymptomatic pre-existing cervical stenosis. Dr. Blair opined Claimant was not medically stable and that multilevel anterior cervical discectomy and interbody fusion surgery was reasonable. If Claimant received no further treatment for his injury, Dr. Blair rated Claimant's PPI as 11% whole person PPI for spinal stenosis with radicular symptoms. Regardless of treatment, permanent restrictions issued by Dr. Blair were: no lifting over 25 pounds and no repetitive overhead work.

**Dr. Bailey's IME Addendum, March 15, 2023.**

66. Surety provided Dr Bailey additional medical records dated August 18, 2022, through January 31, 2023, as well as additional imaging. These updated records and diagnostic studies did not change Dr. Bailey's July 8, 2021, opinion. He stated Claimant may be a surgical candidate for a C4-T1 cervical fusion, but opined that surgery was not related to the industrial injury. He agreed with Dr. Dickinson's concerns that the surgery may not relieve all Claimant's symptoms. He reasoned that providers were unable to selectively identify the level of the spine where Claimant's symptoms originated, he had no relief from injections, his EMG was nondiagnostic for radiculopathy, and he had many years of severe degenerative disc disease of the cervical spine. Furthermore, he opined that any treatment following July 8, 2022, was not related to the industrial injury either.



**Symptoms and Work Activity at time of hearing, August 17, 2023.**

67. Claimant testified his current symptoms are significantly different from the shoulder pain he experienced in 2018. During the physical therapy in 2021 and 2022 until the time of hearing, the pain was not in the shoulder joint. At work, he struggled to roll and unroll tarps. He found certain neck motions painful. He has pain and numbness in his arm which throbs some days. Co-workers assist with shoveling and rolling the tarp. At hearing, he was taking three 500 mg. Tylenol pills four times a day and still could not sleep because the arm throbs and twitches. Medicaid had agreed to pay for the surgery, but he has not pursued it because he needs money to pay monthly bills during recovery, which Medicaid does not provide.

**Dr. Blair's Deposition on October 23, 2023.**

68. There, Dr. Blair opined that Claimant "sustained a permanent aggravation of is pre-existing cervical stenosis, that was causing him symptoms, from the injury of 9-8-2021." He found that symptoms were consistent with MRI findings, Dr, Dickinson recommended surgery, a clear stenosis finding in the cervical spine prior to the industrial accident, a long asymptomatic period in the medical records between 2018 and 2021 all supported his causation opinion. As for the neck, Claimant felt the symptoms had resolved completely after his shoulder treatment and the symptoms beginning in 2021 were completely different. Dr. Blair felt Claimant was believable, that he "seemed pretty straightforward." Dr. Blair understood the 2018 EMG to be negative for cervical radiculopathy and for other possible causes of his symptoms such as carpal tunnel syndrome or a pinched nerve.

69. Dr. Blair explained his bases for diagnosis. Claimant's diagnostic imaging was consistent with either the shoulder or the neck as pain generators.

70. Dr. Blair agreed with Dr. Bailey's opinions about the presence of a preexisting

degenerative cervical spine condition and the absence of observable change in pre- and post-accident MRIs. However, Dr. Blair opined that the industrial injury did permanently aggravate the spinal stenosis in the cervical spine. He disputed Dr. Bailey's assumption that there needs to be a change in the imaging for something to have caused an injury or aggravation. Patients often have pain even though their MRIs are stable. New or increased pain, although subjective, is an indication that something in the spine is the cause. Not all injuries show up on the MRI. This happens regularly in his practice. The gap in treatment is inconsistent with Dr. Bailey's denial of a causal relationship and supports Dr. Blair's opinion that the industrial accident aggravated the preexisting degenerative condition.

71. Dr. Blair agreed with Dr. Cooper that surgery is reasonable. He opined that despite the October 27, 2022, EMG findings cervical radiculopathy may exist.

**Dr. Bailey's Deposition November 6, 2023.**

72. Dr. Bailey opined that permanent aggravation of the cervical spine would have shown up in the 2021 MRI. He opined that C8 cervical radiculopathy could not be ruled out. He opined that Claimant's symptoms do not unequivocally make neck surgery reasonable.

**DISCUSSION AND FURTHER FINDINGS OF FACT**

73. 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).

## **Credibility**

74. There are two categories of credibility findings which this Commission makes, "observational credibility" and "substantive credibility." *Painter v. Pottlatch Corp.*, 138 Idaho 309, 313, 63 P.3d 435, 439 (2003). Observational credibility is determined by the observer who presides at hearing. *See, Darner v. Southeast Idaho In-Home Services*, 122 Idaho 897, 841 P.2d 427 (1992).

75. Claimant's testimonial responses were generally frank and intelligent. Dr. Cox found Claimant "a fair historian." Dr. Bates considered Claimant a "good historian." Dr Blair said "he seemed pretty straightforward." These are consistent with the Referee's observation at hearing. Claimant's demeanor was credible.

76. 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).

77. Substantive credibility is derived by analysis of Claimant's consistency of testimony and how well his testimony is supported by the record. Here, Drs. Stromberg and Bailey had reservations based upon Claimant's presentation—particularly his gestures which to the doctors seemed to indicate itching in his hand—which did not correlate with diagnostic imaging. Moreover, a psychological evaluation dated October 2, 2006, by Dr. Eric F Holt, found Claimant had a "functional overlay with symptom magnification for unconscious secondary gain." Defendants argue that Claimant's testimony—his saying his shoulder went back to normal prior to the industrial accident—is contradicted by the first post-accident medical record which Claimant

reports having symptoms on-going for 1-2 months prior. However, Claimant sought no medical treatment for it in the months before this accident. Claimant's comment is deemed insufficient to reduce the weight assigned to his testimony. Claimant is a credible witness.

### CAUSATION

78. 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). "Probable" is defined as "having more evidence for than against." *Fisher v. Bunker Hill Co.*, 96 Idaho 341, 344, 528 P.2d 903, 906 (1974).

79. An accident is "an unexpected, undesigned, and unlooked for mishap, or untoward event. . . connected with industry. . . and reasonably located as to time...and place...causing an injury." An injury is "...a personal injury caused by an accident arising out of and in the course of employment...." Idaho Code 72-102 (18)(a) and (b).

80. Under Idaho Code 72-102(18)(c) "injury" is "construed only to include an injury caused by an accident which results in violence to the physical structure of the body." More than on-set of pain – aggravations of pre-existing conditions are compensable only if caused by an accident. *Nelson v. Ponsness-Warren Idgas*, 126 Idaho 129, 879 P.2d 592 (1994). Accidents can

be subtle events. *Wynn v. J.R. Simplot* 105 Idaho 102, 666 P.2d 629 (1983); *Spivy v. Novartis Seed Inc.*, 137 Idaho 129, 43 P.3d 788 (2002).

81. There is no issue about whether the alleged accident is compensable. The parties do not dispute it. The issues of causation relate to what the injury was and whether a permanent aggravation of Claimant's preexisting condition is causally related to the accident.

#### **Contrasting Medical Opinions.**

82. The parties dispute whether certain pronouncements by one or another physician meet the standard of being expressed and held "to a reasonable degree of medical probability." It is for the Commission to assign weight after analyzing "whether the expert's reasoning and methodology has been sufficiently disclosed and whether or not the opinion takes into consideration all relevant facts." *Eacret v. Clearwater Forest Industries*, 136 Idaho 733, 737, 40 P.3d 91, 95 (2002). In this case, the expert opinions of Drs. Bates, Blair, and Bailey are so considered. Ultimately, it is the opinions of Drs. Bailey and Blair, whose opinions were explored in deposition that are most helpful.

#### **Symptoms of a Pre-existing Cervical Condition Which Resolved Around September 12, 2018, Remained Asymptomatic Until the Date of the Subject Industrial Accident.**

83. The first issue to be addressed in this case is whether the pre-existing cervical condition was asymptomatic before Claimant went to work for Employer, and when. The preponderance of evidence shows Claimant had left upper extremity symptoms which resolved around the time of Dr. Cox's September 12, 2018, IME. A nearly three-year gap in cervical symptoms and treatment occurred September 12, 2018 – approximately July 5, 2021. Claimant worked with no restrictions for Valley Wide and for MacKay during this time. Both Dr. Bailey and Dr. Blair agreed Claimant had a diagnosable cervical spine condition before the September

2021 industrial accident. Dr. Bailey used the term cervical spondylosis. Dr. Blair used the term cervical stenosis. Nevertheless, they rely upon the same diagnostic imaging.

84. The two medical expert opinions most developed regarding Claimant's preexisting condition are Drs. Bailey, for the Defense, and Dr. Blair for Claimant. Both agreed the 2018 MRI documented cervical stenosis/spondylosis. They both saw no change in the cervical spine when comparing the 2018 images with those of 2021 and 2022. However, Dr. Blair convincingly explained that because there was no change in the cervical spine, there was no significant natural progression of degenerative disc disease during the gap.

85. Both Dr. Blair and Dr. Bailey understood Claimant had prior left upper extremity symptoms and that these had been considered by his treating doctors before releasing him to work and issuing an impairment rating for the left shoulder injury of 2017.

86. Claimant's credible testimony about his symptoms supports the opinions of these doctors. Claimant testified that he had a little numbness in his index finger after the second surgery, but that went away when the shoulder healed. When he returned to work for Valley Wide he was running a loader and lifting 50-pound sacks of fertilizer. Claimant also credibly testified he worked for MacKay doing similar work for a year-and-half with no neck or shoulder or arm problems. He credibly testified he had no neck or shoulder problems until operating the loader for employer. Finally, he testified he had no neck or left shoulder issues while he received three months' unemployment benefits after separating from MacKay and before working for Employer.

87. During the gap, Fall River Family Medicine records dated December 2018 to May 2021, which are not of record, but are summarized and referred to by Dr. Bates, document only headache an ambiguously possible cervical symptom. This headache was mentioned in a June 2020 note. Dr. Blair took note of the gap— what did and did not happen at that time — and this

formed part of the basis for his opinion. Dr. Blair opined the condition was asymptomatic between the time of the 2018 injury and the 2021 injury. Dr. Bailey was aware of Dr. Bates' mention of these records, but did not expressly address them or the gap which they described.

88. The preponderance of the evidence shows Claimant had pre-existing cervical condition with relatively mild left upper extremity symptoms which resolved around September 12, 2018.

**Permanent aggravation of cervical stenosis resulting in cervical radiculopathy  
And left ulnar nerve root irritation**

89. As noted in *Wynn v. J.R. Simplot Co.*, 105 Idaho 102, 104, 666 P.2d 629, 631 (1983), "our compensation law does not limit awards to workmen who, prior to injury, were in sound condition and perfect health. Rather, an employer takes an employee as ...[they] find...[them]." After September 2018, Claimant returned to his normal employment. It has been established that any related left upper extremity symptoms resolved around that time as Dr. Lee and Dr. Cox released him to full duty with no restrictions, after which Claimant worked without medical care or symptoms in the left upper extremity.

90. For reasons explained in his notes and deposition testimony, Dr. Blair opined that Claimant suffered a permanent aggravation of cervical stenosis. Dr. Blair felt it was reasonable for the treating doctors to begin with a focus on the shoulder. This delayed ultimate diagnosis, but Dr. Blair opined such is common in many neck-versus-shoulder questions of treatment.

91. Indeed, Claimant's treating doctors equivocated back and forth before diagnosing a cervical condition and offering a surgical treatment. Shortly after the industrial injury on September 8, 2021, treating providers Dr. Lee and PA-C Cleverly, PT Woodfield, Dr. Cooper, and Dr. Dickinson widened the scope of possible causes from the left shoulder to the cervical spine.

Dr. Dickinson, who ultimately recommended cervical spine surgery, began treating Claimant with the suspicion of C8 nerve root radiculopathy on September 22, 2022. By October 20, 2022, Dr. Cooper documented his agreement with Dr. Dickinson that Claimant likely required surgical intervention on his cervical spine.

92. Dr. Bailey relied heavily on the fact that there was little to no change in the diagnostic MRI imaging and EMG tests. Dr. Blair explained that the diagnostic imaging is not always determinative. Dr. Blair's opinion is supported by several factors as he explained, not the least of which is the treating physicians' difficulty and equivocation in treatment.

93. Claimant's work on the loader caused injury such that Claimant's preexisting cervical stenosis became permanently aggravated and made symptomatic. The *Nelson* doctrine applies.

94. Claimant cites a prior Industrial Commission decision to remind this Commission of the inferences it has relied upon in the past in support of a finding in support of the occurrence of an industrial injury. In *McRea v. Idaho Youth Ranch, Inc.*, IC 2012-026908 (December 3, 2013) there was no medical testimony describing the nature of the injury which the claimant was thought to have suffered. The Claimant asserted injury to his low back while helping to load a piano into a horse trailer. Circumstantial evidence upon which inferences in favor of compensability were made included: 1) a several-month period of being symptom free prior to the work accident; 2) working a physically demanding job without difficulty prior to the accident; 3) not being a surgical candidate just prior to the industrial accident; 4) immediate symptoms in the low back and lower extremity immediately following the accident; 5) no response to conservative care; 6) no return to baseline after the accident. These circumstances supported a finding of a permanent aggravation of Claimant's previously injured degenerative spinal condition. The facts of that Mr. *McRea*, make



a persuasive comparison for the inferences and analysis for the instant Claimant Mr. McRea.

95. The Defense points out rightly that at no point in time have diagnostic tests or steroid injections confirmed a cervical diagnosis. Yet, as Dr. Blair explained, shoulder and spine specialists frequently strive together to discern the origin of their patients' problems between neck and shoulder. Claimant testified to symptoms within two weeks after he began operating the malfunctioning loader on June 21, 2023. Nerve-related concerns of the treating providers surfaced within three weeks of the industrial injury. PA-C Cleverly so noted on September 30, 2021. Over the next year providers pursued the matter with 2 EMG studies, 2 cervical MRIs, 2 cervical X-rays, and a cervical CT. Treating doctors and providers progressively reported, discussed and diagnosed a cervical condition. These doctors included Dr. Lee and PA-C Cleverly, PT Woodfield, Dr. Cooper, and Dr. Dickinson.

96. The Defense relies on *Beardsley v. Idaho Forrest Industries*, 127 Idaho 404, 901 P.2d 511 (1995) to show a possible causal link is not sufficient to meet Claimant's burden of providing medical testimony that supports a claim to compensation to a reasonable degree of medical probability. In *Beardsley* the worker had inguinal hernias and a millwright job requiring him to lift, pry, and pull, and he could cite to a relevant time period in which he worked this way for six days a week, eight hours a day or more. He had a clean bill of health two years before the hernias. He acknowledged he did not know how the alleged accident happened. The physician's opinion upon which he relied lacked foundational knowledge regarding Employee's home activities which might have resulted in the hernias. Also lacking from the foundation of the physician's knowledge was Employee's unrefuted testimony of not experiencing such an event at home. Neither Claimant nor his expert identified an event that occurred in the course of employment, so the Commission and the Idaho Supreme Court held Claimant failed to meet his

burden of proving a causal connection between the work and the hernias.

97. *Beardsley* is distinguishable from this case. Here, despite a few statements which suggest symptoms may have arisen over the course of a few days, the occurrence of an accident is undisputed. No specific alternative activities are offered by the Defense as a possible cause. In *Beardsley*, the Court considered specific home activities. Finally, in this case, Dr. Blair and Dr. Bates had knowledge of Claimant's pre-existing symptoms, as well as the lengthy gap in symptoms.

98. Based on a preponderance of the credible evidence, the Referee finds Claimant has proven a compensable permanent aggravation of a pre-existing cervical condition resulting in radiculopathy and left ulnar nerve irritation.

**Claimant's subsequent increase in symptoms remains compensable**

99. The Defendants contend the increase in neck pain Claimant experienced after vomiting in August 2022, amounts to a subsequent, intervening cause of Claimant's cervical spine condition. Cervical MRI, CT, X-ray and EMG were taken in the two months following. And Drs. Bailey and Bates do not address this possible cause. Defendants' speculation is not persuasive.

100. To whatever extent the vomiting contributed to the permanent aggravation of Claimant's pre-existing cervical stenosis, the condition remains compensable. "The consequences flowing from a compensable injury are also compensable unless they are they result from an employee's conduct that is undertaken with rash or deliberate disregard of a material risk the harm will occur." *Sharp v. Thomas Brothers Plumbing*, 170 Idaho 343, 353, 510 P.3d 1136, 1150 (2022). There was nothing rash or deliberate in Claimant's vomiting. In fact, vomiting is very much like the sneeze example considered compensable in the dicta of *Sharp*. (*See, Id.* at 1149-1150).

**Claimant's cervical condition has not reached MMI**

101. A worker reaches MMI on the “date after which further recovery from, or lasting improvement to, an injury can no longer be reasonably anticipated, based upon reasonable medical probability.” *Cooke v. Bonner Foods, Inc.*, 101617 IDWC (2017).

102. Claimant’s cervical spine condition is expected to improve. According to Dr. Dickinson surgery is reasonable. Dr. Cook agrees, as does Dr. Blair who explained surgery would relieve Claimant’s pain by opening the spinal canal which is currently narrowed by stenosis.

103. Dr. Bailey’s MMI date of February 14, 2022, is premised on a left shoulder sprain diagnosis and is inconsistent with the opinions of Drs. Dickinson, Cooper, Blair and Bates.

104. The preponderance of evidence shows Claimant’s cervical spine condition is not yet medically stable.

**TTDs are owing and credit and offsets shall be applied**

105. 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).

106. Benefits ceased August 17, 2022. Employer terminated him on November 10, 2021. Claimant’s treating physician, Dr. Dickinson, has not released Claimant to full or light duty. Dr. Blair provided an opinion on Claimant’s permanent work restrictions regardless of whether he receives further treatment. Thus, Claimant has established he is in a period of recovery which is on-going.

107. However, Claimant also found work for Wilcox Farms in August of 2022, and nothing in the record indicates his employment has ended. (It seems Claimant may have been

working beyond those restrictions with the assistance of his co-workers and significant amount of over-the-counter pain medication.)

108. Claimant requests additional TTDs from November 10, 2021, until he is deemed to reach MMI. This would be some time after the hearing and after his cervical surgery.

109. His average weekly wage (AWW) was \$491.76.

110. Pursuant to Idaho Code 72-408 and *Jarvis*, Claimant is entitled to TTD/TPD benefits during his period of recovery from November 11, 2021, through the date of hearing, and until such time as he reaches medical stability or Defendants meet their burden of establishing that Claimant is no longer in a period of recovery. Defendants are entitled to an offset for periods of earnings and a credit for any TTD overpayment. As Claimant argues in his Opening Brief, the employment history documentation will show applicable periods of unemployment and periods of earnings.

#### **Surgical medical care is reasonable**

111. Under Idaho Code 72-432(1) injured workers are entitled to reasonable medical, surgical or other attendance or treatment as may be reasonable required by the employee's physician. Of course, an employer is only obligated to provide medical treatment necessitated by the industrial accident and is not responsible for medical treatment not related to the industrial accident. *Williamson v. Whitman Corp./Pet. Inc.*, 130 Idaho 602, 944 P.2d 1365 (1997).

112. Drs. Dickinson, Cooper, Bailey, and Blair opined the cervical discectomy and fusion surgery which Dr. Dickinson recommended is reasonable. Dr. Bailey explained surgery would relieve Claimant's pain by opening Claimant's spinal canal which is currently narrowed by stenosis. Based on these opinions, the Referee finds cervical surgery is reasonable under Idaho Code 72-432(1).

### **CONCLUSIONS**

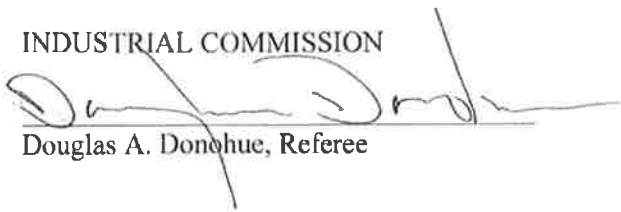
1. Claimant's symptomatic cervical spondylosis, radiculopathy, and ulnar nerve irritation was caused by the September 8, 2021, industrial accident;
2. Claimant's cervical spine condition is not medically stable;
3. Claimant is entitled to TTD/TPD benefits from November 11, 2021, until his cervical condition is deemed medically stable. Defendants are entitled to an offset for wages earned and a credit for overpayment.
4. Claimant is entitled to cervical discectomy and fusion surgery, along with ensuing medical care, as recommended by Dr. Dickinson.

### **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 10th day of September, 2024.

INDUSTRIAL COMMISSION

  
Douglas A. Donohue, Referee

## CERTIFICATE OF SERVICE

I hereby certify that on the 20<sup>th</sup> day of September, 2024, a true and correct copy of the **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail and Electronic Mail upon each of the following:

JAMES ARNOLD  
PO BOX 1645  
IDAHO FALLS, ID 83403-1645  
[jcarnold@ppainjurylaw.com](mailto:jcarnold@ppainjurylaw.com)  
[josie@ppainjurylaw.com](mailto:josie@ppainjurylaw.com)

SUSAN VELTMAN  
1703 W HILL ROAD  
BOISE, ID 83702  
[veltman@bvwcomplaw.com](mailto:veltman@bvwcomplaw.com)  
[admin@bvwcomplaw.com](mailto:admin@bvwcomplaw.com)

dc

*Debra Cupp*

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

GLEN MCRAE,

Claimant,

v.

MOUNTAIN WEST, LLC,

Employer,

and

BERKSHIRE HATHAWAY HOMESTATE  
INSURANCE COMPANY,

Surety,  
Defendants.

**IC 2021-024387**

**ORDER**

**FILED  
SEPTEMBER 20, 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's symptomatic cervical spondylosis, radiculopathy, and ulnar nerve irritation was caused by the September 8, 2021, industrial accident;
2. Claimant's cervical spine condition is not medically stable;
3. Claimant is entitled to TTD/TPD benefits from November 11, 2021, until his cervical condition is deemed medically stable. Defendants are entitled to an offset for wages earned and a credit for overpayment.

**ORDER - 1**

4. Claimant is entitled to cervical discectomy and fusion surgery, along with ensuing medical care, as recommended by Dr. Dickinson.


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

All other issues are reserved.

DATED this 20th 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 20th 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:

JAMES ARNOLD  
PO BOX 1645  
IDAHO FALLS, ID 83403-1645  
[jcarnold@ppainjurylaw.com](mailto:jcarnold@ppainjurylaw.com)  
[josie@ppainjurylaw.com](mailto:josie@ppainjurylaw.com)

SUSAN VELTMAN  
1703 W HILL ROAD  
BOISE, ID 83702  
[veltman@bvwcomplaw.com](mailto:veltman@bvwcomplaw.com)  
[admin@bvwcomplaw.com](mailto:admin@bvwcomplaw.com)

dc

*Debra Cupp*