BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

EUGENE STROEBEL, Claimant, v. AUTOMOTIVE MARKETING CONSULTANT, Employer, and XL SPECIALTY INSURANCE COMPANY Surety, Defendants.	**IC 2017-050855** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION**

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Industrial Commission assigned this matter to Referee Douglas A. Donohue who conducted a hearing in Boise on November 17, 2022. Claimant appeared *pro se*. Chad Walker represented Employer and Surety. The parties presented oral and documentary evidence. One post-hearing deposition was taken. Claimant submitted his arguments in writing which are accepted as post-hearing opening and reply briefs. Defendants also submitted a brief. The case came under advisement on May 16, 2023. This matter is now ready for decision.

ISSUES

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

1. Whether the condition for which Claimant seeks benefits was caused by the alleged industrial accident;

2. 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

3. Whether apportionment of permanent disability is appropriate under Idaho Code § 72-406.

CONTENTIONS OF THE PARTIES

Claimant contends he sustained multiple injuries when he hit his head on a beam on July 30, 2017. (Defendants believe it occurred one day later.) The adjustors delayed action and were unprofessional in their demeanor. Because of adjustors' instructions, the occupational health physician refused to examine Claimant's injuries except for his right knee. Health insurance and Claimant directly paid for medical care for which Surety should have paid. Claimant paid over $3,200 personally. The IME physician was biased and refused to accept Claimant's subjective complaints. The IME physician's comments have been contradictory. Claimant's left hip and gluteal muscle continue to be problematic and future medical benefits should be awarded. In his reply brief, Claimant requested the opportunity to gather and present additional evidence. He indicated an erroneous expectation that additional hearings would occur.

Defendants allege Surety paid some medical and permanent impairment for the July 31, 2017 industrial accident. Claimant has reached maximum medical improvement ("MMI") and is not entitled to further benefits. Claimant failed to show the amount, if any, of temporary disability he suffered. The record does not show any physician restricted Claimant from any type or amount of work during recovery. Medical care, shown by a physician's opinion to be likely related to the accident, has been paid. Causation as it pertains to each separate body part is a significant issue. Claimant's reporting has been inconsistent and occasionally much belated after alleged onset. Some conditions pre-existed the accident and have not been shown to have been permanently aggravated or exacerbated by the accident. Claimant continues to work and has not been restricted from any activity for any condition related to the industrial accident. He is not entitled to permanent disability above permanent impairment.

EVIDENCE CONSIDERED

The record in the instant case included the following:

1. Oral testimony at hearing of Claimant;
2. Claimant's Exhibits 1 through 3;
3. Defendants' Exhibits 1 through 10; and
4. Post-hearing deposition of Robert Friedman, M.D.

Claimant's post-hearing request for further discovery is denied. The record shows no basis upon which one could find that issues were reserved or that additional hearings are appropriate. Moreover, Claimant submitted with his brief proposed exhibits A through D. These documents are available elsewhere in the legal file and/or as exhibits of record and will be assigned appropriate weight in the analysis hereinbelow. However, these documents cannot be admitted as new exhibits separately because they were not identified in a rule 10 submission before the hearing, and no request was made at hearing to hold the record open for receipt of additional documents.

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. At or near the end of July 2017 Claimant was at the Texas Motor Speedway, loading an equipment truck, when he struck his forehead on a beam. As he fell his right knee popped. He landed on his left hip and gluteal muscle. He took a break while others finished loading the truck. He then drove it to the company hub in Dallas.

2. On August 3, 2017, Claimant visited his regular physician, Jay Hansen, M.D. at St. Luke's Family Clinic in Nampa. This thorough and multi-page medical record mentioned pre-

existing conditions but did not mention the recent industrial accident. Moreover, Claimant expressly denied having fallen in the past year. He denied any pain in the past four weeks. The note did not mention any problem with any body part associated with the industrial accident.

3. On August 18, 2017, Claimant visited Amy Waselchuk, PA-C with a complaint about a right finger joint. An X-ray showed osteoarthritis in the finger. No mention is made of the July 2017 industrial accident or of any complaint about any body part associated with the accident.

Significant Prior Medical Care

4. Claimant generally attended annual medical check-ups with occasional symptom-specific visits over the course of several years preceding the 2017 accident. This provided a reasonable baseline upon which physicians might evaluate his condition.

5. Claimant's first chiropractic visit of record is dated August 29, 2001. Primary complaints and treatment are in the cervical area. Lower lumbar adjustments were often performed as well. Tim Klena, D.C. provided adjustments at irregular intervals over the years preceding the accident. In 2022 Claimant reported he had received chiropractic treatments intermittently over the years following a back injury in high school.

6. In February 2006 Claimant sought medical and chiropractic treatment for neck pain after being struck on the head by an object.

7. The first chiropractic treatment of record expressly for low back pain occurred in 2009. Claimant also sought chiropractic treatment expressly for his right shoulder on three occasions in 2009. Shoulder pain complaints continued to Dr. Klena in ensuing years.

8. On November 15, 2011, Claimant visited Jay Hansen, M.D. with a complaint of a

sore left knee. He described having twisted it a few weeks prior. An MRI of the left knee in mid-December describes a bowling activity origin inconsistent with the earlier description he provided Dr. Hansen in November. The MRI showed a meniscal tear. It also showed cartilage loss and other degeneration in the left knee with a leaking Baker's cyst.

9. On January 11, 2012, Claimant visited Robert Walker, M.D. for the left knee. He reported a history of one and one-half years of intermittent knee pain since a twisting event, and he reported the recent bowling event.

10. In June 2016 chiropractic X-rays were interpreted by Dr. Klena as showing lumbar degenerative joint disease with bone spurs. His adjustments regularly also included ultrasound and electrical stimulation.

11. Claimant's last chiropractic treatment of record before the July 2017 accident occurred on January 20, 2017. Claimant described bilateral lumbar pain being present 90% of the day and rated it at 4 of 10. He also described and rated pain in his neck and right shoulder. He described right hip pain which Dr. Klena attributed to the right ilium. Dr. Klena also taped Claimant's ankle.

Post-Accident Medical Care: July 2017 through December 2017

12. On August 11, 2017, Claimant returned to Dr. Klena. He described the July 2017 accident (but dated it July 28, 2017) and reported symptoms about his neck on the left. Claimant attributed bilateral lumbar complaints to repetitive motion since the January 2017 visit. He attributed bilateral hip symptoms to excessive standing and walking since August 4, 2017.

13. On August 16, 2017, Claimant told Dr. Klena that his low back pain had increased after lifting some steel on August 14.

14. September 28, 2017, is the date of Claimant's first report to Dr. Klena of right knee pain. The left neck pain reportedly arising from the July 2017 accident was subsiding.

15. On November 21, 2017, Claimant told Dr. Klena that pain in his left pelvis had substantially increased. He offered no new cause or event, and Dr. Klena repeated the August 4, 2017, date as onset with excessive standing and walking. It was at this visit that Dr. Klena first recorded that Claimant attributed his increasing right knee pain to the July 2017 accident. Dr. Klena recommended an orthopedist be consulted to evaluate the right knee. Dr. Klena also took and interpreted cervical spine X-rays as showing degenerative joint disease with bone spurs.

16. On December 6, 2017, Claimant visited Dr. Klena and described an automobile accident and injury having occurred on November 3, 2017. This automobile accident was not mentioned in at least the three intervening visits. Claimant reported marked improvement in his neck area, new mild symptoms in his thoracic spine area since the automobile accident, and low back symptoms milder than at his last visit before the automobile accident. Knee and hip complaints were not mentioned at this visit.

17. At a December 29, 2017, visit with Dr. Klena no mention of the automobile accident is found. Onset dates at various body parts revert to their prior attributions—neck to the July 2017 industrial accident, low back to the August 14, 2017, lifting injury, left pelvis to the August 4, 2017, excessive standing and walking, the right knee to the July 2017 industrial accident.

Medical care: 2018-2019

18. Claimant continued chiropractic care with Dr. Klena throughout 2018 and 2019. Symptoms at various body parts waxed and waned, sometimes with attribution to a recent event and sometimes not. Except as noted hereinbelow, these records, carefully read, do not shed

substantively relevant light on issues under consideration here.

19. On February 14, 2018, Claimant visited Jennifer Miller, M.D. at Idaho Sports Medicine Institute for Claimant's right knee. Claimant reported the July 2017 accident and reported that right knee pain began then. Dr. Miller diagnosed bilateral medial compartment joint degeneration (arthritis) and continued "but his RIGHT knee has exacerbated symptoms due to injury. (emphasis in original.)

20. On September 10, 2018, Claimant visited Cody Heiner, M.D. Claimant described the July 2017 accident. Dr. Heiner noted the absence of "obvious pathology on exam, beyond some probable pre-existing osteoarthritis consistent with his age." X-rays showed only arthritis. An MRI showed a medial meniscus tear and a possible ganglion posterior to the posterior cruciate ligament, together with the degeneration.

21. On October 11, 2018, Claimant returned to Dr. Heiner. Dr. Heiner was unable to sort out new versus pre-existing conditions. He noted Claimant "was not forthcoming" in providing a history. Claimant newly added complaints of neck and left low back pain which Claimant related to the July 2017 accident. Dr. Heiner declined to consider issues other than the right knee.

22. On February 8, 2019, Dr. Klena noted "left low back pain that continues from original WC injury of July 30th, 2017." However, the history continues to note an August 14, 2017, onset following a lifting injury as the source of Claimant's low back pain.

23. On February 8, 2019, Claimant visited Robert Walker, M.D., an orthopedic surgeon for his right knee. Claimant described the July 2017 industrial accident as a source of continuing pain. Dr. Walker examined Claimant and diagnosed "advanced right knee osteoarthritis, with

increased pain after work injury of 7/20/17" [sic]. Dr. Walker noted the osteoarthritis was preexisting but that symptoms were exacerbated by the industrial injury. Dr. Walker performed arthroscopic surgery on the right knee on February 15. He performed a medial meniscectomy and removed a loose body. One week post-op Claimant reported dramatic improvement.

Dr. Friedman's IME

24. On March 27, 2019, Robert Friedman, M.D. reported his findings and opinions. He reviewed medical records back to 2011 and evaluated Claimant on March 17 at Surety's request. Dr. Friedman opined that the accident aggravated a preexisting cervical arthritis and a preexisting right knee arthritis. He opined that the knee surgery and postoperative physical therapy were reasonable and related to the accident. He opined that 8 to 10 chiropractic visits after the accident were reasonable and related to the accident, but that additional chiropractic care could not be deemed necessary or related to the accident without additional chiropractic records unavailable to Dr. Friedman. He opined that further medical treatment was not indicated or necessary for Claimant's neck, low back, or knees. He opined that "there is no evidence" to determine that the accident aggravated or accelerated Claimant's underlying arthritis. He opined that Claimant's sole industrial condition at the time of this IME was a right meniscus tear. He opined it "possible", depending upon the content of absent records, that the cervical spine symptoms may have been exacerbated or aggravated by the accident.

25. Dr. Friedman opined Claimant had reached maximum medical improvement in his spine and gluteal region. He recommended completion of physical therapy for his right knee. All other treatment was caused by preexisting arthritis and not the accident. Dr. Friedman rated Claimant's knee at 2% of lower extremity related to the accident. He rated Claimant's neck at 1%

whole person, with causation attributed to preexisting arthritis or to the accident depending upon whether prior medical records show he had complained of symptoms before the accident or not. He rated gluteal impairment at zero. He opined that the accident did not cause any new or additional restrictions.

26. In post-hearing deposition Dr. Friedman well explained his bases for his opinions about which conditions were unrelated to the industrial accident. His testimony and earlier reports were consistent.

Medical Care: 2020-Hearing

27. On February 14, 2020, Jennifer Miller, M.D. opined that degeneration in Claimant's right knee was exacerbated by the injury. He suffered medial compartment joint degeneration in both knees.

28. On May 21, 2020, Claimant visited Tobias Gopon, M.D. at St. Luke's Sports Medicine. He complained of left hip pain since the July 2017 accident. By history Claimant also reported having seen a chiropractor intermittently since a high school back injury. Dr. Gopon reviewed X-rays and diagnosed left hip pain with arthritis and lumbar spondylosis. He opined that the "most likely contributing factor to his pain is left hip arthritis."

29. On July 3, 2020, Surety denied physical therapy for left hip arthritis, first, as unrelated to the accident and, second, upon the assertion that Claimant had reached medical stability for industrially related symptoms.

30. On July 29, 2020, St. Luke's responded to Claimant's grievance about scope of treatment. St. Luke's reported they were referred only for evaluation of Claimant's knee.

31. On August 14, 2020, an MRI confirmed left hip labral tears.

32. On November 2, 2020, Dr. Klena tied, by history, Claimant's left lumbar symptoms to an October 19, 2020, repetitive motion onset.

33. On August 27, 2021, Dr. Klena asserted left hip/pelvis symptoms have been present since the July 2017 industrial accident. This assertion is new and not supported by Dr. Klena's contemporaneously made notes.

34. On September 10, 2021, Dr. Klena disagreed with Dr. Friedman's opinion that the left hip labral tears were preexisting. He reported that Claimant did not mention left hip pain to him before the accident. He opined that the left hip condition was caused by the accident and would need medical treatment including surgery. He opined that all chiropractic treatment since the accident was medically necessary and related to the accident. He opined that other than the left hip, all industrially related conditions were at maximum medical improvement, "without residuals". After this correspondence in which Dr. Klena disagreed with Dr. Friedman's opinions, subsequent notes of treatment visits occasionally add or omit references to the July 2017 accident. When adding such a reference, Dr. Klena claimed varying symptoms to have been "present since" that accident. Such claims are not supported by contemporaneously made notes.

35. On November 14, 2022, Dr. Friedman reported on his review of additional medical records. Based upon Dr. Klena's notes Dr. Friedman opined that the cervical degenerative disease and symptoms were preexisting and unrelated to the accident. He modified his earlier PPI rating and tied only 1% whole person for the right knee to the industrial accident. No other body parts show PPI related to the industrial accident.

Vocational Factors

36. Born December 23, 1951, Claimant was 70 years old on the date of hearing.

37. Claimant returned to work promptly after the accident. The record does not show any physician having imposed temporary restrictions in the early visits following the accident.

38. The record does not show any physician imposed permanent restrictions related to Claimant's right knee. The record does not show a loss of wage-earning capacity nor of a loss of local labor market access.

DISCUSSION AND FURTHER FINDINGS OF FACT

39. 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).

40. 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).

41. 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).

42. Claimant's demeanor appeared credible. He made a good first impression. He appears somewhat stoic. He has a history of being a good and stable worker. One can reasonably find that Claimant sincerely believes his several conditions are related to the July 2017 industrial

accident. However, medical records soon after the accident are silent about certain conditions and expressly show Claimant denied having fallen and denied experiencing any pain in the weeks immediately after the accident.

43. Where contemporaneously made medical records are inconsistent with Claimant's memory of the onset and location of symptoms, these medical records receive more weight.

Causation

44. 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 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).

45. Here, from Claimant's first visit to his chiropractor after the July 2017 accident he complained of head and neck pain and attributed it to the accident. Although Dr. Klena did not expressly opine about causation until years later, his treatments appear to have been an attempt to quiet a temporary aggravation of a preexisting condition in that area. The records further show

these symptoms subsided to baseline consistent with preexisting chiropractic records.

46. On August 3, just a few days after the July 2017 accident, Claimant denied to Dr. Hansen that he suffered any pain and that he had suffered any fall. Dr. Hansen's comprehensive physical examination did not note any abrasion on Claimant's head, nor any swelling or soreness in any body part. Rather, Dr. Hansen identified two unrelated systemic conditions not relevant to this discussion.

47. On August 11 Dr. Klena noted by history that the July 2017 accident had occurred and that Claimant related some leftward neck pain to it. Bilateral lumbar pain was reported by Claimant to have been present continuously since the January visit prior. Bilateral pelvis pain Claimant linked to an event of excessive standing and walking on August 4, 2017. Dr. Klena did not opine about causation in this note.

48. On August 18 PA Waselchuk treated a finger injury. This visit was silent as to the July 2017 accident and any relevant body parts.

49. September 28, 2017 is the date of first mention of right knee pain. Dr. Klena had noted left knee degeneration in the years prior to this visit. In this note, neither Claimant nor Dr. Klena commented about how or when this right knee pain arose. Not until November 21, 2017 did Dr. Klena link right knee symptoms to the July 2017 accident.

50. In nearly all of his records Dr. Klena noted that Claimant had linked by history certain symptoms to certain events. However, Dr. Klena's various recitations of events and attributions of symptoms to events do not rise to the standard required as medical opinions. These are not medical opinions at all. They simply report Claimant's statements to Dr. Klena. Later in other chiropractic notes, Dr. Klena did express opinions about causation. But for body parts other

than the neck and right knee, Dr. Klena's opinions have reconstructed a false historical basis. Such opinions receive little weight.

51. Dr. Freidman first opined it "possible" that there was a cervical spine aggravation, but upon review of additional preexisting chiropractic records opined that Claimant suffered no permanent impairment to his cervical spine region as a result of the accident.

52. Dr. Friedman, Dr. Miller, Dr. Walker and Dr. Heiner related Claimant's right knee condition to an exacerbation of his preexisting arthritis, They related the need for surgery to repair the meniscal tear to the July 2017 accident.

53. As to any condition in any body part other than Claimant's cervical spine and his right knee, Claimant failed to show by a reasonable medical probability that the onset of symptoms were temporally proximate to the accident or causally related to it.

Temporary Disability

54. Eligibility for and computation of temporary disability benefits are provided by statute. *Idaho Code* §72-408, *et. seq*. Upon medical stability, eligibility for temporary disability benefits does not continue. *Jarvis v. Rexburg Nursing*, 136 Idaho 579, 38 P.3d 617 (2001). An injured worker who is unable to work while in a period of recovery is entitled to temporary disability benefits under the statutes until he has been medically released for work and Employer offers reasonable work within the terms of the medical release. *Malueg v. Pierson Enterprises*, 111 Idaho 789, 727 P.2d 1217, (1986). The statute requires a five-day waiting period before temporary benefits become payable. Idaho Code § 72-402.

55. Here, Claimant was paid for his work the day of the accident. He took a short break and resumed work. He has not shown that any physician released him from full-work duty or

imposed temporary restrictions which might cause him to miss work. If he missed work following the knee surgery, he has not asserted it. The record does not show any such remains unpaid.

Permanent Impairment

56. 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).

57. Dr. Friedman offers the only PPI rating of record. His 1% whole person (2% lower extremity) rating for Claimant's right knee and subsequent surgery is related to the 2017 accident.

58. No physician has assigned restrictions for Claimant's temporary aggravation of his pre-existing cervical spine condition. Dr. Friedman assigned a 1% whole person PPI rating for degenerative cervical spine disease unrelated to the July 2017 accident.

59. No physician has assigned restrictions or rated any other body part.

Permanent Disability and Apportionment

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

61. 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).

62. 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).

63. Apportionment was raised as a noticed issue in this case. Under Idaho Code § 72-406(1), in cases of partial permanent disability "if the degree or duration of disability resulting from an industrial injury or occupational disease is increased or prolonged because of a preexisting physical impairment, the employer shall be liable only for the additional disability from the industrial injury or occupational disease." The Idaho Supreme Court has held that apportionment under I.C. § 72-406 must be evaluated in two steps. First, the Idaho Industrial Commission must evaluate "the claimant's permanent disability in light of all of his physical impairments, resulting from the industrial accident and any pre-existing conditions, existing at the time of the evaluation." *Page v. McCain Foods, Inc.*, 145 Idaho 302, 179 P.3d 265, 272 (Idaho 2008). Second, the Commission must apportion "the amount of the permanent disability attributable to the industrial

accident." *Id.*

64. For impairment, Dr. Friedman's analysis assigned 1% whole person impairment related to Claimant's knee and 1% whole person impairment related to his cervical spine degenerative disease. (Friedman IME, 8-9). There was no impairment for Claimant's hip. Therefore, Claimant's total impairment is 2%. *Id.* As for disability in excess of impairment, without any physician-imposed permanent restrictions, Claimant has failed to establish permanent disability above his PPI rating. He worked after the accident. He has not shown a loss of labor market access. He has not shown a loss of wage-earning capacity. Considering all non-medical facts and circumstances, Claimant's disability from all causes is rated at 2% of the whole person, inclusive of PPI. Applying apportionment pursuant to the second step of the *Page* analysis, 1% of Claimant's total impairment was apportioned to causes unrelated to the industrial accident, and 1% was apportioned to the accident. Without any disability in excess of impairment, 50% of Claimant's disability is the result of pre-existing conditions. Claimant is entitled to 1% permanent partial disability apportioned to the industrial accident.

Medical Care

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

66. Here, Claimant did not assert he was entitled to additional medical care benefits for his right knee and the surgery. These were paid by Surety. Rather, he asserted entitlement to medical care benefits for his hip and low back, body parts for which he has failed to show a causal relation to the industrial accident.

67. Defendants have paid significant medical care benefits, including chiropractic

treatment for the temporary aggravation of Claimant's cervical spine.

68. Dr. Klena noted Claimant's left neck symptoms were subsiding by September 28, 2017. Dr. Klena's X-rays in November 2017 showed no acute or traumatic basis but rather arthritis in Claimant's cervical spine. To be clear, Defendants are liable for Dr. Klena's treatment from August 11, 2017 through December 6, 2017 when neck symptoms returned to baseline before the automobile accident, and for 10 visits following the right knee surgery, based upon Dr. Friedman's opinions.

69. Reasonable medical care for which Defendants are liable includes diagnostic imaging and treatment of Claimant's right knee. Claimant failed to show he is entitled to additional medical benefits.

CONCLUSIONS

1. Claimant temporarily exacerbated a pre-existing condition in his cervical spine area, and injured his right knee in a compensable accident around the end of July 2017;

2. Claimant has reached medical stability regarding both conditions and is entitled to permanent disability rated at 1% whole person, inclusive of 1% PPI, accounting for apportionment; and

3. Claimant is entitled to medical benefits for his right knee. Claimant is entitled to benefits for chiropractic care from August 2017 through December 2017 inclusive for treatment of the temporary aggravation of his neck and for 10 visits occurring immediately after. Claimant failed to establish entitlement to additional medical care and temporary disability benefits.

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 21st day of July 2023.

INDUSTRIAL COMMISSION

Douglas A. Donohue, Referee

ATTEST:

Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of August 2023, a true and correct copy of the **FINDINGS OF FACTS, CONCLUSIONS OF LAW AND RECOMMENDATIONS** was served by regular United States Mail and Electronic Mail upon the following:

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BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

EUGENE STROEBEL, Claimant, v. AUTOMOTIVE MARKETING CONSULTANT, Employer, And XL SPECIALTY INSURANCE COMPANY, Surety, Defendants.	**IC 2017-050855** **ORDER**

Pursuant to Idaho Code § 72-717, Referee Doug 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 temporarily exacerbated a pre-existing condition in his cervical spine area, and injured his right knee in a compensable accident around the end of July 2017;

2. Claimant has reached medical stability regarding both conditions and is entitled to permanent disability rated at 1% whole person, inclusive of 1% PPI, accounting for apportionment; and

3. Claimant is entitled to medical benefits for his right knee. Claimant is entitled to benefits for chiropractic care from August 2017 through December 2017 inclusive for treatment

of the temporary aggravation of his neck and for 10 visits occurring immediately after. Claimant failed to establish entitlement to additional medical care and temporary disability benefits.

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

DATED this 11th day of August, 2023.

INDUSTRIAL COMMISSION

Thomas E. Limbaugh, Chairman

Thomas P. Baskin, Commissioner

Aaron White, Commissioner

ATTEST:

Christina Nelson
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of August, 2023, 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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