

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

AMBER YOUMANS,

Claimant,

v.

EMPIRE AIRLINES, INC,

Employer,

and

PACIFIC INDEMNITY COMPANY,

Surety, Defendants.

IC 2018-007089

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

FILED April 29, 2022

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Sonnet Robinson, who conducted a hearing on July 14, 2021. Claimant, Amber Youmans, was present in person and represented herself *pro se*. David Gardner of Pocatello represented Defendants. The parties presented oral and documentary evidence. The matter came under advisement on October 7, 2021 and is ready for decision.

ISSUES

The issues¹ to be decided are:

1. Whether Claimant's condition was caused by an accident arising out of and in the course of employment as defined by Idaho Code § 72-102(17);
2. Whether Claimant is entitled to any medical benefits as required by Idaho Code

¹ Defendants and Claimant argued the issue of time loss benefits in briefing. However, it was not a noticed issue, and the Commission declines to rule on it pursuant to Idaho Code § 72-713.

§ 72-432;

3. Whether Claimant is entitled to permanent impairment or permanent disability as a result of the claimed accident.

CONTENTIONS OF THE PARTIES

Claimant did not file an opening brief.

Defendants contend that they have paid Claimant all the benefits to which she is entitled. Claimant's current symptoms are the same as they were pre-injury and Dr. Tsanadis' opinion should be accepted over Dr. White's as it is more recent and Dr. White does not adequately explain how she incorporated Claimant's pre-existing symptomatology. No physician has given Claimant an impairment rating and she was released to work without restrictions. Claimant has offered no expert vocational testimony to prove disability, only her own testimony.

Claimant responds that she did have pre-existing migraines, but they are now daily and accompanied by speech, memory, and balance issues. Dr. Panos is still pursuing further treatment for her ongoing symptoms, and she is not at MMI. Claimant asserts she is entitled to ongoing Botox injections to treat her migraines, time loss benefits, an award of permanent impairment, and total and permanent disability benefits.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. Joint Exhibits 1-15;
3. The testimony of Claimant, Amber Youmans, taken at hearing;

All outstanding objections are overruled. Both Claimant and Defendants quoted from or cited to records which were not admitted before the Referee. Those references are struck pursuant to JRP 11(C).

The undersigned Commissioners have reviewed the Referee's proposed decision and conclude that different treatment is warranted on the issue of whether Claimant has proved her psychological conditions arose out of and in the course of employment. Accordingly, the Commission declines to adopt the proposed decision and issues these findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. **Industrial Accident.** On February 14, 2018, Claimant suffered an unwitnessed fall in the parking lot of her Employer wherein she lost consciousness. DE 5:18. Claimant did not remember what happened, but after she awoke, she used her car alarm to get help. *Id.* Claimant was on the ground for approximately 20 minutes. *Id.* Claimant was transported by ambulance to the Kootenai Health emergency department where Claimant was admitted; Claimant suffered two seizure-like episodes while being transported. DE 4; DE 5:20.

2. Claimant was examined by Kami Bowcut, PA. DE 5:22. Claimant complained of head, neck, and low back pain. *Id.* Claimant reported pre-existing right eye blindness, migraines with vision changes, and seizures. *Id.* Claimant described a seizure which occurred in August of 2017 where she fell down a flight of stairs. *Id.* PA Bowcut recorded "[s]he does state that her head pain and vision changes do seem similar to" her pre-injury migraines. *Id.* PA Bowcut noted CT scans of Claimant's head, chest, abdomen, pelvis, cervical spine were negative for traumatic injury. *Id.* at 24. Claimant was admitted overnight for observation. *Id.*

3. On February 15, 2018, Claimant was examined by Michael May, MD. *Id.* at 30. Dr. May recorded that Claimant was improved, and that she denied any concerns, and that she was comfortable going home. Claimant had taken her normal treatment for migraines, sumatriptan, the night before and reported it was working well for her migraine. Claimant reiterated her headache appeared similar to her typical migraines. *Id.* at 30. Claimant was discharged without restrictions. *Id.* at 31.

4. On February 19, 2018, Claimant was examined by Daniel Roquiz, MD. DE 6:55. Claimant reported her fall, low back pain, and migraine and Dr. Roquiz recorded she was in “significant” pain. *Id.* at 57. Dr. Roquiz found Claimant tender around her lumbar spine and ordered a lumbar CT scan. *Id.* at 57. Dr. Roquiz assessed (1) low back pain; (2) fall; (3) migraine; and (4) post-concussive syndrome. *Id.* at 59.

5. The lumbar CT scan performed on March 1, 2018 showed (1) prominent disc degenerative changes at L4-5 with associated reactive bony endplate sclerosis; (2) mild facet joint degenerative changes at L4-5 and L5-S1; (3) mild degenerative lumbar levoscoliosis. DE 5:32. Claimant returned to Dr. Roquiz on March 13, 2018, and reported her back pain was getting worse. DE 6:67. Dr. Roquiz prescribed methocarbamol. *Id.* at 68.

6. On March 23, 2018, Claimant was notified her claim was accepted and Surety issued time loss benefits. DE 3:5.

7. Claimant saw Scott Magnuson, MD, on March 26, 2018 for pain management. DE 8:113. Claimant reported ongoing low back pain which radiated primarily into her left lower extremity, and occasionally her right lower extremity. *Id.* Dr. Magnuson reviewed Claimant’s lumbar CT scan and opined Claimant’s lumbar degenerative disc disease “could be” causing her

low back pain. *Id.* at 117. Dr. Magnuson wrote that Claimant had “failed” conservative measures and recommended an ESI shot, followed by a course of physical therapy. *Id.*

8. Claimant was evaluated by Craig Panos, MD, for her concussion symptoms on April 11, 2018. DE 11:155. Claimant reported her concussive symptoms had improved since the fall but that she had continued low back pain. *Id.* at 155-156. Claimant reported a history of migraines going back to age 15, however, since the fall, her headaches had been constant and she’d had difficulty with memory and vision changes. *Id.* at 156. Dr. Panos recommended Claimant avoid screens, and limited Claimant to four hour shifts at work with only 30 minutes of screen time at a time; Dr. Panos referred Claimant for vestibular physical therapy and ordered a brain MRI. *Id.* at 159-160.

9. Claimant underwent a vestibular physical therapy evaluation on April 12, 2018 to treat post-concussive syndrome. DE 5:34. The physical therapist found Claimant had dizziness and mild balance deficits which affected her walking and standing; further, that Claimant would benefit from a course of vestibular physical therapy. *Id.* at 35.

10. Claimant received her first ESI shot on April 25, 2018 from Dr. Magnuson. DE 7:84.

11. On April 26, 2018, Claimant was evaluated by Wayne Ellenbecker, OD, for blurry vision. DE 10:150. Dr. Ellenbecker conducted an eye exam and diagnosed (1) blindness right eye, category three, normal vision left eye; (2) regular astigmatism, left eye; (3) myopia, left eye; (4) presbyopia; (5) concussion with loss of consciousness of unspecified duration, initial encounter; and (6) unspecified visual field defects. *Id.* at 154. Dr. Ellenbecker referred Claimant to her primary care physician for her concussion and for special testing for her unspecific visual defects. *Id.*

12. Claimant underwent an MRI of her brain on May 1, 2018 which revealed “[n]ormal MRI of the head.” DE 5:44. Claimant returned to Dr. Panos on May 2, 2018 and reported an improvement in her nighttime headaches, but still daily headaches when trying to focus her vision. DE 11:163. Dr. Panos recommended Claimant continue physical therapy and avoid environmental triggers. *Id.* at 166.

13. At follow-up on May 16, Claimant reported her headaches were slightly worse and she was still frustrated with her memory and cognitive issues. *Id.* at 170. Dr. Panos increased Claimant’s working hours from four hours a day to six with only 30 minutes of screen time at a time. He also referred her for physical therapy for her neck and back pain and occupational therapy for her cognitive difficulties. *Id.* at 173.

14. On May 23, 2018, Claimant reported to Dr. Magnuson her first ESI shot had given her 80% relief for a couple weeks before she returned to baseline. DE 7:90. Claimant requested and received a second ESI shot into her lumbar spine; Dr. Magnuson again reiterated he would refer her to physical therapy for her back pain. *Id.* at 91.

15. Claimant returned to Dr. Panos on June 13, 2018. DE 11:176. Claimant reported vestibular therapy was helping her balance issues, but that her headaches were ongoing, unchanged and happening at work; Claimant was still experiencing memory and concentration issues. *Id.* at 177. Claimant had not yet started occupational therapy or physical therapy for her neck and back. Claimant was referred to Todd Wiley, OD, for ongoing vision issues. *Id.* at 180.

16. Claimant received her third lumbar ESI from Dr. Magnuson on June 20, 2018. DE 7:100.

17. Claimant followed-up with Dr. Panos on July 16, 2018. DE 11:183. Claimant did not want to see Dr. Wiley because of cost issues and that she was “seeing better” and had not lost

vision in the past month. Claimant reported continuing migraines, that she felt she could not function, and that she continued to forget things. Claimant also reported a recent work evaluation and that she had been promoted. *Id.* at 184. Dr. Panos continued Claimant's work restrictions and wrote that he would call Dr. Magnuson to discuss occipital nerve blocks for her headaches. *Id.* at 187-188.

18. Claimant received an occipital nerve block on August 8, 2018 and followed up with Denise Love, Dr. Magnuson's nurse practitioner, on August 22, 2018. DE 8:121. Claimant reported 100% relief from her headaches for two and half days before the relief abruptly wore off; Claimant was reportedly very discouraged. *Id.* NP Love recommended radiofrequency ablation of Claimant's occipital nerve based on the significant relief she had from the occipital nerve block. *Id.* at 124.

19. On September 12, 2018, Dr. Magnuson performed an occipital nerve block and radiofrequency ablation. DE 7:106.

20. On October 5, 2018, Claimant saw NP Erik Kelly. DE 6:69. Claimant reported depression, stress, and poor concentration which she related to her work environment; Claimant relayed "her co-workers have created a hostile work environment for her and that the situation has progressed so much that HR is now saying that she needs to be evaluated for mental fitness to work, specifically to evaluate if she is a danger to herself or others." *Id.* at 72. Claimant requested an evaluation and communication she could provide to work to demonstrate she was not a threat to herself or others. *Id.*

21. Claimant returned to Dr. Panos on October 10, 2018. DE 11:190. Claimant reported ongoing headaches and severe back pain, but improved memory and concentration. *Id.* at 191.

Claimant relayed that her migraine medication didn't seem to be working any longer and that the radiofrequency ablation only helped her migraines for one week. *Id.*

22. Claimant saw NP Love on October 24, 2018 and reported she had lost her job due to her migraines, which were occurring daily. DE 8:127. Claimant repeated that she had only had relief from the radiofrequency ablation for one week. NP Love wrote that radiofrequency ablation had been ineffective to treat Claimant as most patients had relief for at least six weeks, and it was more likely the nerve block itself which provided Claimant's reported pain relief. *Id.* at 130.

23. On November 7, 2018, Claimant saw Dr. Panos. DE 11:197. Claimant reported her headaches had increased with the colder weather and with losing her job; she continued to struggle with concentration. *Id.* at 198.

24. Claimant followed up with NP Love on November 21, 2018 and reported continued daily migraines. DE 8:133. NP Love discharged Claimant from the clinic noting there was nothing further they could offer her. *Id.* at 135.

25. Claimant saw Holly Moore, NP, on December 11, 2018 for her low back pain. DE 9:139. Claimant reported she had had low back pain since her February 2018 industrial accident. *Id.* NP Moore ordered an MRI which showed (1) a concentric spondylotic L4-5 disc displacement and facet hypertrophy mildly narrows the lateral recesses and gently encroaches upon the descending L5 nerve roots. Mild bilateral foraminal narrowing; (2) no focal compressive disc herniations. No high-grade central canal or foraminal stenosis; (3) no acute vertebral fractures. No microtrabecular stress reactions; (4) "combination of a mild congenitally-narrowed central canal, straightening of the lumbar lordosis and varying levels of facet hypertrophy with capsulitis may contribute to the patient's history of low back pain." *Id.* at 144.

26. Claimant saw Jeffrey Larson, MD, on January 3, 2019 to review her MRI. DE 9:146. Dr. Larson recorded that her MRI showed nothing surgical, with no acute findings, but that she did have some mild degenerative changes which could have been aggravated. *Id.* at 148-149.

27. Claimant saw Dr. Panos on January 8, 2019. DE 11:211. Claimant expressed disappointment about her evaluation by Dr. Larson; Dr. Panos referred Claimant to Axis Spine Center for her back pain. *Id.* at 216.

28. On February 2, 2019, Claimant underwent an independent medical exam (IME) with Gregory Zoltani, MD at Defendant's request. DE 13:307. Dr. Zoltani took a history, performed a physical exam, and reviewed records. Dr. Zoltani diagnosed (1) status post-concussion, historically related on a more probable than not basis; (2) mixed headaches syndrome, post-traumatic type, related on a more probable than not basis; (3) lumbodorsal strain, historically related on a more probable than not basis, resolved. *Id.* at 314.

29. Dr. Zoltani reviewed a treatment plan, and agreed it was reasonable and medically necessary; it is not clear what treatment plan Dr. Zoltani reviewed or who authored the treatment plan, but from context, it was likely Dr. Panos' treatment plan. *Id.* Dr. Zoltani opined that Claimant would be at MMI in six to eight weeks if the treatment recommendations were followed. Dr. Zoltani found Claimant capable of returning to work, with no restrictions, and recommended Claimant go back to work from a mental health standpoint. *Id.* at 315. In conclusion, Dr. Zoltani wrote:

The diagnoses listed above are the result of the acute injury on the date mentioned. I do not feel that she is at maximum medical improvement pertaining to her post-traumatic headaches and concussion. She continues to have memory difficulties and neuropsychological evaluation should be undertaken to address the superimposed psychogenic factors contributing to her ongoing condition, as well as considering medications such as Depakote, which would act as a mood stabilizer in addition to a headache preventative, and consideration for Botox injections if that medication trial failed for the chronic daily post-traumatic headaches. As it

pertains to the lumbodorsal strain, that condition has reached maximum medical improvement and does not require any additional treatment. Treatment received has been reasonable and necessary.

DE 13:315.

30. On February 23, 2019, Dr. Panos referred Claimant for neuropsychological testing and recommendations. DE 11:226.

31. On April 10, 2019, temporary disability benefit payments were stopped because Dr. Zoltani had found Claimant capable of returning to work. DE 3:9.

32. Claimant saw Michelle White, PhD, on April 16, April 17, April 26, June 26, June 28, July 3, July 15, and July 18, 2019 for neuropsychological evaluation and testing. See DE 12.

33. On June 11, 2019, Dr. Panos referred Claimant to neurology for consideration of Botox injections after failure of multiple medications. DE 11:262. On July 9, 2019, Dr. Panos recorded Claimant's insurance would no longer pay for her migraine medication, Imitrex, which was causing "significant deterioration." *Id.* at 270. By August 15, Claimant had secured Medicaid, and requested she be restarted on Imitrex, which Dr. Panos prescribed. *Id.* at 277, 281. Dr. Panos again referred Claimant to neurology for consideration of injections. *Id.* at 281.

34. On September 11, 2019, Dr. White issued her neuropsychological report. Dr. White reviewed records, interviewed Claimant and her mother, conducted testing, and observed Claimant over eight sessions. See DE 12.

35. Dr. White opined that Claimant presented with persisting neurobehavioral deficits, pain, and cognitive and psychological sequela from her work-related injury and that she required additional treatment. *Id.* at 305. Dr. White diagnosed: (1) psychological factors affecting headaches, (2) mild neurocognitive disorder, (3) adjustment disorder with mixed anxiety and

depression, (4) other sleep disorder. Dr. White opined these issues were injury related. *Id.* at 305-306.

36. Dr. White made the following recommendations (1) a referral to Todd Wiley for a full vision assessment and evaluation regarding vestibular dynamics; (2) a referral to Spokane Ear, Nose, and Throat for an evaluation of tinnitus and vestibular dynamics; (3) a referral to Dr. Wade Steeves for further intervention of her headaches and improved functioning; (4) outpatient speech therapy to assist with compensatory strategies and maximizing her vocational viability; (5) further evaluation and intervention with psychotropics currently under the direction of Dr. Panos; (6) ongoing assistance by Dr. Panos and possible referral to Dr. Karen Stanek to maximize overall functioning; (7) outpatient cognitive-behaviorally neurobehaviorally-based psychotherapy to maximize functioning; (8) re-referral for physical and occupational therapy; (9) follow-up neuropsychological testing in six months to one year to look at current functioning and prognosis. *Id.*

37. On December 5, 2019, John Tsanadis, PhD conducted a records review at Defendants' request. Dr. Tsanadis reviewed records from 2013 to 2019. DE 14:317-318. Dr. Tsanadis found Claimant did not meet the criteria for any diagnosis, including an aggravation of a pre-existing condition. Dr. Tsanadis opined Claimant's treatment to date had been reasonable, but that she was at MMI, with no permanent impairment or need for restrictions. *Id.* at 320-321. Dr. Tsanadis wrote:

The claimant is presenting with a variety of somatic symptoms that are nonspecific in nature and many of which have been present prior to the reported brain injury. In addition, the claimant at most had a concussion (i.e., mild traumatic brain injury) which is a self-limiting injury. The expectation of such an injury is a full neurocognitive/neurobehavioral recovery within a few days to weeks. Thus, there is no basis for the claimant to have ongoing problems related to the work injury.

Id. at 320. Dr. Tsanadis was concerned that Claimant had somatic symptom disorder given her history of complaints and wrote that dissimulation would need to be ruled out based on Claimant's overreporting of symptoms.

38. **Condition at Hearing.** Claimant reported ongoing headaches and difficulty with memory, speech, and balance. Tr. 20:12-15. Claimant was receiving Botox injections every three months to treat her headaches; it kept her from having daily migraines, but it did not completely alleviate her symptoms. *Id.* at 17:5-14.

39. **Credibility.** The Referee found that Claimant testified credibly. However, the Referee determined that it was clear her memory was impaired. Where Claimant's testimony contradicts the medical record, the medical record will be relied upon. The Commission finds no reason to disturb the Referee's findings and observations on Claimant's presentation or credibility.

DISCUSSION AND FURTHER FINDINGS

40. **Causation.** A worker's compensation claimant has the burden of proving, by a preponderance of the evidence, all the facts essential to recovery. *Evans v. Hara's, Inc.*, 123 Idaho 473, 849 P.2d 934 (1993). Claimant must adduce medical proof in support of his claim, and he must prove his claim to a reasonable degree of medical probability. *Dean v. Dravo Corporation*, 95 Idaho 558, 511 P.2d 1334 (1973). While *pro se* claimants are generally afforded more leniency in worker's compensation proceedings, they are still held to the same legal standards as attorneys. *Hagler v. Micron Technology, Inc.*, 118 Idaho 596, 798 P.2d 55 (1990); *Clark v. Cry Baby Foods, LLC*, 155 Idaho 182; 307 P.3d 1208 (2013); JRP 11(A); JRP 11(C).

41. Where there is both a positive and a negative diagnosis between two qualified doctors, the fact finder may examine the methodologies of both physicians to determine which physician is more credible. *Mazzone v. Texas Roadhouse, Inc.*, 154 Idaho 750, 759, 302 P.3d 718,

727 (2013). It is the role of the Commission to determine the weight and credibility of testimony and resolve conflicting interpretations of testimony. *Henderson v. McCain Foods, Inc.*, 142 Idaho 559, 565, 130 P.3d 1097, 1103 (2006).

42. Claimant admits she had pre-existing migraines but argues she now suffers from daily migraines and from memory, speech, and balance deficits caused by the accident. Claimant offers the opinions of Dr. White, Dr. Zoltani, and Dr. Panos to support her argument that her ongoing symptoms are related to her accident.

43. More specifically, Claimant argues Dr. White's opinion is superior to Dr. Tsanadis because Dr. White's opinion was formed over the course of multiple visits and because Dr. White actually met with Claimant and tested her whereas Dr. Tsanadis only reviewed records. Further, Defendants' argument that Dr. White failed to review past medical records is incorrect; Dr. White did review medical records as shown on page 8 of her report (DE 12:299).

44. Defendants argue Claimant's current condition is no different from her pre-existing symptomology and argue Dr. White's opinion is fatally flawed because she does not adequately explain how she evaluated Claimant's pre-existing medical history. Further, her report is outdated when compared to Dr. Tsanadis' report.

45. Dr. White's opinion and Dr. Zoltani's opinion are more persuasive than Dr. Tsanadis regarding causation and Claimant's diagnosis because of their superior methodologies. Dr. White reviewed Claimant's medical records and educational records. Dr. White met with Claimant for examination purposes eight times. Dr. White conducted 27 different tests that examined Claimant's intelligence, psychology, perception, vision, and memory.

46. Dr. Zoltani conducted a physical exam of Claimant and took a history from her personally. Dr. Zoltani also reviewed medical records, including pre-existing medical records

documenting Claimant's history of seizures and migraines.

47. In contrast, Dr. Tsanadis conducted a records review and did not examine² Claimant. Dr. Zoltani and Dr. White's opinions are more persuasive because of their in-person examinations, and the depth and breadth of Dr. White's examination via multiple tests, over multiple appointments. Put simply, their opinions have a better foundation than Dr. Tsanadis' opinion.

48. Further, Dr. Tsanadis' opinion itself is weak. Dr. Tsanadis asserts that Claimant's "variety of somatic symptoms" were present prior to the injury. However, Dr. Tsanadis does not describe what symptoms he is referring to, nor what medical records support their persistence pre-injury and post-injury. The lack of explanation is a critical blow to Dr. Tsanadis' opinion. Claimant does not dispute that she suffered from pre-existing migraines. Her theory of injury is that she now suffers from daily headaches and other cognitive changes. Dr. Tsanadis does not address Claimant's reported changes in speech, memory, and balance. Dr. Tsanadis does not engage with Dr. Zoltani's causation opinion at all. Dr. Tsanadis did not cite to or summarize a single record where Claimant complained that her headaches were daily, or that she suffered from any of the cognitive symptoms described by Dr. Panos. Dr. Tsanadis' assertion that Claimant's symptoms are the same now as they were pre-injury, without explanation or citation, is inadequate to prove the same.

49. Defendants are correct that Dr. White does not explain how she incorporated Claimant's medical history into her diagnosis. However, this is not fatal to her opinion because Dr. White was clearly aware of Claimant's pre-existing history of depression, concussions, and

² Defendants' assertion that Claimant was examined by Dr. Tsanadis is contradicted by the report itself and by Claimant. Further, Dr. Tsanadis was not prevented from examining Claimant due to the COVID-19 pandemic; Dr. Tsanadis conducted his review in December 2019.

migraines, both because Claimant reported it on her intake form and because it was referenced in medical records that Dr. White reviewed, particularly Dr. Zoltani's IME. Dr. White was not misled to think Claimant was symptom-free prior to the accident when issuing her opinion.

50. Claimant has proven to a reasonable degree of medical probability via Dr. Zoltani's opinion that her work-related accident caused mixed headaches syndrome of post-traumatic type.

51. Dr. White's diagnosis of psychological conditions merit further discussion and analysis. Dr. White diagnosed Claimant with the following conditions pursuant to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition ("DSM-5"): (1) psychological factors affecting headaches; (2) mild neurocognitive disorder; (3) adjustment disorder with mixed anxiety and depression; and (4) other sleep disorder. DE 12:306. Dr. White opined that these issues were related to her work injury. *Id.* Claimant asserts that she is entitled to treatment for these psychological conditions.

52. Psychological injuries, disorders or conditions are not compensated under workers compensation unless several elements are met. Idaho Code § 72-451 outlines these elements and the heightened burden of proof that a claimant must meet in order to be compensated for psychological conditions.³ The statute provides, in pertinent part:

(1) Psychological injuries, disorders or conditions shall not be compensated under this title, unless the following conditions are met:

(a) Such injuries of any kind or nature emanating from the workplace shall be

³ The application of Idaho Code § 72-451 to this case is not expressly addressed in briefing by either party. In *Deon v. H & J, Inc.*, 157 Idaho 665, 339 P.3d 550 (2014) the Court held that the Commission may not *sua sponte* raise theories of liability or affirmative defenses which were never raised by the parties to the case. Here, Claimant has requested that the Commission decide the issue of whether Claimant's conditions were caused by an accident arising out of and in the course of employment. Included in Claimant's request for compensation are psychological conditions she claims were caused by the work accident, such as depression, anxiety, and the other psychological diagnoses of Dr. White. *See* Clt Brief, p. 6-9. We cannot address Claimant's request for compensation for psychological conditions caused by the work accident without addressing the statutory prerequisites to the compensability of such conditions. The consideration of Idaho Code § 72-451 does not involve consideration of a new theory of recovery or affirmative defense as was the case in *Deon*. It is necessary to our determination of the first noticed issue.

compensated only if caused by accident and physical injury as defined in section 72-102(17)(a) through (17)(c), Idaho Code, or only if accompanying an occupational disease with resultant physical injury, except that a psychological mishap or event may constitute an accident where:

- (i) It results in resultant physical injury as long as the psychological mishap or event meets the other criteria of this section;
 - (ii) It is readily recognized and identifiable as having occurred in the workplace; and
 - (iii) It must be the product of a sudden and extraordinary event;
- (b) No compensation shall be paid for such injuries arising from conditions generally inherent in every working situation or from a personnel-related action including, but not limited to, disciplinary action, changes in duty, job evaluation or employment termination;
- (c) Such accident and injury must be the predominant cause as compared to all other causes combined of any consequence for which benefits are claimed under this section;
- (d) Where psychological causes or injuries are recognized by this section, such causes or injuries must exist in a real and objective sense;
- (e) any permanent impairment or permanent disability for psychological injury recognizable under the Idaho worker's compensation law must be based on a condition sufficient to constitute a diagnosis using the terminology and criteria of the American psychiatric association's diagnostic and statistical manual of mental disorders, third edition revised, or any successor manual promulgated by the American psychiatric association, and must be made by a psychologist or psychiatrist duly licensed to practice in the jurisdiction in which treatment is rendered; and
- (f) Clear and convincing evidence that the psychological injuries arose out of and in the course of the employment from an accident or occupational disease as contemplated in this section is required.
- (2) Nothing in subsection (1) of this section shall be construed as allowing compensation for psychological injuries from psychological causes without accompanying physical injury.

Idaho Code § 72-451.

53. First, it is clear that Dr. White considered the diagnoses she made to qualify as

psychological diagnoses pursuant to the current version of the DSM. DE 12:306. Therefore, for these conditions to be deemed compensable all elements of Idaho Code § 72-451 must be satisfied.

54. Dr. Zoltani's and Dr. White's opinion establish that Claimant's psychological conditions are a consequence of the physical injuries she suffered as a result of the work accident. In other words, Claimant's psychological conditions are of the "physical-mental" variety, as opposed to "mental-physical" or "mental-mental." However, Claimant has not presented sufficient medical evidence to meet her heightened burden of proof for such psychological conditions; she must establish that the work accident was the "predominant cause as compared to all other causes combined" of her psychological conditions, as required by statute. Idaho Code § 72-451(1)(c).

55. As noted *supra*, Claimant has a medical history of pre-existing anxiety, depression, and sleep disorders. Dr. White reviewed this history and noted it in her evaluation. Dr. White opined that Claimant's psychological issues were merely "injury-related" (DE 12:306) and concluded that Claimant "presents with persisting neurobehavioral deficits, pain, cognitive and psychological sequela from her work-related injury necessitating additional evaluations and treatments." DE 12:305. With no further elaboration from Dr. White, the Commission cannot conclude that Dr. White's opinion establishes that the work injury was the *predominant* cause, as compared to all other causes combined, of Claimant's psychological conditions. Having failed to meet one of the elements required by Idaho Code § 72-451, there is no need to analyze whether Claimant has proven the other elements of the statute.

56. In conclusion, Claimant has failed to meet her burden of proof by clear and convincing evidence that her psychological conditions (psychological factors affecting headaches, mild neurocognitive disorder, adjustment disorder with mixed anxiety and depression, and other sleep disorder) arose out of and in the course of her employment.

57. **Medical Care and Maximum Medical Improvement (MMI).** An employer shall provide reasonable medical care for a reasonable time after an injury. Idaho Code § 72-432(1). A “reasonable time” includes the period of recovery before medical stability, but may include a longer period. *Jarvis v. Rexburg Nursing Center*, 136 Idaho 579, 38 P.3d 617 (2001). A claimant bears the burden of showing that medical treatment required by a physician is reasonable. Idaho Code § 72-432(1). A claimant must support his or her workers' compensation claim with medical testimony that has a reasonable degree of medical probability. *Sykes v. CP Clare & Co.*, 100 Idaho 761, 764, 605 P.2d 939, 942 (1980)).

58. It is for the physician, not the Commission, to decide whether the treatment is required; the only review the Commission is entitled to make is whether the treatment was reasonable. *Sprague v. Caldwell Transportation, Inc.*, 116 Idaho 720, 779 P.2d 395 (1989). The reasonableness of treatment is dependent upon the totality of the facts and circumstances of the individual being treated. *Harris v. Independent School District No. 1*, 154 Idaho 917, 303 P.3d 605 (2013).

59. Medical stability, or maximum medical improvement (MMI), essentially means that a worker has achieved the fullest reasonably expected recovery with respect to a work-related injury. A claimant attains MMI on the date after which further recovery from, or lasting improvement to, an injury can no longer reasonably be anticipated, based upon reasonable medical probability. A finding of MMI is precluded where treatment is being provided with a reasonable expectation that it will bring about some degree of recovery, even if treatment ultimately proves ineffective. In determining whether a claimant has reached MMI, the Commission may consider such factors as a return to work, the extent of the injury, and, most importantly, whether medical

evidence or testimony shows that the injury has actually stabilized. A claimant's condition may fluctuate, meaning that a claimant may have multiple periods of stability and instability, depending on the facts of the case. As noted by the Idaho Supreme Court, "... a person can be medically stable and still have symptoms and pain from her injury as long as no further material improvement is expected with time or treatment." *Cooke v. Bonner Foods*, IIC-2009-019578, IIC 2013-008560 (Issued October 16, 2017)(internal citations omitted).

60. Claimant argues she is not at MMI, and is only⁴ requesting treatment for her migraines, including Botox injections and other concussion related care. Clt Brief, p. 9. Claimant offers Dr. Zoltani and Dr. Panos' opinion to support her entitlement to Botox injections. Defendants do not argue Botox or other recommended treatment is unreasonable but rely on Dr. Tsanadis' opinion that any condition Claimant is still treating for is pre-existing in nature.

61. Regarding Claimant's Botox treatment specifically, in February of 2019, Dr. Zoltani stated Botox injections should be considered if other medication failed. Dr. Panos referred Claimant for Botox injections after multiple medications had failed in June of 2019. Dr. Panos was Claimant's treating physician and prescribed Botox injections. There is no evidence or argument that Botox injections are unreasonable treatment for post-traumatic headaches. Claimant is entitled to ongoing Botox injections to treat her post-traumatic headaches.

62. Regarding the other concussion related care recommended by Dr. Zoltani, Claimant has proven entitlement to the recommended medical care. Claimant correctly points out that Dr. Zoltani stated Claimant would reach MMI after treatment recommendations were carried out. One of those treatment recommendations was a neuropsychological evaluation, which was conducted,

⁴ Claimant does not argue for additional benefits for her low back, and Dr. Zoltani's opinion that her lumbodorsal strain had resolved by the time of his examination is accepted.

and produced additional recommendations for treatment. However, for reasons discussed *supra*, Claimant is not entitled to the treatment recommended by Dr. White for her psychological conditions, including anxiety and depression.

63. Claimant is entitled to continuing Botox injections for her migraines and to the treatment recommended by Dr. Zoltani and Dr. Panos related to the diagnosis of mixed headaches syndrome of post-traumatic type. Claimant still requires injury related treatment, which could improve her overall functioning, and is not at MMI.

64. **Permanent Impairment.** Claimant is not at MMI. This issue is not ripe.

65. **Permanent Disability.** Claimant is not at MMI. This issue is not ripe.

CONCLUSIONS OF LAW AND ORDER

1. Claimant has proven her claimed condition of mixed headaches syndrome of post-traumatic type were caused by her workplace accident;
2. Claimant has not proven her claimed psychological conditions of: (1) psychological factors affecting headaches; (2) mild neurocognitive disorder; (3) adjustment disorder with mixed anxiety and depression; and (4) other sleep disorder, were caused by her workplace accident;
3. Claimant has proven entitlement to ongoing Botox injections and treatment recommended by Drs. Zoltani and Panos;
4. Claimant has not proven entitlement to the treatment recommended by Dr. White;
5. Claimant is not at MMI;
6. All other issues are reserved.
7. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 29th day of April, 2022.

INDUSTRIAL COMMISSION






Aaron White, Chairman



Thomas E. Limbaugh, Commissioner



Thomas P. Baskin, Commissioner

ATTEST:



Kamerron Slay
Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of April, 2022, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** was served by *E-mail transmission* and regular United States Mail upon each of the following:

AMBER YOUMANS



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