BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

RONALD COLE, Claimant, v. STATE OF IDAHO, INDUSTRIAL SPECIAL INDEMNITY FUND, Defendants.	**IC 2020-024233** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** FILED JANUARY 27, 2025 IDAHO INDUSTRIAL COMMISSION

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Industrial Commission assigned this matter to Referee Douglas A. Donohue who conducted a hearing in Coeur d'Alene on June 16, 2023. Richard Whitehead represented Claimant. Michael McPeek represented Employer and Surety. Thomas Callery represented ISIF. All parties presented oral and documentary evidence. All parties took post-hearing depositions and submitted briefs. The case came under advisement on November 6, 2023, but on March 4, 2024, was informally stayed upon representations from the parties that a settlement was imminent. Employer and Surety settled with Claimant. The matter was reopened under advisement on October 28, 2024, when ISIF represented that issues remained between Claimant and ISIF for the Commission to decide. This matter is now ready for decision.

ISSUES

The issues to be decided as revised by the settlement are:

1. Whether Claimant is entitled to total and permanent disability;
2. Whether Claimant is entitled to permanent total disability under the odd-lot doctrine;

3. Whether ISIF is liable under Idaho Code § 72-332; and

4. Apportionment to establish ISIF's share of liability, if any, under *Carey v. Clearwater County Road Dept.*, 107 Idaho 109, 686 P.2d 54 (1984).

All the other issues were moot or resolved by the settlement between Claimant and Employer and Surety.

CONTENTIONS OF THE PARTIES

Claimant contends he is totally and permanently disabled. Claimant injured his left knee in September 2020. The accident aggravated a longstanding preexisting left knee condition. Claimant's preexisting condition involved two surgeries on his left knee with a Washington State Labor and Industries ("L&I") workers' compensation permanent disability rating of 5% in 1991. This is essentially equivalent to a 4 or 5% PPI rating under Idaho law and is confirmed by John McNulty, M.D. That condition progressed to degenerative arthritis between then and the subject accident. The arthritis was accelerated by the 2020 accident. Other preexisting conditions are present, including an old back injury following a 2011 accident which causes radiating symptoms in his right leg. Also present was an inguinal hernia which necessitated two surgeries and continues to cause occasional sharp pain. The 2020 accident resulted in two surgeries, one a total knee replacement. Statutory and judicial requirements for ISIF liability are satisfied here.

Employer and Surety were active Defendants at the time of briefing. Evidence to which they point in their brief as reflective of permanent disability remains relevant to this decision.

ISIF contends that Claimant's restrictions related to the subject accident are essentially the same as his restrictions after the 1991 injury. Claimant is not totally and permanently disabled. He is educated. He has been retrained. Jobs are available. Claimant's off-work activities before

the subject accident show that purported representations of "hindrance" are not well taken. Moreover, given prior versus current restrictions, the "combining" requirement under the "but for" test cannot be established by Claimant. If ISIF is determined to be liable, *Carey* apportionment should be based upon Claimant's actual time-of-accident wage which requires a 45% average state wage basis for benefits.

EVIDENCE CONSIDERED

The record in the instant case included the following:

1. Oral testimony at hearing of Claimant, Claimant's sawing partner Mark Evans, and Claimant's brother Edward Province;

2. Joint exhibits 1-48 admitted at hearing; and

3. Post-hearing depositions of orthopedic surgeons John McNulty, M.D. and Qing Min Chen, M.D., and of vocational expert Cali Eby.

All objections raised in post-hearing depositions are OVERRULED.

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

1. (Employer and Surety having settled out of this litigation, fewer findings of fact about medical care provided during recovery are relevant now than those which were relevant at the time of hearing. In Exhibit 1 the parties provided an excellent outline and timeline of Claimant's medical care.)

2. Claimant worked felling trees for Employer. The job requires 50 to 100 pounds of equipment to be carried over steep, often brushy, ground. He injured his left knee in a logging

accident on September 10, 2020.

3. On September 19, 2020, John Swanson, M.D., examined Claimant, diagnosed a knee sprain, and considered a possible meniscus tear. X-rays showed osteophytes and spurring.

4. On October 27, 2020, a left knee MRI showed tears to the meniscus, medial and lateral. Degeneration was also present and diagnosed as osteoarthritis. David King, M.D., expressed difficulty sorting the injury from the arthritis. He recommended surgery, opined that Claimant eventually would require a total knee replacement ("TKR"), but opined that Claimant "was not quite ready" for that procedure. Dr. King referred Claimant to Roger Dunteman, M.D., for possible surgery.

5. On January 13, 2021, upon examination Dr. Dunteman concurred that surgery was likely after a trial of conservative measures and injections. He placed temporary restrictions which kept Claimant off work. After several treatment visits by Dr. Dunteman or his PA-C, Dr. Dunteman performed arthroscopic surgery on April 29, 2021. Claimant reported no improvement. Objective signs of a continuing knee problem remained. Despite Claimant initially describing the September 10, 2020, accident and injury, in subsequent visits, Dr. Dunteman recorded a history of a gradual onset of symptoms without accident. It is unclear to what extent this change may have affected his opinions about causation.

6. Before the end of 2021, Dr. Dunteman was considering a TKR.

7. On January 26, 2022, X-rays showed chondromalacia in the patella and throughout the knee.

8. On March 28, 2022, orthopedic hospitalist Qing-Men Chen, M.D., reported that he visited with Claimant at Surety's request. He reviewed records and performed a forensic

examination of Claimant. He opined that Claimant would be rated for PPI at 10% lower extremity, wholly due to this accident. In deposition he opined that some pre-existing impairment should be deducted from this total. He acknowledged a prior left knee PPI would have been appropriate, but did not have records to identify the exact extent. His report is unclear about whether the PPI he identified did or did not include the preexisting condition. In deposition he opined that the accident did not aggravate the pre-existing arthritis. He opined that treatment after July 29, 2021, should be attributed to the preexisting knee condition and not to the accident. He opined that the accident did not limit any work activity, but that the prior knee condition would bring lifting and walking restrictions.

9. On May 25, 2022, Dr. Chen provided a follow-up set of responses to Surety questions. He agreed with Dr. McNulty that Claimant was a candidate for TKR, but he disagreed as to whether it was accident related.

10. On May 10, 2022, orthopedic surgeon John McNulty, M.D. reported that he visited with Claimant at Claimant's request. He reviewed records and conducted a forensic examination of Claimant. He opined that Claimant was not yet medically stable. He opined that Claimant's need for a total knee replacement was "directly causally related" to the accident.

11. On May 26, 2022, Dr. Dunteman agreed that causation for TKR was not "certain," but noted that Claimant had been working up to the time of the accident and now could not. He opined that "certainly" the work "could contribute" to the preexisting condition.

12. On November 15, 2022, Dr. Dunteman performed the TKR.

13. On January 3, 2023, Dr. Dunteman performed a manipulation under anesthesia.

14. On March 30, 2023, Dr. McNulty issued a report in which he reviewed new records

and again conducted a forensic examination of Claimant. He reported Claimant was now medically stable. He opined that the TKR and manipulation under anesthesia were made medically necessary by the accident. He rated Claimant's left knee PPI at 25% of the lower extremity which he calculated represented 5% whole person from the 1993 knee injury and 5% whole person for this accident. He recommended restrictions including light-duty work and occasional waist-to-shoulder lifting up to 20 pounds as well as limited standing and walking.

15. On June 21, 2023, Dr. McNulty was deposed by Claimant. He opined Claimant's excruciating pain when the injury occurred indicates a new injury. He opined the change in arthritic condition of the medial compartment of the left knee between September 2020 and January 2022 indicates significant worsening of his osteoarthritis of the left knee. These facts show to a reasonable degree of medical probability that the arthroscopy, injections and TKR were necessitated by the industrial accident of September 10, 2020. He explained that because Claimant did not receive physical therapy after his TKR, arthrofibrosis set in, some of the effects of which are permanent. Exhibits 46-48 are photos showing Claimant's left knee is more swollen than it was on March 23, 2023, when Dr. McNulty last examined Claimant. Dr. McNulty opined Claimant's knee is no longer stable.

16. Claimant's treatment and recovery required physical therapy, injections, a 2021 surgery, a 2022 total knee replacement, and a 2023 manipulation under anesthesia. All procedures were performed by Dr. Dunteman. Claimant continues to perform a home exercise program to ameliorate residual problems including range of motion and swelling issues.

16. As of the date of the hearing, Claimant's left knee remains swollen, sometimes more sometimes less, and is chronically painful. In the June 21, 2023, post-hearing deposition,

Dr. McNulty reviewed photos of Claimant's knee which were taken three weeks before the June 16, 2023, hearing. He opined that the swelling was considerably worse than when he had examined Claimant at his IME.

Prior Conditions: Medical Records, left knee 1991

17. Claimant suffered a left knee injury in Washington State in 1991. On September 20, 1991, Claimant sought treatment for that knee injury. An initial arthrogram failed to detect a plica ligament or meniscus tear. Objective signs upon examination caused physicians to look further. An arthroscopic procedure performed by M. Robert Lang, M.D., revealed and repaired two plica ligaments. A problem remained. By the end of November meniscal tears had been identified by MRI. These were thought to be unrelated to his objective signs. One year later Claimant still had objective signs. On February 2, 1992, Richard Zorn, M.D., performed an arthroscopic meniscectomy. He found degenerative conditions and scar tissue as well as the torn meniscus.

18. On March 4, 1992, Dr. Lang recommended that Claimant should "assume an occupation that is not as demanding or traumatic to this knee." On April 7, 1992, Dr. Lang reported full range of motion, no swelling, the objective "click" was gone, and the knee was stable. Some persistent pain remained.

19. On April 29, 1992, Dr. Lang opined Claimant was medically stable, was expected to require additional medical treatment, was able to return to his former occupation, and was capable of success at retraining. He identified restrictions: sit for 1 hour, stand for 1 hour, walk for 1 hour, lift 10 pounds frequently, 15 pounds occasionally. The form used makes it ambiguous whether these were considered temporary or permanent as well as whether certain motions were

or were not to be performed.

20. With the fall quarter 1992 Claimant began a retraining program in the form of schooling toward a certification as an electronics tech. Claimant performed well in classes and got good grades. Ultimately, retraining money ran out after four quarters. Claimant was eligible for entry level positions. Moreover, time loss benefits ceased upon cessation of this retraining program.

21. On September 15, 1993, Dr. Lang rated Claimant under the Washington L&I system with "permanent partial disability equal to 5% of the amputation value at the level of the knee. He returned to work in the woods. Arthritis began to develop.

22. About 2012 Claimant's coworker observed that Claimant's pace at work had diminished. Claimant sought more help than before in some aspects of the work.

Prior Conditions: Medical Records, nose, 2010

23. In August 2010 Claimant broke his nose in a work accident. A closed reduction was performed. No PPI or restrictions resulted from this injury.

Prior Conditions: Medical Records, low back, 2011

24. In September 2011 Claimant injured his low back falling backwards over a fallen log. The accident included a hyperextension of his right elbow.

25. The accident included a hyperextension of his right elbow. Treatment included temporary restrictions for about 30 days. Physical examination did not correlate 2012 MRI findings with his continuing complaints of right leg radicular paresthesias. On January 5, 2012, a thoracic MRI showed no significant problem. A lumbar MRI showed mild degenerative changes at L3 through S1.

26. On December 5, 2014, a Lumbar MRI showed no disc herniations, but multilevel, L3-S1 spondylosis without foraminal stenosis.

27. In 2014, John McNulty, M.D., reviewed records and conducted a forensic examination of Claimant at Claimant's request. Dr. McNulty opined a 3% PPI. The workers' compensation claim settled in 2015. The settlement did not acknowledge any PPI amount despite Michael Ludwig, M.D., suggesting a 2% PPI for right leg paresthesias. It did acknowledge that Claimant was not given any permanent restrictions.

Prior conditions: Medical Records, chainsaw laceration, 2013

28. About May 2013 Claimant cut his right arm on a chainsaw. This was treated and left no permanent impairment.

Prior Conditions: Medical Records, right inguinal hernia, 2016

29. Claimant suffered an inguinal hernia in 2016.

30. On July 8, 2016, John Stackow, M.D. surgically repaired the hernia with mesh. Claimant returned to work. However, occasional pain occurred.

31. In 2019 the hernia reoccurred. On August 21, 2019, Dr. Stackow again surgically repaired the hernia with mesh.

32. After two surgeries Claimant returned to work in the woods. He experiences occasional, sudden, sharp pain where the mesh was implanted. Exhibit 19 is a page from the *Guides*. It suggests a one to five percent whole man PPI in the category which appears most similar to physicians' examinations of Claimant. However, the record does not show that Claimant was actually rated by a physician.

33. Since Claimant's hernia surgeries, the coworker performed some of the more

dangerous tree-falling which Claimant would otherwise have performed. This was because safety requires the ability to move quickly to get away in such instances.

34. Claimant's brother provided some informal assistant care and noted that Claimant's activities of daily living reduced after the hernia surgeries and much more so after the subject accident. The brother has observed that Claimant cannot maintain a position, sitting or standing, for more than 15 to 30 minutes.

Vocational Factors

35. Born November 20, 1953, Claimant was 69 years old as of the date of hearing.

36. Claimant earned a bachelor's degree in philosophy. He has never used it in his vocational endeavors. He also worked for about one year as a restaurant owner. After his 1991 injury, Claimant earned a certification in electronics. Instead of using it vocationally he returned to logging. Pay and working conditions were reasons for that choice.

37. Claimant typically has worked in high lead logging, tree harvesting on the steeper slopes. High lead logging involves a temporarily erected, stationary tower which moves the timber by use of a high cable. After knee surgeries in 1991 and 1992 Claimant adjusted his procedures for carrying the 50 to 100 pounds of equipment he needed in the woods each day. In addition to the weight, steep and unstable ground was more difficult to work with after these knee surgeries. Claimant needed to make additional adjustments after his back injury.

38. Claimant began Social Security retirement at age 64, in approximately 2018. One year he worked and earned more than the regulations allowed. A partial payback was required.

39. Claimant has not worked or searched for work since the industrial accident in 2020.

Vocational Experts

40. On May 30, 2023, vocational expert Caly Eby issued her report. She reviewed records and interviewed Claimant at ISIF's request. She opined Claimant's loss of labor-market access was 93%. Thus, she opined his access to be the same before and after the accident. In deposition she elaborated about the types of suitable jobs which were available.

41. On May 31, 2023, vocational expert Dan McKinney issued his report. He reviewed records at Claimant's request. He opined that Claimant was totally unemployable.

DISCUSSION AND FURTHER FINDINGS OF FACT

42. 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 the law serves leave no room for narrow, technical construction. *Ogden v. Thompson*, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996).

43. Facts, however, need not be construed liberally in favor of the worker when evidence is conflicting. *Aldrich v. Lamb-Weston, Inc.*, 122 Idaho 361, 363, 834 P.2d 878, 880 (1992). Uncontradicted testimony of a credible witness must be accepted as true, unless that testimony is inherently improbable, or rendered so by facts and circumstances, or is impeached. *Pierstorff v. Gray's Auto Shop*, 58 Idaho 438, 447–48, 74 P.2d 171, 175 (1937). *See also Dinneen v. Finch*, 100 Idaho 620, 626–27, 603 P.2d 575, 581–82 (1979); *Wood v. Hoglund*, 131 Idaho 700, 703, 963 P.2d 383, 386 (1998).

44. Claimant's demeanor did not show indicia which might undermine his credibility.

Permanent Disability

45. 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).

46. Permanent disability begins after an injured worker's period of recovery ends. *See* I.C. § 72-408, 428. The period of recovery ends when the injured worker reaches medical stability, also termed maximum medical improvement or MMI. A worker is at medical stability when "no further material improvement is expected with time or treatment." *Shubert v. Macy's W., Inc.*, 343 P.3d 1099, 158 Idaho 92 (Idaho 2015)(overruled on other grounds). A worker may still have pain or other symptoms, and palliative care may be ongoing. *See id*, *Rish v. The Home Depot*, 161 Idaho 702, 390 P.3d 428 (2017). "[N]o further deterioration or change can be expected". *Horton v. Garrett Freightlines, Inc.*, 115 Idaho 912, 772 P.2d 119 (Idaho 1989). If a worker is not at medical stability, it is error to relinquish jurisdiction over permanent disability. *See id.*

47. Here, the parties did not proceed to hearing until after Dr. Chen and Dr. McNulty had both opined that Claimant had reached medical stability. Dr. Chen opined Claimant reached medical stability on July 29, 2021, after his 2021 arthroscopy. Dr. McNulty opined that Claimant had reached medical stability in his IME dated March 30, 2023, after his 2022 TKR. At that time, Dr. McNulty had conducted a physical exam and observed residual swelling, mild range of motion loss, and atrophy in Claimant's left thigh. He assigned work restrictions. Photos taken shortly before hearing show the condition of the knee appears to have changed and Dr. McNulty opined

during his post-hearing deposition that Claimant needed an examination to rule out possible complications. Therefore, he then opined Claimant was not at MMI.

48. The Commission finds that Claimant reached MMI on March 30, 2023, as Dr. McNulty originally opined. Although Dr. McNulty recanted his MMI finding in post-hearing deposition, he did so based only on photos. Dr. McNulty had no opportunity to physically examine Claimant as he had at his prior IME, which was a fact with which he tempered his call for an urgent examination of the knee. The waxing and waning of symptoms – in this case swelling – is not indicative of medical instability. Once healed, the TKR created stability. Maximum medical improvement as opined by Dr. McNulty on March 30, 2023, holds regardless of the waxing and waning swelling.

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

50. 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). A claimant's local labor market

access in the area around his home is the general geographical scope for assessing permanent disability. *Combs v. Kelly Logging*, 115 Idaho 695, 769 P.2d 572 (1989).

51. The record shows Claimant has lost the ability to work as a logger, the only occupation which he has performed for essentially all of his adult life.

52. Even after taking Social Security Retirement, Claimant returned to work to the extent the regulations allowed without reducing benefits.

53. Vocational experts rate Claimant's disability at 93% and total loss of access. Jobs represented to be generally available and within Claimant's physical restrictions were not established to be suitable to his non-medical factors. Some Claimant has never tried. Some he tried and failed, namely, restaurant work and management. Claimant is intelligent and articulate. This alone does not overcome other non-medical factors which make these jobs unsuitable. Given Claimant's age and other nonmedical factors, the preponderance of evidence shows it likely that 100% total and permanent disability is present.

54. Upon a finding of 100% total and permanent disability, resort to odd-lot disability is unnecessary.

ISIF ISSUES

55. In the presence of qualifying conditions, upon a determination of total and permanent disability, ISIF liability arises. Idaho Code § 72-332(1). A progressive preexisting condition may bring the qualifying conditions. *Colpaert v Larson's Inc.*, 115 Idaho 825, 771 P.2d 46 (1989). To establish the qualifying conditions, a four-factor test is applied using "but for" causation analysis. *Bybee v ISIF*, 129 Idaho 76, 921 P.2d 1200 (1996).

56. First, the existence of preexisting permanent impairment is established by the

evidence. Claimant received an impairment for his left knee in 1993 rated under Washington L&I guidelines. Given the differences in statutory language this would translate to about a 1 or 2% PPI under Idaho Workers' Compensation statutes. Also present with that injury was a progressive arthritis which worsened. On March 30, 2023, Dr. McNulty assessed Claimant's preexisting left knee condition to be rated at 5% whole person. In deposition he equivocated a bit, suggesting an additional single percentage transferred from new to old or vice versa would not be out of line.

57. PPI for the low back injury with persistent paresthesias Dr. McNulty rated at 3% whole person. Dr. Ludwig recommended a 2% rating.

58. Dr. Stackow recommended Claimant quit logging after his hernia repairs. Without any physician's opinion rating Claimant's hernia repair, despite restrictions and recommendations that he avoid logging, the mere submission of a page of the *Guides* into evidence which may suggest a 1 or 2% PPI is appropriate does not suffice for a physician's rating.

59. Claimant's PPI from the current industrial accident was rated at 5% whole person by Dr. McNulty. Thus, the requirements for PPI ratings for current and prior conditions is met.

60. Second, it is well established that Claimant's preexisting conditions were manifest. His function was affected by the rough and steep conditions in which he worked.

61. Third, Claimant has shown a determined approach to minimizing physical problems in order to productively work throughout his career. Nevertheless, testimony of others shows that Claimant's preexisting hernia, residual numbness from his back injury, and his left knee injury from the 1990s were a hindrance to his performance of work. Claimant testified for arrangements and alterations he made in his workday. His coworker testified of specific instances

where he would perform a part of Claimant's job because Claimant was unsafe in his inability to move quickly in certain dangerous situations.

62. Fourth, Claimant worked in the woods until this industrial accident. But for this accident he would not be totally and permanently disabled. Conversely, there is insufficient evidence to show that but for the combination of preexisting conditions with the current accident, Claimant would *not* be totally and permanently disabled. For example, without his right leg radiculopathy, the left knee injury alone would not so severely affect his mobility. Thus, but for the effect of the preexisting conditions, this accident would not have resulted in total and permanent disability. The preponderance of evidence and totality of circumstances show it likely that the combining element is met in this matter.

63. Claimant has shown it likely by a preponderance of evidence that ISIF is liable.

Carey Formula Apportionment

64. If one were to strictly calculate figures for prior PPI and current PPI, the result would include decimal places. The numbers would suggest an absurd level of precision about the relationship of each injured body part to the whole person. They would suggest an absurd level of precision about the number of days or minutes to be counted about the extent to which PPI applied to the 500-week basis which is the foundation for the percentage of PPI. Here, prior PPI adds to about 7%, taking into account the minor variance of physicians and the effect of combining the preexisting PPI values. A more precise number would improperly sharpen the number to absurd decimal places. It would create a fallacious implication of exactitude. Here, use of whole numbers seems to be the limit of reasonable specificity. For example, consider Dr. McNulty's ambivalence about apportioning 1% PPI one way or another between current and preexisting

conditions. PPI from the current accident is found to be 5%. *Carey* requires that permanent disability over impairment in the amount of 88% be apportioned pro rata. So, 5/12ths of 88% is attributable to this accident, and 7/12ths is attributable to the preexisting impairments. Thus, 41% of disability in excess is attributable to the current accident with the remaining 47% attributable to ISIF.

65. Adding current PPI to Employer's share results in benefits for 230 weeks, beginning March 30, 2023. ISIF's apportioned liability begins at the end of 230 weeks of benefits.

66. Claimant had substantially reduced his earnings to stay under the Social Security cap before the accident occurred. Claimant did not dispute that ISIF benefits are to be paid at the rate of 45% of the Average State Wage. Therefore, ISIF is liable for payments representing that calculation.

CONCLUSIONS

1. Claimant made a prima facie showing that he is 100% totally and permanently disabled;

2. Claimant established that he meets the criteria for establishment of ISIF liability beginning March 30, 2023; and

3. ISIF is liable for benefits to Claimant calculated at 45% of the Average State Wage beginning immediately after 230 weeks of PPD which represents Employer's share.

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 27th day of November, 2024.

INDUSTRIAL COMMISSION

Douglas A. Donohue, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of January, 2025, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States mail and Electronic Mail upon each of the following:

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BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

RONALD COLE, Claimant, v. STATE OF IDAHO, INDUSTRIAL SPECIAL INDEMNITY FUND, Defendants.	**IC 2020-024233** **ORDER** **FILED** **JANUARY 27, 2025** **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 made a prima facie showing that he is 100% totally and permanently disabled;

2. Claimant established that he meets the criteria for establishment of ISIF liability beginning March 30, 2023; and

3. ISIF is liable for benefits to Claimant calculated at 45% of the Average State Wage beginning immediately after 230 weeks of PPD which represents Employer's share.

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

DATED this the 27th day of January, 2025.

INDUSTRIAL COMMISSION

Claire Sharp

Claire Sharp, Chair

Aaron White, Commissioner

Thomas E. Limbaugh, Commissioner

ATTEST:

Kamerron Slay

Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of January, 2025, 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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