

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JAIME DELEON,
v.
SORRENTO LACTALIS, INC.,
and
PHOENIX INSURANCE COMPANY,
Claimant,
Employer,
Surety,
Defendants.

IC 2022-006477

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

**FILED FEBRUARY 4, 2025
IDAHO INDUSTRIAL COMMISSION**

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee John Hummel, who conducted a hearing in Boise, Idaho on February 15, 2024. Claimant, Jaime DeLeon, was present in person; Darin Monroe, of Boise, represented him. W. Scott Wigle, of Boise, was present and represented Defendants, Employer Sorrento Lactalis, Inc. and Surety Phoenix Insurance Company. The parties conducted post-hearing depositions and later submitted briefs. The matter came under advisement on January 21, 2025.

ISSUE

Whether and to what extent Claimant is entitled permanent partial disability (PPD).¹

¹ The parties waived at the hearing the previously noticed issues of medical care, temporary disability benefits and permanent partial impairment (PPI). *See*, Tr., 5:21-6:18. Claimant did not raise the issue of attorney fees in his briefing, thus this issue is also deemed waived. *See*, Claimant's Opening Brief. Defendants waived the

CONTENTIONS OF THE PARTIES

Claimant sustained an injury to his left little finger (non-dominant hand) in an industrial accident on Employer's premises on March 11, 2022. Surety accepted Claimant's claim and covered his surgery, temporary disability benefits, and permanent partial impairment (PPI).

Claimant alleges that his impaired left hand has reduced his access to the labor and thereby resulted in a 45% permanent partial disability (PPD), inclusive of impairment.

Defendants deny that Claimant has suffered any significant PPD in excess of impairment. They point to the fact that Claimant is working in another agricultural production job, albeit a lighter one, for another employer for equivalent compensation. They also dispute the work restrictions given to Claimant by Dr. Nanavati as illegitimate because they are based solely upon Claimant's subjective complaints.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. The transcript of hearing conducted on February 15, 2024;
3. Joint Exhibits 1 through 14;
4. The post-hearing deposition of Cali C. Eby, MPA, CDMS, taken on June 18, 2024; and
5. The post-hearing deposition of Vipul Nanavati, M.D., taken on September 24, 2024.

FINDINGS OF FACT

1. **Claimant's Background.** Claimant was born on October 10, 1968 and was 55

issue of apportionment in their responsive brief, *See*, Defendants' Response Brief at 3, thus the sole remaining issue

years old at the time of hearing. He was born in Mexico, where he attended school to the 5th grade. He emigrated to the United States in approximately 1982. In the United States Claimant attended school through the 12th grade but did not graduate from high school, nor did he attain a GED. Tr., 18:23-19:24.

2. **Work History.** Claimant's work history, including his job with Employer, consisted entirely of agricultural and agricultural production jobs. Claimant stated in pertinent part as follows: "I worked in the fields for some months when I was younger, and the majority of my life I have worked in food – at food processing plants." Ex. 14 (Claimant's Dep.); 9:7-9.

3. Claimant's first full-time job in agricultural processing was with J.R. Simplot Company beginning in 1991 and lasting through 1998. He began this job as a potato peeler and worked his way up to sanitation and then worked as a machine operator processing potatoes. He did not have any work accidents or injuries during this employment. Tr., 20:4-21:1.

4. Claimant next went to work for Simplot Meats as a trimmer from 1998 to 1999. In this job he had one work accident in which a weight fell on his left arm, however he recovered fully from that. *Id.* at 21:2-22:15.

5. Claimant next worked for Nestle as a potato production processor in the packaging department from 1999 to 2002. He did not sustain any work-related injuries in this job. *Id.* at 22:17-23:1.

6. Claimant then went to work for XL Beef from 2002 to 2004. In this job he cleaned beef heads. He did not sustain any work-related injuries in this job. *Id.* at 23:22-24:22.

7. Prior to the subject employment, Claimant did not sustain any injuries that resulted in permanent work restrictions or impairments. *Id.* at 25:3-6.

for disposition here is whether Claimant is entitled to permanent partial disability in excess of impairment.

FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION - 3

8. **Subject Employment.** After XL Beef, Claimant went to work for Employer in cheese production beginning in 2004. *Id.* at 24:23-25.

9. When he first became employed by Employer, Claimant worked in sanitation, cleaning cheese processing machines. Tr., 25:7-15. While working in that capacity in 2006, Claimant had an industrial accident in which he hit his left little finger on the edge of a metal machine. He reported the injury and Employer sent Claimant to a doctor who put a splint on his finger and returned him to work with no restrictions and no impairment. He had only one doctor visit. He did not miss any time from work. Claimant did not experience any difficulties with his left hand or 5th digit thereafter until the industrial accident. *Id.* at 25:12-26:10; *see also*, Ex. 14, 24:20-26:14.

10. Employer promoted Claimant to machine cook operator during his employment. Tr., 26:11-17. As a machine operator, Claimant was required to lift as much as sixty pounds or more. *Id.* at 27:21-25. He further described the requirements of the job as follows: “You need to have a lot of strength and you also have to have dexterity and also be aware that something could happen.” *Id.* at 27:16-20. The job required Claimant to do a lot of grasping with both hands and to lift overhead. *Id.* at 29:6-11. According to Claimant, “You need both hands. Also to disassemble the machines you need both hands.” *Id.* at 29:19-22.

11. **Industrial Accident.** On March 4, 2022, Claimant was performing his regular job as a machine cook operator at the end of the production area. His shift began at 4:30 a.m. After the employee meeting that began his shift, he was cleaning out cheese from the production machine so that he could wash the machine. He was tightening a nut when he heard a pop in his left little finger and it began hurting. Claimant “knew that something had happened to it.” When Claimant took off his glove, he saw that the left little finger was swollen and bruised. Tr., 26:18-

27:9; *see also*, Ex. 14, 27:16-29:17.

12. Claimant reported the accident to his supervisor Rick Rousay. Tr., 30:2-7. Mr. Rousay kept Claimant working until 3:00 p.m. and then sent Claimant to see an on-site nurse, who referred him to Saint Luke's Occupational Health Clinic. Tr., 30:8-20.

13. **Medical Treatment.** Brent A. Shepherd, M.D., evaluated Claimant on March 4, 2022 at Saint Luke's Occupational Health in Nampa, Idaho. Claimant reported that he was tightening a nut with his hand when he felt immediate pain in the 5th digit. Ex. 3:006. Claimant "initially had some swelling in the finger, but now he feels that it has decreased some. He cannot extend the DIP (distal interphalangeal joint). He has some mild tingling of the finger." *Id.* An examination of the 5th digit showed swelling present over the DIP joint with surrounding bruising; limited ROM (range of motion) with pain with DIP joint; and sensation intact with some decreased sensation. *Id.* at 007. X-rays showed a 5th distal phalanx fracture, "concerning for 'jersey finger' fracture and tendon involvement." *Id.* at 008. Dr. Shepherd splinted Claimant's 5th digit and wrapped it. He prescribed Diclofenac for severe pain and referred Claimant to orthopedics. *Id.* Dr. Shepherd opined that the finger injury was "most likely due to work activity." *Id.* He further prescribed light duty and no use of the left hand. *Id.* Dr. Shepherd recommended that Claimant use ice and heat to reduce swelling. *Id.* at 018.

14. Dr. Vipul N. Nanavati, M.D., an orthopedic surgeon with Idaho Shoulder to Hand Specialists in Boise, examined Claimant upon referral from Saint Luke's Occupational Medicine on March 8, 2022. Ex. 4:023. Dr. Nanavati recorded the history of Claimant's illness as follows:

Jaime is a pleasant 53 year-old patient presenting to the clinic today for evaluation of his left hand pinky finger work related injury. He was tightening a nut with his hand and felt immediate pain to his left pinky. He was seen by St. Luke's occupational medicine for this. He reports that his finger has been painful. He was given pain and anti-inflammatory medication, but states that these are not helping. He is at work with right hand work only. He is doing work with his left hand

though, which has been painful for him.

He is unclear how he twisted his hand. He had immediate pain and swelling. He had no crush injury. The finger did bruise immediately and he lost ability to flex the finger. He denies previous issues in function with the finger.

Ex. 4:023.

15. Dr. Nanavati assessed the following: 1. Closed displaced fracture of distal phalanx of left little finger. 2. Traumatic rupture of tendon of distal interphalangeal (DIP) joint of finger. 3. Pathological fracture of phalanx of finger of left hand due to other disease. *Id.* at 025.

16. Dr. Nanavati discussed with Claimant the need for surgical repair for the flexor tendon of the left little finger. “The fracture seems traumatic based upon the swelling of the digit. However, the images show pathology to the volar distal phalanx that is indicative of possible pathological process that is underlying. This will make surgery more difficult as the bone quality may be suspect and may require bony excision to ultimately repair to the healthy bone.” *Id.*

17. In an addendum to his report on March 10, 2022, Dr. Nanavati stated in pertinent part as follows: “

I spoke with the adjuster yesterday regarding the evidence of previous injury to the digit. The patient reports that he did have a previous injury but that healed without surgery. He was told that he had a deformity to the finger. The patient states that prior to the injury of 3/4/2022, he could bend the tip of the digit and use the finger well. I did not have any records to identify any tendon injuries from the past. It is unclear what kind of tendon injury he might have had. Based on the patient’s reporting, the injury of 3/4/2022 was what caused the loss of motion to the DIP joint. He reported to the adjuster that he did have flexion of the DIP joint prior to the 3/4/2022 injury. Therefore, based upon the information provided, I would recommend that Mr. De Leon have surgery to repair the FDP of the digit. It seems that the FDP rupture associated with the fracture is acute. The fracture, though having an underlying pathological etiology, seems to be acute based on the examination findings with bruising and swelling of the finger. I think the pathological nature of the underlying disease made the bone more susceptible to fracture from his injury.

Id. at 026.

18. In a response to a letter from Surety, Dr. Nanavati opined that Claimant was not

in need of surgery due to a preexisting condition. "... Function since 3/4/22 is a new injury and should be fixed." *Id.* at 027.

19. Dr. Nanavati took Claimant to surgery at the Saltzer Surgery Center in Meridian, Idaho on March 11, 2022. Both the pre and post-operative diagnosis was as follows: "Left small finger pathologic fracture of the distal phalanx with subsequent jersey finger type injury involving the flexor digitorum profundus insertion." Ex. 4:029.

20. The surgical procedures performed were as follows: 1. Curettage of left small finger distal phalanx enchondroma. 2. Primary repair of left small finger flexor digitorum profundus tendon at terminal insertion. *Id.* Dr. Nanavati also found a preexisting enchondroma lesion that was required to be excised out of the bone, which required the tendon to be attached inside the bone instead of on the bone surface. Nanavati Dep., 10:14-25, 11:1-10.

21. Dr. Nanavati reported to Surety that Claimant was totally incapacitated at the time of surgery and would remain off work until reevaluated on March 29, 2022. Ex. 4:032.

22. Claimant presented to Dr. Nanavati on March 29, 2022 for his first post-surgical follow-up appointment. Dr. Nanavati recorded that Claimant was doing well post-surgery. "The finger is healing. The finger at the DIP is flexed. Sensation is intact. No signs of infection. Moderate swelling is noted." *Id.* at 034. Dr. Nanavati prescribed physical therapy for the digit and a protective splint fabricated due to Dr. Nanavati's concern about the risk of the repair failing due to the bone loss. *Id.* Claimant was released to return to work right handed work only, no lifting, pushing, pulling with the left hand. Claimant could, however, do very fine motor skills with the thumb and index finger of the left hand. Ex. 4:038.

23. Claimant returned to Dr. Nanavati on April 11, 2022 for follow-up. Claimant reported that his finger had been doing very well. He had started physical therapy and reports

encountering extreme pain when stretching his pinky finger. He stopped performing this exercise pending further instructions. Dr. Nanavati discussed the “difficulties” of Claimant’s case with him. “He had significant bone loss at the base of the P3 and we had to advance his FDP into P3 for repair... The goal is to heal the flexor and avoid contracture, both failure and contracture are real risks. I encouraged him to go to therapy and work slowly towards ROM recovery passively.” Claimant was to remain right-handed only at work and to wear a brace for protection. Ex. 4:041-042.

24. At follow-up on May 5, 2022, Dr. Nanavati noted that Claimant’s “hand is globally stiff. This is worrisome to me. Jaime is not willing to push himself into the zone of discomfort to get his motion back, especially in the non-surgically treated digits.” Dr. Nanavati discussed with Claimant “the critical need to work the digits for motion and not just at therapy but multiple times per day on his own.” Dr. Nanavati directed discarding the brace to “let him fly with the hand... X-rays disclosed a not a great looking joint.” *Id.* at 043-044. Return to work restrictions included no overhead work with the left hand, no power gripping with the left hand, no pushing or pulling motions with the left hand. No need for brace. Limited use of the left hand. NO more than 10 pounds lifting with the left hand. *Id.* at 045-046.

25. On May 17, 2022, Claimant reported to Dr. Nanavati that “his hand had been doing well. He is still on physical therapy. He feels like he’s making slow progress. He is able to bend his other three fingers but still has difficulty bending the pinky.” *Id.* at 047. Dr. Nanavati lifted the remaining restrictions on Claimant’s left hand. “The more he does the better to regain motion and use. I am worried for stiffness long term, especially for the small and ring [fingers].” *Id.* at 048. Claimant was to continue PT and home exercises, activity as tolerated, and light duty at work. *Id.* at 049.

26. At the June 7, 2022 examination, Claimant reported that his finger had been doing well. He still had some pain, but was getting better with ROM with the other digits of the left hand. He felt pain only in the DIP of the small digit. Dr. Nanavati assessed acquired deformity of left hand, and that Claimant's small finger DIP joint was becoming "problematic." The goal was to "get all the flexibility mobility back in all the other digits. Get him to make a full composite fist. Get him to get his mobility back in the PIP joint (proximal interphalangeal joint) of the small finger and MCP (metacarpophalangeal joint) of the small finger. Not have restrictions and the use of his hand with regards to work. The more he does the better he will get. Realistically, there are restrictions in terms of grasping and lifting. I think he will need some help at work to accomplish any heavy load lifting and other carrying activities." Nevertheless, Dr. Nanavati wanted Claimant to use his hand as much as possible to recover its use. Dr. Nanavati prescribed continuing physical therapy and arranged for reassessment in 4 weeks. Ex. 4:052. To accomplish these goals, Dr. Nanavati returned Claimant to work with the following noted restrictions; "Please provide assistance with heavy lifting that requires both hands. Please understand that he will need help on occasion to accomplish work tasks due to the stiffness in his left hand. Limit left hand to 25 pounds lifting at this time. Limit up to 50 pounds with both hands by himself. No overhead lifting with the left hand." Ex. 4:054-055.

27. On July 12, 2022, Claimant reported that he felt his finger was improving. "He is back to full duty at work. He has been in therapy and he feels this has helped his overall function." Dr. Nanavati assessed that Claimant was doing well post-surgery. "The finger is flexed at rest but has motion. This is better than having a straight fused DIP. The FDP pulls through and allows for a composite fist." *Id.* at 056. Dr. Nanavati scheduled Claimant for follow-up in six weeks, at which point he would likely be at maximum medical improvement and ready

for an impairment rating. *Id.* at 057. Dr. Nanavati returned Claimant to work without restrictions. Ex. 4:058.

28. On August 25, 2022, Claimant returned to Dr. Nanavati accompanied by his wife. She had not been at any previous visits with him, but she was “upset because he has returned to full duty at work. She states that he comes home with pain every day from his job. Jaime states that I released him back to full duty work. The reality is that we had a long discussion with him at the last visit and I asked him if he felt he could return to his job. He had stated that he could. I told him that if he was having difficulties or problems that he would contact us and we would then make adjustments accordingly. He never contacted us or made any effort to reach to us stating that he was having difficulties or problems.” Ex. 4:060. Claimant informed Dr. Nanavati that he was having difficulty doing overhead lifting and heavy lifting. He stated that his job requirements were significant, and he only needed help with certain work activities. Based upon Claimant’s complaints, Dr. Nanavati held off on doing an impairment rating. *Id.*

29. Dr. Nanavati had a very long conversation with Claimant and his wife. He made it clear that if Claimant was still having problems with his hand, he needed to communicate that to Dr. Nanavati. Claimant received information on doing a fusion surgery or amputation of the tip of the little left finger. Claimant wanted to think about his options. Claimant requested work restrictions. “I suspect these work restrictions will be long term for Jaime even if we do a fusion. Again, the fusion surgery would be for pain relief, nothing more.” Dr. Nanavati scheduled Claimant to return in 2 weeks, at which point he would need to choose his options. If Claimant decided on no further surgical treatment, then an impairment rating would be in order and he would be at MMI. *Id.* at 061. Dr. Nanavati returned Claimant to work with the following restrictions: Not lifting over 40 pounds with both hands waist level. No lifting over 25 pounds

with the left hand only to waist level. Provide help when taking apart and assembling the cookers. *Id.* at 063.

30. At the September 13, 2022 follow-up visit, Claimant stated that he did not want a fusion or amputation. He also stated that Employer was not accommodating his work restrictions. Claimant decided to move to the night shift where “they do a little less of what bothers him.” Ex. 4:065. Because Claimant decided not to pursue any further surgical interventions to his little finger, Dr. Nanavati declared him at MMI and assessed a PPI rating, as follows: Using the 6th Edition of the *Guides to Permanent Impairment*, Dr. Nanavati declared that the little left finger is the only finger with an impairment, a 45% digital impairment for the finger correlated to a 5% hand impairment, a 4% upper extremity impairment, and a 2% whole person impairment. *Id.* at 066.

31. In a doctor’s report of work status and restrictions on September 13, 2022, Dr. Nanavati stated that Claimant could return to work without restrictions. Patient was discharged, no further medical treatment was needed. *Id.* at 068.

32. Claimant returned to Dr. Nanavati for a final visit on October 6, 2022. Dr. Nanavati recorded the following in pertinent part:

Jaime returns for his left hand due to increased pain and stiffness. He had recently switched to the night shift to avoid activities that were bothering him. Unfortunately, the company wanted to increase production so they changed the work flows and now Jaime has been doing work that he was hoping to avoid due to the way that it was hurting his left hand.

He returns today reporting that he cannot continue with the work in the manner that is being expected. He feels he needs restrictions on his left hand that are permanent to prevent the rebound pain and swelling he gets at the end of every shift.

He does not want to quit his job but does not feel that he can continue as is.

He would like to instate some permanent work restrictions for his left hand.

Id. at 070.

33. Dr. Nanavati and Claimant had another long discussion about what he could and could not do at work. Dr. Nanavati was “fine” with giving him permanent restrictions but warned Claimant that they may not be something Employer could accommodate, thus he might lose his job. Claimant understood this. Ex. 4:071.

34. Dr. Nanavati gave Claimant the following permanent work restrictions on October 6, 2022: Claimant was unable to lift more than 15 pounds with the left hand up to waist level. Claimant was unable to pull cheese out of the cooker with his left hand. Claimant was unable to perform firm and tight grasp with the left hand. Claimant was unable to do physically strenuous repetitive work with the left hand. Claimant was unable to lift more than 30 pounds with both hands up to waist level. Claimant was unable to lift more than 5 pounds overhead with left hand. He was unable to lift more than 15 pounds overhead with both hands. *Id.* at 073.

35. **Nanavati Deposition.** The deposition of Vipul Nanavati, M.D. was taken on September 24, 2024.

36. Dr. Nanavati attended Johns Hopkins University in Baltimore, Maryland for his undergraduate degree in bioengineering. He then attended medical school at Rutgers University in New Jersey. He completed an orthopedic residency at Thomas Jefferson University and also a hand fellowship in 2003 to 2004 at Thomas Jefferson. He completed a second fellowship in shoulder and elbow surgery at Thomas Jefferson from 2004 to 2005. Dr. Nanavati was then an academic professor from 2005 to 2008 at SUNY Upstate University in Syracuse, New York. Then he practiced as a private orthopedist and adjunct faculty at the University of Connecticut. He then practiced orthopedic surgery at Mercy Medical Center in Baltimore, Maryland. He moved to Idaho in 2019 and opened an orthopedic surgery practice focusing on the upper extremities, shoulder, elbow, wrist and hand. Nanavati Dep., 4:25-6:4.

37. In March 2022, Dr. Nanavati became the primary orthopedic surgeon for Claimant. Nanavati Dep., 6:5-17. He had his first consultation with Claimant on March 8, 2022 concerning the industrial injury to his left little pinky finger. Nanavati Dep., 7:17-24. The injury was to the DIP joint of the small finger. *Id.* at 8:1-2. He had a fracture to the joint at the level of the distal to the joint, outside the joint, in the setting of an enchondroma, a benign tumor in the bone which tends to weaken the bone from which Claimant was previously asymptomatic. *Id.* at 8:24-9:8. Dr. Nanavati also concluded that Claimant had ruptured or broken off the tendon that bends the small finger at the DIP joint. *Id.* at 9:9-11. Claimant had lost the ability to flex the finger toward the palm at the last joint. *Id.*

38. “Our plan was to fix the tendon so we could establish again connectivity to the tip of the finger so he [Claimant] could bend it again. And in the process, clean out the enchondroma, which is within the bone, by scraping it out, you stimulate the bone to regrow, which was the plan,” Dr. Nanavati testified. *Id.* at 10:13-19. The surgery went “as well as it could go.” *Id.* at 10:23. The tendon was functional. *Id.* at 11:16-19.

39. Following surgery, and initiation of physical therapy, Dr. Nanavati became concerned about stiffness Claimant was developing in his left hand. Therefore, Dr. Nanavati encouraged Claimant to use the hand as much as possible. “So we started out with no use of that hand to protect what we had done surgically. Then over time we started taking away restrictions from no use to light use, to then I think around 3 months I said, use it as you can. And then basically no restrictions after that until much later.” *Id.* at 17:20-25.

40. “The hand is globally stiff” – Claimant was having a difficult time making a tight fist, so he was unable to fully flex the fingers and/or fully extend and open the palm of the hand. *Id.* at 18:25-19:3. Dr. Nanavati thus encouraged Claimant to do hand exercises several times a

day and not just during PT. Dr. Nanavati recommended getting rid of the brace at that point. “But, the ultimate goal was to get his function back so he could use his hand as normally as possible.” Nanavati Dep., 19:10-15. Claimant was encouraged to use his hand as tolerated. *Id.* at 19:23-24.

41. Dr. Nanavati assigned temporary restrictions as follows: “No need for the brace, limited use of left hand, no more than 5 pounds lifting on the left and 10 pounds on the right.” *Id.* at 20:10-13.

42. On May 17, 2022, Dr. Nanavati was recommending Claimant to use his left hand more. This was 3 months after surgery. “No need for brace. Increase use of left hand as tolerated.” *Id.* at 21:20-21.

43. On June 7, 2022, the tip of Claimant’s little left finger was becoming arthritic. Dr. Nanavati gave Claimant temporary restrictions, lifting 25 pounds to the left hand, 50 pounds with both hands and no overhead lifting with the left hand. *Id.* at 24.

44. By July 12, 2022, Claimant was getting close to maximum medical improvement. He was full duty at work. *Id.* at 25:16-25.

45. On August 25, 2022, Claimant was accompanied by his wife. They were unhappy with Claimant’s progress because they said that Claimant was still experiencing pain at home and at work. They requested work restrictions. Dr. Nanavati ordered restrictions as follows: 40 pounds with both hands, 25 pounds with the left hand, all at waist level. The point was to formulate restrictions that would allow Claimant to continue working in his current position of lighter duty. *Id.* at 26:13-27:21. Accordingly, Dr. Nanavati did not place Claimant at MMI at this time because Claimant was still having difficulties. *Id.* at 27:25-28:3.

46. On September 11, 2022, Dr. Nanavati declared Claimant at MMI. He addressed

permanent restrictions (none), gave an impairment rating of 2% whole person impairment, and released Claimant from care to return to work without restrictions. Nanavati Dep., 29:17-30:6.

47. Claimant returned to Dr. Nanavati on October 6, 2022. He reported still having pain on the night shift, which Claimant had hoped would be better for him. Dr. Nanavati and Claimant had a long discussion about permanent restrictions. Claimant's hand was basically unchanged from the previous appointment. The restrictions Dr. Nanavati assigned were based on Claimant's subjective feedback. Claimant was restricted from lifting in excess of 15 pounds with the left hand and pulling cheese out of the cooker with his left hand. No lifting in excess of 30 pounds with both hands. Again, this was based upon Claimant's subjective experience. *Id.* at 34:1-35:23. Dr. Nanavati warned Claimant that this could result in him being discharged by Employer. "*So, in my professional opinion, the restrictions are the patient's wishes not medical necessity...They are based upon his perceived disability.*" *Id.* at 36:13-21. [Emphasis added.]

48. "The probability of reinjuring the finger was very low at this point. Could he have suffered another injury? Yes. But that particular injury was, I would say, fixed and stable by then." *Id.* at 39:2-5.

49. **Termination of Claimant's Employment.** Claimant explained the termination of his job with Employer in his deposition as follows: "Well, if it were up to me, I would still be working there. But they decided to let – to fire me because I couldn't do the job. I told them I didn't have the strength in my hand to lift heavy things." Ex. 14, 36:21-25. The termination of his employment occurred on November 29, 2022. *Id.* at 42:24-43:3. "The reason they gave me for the termination was that due to the restrictions I had, they couldn't accommodate me in any area or certain department at all." *Id.* at 45:3-5.

50. At hearing, Claimant testified to a somewhat different context of the termination

of his employment with Employer. Claimant's employment was terminated by the company's HR department after a conversation that Claimant had with the plant manager in which he complained about the functioning of a machine. Claimant did not discuss his worker's compensation injury with the plant manager. Tr., 58:2-22.

51. **Post-Termination Employment.** Two to three months after the termination of his employment with Employer, Claimant got a job with Darigold operating a butter packaging machine. The job was basically "visual," watching the machine and ensuring that it was working properly and changing the paper when required. Heavy lifting was not required nor was intense use of Claimant's left hand. Nevertheless, after working at Darigold for a period of time, he had to quit to attend to some personal family matters in Mexico for two months. Ex. 14, 49:6-22.

52. By the time of hearing, Claimant had become re-employed with Darigold and was making \$23.50 per hour. In contrast, his last wage with Employer was \$23.90 per hour. Tr., 43:11-14.

53. His job with Darigold was now to make cottage cheese and sour cream by cooking it. *Id.* at 39:22-25. "This work is lighter," meaning that any lifting required is minimal. *Id.* at 39:14-19. The maximum lifting required was 30 pounds. *Id.* at 40:3-6. Sometimes Claimant used both hands to lift cheese and sour cream, but mostly he used his right hand. *Id.* at 40:7-12.

54. In deposition, Claimant stated that the health insurance benefits at Darigold were better than those at Employer, but at hearing he denied that was the case. (At deposition: "The pay wasn't as good as Sorrento but the benefits were much better." Ex. 14:5-6. At hearing: "To be honest with you, I don't know if they [benefits] are better or not, but I like that job too." Tr., 43:16-18.)

55. **Vocational Evaluation Report.** On January 2, 2024, Cali C. Eby, MPA, CDMS, CIWCS, of VocConsult Services, Inc., delivered a vocational evaluation report concerning Claimant to the attention of his legal counsel. *See*, Ex. 11. Ms. Eby's credentials are known to the Commission.

56. To conduct her vocational evaluation, Ms. Eby performed a records review of all relevant medical records and other records; conducted a vocational interview of Claimant; analyzed his physical restrictions and functional limitations; reviewed Claimant's demographics and non-medical factors; assessed Claimant's educational level; reviewed his work history; analyzed prior job demands; performed a transferable skills analysis; performed a labor market analysis and accessibility analysis; performed an earning capacity evaluation; and delivered disability findings and conclusions. Ex. 11:406.

57. During Claimant's vocational interview, his left 5th digit was noticeably deformed and he held it stiffly near his body most of the time. He also demonstrated limited range of motion with his left hand and the extent of his grip. Ms. Eby noted that he was unable to make a full fist with his left hand. *Id.* at 408.

58. Ms. Eby opined that Claimant's subjective complaints were consistent with Dr. Nanavati's work restrictions and there was no indication of symptom magnification, functional overlay or subjective hindrance in his records. *Id.* at 409.

59. Ms. Eby concluded that Claimant is "independent in most activities of daily living that do not require fine use or heavy lifting with his left hand or both hands. He can cook, but does not lift heavy pots. He has dropped dishes in attempting to clean them. He struggles to grip or handle objects like brooms and mops with both hands." *Id.* at 410.

60. Claimant reported that he holds citizenship and denied any criminal felony

history. Ex. 11:410.

61. Claimant's vocational history is remarkable for 30 years in food production industries. *Id.* at 411.

62. The following job titles were relevant to Claimant's work history from the Dictionary of Occupational Titles: cleaner, industrial; head trimmer; cheesemaker; cottage-cheese maker; potato peeling machine operator; dairy processing equipment operator; packager, machines; and production helper. *Id.* at 412.

63. Claimant has performed unskilled jobs in food production and cleaning, as well as skilled work in food production, specifically cheesemaking. His highest level of vocational preparation was SVP 3, semi-skilled. *Id.* at 11:413.

64. Claimant has worked in primarily medium to heavy level food processing jobs requiring frequent reaching and handling, climbing and standing. He is now limited in the amount he can lift, between 5 and 30 pounds. While he has the use of his right, dominant hand, he is unable to perform repetitive and heavy tasks with both hands. *Id.*

65. Claimant has demonstrated knowledge of food production; public safety and security; production and processing; education and training; and English language. His skill set includes operation monitoring; critical thinking; reading comprehension; active listening; and coordination. *Id.* at 414. There are several relevant job titles, such as machine setters, that are relevant to his experience. *Id.*

66. Claimant's job market is centered on Caldwell, Idaho, 30 miles from Boise. Claimant is restricted from performing his time-of-injury occupation and many other medium jobs because of his lifting restrictions. Ms. Eby estimated his total job market access loss to be 68%, which accounts for jobs that require use of hands at a constant frequency. *Id.* at 415.

67. For employability and placeability, Ms. Eby determined that Claimant to still be employable in light production jobs, which exist in sufficient quantities that if he were to lose his current position with Darigold, he would be placeable in the labor market. Ex. 11:416.

68. Because Claimant was earning \$23.90 per hour at the time of injury and has found other work for Darigold at \$23.50 per hour, Ms. Eby did not find that he suffered a loss of earning capacity as a result of his industrial injury. *Id.*

69. Ms. Eby concluded her report in pertinent part as follows:

The Evaluatee injured his non-dominant hand in an industrial accident at Sorrento Lactalis. He has been found to be medically stable and given restrictions that preclude him from his time-of-injury position. My analysis estimates his labor market loss at 68%, as he still has use of his dominant hand. He has recouped much of his previous pay in another production job so has no loss of earnings. If these vocational factors are considered equal his partial permanent disability would be 34%. Considering the difference between these two numbers, the Commission may feel it is appropriate weigh loss of access more heavy, which could result in a PPD rating as high as 45%.

Id. at 417.

FURTHER FINDINGS AND ANALYSIS

70. The provisions of the Idaho Workers' Compensation Law are to be liberally construed in favor of the employee. *Haldiman v. American Fine Foods*, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990). The humane purposes which it serves leave no room for narrow, technical construction. *Ogden v. Thompson*, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996). Facts, however, need not be construed liberally in favor of the worker when evidence is conflicting. *Aldrich v. Lamb-Weston, Inc.*, 122 Idaho 361, 363, 834 P.2d 878, 880 (1992).

71. **Disability.** "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.” Idaho Code § 72-425.

72. The test for determining whether Claimant has suffered a permanent disability greater than permanent impairment is “whether the physical impairment, taken in conjunction with nonmedical factors, has reduced Claimant’s capacity for gainful employment.” *Graybill v. Swift & Company*, 115 Idaho 293, 294, 766 P.2d 763, 764 (1988). In sum, the focus of a determination of permanent disability is on Claimant’s ability to engage in gainful activity. *Sund v. Gambrel*, 127 Idaho 3, 7, 896 P.2d 329, 333 (1995).

73. Permanent disability is a question of fact, in which the Commission considers all relevant medical and nonmedical factors and evaluates the advisory opinions of vocational experts. *See Eacret v. Clearwater Forest Industries*, 136 Idaho 733, 40 P.3d 91 (2002); *and Boley v. State of Idaho, Industrial Special Indemnity Fund*, 130 Idaho 278, 939 P.2d 854 (1997). The burden of establishing permanent disability is upon Claimant. *Seese v. Ideal of Idaho, Inc.*, 110 Idaho 32, 714 P.2d 1 (1986).

74. The first requirement for determining whether Claimant has sustained disability in excess of impairment is to establish that Claimant has a permanent partial impairment. *See*, I.C. § 72-425. *See also, Urry v. Walker and Fox Masonry Contractors* 115 Idaho 750, 769 P.2d 1122 (1989) (“...there must be impairment for disability to exist. *A fortiori*, there must be an increased level of impairment for a new, additionally compensable disability to exist.” *Urry*, 115 Idaho at 753, 769 P.2d at 1125.)

75. Claimant has met the *Urry* bar. He is entitled to a 2% PPI, as found above. Therefore, he is entitled to PPD to the extent pertinent medical and nonmedical factors support a claim for disability.

76. Claimant has not met his burden of proof in demonstrating significant disability of 45%. His medical evidence relies upon a set of permanent work restrictions given by Dr. Nanavati on October 6, 2022. If determined reasonable, these restrictions would form the basis of Claimant's claim for disability and support his argument that the restrictions have negatively impacted his access to the labor market. Unfortunately for Claimant, the work restrictions are not reasonable. They rely entirely upon Claimant's subjective complaints and not objective medical evidence. As Dr. Nanavati admitted in his deposition as follows: "So in my professional opinion, the restrictions are the patient's wishes not medical necessity... But it's hard for me to say that medically those restrictions are objective. They are based on his perceived disability." Nanavati Dep., 36:9-21.

77. The permanent work restrictions that Dr. Nanavati gave on October 6, 2022 were the result of a campaign by Claimant and his wife to lobby Dr. Nanavati for the imposition of work restrictions. They are not based upon medical necessity. At the prior appointment on September 11, 2022, Dr. Nanavati gave Claimant a full release to return to work without restrictions. Then a 180 degree change occurred with no intervening circumstances other than Claimant's perception of his disability insistentlly expressed to Dr. Nanavati, and then Dr. Nanavati issued a set of serious, permanent work restrictions as a result at Claimant's request. For these reasons, the permanent work restrictions issued by Dr. Nanavati on October 6, 2022 are suspect and cannot be relied upon for a basis of a finding of permanent disability.

78. Ms. Eby used Dr. Nanavati's suspect permanent work restrictions in concluding that Claimant had a permanent partial disability of 45%. As the Defendants argue, *see*, Defendants' Response Brief at 15, this makes Ms. Eby's disability assessment grossly overstated.

79. There is no dispute that Claimant suffered an injury in his work for Employer. For this, Claimant was required to have surgery on the tip of his little finger on his nondominant hand. He has a very modest impairment of 2% from that injury. Dr. Nanavati initially released Claimant to return to work with no permanent work restrictions, but that changed as a result of Claimant's efforts to have permanent work restrictions issued based solely upon his perceived disability. He is no longer working for Employer, however he is able to continue work in the same industry to which he has devoted his career, agricultural production, for equivalent compensation. He continues to work full time without any appreciable loss of income from the industrial accident.

80. Although Claimant has failed to prove a permanent partial disability of 45%, nevertheless he does have a minimal impairment that limits full use of his left hand due to pain. A permanent partial disability of 5%, exclusive of impairment, is adequate to express this limitation in the event that Claimant finds himself in the job market in his chosen industry again.

81. Under these circumstances and for the foregoing reasons, Claimant has failed to demonstrate a 45% permanent partial disability. He is entitled to 5% disability, exclusive of impairment.

CONCLUSION OF LAW

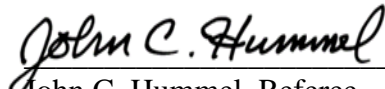
1. Claimant has a permanent partial disability of 5%, exclusive of impairment.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusion of Law, the Referee recommends that the Commission adopt such findings and conclusion as its own and issue an appropriate final order.

DATED this 24th day of January, 2025.

INDUSTRIAL COMMISSION



John C. Hummel, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of February 2025, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by email transmission and regular United States Mail upon each of the following:

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---Meagan Graves---

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JAIME DELEON,
v.
SORRENTO LACTALIS, INC.,
And
PHOENIX INSURANCE COMPANY,
Claimant,
Employer,
Surety,
Defendants.

IC 2022-006477

ORDER

**FILED FEBRUARY 4, 2025
IDAHO INDUSTRIAL COMMISSION**

Pursuant to Idaho Code § 72-717, Referee John Hummel 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 has a permanent partial disability of 5%, exclusive of impairment.
2. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 4th day of February , 2025.

INDUSTRIAL COMMISSION



Claire Sharp, Chair



Aaron White, Commissioner

Thomas E. Limbaugh, Commissioner

ATTEST:

Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of February 2025, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

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