

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

ANDREA E. BUTTERFIELD,

Claimant,

v.

DEPARTMENT OF FISH & GAME,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,

Defendants.

**IC 2021-015786**

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

**Filed 3/17/25**

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**INTRODUCTION**

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Brian Harper, who conducted a hearing in Lewiston, Idaho, on February 6, 2024. Christopher Caldwell represented Claimant. Paul Augustine represented Defendants. The parties produced oral and documentary evidence at hearing and submitted post-hearing briefs. Two post-hearing depositions were taken. The matter came under advisement on January 7, 2025.

**ISSUES**

The parties agreed to the following issues for this adjudication:

1. Whether the condition for which Claimant seeks benefits was caused by the industrial accident; and
2. Whether and to what extent Claimant is entitled to the following benefits:
  - a. Medical Care;
  - b. Temporary partial and/or temporary total disability (TPD/TTD);

- c. Disability based on medical factors (PPI);
- d. Permanent partial disability (PPD); and
- e. Attorney fees<sup>1</sup>

### **CONTENTIONS OF THE PARTIES**

Claimant asserts she injured her left shoulder in a work-related accident which occurred on June 5, 2021. Initially, treatment centered on her cervical spine, but when an MRI disclosed an injury to her shoulder, the surgery to fix her shoulder all but eliminated her constellation of complaints which to that point had been resistant to all treatment modalities. Defendants are responsible for the cost of the shoulder treatment, including surgery, as well as denied temporary disability benefits. Permanent impairment rating of 2% whole person is not disputed and is due Claimant once she prevails on causation. Claimant is also entitled to a modest permanent partial disability rating over her PPI.

Defendants acknowledge the accident. They paid benefits associated with her head/neck/brain injuries. However, she did not injure her left shoulder in the work accident. Her first true complaints of left shoulder injury cropped up more than nine months after her work accident. Claimant's torn rotator cuff injury was not diagnosed until 18 months after her work accident. Her medical expert, Dr. McNulty, is the only physician to relate her left shoulder to the industrial accident. His opinions are deeply flawed and do not carry the weight of the medical opinions of Drs. Greendyke and Larson, both of whom opined that Claimant's accident did not cause her torn rotator cuff. Claimant's 2% PPI rating was for her left shoulder which is not causally related to her industrial accident. Finally, Claimant recovered from her work injuries and has no permanent disability.

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<sup>1</sup> Claimant withdrew the attorney fee claim in her opening brief, so it is not an issue for resolution herein.

## **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. The testimony of Claimant, and witness Christopher Lee, MPT, taken at hearing;
2. Joint exhibits (JE) A through DDD admitted at hearing; and
3. The post-hearing deposition transcripts of John McNulty, M.D., and Spencer Greendyke, M.D., taken on February 21, 2024, and September 13, 2024, respectively.

## **FINDINGS OF FACT**

1. At the time of hearing Claimant was 26 years old. She was a college graduate working for the Idaho Department of Fish and Game (Employer) as a fisheries technician on June 5, 2021, the date of her accident.

### **Claimant's Relevant Pre-Accident Medical History**

2. In 2012, when Claimant was 14 years old, she felt her left shoulder pop while reaching up and back to brush her hair. Immediately thereafter, she experienced pain with movement of her left arm/shoulder and was unable to lift her left arm or use her shoulder. She went to her physical therapist the following day and her physician the day after that. Her doctor observed her left shoulder was drooping and she was tender over the entire shoulder joint and scapula. He observed her loss of use of her left arm. After suboptimal x-rays were reviewed, her diagnosis was soft tissue and possibly ligament injury.

3. In early 2016, Claimant fell while snowboarding. Subsequently, she developed left shoulder pain. Physical therapy on her thoracic spine increased her complaints. Cervical spine and left shoulder movement tests were positive. X-rays of her left shoulder were interpreted as showing a possible minor shoulder separation without significant displacement.

4. In late 2016, Claimant was referred to a sports medicine clinic for “ongoing problem with her left shoulder.” JE R, p. 1007. Claimant’s history revealed that she had experienced intermittent left shoulder pain for more than one year. Her left shoulder complaints began at a time when she was rehabilitating her right shoulder from an injury which occurred during competitive volleyball. Claimant was experiencing left shoulder pain with forward flexion and abduction beyond 90 degrees. Several tests<sup>2</sup> were positive, but Claimant was not tender over her left sternoclavicular or acromioclavicular joints. An ultrasound was recommended.

5. The ultrasound findings included a probable partial thickness tear of Claimant’s left supraspinatus tendon. An MRI arthrogram was scheduled. The arthrogram was read as normal with no rotator cuff pathology or labral tears.

6. After the arthrogram results were considered, the assessment was chronic left shoulder pain, “likely related to ongoing subacromial impingement.” *Id* at 1017. Aggressive physical therapy was suggested, with the note that it could take months to see results. No further records regarding this complaint of chronic left shoulder pain are contained in the record.

7. In 2020, Claimant fell while roller skating and injured her left hand. Medical records do not mention any injury or pain in her left upper extremity beyond her wrist and hand.

8. There is no indication in the record that any of the above noted injuries produced long term issues or limitations involving Claimant’s left shoulder.

### **Claimant’s Industrial Accident**

9. On June 5, 2021, Claimant was employed by Employer to work on a fish trap known as a screw trap. The trap contained a rotating drum or cone, in which a stick had become lodged, keeping the cone from spinning properly. Claimant was bent over, peering into the cone

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<sup>2</sup> Including “empty can” and Hawkins, (both designed to test supraspinatus muscles and tendons), and O’Brien’s test (designed to test for labral injury or SLAP tear).

while trying to dislodge the stick. At that time, a large metal trap door weighing about 45 pounds unexpectedly swung down and struck Claimant on the back of her head. The impact cut her head and resulted in a concussion and closed head injury in addition to a laceration which required six staples to close. Claimant testified at hearing that her memory after the impact and before arriving at the hospital in Grangeville was quite limited and confused.

10. In addition to the cut on her head, Claimant complained of neck pain and headache. CT scans of Claimant's brain and cervical spine came back normal.

11. Claimant was still having neck pain and trouble sleeping when she went in to have her staples removed on June 14. Cheryl Mallory, M.D., examined Claimant and diagnosed her with postconcussion syndrome, along with muscle, fascia, and tendon strain to Claimant's neck. Claimant was referred to physical therapy and kept off work.

### **Physical Therapy Analysis**<sup>3</sup>

12. At the time of her work accident in question, Claimant was, and had been for about six weeks, in physical therapy with Christopher Lee, MPT, for residual effects of a left little finger injury which affected her strength and motion in her left hand. Her little finger injury apparently also affected the strength in her left upper extremity, as Mr. Lee documented at various times a weakness from Claimant's left shoulder through her hand which impacted her ability to grasp, grip, and perform fine motor skills.

13. When therapy was prescribed for Claimant's neck issues, she returned to Mr. Lee.

14. On Claimant's first visit with Mr. Lee after the subject work accident, she noted increasing neck and mid to upper back pain. Mr. Lee obtained authorization to treat Claimant

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<sup>3</sup> Because the Claimant's arguments focus to a significant extent on physical therapy notes to establish causation, they will be examined in far greater detail than typically found in this Referee's findings.

after diagnosing neck strain and pain, stiffness and weakness, thoracic pain, radiculopathy from Claimant's cervical spine, and pain in "an unspecified" shoulder. JE N, p. 363.

15. Claimant's chief complaints on her June 24 appointment included pain from neck into shoulder and between shoulder blades and difficulty sleeping on her right side (along with other symptoms consistent with the diagnosis). Notes from PT at one line listed a singular shoulder, *i.e.* shoulder impairment, and at another place list pain location as "neck, upper back, shoulders." *Id.* Bilateral shoulder testing was consistent from right to left side.

16. Records from PT indicated "bilateral" shoulder weakness in the first several treatment sessions. By Claimant's July 13 session, she stated her upper neck pain was mostly right sided. Mr. Lee applied K tape bilaterally to her upper trapezius region to improve blood flow.

17. Notes from Claimant's July 20 PT session still indicated therapy directed, among other places, at Claimant's upper thoracic region and "shoulders." Claimant was able to "increase repetitions for supine shoulder flexion on the right today."<sup>4</sup> *Id.* at 383.

18. Claimant was released from therapy to a self-administered home program for her left hand on July 26, 2021, with an 80% improvement.

19. Claimant's PT sessions for her subject industrial injury continued to focus on her cervical spine and mid to upper scapulothoracic regions through July and into early August. Her August 12 session notes indicate Claimant still had "upper C-spine restrictions mostly on the right side .... She still has moderate weakness of the shoulder girdle mostly on the right which also continues to affect her ability for reaching and lifting." JE N, p. 397.

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<sup>4</sup> It is unclear from this particular note whether the notation was meant to suggest Claimant was getting better regarding her right shoulder, but not her left, or it meant Claimant's therapy was concentrated on working with her right shoulder and not her left. However, the notes are clear that Claimant's cervical complaints were right-sided.

20. On her PT visit of August 23, Mr. Lee held off on right sided scapular retraction therapy due to Claimant's (presumably right) shoulder pain.

21. Claimant missed a couple of weeks of therapy due to authorization issues, but when she returned on September 9, 2021, she complained of increased symptoms through the shoulder blades and mid back as well as her neck. Her bilateral shoulder girdle and scapulothoracic areas showed moderate weakness requiring further treatment.

22. Claimant continued to attend physical therapy sessions throughout the fall of 2021. Her symptoms changed little, sometimes moving into her occipital region and back to her cervical spine. Significant progress did not occur, despite her claims that she felt improved after most sessions. The notes describe a predominantly right-sided pain in her cervical spine, with chronic weakness of her shoulder girdle (or at times, girdles) and scapulothoracic areas.

23. On her November 4, 2021 visit, Claimant complained of pain and weakness in her right shoulder. Mr. Lee applied K tape to Claimant's right shoulder to assist with blood flow and lessen her pain. Claimant continued to complain of right shoulder pain to a lesser degree on the next two visits.<sup>5</sup>

24. Claimant again specifically complained of right shoulder pain in her December 15, 2021 therapy session. Complaints of right shoulder pain or soreness continued into her next few treatment sessions. Additionally, as of January 2022, Mr. Lee still noted right greater than left shoulder girdle weakness (a common finding) which affected Claimant's ability to reach and lift above shoulder level.

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<sup>5</sup> On Claimant's November 18 visit she noted her shoulders were sore because she had gone fishing the day before. This appears to be a temporary muscle soreness as there is no note in the record of any special concern with this complaint and it does not recur in subsequent sessions.

25. At Claimant's January 10 therapy session, Mr. Lee devoted attention to Claimant's right shoulder, performing deep tissue work to her anterior shoulder. Two days later, Claimant's main complaints were mostly concerning her right shoulder and her head. She continued to have difficulty reaching above her shoulder with her right arm. Mr. Lee noted labral inflammation and "marked rotator cuff weakness [and] impingement" in Claimant's right shoulder. He surmised her right shoulder complaints increased due to her decreasing right sided cervical pain.

26. After the following events;

- The initial independent medical examination by Spencer Greendyke, M.D., on January 18, 2022, at which time he released Claimant to return to work without restrictions;
- An MRI conducted on February 15, 2022, which showed a C2-C3 *left* paracentral disc protrusion with mild left ventral thecal sac effacement;
- Being released to regular duty work by one of Claimant's treating physicians, Cheryl Mallory, M.D., on February 16, 2022, (Claimant had been off work for over three months at this time); and
- A trip by Claimant to the emergency room in Clarkston, WA on February 18, 2022, wherein she complained of left-sided neck pain;

Mr. Lee's therapy notes changed dramatically. On March 17, 2022, he wrote to Dr. Mallory, acknowledging that Claimant's symptoms have gone from "mostly right sided pain to left sided pain [with] upper extremity radicular issues and weakness." JE N, p. 460. He suggested these new findings were a "flare up" and Claimant could use more therapy, as she had not been under his care since January.

27. At his first session with Claimant after his letter to Dr. Mallory, Mr. Lee documented Claimant had swelling in her upper trapezius and parathesis in her upper left



extremity, neither of which were present when he stopped treating her in January 2022. Mr. Lee suggested an additional 12 weeks of therapy for these new and/or changed symptoms. He noted her left sided symptoms correlated with the MRI findings from mid-February.

28. In a letter dated March 22, 2022, to one of Claimant's providers, Mr. Lee wrote that Claimant's left-sided upper extremity weakness, paresthesias, and pain were cervical in nature, and "were not present when I last treated her two months ago." JE N, p. 467.

29. Through mid-May 2022, Mr. Lee treated Claimant in much the same way as he had previously, only now he focused on Claimant's left-sided complaints. In his final note, dated May 12, 2022, he commented on the fact that Claimant continued to complain of left upper extremity pain and paresthesia and was unable to use her left arm to any great extent. Mr. Lee suggested an additional assessment from a medical provider.

30. At Claimant's request, Mr. Lee prepared a "chart interpretation" which was a list of treatment dates in which shoulder complaints were mentioned. Some of the entries did not distinguish between left and right shoulders. At hearing, Mr. Lee explained that when discussing the shoulder girdle, he is referencing all the muscles which stabilize the shoulder blade, including rotator cuff, deltoid, and scapular stabilizers. Efforts in physical therapy included attempts to strengthen the muscles of both Claimant's left and right arms.

31. Mr. Lee acknowledged at hearing that prior to 2022, Claimant did not complain of left shoulder pain; instead, "most of the complaints were cervical, mid to upper back," along with consistent right shoulder pain and weakness. Tr. p. 123.

### **Other Medical Treaters**

32. Over the course of her post-accident recovery, Claimant was seen by several medical providers. Detailed analysis of each appointment is not necessary for resolution of

the issues in play. Relevant findings are set out below. Not all physicians or counselors Claimant visited during the course of her recovery are mentioned herein.

***Cheryl Mallory, M.D.***

33. Dr. Mallory treated Claimant since at least 2019 through Valley Medical Center in Lewiston. Dr. Mallory began seeing Claimant on June 14, 2021 for various complaints associated with the accident in question, including post-concussion symptoms, neck muscle and tendon strain, pain across her upper back, and persistent headaches.

34. Claimant was released to light duty work as of July 13, 2021. Dr. Mallory noted on October 6, 2021, Claimant was tolerating work duties and was able to do most of her regular duties within those restrictions.

35. At her November 3, 2021 visit, Claimant was complaining of right sided pain in her parietal occipital area, along with PTSD symptoms.

36. By January 2022 Claimant had nearly normal range of motion in her neck and continuing right occipital tenderness. She continued to struggle with depression and mood issues.

37. Dr. Mallory was provided a copy of Dr. Greendyke's IME report on February 2, 2022, and asked to indicate whether she agreed with his treatment plan. Dr. Mallory did agree to implement Dr. Greendyke's plan, which included a cervical spine MRI to address Claimant's recent onset of right sided intermittent C6 radiculopathy. Dr. Greendyke also recommended Claimant consult with Dr. Christine Guzzardo, Ph.D., a Spokane area psychologist, for post concussive syndrome symptoms.

38. The recommended MRI was performed on February 15, 2022, as described above, which showed left sided disc protrusion at C2-C3.

39. At no point prior to Dr. Greendyke's IME is there any notation in Dr. Mallory's medical records for Claimant of any type of left shoulder or left sided symptomatology whatsoever.

In fact, the first such mention is in a record dated September 9, 2022, in which Dr. Mallory noted Claimant “continued to have occipital pain and states it has moved more to the left side.” JE Q, p. 947.<sup>6</sup>

40. Claimant continued to treat with Dr. Mallory and other treaters at Valley Medical Center through early 2023; their focus included Claimant’s cervical disc herniations and prolonged symptoms associated with postconcussive syndrome, PTSD, and depression.

***Heidi Markland, L.Ac***

41. On December 7, 2022, Claimant presented at Ancient Spring Acupuncture where she saw Ms. Heidi Markland, acupuncturist. The intake form indicated Claimant was suffering from right sided headache and left occipital pain radiating into her left scapula, through her tricep and into the palm of her left hand, along with shooting pain in her left elbow at a 10/10 level. Claimant’s left shoulder abduction was 140, while right was 180. Internal rotation was 80 bilaterally. External rotation was 90 right, 80 left. There was also a notation of “noticeable swelling of the left rhomboids and scapular winging” upon palpation. JE B, p. 2.<sup>7</sup> The acupuncturist also felt Claimant’s left shoulder seemed unstable with rotation of her left arm.

42. In subsequent visits, Claimant complained of numbness in the last three fingers of her left hand, and stabbing pain into her palm and left forefinger.

43. At her January 9, 2023 visit, Claimant relayed an episode where she experienced pain that radiated from the base of her head to her sacrum which made her “foggy-headed”

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<sup>6</sup> As noted by Defendants, Dr. Mallory’s office notes of July 13, 2021, January 10, 2022, and February 28, 2022, indicate Claimant had left and right upper extremity normal range of motion and strength without tenderness. The undersigned confirmed the notes of July 13 and January 10, but could not find such record for February 28, 2022.

<sup>7</sup> It is fitting to note the somewhat random ordering of exhibits (apparently in this case prepared alphabetically, as opposed to chronologically), in contravention of this Referee’s prehearing order. All attorneys should take note that organizing exhibits other than in a chronological order violates this Referee’s order and, if done repeatedly, will result in sanctions. Also, the order requires an electronic copy of all exhibits be submitted.

and nauseated. She also had stabbing pain in her left shoulder. Claimant also experienced tingling and numbness in her left hand when laying on her back. Acupuncture treatments reduced, but did not eliminate Claimant's pain.

***Richard Stowell, M.D.***

44. Claimant first presented to Richard Stowell, M.D., an orthopedic surgeon associated with Orthopedic Sports Institute (OSI) in Cour d'Alene on January 9, 2023, with left shoulder complaints.

45. Claimant told Dr. Stowell that she lifted the steel door off her using her left shoulder. (Previously, she told Dr. Greendyke she used her right arm to lift the door, and in hearing testified she really had no idea how she lifted the metal plate off her.) Dr. Stowell ordered left shoulder x-rays, MRI and nerve conduction studies.

46. The nerve conduction study came back normal, as did the x-rays. However, the MRI showed a 50% thickness tear of Claimant's left supraspinatus tendon (rotator cuff) and subacromial bursitis.

47. Dr. Stowell tried injections to no avail. Claimant continued to demonstrate a very limited range of motion in her left shoulder. Physical therapy undertaken at OSI resulted in some improvement, but not a return to baseline. Throughout this time Claimant complained of neck and upper back pain/restrictions as well as left shoulder pain, but on a decreasing basis as therapy progressed.

48. Due to Claimant's lack of permanent improvement in her left shoulder, Claimant underwent a left shoulder arthroscopy with rotator cuff repair on April 11, 2023.

49. Claimant testified at hearing that within five days after surgery she, "for the first time since my accident" had no neck pain whatsoever. The "tension and agony" she had felt for the past two years was gone and her neck "felt normal again." Tr. p. 83. Since her surgery, she has

had no difficulty with her left shoulder, her neck, her back, her head or her right shoulder and arm. She was able to return to full time work without restrictions after September 2, 2023.

50. Claimant's only residual effects from the accident involve her sensitivity to loud noises and bright light. She testified she will wear sunglasses even on cloudy days and will use ear plugs to reduce experienced noise. Mentally, she still is apprehensive of falling objects and will not put herself in a situation where something is over her head that could fall on her. Such situations can lead her to experiencing panic attacks.

51. Claimant is able to perform all of her duties with her current employer, the Colville tribe, working on a research boat, which requires less lifting than her jobs with Idaho Fish and Game. She also makes more money with her current employment and has medical, sick leave, and vacation benefits.

## **DISCUSSION AND FURTHER FINDINGS**

### **CAUSATION FOR MEDICAL AND TEMPORARY DISABILITY BENEFITS**

52. The first, and most contested, issue is whether Claimant has proven her left shoulder rotator cuff tear was caused by her industrial accident of June 5, 2021. If it was, Claimant is entitled to reasonable and necessary medical treatment for such injury. If it was not, then no such benefits are available to Claimant. *See, e.g., Williamson v. Whitman Corp./Pet, Inc.*, 130 Idaho 602, 944 P.2d 1365 (1997). (An employer is only obligated to provide medical treatment necessitated by the industrial accident and is not responsible for medical treatment not related to the industrial accident.) She would also be entitled to temporary disability benefits during recovery from such treatment if required to miss or reduce her work hours.

53. Claimant has the burden of proving the condition for which compensation is sought is causally related to an industrial accident. *Callantine v Blue Ribbon Supply*, 103 Idaho 734, 653

P.2d 455 (1982). Arguments suggesting a causal link is not sufficient to satisfy Claimant's burden. *Beardsley v. Idaho Forest Industries*, 127 Idaho 404, 901 P.2d 511 (1995). To prove that a causal relationship is medically probable requires Claimant to demonstrate that there is more medical evidence for the proposition than against it. *Jensen v. City of Pocatello*, 135 Idaho 406, 18 P.3d 211 (2000).

54. Both parties rely heavily on their IME physician reports and testimony, as well as their interpretation of PT Lee's physical therapy notes. Claimant utilized John McNulty, M.D., as their IME witness. Defendants rely on the IME reports and testimony of Dr. Greendyke, as well as the IME report of Jeffrey Larson, M.D.

***Spencer Greendyke, M.D.***

55. Dr. Greendyke was the first physician enlisted by either party to provide an independent medical examination and report in this case. Surety requested his input. His first IME was performed on January 18, 2022.

56. In addition to his physical examination of Claimant, Dr. Greendyke reviewed provided medical records dating back to 2011. Claimant also provided a history of the accident and her care to date, along with her current complaints which included head pain and neck pain rated at up to 6/10 on the pain scale with activity.

57. Claimant also filled out an intake form in which she provided various types of information, such as current medications, symptoms, past medical issues, and a history of the accident. Claimant, when asked to list affected body parts, with instructions to designate **Right** or **Left** (bolded on form), wrote "Head, neck, right shoulder." When asked to illustrate where, and what types of pain she was experiencing using a human form and various marks representing different pain sensations, Claimant drew "aching" and "stabbing" pain marks on her right shoulder and back of her head, and "numbness" down her right arm. Finally, she depicted "aching" pain

across her entire posterior neck. No marks were used to indicate any type of pain involving her left upper extremity.

58. When describing the history of the accident, Claimant, in her own handwriting, stated that when the steel door fell on her head, she “used my right shoulder to push it off.” JE S, p. 1036.

59. At the time of her examination Claimant was alert, oriented x3, in no apparent distress and cooperative. Dr. Greendyke reported no outward signs of pain, symptom magnification, or inappropriate responses during the examination. Claimant disputes part of these findings, which will be discussed hereinafter.

60. Claimant was tender to palpation on the right occiput, with no palpable masses present. She had a full active range of motion in her upper extremities bilaterally. Her upper extremity motor strength was 5+/5.

61. After the physical examination, Dr. Greendyke diagnosed post-injury headaches, cervicgia, right-sided C6 radicular pain, all industrially related. Dr. Greendyke did not believe Claimant was medically stable and suggested a cervical spine MRI to address her C6 radiculopathy. He also felt it was warranted to address Claimant’s post concussive syndrome with Dr. Guzzardo.

62. On March 18, 2022, Dr. Greendyke authored an IME addendum report in which he reiterated his recommendation that Claimant treat with Dr. Guzzardo, even though Surety was having trouble arranging a for timely appointment due to Dr. Guzzardo’s schedule.

63. On May 31, 2022, Claimant returned for a second IME examination with Dr. Greendyke. She filled out the same forms as previously. She was taking considerably more medication, and her pain diagram was significantly different than the one she filled out in January. This second pain diagram included stabbing, pins and needles, numbness, and aching symbols from her left neck, through her left shoulder, and all the way down her left arm to her fingertips. On her posterior view, these symbols continued down to the base of her shoulder

blades on the left. In contrast, on her right side, Claimant depicted aching in her right shoulder, elbow, and hand on the posterior view, and some aching in her right forearm on her front view. Claimant also listed burning and shooting pain on her head.

64. Claimant, when asked to list affected body parts, with instructions to designate **Right** or **Left** (bolded on form), wrote “Mostly left arm, neck.” *Id* at 1045.

65. Claimant also noted that when she stopped physical therapy, her neck and head pain increased in severity, up to 9/10 with activity for her head pain, and 8/10 constantly. She noted her neck pain radiated down into her arms.

66. Claimant was accompanied by her mother for this examination. Again, she was alert, oriented x3, cooperative, and in no acute distress during the exam. She showed no symptom magnification or inappropriate responses.

67. During the exam, Dr. Greendyke found no apparent atrophy in Claimant’s neck muscles, nor any visible masses. She was tender to palpation at the occiput. She displayed a full active range of motion in her upper extremities bilaterally. Her upper extremity motor strength was 4/5 left and 5/5 right.

68. After the physical examination, Dr. Greendyke diagnosed occipital neuralgia, industrially related, MRI documented C2-3 left sided paracentral disc protrusion of uncertain origin (possibly preexisting) and not consistent with Claimant’s subjective radicular complaints. He also diagnosed bilateral C6 radicular pain, left greater than right.<sup>8</sup> Additionally, he confirmed his prior diagnosis of industrially related headaches and cervicalgia.

69. Dr. Greendyke still was insistent on Claimant obtaining treatment with a neurocognitive specialist to address her post concussive syndrome symptoms prior to declaring her

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<sup>8</sup> At the time of his first IME in January 2022, Dr. Greendyke diagnosed right-sided C6 radicular pain.



at MMI. While he did not think Claimant's MRI findings warranted surgery, he suggested she be seen by a neurosurgeon for further evaluation. Finally, he felt it was warranted for Claimant to undergo a trial of right and left sided occipital nerve blocks.

70. After an additional addendum report not relevant to the issue of causation on Claimant's left rotator cuff tear, Dr. Greendyke prepared a report dated April 7, 2023, in which he opined that Claimant's left shoulder rotator cuff tear was not related to her industrial accident in question. Finally, on November 17, 2023, Dr. Greendyke authored an opinion letter wherein he explained his reasons for disagreeing with the determination by Claimant's IME doctor, Dr. McNulty, that Claimant's left shoulder rotator cuff tear was industrially related.

***Jeffrey Larson, M.D.***

71. The second physician to conduct an IME in this case, again at Surety's request, was Dr. Larson, who conducted an independent medical examination of Claimant on October 4, 2022.

72. Dr. Larson reviewed relevant medical records and prepared a comprehensive summary of Claimant's treatment from the date of injury moving forward. He conducted an examination of Claimant, who was accompanied by her mother to the appointment. During the examination, Claimant displayed normal range of motion in her neck, with pain on palpation at the upper occipital cervical region. Claimant expressed pain with any movement of her left upper extremity. Claimant had no memory deficit and was oriented to time and space, with adequate attention span and concentration.

73. Claimant exhibited a "patchy" loss of sensation in a non-radicular pattern in her left upper extremity. Likewise, she had a "diffuse" loss of left upper extremity motor strength but moved all her extremities "well and without any apparent difficulty as she move[d] around the exam room and office." JE T, p. 1086.

74. Dr. Larson diagnosed a closed head injury related to her industrial accident. He also diagnosed neck and upper left extremity pain, numbness and weakness but opined those symptoms were unrelated to her industrial accident. He found her to be fixed and stable regarding her industrial accident. He felt her neck and left upper extremity complaints did not have an anatomic basis. He was also skeptical of her history that the left upper extremity pain started immediately after the accident, because his review of “extensive medical records” made it clear to him that her left shoulder complaints appeared to begin after the cervical MRI ordered by Dr. Greendyke was performed. JE T, p. 1087.

75. Dr. Larson did not feel work restrictions were appropriate, and for her neck and left upper extremity no impairment ratings were in order. He deferred the closed head injury impairment rating.

***John McNulty, M.D.***

76. Claimant hired Dr. McNulty to perform an IME for her. The examination took place on October 17, 2023.

77. In her history to Dr. McNulty, Claimant expressed uncertainty whether the trap door struck her left shoulder when it fell, but she did state that she used her left arm to push the door off her. According to Dr. McNulty’s report, Claimant also indicated to him that she had immediate left shoulder pain after her accident. Dr. McNulty also described “persistent” left shoulder pain when Claimant returned to work shortly after the accident.

78. By the time of Claimant's examination by Dr. McNulty, she had undergone surgery to repair her left rotator cuff and had no real complaints, consistent with her testimony. Dr. McNulty’s impressions were neck, head, and possible left shoulder contusion, scalp laceration, left shoulder rotator cuff tear, with repair and excellent functional result, resolved cervical strain, concussion, and multiple side effects from gabapentin, resolved with discontinuation.

79. Dr. McNulty opined Claimant's left rotator cuff tear was causally related to her work accident. He believed she injured her rotator cuff when "she lifted the trapdoor off of her on 6/5/2021." JE U, p. 1097. He supported his opinion by noting that Claimant told him she had persistent left shoulder pain when she returned to work.

80. In Dr. McNulty's opinion, Claimant's work-related rotator cuff tear necessitated surgery and the need for post-surgical therapy. Dr. McNulty further opined Claimant still suffered from PTSD at the time of his examination.

81. Claimant had no work restrictions after recovering from shoulder surgery and had no impairment rating from her cervical spine injury. Dr. McNulty assigned a 2% whole person PPI rating for her shoulder injury. He did not discuss her PTSD which he felt was ongoing at the time of his examination.<sup>9</sup>

### ***Expert Depositions***

82. Drs. McNulty and Greendyke were deposed post hearing. Relevant testimony from the depositions is set out below.

#### **Dr. McNulty**

83. Dr. McNulty testified that after reviewing the medical records and taking a history from Claimant, the "best [he] could come up with" was that the rotator cuff tear occurred when Claimant was lifting the trap door off her. His opinion was supported by the fact that he was "not aware of any other event that would have caused her to tear her rotator cuff." McNulty Depo., pp. 14, 15.

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<sup>9</sup> Dr. Stowell was later provided a copy of Dr. McNulty's IME report from Claimant's attorney and asked to check the box if he agreed with Dr. McNulty. He checked the "agree" box. He had no other input of relevance to this analysis, was not deposed, and prepared no independent reports. His response is afforded very little weight and is insufficient to affect the outcome of the causation analysis.

84. Dr. McNulty testified that individuals with a torn rotator cuff to a degree similar to Claimant typically will have pain with strenuous use of the shoulder and reduction in range of motion due to the pain. In a case such as Claimant's, where there is also a neck injury, it could be more difficult to diagnose the torn rotator cuff due to the fact neck injury can cause shoulder pain and vice versa.

85. Dr. McNulty suggested the inconsistency in the record from right shoulder pain to left shoulder pain could be the result of Claimant's impaired memory from the accident. As such, he tended not to become fixated on which shoulder Claimant complained about but rather relied on the fact that Claimant had a significant tear in her left rotator cuff as documented by Dr. Stowell, coupled with the fact the doctor was not aware of any other events that could have torn the rotator cuff after Claimant's accident. He felt Claimant's work history pre-accident was a strong indicator that her left shoulder was not impaired prior to the work accident in question.

86. Dr. McNulty reviewed Claimant's left shoulder MRI arthrogram from 2016 and noted it was negative, suggesting the torn rotator cuff was not present in 2016. Dr. McNulty later testified that in a young person such as Claimant, a torn rotator cuff will most likely be caused by a traumatic event.

87. Dr. McNulty acknowledged Claimant's hand drawn pain diagram from January 2022 showed only right sided pain in Claimant's upper extremities. He points out that later in 2022, (late April) physical therapy notes indicate left arm pain, and in May of that year Claimant presented at the ER with complaints of intractable neck pain radiating down her left arm. He testified that some of Claimant's left and right arm pain could be from her neck, but it was difficult to tell "with somebody who's got mental status changes." McNulty Depo., p. 30.

88. Dr. McNulty gave Claimant a 2% whole person PPI rating for her left rotator cuff with no permanent restrictions.

89. In cross examination, Dr. McNulty did not know where, anatomically, Claimant experienced pain when she performed strenuous activity. Dr. McNulty could only recall that when Claimant returned to work (and he did not have a time frame for that), she became nauseated from pain. His records did note she experienced left upper extremity radiating pain from work, but he had no idea of the timeframe involved, and whether it was in 2021, 2022, or 2023 when this occurred. Dr. McNulty conceded that the pain which made Claimant nauseated could have originated in her neck. He also could not answer if radiating pain was consistent with rotator cuff injury. Instead, he testified “[s]he still ha[d] a significant problem, (when she returned to work) whether it’s her neck, her shoulder, or possibly side effects from medication.” He went on to testify that no matter what “her operative findings [showed] a rotator cuff tear.” McNulty Depo., p. 35.

90. Dr. McNulty listed the possibility of the trapdoor hitting Claimant’s left shoulder due to a notation in Dr. Stowell’s medical records wherein he stated, based upon the history from Claimant, that she sustained injuries to her head, neck and shoulder (presumably left) in the work accident. Dr. McNulty acknowledged he was not aware of any medical record which mentioned a contusion to Claimant’s left shoulder. He pointed out that is why he said she “possibly” sustained a left shoulder contusion in his IME report.

91. Dr. McNulty also acknowledged that Claimant told him she pushed the trapdoor off her using her left hand, and that such statement is inconsistent with her statements in other medical records. He blamed the inconsistency not on Claimant changing her story to fit her perception of the evolving medical records, but rather on the fact that she had “mental status changes, confusion, and ... there’s contradictory information throughout the report.” *Id* at 38.

92. When shown medical records from June 10 and 14, and July 13, 2021, stating Claimant had intact judgment, insight, orientation to time, place, and person, and intact memory

for recent and remote events, Dr. McNulty could not dispute the findings, but considered that they might be duplicated from the first time they were mentioned in the office notes. He remained adamant that Claimant had mental problems affecting her memory throughout her recovery.

93. When asked to identify when the medical records first specifically mention either left sided neck or left shoulder pain, Dr. McNulty pointed to records from April 28, 2022 (physical therapy), and May 18, 2022, emergency room records.

Dr. Greendyke<sup>10</sup>

94. Dr. Greendyke testified that when he first examined Claimant (on January 18, 2022), his focus was on her cervical spine. He does not believe, nor do his notes show, that he asked Claimant to raise her arms above her head on that examination.<sup>11</sup>

95. Dr. Greendyke testified that a rotator cuff tear does not typically lead to pain radiating down the person's arm, especially past the elbow. Radiating pain down an arm is indicative of a ruptured disc in the neck, but not indicative of a rotator cuff tear, which manifests as pain in the area of the rotator disc when moving the affected shoulder.

96. Between Dr. Greendyke's first exam in January 2022, and her follow up examination on May 31, 2022, Dr. Greendyke was not aware of any intervening accidents involving Claimant, but did acknowledge her symptoms had changed (he called the symptom changes "dramatic" at page 50 of his deposition) to include bilateral arm pain radiating from shoulders to hands, much worse on left. These symptoms led the doctor to suspect a ruptured disc.

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<sup>10</sup> At the time of his deposition, Dr. Greendyke had been charged with multiple felonies involving moral turpitude. Subsequent to the date of his deposition, on September 13, 2024, he pled guilty to those crimes. IRE 609 addresses impeachment by evidence of criminal conviction. Because Dr. Greendyke had not been convicted of or pled guilty to any crimes at the time of his testimony, the charges are insufficient to allow for impeachment. Dr. Greendyke's testimony will be considered to the same extent, and with the same undiminished consideration as all other expert testimony elicited in this matter.

<sup>11</sup> Claimant alleges that Dr. Greendyke *did* ask her to raise her left arm at this examination, and it was painful to do so. He then allegedly jerked her arm upward and said that maybe she was hurt or maybe she was just a "wuss."

Dr. Greendyke pointed out Claimant's description, in her handwriting, of her complaints, were "mostly left arm, neck." He differentiated left arm from left shoulder. Her pain complaints suggested cervical disc involvement, which "would make sense with a head injury like what she had." Greendyke Depo. p. 20.

97. Dr. Greendyke acknowledged that one can have a cervical spine injury and a rotator cuff injury simultaneously, and typically diagnosing the spine injury is a higher priority than diagnosing a rotator cuff tear, as the former can cause more significant health issues than the latter.

98. Dr. Greendyke testified that if Claimant had injured her left rotator cuff in the accident in question, she would have had symptoms immediately thereafter with activities such as dressing, sleeping on her left side (if she did that), and pain with overhead or other activities which required her to move her left arm across her body.

#### **Causation, Medical Care, and Temporary Disability Benefits Analysis**

99. As noted previously, it is up to Claimant to present the greater weight of credible medical evidence to prove a causal link between her torn left rotator cuff and her industrial accident. Without such a link, Claimant is not entitled to medical care benefits for treatment of her rotator cuff, nor is she entitled to time loss benefits while in a period of recovery regarding her rotator cuff injury. It is critical to examine the entirety of the record to see if there is more credible evidence in favor of causation than opposed to causation. Claimant advances several theories to support her position. Each of those theories will be addressed in turn.

#### **Theory: Claimant was experiencing left sided pain within days of accident**

100. Claimant points to Mr. Lee's physical therapy notes beginning on June 24, 2021, where the record notes Claimant, in addition to pain in her neck (cervicalgia) and strain of her muscles, fascia, and tendons in her neck, pain in her thoracic spine, radiculopathy, and weakness (unspecified), also mentioned "pain from neck into shoulder and between shoulder blades"

as supporting the idea that Claimant had pain in her bilateral shoulders, because under pain location, Mr. Lee noted “neck, upper back, shoulders.” JE N, p. 363. While this note does support the notion that Claimant, on that date, and thereafter did, on occasion, experience pain in her shoulders (at times both shoulders, and at other times, specifically her right shoulder), such a finding is a far cry from establishing the fact that Claimant was suffering from pain from a torn rotator cuff.

101. Claimant’s pain during 2021 was concentrated in her neck, her *right* shoulder, and her upper back. The pain into her shoulders/arms was a radiating pain, indicative of nerve pain. There are no notations of pain specific to a torn rotator cuff in physical therapy notes or in Dr. Mallory’s notes. In fact, Dr. Mallory’s notes would all but eliminate a rotator cuff tear, as she noted Claimant had full range of motion in both shoulders.

102. Claimant also points out the physical therapy notes discussed upper extremity weakness (bilateral), as well as shoulder girdle weakness on a recurring basis. It seems as if Claimant is arguing that whenever the word “shoulder” is used to denote the location of muscle weakness, the implication is that the record is in fact describing a left-sided torn rotator cuff. There is no evidence in the record that *muscle* weakness is synonymous with a torn supraspinatus *tendon*. (See, e.g., JE K, p. 314.)

103. If weakness denoted a torn rotator cuff, Claimant’s physical therapy records of May 18, 2021 would establish Claimant's torn rotator cuff predated her industrial accident. In those records, there is a notation that Claimant “continues to have weakness of the left upper extremity, from the shoulder distally through the hand.” JE N, p. 350. This upper extremity and left shoulder weakness is a recurring notation thereafter. Clearly, Claimant cannot have it both ways; if her left shoulder weakness after her work accident is evidence of a torn rotator cuff, then her left shoulder weakness prior to her work accident must also be evidence of a torn rotator



cuff which predated her work accident. Claimant's selective emphasis on generalized findings is not persuasive.<sup>12</sup>

104. Claimant accurately notes that injuries to the shoulder can present as neck pain and vice versa. She then suggests that maybe her torn rotator cuff really presented as neck pain, leading treaters to mistakenly focus on her neck as the source of her complaints. She argues fixing her rotator cuff for the most part "cured" her constellation of complaints.

105. The fact that Claimant nearly spontaneously (within five days after surgery) recovered from her litany of complaints after her rotator cuff surgery is interesting, but not dispositive. While both deposed doctors agreed that shoulder pain can present as neck pain and vice versa, neither validated the notion that a left partially torn rotator cuff can present as right shoulder and right arm radicular pain. Furthermore, there was no medical evidence presented to explain how repairing Claimant's left rotator cuff could account for her sudden resolution of the bulk of her neuropsychological deficits which had, to one degree or another, plagued Claimant since her accident.

Theory: Claimant suffered no other traumatic events after her work accident

106. Claimant next argues she had to have torn her rotator cuff in the work accident because the record does not contain evidence of any other post-accident traumatic events.

107. Claimant was a very active person, participating in high school volleyball, track, and basketball, and more recently, an active roller skater who would have her dogs pull her for hours at a time, a snowboarder, a snow cat operator, a pole fitness instructor, and while employed for Employer, an employee who could do physical activity as part of her job, lifting

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<sup>12</sup> The reference to preexisting left upper extremity weakness should not be interpreted to suggest the Referee is in any way inferring that Claimant's torn rotator cuff predated the work accident in question, and there is no medical evidence to suggest such a finding. It is simply an illustration that placing undeserved weight on generalized findings may lead to unintended results. This Referee does not find the physical therapy notes for any treatments undertaken in 2021 are supportive of the notion that Claimant torn her supraspinatus tendon during or as a result of her work accident.

as much as 40 pounds over her head and extended away from her body on a repetitive basis. She acknowledged she suffered several injuries as the result of her active lifestyle, including injuries to her head, left shoulder, and left wrist/arm, as well as her hand, an injury which took place not long before the accident in question.

108. It is true the record does not contain evidence of another trauma after the accident of June 5, 2021. However, simply because there is no “smoking gun” accident to clearly discredit Claimant’s argument does not mean the accident caused her injury. Certainly, it would be speculation to attempt to lay the blame for her rotator cuff on her past injuries or lifestyle, or to assume she injured her shoulder at some point after her accident but before she began to complain specifically of left shoulder pain in late February 2022, but Defendants do not carry the burden of such proof.<sup>13</sup> Instead, it is up to Claimant to prove the accident in question caused her torn rotator cuff. If she cannot do that it is unnecessary to find the “smoking gun.” Proving the record contains no other traumas of record does not prove the accident caused her rotator cuff tear.

109. Dr. McNulty opined that young people do not typically have torn rotator cuffs from sources other than trauma, but he did not elaborate on the level of trauma needed to tear the tendon, or if repeated injuries to one’s shoulder make it easier to tear a rotator cuff with what would otherwise be considered a minor trauma, or even a daily activity.

*Theory: Claimant was not a totally accurate historian due to medications and past head injuries*

110. Dr. McNulty tried to excuse Claimant’s shifting complaints (right sided pain for months, suddenly shifting dramatically to left sided pain) as perhaps being the result of her

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<sup>13</sup> Defendants offer speculative theories, such as Claimant’s trip to a roller skating event in California, where she denied roller skating, but was able to participate in other events to some extent. Defendants also speculate that Claimant could have injured her rotator cuff in 2020 when she fell while roller skating. Defendants also point to her post-accident activities of roller skating (she testified she would have her dogs pull her) and yoga as possible culprits. They end their speculation with the notation that “because Claimant is not a great historian, we may never know what caused her rotator cuff. Def. brief, p. 21.

current and previous head injuries, and/or being on gabapentin, and at times concurrently on Lyrica. Both medications can make a person excessively drowsy and confused. Also, during this time Claimant was having difficulties sleeping, had nightmares and night terrors, and was exhibiting PTSD type symptoms.

111. Claimant points out that neither Dr. Greendyke nor Dr. McNulty found signs of symptom magnification or malingering. Her stated complaints were as accurate as possible, all things considered.<sup>14</sup>

112. Defendants counter by pointing out Dr. Mallory's records list Claimant as being oriented x3 and exhibiting good short-term memory when the doctor was examining Claimant's range of motion in her arms, which incidentally was full. They question why Claimant would be consistently confused for months after the accident when she related her pain predominately to her right arm. They question whether Mr. Lee was confused when he applied K tape to Claimant's right shoulder. Defendants also note Claimant first told providers she lifted the metal trap door with her right arm (when her right arm was most symptomatic), then said she lifted it with her left arm (when her left arm was hurting more). At hearing she testified she did not know how she got the trapdoor off her.

113. Defendants further argue that realistically it would make little sense for Claimant to use her left arm to remove the trap door since she was still treating for her injured left hand at the time of the June 5, 2021 accident. She was complaining of left arm weakness, left hand

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<sup>14</sup> While it is true that neither Drs. McNulty nor Greendyke found evidence of symptom exaggeration or malingering, other providers took issue with the accuracy of Claimant's complaints. For example, Dr. Larson found Claimant's left upper extremity and neck complaints "do not have an anatomical basis." JE T, p. 1086. A psychiatrist who treated Claimant in June of 2022, Dr. Benjamin Carpenter, found that, in addition to exhibiting post traumatic brain injury symptoms, Claimant presented with "symptom amplification" (including variable effort put forth during left sided muscle testing) which may or may not have been volitional. JRP J, pp. 301, 302. Finally, in neurological testing done by neuropsychologist Stacy Hill, Ph.D, Claimant failed the validity criteria in two out of three tests, rendering her test scores nonreliable. Dr. Hill determined the scores "likely underestimate [Claimant's] actual neurocognitive functioning." JE C, pp. 11, 12.

pain, and trouble with heavy lifting and carrying. At her deposition Claimant testified she told Dr. Mallory she had a lot of radicular pain going down her left arm and specifically complained of left shoulder pain shortly after the accident. Dr. Mallory's records do not support these statements. Claimant also made other inaccurate statements regarding the onset of her left sided complaints. Defendants note Claimant was not on gabapentin or being treated for mental status changes when she inaccurately testified at her deposition.

114. In this case, Claimant cannot be given a green light to give inconsistent and conflicting histories with impunity simply due to her concussion and medications. There is no credible evidence that she was incapable of rendering an accurate history at any point after the accident. Attempting to justify her shifting stories when such inconsistencies tend to inure to Claimant's benefit, simply by listing gabapentin or a concussion, greatly diminishes Dr. McNulty's credibility on this point.

Expert Witness Weight

115. Claimant argues Dr. McNulty's testimony should be afforded the greatest weight. She believes his opinion is supported by Mr. Lee's physical therapy records, which show Claimant complained of bilateral shoulder pain 19 days after the accident. She maintains that multiple inclusions in the record of bilateral shoulder weakness supports the fact that Claimant's rotator cuff tear was present after the accident. She argues Dr. McNulty credibly testified that it was unusual for someone Claimant's age to have a torn rotator cuff absent a traumatic injury. Claimant suffered a traumatic injury when the trap door fell on her, therefore it follows that Claimant's torn left rotator cuff must have been caused by her work accident, as testified to by Dr. McNulty.

116. There are several problems with Claimant's argument. The general phrase of bilateral shoulder pain or shoulder weakness could mean any number of things, only one of which is a torn rotator cuff. Claimant's presentation to her providers, to physical therapy, and to

Dr. Greendyke on his first examination does not support a torn rotator cuff. While surgery performed nearly two years after the accident did reveal a torn tendon, when the entirety of the record is carefully examined, it is an unwarranted leap to tie that fact to Claimant's accident. A heavy trap door hit Claimant on the head. Nine months later she began to describe decidedly left-sided symptoms to her doctors. Thereafter she was determined to have a torn rotator cuff tendon. Without more, those facts do not support causation. Instead of providing the "more," Claimant's inconsistent and shifting histories and testimony degrade her credibility and make it less likely, not more, that there is a causative connection between her rotator cuff and the accident in question.

117. When the totality of the record is examined and considered, the weight of the evidence does not support Claimant's position that her torn left rotator cuff was causally connected to her work accident. Dr. McNulty's opinion is based on inaccurate information provided by Claimant and his rationale for disregarding large sections of the medical records is unpersuasive. Of all three expert opinions presented herein, Dr. Larson's opinions are the most credible, and carry the greatest weight. Dr. McNulty's opinions carry the least weight.

118. When the entirety of the record is considered, Claimant has failed to prove her torn left rotator cuff was caused by the industrial accident in question.

119. Because Claimant failed to prove by a preponderance of the evidence that her left rotator cuff injury was causally related to industrial accident in question, the issue of payment for medical treatment of her rotator cuff is moot.

120. When the entirety of the record is considered, Claimant has failed to prove her entitlement to medical benefits for treatment of her torn left rotator cuff.

121. Because Claimant failed to prove by a preponderance of the evidence that her left rotator cuff injury was causally related to industrial accident in question, her entitlement to

temporary disability benefits during her period of recovery from her torn rotator cuff injury and surgery is moot.

122. When the entirety of the record is considered, Claimant has failed to prove her entitlement to temporary disability benefits during her period of recovery from her torn left rotator cuff injury and surgery.

### **Permanent Partial Impairment**

123. Permanent impairment is any anatomic or functional abnormality or loss after maximal medical rehabilitation has been achieved and a claimant's position is considered medically stable. *Henderson v. McCain Foods*, 142 Idaho 559, 567, 130 P.3d 1097, 1105 (2006). Permanent impairment is a medical appraisal. Idaho Code § 72-424.

124. In this case, only Dr. McNulty offered a permanent partial impairment (PPI) rating for Claimant. He assigned her a 2% whole person rating, but the rating was *only* for her torn rotator cuff. He assigned her no PPI for her closed head injury, neck pain, or any other complaint raised by Claimant after the accident in question. In Dr. McNulty's opinion, only the torn rotator cuff resulted in *permanent* impairment; all other injuries resolved with time and after Claimant's rotator cuff surgery.

125. While the parties agreed at hearing that if Claimant's left rotator cuff injury was deemed to be causally related to the accident, then she would be entitled to a 2% impairment rating (because Defendants had no opposing medical opinions), entitlement to such benefits was contingent on Claimant proving causation. As noted by the Referee, there was no dispute over the permanent partial impairment rating "should it come down to that." The Referee then stated Defendants' attorney noted this case was "definitely a causation case" but there was no dispute over the PPI rating. Tr. p. 127. While the Referee could have been more articulate in his comments, the fact remains the only impairment rating given was for Claimant's

rotator cuff tear, which she failed to prove was causally connected to her work accident. As such, she is not entitled to PPI benefits.

126. When the entirety of the record is considered, Claimant has failed to prove her entitlement to permanent partial impairment benefits.

**Permanent Partial Disability Benefits**

127. 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. (Emphasis added.)

128. All providers who treated Claimant released her to time-of-injury employment with no restrictions for injuries sustained in the subject industrial accident. With no work restrictions, Claimant is not entitled to permanent partial disability benefits. Furthermore, without permanent partial impairment there can be no permanent partial disability. *Urry v. Walker & Fox Masonry Contractors*, 115 Idaho 750, 753, 769 P.2d 1122, 1125 (1989). While Claimant argues she is still sensitive to light and loud noises, and at times becomes quite uncomfortable when working under structures she feels might be able to fall on her, no physician has opined these conditions are permanent.

129. Claimant has failed to prove she suffered any permanent injury from the accident in question. She cannot be permanently disabled by temporary injuries. *See, e.g. Smith v. State of Idaho, Industrial Special Indemnity Fund*, 165 Idaho, 443 P.3d 178 (2019).

130. When the entirety of the record is considered, Claimant has failed to prove by a preponderance of the evidence that she is entitled to any permanent partial disability benefits as the result of the work accident of June 5, 2021.

## CONCLUSIONS OF LAW

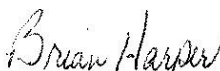
1. When the entirety of the record is considered, Claimant has failed to prove her left torn rotator cuff was caused by the industrial accident in question.
2. When the entirety of the record is considered, Claimant has failed to prove her entitlement to medical benefits for treatment of her torn left rotator cuff.
3. When the entirety of the record is considered, Claimant has failed to prove her entitlement to temporary disability benefits during her period of recovery from her torn left rotator cuff injury and surgery.
4. When the entirety of the record is considered, Claimant has failed to prove her entitlement to permanent partial impairment benefits.
5. When the entirety of the record is considered, Claimant has failed to prove by a preponderance of the evidence that she is entitled to any permanent partial disability benefits as the result of the work accident of June 5, 2021.

## RECOMMENDATION

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

DATED this 3<sup>rd</sup> day of March, 2025.

INDUSTRIAL COMMISSION

  
\_\_\_\_\_  
Brian Harper, Referee



## CERTIFICATE OF SERVICE

I hereby certify that on the 17<sup>th</sup> day of March, 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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Jennifer S. Komperud

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

ANDREA E. BUTTERFIELD,

Claimant,

v.

DEPARTMENT OF FISH & GAME,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,

Defendants.

**IC 2021-015786**

**ORDER**

Filed 3/17/25

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Pursuant to Idaho Code § 72-717, Referee Brian Harper 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 recommendation of the Referee. The Commission concurs with this recommendation.

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,

IT IS HEREBY ORDERED that:

1. When the entirety of the record is considered, Claimant has failed to prove her left torn rotator cuff was caused by the industrial accident in question.
2. When the entirety of the record is considered, Claimant has failed to prove her entitlement to medical benefits for treatment of her torn left rotator cuff.

**ORDER - 1**

3. When the entirety of the record is considered, Claimant has failed to prove her entitlement to temporary disability benefits during her period of recovery from her torn left rotator cuff injury and surgery.

4. When the entirety of the record is considered, Claimant has failed to prove her entitlement to permanent partial impairment benefits.

5. When the entirety of the record is considered, Claimant has failed to prove by a preponderance of the evidence that she is entitled to any permanent partial disability benefits as the result of the work accident of June 5, 2021.

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

IT IS SO ORDERED.

DATED this the 14th day of March, 2025.

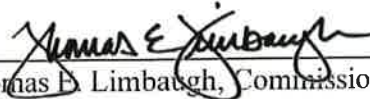
INDUSTRIAL COMMISSION



Claire Sharp, Chair




Aaron White, Commissioner



Thomas E. Limbaugh, Commissioner



ATTEST:



Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the 17<sup>th</sup> day of March, 2025, a true and correct copy of the foregoing **ORDER** was served by email transmission and regular United States Mail upon each of the following:

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