BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JULIE YATES, Claimant, v. ENCODER PRODUCTS COMPANY INC., Employer, and TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, Surety, Defendants.	**IC 2022-004939** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** **FILED MARCH 3, 2025** **IDAHO INDUSTRIAL COMMISSION**

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Sonnet Robinson. A hearing was conducted on June 25, 2024, in Coeur D'Alene, Idaho. Claimant, Julia Yates, was represented by Richard Whitehead of Coeur d'Alene. W. Scott Wigle of Boise represented Defendants. The parties presented oral and documentary evidence. A post-hearing deposition was taken. The matter came under advisement on December 3, 2024, and is ready for decision.

ISSUES[1]

1. Whether Claimant suffers from a compensable occupational disease;
2. Whether Claimant provided timely notice to Employer;
3. Whether Claimant is entitled to:

[1] Defendants did not argue Claimant's condition was pre-existing, and this issue is deemed abandoned.

a. Medical care;

b. Temporary partial or temporary total disability benefits;

c. Permanent partial impairment;

d. Permanent partial disability;

e. Attorney's fees; and,

4. Whether Claimant is totally and permanently disabled via the odd lot doctrine or otherwise.

CONTENTIONS OF THE PARTIES

Claimant contends she contracted severe interstitial lung disease from working for Defendants. Claimant was exposed for 18 years to a variety of fumes from many different solders and epoxies. Claimant is totally and permanently disabled by this occupational disease as found by Social Security Disability (SSD) and The Hartford. Claimant is entitled to attorney's fees for Defendants' initial denial based on untimely reporting, when the reporting was timely, and then subsequently maintaining that denial based on a meritless medical opinion.

Defendants respond that Claimant has failed to meet her burden of proof regarding causation. Claimant's expert's medical opinions are conclusory and do not consider all the relevant information. Defendants' initial denial was reasonable based on late reporting and continues to be a reasonable denial on the basis of medical causation, and therefore, Claimant is not entitled to attorney's fees. Regarding total disability, Claimant is still potentially receiving a lung transplant and may improve; therefore, even if the claim is compensable, disability is not yet ripe.

Claimant replies that the medical opinions of her two treaters and her retained expert are more persuasive than Defendants' medical expert's opinion. Claimant made a timely claim, is entitled to medical care reimbursement at the *Neel* rate, is totally and permanently disabled, and is entitled to attorney's fees.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. Joint exhibits (JE) 1-43;
3. The hearing testimony of Claimant, Julia Yates, Shellie Martin, Defendants' adjustor, Robert White, CEO and president of Employer, and Nick Peck, a mechanical design engineer at Employer;
4. The post-hearing deposition of John Schumpert, MD, taken by Defendants.

All outstanding objections are OVERRULED.

After having considered the above evidence and the arguments of the parties, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

FINDINGS OF FACT

1. Claimant was 66 years old at the time of hearing. Prior to working for Employer, Claimant worked as a waitress, cashier, and plastic molds fabricator. JE 40:10-16; HT 31:6-8.

2. Claimant began working for Employer in 2004. Tr. 31:6-14. Claimant initially worked in the basement on new products, which were not yet ready for mass production, but she eventually moved to the 2nd floor for general production. JE 40:25-27. Claimant gradually learned how to build most of the encoders Employer produced and was able to fill-in for others, becoming a "lead" on certain product lines. *Id.*; *Id.* at 30-32. Claimant's job involved assembling, soldering, mixing and applying epoxy resins, and curing products in the oven; as a lead, Claimant supervised other employees' encoder production and maintained product quality. See JE 40. Claimant initially worked with a lead-based solder, which was discontinued within a few months after she started; thereafter she worked with a no-lead solder until 2012 when Employer transitioned to a no-lead,

no-clean solder. HT 151:5-152:2; JE 20:1559. Employer used 9 solders and 26 epoxies during Claimant's tenure, however, "use of a certain product would have been dependent on which production line and work station she was using... [and Claimant] would not have used every item on this list." JE 20:1559 Claimant testified that she had various reactions to different epoxies during her tenure with Employer, mostly congestion and tear duct irritation, but also tongue and lip numbness when taking certain products out of the oven and headaches. See JE 40, HT 36:11-39:23.

3. On January 28, 2007, Claimant presented to Bonner General Hospital's emergency department with an itchy rash on her face from epoxy exposure; Claimant was diagnosed with allergic contact dermatitis, which she reported had started two years ago. JE 4:37-49. The material safety data sheet (MSDS) for araldite appears in the hospital records with Claimant's admission paperwork. Employer later discontinued using araldite as "some employees reported developed a [r]ash" after use. JE 20:1559. Araldite contains a component, specifically an epoxy resin, which is contained within several other epoxies used by Employer. See JE 29:1702, 1707, 1712, 1713 (CAS 25068-38-6).

4. In 2010, an employee of Employer filed a complaint with OSHA alleging that the work area was poorly ventilated, which was causing health issues from the epoxy fumes. JE 18:1248. OSHA requested the Employer provide all the MSDSs for the epoxies used "along with exposure and sampling results, if available." *Id.* Employer invited Boise State University's Safety & Health Consultation Program to evaluate their safety procedures and noise/air levels to identify any hazards. See JE 18. BSU consultants conducted an onsite evaluation and found that the air

contaminant[2] and noise levels were not above OSHA limits, however, there were four areas of concern identified: (1) using the wrong type of gloves with a particular epoxy; (2) allowing eating and drinking in the production area; (3) a knock-out was missing on a junction box; (4) three containers were not marked with their contents. Employer wrote back to OSHA identifying how they had remedied those specific issues. OSHA closed the complaint on March 29, 2011. JE 18:1322.

5. On February 8, 2019, Claimant presented to Dr. Guth again for a cough which had been present for five days. JE 6:275. Dr. Guth ordered a chest x-ray which showed Claimant's heart was enlarged with increased pulmonary vascular markings. *Id.* at 274. Dr. Guth administered albuterol in office and prescribed Augmentin and prednisone. *Id.* at 277.

6. On February 12, 2019, Claimant reported a progressive sense of weakness and shortness of breath, even after rest. JE 3:28. Claimant noticed she was having a harder time going up stairs but attributed it to age and lack of exercise. HT 42:1-20.

7. Claimant was moved from the Raytheon production line to the 260-production line around the beginning of 2020 and began using a different "no-clean" solder. She engaged in soldering activities for almost her entire shift. JE 40:41, 58-60.

8. On January 20, 2021, Claimant reported she was concerned she had COVID due to stomach symptoms and a "mild" cough which had been present one month. Claimant was tested for COVID the next day, which was negative. JE 5:125-128. Claimant reported she was short of breath, but that "this is normal for her and not worse than baseline." *Id.* at 127.

9. On February 18, 2021, Claimant returned and again reported cold-like symptoms.

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[2] Diethylenetriamine was measured in nine areas, butoxyethanol, n-butyl alcohol, isopropyl alcohol, naptha (coal tar), and petroleum distillates were measured in five areas. JE 4:43.

Claimant tested negative for COVID the next day. *Id.* at 130-133. Claimant reported shortness of breath and dizziness, and "wonder[ed] if she needs to see a lung specialist." *Id.* at 132. Claimant was diagnosed with bilateral pneumonia. *Id.* at 138.

10. Claimant continued to experience symptoms and was hospitalized on March 8, 2021 for acute hypoxic respiratory failure. JE 8:372. Claimant reported she had been short of breath for the past two to three years ever since she had a prior episode of pneumonia; her symptoms were slowly progressing and had increased over the last few months. *Id.* at 368, 433. Claimant's current medications were recorded, including Sertraline. JE 11:633.

11. Claimant was examined by Shana Fogarty, MD, who wrote that Claimant's two-to-three-year history of shortness of breath: "raises concern for chronic interstitial lung disease. Multiple possible etiologies, including work related exposures..., possible allergic component with 7 animals in the home that are indoor only, possible autoimmune given she had a chronic right nasal polyp which bleeds." JE 8:372, 442, 458. Claimant reported she had worked with a hood mask and venting for the last year, but used to work with epoxy "before the[re] were work related protections." *Id.* Dr. Fogarty referred Claimant to pulmonology. *Id.*

12. Claimant underwent a pulmonology consult with Robert Scoggins, MD, and Leah Bennett, ARNP, on March 9, 2021. JE 8:458. Dr. Scoggins took a history and Claimant denied prior lung or immune disease, smoking, or raising birds or chickens. Regarding her work, Claimant reported:

> She does work in a plant and does soldering on a daily basis. She was recently moved from a play [sic] area where she did soldering occasionally and was lead based. She is now working with a different soldering machine. She does not wear any respirator but does have a system to clear the smoke while soldering.

JE 11:702. NP Bennett wrote: "CT finding with concerns of a chronic component secondary to work related exposure...She was previously diagnose[d] and treated for [] bilateral pneumonia and

these findings could be a postinfection inflammatory response." JE 8:439.

13. After several tests and a multi-day hospital stay, Claimant was released on March 16, 2021 with the following assessment:

> Acute hypoxic respiratory failure with subacute symptoms dating back to mid February. Has been on and off multiple antibiotics and outpatient steroids, differential diagnosis still possible autoimmune versus inflammatory versus interstitial lung disease and we'll discharge on prolonged pulmonary taper… of note the patient also works in soldering and occupational inhalation injury is not excluded, and the patient is instructed not to go back to work until cleared by pulmonology.

JE 8:495.

14. On March 30, 2021, Claimant discussed her interstitial lung disease diagnosis with her primary care physician who wrote "some concerns for environmental cause; solder at work… works ft as assembly lead based solder at work. X last 1.5 years used a different solder but started with a cough daily and noted progressive SOB." JE 5:152.

15. Claimant began treating at the Kootenai Clinic, Lung and Asthma (KCLA) on April 6, 2021. JE 11:648. Claimant reported she had worked at Employer for 17 years and "currently works soldering 8 hrs/day." *Id.* at 651.

16. On May 6, 2021, Dr. Scoggins wrote Claimant's interstitial lung disease was "most consistent with an NSIP pattern possibly a[n] occupational exposure which [] led to lung disease." *Id.* at 665.

17. Claimant applied for social security disability and was approved in August of 2021. JE 24:1639.

18. On November 3, 2021, Claimant saw Robin Beard, ARNP at KCLA. JE 11:682. Claimant reported the following regarding her condition:

> Work exposure: works in computer encoder manufacturing for 17 years doing soldering (including lead, no clean), noticed coughing worse when she started no

> clean soldering in February 2020. Worked with epoxy and placing these items in an oven would cause her tongue and lips to go numb. Fume hoods, masks, gloves, were not always supplied by her employer.

Id. at 683. NP Beard observed "there is no unifying diagnosis at this time. I explained that a lung biopsy is likely the next step to aid in diagnosis." JE 11:684.

19. On December 31, 2021, Claimant presented to Brian Snyders, DO, with a possible sinus infection. Dr. Snyder prescribed an inhaler and a z-pack. JE 5:176.

20. Claimant returned to Dr. Snyder on January 18, 2022, for follow-up; Dr. Snyder assessed (1) interstitial lung disease; (2) chronic hypoxemic respiratory failure; (3) siderosis-welder's lung. JE 5:178. Dr. Snyder noted he had reviewed the "past lung results from KC Lung and Asthma" and that Claimant had improved over time. JE 5:178. In relevant part, Dr. Snyder wrote:

> patient's diagnosis of lung disease is due to her job soldering and ingesting harsh chemicals, recommend getting a lawyer. Records released to be signed today to obtain records from Bonner General starting from year 2000… Recommend she seek legal action for her diagnosis of welders lung due to her job soldering and has a lawyer in mind.

Id.

21. Claimant filed the first report of injury on February 14, 2022. JE 1. On April 20, 2022, Claimant's claim was denied as untimely reported, due to a pre-existing condition, and not related to her employment. JE 2:10; 38:1813. The rationale was as follows:

> 63-yr. old assembly employee who reported that she has been out of work for roughly a year. She has had some health issues, relating to breathing problems and damaged lung, and believes that it could be a result of her employment over the years. Prior medicals have been received and reviewed. It appears that EE has been having breathing/lung matters as far back as 2019. Investigation fails to support that EEs current matter is a direct result of her employment. As well, denying for late reporting.

JE 38:1813.

22. Dr. Scoggins re-examined Claimant on June 7, 2022 and wrote that Claimant's

interstitial lung disease was "likely work-related – inhalation of smoke while soldering." JE 11:711.

23. On September 13, 2022, Claimant presented to the ER with shortness of breath. JE 11:713. Claimant was admitted and examined by Dr. Scoggins and Amanda Liggett, MD, another physician from KCLA, and discharged on September 16, 2022. *Id.* at 737. Claimant's case was transferred to Dr. Liggett after this hospitalization. See JE 11; JE 27:1669.

24. On December 16, 2022, Dr. Liggett wrote:

> To Whom It May Concern:
>
> Ms. Julia A. Yates is under my care for interstitial lung disease. She first started developing symptoms in March 2021 with progressively worsening shortness of breath. She had an unrevealing infectious, autoimmune/inflammatory work-up including a bronchoscopic evaluation. She has a history of working as a soldering technician with exposure to noxious fumes without personal protection equipment. Combined findings from history, radiological and cytologic evaluation are suggestive of nonspecific interstitial pneumonitis (NSIP) with associated chronic hypoxic respiratory failure due to occupational exposures. This is to a reasonable degree of medical probability on a more likely than not basis.

JE 11:792.

25. On November 16, 2023, Dr. Liggett wrote another letter. JE 27:1658. Dr. Liggett wrote that Claimant had been worked up for infectious, autoimmune, and inflammatory causes, but none were revealed. Therefore, it was her opinion that Claimant's condition was due to occupational exposures, specifically exposure to noxious fumes without personal protective equipment. *Id.* Dr. Liggett put Claimant in Class 4A of the AMA Guides at the time of her exam based on Claimant's DCLO. *Id.*

26. On December 6 and 8, 2023, Dr. Snyder took an extensive history from Claimant: "patient presents today to review exposure history that could be responsible for her lung disease." Dr. Snyder also reviewed records from prior visits to Prairie Family Medicine and wrote that the

number one cause of interstitial lung disease was hazardous materials. JE 25:1648. Dr. Snyder wrote that Claimant's mother was a life-long smoker who died of lung cancer; Claimant had never traveled and had limited use of humidifiers and vaporizers. Her current medications were listed, and her medication history was described as including a small number of narcotics after surgeries, and "additionally she was on a short-term diuretic, antibiotics, and inhalers as they were ineffective. Cell Cept [sic] was also discontinued due to ineffectiveness. Sertraline, Prozac, Lithium and Gabapentin [were] all tried and failed." Claimant also detailed her employment from 1975 onward. Regarding her work for Employer, Claimant gave a history that "masks were not worn at work," that there was no ventilation when working with epoxy or when taking items out of the oven, and that she was exposed to lead smoke, silicone, and epoxy fumes repeatedly. *Id.* at 1648-1651. Claimant explained that around 2007 OSHA was called and thereafter, workstations had a shop vacuum under them to suck fumes away and later the oven also received the same treatment; fans and filters were also installed around this time. Claimant described working directly over the epoxy when applying it. *Id.*

27. On December 11, 2023, Dr. Snyder wrote two letters to Claimant's attorney detailing his opinions regarding Claimant's interstitial lung disease. JE 25:1626. The first letter confirmed that Claimant has interstitial lung disease and explained Claimant's reduced level of lung function. JE 25:1645. The second letter explained Dr. Snyder's reasoning for relating Claimant's interstitial lung disease to her work. Dr. Snyder wrote that Claimant worked with lead solder and epoxies and was "exposed to noxious fumes… while working directly over the material." *Id.* at 1646. Regarding other potential causes, Dr. Snyder explained that they had ruled out autoimmune disease, asbestos, silica, medications, COVID, and cigarette smoke and that Claimant had no prior history of respiratory illness. *Id.* Dr. Snyder concluded:

> Following an extensive review of all potential causation possibilities, Ms. Yates' exposure in the Encoder Products Company workplace is not only probable, but the only environmental source responsible for this disease. In my professional medical opinion, repeated exposure to and inhalation of noxious fumes at Encoder Products Company caused Ms. Yates' interstitial lung disease with bronchiectasis.

JE 25:1646-1647. Dr. Snyder rated her at 55% permanent impairment for the condition and noted it was a terminal diagnosis without a lung transplant. *Id.*

28. On December 11, 2023, John Schumpert, MD, issued his report on Defendants' behalf. JE 29:1678. Dr. Schumpert interviewed Claimant by phone, reviewed medical records and depositions, toured Employer's facility and observed current manufacturing processes, and researched the material Ms. Yates worked with throughout her employment. See JE 29:1701-1705, JE 20:1559, and JE 19.

29. Dr. Schumpert opined that Claimant's testing during her March 2021 hospital stay was "extremely limited" and was not an adequate basis to diagnosis interstitial lung disease caused by occupational exposure. JE 29:1717. Dr. Schumpert wrote that if the epoxy resins Claimant used were the source of her symptoms, then he would have "expected her to voice complaints of skin rashes, eye irritation, and nasal irritation long before the onset of her pulmonary symptoms." *Id.* at 1718. Dr. Schumpert concluded:

> After reviewing all the Safety Data Sheets provided by EPC, I do not believe any of the products used at EPC would produce the individual's pulmonary fibrosis. The only product that stands out as a known source pulmonary fibrosis (i.e., crystalline silica) is dissolved in a liquid and therefore is not respirable. Adequate exhaust ventilation has been present and upgraded throughout much of the individual's employment at EPC. Finally, the individual is the only employee at EPC suffering from severe pulmonary disease. If either ventilation systems or the products used at EPC were the cause of pulmonary disease, I would expect more than one employee to be ill. Soldering is unlikely as the source of the individual's pulmonary fibrosis. The use of the various epoxy resins is also unlikely to be the source of the individual's pulmonary fibrosis.

JE 29:1722.

30. On January 19, 2024, Dr. Liggett authored a third letter. JE 27:1669. Dr. Liggett detailed the extensive testing she and Dr. Scoggins had provided Claimant at their clinic from her March 8, 2021 hospitalization forward. *Id.* Dr. Liggett wrote:

> The data listed above demonstrates Ms. Yates has had an extensive workup for non-occupational causes of interstitial lung disease. This work up has been entirely negative. Medical literature describes inhalation exposure to low molecular weight sensitizing chemicals, including epoxy resins as a cause of interstitial lung disease. My opinion still stands that to a reasonable degree of medical probability on a more likely than not basis Ms. Yates suffers from NSIP due to toxic exposure from epoxy and soldering fumes, particulates and gases while employed at Encoder Products Company.

JE 27:1672.

31. On June 1, 2024, James Pearle, MD, issued a report on Claimant's behalf. JE 32. Dr. Pearle reviewed medical records[3], Claimant's deposition, and Dr. Schumpert's report. Dr. Pearle focused his analysis on colophony, which is a resin that consists of a mixture of rosin acids. Dr. Pearle wrote that colophony has a long association with occupational asthma; inhaling soldering fumes and heated colophony causes the airways to become inflamed, which leads to hypersensitivity, which leads to fibrosis of the lungs: "the pulmonary sensitivity to colophony has been well established, with strong evidence of occupational asthma and a suggestion that hypersensitivity pneumonitis is also associated with colophony." JE 32:1756. Dr. Pearle explained that generally diagnosing occupationally caused lung disease is a workup of exclusion which disproves any other specific causes:

> In the presence of appropriate occupational exposure, a clinical picture of interstitial fibrosis or hypersensitivity pneumonitis or occupational asthma is established because of the strength of the association and the elimination of other possible causes of this hypersensitivity. Thus, with hypersensitivity lung disease, fibrosis, or asthma in the presence of appropriate exposure, one must conclude to a reasonable degree of medical probability that the exposure led to this lung disease.

[3] Dr. Pearle lists "MEDICAL RECORDS REVIEWED" on page 1731 but clearly reviewed more records than are listed based on his "MEDICAL CHRONOLOGY/OUTLINE."

> One can never prove the negative: that an individual's lung disease is idiopathic (no known etiology), when an obvious and sufficient exposure is the elephant in the room.

JE 32:1757. Dr. Pearle criticized Dr. Schumpert for acknowledging that some of the solders contained rosins, but then failing to analyze that component as a possible source of her interstitial lung disease despite its long association with inflammation in the lungs and airways.[4] *Id.* at 1759. Dr. Pearle did agree with Dr. Schumpert that silica, kaolin, copper, silver, and hydrochloroquine were unlikely to have caused her lung disease. *Id.*

32. Dr. Schumpert was deposed on September 17, 2024. Dr. Schumpert explained it was not always possible to tell what caused interstitial lung disease. Schumpert Depo. 15:20-22; 16:11-13. Dr. Schumpert confirmed that determining what caused interstitial lung disease was a process of exclusion, including testing for different autoimmune diseases, reviewing medications, and looking at possible occupational exposures. *Id.* at 16:1-11.

33. Regarding the chemicals Claimant worked with, Dr. Schumpert explained that epoxies are made of polymerizing agents; generally, two epoxies are mixed to create the desired chemical reaction (such as becoming an adhesive). However, because the epoxies want to 'react,' they can also react with skin and lungs when touched or inhaled:

> Epoxy resins in particular... are known to cause asthma. Breathing in epoxy resins in an occupational setting for a long period of time, for years, can cause asthma and it's allergic asthma, it's not irritant asthma...
>
> Epoxy resins are also a source of allergic contact dermatitis. And the reason I want to be sure that you understand the significance of allergic versus irritant is that an irritant is something that can cause a reaction now but there's no immune response, per se, so you're not making antibodies so that you remember that exposure for a

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[4] Dr. Schumpert's December 11, 2023, report recorded three solders contained rosins, and all three were different compositions of rosin. One rosin: "may cause skin irritation, allergic skin reactions, serious eye irritation, allergy or asthma symptoms, and respiratory irritation," but another was "not considered to be a hazardous chemical." JE 29:1706-1707. Dr. Schumpert did include rosins' effects in the body of his report, but Dr. Pearle is correct: Dr. Schumpert did not give rosins the same exhaustive review as some other solder components in his conclusions.

> future reference. And so that if you even have a minute amount of that exposure at the future you're going to have a larger reaction, you'll have an allergic reaction.
>
> An irritant is something that if you just get enough of it on you, it's going to irritate your skin, it's going to make you cough. But then once you get out of the exposure, you're fine, you can go back in, you can do your work, you are not going to just keep reacting to that substance.
>
> Epoxy resins can cause allergic asthma. They can also cause allergic contact dermatitis. They do not cause interstitial lung disease, as I said, at the beginning. Asthma is an obstructive lung disease, it is not in interstitial or a restrictive lung disease.

Id. at 30:20-33:8. Dr. Schumpert also did not think Claimant's exposure to solder fumes caused her interstitial lung disease; he explained that soldering basically transmutes solid metals to aerosolized fume: "solid, very finely divided particles of the metal," but explained that there were a number of safety ventilation features which kept exposure minimized at Employer's location. *Id.* at 41:13-15; 36:15-37:13.

34. Dr. Schumpert was questioned regarding Dr. Pearle's opinion that colophony was the cause of Claimant's interstitial lung disease. Dr. Schumpert explained that colophony is a resin which can cause an allergic reaction and asthma and that if Claimant was claiming she had contracted asthma, his opinion would be totally different. Schumpert Depo. 38:7-39:24. Dr. Schumpert added that if it was epoxy resins which caused Claimant's lung disease, she would first develop dermatitis:

> epoxy resins are very good skin sensitizers. And so what you typically see in someone who has epoxy asthma is they first develop…epoxy dermatitis. And she never developed dermatitis. She's never had dermatitis, so I don't know how she could, without wearing personal protective equipment, develop some kind of lung disease from it without actually developing some kind of skin disease first.

Schumpert Depo. 40:22-41:6.

35. On cross-examination, Dr. Schumpert was asked about Claimant's 2007 dermatitis, but Dr. Schumpert was unaware of what caused it: "no one ever addressed that." *Id.* at 49:16-23.

Dr. Schumpert agreed that his analysis of safety features reducing exposure was only valid for 2023 and he was unaware of the safety features in 2004 when Claimant started or 2011 when BSU conducted their on-site evaluation. Dr. Schumpert agreed it was very difficult to quantify exposure to any one chemical. *Id.* at 50:5-21. Dr. Schumpert explained that any sensitization would happen quickly, within six months of first exposure. *Id.* at 52:24-53:2. Dr. Schumpert's training was different from a pulmonologist's training because it was more focused on epidemiology and toxicology versus physical care. *Id.* at 56:4-57:23. Dr. Schumpert had not previously encountered a case where a patient had been exposed to both soldering and epoxy fumes. *Id.* at 60:10-16.

36. On re-direct, Dr. Schumpert opined that Claimant would have shown symptoms sooner if her disease was the result of exposures from when she first worked for Employer in 2004. Schumpert Depo. 63:19-66:2.

DISCUSSION

37. The provisions of the 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). A worker's compensation claimant has the burden of proving, by a preponderance of the evidence, all the facts essential to recovery. *Evans v. Hara's, Inc.*, 123 Idaho 473, 849 P.2d 934 (1993).

38. **Notice.** An occupational disease exists under the workers' compensation law when it first manifests. *Sundquist v. Precision Steel & Gypsum*, 17 141 Idaho 450, 454, 111 P.3d 135, 139 (2005). "[M]anifestation" occurs when the claimant knows he has an occupational disease or

is so informed by a physician. *Id.* at 455, 111 P.3d at 140; see also Idaho Code § 72-102(18). The Industrial Commission has identified three conditions that must all be true for a worker to "know" that he has an occupational disease: (1) the person believes it to be true; (2) the person must have justifying reasons for believing it to be true, and (3) it must in fact be true. *Lowery v. Kuykendall Logging*, 560 P.3d 1069 (2024), quoting *Dahlke v. Ash Grove Cement Co.*, IC 2012-016998 (April 25, 2014). For the purposes of notice and filing requirements of Idaho Code § 72-448, a disease is not manifest "until its cause has been clearly identified by competent medical authority as related to the employee's work and that information has been communicated to the employee." *Lowery v. Kuykendall Logging*, 560 P.3d 1069 (2024), quoting *Boyd v. Potlach Corp*, 117 Idaho 960, 793 P.2d 192 (1990).

39. Claimant was not informed by a medical authority that her condition was related to her occupation until January 18, 2022. Prior to this appointment, Claimant suspected, but did not know, that her condition was related to her work. Previously, Claimant only met the first requirement of "knowing," she believed it to be true. Claimant's "justifying reasons" must be evaluated within the context of the claimed occupational disease. The example used in *Dahlke* was lead poisoning. The hypothetical claimant in *Dahlke* knew the signs and symptoms of lead poisoning, knew other coworkers had lead poisoning, and knew they were exposed to lead in their employment. Claimant's level of familiarity and knowledge about interstitial lung disease prior to her diagnosis falls far short of this demanding standard. Claimant's pulmonologists, presumably the most knowledgeable, took 15 months to exclude every other potential cause of Claimant's disease (other than idiopathic) before concluding it was related to her work. Claimant timely filed her claim on February 14, 2022.

40. **Occupational Disease.** Claimant alleges and Defendants deny she contracted an

occupational disease, ILD, as a result of her employment for Encoder Products. An occupational disease is defined as "a disease due to the nature of an employment in which the hazards of such disease actually exist, are characteristic of, and peculiar to the trade, occupation, process or employment …." Idaho Code § 72-102(21)(a). The other operative statutes in an occupational disease case are: Idaho Code §§ 72-437, 72-438, and 72-439. Specifically, Idaho Code § 72-437 provides: When an employee of an employer suffers an occupational disease and is thereby disabled from performing his work in the last occupation in which he was injuriously exposed to the hazards of such disease, or dies as a result of such disease, and the disease was due to the nature of an occupation or process in which he was employed within the period previous to his disablement as hereinafter limited, the employee, or, in case of his death, his dependents shall be entitled to compensation. To summarize the statutory scheme:

> [T]hose with occupational disease claims must demonstrate (1) that they were afflicted by the disease; (2) that the disease was incurred in, or arose out of and in the course of, their employment; (3) that the hazards of such disease actually exist and are characteristic of and peculiar to the employment in which they were engaged; (4) that they were exposed to the hazards of such non-acute disease for a minimum of 60 days with the same employer; and (5) that as a consequence of such disease, they became actually and totally incapacitated from performing their work in the last occupation in which they were injuriously exposed to the hazards of such disease.

Boutwell v Spears Manufacturing, No. IC 2017-011374, 2019 Idaho Ind. Com WL 2577490, at 7 (IIC May 3, 2019), citing *Fowler v. Militec Defense Systems*, 2014 IIC 0070 (2014).

41. The claimant has the burden of proving a causal connection between his work environment and an occupational disease "to a reasonable degree of medical probability." *Wichterman v. J.H. Kelly, Inc.*, 144 Idaho 138, 141, 158 P.3d 301, 304 (2007). "In this regard, 'probable' is defined as 'having more evidence for than against.'" *Jensen v. City of Pocatello*, 135 Idaho 406, 412, 18 P.3d 211, 217 (2000) (quoting *Soto v. Simplot*, 126 Idaho 536, 540, 887 P.2d 1043, 1047 (1994)). Proof of a possible causal link is not sufficient to satisfy this burden. *Id.* Expert

medical testimony is required, "although the Industrial Commission as the finder of fact may consider other evidence as well, including evidence regarding credibility." *Id.* The Commission is "free to determine the weight" to give an expert opinion. *Eacret v. Clearwater Forest Indus.*, 136 Idaho 733, 737, 40 P.3d 91, 95 (2002). When deciding how much weight an opinion is entitled to, "the Commission can certainly consider whether the expert's reasoning and methodology has been sufficiently disclosed and whether or not the opinion takes into consideration all relevant facts." *Id.*

42. ***Disease.*** Per the experts, interstitial lung disease (ILD) is a very general term; asbestosis, silicosis, byssinosis are all types of ILD. Schumpert Depo. 14:11-15:5. Claimant's ILD is a restrictive lung disease which means that "you have difficulty getting air into your lungs" as opposed to an obstructive lung disease, which means difficulty getting carbon dioxide out, such as asthma. *Id.* 11:8-10. Fibrotic changes (scarring) prevents oxygen from entering the bloodstream, leading to decreased oxygen saturation and shortness of breath. The fibrotic changes are progressive, and there is no cure other than a lung transplant. All the physicians agree Claimant has extensive pulmonary fibrosis in her lungs and that she qualifies for a diagnosis of ILD.[5] At the time of hearing, Claimant had been denied a lung transplant by the University of Washington due to her BMI and she was pursuing a transplant through the University of Utah. All the experts and treaters agree that ILD can be caused by a number of factors such as smoking, radiation, medications, occupational exposure, and that there can be no known cause, i.e., the disease can be idiopathic.

43. ***Exposure to Hazards of ILD for Minimum of 60 Days with Encoder Products.***

[5] Interstitial lung disease and pulmonary fibrosis are not the same condition, however, the experts and treaters frequently refer to Claimant's condition as pulmonary fibrosis, interstitial pneumonitis, or interstitial fibrosis, and add different qualifiers such as "non-specific" or "with bronchiectasis."

Claimant has proven she was exposed to epoxy and solder fumes[6] at her workplace. Defendants correctly point out that there are safety measures in place to protect the workers including gloves, vents, respirators, hoods, etc. Defendants have changed epoxies and solders to less caustic/toxic ones, complied with all OSHA directives, and implemented all of BSU's recommendations for occupational safety. Dr. Schumpert's video tour of the facility demonstrates that it is a clean, organized environment. However, there can be no dispute that despite Employer's best efforts there will be some exposure to fumes from soldering, mixing/applying epoxies, and from firing/curing encoders.[7] Claimant has worked for Employer since 2004 and she, Mr. Peck, and Mr. White all readily admit and corroborate that more and better safety measures for both equipment and materials were implemented over the years that Claimant was employed. HT 35:17-36:2; 50:18; 115:10-116:9, 133:5-134:2; 151:5-155:7; 161:25-162:22. In other words, even with current safety measures, fumes are not completely eliminated during production and Claimant would have been exposed from 2004 onward to decreasing, but still present, fumes from soldering and applying/mixing epoxies. Claimant has shown occupational exposure.

44. Before further discussion, Dr. Schumpert's opinion that not enough testing was done to exclude other causes of Claimant's condition (besides idiopathic) must be resolved. Dr. Liggett's third letter squarely refuted Dr. Schumpert's opinion. Most, if not all, of the tests Dr. Schumpert outlined as necessary in his written opinion to diagnose Claimant with an occupationally caused condition were conducted by Claimant's pulmonologists throughout 2021 and 2022 or actually were conducted during the March 2021 hospital stay. (This hospital stay is

[6] This decision will use the non-scientific definition of "fume – a smoke, vapor, or gas especially when irritating or offensive" for readability. "Fume." Merriam-Webster.com Dictionary.

[7] Dr. Schumpert described that the only way to measure these kinds of exposures is to clip a calibrated air pump tube to a workers' collar six to eight inches from their mouth and nose as most vapors/fumes/particulates are not visible. Schumpert Depo. 25:12-25.

when Dr. Schumpert mistakenly lists the industrially related diagnosis was made.) For example, Dr. Schumpert writes that Claimant had rheumatoid factor testing done in the hospital but lists "rheumatoid factor" as another test the hospital did not administer, but should have.[8] Drs. Liggett and Scoggins thoroughly reviewed Claimant's personal history, medication history (including sertraline), and conducted extensive testing. Claimant's pulmonologists did not form the opinion that Claimant's condition was work related until June 7, 2022, when Dr. Scoggins wrote the condition was likely work related. Dr. Schumpert's opinion that the testing performed was insufficient is rejected. However, Claimant must still prove by way of medical evidence that her condition was caused by her industrial exposure rather than an idiopathic cause.

45. ***ILD Incurred In or Arose Out Of and In The Course Of Employment.*** Dr. Liggett, Dr. Snyder, and Dr. Pearle all agree that Claimant's ILD was caused by her occupational exposure. Dr. Schumpert opined that the materials Claimant worked with were unlikely to cause her pulmonary condition and that if Claimant's work had caused her condition, he would expect more than one employee to be sick.

46. Dr. Snyder is Claimant's primary care physician and has been since 2021. He has practiced medicine since 2003 and is board certified in family medicine. JE 26:1655-1656. Dr. Snyder was not deposed. Dr. Snyder's opinion is the weakest opinion due to his lack of expertise in the subject matter and his clear stance as an advocate for his patient. Dr. Snyder is a family practice physician and does not specialize in pulmonology, toxicology, epidemiology, or a related field giving him specialized expertise. Despite Claimant reporting to him that many safety features regarding exposure were implemented in 2007 and 2009 (see JE 25:1651), Dr. Snyder wrote "I can't help but think how many other people have been affected by Encoder's lack of protection for

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[8] Compare JE 29:1716-1717 with JE 27:1669-1673.

their employees." JE 25:1644. Dr. Snyder "felt responsible to prove without a doubt that the exposure has destroyed her lungs and her life." *Id.* Within the context of Dr. Snyder's area of expertise and clear stance as an advocate, his opinion is given no weight. The rest of the medical opinions will be analyzed below.

47. Dr. Liggett is and has been Claimant's treating physician for her pulmonary condition since September of 2022 and she still works for KCLA. Dr. Liggett is board certified in pulmonary disease, internal medicine, and critical care, and has been practicing medicine since 2012. JE 28:1674. Dr. Liggett was not deposed.

48. Dr. Pearle is a professor at the UC Irvine School of Medicine and the president and medical director for California Research Medical Group, Inc. He graduated medical school in 1973 and is board certified in pulmonary disease and internal medicine. JE 33:1783. Dr. Pearle was not deposed.

49. Dr. Schumpert graduated medical school in 1992 and has a master's in public health. JE 30:1724. Dr. Schumpert completed a residency in Occupational and Environmental Health in 1995 and has worked as Founder/Chief Medical Officer for Resources for Environmental and Occupational Health since 2001 and as a faculty affiliate for the University of Montana since 2009. *Id.*

50. All three doctors agreed that ILD can occur idiopathically. Dr. Schumpert testified that "the big smoking guns are the occupational exposures" for ILD, but once occupational exposure, rhematic and autoimmune diseases, and medications are ruled out, ILD is considered idiopathic. Dr. Schumpert did not quantify how many patients with ILD receive a confirmed cause of their ILD vs. idiopathic. Dr. Pearle also did not quantify how often ILD is idiopathic but wrote that Claimant's case demonstrated an "obvious and appropriate" occupational exposure and that it

did not make sense to deem Claimant's ILD idiopathic.

51. In Dr. Schumpert's written report, he listed all the epoxies and solders and then listed their components and corresponding CAS (Chemical Abstract Service) number. He utilized PubChem and PubMed to research their effects. JE 29:1700. Dr. Schumpert was very concerned about the specific products Claimant was using because materials like crystalline silica are a known cause of silicosis (ILD caused by silica inhalation). However, his report is incomplete and flawed.

52. First, Dr. Schumpert's opinion rests on the foundation that he has examined "all" the components and that none of them can cause interstitial lung disease: "After reviewing all the Safety Data Sheets provided by EPC, I do not believe any of the products used at EPC would produce the individual's pulmonary fibrosis." *Id.* at 1722. However, there are at least seven unexamined components that are proprietary epoxy resins, the component Dr. Liggett identifies as the cause of Claimant's condition, and several more unidentified components which are not resins. *Id.* 1703-1706, 1709-1710, 1712-1715. When Dr. Schumpert was unable to identify a resin, he wrote about epoxy resins "in general" noting that they "are known to be skin and pulmonary sensitizers." However, in his conclusion he wrote "[t]he primary dermal effect of epoxy resin systems is allergic contact dermatitis, not a pulmonary condition." JE 29: 1704, 1718. Whether or not the epoxy resins Claimant worked with are pulmonary sensitizers is the question Dr. Schumpert was trying to answer, and he answered it both ways. This contradiction in his written opinion about epoxy resins "in general" severely undercut Dr. Schumpert's conclusion that none of the products were responsible for Claimant's condition. This flaw is critical to reaching any conclusion regarding causation because he was unable to identify and analyze several of the epoxy resins, making his opinion about epoxy resins "in general" the most relevant opinion for any causation analysis.

53. Secondly, Dr. Schumpert did not discuss that at least one component (modified acrylamide) associated with pulmonary fibrosis is contained within a "general purpose adhesive." JE 29:1714. This omission is very noticeable when compared to the treatment Dr. Schumpert gave to other components which cause pulmonary fibrosis, namely silica and kaolin, which both received paragraphs explaining their origin, typical use, latency studies, and their physical structure. JE 29:1718-1719. Dr. Schumpert specifically explained why both silica and kaolin (and many more materials) were unlikely to cause Claimant's condition. There is no similar analysis regarding how or why acrylamide would or would not have caused Claimant's condition.

54. Thirdly, Dr. Schumpert wrote that if the epoxy resins Claimant used were the source of her symptoms, he would have "expected her to voice complaints of skin rashes, eye irritation, and nasal irritation long before the onset of her pulmonary symptoms." Claimant testified about her ongoing congestion and tear duct irritation prior to 2021, which Dr. Schumpert seems to have entirely discounted or misunderstood. Regarding her visit to the emergency room in 2007 for contact dermatitis from epoxy exposure, Dr. Schumpert testified that no one determined what caused the dermatitis. This is incorrect. Dr. Schumpert did note his difficulty with reading the handwritten paperwork, but this reader was able to clearly read "epoxy exposure" and "avoid epoxy" in Claimant's hospital records. JE 4:37, 41. Dr. Schumpert recorded that Claimant's hospital records contained the MSDS for araldite with her admission paperwork and that "[s]he felt the rash might have been caused by her exposures at work," but did not discuss this in his conclusions and seemingly forgot about it by the time of his deposition. JE 29:1680. Dr. Schumpert ignored or misunderstood that Claimant had the exact reaction to epoxy resins he predicted.

55. Lastly, Dr. Schumpert wrote that if Claimant's work was the cause of her condition, he would expect more than one of the 170 employees to have ILD. On its face, this observation is

flawed. Dr. Schumpert does not know if any of the 10,000 employees who have ever worked for Employer from 1969 onward developed ILD. HT 105:11-114:14. While a cluster of cases would certainly strengthen Claimant's case, the lack of similar cases out of the 170 people who currently work at Employers does not significantly weaken her case.

56. Dr. Pearle and Dr. Schumpert both endorsed the following mechanism of injury: exposure to an allergen, dermal allergic response (dermatitis), continued exposure, continuing and escalating development of hypersensitivity/inflammatory response to the original allergen, and the inflammatory response eventually causing damage (fibroids). Dr. Schumpert's opinion is that only asthma has been shown to result from this specific allergen in the available literature, which is an obstructive, not restrictive, lung disease. Dr. Pearle's opinion is much broader: that colophony and soldering fumes, which both contain rosins, caused an allergic/inflammatory response and Claimant's inflammatory response has developed into ILD. Dr. Pearle repeatedly acknowledged that colophony can cause asthma, however, he maintained his opinion regarding Claimant's ILD: "These rosins demonstrate their allergic or irritative tendencies by reports of skin rash and occupational asthma. Hypersensitivity pneumonitis with ensuing fibrosis is the logical extension of this inflammatory response." JE 32:1759.

57. Unlike Drs. Pearle and Schumpert, Dr. Liggett was not aware of the exact products Claimant was using at Employers, but was aware Claimant worked with epoxies and soldered. HT 90:21-91:1; JE 11. Dr. Liggett's opinion regarding materials was: "Medical literature describes inhalation exposure to low molecular weight sensitizing chemicals, including epoxy resins as a cause of interstitial lung disease…" Dr. Schumpert wrote that epoxy resins in general "are known to be skin and pulmonary sensitizers, producing allergic contact dermatitis and allergic asthma." JE 29:1704, 1718. Dr. Liggett says the literature supports her theory of injury regarding epoxy resins,

and Dr. Schumpert flatly disagrees. Neither side offered a citation for their assertions other than Dr. Schumpert's cite to Fregret for the presumption that 90% of patients sensitized to a certain epoxy resin first show dermatitis. As discussed above, Dr. Schumpert never elaborated beyond this because he never considered Claimant's testimony regarding her eye or nasal irritation or her 2007 hospital admission for allergic dermatitis caused by epoxy.

58. The main difference between Dr. Schumpert's opinion and Dr. Liggett's opinion is Dr. Schumpert's assertion that the epoxy resins Claimant worked with do not cause ILD. Dr. Schumpert's opinion, as noted above, is flawed on this point as Dr. Schumpert did not analyze all the components, either because they were proprietary, not listed, or the analysis is missing (acrylamide). In contrast, Dr. Liggett wrote that the literature does support low molecular weight epoxy resins causing ILD. Both Drs. Pearle and Schumpert explained the mechanism by which those epoxies could cause ILD via allergic reaction → hypersensitivity → inflammation → fibroids.

59. Defendants argue that Claimant must prove a specific component can cause ILD and that she was exposed to that component at work. Defendants are generally correct. The issue is what level of "specificity" is required regarding the component. Dr. Liggett points generally to the class of epoxy resins. Dr. Liggett's lack of specificity would normally greatly weaken her opinion, especially when compared with a line-by-line comparison of the components as done by Dr. Schumpert. However, Dr. Schumpert's line-by-line analysis is missing several components and his "general" opinions on epoxy resins are contradictory (see ¶ 52). Dr. Liggett's firm, but general opinion, is stronger than Dr. Schumpert's specific, but incomplete and flawed opinion.

60. Both Drs. Liggett and Pearle agreed Claimant's industrial exposure was the cause of her ILD. Weighing the medical opinions was particularly difficult in this case due to the complicated nature of the claim and the significant issues with all the medical opinions offered.

However, Dr. Liggett and Dr. Pearle clearly and cogently explain how Claimant's work exposure to epoxies caused Claimant's ILD. For the reasons discussed above, Dr. Schumpert's opinion failed to overcome Claimant's treater and her expert's opinion that her occupational exposure caused her ILD.

61. ***Hazards of ILD Characteristic of and Peculiar to Employment at Encoder Products***. In addition to proving actual causation, Claimant must also prove the hazards of ILD are "characteristic of and peculiar to" her occupation. Idaho Code § 72-102(21)(a). This phrase has been construed "…in the sense that the conditions of that employment must result in a hazard which distinguishes it in character from the general run of occupations." *Bowman v. Twin Falls Cost. Co., Inc.*, 99 Idaho 312, 323, 581 P.2d 770, 781 (1978). In applying this rule to a case in which carpal tunnel was caused by employment exposing the claimant to long periods of repetitive upper extremity motions – including writing, keyboarding, and gripping – the Idaho Supreme Court took notice of the fact that while a significant fraction of occupations might require of an employee that they drive, write, and use a computer keyboard, an equally great number do not. *Mulder v. Liberty Northwest Ins. Co.*, 135 Idaho 52, 14 P.3d 372 (2000).

62. Here, it has been found that the hazards (epoxy resin and soldering fumes) to which Claimant was exposed in her work at Encoder Products did cause her ILD. It is also proven that the risk of ILD to which Claimant was exposed is characteristic of and peculiar to her occupation. Her work with epoxy and soldering fumes is clearly not characteristic of the general run of occupations.

63. ***Actual and Total Incapacity***. The medical evidence clearly establishes Claimant's incapacity from performing the work of assembling encoders by the application of epoxy resins and soldering. On March 16, 2021, she was instructed by Dr. Wilson who was releasing her from a

multi-day hospital stay, not to return to work until cleared by pulmonology.

64. Claimant has met her burden of showing she contracted a compensable occupational disease.

65. **Medical Care.** Idaho Code § 72–432(1) requires an employer to provide an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital service, medicines, crutches and apparatus, as may be reasonably required by the employee's physician or needed immediately after an injury or manifestation of an occupational disease, and for a reasonable time thereafter.

66. Claimant is entitled to past medical care to diagnose and treat her ILD. Claimant is entitled to future medical care to treat her ILD. Defendants' expert did not identify any unreasonable or unnecessary medical care, nor did Defendants make an argument regarding such. Claimant has met her burden to show entitlement to future and past medical care related to this condition.

67. **Temporary Disability Benefits.** Income benefits during periods of temporary disability are payable to an injured worker pursuant to the provisions of Idaho Code § 72-408.

68. Claimant is entitled to temporary disability benefits from the date of her first disablement and ongoing until she reaches medical stability. Claimant is still seeking treatment in the form of a lung transplant and is not yet medically stable.

69. **Permanent Partial Impairment (PPI).** "Permanent impairment" is any anatomic or functional abnormality or loss after maximal medical rehabilitation has been achieved and which abnormality or loss, medically, is considered stable or nonprogressive at the time of evaluation. Permanent impairment is a basic consideration in the evaluation of permanent disability, and is a contributing factor to, but not necessarily an indication of, the entire extent of permanent disability. Idaho Code § 72-422. The Commission is the ultimate evaluator of impairment. *Waters v. All Phase*

Construction, 156 Idaho 259, 262, 322 P.3d 992, 995 (2014).

70. No physician has declared Claimant at maximum medical improvement and Claimant is still seeking a lung transplant. It is premature to determine Claimant's PPI without a declaration of medical stability.

71. **Total and Partial Permanent Disability.** 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 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 impairment and by pertinent nonmedical factors provided in Idaho Code § 72-430. Idaho Code § 72-425. Idaho Code § 72-430(1) provides that in determining percentages of permanent disabilities, account should be taken of the nature of the physical disablement, the cumulative effect of multiple injuries, the age and occupation of the employee at the time of the accident causing the injury, consideration being given to the diminished ability of the employee to compete in an open labor market within a reasonable geographical area considering all the personal and economic circumstances of the employee, and other factors as the Commission may deem relevant. In sum, the focus of a determination of permanent disability is on the claimant's ability to engage in gainful activity. *Sund v. Gambrel*, 127 Idaho 3, 7, 896 P.2d 329, 333 (1995).

72. There are two methods by which a claimant can demonstrate that he or she is totally and permanently disabled. The first method is by proving that his or her medical impairment together with the relevant nonmedical factors totals 100%. If a claimant has met this burden, then total and permanent disability has been established. The second method is by proving that, in the event he or she is something less than 100% disabled, he or she fits within the definition of an odd-

lot worker. *Boley v. State of Idaho, Industrial Special Indemnity Fund*, 130 Idaho 278, 281, 939P.2d 854, 857 (1997). An odd-lot worker is one "so injured that he can perform no services other than those which are so limited in quality, dependability or quantity that a reasonably stable market for them does not exist." *Bybee v. State of Idaho, Industrial Special Indemnity Fund*, 129 Idaho 76, 81, 921 P.2d 1200, 1205 (1996). Such workers are not regularly employable "in any well-known branch of the labor market — absent a business boom, the sympathy of a particular employer or friends, temporary good luck, or a superhuman effort on their part." *Carey v. Clearwater County Road Department*, 107 Idaho 109, 112, 686 P.2d 54, 57 (1984). Odd-lot presumption arises upon showing that a claimant has attempted other types of employment without success, by showing that she or vocational counselors or employment agencies on her behalf have searched for other work and other work is not available, or by showing that any efforts to find suitable work would be futile. *Boley, supra.*; *Dehlbom v. ISIF*, 129 Idaho 579, 582, 930 P.2d 1021, 1024 (1997).

73. Claimant is not yet at MMI for her occupational disease. At the time of hearing, she was pursuing a lung transplant at the University of Utah. Therefore, determining Claimant's disability must wait until she is declared MMI.

74. **Attorney's Fees.** Claimant claims Defendants unreasonably denied this claim for benefits. Attorney fees are not granted as a matter of right under the Idaho Workers' Compensation Law, but may be recovered only under the circumstances set forth in Idaho Code § 72-804 which provides:

> 72-804. ATTORNEY'S FEES — PUNITIVE COSTS IN CERTAIN CASES. If the commission or any court before whom any proceedings are brought under this law determines that the employer or his surety contested a claim for compensation made by an injured employee or dependent of a deceased employee without reasonable ground, or that an employer or his surety neglected or refused within a reasonable time after receipt of a written claim for compensation to pay to the injured employee or his dependents the compensation provided by law, or without reasonable grounds discontinued payment of compensation as provided by law

> justly due and owing to the employee or his dependents, the employer shall pay reasonable attorney fees in addition to the compensation provided by this law. In all such cases the fees of attorneys employed by injured employees or their dependents shall be fixed by the commission.

The decision that grounds exist for awarding attorney fees is a factual determination which rests with the Commission. *Troutner v. Traffic Control Company*, 97 Idaho 525, 528, 547 P.2d 1130, 1133(1976). It is axiomatic that a surety has a duty to investigate a claim in order to make a well-founded decision regarding accepting or denying the same. *Akers v. Circle A Construction, Inc.*, IIC 1998-007887 (Issued May 26, 1999). Defendants' grounds for denying a claim must be reasonable both at the time of the denial and in hindsight. *Bostock v. GBR Restaurants*, IIC 2018-008125 (Issued November 9, 2020).

75. Defendants ultimately had three bases to deny this claim: (1) pre-existing condition; (2) untimely reported; (3) unrelated to work. A review of Ms. Martin's testimony and Exhibit 38 demonstrates this claim was treated as an injury case by Defendants, not an occupational disease case, and unreasonable adjusting decisions flowed from that incorrect perception.

76. At the time of the denial on April 20, 2022, Defendants saw that Claimant had over a year of treatment for her ILD specifically, and arguably symptoms as far back as 2019. Defendants pointed to these medical records as evidence of a pre-existing condition. However, Claimant had worked for Employer since 2004, and Defendants knew that. There was no evidence that Claimant had lung symptoms of any kind prior to working for Employer. This denial was based on the incorrect belief that the beginning symptoms of Claimant's occupational disease were a "pre-existing" condition. Denial on this basis was unreasonable.

77. Defendants also denied this case on the basis that it was not reported timely on February 14, 2022. At the time of Defendants' denial, Claimant's medical records showed she had discussed with her physicians whether her condition might be related to her work. As discussed in

the notice section, when a claimant has "knowledge" that their disease is work related, this knowledge triggers the reporting requirement. This knowledge is accomplished by either a medical authority informing the claimant it is related to work, or the claimant "knowing" it is related. The existence of "knowledge" depends upon an extremely high standard as set forth in *Dahlke, supra*. Defendants appear to have recognized that that was the relevant prerequisite for triggering Claimant's reporting requirement at the time of their denial. In the adjuster's claim notes dated February 17, 2022, it was noted that "date of knowledge that condition may be work related may come into play." JE 38:1820. Thereafter, Defendants requested records from KC Asthma and Lung and Prairie Family Medicine, which showed that Dr. Snyder related her condition to her work on January 18, 2022, but that Dr. Scoggins was still conducting testing and there was no "unified diagnosis" at the time. In other words, the records in Defendants' possession showed the earliest Claimant was informed by a medical authority that her condition was work related was January 18, making her February 14 report timely. This was confirmed by Ms. Martin at hearing. See HT 23:3-10. The remaining basis for untimely reporting would turn on whether Claimant "knew" it was related to her work. *Dahlke* was published in 2014 and was reaffirmed by the Commission prior to this denial and by the Idaho Supreme Court recently. See *Boutwell v. Spears Manufacturing*, IC 2017-011374 (May 2, 2019), and *Lowery v. Kuykendall*, 560 P.3d 1069 (2024). Claimant's suspicions that her condition was related to her work was not "knowledge" based on then existing law and it was not a reasonable basis to deny the claim at that time.

78. Lastly, Defendants denied this claim on the basis that her condition was unrelated to her work. This was not based on a medical opinion, but a review of the medical records. HT 24:3-24. Ms. Martin explained that the medical records showed she had symptoms back in 2019 and Claimant's pulmonologist, Dr. Scoggins, had not yet related her condition to her work, only her

primary care physician. Defendants did not reach out to Dr. Scoggins regarding his May 6, 2021, notation that it was "possibl[y]" work related, relying on the fact that the standard is "probable." HT 28:3-8. Defendants did not secure their own physician's medical opinion regarding compensability until December 2023. Reaching out to either their own expert or Dr. Scoggins would have revealed that occupationally caused ILD is a diagnosis of exclusion, and that further testing was required before any determination could be made regarding causation. When one treater says the condition is definitely related and another treater says it is possibly related, further investigation is the reasonable action, not denial. This was an unreasonable basis to deny the claim.

79. This was an extremely atypical claim from the beginning and should have received more attention and investigation from Defendants. Every reason used to deny the claim in April of 2022 was unreasonable. Claimant is entitled to attorney's fees.

CONCLUSIONS OF LAW

1. Claimant has proven she incurred an occupational disease;

2. Claimant provided timely notice of her occupational disease;

3. Claimant is entitled to past and future medical care for her condition;

4. Claimant is entitled to past due temporary disability benefits and future temporary disability benefits until she reaches medical stability;

5. Determining Claimant's permanent partial impairment and permanent total/partial disability is premature;

6. Claimant is entitled to attorney's fees;

7. All other issues are moot.

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 10th day of February, 2025.

INDUSTRIAL COMMISSION

Sonnet Robinson

Sonnet Robinson, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of March, 2025, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail and *E-mail transmission* upon each of the following:

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BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JULIE YATES, Claimant, v. ENCODER PRODUCTS COMPANY INC., Employer, and TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, Surety, Defendants.	**IC 2022-004939** **ORDER** **FILED MARCH 3, 2025** **IDAHO INDUSTRIAL COMMISSION**

Pursuant to Idaho Code § 72-717, Referee Sonnet Robinson submitted the record in the above-entitled matter, together with her 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 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 proven she incurred an occupational disease.

2. Claimant provided timely notice of her occupational disease.

3. Claimant is entitled to past and future medical care for her condition.

4. Claimant is entitled to past due temporary disability benefits and future temporary disability benefits until she reaches medical stability.

5. Determining Claimant's permanent partial impairment and permanent total/partial disability is premature.

6. Claimant is entitled to attorney's fees under Idaho Code § 72-804. Unless the parties can agree on an amount for attorney's fees, Claimant's counsel shall, within twenty-one (21) days of the entry of the Commission's decision, file with the Commission a memorandum of attorney's fees incurred in counsel's representation of Claimant in connection with these benefits, as well as an affidavit in support thereof, with appropriate elaboration on *Hogaboom v. Economy Mattress*, 107 Idaho 13, 684 P.2d 990 (1984). The memorandum shall be submitted for the purpose of assisting the Commission in discharging its responsibility to determine reasonable attorney's fees in this matter. Within fourteen (14) days of the filing of the memorandum and affidavit, Defendants may file a memorandum in response to Claimant's memorandum. If Defendants object to the time expended or the hourly charge claimed, or any other representation made by Claimant's counsel, the objection must be set forth with particularity. Within seven (7) days after Defendants' counsel files the above-referenced memorandum, Claimant's counsel may file a reply memorandum. The Commission, upon receipt of the foregoing pleadings, will review the matter and issue an order determining attorney's fees.

7. All other issues are moot.

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

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DATED this ___3rd___ day of ____March____________, 2025.

INDUSTRIAL COMMISSION

Claire Sharp
____
Claire Sharp, Chair

____
Aaron White, Commissioner

Thomas E. Limbaugh
____
Thomas E. Limbaugh, Commissioner

ATTEST:

Kameron Slay
____
Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of March 2025, a true and correct copy of the foregoing **ORDER** was served by *E-mail transmission* and by regular United States Mail upon each of the following:

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