BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

DONNA ROBERDS, Claimant, v. THE HOME DEPOT U.S.A. INC., Employer, and NEW HAMPSHIRE INSURANCE COMPANY, Surety, Defendants.	**IC 2013-032278** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** FILED MAY 5, 2025 ~~IDAHO INDUSTRIAL COMMISSION~~

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Industrial Commission assigned this matter to Referee Alan Taylor. Upon his retirement this matter was reassigned to Referee Douglas Donohue who conducted a hearing in Lewiston in two parts, on September 7, 2023, and June 28, 2024. After a Complaint filed in 2014 and the withdrawal of Claimant's attorney in 2018, Claimant has prosecuted her claim *pro se*. Scott Wigle represented Employer and Surety. The parties presented oral and documentary evidence. A post-hearing deposition was taken. The parties submitted briefs. The case came under advisement on December 23, 2024. This matter is now ready for decision.

ISSUES

The issues to be decided according to the Notice of Hearing are:

1. Whether the condition for which Claimant seeks benefits was caused by the alleged industrial accident;

2. Whether and to what extent Claimant is entitled to:
   a) Temporary disability,
   b) Permanent partial impairment,
   c) Permanent disability in excess of impairment including total and permanent disability, and

d) Medical care; and

3. Whether Claimant is totally and permanently disabled under the odd-lot doctrine.

CONTENTIONS OF THE PARTIES

Claimant contends she was injured when a microwave oven was allowed to slide down a portable stairway rail. It struck her in the head at her left cheek. Employer misdiagnosed the severity of her condition, delayed medical treatment, and afterward harassed her at work because of her injury. Moreover, early physicians relied upon Employer's misdiagnosis. These doctors disregarded her reports of memory difficulties and other symptoms of traumatic brain injury (TBI). As a result, Employer assigned duties which were inconsistent with her ability following the injury. Claimant experienced difficulty performing at work because of impaired mental function caused by the injury. She was written up or orally warned for safety and policy infractions. These occurred either because of her mental function or because Employer was retaliating because she filed a claim. She was treated unfairly compared to other employees and ultimately fired.

Claimant further contends that physical therapy records have been falsified, including the discharge summary dated May 7, 2014. Relevant documents have been deliberately hidden by Employer and the initial treating physician. Claimant also accuses, "The commission also aided in hiding this document from me." "[T]his document" refers to a written statement authored by the coworker who dropped the microwave. She contends that Dr. Beaver's report was substantially deficient and corrupt. Multiple physicians committed medical malpractice. Her former attorney did not perform as she expected.

Employer and Surety admit the December 5, 2013, accident occurred. Claimant did not lose consciousness nor report amnesia. Claimant initially declined medical treatment. The

following week she sought treatment. She suffered a bruise on her cheek, and a cervical strain was diagnosed. Light-duty work, medicine, and physical therapy were provided. Claimant was released to full-duty work on February 19, 2014. Claimant was fired about the end of July 2014. Two weeks later she began again seeking treatment with dramatic history and symptoms.

EVIDENCE CONSIDERED

The record in the instant case included the following:

1. Oral testimony at hearing of Claimant, and at continued hearing, oral testimony of Michelle Civitello;
2. Claimant's exhibits 1 through 33, except for portions of pages 11 through 25 in exhibit 27 which contain hearsay not cured by the testimony of the persons offering the information;
3. Defendants' exhibits 1 through 28; and
4. Post-hearing deposition of Craig Beaver, Ph.D.

The Referee submits the following findings of fact and conclusions of law for the approval of the Commission and recommends it approve and adopt the same.

FINDINGS OF FACT

Introduction and Accident

1. Claimant began working for Employer on October 21, 2013. On December 5, 2013, Claimant was assisting a coworker load microwave ovens from a high shelf onto a cart. For the first few boxes, the coworker climbed a mobile stairway which had an angled rail on each side, picked a box holding a microwave oven, descended the stairway, and placed the box on the cart. Claimant stood nearby. One oven came out of the coworker's grip either accidentally or not and slid down the rails. The boxed microwave struck Claimant's face at her left cheek. It then landed on the floor. Claimant remained standing and did not lose consciousness. Employer noticed a red mark on Claimant's cheek. Claimant declined Employer's offer of medical attention. She continued working albeit at a lighter set of tasks for the remainder of her shift. Claimant noticed

neck pain and a headache which did not abate. Pain at the bruise on her left cheek went away in a few days, maybe a week. At hearing she reported that she felt "fuzzy" immediately after the accident.

2. After one or a few days Claimant informed Employer that she wanted medical attention. In her 2015 deposition (when she still was represented by counsel) Claimant testified that her main symptom was a headache. Also, Claimant admitted that Employer did not refuse to allow Claimant to seek medical attention. Rather, her supervisor, Ms. Civitello, asked Claimant to allow her opportunity, perhaps two weeks, to arrange such medical care. Claimant delayed treatment based upon this representation.

Medical care: Accident date through July 2014

3. It was 10 days after the accident, on December 15, 2013, before Claimant first visited any medical provider. She visited an emergency room for symptoms unrelated to the accident. The ER report does not indicate that she mentioned the December 5 accident. Examination did not note any bruising or evidence of trauma to her head or face. At "Neuropsychological" the PA reported "negative."

4. On December 16, 2013, Claimant first visited Valley Medical Center in Lewiston with a complaint of a "hurt neck" which she related to the accident. She denied that she fell. She denied loss of consciousness. She did report dizziness and nausea had occurred. She reported paresthesias and radiating pain into her arms. She stated that she had missed work on December 11 and returned to work on December 12. Examination revealed she was oriented to time, place, and person with memory and judgment intact as well as normal mood and affect. The physician provided a restriction against lifting/carrying 11-20 pounds. He ordered X-rays and prescribed a

muscle relaxer. The radiologist reported mild degenerative disease and a loss of c-spine lordosis. The physician related the loss of lordosis to muscle spasms. He diagnosed a crushing injury of her face and scalp and a neck sprain/strain. Treatment was provided for a soft tissue neck injury. In an early January follow-up visit, he recommended physical therapy.

5. On December 26, 2013, she returned and reported that her neck pain was resolving. At a visit one week later she reported that her neck pain was unchanged in the past week.

6. On January 16, 2014, improvement was noted and medication reduced to ibuprofen. On January 22, 2014, physical therapy was prescribed. Also, the physician approved Claimant's request for a refill of her muscle relaxers. Although Claimant maintained her reports of neck pain radiating into her back and arms, these medical records do not indicate that she repeated her initial mention of nausea, dizziness, or any similar symptom which might invite inquiry about a concussion or other traumatic brain injury.

7. At her initial physical therapy visit Claimant did not endorse any symptoms upon which a physical therapist might consider concussion or other traumatic brain injury. She did endorse infrequent moderate headaches, and "slight difficulty" when attempting to concentrate. Rather, Claimant's neck, upper back, shoulder and arms were the focus of treatment. Also, on February 18, 2014, Claimant denied both headaches and any difficulty concentrating. This was deemed to be connected to her decreasing neck pain.

8. Claimant was assigned light-duty work for a time. Ultimately, she was released to full-duty work on February 19, 2014.

9. At a visit on March 12, 2014, Claimant complained of neck stiffness, and difficulty lifting lumber at work. She included complaints in multiple body parts. The PA opined, "[M]any

of her pains are more related to new activities exacerbating new symptoms unrelated to her neck injury." He did not impose any restrictions. He requested an IME.

10. About April 7, 2014, the physical therapist deemed Claimant maximally served by physical therapy. Physical therapy had addressed symptoms suggesting potential cervical issues but did not mention TBI or similar potential symptoms. When Claimant reported to her treating physician that she was being released from physical therapy she endorsed continuing neck pain with nausea and numbness and tingling.

11. After treating a flare-up of symptoms arising from her return to full-duty work in February and symptoms had again subsided, Claimant was discharged from physical therapy having met all goals on May 7, 2014. Her last therapy session occurred April 2, 2014. She had attended 15 sessions.

12. On May 13, 2014, physiatrist J. Craig Stevens, M.D., reviewed records and examined Claimant for forensic purposes at Defendants' request. He noted an absence of objective findings and expressly noted that the muscle spasms and loss of cervical lordosis reported in the early medical notes had resolved. He noted that much of her physical therapy had treated subjective complaints without finding objective signs or symptoms. He opined Claimant suffered a contusion and cervical strain from the accident. These had largely resolved. He opined there was no evidence of neurological injury. He opined there was no objective basis for continued medical treatment and that her subjective complaints should subside in due course. He deemed her prior treatment "reasonable" but "somewhat excessive" and suggested no further treatment beyond occasional ibuprophen for headache as needed. He opined she was at MMI and without PPI.

July 2014 Termination

13. About the end of July 2014, after write-ups for safety and policy violations, Claimant was terminated by Employer for an unsafe safety practice unrelated to the accident.

Medical Care: July 2014 to Hearing

14. Medical records beginning after she was fired by Employer to the date of hearing show multiple, varying, often inconsistent reports by Claimant of subjective symptoms both mental and physical. The number, variance, and inconsistency of specific complaints on specific dates are not comprehensively set forth below. Only a few salient examples are noted in these findings.

15. On June 10, 2015, Claimant returned to physical therapy. This time she reported a history of concussion-type symptoms. In follow-up visits, the physical therapist treated her symptoms as stemming from a cervical injury or dysfunction and diagnosed "cervicalgia."

MRIs and diagnostic imaging

16. On September 18, 2014, a brain MRI was read by the radiologist as showing "[n]o acute intracranial abnormalities." He deemed a small bright spot as "likely not the cause of the patient's presenting symptoms." The first C-spine MRI, dated September 30, 2014, showed cervical spondylosis particularly at C5-6.

17. On January 8, 2016, a bone scan of her C-spine showed no abnormality.

18. On September 8, 2016, a C-spine MRI showed the same disc bulge at C5-6 which did not affect the nerve root and some mild degeneration elsewhere with no other abnormalities.

19. On December 9, 2020, another C-spine MRI showed no change.

20. On May 30, 2023, another C-spine MRI showed no change.

Scott Osburn, D.O., August 2014 – June 2016

21. On August 11, 2014, after Claimant had been fired, she reported, "Coworker dropped a microwave on patient. Memory and vision has [sic] been affected." This inaccurate version of the event and this description of symptoms are the first of their kind in the record. Moreover, "new onset of headaches and memory loss" appears for the first time as well. Scott Osburn, D.O., examined her and noted, "Recent and remote memory: Intact." He prescribed an MRI and return to physical therapy. He noted this visit was for a "second opinion."

22. On November 19, 2014, Claimant made her second visit to Dr. Osburn. He noted, "The patient is being seen for follow-up of post-concussion syndrome." At this visit Claimant added jaw symptoms as a new complaint.

23. At her next visit on March 5, 2015, with Dr. Osburn, Claimant added "stable cognitive impairment" as a symptom.

24. At her next visit with Dr. Osburn on May 4, 2015, Claimant changed her history to report that the "microwave fell on her head and upper back." Dr. Osburn noted that he was "very concerned" about her psychological condition.

25. At her next visit on August 17, 2015, Claimant added photophobia and phonophobia to her symptom list.

26. On June 13, 2016, after examination, Dr. Osburn opined that "This is all due to work-related injury." He appears to include psychological anxiety and depression as well as GERD to have been caused by the accident despite the greatly belated appearance of these symptoms. Her symptoms did result in a physician's release from jury duty.

Jean Thomas M.D., September 2014 – January 2018

27. On September 22, 2014, Claimant visited Jean Thomas, M.D., with complaints of daily headaches, nausea, arm pain, back pain and numbness. By history, she mentioned feeling "fuzzy" headed, and not clear thinking. She described this as "intermittent." Examination was nondiagnostic. Dr. Thomas reviewed the C-spine X-ray and brain MRI and deemed them "unrevealing." Dr. Thomas prescribed Elavil, an antidepressive, and "told her this is the drug of choice for post concussive [syndrome]."

28. Claimant returned on November 3, 2014. Dr. Thomas increased the Elavil dosage.

29. Claimant returned on January 6, 2015. Dr. Thomas added diagnoses related to thyroid and TMJ and adjusted Claimant's medications. Claimant offered "some paperwork" and asked Dr. Thomas to comment.

30. Claimant returned on April 6, 2015. She arrived with a written list of complaints as she had on previous visits. After examination, Dr. Thomas limited the diagnosis, so-called "assessment," to "headache." Dr. Thomas noted "multiple somatic complaints" of unclear etiology with a lack of response to medications.

31. Claimant returned on July 8, 2015. Claimant reported an idiosyncratic medication regimen with nontypical responses to certain medications. Claimant wanted another MRI.

32. Claimant returned on April 18, 2016. Claimant's friend had been attending these with her. On this occasion he supported her reports of mental disturbance.

Other Medical Records

33. On March 16, 2015, Rebecca Alexander, Ph.D., evaluated Claimant for purposes of Social Security Disability. At this initial visit Claimant's report of the accident included more

dramatic symptoms than contemporaneous observations by Ms. Civitello and more dramatic symptoms than early medical records described. Claimant's representations about the days following the accident are inconsistent with her representations given at other times. Claimant emphasized her perceived disabilities to Dr. Alexander. After testing, Dr. Alexander diagnosed "somatic symptom disorder." Dr. Alexander found normal brain function after objective testing despite endorsements of mental function disability by Claimant.

34. On April 11, 2016, Claimant received psychological testing performed by social worker Brandon McIntosch. Claimant attributed all subjective physical and mental complaints to the work accident and claimed these had been present continuously since the accident. This history is inconsistent with medical records made between the accident and her date of termination. She was diagnosed with major depressive disorder and unspecified anxiety disorder. Subsequent counselling visits ensued with Mr. McIntosh and others.

35. On July 11, 2016, April Piscitello, N.P., examined Claimant for GERD and dyspepsia. Claimant dated her symptoms to the accident.

36. On September 6, 2016, Liliana Saunero-Nava, M.D., examined Claimant for low back and neck pain. She noted, "Even though patient complaints of localized lumbar pain I was not able to find/localize it nor reproduce or elicit with any maneuvers. She is moving quite freely." Claimant requested another MRI. Dr. Saunero-Nava declined.

37. On September 22, 2016, orthopedist Greg Dietrich, M.D., examined Claimant for neck pain with intermittent arm symptoms. He noted, "She does not really complain of any symptoms consistent with myelopathy." He noted findings from the recent C-spine MRI. He advised against surgery.

38. On February 9, 2017, Dr. Saunero-Nava took lumbar X-rays upon Claimant renewed complaints of worsening lumbar pain. The X-rays showed mild scoliosis with minimal degenerative changes.

39. On March 9, 2017, Gary Haas, D.O., examined Claimant for neck, shoulder and arm pain. Claimant gave a history with inaccurate details. For the first time Claimant added bowel and bladder issues. Dr. Haas reviewed the September 3, 2014, C-spine MRI. Despite some speech anomalies Dr. Haas found her cranial nerves "grossly intact." Observing some shoulder anomalies Dr. Haas noted, "I am not exactly sure what was causing this." He provided a cervical epidural steroid injection. At her next visit Claimant was "equivocal" about whether it helped. Nevertheless he soon after performed another injection. In following months Dr. Haas performed nerve branch blocks at C3 through C6 for diagnostic purposes. These did not assist in a diagnosis. By June 15, 2017, Dr. Haas was "starting to feel that this [possible post-concussive syndrome by history] could likely be contributing." He tried other medications. At a visit on September 28, 2017, Dr. Haas gave her a book which recommended cognitive behavioral therapy exercises.

40. From April 17, 2017, to January 10, 2018, Larry Bearden (credentials not found in the record) at St. Joseph Outpatient Mental Health conducted several therapy sessions. Over time they explored Claimant's dissatisfaction with her workers' compensation attorney, a "stroke" her boyfriend suffered, and other stressors.

41. On July 24, 2017, Brian Campbell, Ph.D., neuropsychologist, reported his evaluation of Claimant. The evaluation occurred over two days. It included a review of records from several providers. Additionally, it was updated about 9 weeks later. This report is dated about 5 days after the update. During the evaluation, her boyfriend provided input much like other

physicians noted in their examinations. Dr. Campbell found that results of testing supported a diagnosis of "personality change due to concussion and chronic pain" along with other mild neurocognitive and psychological issues.

42. On January 5, 2018, Kathalene Cassels, PA-C, for neurologist S. Wade Steeves, M.D., accepted Claimant's demonstration of aphasia which "has only appeared after the accident." On subsequent visits, including visits to Dan Wilcox, M.D., of the same office, Claimant was treated for her complaints of intractable migraine headaches. Sometimes she alleged continuing mental difficulties, sometimes not. These alleged mental difficulties varied without thematic consistency from visit to visit. Dr. Wilcox "related to her" that some of her complaints were nonanatomical.

43. In April 2020 Claimant sought psychological treatment. Her initial reported symptom was headaches. In May David Greeley, M.D., evaluated Claimant via Zoom. She reported symptoms including problems with word-finding. In the evaluation she endorsed multiple other symptoms relating to depression, anxiety, and other potential psychological diagnoses. In follow-up visits he provided botox injections for the headaches.

44. On September 28, 2020, Dr. Campbell reported another neuropsychological examination. Compared to the 2017 evaluation Claimant showed some improvement in certain areas. Both evaluations are highly dependent upon Claimant's reported history and description of symptoms. The latter history includes inaccurate details of the accident compared to details described to other physicians in the weeks immediately after it. Testing reveals average intelligence, average mental functioning, and significant somatic concerns. The MMPI results noted, "Her somatic complaints may border on the bizarre. . . Diagnostic possibilities include

thought disorders (vs. neurological disorders due to head trauma) and/or severe somatization disorder." Dr. Campbell's diagnoses rely mostly upon Claimant's reports about pre-accident function and immediate post-accident deficits. Similarly, Dr. Campbell's opinions about causation rely mostly upon Claimant's reports of change occurring immediately after the accident and continuing unabated since. Both onset and continuing symptoms are not supported by the early medical records recorded before she was fired. Claimant reported that she intended to appeal her claim for workers' compensation benefits to the Idaho Supreme Court and had written a letter to the White House.

Forensic opinions of Dr. Beaver

45. Psychologist Craig Beaver, Ph.D., performed a forensic records review to assess whether and to what extent she may have suffered a head injury in the accident. His report is dated February 26, 2018. He opined that Claimant neither complained of nor exhibited signs of neurocognitive injury from the date of the accident until about August 2014. He expressly noted that she returned to work and was found to be at maximum medical improvement well before she was fired. Further, he expressly noted that such complaints began only after she was fired by Employer. He opined that these later-arising complaints are inconsistent with any causal relationship to the accident.

46. Dr. Beaver was deposed via Zoom post-hearing. He had reviewed Claimant's medical records but had not met, interviewed, nor examined Claimant. Dr. Beaver explained that TBI will manifest most strongly immediately after the causal trauma, usually with a loss of consciousness and brief amnesia to times immediately before and after the event. Symptoms will be greatest during the first 24 hours up to 72 hours after the trauma. These will gradually subside

and neurocognitive abilities will improve thereafter. Mild examples may arise with lesser injury. These will involve no loss of consciousness or immediate amnesia. They are expected to result in full recovery in a 30- to 90-day timeframe. It "wouldn't make biomechanical sense" for a trauma to cause symptoms which do not appear until weeks or months later.

47. Dr. Beaver explained that here, Claimant's initial medical records do not document any such injury or symptoms. Dr. Campbell's reliance upon the history provided to him by Claimant showed he weighted her subjective report over the initial medical records. Whether Dr. Cambell even reviewed the initial medical records is ambiguous from his report. The history Claimant provided was inconsistent with these medical records. Dr. Beaver opined that Dr. Campbell's testing showed that Claimant's complaints of symptoms were not supported objectively. She performed better than her complaints of symptoms would lead one to expect. Dr. Beaver opined that Claimant's "neurocognitive abilities were solidly within the range" of Claimant's educational and work history factors. He opined that commonly, test results like Claimant's are indicators more of anxiety or depression and not of neurocognitive injury. Moreover, he opined that test results showed "evidence of what we call somatic symptom disorder." He opined that Dr. Alexander's testing for Social Security was consistent with depression, anxiety, and somatic symptom disorder but not with neurocognitive injury. Dr. Beaver opined that Claimant suffered no psychological permanent impairment related to the work accident.

48. Upon cross-examination, Dr. Beaver acknowledged that several symptoms which Claimant asserted could be indicative of post-concussion syndrome, but he could not opine upon why the medical records did not reflect Claimant's assertion that she had been endorsing these

symptoms in the initial weeks and months following the accident.

At Hearing

49. At hearing Claimant testified about problems with her back, teeth, and eyes as possibly related to the accident or to medications taken as a result of the accident. She testified that she noticed progressive decline in mental function from the date of the accident until after she was terminated by Employer. Later at hearing she denied her back pain was related to the accident. She testified that driving her car after water leaked from a broken radiator hose and another occasion on which she caught her car on fire were Employer's fault because of her mental condition following the accident.

Vocational Factors

50. Born September 2, 1970, Claimant was 43 years of age at the date of the accident. She was 53 years of age when she testified at hearing.

51. About September 2014, Claimant filed a charge of discrimination against Employer. The Human Rights Commission in the Department of Labor investigated the claim. Claimant alleged a neck injury and not any concussion or brain injury initially, but informally and anecdotally added descriptions of symptoms sounding like a brain injury in that proceeding. On December 1, 2014, the Human Rights Commission found Claimant was not disabled under the Americans with Disabilities Act. It found Claimant's claim was not supported beyond her own "unsupported subjective belief."

52. Claimant receives Social Security Disability benefits effective July 31, 2014. This finding arose from her claim of migraine headaches and degenerative C-spine disc disease.

53. In an email dated June 26, 2018, engineer Shakir Shatnawi, Ph.D., speculated about

impact force of the microwave box on Claimant's cheek and opined, "This is a significant force that can cause a serious injury."

DISCUSSION AND FURTHER FINDINGS OF FACT

54. The provisions of the Idaho Workers' Compensation Law are to be liberally construed in favor of the employee. *Haldiman v. American Fine Foods*, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990). The humane purposes which it serves leave no room for narrow, technical construction. *Ogden v. Thompson*, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996).

55. 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 claimant must prove all essential facts by a preponderance of the evidence. *Evans v. Hara's, Inc.*, 123 Idaho 472, 89 P.2d 934 (1993).

56. Uncontradicted testimony of a credible witness must be accepted as true, unless that testimony is inherently improbable, or rendered so by facts and circumstances, or is impeached. *Pierstorff v. Gray's Auto Shop*, 58 Idaho 438, 447–48, 74 P.2d 171, 175 (1937). *See also Dinneen v. Finch*, 100 Idaho 620, 626–27, 603 P.2d 575, 581–82 (1979); *Wood v. Hoglund*, 131 Idaho 700, 703, 963 P.2d 383, 386 (1998).

57. Claimant has pursued allegations against Employer for several years. Although substantial evidence supports the occurrence of the accident, Claimant's description of the accident has varied. She testified to her vivid recollection of the details of the occurrence of the accident and of her conversations with physicians in the years immediately following it and thereafter. Claimant's allegations of improper motives and conduct by Ms. Civitello are inconsistent with Ms. Civitello's credible testimony. Where differences between Claimant's and Ms. Civitello's testimony are irreconcilably inconsistent, Ms. Civitello's testimony carries more weight. Where

contemporaneously made medical records are inconsistent with Claimant's testimony, the medical records carry more weight. This weighting of evidence does not suggest that Claimant was intentionally misleading. On the contrary, Claimant appears to sincerely and actually believe that her perspective of the accident and subsequent course of events is accurate.

58. Ms. Civitello showed no indicia undermining her credibility at hearing. She well explained her reasoning for her actions after the accident, both with respect to interactions with Claimant as well as interactions with other employees which Claimant cited as evidence of disparate treatment. Ms. Civitello is a credible witness. Her testimony was credible that Employer's actions about job assignments to Claimant and reviews of specific performance events after the accident were not vindictively motivated by the occurrence of the accident.

Causation: Certain Medical Treatment

59. A claimant must prove that she was injured as the result of an accident arising out of and in the course of employment. *Seamans v. Maaco Auto Painting*, 128 Idaho 747, 751, 918 P.2d 1192, 1196 (1996). Proof of a possible causal link is not sufficient to satisfy this burden. *Beardsley v. Idaho Forest Industries*, 127 Idaho 404, 406, 901 P.2d 511, 513 (1995). A claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability. *Langley v. State, Industrial Special Indemnity Fund*, 126 Idaho 781, 785, 890 P.2d 732, 736 (1995). Magic words are not necessary to show a doctor's opinion is held to a reasonable degree of medical probability; only his or her plain and unequivocal testimony conveying a conviction that events are causally related. *Jensen v. City of Pocatello*, 135 Idaho 406, 18 P.3d 211 (2001).

60. The preponderance of evidence supports a finding that Claimant did not exhibit any neurocognitive deficit related to the accident. Her alleged neurocognitive symptoms arose only

months after medical stability from the neck strain caused by the accident. Moreover, the alleged neurocognitive symptoms increased in alleged number and severity over time. At hearing and elsewhere in the record, Claimant had demonstrated complete recall of the events immediately before and after the accident. Her function, judgment, organization, and recall as she prosecuted this claim were all well above the norm for a *pro se* litigant in this arena. Her brief exhibitions of lapses of mental function throughout this process do not substitute for the medical opinion required to show a causal link.

61. Dr. Beaver opined that Claimant's history as described by the medical records in evidence is inconsistent with medical expectations; a significant traumatic brain injury involves immediate loss of consciousness. A lesser TBI may involve significant disorientation, and/or loss of memory particularly regarding the moments before and after the event. Regardless of severity, immediate symptoms tend to resolve within hours or a few days, with residual problems ameliorating more gradually thereafter. Here, he opines, such injury pattern is absent. Indeed, this pattern is contradictory to Claimant's testimony and contemporaneously made medical records. Such injury does not wait to appear nor gradually thereafter become worse. It does not exhibit an increasing variety of belated symptoms.

62. The decision of Claimant's unemployment benefits appeal bears some weight. However, the issue to be decided there involved a question of misconduct not medical causation. It is unknown to what extent medical records were available or were considered by the Department of Labor appeals examiner. Regardless, the record does not support a finding that the appeals examiner considered the medical question of causation vis-à-vis neurocognitive complaints and the accident. Moreover, Employer did not appear at that hearing to admit or deny any

representation or document relating to eligibility for unemployment benefits.

63. In this instant action, the question of injury caused by the workplace accident is directly addressed. Here a full set of medical records is present. In the instant action, a more direct, detailed, and thorough record was produced with all parties participating.

64. Post-termination medical opinions carry less weight when suggesting a link between the accident and certain symptoms. These, particularly those of Dr. Osborn, rely upon the accuracy of Claimant's representations and history. Drs. Campbell and Alexander, also appear to accept Claimant's inaccurate history. Indeed, statements by Campbell, Alexander, and other counsellors focusing on Claimant's mental health in this time frame are ambiguous about whether they constitute opinions of a provider versus a recitation of the history Claimant provided along with Claimant's belief in a causal link. Moreover, Dr. Beaver's findings upon forensic analysis of those treaters' opinions carries more weight than do those treaters' opinions themselves.

65. Medical records concerning treatment after the date of Dr. Beaver's report do not reestablish any continuation of injury. These rely upon Claimant's history in which she claimed continuing symptoms since 2013. These are similarly inconsistent with the medical records contemporaneously made in the Spring of 2013.

66. Medical records from her post-accident visits to the date of her termination carry the most weight. These support a possible neck injury which resolved but do not support as likely a causal finding of any concussion or post-concussion syndrome, traumatic brain injury, or PTSD from the accident. Depression, anxiety and other psychological symptoms are not supported by the record as likely to have been caused by the accident.

67. Other physical symptoms in body parts not directly linked to the accident initially

have not been shown to be causally related to the accident. For example, Claimant complained of acute back spasm for the first time on March 5, 2015. She attributed it to planting onions. Her hearing testimony that the industrial accident may have caused lumbar pain is not credible. Similarly, Claimant sought treatment for her shoulder in 2019. The linkage of a shoulder problem rests almost entirely upon Claimant's representations to physicians that the problem began with the accident and continued in the years since.

68. Claimant established that she suffered a bruise on her cheek and a neck strain at the time of the accident. These resolved entirely by the date of medical stability. Claimant failed to show it likely that she suffered any additional injury resulting from the accident.

Temporary Disability

69. Idaho Code § 72-408 provides income benefits "during the period of recovery." The burden is on a claimant to present medical evidence of the extent and duration of the disability. *Sykes v. C.P. Clare and Company,* 100 Idaho 761, 605 P.2d 939 (1980). Once a claimant attains medical stability, he or she is no longer in the period of recovery. *Jarvis v. Rexburg Nursing Center,* 136 Idaho 579, 38 P.3d 617 (2001). Further, a claimant's refusal of an offer of light-duty work suitable to Claimant's restrictions ends his or her entitlement to temporary disability. *Malueg v. Pierson Enterprises*, 111 Idaho 789, 727 P.2d 1217 (1986).

70. Claimant has failed to show she lost work for which TTD benefits were denied.

Medical Care

71. An injured worker is entitled to reasonable and necessary medical care related to the industrial injury for a reasonable period of recovery. Idaho Code § 72-432. This medical care may include palliative care after an individual has reached medical stability. *Rish v. The Home*

Depot, 161 702, 390 P.3d 428 (2017).

72. Claimant showed she required treatment including physical therapy from the date of the accident to the date of medical stability. She is entitled to these medical benefits. Further, to the extent that Defendants approved additional diagnostic attempts and/or treatment thereafter, such care is deemed to have been reasonable and necessary. However, Claimant failed to show entitlement to unpaid medical care benefits for any care after the date of termination.

Permanent Impairment

73. Permanent impairment is defined and evaluated by statute. Idaho Code §§ 72-422 and 72-424. When determining impairment, the opinions of physicians are advisory only. The Commission is the ultimate evaluator of impairment. *Urry v. Walker & Fox Masonry*, 115 Idaho 750, 769 P.2d 1122 (1989); *Thom v. Callahan*, 97 Idaho 151, 540 P.2d 1330 (1975). Impairment is an inclusive factor of permanent disability. Idaho Code § 72-422.

74. Here, on May 13, 2014, at the time of medical stability, Dr. Stevens opined she suffered no permanent impairment. Claimant has not produced reasonable medical opinion to the standard of medical probability that she did suffer permanent impairment.

Permanent Disability and §72-406 Apportionment

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

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

77. Permanent disability is defined and evaluated by statute. Idaho Code §§ 72-423 and 72-425 *et. seq.* Permanent disability is a question of fact, in which the Commission considers all relevant medical and non-medical factors and evaluates the purely advisory opinions of vocational experts. *See*, *Eacret v. Clearwater Forest Indus.*, 136 Idaho 733, 40 P.3d 91 (2002); *Boley v. ISIF*, 130 Idaho 278, 939 P.2d 854 (1997). The burden of establishing permanent disability is upon a claimant. *Seese v. Idaho of Idaho, Inc.*, 110 Idaho 32, 714 P.2d 1 (1986). Where preexisting impairments produce disability, all impairments and disability should be accounted for with a subtraction back for the compensable portions. *Page v. McCain Foods, Inc.*, 145 Idaho 302, 179 P.3d 265 (2008). An employer takes an employee as it finds him or her. *Wynn v. J.R. Simplot Co.*, 105 Idaho 102, 666 P.2d 629 (1983).

78. Here, without PPI there is no basis upon which to find permanent disability.

79. Without permanent disability there is no basis for apportionment nor inquiry into possible odd-lot status.

CONCLUSIONS

1. Claimant suffered a bruise on her cheek and a neck strain in her December 2013 accident and injury. This resolved by May 13, 2014, without permanent impairment;

2. Claimant failed to show she suffered any neurocognitive injury caused by the

accident;

3. Claimant failed to show she is entitled to additional temporary disability or unpaid medical care; and

4. Claimant failed to show she is entitled to any permanent disability.

RECOMMENDATION

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

DATED this 14th day of April 2025.

INDUSTRIAL COMMISSION

Douglas A. Donohue, Referee

ATTEST:

INDUSTRIAL COMMISSION SEAL STATE OF IDAHO

Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of May, 2025, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States mail and Electronic Mail upon each of the following:

DONNA ROBERDS
29992 TRIUMPH LANE
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dc

Debra Cupp

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

DONNA ROBERDS, Claimant, v. THE HOME DEPOT U.S.A. INC., Employer, and NEW HAMPSHIRE INSURANCE COMPANY, Surety, Defendants.	**IC 2013-032278** **ORDER** **FILED** **MAY 5, 2025** **IDAHO INDUSTRIAL COMMISSION**

Pursuant to Idaho Code § 72-717, Referee Douglas Donohue submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusions of law, to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant suffered a bruise on her cheek and a neck strain in her December 2013 accident and injury. This resolved by May 13, 2014, without permanent impairment:
2. Claimant failed to show she suffered any neurocognitive injury caused by the accident;
3. Claimant failed to show she is entitled to additional temporary disability or unpaid medical care; and
4. Claimant failed to show she is entitled to any permanent disability.

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

DATED this 1st day of May, 2025.

INDUSTRIAL COMMISSION

Claire Sharp

Claire Sharp, Chair

Aaron White, Commissioner

Thomas E. Limbaugh, Commissioner

ATTEST:

Kamerron Slay
Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of May, 2025, a true and correct copy of the foregoing **ORDER** was served by regular United States mail and Electronic Mail upon each of the following:

DONNA ROBERDS
[redacted]

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