BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

RENATE FRANCIS, Claimant, v. STATE OF IDAHO, INDUSTRIAL SPECIAL INDEMNITY FUND, Defendant.	**IC 2013-019484** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** FILED OCTOBER 21, 2025 IDAHO INDUSTRIAL COMMISSION

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee John Hummel, who conducted a hearing in Idaho Falls on February 25, 2025. Andrew Adams, of Idaho Falls, represented Claimant, Renate Francis, who was present in person. Paul J. Augustine, of Boise, represented Defendant, State of Idaho, Industrial Special Indemnity Fund (ISIF). The parties presented oral and documentary evidence, took post-hearing depositions and submitted briefs. The matter came under advisement on August 29, 2025.

ISSUES

The noticed issues to be decided by the Commission as the result of the hearing are as follows:

1. Whether Claimant is entitled to permanent total disability pursuant to the odd-lot doctrine or otherwise.
2. Whether ISIF is liable for a portion of Claimant's disability under Idaho Code § 72-332.

3. If ISIF is liable, what is the correct apportionment under the *Carey* formula.

CONTENTIONS OF THE PARTIES

Claimant alleges that she is totally and permanently disabled pursuant to the odd-lot doctrine as a combination of her pre-existing impairments and the shoulder impairment from the industrial accident in 2013. She asserts that ISIF is liable for a portion of her total permanent disability benefits pursuant to Idaho Code § 72-332.

ISIF admits that Claimant is totally and permanently disabled, however, ISIF contends that Claimant's pre-existing conditions did not combine with her industrial accident to render her totally and permanently disabled. ISIF denies that Claimant's knees and hip were preexisting subjective hindrances.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. The transcript of the hearing held on February 25, 2025;
3. Joint Exhibits 1 through 35, admitted at the hearing;
4. Deposition of Claimant taken on November 12, 2024;
5. Deposition of Kent Granat taken on May 22, 2025; and
6. Deposition of Terry M. Parsons. M.Ed., taken on May 29, 2025.

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

FINDINGS OF FACT

1. **Claimant's Background**. Claimant was born on August 1, 1967, in Rapid City, South Dakota. Claimant's Dep., 5:12-15. At the time of hearing, she resided in Blackfoot, Idaho, Claimant's Dep., 5:16-17, and was 57 years old. Tr., 11:2-3. Claimant graduated from high school but otherwise received no formal training or education. Ex. 5:000007. She moved to Idaho after attending high school in South Dakota. Tr., 11:12-18. She briefly worked for Deseret Industries after moving to Idaho. Tr.,11:23-4.

2. **Employment**. Claimant began working for Employer, Pillsbury/Basic American Foods, in August 1989 in the production department. Claimant's Dep., 9:5-7. Employer's business was the production of potato products. *Id*. at 10:4-10. Prior to 1989, Claimant did not have any significant medical conditions that affected her ability to work. *Id*. at 9:23-10:1. She began working in production and finished working in packaging. *Id*. at 9:11-19. She worked in various positions in production, packaging and sanitation, and worked for Employer for 25 years. *Id*.

3. Claimant described the physical aspects of her job with Employer as follows: "Stairs, climbing, working in chemicals, a lot of lifting, vacuuming, brushing stuff down. A lot of shoveling when it came to whether they were the raw potatoes or they ran through the machines. And they had a breakdown, so we would have to shovel. So a lot of variety." Tr., 13:13-18.

4. **Prior Medical Conditions**. **Knees**. Five years into working for Employer, in approximately 1995 or 1996, Claimant developed problems in her knee joints. She began to take ibuprofen for pain in her knees, three pills per day and continued to do so for twenty years. In 2003, Claimant had arthroscopic surgery on both knees. Tr., 15:1-20. After surgery on

her knees, Dr. Fields returned Claimant to full-duty work with no accommodation or work restrictions. She continued to take Ibuprofen for pain. Tr., 16:1-14.

5. Claimant described the physical impact of her knee condition on working as follows: "Yeah. It was hard. The concrete floors. They had special mats that they would put in certain areas of the plant, you know, for you to stand on to give you cushion. But just walking on the floors and repetitive of whatever you doing kind of was hard on the body." They never made accommodation for her, but she kept taking three ibuprofen a day. Tr.: 16:1-17:14.

6. She had right knee replacement surgery in October 2019 at Bingham Memorial Hospital. *Id*. at 34:5-6. Dr. Walker assigned her a 37% lower extremity rating for her right knee in his IME. Ex. 20:000010.

7. **Hip**. While working in sanitation, Claimant injured her left hip while moving 600-pound chemical barrels on June 3, 2008. Ex. 5:00006. The job required her to move these "big tanks" with her hip and hands. Claimant was working as a lead sanitation worker at the time. Tr., 18:1-9. She did not miss any work at the time and received no treatment. *Id.*

8. Thereafter, the Safety Committee, upon Claimant's petition, modified her job by providing a forklift machine that helped move the chemical barrels that Claimant had previously been required to move with her hip and hands. This change benefited all workers, not just Claimant. Tr., 20:9-13.

9. She later underwent left hip replacement surgery in 2015. *Id*. at 19:7-14. She had follow-up left hip surgery in December 2020 in which a spacer and antibiotic beads were implanted because the prosthesis had failed due to infection. *Id*. at 33:11-19. Dr. Walker assigned her a 71% lower extremity rating for the left hip in his IME due to the failed implantation of the prosthesis. To date, Claimant still does not have a left hip. Ex. 20:9.

10. **Industrial Accident**. On July 22, 2013, Claimant was working on a packing line dumping potato slices into a hopper, when she had to go up a set of stairs to operate a hopper. When she came down the stairs, she slipped and fell, landing on her face and shoulder, injuring her left shoulder. She then received transport via ambulance to Bingham Memorial Hospital and received treatment for a large rotator cuff tear. Ex. 5: 2; Claimant's Dep., 18:24-25; Tr., 23:13-24:1.

11. Prior to her accident, there were no work restrictions imposed by any physician on Claimant. Tr., 45:4-11.

12. Due to continued pain when she reached or lifted, she was seen by John L. Andary, M.D., on August 26, 2013. Ex. 9:1. Claimant had surgery on her left shoulder on September 27, 2013, by Dr. Andary, who released her on April 16, 2014. Tr., 24:15-25; Ex. 11:00001. Claimant was diagnosed with left shoulder massive rotator cuff tear; subacromial bursitis with impingement; tearing of the superior labrum; and tear of the long head of the biceps. *Id*. The procedures performed included left shoulder arthroscopy and arthroscopic massive rotator cuff repair; arthroscopic repair of type 1 SLAP lesion; and repair of partial tear of the long head of the biceps. *Id*. Dr. Andary assigned her a 10% upper extremity impairment for the left shoulder and limited her to a 10 pounds lifting restriction with her left upper extremity only and released her to return to modified work duties. Ex. 20:8. Furthermore, she was limited to no lifting greater than 30 to 40 pounds with both arms, no repetitive reaching and lifting of lighter weights, and rare overhead work. Ex. 9:21.

13. Employer accommodated Claimant's work restrictions by allowing her to work on a Hyster in Packaging. She was provided with a stool to get into and out of the Hyster. Tr., 23:13-15. She would get in and out of the Hyster multiple times per day. Tr., 25:18-25.

14. When Claimant returned to work after her shoulder surgery, she was initially on light duty. She then became a Hyster driver. She continued to work for Employer for approximately five months until October 30, 2014, when she began experiencing pain in her knees and hips. Tr., 25:4-15. She stopped working in October 2014 and began preparing for her first left hip surgery. Ex. 20:5.

15. The five years following her industrial accident were filled with significant and debilitating medical outcomes: "So I had my knee done first. My second knee replacement surgery was in October of '19. Then I had my hip pulled out in December of '20. And then in April of '21, I had my third surgery on my hip to take out the spacer out of my femur. And they were fishing around for injection, trying to clean up my hip." Tr, 34:5-10. To date, she does not have a left hip. Tr., 33:12-19.

16. **Restrictions**. After Dr. Fields released Claimant to return to work full duty on July 1, 2003, following her knee surgery, up until her accident in 2013, Claimant had no workplace restrictions imposed by any doctor, nor did she have any accommodation due to her knee. Tr., 44:20-45:11. Claimant never had any shoulder problems prior to July 22, 2013. *Id*. at 49:23-25.

17. Prior to her shoulder accident in July 2013, Claimant was able to perform all the essential functions of her job as a forklift operator with Employer. Prior to 2013, no doctor had imposed any permanent restrictions on her. Claimant Dep., 43:9-17.

18. Taking the "knee and the hip out of the equation," Claimant admitted that shoulder restrictions Dr. Fields assigned alone took her out of performing her job. *Id*., 82:22-83:4.

19. **Dr. Walker IME**. Dr. Walker in an IME dated February 13, 2020, summarized Claimant's restrictions as follows:

> As far as restrictions are concerned, she is completely unable to ambulate in any functional manner with her left hip. Consequently, she would be limited to sedentary work. Her right knee replacement would keep her from doing anything more than sedentary work. Her right shoulder would keep her from doing any overhead lifting and no lifting more than 10 lbs. Her right hip would keep her from doing any significant ambulation and therefore would preclude her to sedentary work.

Ex. 20 at 11.

20. Dr. Walker rated Claimant's left shoulder at a 37% upper extremity impairment, for a net impairment of 27% upper extremity impairment. Ex. 20:9. Dr. Walker also limited Claimant to 5 pounds lifting restriction for the left arm following the shoulder replacement. *Id*. at 8.

21. Dr. Walker opined that Claimant had a 27% upper extremity rating for her left shoulder. Ex. 20:000008-9. Her left hip replacement was a 75% lower extremity rating. Her right knee replacement was a 37% lower extremity rating. Her right shoulder was a 3% upper extremity rating. Her right hip was a 30% lower extremity rating. After these were converted to a whole person she had a 59% whole person impairment rating. Ex:20:10-11. These impairments were as of the time of the visit in 2020. *Id.*

22. Dr. Walker opined that Claimant "currently would be on a 5 lb. permanent lifting restriction for the left arm following the replacement. Ex. 20:8. Dr. Walker further observed that "As far as restrictions are concerned, she is completely unable to ambulate in any functional manner with left hip. Consequently, she would be limited to sedentary work. Her right knee replacement would keep her from doing anything more than sedentary work. Her right shoulder would keep her from doing any overhead lifting more than 10 lbs. below

shoulder level. Her right would keep her from doing any significant ambulation and therefore would preclude her to sedentary work." Ex. 20:11.

23. **Michael O'Brien, M.D. IME 11/30/2016**. Dr. O'Brien found as follows:

> Summary:
> This patient has difficulties with all of her limbs. She retains difficulties with the injured left rotator cuff, preventing movement on that side. She has difficulties with an emerging rotator cuff syndrome on the opposite or right side. Her left hip has been replaced, and her right knee has been replaced. She also has pain in the left knee. She is grossly obese with vascular changes, limb edema, and neuropathic pain. Prior to her industrial injury, she was able to function. However, since the injury in 2013 she has been largely dysfunctional. Her preexisting problems, her failed shoulder surgery and other emerging problems such as her obesity, are compounding her ability to function. At the age of 49, she certainly would fulfill the requirements of a disability rating.
> Clinical Impression:
> Prior to her industrial accident in 2013, this patient was employable and functioning at an adequate level. Since then, her left shoulder with residuals was severe enough to limit her use of her upper left extremity. Now, she is virtually unable to do any work in a meaningful fashion. Any rehabilitative efforts at this point would be merely to relieve her of residual pain that she now is experiencing in all of her limbs. This woman, 46 years of age at the time, fell and severely injured her shoulder. Subsequent to that event, she became unemployable. There were many other medical factors contributing to her unemployability, but it was the fall that precipitated her inability to continue to work. *The industrial accident therefore played a major role in accelerating the onset of her presently disabling condition.*

Ex. 17:3 [Emphasis added].

24. **Social Security Decision**. Claimant was declared disabled according to the Social Security Administration standards effective October 30, 2014, with the following noted severe impairments: morbid obesity; status post bariatric surgery; varicose veins and venous insufficiency; status post left hip arthroplasty; status post right knee arthroplasty; status post left rotator cuff repair; degenerative disc disease; osteoarthritis in left knee; chronic rotator cuff impingement; and carpal tunnel syndrome. Ex. 34:64-65.

25. The Social Security ALJ determined that Claimant was disabled in November of 2016 for the following reasons:

> The claimant's multiple orthopedic problems, in combination with her obesity, were significantly limiting, and this is accounted for in the restrictive residual functional capacity above. Her longitudinal treatment records show some gaps in her treatment, then she underwent surgeries with brief improvement until she became dependent upon a walker to ambulate, which is documented in November 2016 consultive examination.

Ex. 34:68.

26. The consultive examination is a reference to Dr. Fields July 2017 note, in pertinent as follows:

> Uses a walker to ambulate and has undergone a left total hip replacement in 2015, a right knee replacement in 2015 and has left shoulder cuff repair, which now has torn again, has chronic left cuff and degenerative disease of both shoulder joints. Recently, in 02/2016, had a laparoscopic sleeve gastrectomy. Has lost some weight due to that and has improved, but at this point, after 2 years of advance physical therapy treatment, I do not know that she would be able to go back and do the work that she did before with physical labor. Her joints would not allow her to do that, and I think she is a candidate for permanent disability.

Ex. 7:191.

27. **Termination of Employment**. Claimant has not worked since October 2014. She resigned effective July 7, 2015, after her period of short-term disability benefits ran out. *Id*. at 54:17-22.

28. **Wheelchair**. At the time of hearing, Claimant was ambulating in a wheelchair. She had continued mobility until around November 2016, but because of the combination of joint replacements, infections and shoulder problems, Claimant started to be almost exclusively in a walker or wheelchair after that time. Tr., 56:18-24.

29. **Terry Parsons, M.Ed. Vocational Evaluation**. Ms. Parsons delivered a vocational evaluation at the request of ISIF on January 15, 2025. With regard to the issue of "combination," she opined as follows:

> It is my professional opinion that there is no combination in this case. The vocational effects of her left shoulder injury alone, in combination with the aforementioned nonmedical factors, render her unemployable and do not combine with any of her pre-injury conditions. Evidence does not establish that but for her preexisting conditions as they existed at the time of her 2013 accident, she would not be totally and permanently disabled following her 2013 left shoulder injury. Her total disability is due solely to her 2013 left shoulder injury without the combination of any of her pre-existing conditions as she had no permanent restrictions imposed by any of her physicians at the time of her accident on July 22, 2013.

Ex. 30:31.

30. **Kent Granat Vocational Evaluation**. Mr. Granat delivered a vocational evaluation at the request of Claimant's counsel on February 8, 2025. He opined in pertinent part as follows: "It appears to this vocational evaluator that both Dr. O'Brien and Dr. Walker recognized in their IME reports that it was a combination of Ms. Francis' left shoulder injury and her 'many other medical factors' that contributed to her unemployability and a permanent and total disability status." Ex. 31:8.

31. **Kent Granat Deposition**. Mr. Granat's deposition was taken on May 22, 2025. He was queried as follows:

> Q. Now, when do you think – as far the other things, when do you think that combination you talked about, when do you think that combination occurred that she became totally and permanently disabled when the hips and the other factors caught up with her shoulder to take her out of those sedentary jobs you talked about earlier?
> A. I think when the left hip surgery failed.
> Q. So when the left hip surgery failed, that's when she – that's when she became totally and permanently, and that's when it was of no use for her to try to find work anymore?
> A. That's true. So I guess that was in October or November of 2014. That's when she had the surgery, but at some point, between November 2014 and

November 2016 when Dr. O'Brien gives the IME – she became unemployable sometime in that two-year period.
Q. When everything started going bad?
A. Right, and he captures it in the IME.
Q. Now, so let me – if the 2013 injury never occurred, would the hips make her totally and permanently disabled by themselves?
A. Well, it would – I believe so because at that point in time she's at a – she can't really work in terms of being on her feet. And as a result, she would be in a sedentary capacity and has no transferable skills into sedentary work, and she was 57, 56. So that combination would have her be unemployable.

Granat Dep., 18:9-19:14.

32. **Terry M. Parsons, M.Ed. Deposition**. Ms. Parsons' deposition was taken on May 29, 2025. Ms. Parsons did not interview Claimant but rather reviewed her depositions and medical records. Parsons Dep., 9:22-10:4.

33. Ms. Parsons was queried about her "ultimate opinion about whether there's any combination in this case? She answered as follows:

A. There is no combination.
Q. Can you explain why?
A. Because she had no impairment, no restrictions, was able to do her job prior to her injury of – time of injury.
Q. And the – by itself the left shoulder would result in total and permanent disability; is that – that's your opinion?
A. Yes.
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Q. The mobility issues that she developed after the accident, starting in 2016, would those also impact her employability?
A. Yes, that added to her inability.
Q. Okay. And did you see any information in – medical information that somehow her left shoulder injury aggravated any of the preexisting problems she experienced before her accident?
A. No.

Parsons Dep., 31:4-25.

34. Ms. Parsons was queried about the ibuprofen Claimant took and the modification of her job with regard to moving barrels as follows:

Q. Okay. So, you don't think that taking three ibuprofen every day since 1995 is – was a subjective hindrance to her job?
A. I didn't have any documentation that she was taking three a day. And it may be a hindrance.
Q. So, you read her deposition and her hearing testimony?
A. Yes.
Q. Where she talked about doing that?
A. Yes.
Q. Okay. But the – okay. And you don't think it's a job modification that they changed her job after the 2008 injury, they no longer had to move those barrels by hand, that they bought a machine to do that?
A. It was my understanding that that was a recommendation for safety.
Q. But it was modified for everybody, right, not just for her but for everybody?
A. Yes, they – yeah, they changed the protocol on doing that job.
Q. Yes. As a result of her 2008 injury the job changed for – not just for her but for all people?
A. I can't confirm that it was just based on her, but yes, they did modify that.

Parsons Dep., 32:9-33:7.

DISCUSSION AND FURTHER FINDINGS

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

36. **Disability**. The first prerequisite to ISIF liability is a finding that Claimant is totally and permanently disabled. *See*, *e.g.*, *Hope v. Industrial Special Indemnity Fund*, 157 Idaho 567, 571, 338 P.3d 546, 550 (2014).

37. "Permanent disability" or "under a permanent disability" results when the actual or presumed ability to engage in gainful activity is reduced or absent because of permanent impairment and no fundamental or marked change in the future can be reasonably expected.

Idaho Code § 72-423. "Evaluation (rating) of permanent disability" is an appraisal of the injured employee's present and probable future ability to engage in gainful activity as it is affected by the medical factor of permanent impairment and by pertinent nonmedical factors provided in Idaho Code § 72-430." Idaho Code § 72-425.

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

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

40. Total permanent disability may be established under the 100% method or the Odd-Lot Doctrine. Under the 100% method, Claimant must show his medical impairment, and nonmedical factors combine to demonstrate that Claimant is 100% disabled. Under the Odd-Lot Doctrine, Claimant must show he was 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, absent business boom, the sympathy of the employer, temporary good

luck, or a superhuman effort on Claimant's part. *See, e.g. Carey v. Clearwater County Road Dept.*, 107 Idaho 109, 112, 686 P.2d 54, 57 (1984).

41. Claimant has the burden of proving Odd-Lot status. *Dumaw v. J. L. Norton Logging*, 118 Idaho 150, 153, 795 P.2d 312, 315 (1990). He may establish total permanent disability under the Odd-Lot Doctrine in any one of three ways: (1) by showing that he has attempted other types of employment without success; (2) by showing that he or vocational counselors or employment agencies on his behalf have searched for other work and other work is not available; or (3) by showing that any efforts to find suitable work would be futile. *Lethrud v. Industrial Special Indemnity Fund*, 126 Idaho 560, 563, 887 P.2d 1067, 1070 (1995).

42. Claimant and ISIF stipulate that she is totally and permanently disabled. Tr., 5:24-25. Nevertheless, the record supports a finding that Claimant is totally and permanently disabled. Dr. Walker opined that all of Claimant's orthopedic conditions limited her to sedentary work. Nevertheless, Claimant had no transferable skills that would make sedentary work feasible. Dr. O'Brien opined that Claimant was totally and permanently disabled. Furthermore, the Social Security Administrative Law Judge ruled that the medical factors and nonmedical factors combined to render Claimant fully disabled. Ms. Parsons agreed that Claimant was totally and permanently disabled in November 2016. Parsons Dep., 33:10-13. Thus, both the parties' agreement and the factual record support a finding of total and permanent disability. Therefore, the issue becomes whether she meets the other elements of ISIF liability.

43. **ISIF Liability**. The following discussion lays out the requirements for ISIF liability and addresses whether Claimant meets those requirements.

44. Idaho Code § 72-332(1) provides as follows:

> If an employee who has a permanent physical impairment from any cause or origin, incurs a subsequent disability by an injury or occupational disease arising out of and in the course of his employment, and by reason of the combined effects of both the pre-existing impairment and the subsequent injury or occupational disease or by reason of the aggravation and acceleration of the pre-existing impairment suffers total and permanent disability, the employer and surety shall be liable for payment of compensation benefits only for the disability caused by the injury or occupational disease, including scheduled and unscheduled permanent disabilities, and the injured employee shall be compensated for the remainder of his income benefits out of the industrial special indemnity account.

45. In *Dumaw v. J.L. Norton Logging*, 118 Idaho 150, 795 P.2d 312 (1990), the Idaho Supreme Court specified the following four-part test for determining liability under Idaho Code § 72-332(1): 1.) Whether there was a preexisting impairment; 2.) Whether the impairment was manifest; 3.) Whether the impairment was a subjective hindrance to employment; and 4.) Whether the impairment in any way combines with the industrial injury in causing total permanent disability. *Id*., 118 Idaho 155, 795 P.2d at 317. The party asserting ISIF liability (in this case, Claimant) bears the burden of proving all four elements. *Eckhart v. State Industrial Special Indemnity Fund*, 133 Idaho 260, 263, 985 P.2d 685, 688 (1999). *See also*, *Andrews v. State Industrial Special Indemnity Fund*, 162 Idaho 156, 158, 395 P.3d 375, 377 (2017).

46. Claimant argues that her knees and hips were preexisting impairments, that they were manifest, and subjective hindrances prior to the industrial accident. Claimant's Opening Brief at 10.

47. Under I.C. 72-332(2), a pre-existing impairment is defined as a "permanent condition, whether congenital or due to injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining reemployment if the claimant

becomes unemployed. This shall be interpreted subjectively as to the particular employee involved. . . . "

48. Claimant argues that her chronic pain management (3 ibuprofen per day) and petition to the Safety Committee modify her job demonstrate that the pre-existing impairments were manifest and were a subjective hindrance to her employment. Claimant's Opening Brief at 10.

49. Claimant testified that beginning in 1994 or 1995 she began taking three ibuprofen per day to deal with the physical demands of her job in light of her knees' condition. Claimant never had any permanent work restrictions ordered by a physician, nevertheless she took three ibuprofen per day to deal with the pain from first her knees and second her hips. Without the pain medication, she argues that she would have had to seek a less physically demanding job. Terry Parsons conceded that taking three ibuprofen per day "may be a hinderance." Parsons Dep., 32:9-13. Claimant argues that continued use of the medication was the only way she could continue with the work. Claimant's Opening Brief at 11.

50. After Claimant's hip injury in 2008, Employer changed the physical demands of the job. Claimant advocated with the Safety Committee to change moving the heavy barrels with her hip to use of a machine. This change accommodated her and everyone else performing the same job tasks. She argues that she was then able to perform the job duties using the new equipment, instead of placing undue burden on her hip. *Id*. at 11.

51. Claimant argues that prior to 2013, Claimant's knees and hips were obstacles to finding employment. She argues that this is demonstrated by the fact that she could only perform her job activities by Claimant taking an abundance of ibuprofen and having Employer change the physical requirements of the job by purchasing safety equipment. *Id*.

52. Nevertheless, Claimant had no physician-imposed work restrictions or rated impairments at the time of her 2013 industrial accident, and she performed unaccommodated medium physical work up until the time of her accident.

53. To impose liability on ISIF, Claimant must prove that her preexisting impairments constituted a hindrance or obstacle to employment. It cannot be assumed that it was merely because Claimant had a preexisting condition that it also constituted a hindrance to employment. *Tarbet v. J.R. Simplot Company*, 151 Idaho 755, 759, 264 P.3d 394, 399 (2011).

54. To satisfy the "subjective hindrance" element, Claimant's preexisting physical impairments must constitute a limitation or restriction on her employment immediately preceding the last industrial accident. *Ritchie v. State of Idaho, Industrial Special Indemnity Fund*, IC 2008-0143338, IC 2008-02389 (August 15, 2016).

55. Here, while Claimant testified that she had to take ibuprofen daily due to pain, nevertheless she had no physician-imposed restrictions, and she was able to perform all of the duties of a medium physical demand job without accommodation or modification. While she successfully lobbied the Safety Committee to modify the requirement to lift 600-pound barrels of chemicals by hand and hip, nevertheless this was changed for all workers, not just Claimant. The bottom line is that her underlying degenerative conditions of her bilateral knees and left hip were not a subjective hindrance to her employment at the time of her 2013 industrial accident. Claimant has failed to prove her preexisting knee and hip condition were a subjective hindrance.

56. To satisfy the "combined effects" requirement of Idaho Code §72-332(1), Claimant must show that "but for" her preexisting impairment, she would not have been totally and permanently disabled. *Bybee v. State Industrial Special Indemnity Fund*, 129 Idaho 76, 80,

921 P.2d 1200, 1204 (1996). Claimant offered no evidence or expert testimony to prove this element of ISIF liability. Rather, she makes a conclusory argument that "but for" the preexisting conditions which were accelerated or increased by the industrial accident, she could still drive the Hyster, with her left shoulder restrictions. Claimant's Opening Brief at 13.

57. This argument ignores that Claimant's post-accident position driving the Hyster was accommodated. It also ignores that her more restrictive 5 lb. lifting restriction imposed by Dr. Walker in 2020 following her reverse total shoulder surgery alone would prevent her from operating a Hyster.

58. The disabling effect of a pre-existing condition must be assessed as of the date immediately preceding the last work injury. *Colpaert v. Larson's Inc.*, 115 Idaho 825, 829, 771 P.2d 46, 50 (1989). Claimant, at the time of her 2013 accident, had no restrictions on her physical activities at work due to the degenerative conditions of her knees and left hip. After her 2003 bilateral knee surgery, Dr. Fields released her to resume full duty work on July 1, 2003. Ex. 33:1. She continued to work without restrictions for a decade until her 2013 industrial accident. Furthermore, the record is devoid of evidence that her left hip injury restricted her work activities. Since she had no preexisting restrictions, there is nothing to combine with her industrial accident to impose ISIF liability.

59. Claimant never had her preexisting conditions rated for impairment as of the date of her 2013 industrial accident. Since Claimant failed to establish that her preexisting conditions warranted an impairment rating, she cannot meet the "combines with" element and ISIF is not liable for her total and permanent disability. *See also*, *Jerry Wilson v. State of Idaho, Industrial Special Indemnity Fund*, IC 2018-027846 (November 8, 2024 ("ISIF liability fails because there were no preexisting, rated impairments prior to the industrial injury.")

60. Alternatively, under I.C. §72-332 a claimant may establish the combined with element of ISIF liability if the industrial injury aggravated and/or accelerated Claimant's preexisting physical impairment. *Aguilar*, 164 Idaho at 902. There is no evidence that either her knees or hip conditions were aggravated or accelerated by the 2013 industrial accident. Rather, the evidence shows that the industrial accident played a major role in accelerating the onset of her present disabling condition.

61. It is Claimant's contention that the light duty following her return from surgery after the industrial accident accelerated or aggravated her preexisting degenerative conditions of the knees and hips, combining to cause her total and permanent disability in November of 2016. *Id*. at 12.

62. After the industrial accident and initial release to return to work, Claimant began driving a Hyster in Packaging as accommodation for five months. Tr., 25:8-10. When using the Hyster, she had to use a step stool and swing herself into the Hyster. *Id*. at 23:9. She had to do this multiple times per day. *Id*. at 25:16-25. Claimant argues that it was during these five months that her pre-existing impairments (knees and hips) began to cause her additional difficulties. Ex. 20:00005; Claimant's Opening Brief at 12.

63. Claimant argues that the pre-existing injuries and her industrial accident and injury combined to make her totally and permanent disabled. Claimant's Opening Brief at 13. This combination results from establishing "but for" the preexisting conditions which were accelerated or aggravated by the industrial accident, she could still drive the Hyster, with her left shoulder restrictions.

64. Claimant's argument that her 5-month modified Hyster job following her left shoulder injury aggravated or accelerated her underlying hip and knee conditions is belied by

the evidence in the record. First, her testimony was that her post accident Hyster job caused pain in her right shoulder because she was overcompensating for her left shoulder injury. Tr., 26-27. Second, Claimant testified that the Hyster post-accident did not cause an increase in her hip pain. Third, she applied for FMLA leave in October 2014 due to urinary and low back issues, not hip or knee pain. Ex. 33:14-17. Fourth, she operated a Hyster unaccommodated for several years prior to her industrial accident and she was never treated by an orthopedic surgeon for hip pain. If she was able to operate a Hyster for several years prior to her industrial accident and was not treated by an orthopedic surgeon for any hip problems, her five months of driving the Hyster in 2014 with accommodations would not have aggravated her preexisting hip arthritis to cause a hip replacement.

65. The evidence establishes that the progression of Claimant's advanced degenerative disease, coupled with her morbid obesity, caused her hip and knee total joint replacements. No physician attributed her need for these joint replacements due to her 2013 industrial accident. The reasonable conclusion is that Claimant's underlying hip and knee conditions progressed over time due to her morbid obesity, not her 2013 industrial accident.

66. The record establishes that Claimant's total disability is due to her 5 lb. (and 10 lb. bilateral) lifting restrictions after her total left shoulder replacement surgery in 2019. These lifting restrictions would restrict Claimant to performing sedentary work; however the nonmedical factors also establish that Claimant did not have transferable skills for sedentary work. Based upon this, Claimant would be totally and permanently disabled based upon her left shoulder injury alone.

67. In the alternative, Claimant's underlying degenerative joint disease, heavily related to her morbid obsesity, caused her total and permanent disability. The Social Security

ALJ found that Claimant became totally disabled in November 2016 when she lost her ability to ambulate independently and was forced to rely on a walker or a wheelchair to ambulate. This was due to her knee and hip replacements, and other obesity related medical problems. Also in this scenario, Claimant was limited to sedentary work for which she had no transferable skills.

68. ISIF is not liable for Claimant's disability as she has failed to show that her preexisting degenerative conditions of her knees and left hip constituted subjective hindrances to her employment at the time of her 2013 industrial accident, nor were preexisting degenerative conditions of her knees and left hip ratable impairments as of her 2013 industrial accident. There is no combination with her left shoulder injury to render her totally and permanently disabled, and her preexisting conditions were not aggravated or accelerated by her 2013 left shoulder injury.

69. **Carey Apportionment**. Since Claimant has failed to establish preexisting subjective hindrances to employment and her preexisting conditions combined with her 2013 industrial injury, the *Carey* apportionment issue is moot.

CONCLUSIONS OF LAW

1. Claimant is totally and permanently disabled.

2. ISIF is not liable for a portion of Claimant's total and permanent disability pursuant to Idaho Code § 72-332.

3. The *Carey* formula is not applicable.

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 ___8th___ day of September, 2025.

INDUSTRIAL COMMISSION

John C. Hummel

John C. Hummel, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of October, 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 email upon each of the following:

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Kate Armon

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

RENATE FRANCIS, Claimant, v. STATE OF IDAHO, INDUSTRIAL SPECIAL INDEMNITY FUND, Defendant.	**IC 2013-019484** **ORDER** FILED OCTOBER 21, 2025 IDAHO INDUSTRIAL COMMISSION

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

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

1. Claimant is totally and permanently disabled.
2. ISIF is not liable for a portion of Claimant's total and permanent disability pursuant to Idaho Code § 72-332
3. The *Carey* formula is not applicable.
4. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 20th day of October, 2025.

INDUSTRIAL COMMISSION

Claire Sharp

Claire Sharp, Chair

Aaron White, Commissioner

ATTEST:

Mary McMenomey

Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of October, 2025, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail and Electronic Mail upon each of the following:

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