

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

ALISON SEEKELL,	Claimant,	IC 2019-025054
v.		
ENCOMPASS HEALTH,	Employer,	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION
and		
ARCH INSURANCE COMPANY,	Surety,	FILED
	Defendants.	SEPTEMBER 30, 2025
		IDAHO INDUSTRIAL COMMISSION

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Industrial Commission assigned this matter to Referee Douglas A. Donohue who conducted a hearing in Boise on December 5, 2023. Taylor Mossman-Fletcher represented Claimant. Nathan Gamel represented Employer and Surety. The parties at hearing presented oral and documentary evidence. They took post-hearing depositions and submitted briefs. This case came under advisement on May 28, 2025, and is now ready for decision.

ISSUES

The issues to be decided according to the Notice of Hearing and as modified by agreement by the parties at hearing are:

1. Whether the condition for which Claimant seeks benefits was caused by the alleged industrial accident;
2. Whether Claimant's condition is due in whole or in part to a subsequent intervening cause;
3. 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 permanent disability,
 - d) medical care; and
 - e) Attorney fees;

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4. Whether Claimant is entitled to permanent total disability under the odd-lot doctrine;
5. Whether apportionment is appropriate under Idaho Code § 72-406;

CONTENTIONS OF THE PARTIES

Claimant contends she suffered an anaphylactic reaction to a tuberculin test required by Employer. (Unfortunately, the test, called a Purified Protein Derivative Test, uses the same acronym, PPD, as the Commission uses for permanent partial disability. The Referee will endeavor to call it a “PPD Test” throughout to distinguish it from our commonly used acronym for disability.) The PPD Test caused an adverse lymphatic response. It aggravated a previously asymptomatic and undiagnosed sarcoid in her lung. This event changed her life for the worse. Having reached maximum medical improvement (MMI) as of August 30, 2022. Claimant requires medical treatment for continuing symptom management. Much of her medical care remains unpaid by Surety. The *Neel* rate applies. Temporary disability benefits should be awarded from October 21, 2021, through the MMI date. Defendants accepted the claim, then cut off benefits, and then belatedly restored some benefits. Defendants unreasonably redirected treatment by refusing a treating physician’s referral and instead unreasonably required a psychological IME. Further, Defendants unreasonably delayed Claimant’s attempts to conduct discovery and to bring this matter to hearing. Defendants’ actions were unreasonable and an award for attorney fees is appropriate. Claimant’s PPI should be rated at 20% whole person as opined by Dr. DiVietro. She qualifies as a totally and permanently disabled odd-lot worker.

Defendants contend Dr. DiVietro’s restrictions do not constitute an opinion about MMI and cannot be acknowledged as *permanent* restrictions. Claimant is not entitled to PPI because *Mazzone* prohibits the Commission from consulting the *AMA Guides*. Claimant failed to identify

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a PPI rating timely under JRP 10. Dr. DiVietro's post-hearing deposition testimony should be stricken. Claimant's counsel "crossed the line" between post-hearing deposition preparation and evidence creation. Therefore, permanent partial disability (PPD) cannot be recognized. Mr. Porter's vocational opinions were not based upon permanent restrictions or whether Claimant was medically stable. The absence of an MMI until post-hearing briefing should preclude any award of medical benefits or TTDs or both. Defendants acted reasonably, and Claimant unreasonably failed to attend a scheduled IME. Defendants should be awarded sanctions for Claimant's disregard of JRP 10 and lack of decorum in briefing.

EVIDENCE CONSIDERED

The record in the instant case included the following:

1. Oral testimony at hearing of Claimant and of her husband Robert Seekell;
2. Joint Exhibits 1 through 28; and
3. Post-hearing depositions of co-worker Jenny Beutter who is a certified nursing assistant (CNA), of pulmonologist Matthew DiVietro and physiatrist Robert Friedman, and of vocational experts Delyn Porter and Cali Eby.

Objections raised in depositions are **OVERRULED** except that Defendants' objection to testimony of Dr. DiVietro regarding his creation of a PPI rating after the date of hearing as violative of JRP 10 is **SUSTAINED**. Defendants' request for JRP Rule 16 attorney's fees sanctions is denied.

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. On September 2, 2019, Claimant received an injection to determine whether she

had been exposed to tuberculosis in the past several months. This purified protein derivative antigen, called a PPD Test, was required by Employer. The shot itself is administered subcutaneously, Over the years in which she worked for Employer she had received this so called “vaccination” on a few occasions. In point of fact, the injected substance is not a vaccine. It merely responds to prior exposure to tuberculosis.

2. The PPD Test involved two injections. Claimant alleged that the injection involved a greater amount of fluid than on earlier occasions and that the needle struck a vein rather than being administered subcutaneously. Claimant’s body reacted adversely. The adverse reaction was immediate. A fluid bubble under the skin moved from her forearm, the site of the injection, to the inside of her elbow and increased in size. Within about 30 minutes she experienced an “anaphylactic” reaction to the injection.

3. After some confusion and searching, an Epi pen was located to counteract the anaphylactic-like reaction. She was taken to the emergency room for further attempts to ameliorate the allergic reaction. Symptoms rose up her arm, into her shoulder, back, neck, and head.

4. Symptoms persisted, waxing and waning. New symptoms arose. Multiple physicians treated her.

5. After the accident Claimant attempted to continue to work as her symptoms allowed, but she separated from Employer in March 2020.

6. Surety initially paid medical care benefits but stopped when Claimant refused to attend an IME neuropsychological evaluation. Benefits discontinued on May 12, 2020.

7. As care continued in later years the Covid-19 pandemic clearly obstructed Claimant’s opportunity for prompt, effective treatment of her compromised immune system. Most follow-up visits to physicians occurred through telehealth encounters.

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Medical Care: September 2, 2019, through December 31, 2019

8. Claimant arrived at the St. Al's emergency room at 11:52 a.m. At 12:37p.m. an RN noted that Claimant reported her left inner elbow was "swollen/red as well as L side of neck." The nurse reported, "Neither have signs of redness/rash at this point."

9. Dr. Morris, D.O., recorded initial symptoms of pain, shortness of breath, tongue swelling, throat swelling, and diaphoresis. He noted that symptoms improved during the emergency room stay. He diagnosed "angioedema" and "allergic reaction" without using the term "anaphylactic" in diagnosis. Later, physicians who did not see her immediately used the term "anaphylactic" as describing her complaint or as a diagnosis.

10. On September 4 Claimant visited St. Al's Occupational Medicine with Jacob Kammer, M.D. She reported feeling "jittery" and having "trouble thinking" since the accident. His examination showed an enlarged epitrochlear lymph node. There was a bump on her medial left elbow. He felt his observations were consistent with an adverse reaction to the prednisone prescribed in the ER two days earlier. He took her off work for the rest of the workweek because of this side effect of the prednisone.

11. Claimant returned to Dr. Kammer on Sept 6 with a complaints of swelling around her neck and left arm with pain, headache, and wheezing. These she reported not to be improving. Upon attempting an examination, he noted she appeared "angry," "anxious," "agitated," "distracted and upset." He was unable to complete an examination. He noted, "Her description of worsening symptoms, wheezing, swelling in the neck and the top of the left shoulder do not fit with a typical allergic reaction." His notes repeatedly and specifically endorse that the PPD Test was given properly.

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12. On September 9 Lawrence Sladich, M.D., saw Claimant in place of Dr. Kammer. Dr. Sladich recorded Claimant's report that her symptoms had increased despite discontinuing prednisone. Upon examination Dr. Sladich was unable to discern a problem at her lymph nodes or at the site of the PPD Test. He extended her release from work for another three days.

13. On September 12 Michael Gibson, M.D., saw Claimant in place of Drs. Kammer and Sladich. Examination revealed swelling in her left arm. He extended her release from work until a follow-up which he conducted on September 13. After his September 13 examination and associated lab work, Dr. Gibson allowed Claimant to return to work effective Monday September 16. Dr. Gibson researched the literature and found that anaphylactic reactions to the PPD Test had been reported.

14. On September 19 Dr. Gibson again examined Claimant in follow-up. He noted improvement in her subjective symptom report. He contextually linked her report of nightly hot flashes with a hysterectomy performed 8 or 9 months earlier. He confirmed that she was released to return to regular-duty work. He did not see Claimant again until October 10.

15. On September 21 Claimant returned to the ER. Differing treaters at this visit recorded differing notes. One history recorded that she complained that encephalitis, n/v/d (nausea/vomiting/diarrhea), abdominal pain, allergic reaction, hot flashes, neck swelling, fatigue, and headaches had continued since the accident. Another history noted that headache, vomiting, diarrhea, hot and cold flashes, dehydration, weight loss of 8 pounds, a one-day right arm tremor, left-sided neck stiffness, swelling at anterior neck, and confusion were symptoms. She denied numbness, tingling, or muscle weakness. Another history recorded, "On reevaluation patient states that her headache has completely resolved."

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16. Examination including lab work at this September 21 visit was unrevealing. MRIs of Claimant's brain and cervical spine showed nonspecific findings and were nondiagnostic.

17. On October 14 visit Dr. Gibson recorded that Claimant reported that the injection site bled at the time of the PPD Test. This is the first note which alleges bleeding occurred. Claimant reported this bleeding as evidence that the injection inappropriately pierced a vein, despite repeated notes of treating physicians in the days immediately following the PPD Test. For example, Dr. Gibson's diagnosis on this date includes an affirmation that the PPD Test was "properly administered." In response to Surety's written questions addressed to Dr. Kammer, Dr. Gibson opined that "all symptoms" were directly related to the industrial injury, and she was not at MMI. He referred her to Dr. Sky Blue.

18. On October 22 Claimant visited Colin Lyness, M.D., for a neurologic consultation regarding her headache. He linked her history of headache to menopause, calling it "catamenial migraine." Upon examination and review of diagnostic imaging, Dr. Lyness was unable to evaluate her linking of multiple symptoms to the PPD Test. He noted her symptoms were gradually improving.

19. On October 24 and 31 Claimant visited Sky Blue, M.D. A chest CT showed a bit of lung scarring and a left lower lobe pulmonary nodule. He noted she had returned to work but complained of fatigue at the end of her workday. He deemed it "likely" that she had an anaphylactic reaction to the PPD Test. He considered some symptoms as possible "overlap" from other causes.

20. On November 26 Dr. Blue in follow-up noted a new symptom of esophageal pressure with earlier described symptoms continuing with minimal lessening. Upon examination he recorded, "The visible roll of swelling at base of neck is only objective finding." He discussed

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with her the “possibility of bias for recognizing sx [symptoms] due to anxiety and frustration of recent injury.” On this date Dr. Blue responded to written questions. He responded by noting the temporal relationship of symptoms to the accident indicated that these “may be related.” He deferred any opinion about which symptoms were or were not related. He opined Claimant was not at MMI.

21. On December 2 St. Al’s Rehabilitation Services (STARS) evaluated Claimant upon referral from Dr. Blue to address lymphedema. Outpatient physical therapy was recommended. Physical therapy occurred sporadically through June 2020.

Medical Care: 2020

22. On January 21 Dr. Blue performed a follow-up examination. He noted the neck swelling was present. Claimant reported it waxed and waned.

23. On February 14 Claimant visited Brianne Ayers, PA-C, an allergist. This visit was also attended by Claimant’s “family and workers comp supervisor.” Claimant endorsed a constellation of symptoms similar to her complaints since the date of the accident. PA Ayers questioned Claimant to expose other potential sources for the allergen-related complaints. None were described. PA Ayers wrote to encourage Employer to accommodate Claimant’s potential need for time off work. Lab work showed potential kidney inflammation.

24. On March 2 Claimant established contact with family medicine physician Scott Shappard, D.O. He emphasized that he was to become her primary care physician and that he was “not seeing her for Workmen’s Comp.” His only relevant examination finding was restricted range of motion with swelling on the left side of her neck. No other record from this physician is in evidence.

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25. On March 26 PA Ayers, citing Covid-19 precautions, recommended Claimant not leave her home and practice social distancing and that she not work with patients or outside of her home. PA Ayers wrote that she “cannot determine any relationship between her allergic reaction to the tuberculin skin test and her current health troubles.”

26. On May 6 Claimant visited Idaho Nephrology Associates within the St. Al’s community. She saw Michael Adcox, M.D.

27. On May 29 Claimant again returned to St. Al’s for another chest CT. She reported continued shortness of breath. The CT showed “slow interval enlargement” of the nodule seen before.

28. On June 8 Claimant visited Dr. Adcox. By history he noted she was unemployed “in part due to her new onset enigmatic illness.” Dr. Blue apparently referred Claimant to Dr. Adcox because of troubling kidney-related lab data. Dr. Adcox examined Claimant with accompanying additional lab data. He found normal kidneys with kidney function at 95% but diagnosed stage 1 chronic kidney disease based upon the lab data. He disagreed with an earlier erroneous medical note which indicated she had only one kidney. Multiple subsequent visits in 2020 through May 1, 2023, were unrevealing for relevant objective symptoms, cause, or diagnosis despite multiple examinations and additional diagnostic imaging. He did acknowledge the sarcoidosis, apparently as separate from her “enigmatic illness.”

29. On July 7 Claimant visited pulmonologist Matthew DiVietro, D.O. with St. Luke’s. He noted presence of the left lower lobe pulmonary nodule. He considered sarcoidosis as a possible candidate. This initial visit and examination provided no diagnosis. A follow-up procedure occurred on July 10 which included a bronchoscopy and fine needle aspiration of a lymph node. Dr. DiVietro listed mediastinal lymphadenopathy as a diagnosis.

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30. On July 18 Dr. DiVietro confirmed the presence of sarcoidosis.

31. On July 22 Dr. DiVietro opined that the sarcoidosis was triggered by the PPD Test. Multiple subsequent visits included treatment and adjustment of medications. Some symptoms arose or worsened as medication dosages were being adjusted during the remainder of 2020.

32. On November 2 rheumatologist Gregory Wilson, D.O., and his nurse practitioner, Clayton Hawks, N.P., began treating Claimant upon referral from Dr. DiVietro. After a thorough history about her reported symptoms was obtained an examination showed no swelling or other objective indicators. Nurse Hawks reported his findings to Dr. DiVietro. He discussed generalized arthralgia and myalgia along with possible “nuisance” side effects from her medication regimen as issues to treat. He acknowledged the sarcoidosis previously shown by diagnostic imaging.

33. Nurse Hawks attended Claimant in follow-up visits.

Medical Care: 2021

34. As part of her ongoing treatment by Dr. DiVietro Claimant returned to him on January 4 and continued with multiple visits. Claimant claimed as being related to the accident new symptoms in other body parts. These were accepted by Dr. DiVietro as possibly being related to her impaired immunosuppression system. After Dr. DiVietro consulted with Claimant’s ob/gyn physician Valtrex was prescribed, and these symptoms resolved. Dr. DiVietro noted that “progressive enlargement” of the nodule on her lung was discovered when evaluating cervical lymphedema. He opined the sarcoidosis was related—to a standard of “entirely possible”—to the PPD Test reaction.

35. Beginning February 15 Claimant continued follow-up visits with Nurse Hawks.

36. On April 7 Claimant began visiting physiatrist Christian Gussner, M.D., upon referral from Tricia Keefe, D.O. to evaluate possible thoracic outlet syndrome which manifest

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with numbness and tingling in both hands. Upon examination Dr. Gussner found the etiology of this condition to be “unclear.” Subsequent nerve conduction testing and EMG revealed moderate neuropathies which did not support a diagnosis of cervical radiculopathy or thoracic outlet syndrome or ulnar neuropathy, but which suggested bilateral carpal tunnel syndrome.

37. On June 2nd, licensed counselor Jami Clevenger reported she had been intermittently—for a period of time, monthly—counseling with Claimant since 2017. Workplace stress was a significant issue during counseling sessions before and after this accident. At the time of this writing, Claimant was attending biweekly counseling sessions.

38. On December 1 another CT of Claimant’s chest was performed. To Dr. DiVietro it showed no enlargement of the nodule nor any other interval change. The radiology report noted “changes concordant with the history of sarcoidosis in the mediastinum and right lung.” This ambiguity does not invite comparison with the prior CT but rather acknowledges the sarcoidosis itself is a change from its presumed earlier absence.

Medical Care: 2022

39. On February 1 Dr. DiVietro planned to continue to monitor Claimant’s symptoms, the stability shown in the December CT notwithstanding. He noted her subjective symptoms were reported as continuing to improve.

40. On April 3 physiatrist Robert Friedman, M.D., reported on his forensic examination of Claimant which he conducted at Defendants’ request. This visit was recorded by Claimant’s attorney. At this visit Claimant floridly described that she felt the fluid of the PPD Test flow both up and down her arm from the injection site. She recalled and reported details contrary to the contemporaneously made record. For example, she stated that “she was told that the injection went into the blood stream.” Actually, the record shows that Claimant believed and reported that

the PPD Test was improperly administered in this way from the outset. This comes despite multiple treating physicians who observed her immediately after the adverse reaction and who reported the PPD Test was administered properly.

41. Dr. Friedman reviewed records and examined Claimant. He acknowledged her adverse reaction to the PPD Test. He opined it caused an enlargement of her preexisting lung mass as well as enlargement of her perihilar lymph nodes. He deemed these “have not stabilized and resolved.” He opined the sarcoid was preexisting although undiagnosed. He opined the sarcoid was aggravated by the PPD Test. He opined her rash, her carpal tunnel syndrome, her diffuse musculoskeletal pain, as well as her anxiety and depression were unrelated to the PPD Test. Dr. Friedman opined that Claimant had reached medical stability. He later identified October 22, 2021, as the date upon which Claimant reached medical stability. He opined her sarcoidosis caused no basis for restrictions or limitations and no PPI.

42. On December 1 another chest CT showed “mild increase” in lung nodules consistent with the diagnosed sarcoidosis.

43. On December 12 Dr. DiVietro noted Claimant’s symptoms waxed and waned but were most recently worse and were “fairly debilitating.”

Medical Care: 2023

44. In response to questions posed on January 11 Dr. DiVietro opined his disagreement with Dr. Friedman’s report. He opined the PPD Test was probable as a cause (“environmental trigger”) for the sarcoidosis. Similarly, he opined the PPD Test caused the ongoing lymphedema. He deemed ongoing treatment to be necessary. He opined she was not yet medically stable.

45. On September 26, Dr. DiVietro answered additional written questions. He opined Claimant could work 0-4 hours per day and would likely miss 10-15 workdays per month as a

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result of her condition. He opined restrictions pertaining to standing/walking, lifting/carrying, and certain postural activities, physical functions, and environmental obstacles. He opined no restrictions pertaining to sitting, typing, or computer use.

Symptoms Persisting to Hearing

46. Since the 2019 accident Claimant has experienced nausea, vomiting, and diarrhea frequently. This is usually accompanied by a rash and swelling at and about her neck. Also, episodes of frequent debilitating headaches occur in concert with such swelling and rashes. Claimant associates these major symptoms with physical overexertion.

47. Since the 2019 accident Claimant reported that she has experienced nerve dysfunction bilaterally throughout her upper extremities.

48. Claimant suffered from asthma in about 7th grade and used an inhaler for about one year. She did not again use an inhaler until after the 2019 accident. She estimated that since the accident she uses an inhaler “at least three times a month.”

49. Claimant suffered from frequent, debilitating, hormonal headaches from the onset of menopause to the date of her hysterectomy, January 2019. She suffered no similar headaches, in severity or frequency, until after the September 2019 accident. Moreover, she described post-accident headaches as “completely different” in character from the earlier headache symptoms.

Post-Hearing Physicians’ Opinions

Dr. DiVietro

50. On April 25, 2024, Dr. DiVietro testified about his opinions. He declared that he appeared as a fact witness and not as an expert witness in this matter. Dr. DiVietro explained the difference between lymphedema and mediastinal lymphadenopathy. The first is a swelling caused by collection of fluid in the area of a lymph node. The second is actual swelling of a lymph node.

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51. A diagnostic finding of a nodule in a lung is nondiagnostic. In Claimant the nodule was first determined to be noncancerous. Thereafter, its slow growth remained a concern, albeit a lesser concern than cancer. Noncaseating granuloma is an indicator of autoimmune system inflammation. When granuloma of a likely fungal or mycobacterial origin (such as tuberculosis) has been ruled out, a diagnosis of sarcoidosis remains.

52. Sarcoidosis may be symptomatic or asymptomatic. Dr. DiVietro testified that experts generally believe an “environmental trigger” is likely the cause why asymptomatic sarcoidosis may become symptomatic. Dr. DiVietro specifically noted metals such as beryllium and aluminum exposures as possible triggers identified in the literature. By Claimant’s history, her adverse reaction to the PPD Test occurred shortly before the symptoms later diagnosed as sarcoidosis. This timing suggests a causal relationship. He described this as “a theory based upon my sort of clinical impression and circumstantial evidence.” The essential circumstantial evidence is that the PPD Test screens for a mycobacterial disease with a mycobacterial antigen and granuloma is often mycobacterial. He emphasized that he “connected” the PPD Test to the lymphadenopathy, but not necessarily to the lung nodule. Moreover, he did not “connect” the lung nodule and sarcoidosis as causal of the lymphadenopathy. He acknowledged that he was unaware of and did not consider her hormone replacement when assessing possible causes.

53. Claimant’s symptoms of fatigue, paresthesia or neuropathy, and shortness of breath are consistent with sarcoidosis. Claimant’s swelling about the neck is consistent with lymphedema. Dr. DiVietro testified that a flare-up of genital herpes is “one of the risks if you are immunosuppressing somebody.” He testified that joint pain is consistent with active sarcoidosis.

54. Prednisone or some other steroid is the primary treatment. Claimant experienced side effects of the prednisone which she found intolerable. The alternative was the more potent

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Methotrexate. This led Dr. DiVietro to refer Claimant to a rheumatologist.

55. Dr. DiVietro testified that his opinions about Claimant's ability to work were based in part upon Claimant's complaints of nausea and vomiting.

Dr. Friedman

56. On November 13, 2024, Dr. Friedman testified that Claimant's lung nodule must have preexisted the accident without having been documented because a nodule could not have arisen in the five weeks between the accident and the chest CT that documented it. Sarcoidosis is an autoimmune reaction, that is, a lymphatic reaction to the lung nodule. He opined that Claimant's lung mass became symptomatic because of the PPD Test. He opined that there is no medical basis to correlate Claimant's reported functional limitations in the days after the PPD Test—or chronically thereafter—as having been caused by the PPD Test. He cited examples of more serious conditions in which other patients function without such limitations despite a medical expectation that such limitations would arise. He opined that Claimant's sarcoidosis and lymphadenopathy do not cause functional limitations and do not indicate a basis for imposition of restrictions. He found her medically stable. Without limitations or restrictions, he opined that no PPI is awardable or present.

57. Dr. Friedman opined that none of Claimant's reported long-persisting symptoms were caused by the PPD Test.

58. After a walk-through of the *AMA Guides* Dr. Friedman opined that Claimant's symptoms reported in the medical record do not warrant a PPI rating above zero.

Vocational Factors

59. Born October 1, 1971, Claimant was 52 years of age at hearing. She attended school in Connecticut and graduated from high school in 1989 in New York.

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60. In 1989 Claimant began college at Orange County Community College (in New York) and studied in the occupational therapy assistant program. After just over two years she obtained a certificate. Soon after, she began working in Idaho for St. Alphonsus hospital eventually she came to specialize in helping patients with brain or spinal cord injuries. She remained with the same employer for 28 years, although Employer's name changed to Trinity and later to Encompass. The position requires continuing education to maintain certification.

61. On June 29, 2023, a surveillance report issued for an investigation that had been performed daily for about one week earlier that month. Multiple brief observations showed Claimant was physically able to perform brief nonstrenuous motions and tasks. The record does not show Claimant has alleged physical impairments inconsistent with these observations.

Vocational Experts' Opinions

62. On November 16, 2023, Delyn Porter reported his vocational opinions based upon records and an interview of Claimant by Zoom at Claimant's request. He opined that if Dr. Friedman's opinions prevail Claimant has no PPI or PPD related to the accident. If Dr. DiVietro's opinions prevail Claimant was not yet medically stable as of January 11, 2023. In September 2023 Dr. DiVietro described significant restrictions which if accepted would preclude all employment which did not involve a sympathetic employer. Any job search would be futile. Mr. Porter opined that he "agreed" with Dr. DiVietro's assessment.

63. In deposition Mr. Porter acknowledged Dr. DiVietro's post-hearing calculation of PPI. He opined that a claimant could be deemed totally and permanently disabled as an odd-lot worker even without a formal PPI rating or even with a PPI rating of zero. Mr. Porter asserted his permanent disability rating is a *combined* rating, inclusive of PPI, in which PPI could be rated at zero as easily as at one percent or more. He acknowledged that this position differs from his

written report where he opined that Dr. Friedman's formal PPI rating of zero precluded any assignment of permanent disability. He acknowledged that at the time of his written report Dr. DiVietro had opined that Claimant was not medically stable and that she required continuing treatment. He acknowledged that Dr. DiVietro's opinion on this point makes his assessment of restrictions to be temporary at best but that they nevertheless provided important information upon which Mr. Porter could assess permanent disability. Mr. Porter testified that he can identify an individual's permanent loss of labor market access based on temporary restrictions. In this instance Mr. Porter testified that he saw no other restrictions than the temporary restrictions identified by Dr. DiVietro. (Contextually, Mr. Porter ignored Dr. Friedman's opinion of the absence of restrictions when he testified to the immediately preceding allegation.) Mr. Porter admitted he based his PPD calculation assuming Dr. DiVietro imposed a 10-pound lifting restriction and did not revise the calculation upon reading Dr. DiVietro's deposition in which Dr. DiVietro testified the 10-pound restriction applied to carrying items not to lifting them. Ultimately Mr. Porter found Claimant's reports of headache and gastrointestinal troubles as being too bad to be able to work were the factors which comprised the basis upon which he determined loss of labor market access.

64. On November 22, 2023, Cali Eby reported her vocational opinions. She reviewed records and interviewed Claimant virtually. Using Dr. DiVietro's opinions, Claimant suffered loss of access in the range of 65% to 87% and a loss of earning capacity of 66% with an appropriate averaging rated at 70.5% PPD. Ms. Eby noted that, according to Dr. Friedman, Claimant suffered no PPI nor PPD related to Claimant's sarcoidosis or other industrially related injury from the PPD Test. This opinion, if accepted, would preclude any PPD.

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65. In deposition Ms. Eby testified that she does not apply temporary restrictions to an assessment of PPD. Nevertheless, finding Dr. DiVietro's restrictions ambiguous as to whether these were permanent, she did consider these to be permanent in her assessment. She did note in her report the absence of a PPI rating. A nonzero PPI rating would be required to make her disability analysis a valid PPD rating in a worker's compensation setting. She acknowledged that she cannot consider Dr. DiVietro's impression that Claimant may miss 10 to 15 days of work per month because of her symptoms. It is not a restriction *per se*, and it depends entirely upon Claimant's subjective perceptions. Nevertheless, she testified that she considered absenteeism as a factor in assessing jobs for which Claimant might qualify. She opined that future employment for Claimant would not require a sympathetic employer, nor would a job search likely be futile.

DISCUSSION AND FURTHER FINDINGS OF FACT

66. 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).

67. 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).

68. 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*,

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131 Idaho 700, 703, 963 P.2d 383, 386 (1998).

69. Claimant's demeanor showed she sincerely believed the history she testified about at hearing. However, she clearly overestimated her own medical knowledge when describing symptoms and causation. She showed a strong emotional component to her testimony, at times sad, despairing, anxious, and angry from moment to moment. This indicated an amount of unconscious exaggeration to her recollection of the severity of her symptoms and how these affected her ability to function. For example, the swelling about her neck depicted in evidence of record does not explain the functional loss she claims. Moreover, her remembered history is at odds with the contemporaneously made medical records on several instances. Claimant is deemed credible to the extent her testimony is not contradicted by such medical records.

70. Claimant's husband was articulate and supportive of his wife and of her testimony. He too confirmed the emotional component inherent as Claimant deals with her reported symptoms. Claimant's husband was a credible witness. He showed no indicia to the contrary.

71. Ms. Beutter was present at the time of the accident. She did not see Claimant again in a work setting. She did correspond with Claimant "a few times" over Facebook. They had an encounter in a grocery store in about 2023. Ms. Beutter showed no indicia of a lack of candor. She was a credible witness.

Causation

72. 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

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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 their plain and unequivocal testimony conveying a conviction that events are causally related. *Jensen v. City of Pocatello*, 135 Idaho 406, 412-13, 18 P.3d 211, 217-18 (2001). Aggravation, exacerbation, or acceleration of a preexisting condition caused by a compensable accident is compensable in Idaho Worker's Compensation Law. *Nelson v. Ponsness-Warren Idgas Enterprises*, 126 Idaho 129, 879 P.2d 592 (1994).

73. Here, the parties have accepted compensability for Claimant's immediate adverse reaction to the PPD Test. Benefits were discontinued only after Claimant refused to attend a scheduled IME.

74. Over time, Claimant has exhibited a complex constellation of symptoms, mostly subjective, with objective evidence of variable swelling about her neck and trapezius area. Moreover, her emotional attachment to her viewpoint that the PPD Test was improperly administered and that she was treated improperly in the few hours immediately following the adverse reaction has complicated her varying memory and reported symptoms over time.

75. The record establishes that Claimant suffered an adverse allergic reaction to the PPD Test, complicated by a physical intolerance to the initial treating medication Prednisone. The immediate symptoms which resembled anaphylaxis resolved in a few days.

76. Some physicians—Drs. Morriss, Kammer, Sladich, Blue, and Lyness among them—have equivocated or denied the relationship of lingering, continued symptoms or belatedly arising symptoms to the PPD Test. They have described no specific causal process to support such a relationship. Other physicians such as Drs. Gibson and DiVietro have opined the likely presence of a causal relationship between the PPD Test and many or all symptoms resulting from a reduced

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autoimmune system, aggravated sarcoidosis and lymphadenopathy. In contemporaneous records these physicians have neglected to provide an explanation of the specific causal process.

77. Dr. Gibson merely noted “all symptoms” when responding to a causation question by Surety.

78. In deposition, at first, Dr. DiVietro linked only swelling, shortness of breath, and generalized joint pain or neuropathy as being expected from sarcoidosis and lymphadenopathy. He was unaware or failed to consider the impact of Claimant’s post-hysterectomy hormone treatments, particularly as it may relate to her headaches. Later, his opinion morphed back and forth as attorneys examined and cross-examined him. He suggested that but for a compromised immune system which arose from the PPD Test, her STD would not have arisen. Clearly, there exists an actual “but for” causation component to acquiring an STD. The record suggests, but does not frankly state, that this was newly acquired from her husband in 2020 and did not represent a dormant preexisting condition which might have flared up, unprevented by a compromised immune system. Dr. DiVietro stretched for similar tenuous causal links regarding Claimant’s gastrointestinal and other wholly subjective symptoms depending upon which attorney was asking the questions.

79. Dr. DiVietro, in deposition, offered the most complete explanation for his opinion. He demonstrated that he is a caring and competent treating physician. However, he showed excessive malleability in the content and extent of his opinion. He expressed as unlikely but possible the linking of more symptoms than the three expected symptoms to the PPD Test. His agreeableness with first one then the other attorney undercuts the weight to be assigned to his causation opinions for all symptoms except swelling, arthralgias, and dyspnea.

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80. Dr. Friedman opined Claimant suffered the same aggravated sarcoidosis with lymphedema related to the PPD Test. He acknowledged that the swelling persisted, waxing and waning, for a time afterward. Beyond this confirmation of causal relationship, he opined Claimant's other symptoms were not causally related to the PPD Test or Prednisone reaction. He found no PPI or reduction in physical function to be industrially related. His opinions are found to be measured, reasonable, and not influenced by whomever is asking a question at the time.

81. The preponderance of evidence supports the causality of the immediate adverse reaction to the PPD Test experienced by Claimant as well as an adverse reaction to the initial administration of Prednisone to treat her. This caused a temporary aggravation of an asymptomatic lung nodule which caused sarcoidosis and swelling of the mediastinal lymph node which were evaluated and treated thereafter. Dr. Friedman's opinions of Claimant's MMI date, etc., constitute evidence indicating the aggravation of the sarcoid was temporary.

82. The preponderance of evidence does not support a causal link for symptoms beyond the sarcoidosis and swelling of the lymph node with fluid collection around it, for generalized arthralgias with fatigue and for dyspnea which resolved. Chronic headaches, hot flashes, gastrointestinal complaints, kidney dysfunction, carpal tunnel neuropathy, cognitive difficulties, and dizziness were not causally linked by a preponderance of medical opinion.

Temporary Disability

83. 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 she is no longer in the period of recovery. *Jarvis v. Rexburg Nursing Center*, 136 Idaho 579, 38 P.3d 617 (2001).

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84. Here, Claimant asserts entitlement to TTD benefits from October 21, 2021, to the date of MMI. Dr. DiVietro represented in his deposition that he would backdate MMI to August 30, 2022. Dr. Friedman represented shortly after his written report that he would backdate MMI to October 22, 2021.

85. Backdating MMI is a hazardous proposition for any physician. Here, neither had a persuasive reason for his chosen date. As of the hearing, Dr. DiVietro was still on record that Claimant was not yet at MMI. His backdating effort in deposition appears more calculated to make his proposed restrictions effective as permanent ones for purposes of awarding PPI and PPD. Dr. Friedman appears merely to choose a date of diagnostic imaging after which not much change in the lung nodule can be established. The speculation by either has its drawbacks for persuasiveness.

86. Here, the Referee accepts the date of Dr. Friedman's IME examination, March 30, 2022, as the MMI date. Medical evidence shows that all Claimant's causally related conditions had resolved on or before that date.

87. Claimant is entitled to TTD benefits from October 21, 2021 to March 30, 2022.

Medical Care

88. An injured worker is entitled to medical care as set forth by Idaho Code §72-432. Additional palliative care beyond the date of medical stability may be appropriate. *Rish v The Home Depot*, 161 702, 390 P.3d 428 (2017).

89. Here, the nature and extent of Claimant's industrially related injury was complex. It was complicated by the moving target of waxing and waning symptoms and belatedly arising symptoms. Medical treatment, even for conditions ultimately found not to be causally related, was reasonable and continued to be reasonable as physicians sought to explain and treat her

objective symptoms together with her reports of wholly subjective symptoms not well expected by competing diagnoses.

90. Surety does not owe for medical benefits temporarily terminated on May 12, 2020 by Claimant's refusal to attend the psychological IME. However, once Surety again resumed benefits, this hiatus ended. Surety is liable for continued treatment and attempts at diagnosis through the date of medical stability, March 30, 2022. Claimant's medical benefits for medical care provided after this hiatus are to be reimbursed at the *Neel* rate.

91. Defendants' failure to pay thereafter constitutes a denial of medical benefits. These unpaid medical benefits, if any, should be paid at the *Neel* rate.

92. Further, medical benefits arising after October 22, 2021, are due and owing—to the extent not yet paid—to the date of medical stability found herein, March 30, 2022. Although it seems to this Referee that these were properly denied, given the information available at the time based upon Dr. Friedman's report, reading of *Neel* and its sequela, particularly *Thompson v. Burley Inn, Inc.*, 173 Idaho 637, 546 P.3d 649 (2024), appears to require that all unpaid medical benefits are to be paid at the *Neel* rate. This would include medical care from October 22, 2021, through March 30, 2022.⁹² Nothing in this decision should be deemed as indicating Claimant was insincere or untrustworthy. To the contrary, treating physicians and this Referee found her to be a competent, hard-working occupational therapy assistant. Her veritas and certainty of her convictions made prolonged treatment reasonable along with the search to diagnose and to connect the constellation of symptoms with the PPD Test. Dr. DiVietro's ultimate inability to persuasively forge the links shows, *a fortiori*, that Dr. Friedman's opinions are correct.

Permanent Partial Impairment

93. Permanent impairment is defined and evaluated by statute. Idaho Code §§ 72-422

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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.

94. The record here is another example of stark contrast between physicians' opinions.

95. First, Dr. DiVietro, in post-hearing deposition, was led through the *AMA Guides*, a tome with which he was less familiar, after which he posited a nonzero PPI rating from memory upon an on-the-spot backdated date of medical stability. This backdated medical stability date is inconsistent with his express opinion that Claimant was not medically stable, which opinion was his most recent as of the date of hearing. This change of opinion and backdating of MMI would make his potential restrictions, significantly favorable to Claimant, permanent and subject to analysis by vocational experts. Temporary restrictions themselves are less persuasive than Dr. Friedman's opinions about this issue.

96. Second, Dr. Friedman, on the date of his IME about two years before hearing, posited a zero PPI rating and backdated the date of medical stability by about six months before his examination. He opined Claimant retained no industrially related limitations or restrictions.

97. Consistency under cross-examination presents an additional stark contrast between the two physicians. As expressed above, Dr. DiVietro appeared to be willing to modify his opinions in whatever way seemed indicated by the moment. Dr. Friedman based his opinions upon a review of records and examination of Claimant, and he never wavered. His opinion that the PPD Test and prednisone reaction caused some aggravation of a preexisting asymptomatic lung condition which had resolved without permanent impairment is consistent with the preponderance of the evidence.

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98. The preponderance of evidence shows Claimant suffered an aggravation of a pre-existing lung condition and swelling of the mediastinal lymph node which involved temporary symptoms related to the accident, and she suffered more prolonged symptoms unrelated to the accident. She failed to show she suffered permanent partial impairment.

Permanent Disability

99. 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).

100. “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.

101. 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). A claimant’s local labor market

access in the area around his home is the general geographical scope for assessing permanent disability. *Combs v. Kelly Logging*, 115 Idaho 695, 769 P.2d 572 (1989).

102. Before the nonmedical factors can be considered a claimant's physical impairment caused by the compensable accident or occupational disease, must be established. Here, accepting Dr. Friedman's PPI rating of zero as being supported by the preponderance of evidence, Claimant is not entitled to PPD.

Attorney Fees

103. Attorney fees are awardable for unreasonable denial or delay of benefits due and owing to a claimant. Idaho Code § 72-804. Recently, additional duties of notice and approval by the Commission are prerequisites to a Surety denying benefits for noncooperation. *Arreola v. Scentsy, Inc.*, 531 P.3d 1148 (2023).

104. Claimant contends that Surety's decision to delay approving a physician's referral by scheduling a psychological IME was unreasonable. The Referee is unpersuaded. Given the complex, varied, and unexpected constellation of symptoms which arose serially and belatedly after the acute effects of Claimant's adverse response to the PPD Test and to the initial Prednisone treatment had subsided, Surety's proposed IME was reasonable. Date and time were reasonable. Notice was reasonable.

105. Claimant refused to attend a psychological IME. Surety's decision to stop benefits as of May 12, 2020, was not unreasonable. *Arreola* does not apply in retrospect. Surety's discontinuance of benefits based upon Claimant's refusal to attend the IME did not require Commission approval. At some point Surety later reinstated benefits despite Claimant's ongoing refusal to cooperate as required by statute.

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106. Further, unpaid medical expenses which arose after the date of voluntary reinstatement of benefits through Dr. Friedman's opined MMI date (October 22, 2021) are deemed to have been unreasonably denied. From Dr. Friedman's chosen MMI date to the date of MMI found by the Commission (March 30, 2022) any denial of medical benefits was not unreasonable. A surety may rely upon a physician's reasonable opinion about an MMI date.

107. Defendants' assertion that Claimant's brief showed a lack of decorum is not well taken. Claimant's written demeanor is found to be factually descriptive in content and professionally appropriate in tone.

108. Defendants' action and inaction during the process of litigation are more concerning. Evidence of record shows that Defendants' failed or refused to maintain reasonably prompt contact with Claimant's attorney regarding payment of certain bills, ignored e-mails inquiring about approval and timing of such payments, and stalled litigation by promising to go to mediation but arriving at mediation without authority to make a reasonable offer to settle the claim. Defendants acted unreasonably or neglected to act within a reasonable time at several instances.

109. A single instance of a missed e-mail or late payment is not *per se* unreasonable. But here the record shows a pattern which, taken as a whole, demonstrates unreasonable stalling. Attorney fees are awardable for all unreasonably unpaid medical benefits which remain due and owing through the date of hearing and for all and time loss (TTD). The record does not well establish the total amount of such unpaid medical bills, and so the parties should cooperatively establish this dollar amount.

CONCLUSIONS

1. Claimant suffered a compensable accident and injury on September 2, 2019, when she had an adverse allergic reaction to a PPD Test to determine possible prior exposure to

tuberculosis.

2. Claimant received reasonable and necessary medical treatment including prolonged attempts at diagnosis, and she is entitled to medical benefits as yet unpaid which were incurred through her date of medical stability on March 30, 2022. Such entitlement does not include a medical benefit for the period beginning May 12, 2020, through the date upon which Surety again began paying any medical benefits. All unpaid medical bills which are due and owing under this decision are to be paid at the *Neel* rate.

3. Claimant is entitled to TTD benefits from October 21, 2021, through March 30, 2022;

4. A preponderance of evidence shows Claimant is not entitled to PPI or PPD; and

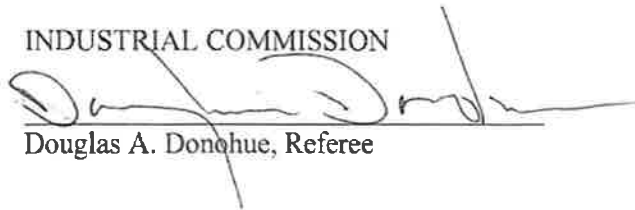
5. Surety is liable under Idaho Code § 72-804 for attorney fees arising from the unreasonable actions by surety and Defendants' attorney.

6. All other issues are moot.

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 __18th__ day of August, 2025.

INDUSTRIAL COMMISSION

Douglas A. Donohue, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of September, 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:

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Debra Cupp

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

ALISON SEEKELL,
v.
ENCOMPASS HEALTH,
and
ARCH INSURANCE COMPANY,
Surety,
Defendants.

Claimant,

Employer,

Surety,
Defendants.

IC 2019-025054

ORDER

**FILED
SEPTEMBER 30, 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 compensable accident and injury on September 2, 2019, when she had an adverse allergic reaction to a PPD Test to determine possible prior exposure to tuberculosis.

2. Claimant received reasonable and necessary medical treatment including prolonged attempts at diagnosis, and she is entitled to medical benefits as yet unpaid which were incurred through her date of medical stability on March 30, 2022. Such entitlement does not include a medical benefit for the period beginning May 12, 2020, through the date upon which Surety again began paying any medical benefits. All unpaid medical bills which are due and owing under this decision are to be paid at the *Neel* rate.

ORDER - 1

3. Claimant is entitled to TTD benefits from October 21, 2021, through March 30, 2022;

4. Claimant is not entitled to PPI or PPD; and

5. Surety is liable under Idaho Code § 72-804 for attorney fees arising from the unreasonable actions by surety and Defendants' attorney.

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.

DATED this 30th day of September, 2025.



ATTEST:

Kamerron Slay
Commission Secretary

INDUSTRIAL COMMISSION

Claire Sharp
Claire Sharp, Chair

Aaron White
Aaron White, Commissioner

Thomas E. Limbaugh
Thomas E. Limbaugh, Commissioner

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of September, 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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