BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

ELIEL MENDOZA, Claimant, v. STATE OF IDAHO, INDUSTRIAL SPECIAL INDEMNITY FUND, Defendant.	**IC 2021-013100** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** **FILED JANUARY 21, 2026** **IDAHO INDUSTRIAL COMMISSION**

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Sonnet Robinson, who conducted hearings on May 19, 2025 and June 5, 2025 in Boise, Idaho. Claimant, Eliel Mendoza, testified and was represented by Darin Monroe of Boise. Daniel Miller of Boise represented Defendant/ISIF. The parties presented oral and documentary evidence. Post-hearing depositions were taken. The matter came under advisement on November 25, 2025 and is ready for decision.

ISSUES

The issues to be decided are:

1. Whether Claimant is totally and permanently disabled;
2. Whether ISIF is liable under Idaho Code § 72-332;
3. If liable, apportionment under the *Carey* formula.

CONTENTIONS OF THE PARTIES

Claimant contends his pre-existing left knee and low back injuries combine with his recent shoulder injury to produce total and permanent disability. Claimant attempted to

return to work but was unable. But for Claimant's most recent shoulder injury, Claimant would be able to perform farm work driving a tractor. ISIF is liable for benefits.

ISIF contends that Claimant's most recent shoulder injury alone is totally disabling. In other words, Claimant cannot prove combination because Claimant's last injury and associated restrictions are totally disabling.

Claimant did not file a reply brief.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. Claimant's Exhibit A;
3. ISIF's Exhibits 1-11;
4. The testimony of Claimant, Eliel Mendoza, taken at hearing;
5. The post-hearing depositions of:
    a. Delyn Porter, taken by Claimant;
    b. Cali Eby, taken by ISIF.

All outstanding objections are OVERRULED.

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

FINDINGS OF FACT

1. Claimant was born August 18, 1966 in Oaxaca, Mexico and was 58 years old at the time of hearing. HT 24:3-23. Claimant arrived in the United States in 2000 and moved to Wilder, Idaho that same year. *Id.* at 25:12-24.

2. On May 20, 2006, Claimant injured his left knee. Ex 1:1. Claimant suffered a meniscal tear, medial collateral ligament injury, and had pre-existing osteoarthritis. *Id.* Claimant underwent surgery and was prescribed a hinged brace to stabilize his MCL. *Id.* Claimant reported to his physician, Dr. Schneider, "he feels that he just cannot continue doing this type of work that he has been doing in the fields." *Id.* Dr. Schneider issued restrictions of avoid walking on uneven ground, kneeling and squatting, or climbing ladders and rated Claimant at 4% of the left lower extremity. *Id.* at 1-2.

3. On January 24, 2009, Claimant injured his low back when he fell backwards and hit his low back on cement. HT 38:10-19.

4. On April 12, 2010, Claimant attended a follow-up appointment with Michael Sant, MD. Ex 2:3. Dr. Sant assessed lumbosacral radiculitis and low back pain and recorded that Claimant had reached MMI after a course of physical therapy. *Id.* Dr. Sant issued restrictions including lifting 30 pounds occasionally, 20 pounds frequently or 10 pounds continuously, limiting bending, twisting, and stooping, and limiting standing and walking to no more than two hours. *Id.*

5. On June 12, 2012, Claimant saw Kevin Krafft, MD, for an impairment rating for his low back after completing work hardening. Ex 3:6. Claimant reported his pain was currently 7-8/10. *Id.* Dr. Krafft declared Claimant at MMI with a 3% impairment and did not assign any restrictions, but noted "he has reached a medium work level which meets his pre-injury position. He is released back to his pre-injury work level." *Id.*

6. Claimant was hired by Weber Farms in 2018. Ex 4:18. On April 9, 2021, Claimant was digging in a ditch and trying to remove a tree root; on the second strike with his shovel, he felt pain. HT 51:23-52:6.

7. Claimant was referred to Michael Daines, MD, and saw him on June 6, 2021. Ex 5:59. Claimant did not report any prior medical or surgical history. *Id.* Dr. Daines recommended an MRI which revealed severe tendinitis and bursitis and significant acromioclavicular arthritis. *Id.* at 64. Dr. Daines recommended surgery after conservative therapy failed. *Id.* at 70. On August 30, 2021, Claimant underwent rotator cuff repair, subacromial decompression, distal clavicle excision, and intra-articular debridement. *Id.* at 76.

8. On September 9, 2021, at follow-up post-surgery, Claimant was still off work and continuing at home exercises. Ex 5:79. Dr. Daines wrote: "with regards to work, he works out in the fields doing farming. We discussed at this point there is nothing that he could return to doing." *Id.* at 80.

9. On October 18, 2021, Claimant met with IRCD and reported his prior knee and back injuries but noted no permanent restrictions related to either. Ex 4:14. Claimant signed the job site evaluation which noted his time of injury position required occasional lifting up to 70 pounds, walking and standing up to seven hours of the day, with a maximum walking and standing time of four hours at a time, occasional climbing and kneeling, frequent bending and stooping and twisting, frequent reaching at shoulder height level, occasionally reaching above shoulder level, and continuously grasping and handling. *Id.* at 24-25.

10. After surgery, Claimant struggled with inflammation and pain in his right shoulder. Ex 5:101. Claimant was ordered to stop physical therapy, received two cortisone shots, and Dr. Daines ordered another MRI. *Id.* at 101-109. On April 1, 2022, after

reviewing the MRI with Claimant, Dr. Daines wrote that the MRI showed "nothing that I would recommend surgery on…I discussed that his MRI images look normal." *Id.*

11. On July 8, 2022, Dr. Daines recommended another MRI due to Claimant's significant pain and weakness. Ex 5:126. On August 11, 2022, Dr. Daines wrote that the MRI showed a functional repair and intact rotator cuff. *Id.* at 129.

12. On October 5, 2022, Dr. Daines rated Claimant at 7% of the upper extremity and assigned restrictions of no lifting overhead, lifting up to 5 pounds below chest-level, and limited use of the right arm. Ex 5:139-141.

13. On October 14, 2022, Claimant met with IRCD for vocational assistance. Ex 4:37. Melissa Rodriguez, the IRCD consultant, asked Claimant "about driving tractor or Hyster and [Claimant] considered this but the vibration and operating on gravels roads or sudden jolts are concerning." *Id.* On December 14, 2022, Claimant reported he "does not feel he can find suitable work within the permanent restrictions." *Id.*

14. On December 29, 2022, Claimant returned to Dr. Daines concerned with numbness and weakness in his fingers. Ex 5:145. Dr. Daines ordered an EMG which was normal. *Id.* at 150. Thereafter, Dr. Daines ordered a shoulder MRI which showed an intact rotator cuff repair. *Id.* at 154. Dr. Daines suspected Claimant's pain might be related to cervical impingement and ordered a cervical MRI. *Id.* at 155.

15. On March 30, 2023, Claimant saw Todd Otstot, PA, who wrote that the cervical spine "shows no source of this weakness or pain in his right arm…pain and weakness is likely due to the atrophy and inability of the rotator cuff muscle bodies to perform and function properly." Ex 5:160.

16. On April 20, 2023, Claimant was evaluated by Timothy Floyd, MD, at Defendant/Employer's request. Ex 6. Dr. Floyd rated Claimant at 2% whole person impairment for this shoulder injury. Ex 6:193. Dr. Floyd wrote there was "no anatomical basis" for Claimant's frozen shoulder and that his weakness was "pain-related, rather than true weakness. This opinion is supported by the finding of a lack of atrophy in the right upper extremity." *Id.* at 189-190. In his written report, Dr. Floyd assigned restrictions of no climbing and no lifting overhead; however, in a job site evaluation dated the same day, Dr. Floyd assigned restrictions of no climbing, no reaching overhead, and no lifting above 50 pounds and only occasionally 0-50 pounds. *Id.* at 194, 199.

17. On May 3, 2023, Dr. Daines re-rated Claimant at 19% of the upper extremity but retained the same restrictions of maximum lifting 5 pounds to chest height, no overhead lifting, and limited use of the right extremity. Ex 5:163.

18. On June 9, 2023, Claimant reported to IRCD he had tried to work but could not tolerate the demands of a field laborer. Ex 4:43.

19. On July 26, 2023, Claimant was evaluated by James Bates, MD, at his request for an independent medical exam. Ex 7. Dr. Bates wrote that Claimant's past medical history was negative for significant medical conditions, but noted a prior knee surgery. *Id.* at 210. Dr. Bates rated Claimant at 7% whole person impairment for his shoulder injury. *Id.* at 223. Dr. Bates issued restrictions as follows: no lifting above 20 pounds, rare lifting above 10 pounds, occasional lifting below 10 pounds, no overhead lifting, occasional push/pull up to 20 pounds, never reaching above shoulder level, occasional reaching below the shoulder, frequent grasping/handling if the right hand is supported and close to the

body, and frequent fine manipulation if the right hand is supported and close to the body. *Id.* at 225-226.

20. On August 23, 2023, Claimant returned to Dr. Daines because he continued to have pain: "he states that his work has been having him do more than he can do. He states he is very painful [sic] and cannot make it through more than a few hours of work." Ex 5:164. Dr. Daines observed Claimant still had "very limited" use of his arm. *Id.*

21. **Vocational History**. Claimant has performed farm labor almost exclusively including driving tractor (hoeing, plowing, ditch maintenance), cleaning corrals, performing irrigation maintenance and repair, planting, harvesting, cleaning produce, weeding and packing produce. HT 27-4-55:17. Claimant speaks very little English but can read and write in Spanish; Claimant only has an elementary education. *Id.* at 25:1-11. Claimant has a remote history of construction work and as a police officer when he lived in Mexico.

22. At Weber Farms during harvest, Claimant did "everything," starting at 5am and working until 10pm seven days a week: "It was every single day." Ex 10:248. In the winter, work was slower, only eight to ten hours a day for six days a week. *Id.* at 249. Claimant explained these hours were typical for farm work and almost all his prior employers kept these hours. *Id.* at 250-251.

23. Claimant described that field work consists of regularly lifting 60-70 pounds, doing a lot of standing, walking, twisting, bending, and climbing. Ex 10:251.

24. After surgery, Claimant attempted to return to work cleaning onions:

> Q: And how long did you do that?
>
> A: Very - - a little bit of time, because they didn't like the fact that I couldn't show up as often as they wanted me.

Q: How often would you show up?

A: I am thinking three days a week.

Q: And was there a reason you couldn't do more work than three days a week?

A: It's just my shoulder was hurting way too much to be able to continue using the hoe and bagging.

Ex 10:251. Claimant also attempted work taking the ear off corn but was similarly unable to work more than three days a week due to pain in his shoulder. *Id.* at 252.

25. On November 22, 2023, Delyn Porter issued a vocational report on behalf of Claimant. Ex A. The Commission is familiar with Mr. Porter, and he is a qualified expert. Mr. Porter interviewed the Claimant in Spanish, reviewed medical and vocational records, and researched immigrant employment in general, but also specifically in Idaho and Boise. *Id.* at 23-24. Mr. Porter examined Claimant's job history, including the physical, educational, and skill requirements to perform farm labor. *Id.* Mr. Porter did not calculate Claimant's labor market based on his prior work, i.e. what farm work Claimant had performed and could still perform. Instead, Mr. Porter focused on Claimant's undocumented status and geographic area to calculate his labor market. *Id*. Utilizing statistics from Idaho Department of Labor's *Occupational Employment and Wage Survey*, Mr. Porter calculated that approximately 5% of Idaho's workforce were undocumented workers, and 5% of the Boise job market was 17,912 total jobs. Mr. Porter used this number as Claimant's available labor market. Applying Claimant's low back and left knee restrictions, Claimant's pre-injury market was reduced to 13,815 jobs. Utilizing Dr. Floyd's restrictions from his written report, Claimant lost access to 22.9% of his labor market. *Id.*

at 24. Utilizing Dr. Bates' restrictions, Claimant lost access to 85.7% of his labor market. *Id.* at 25.

26. Similarly, for wage loss, Mr. Porter "used the reported Middle 25% wages to identify Mr. Mendoza's post-injury wage-earning capacity" from the Idaho Department of Labor's *Occupational Employment and Wage Survey*. Utilizing Dr. Floyd's restrictions, Claimant suffered wage loss of 26%. Utilizing Dr. Bates' restrictions, Claimant suffered wage loss of 40.8%. Mr. Porter concluded that Claimant was totally and permanently disabled under the odd-lot doctrine with Dr. Bates' restrictions. Mr. Porter opined Claimant sustained permanent partial disability of 24.5% based on Dr. Floyd's restrictions. *Id.* at 26.

27. On February 15, 2024, Mr. Porter issued an updated report with Dr. Daines' most recent restrictions. Mr. Porter interpreted "limited" use of the right upper extremity to mean Claimant was limited to using his right upper extremity for 33% of the day. Ex A:34. Mr. Porter described Dr. Daines' restrictions as "catastrophic" to any return to work for Claimant. *Id.* at 35. Mr. Porter opined that Dr. Daines' restrictions resulted in a "total and complete labor market loss" for Claimant and that he was 100% disabled. Further, even if he weren't 100% disabled, he would be an odd-lot worker and still totally and permanently disabled. *Id.* Mr. Porter opined that that Claimant's pre-existing restrictions combine with Dr. Daines' most recent restrictions to result in total and permanent disability but did not describe how they combined. *Id.* at 36.

28. On April 29, 2025, Cali Eby issued a vocational report on behalf of ISIF. Ex 11. The Commission is familiar with Ms. Eby, and she is a qualified expert. *Id.* at 286-287. Ms. Eby interviewed Claimant via interpreter and reviewed medical and vocational reports. *Id.* Claimant reported to Ms. Eby that prior to his shoulder injury, he observed a 30-pound

lifting restriction, worked more slowly, and wore a knee brace when working in the fields. *Id.* at 275.

29. Without restrictions, Ms. Eby calculated Claimant had access to 13,430 jobs in the Boise area in positions within his skillset, such as sorting and packing agricultural products. *Id.* at 284. With Dr. Daines' restrictions, Claimant lost access to 95% of his prior labor market and "he would not realistically be employable." With Dr. Floyd's restrictions from his written report and the JSE and Claimant's previous limitations, Claimant had access to 1,522 jobs. With Dr. Bates' restrictions, Claimant lost access to nearly all of his labor market. Ms. Eby considered the Claimant totally and permanently disabled by Dr. Bates' and Dr. Daines' restrictions for his right shoulder. *Id.* Ms. Eby concluded:

> With his injury to his right, dominant arm and hand, there are no realistic job opportunities within the restrictions set forth by Dr. Daines or Dr. Bates. While his previous knee and back injuries certainly impact his capacity to work, as do his nonmedical factors, his last injury to his right upper extremity was enough to reduce his entire labor market. I do not believe he is employable within those restrictions.

Id. at 285.

30. At hearing, Claimant testified that after his left knee injury, he slowed down and had help from his family to move sprinkler lines over uneven ground. HT 29:19-31:19. However, for certain employers he did not have help from his family. HT 36:1-6. Claimant testified that driving truck or tractor hurt his knee because of shifting with the clutch; after his low back injury, the rattling of the truck or tractor also hurt his back. HT 38:3-39:2. Claimant drove tractor for Weber Farms at the beginning of his employment and described driving tractor for his other Employers after his left knee and low back injury. HT 47:1-14; 48:15-22; See Ex 10.

31. On June 30, 2025, Mr. Porter was deposed. Mr. Porter understood Claimant's preexisting restriction to include a restriction against walking on uneven ground due to his left knee and medium duty lifting restriction due to his low back. *Id.* at 24:23-25:11. Mr. Porter then summarized the three physicians' right shoulder restrictions and reiterated that Dr. Floyd's restrictions resulted in labor market loss of 22.9%, Dr. Bates' in labor market loss of 85.7%, and Dr. Daines' in labor market loss of 100%. *Id.* at 29:15-31:24. Mr. Porter opined that Claimant could still operate a tractor with Dr. Bates' restrictions alone: "there would still be some tractor jobs available to him. Newer tractors have good air suspension in them… he would be able to operate the tractor with his left hand. He could run the controls with his right hand." *Id.* at 35:19-36:2. He also opined that Claimant could still move 2.5-inch irrigation pipe by only using his left extremity. *Id.* at 36:4-18.

32. On cross-examination, Mr. Porter testified he was not aware Claimant had reported numbness in his right hand. *Id.* 42:14-18. Mr. Porter himself moves irrigation pipe on his ranch and noted "an empty three-inch pipe weighs probably about fifty pounds." Mr. Porter also agreed that tractors generally require their operators to climb into the cab. *Id.* at 46:2-19. On re-direct, Mr. Porter testified a 2.5-inch pipe would weigh about 35 pounds empty. *Id.* 52:22-25.

33. Ms. Eby was deposed on August 25, 2025. Ms. Eby considered Claimant's past job history in calculating her labor market statistics. Eby Depo. 17:1-24. Ms. Eby disagreed with Mr. Porter that Dr. Bates' restrictions were "medium-light" as Dr. Bates did not allow Claimant to lift more than 20 pounds; Ms. Eby considered Dr. Bates' restrictions sedentary. *Id.* at 20:6-21:15. Ms. Eby reiterated her opinion that Dr. Daines' restrictions result in a complete loss of labor market access; Dr. Floyd's restrictions and Claimant's

pre-existing restrictions result in significant labor market loss but Claimant would still be able to access some farming jobs such as equipment operator and in packaging. *Id.* at 21:20-22:17. Similarly, Claimant was totally and permanently disabled from Dr. Bates' restrictions alone. *Id.* at 23:1-6.

34. On cross-examination, Ms. Eby explained that whether Claimant had a 'subjective hinderance' prior to the injury was a "hard" question due to his inconsistencies in reporting. Eby Depo. 24:1-20. However, if the Commission found Claimant's reports of assistance more credible than other evidence, then she would consider Claimant's pre-existing restrictions as subjective hinderances. *Id.* at 24:21-25:1. Ms. Eby was asked whether she considered Claimant's tractor driving as a combination scenario; i.e., that Claimant could drive tractor with his right arm restrictions but his low back prevents that position. *Id.* at 26:5-14. Ms. Eby responded that Claimant's low back 'restriction' was a subjective limitation; Ms. Eby only considers the physician's restrictions in her analysis and the restrictions here do not combine to produce total and permanent disability. *Id.* at 26:18-24.

35. **Credibility.** Claimant's hearing testimony is occasionally contradicted by medical reports, vocational reports, and his prior deposition testimony. Where Claimant's hearing testimony is contradicted by prior records and testimony, the prior records and testimony will be relied upon.

DISCUSSION AND FURTHER FINDINGS

36. The provisions of the Workers' Compensation Law are to be liberally construed in favor of the employee. *Haldiman v. American Fine Foods*, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990). The humane purposes which it serves leave no room for

narrow, technical construction. *Ogden v. Thompson*, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996). Facts, however, need not be construed liberally in favor of the worker when evidence is conflicting. *Aldrich v. Lamb-Weston, Inc*., 122 Idaho 361, 363, 834 P.2d 878, 880 (1992). A worker's compensation claimant has the burden of proving, by a preponderance of the evidence, all the facts essential to recovery. *Evans v. Hara's, Inc.*, 123 Idaho 473, 479, 849 P.2d 934 (1993). 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).

37. The Industrial Commission, as the fact finder, is free to determine the weight to be given to the testimony of a medical expert. *Rivas v. K.C. Loggin*g, 134 Idaho 603, 608, 7 P.3d 212, 217 (2000). "When deciding the weight to be given an expert opinion, the Commission can certainly consider whether the expert's reasoning and methodology has been sufficiently disclosed and whether or not the opinion takes into consideration all relevant facts." *Eacret v. Clearwater Forest Industries*, 136 Idaho 733, 737, 40 P.3d 91, 95 (2002).

38. **Total Permanent Disability.** A prerequisite to a finding of ISIF liability is a finding that Claimant is totally and permanently disabled. *Wernecke v. St. Maries Joint School Dist. No. 401*, 147 Idaho 277, 284, 207 P.3d 1008, 1015 (2009). There are two methods by which a claimant can demonstrate that he or she is totally and permanently disabled. The first method is by proving that his or her medical impairment together with the relevant nonmedical factors totals 100%. If a claimant has met this burden, then total and permanent disability has been established. The second method is by proving that, in

the event he or she is something less than 100% disabled, he or she fits within the definition of an odd-lot worker. *Boley v. State of Idaho, Industrial Special Indemnity Fund*, 130 Idaho 278, 281, 939P.2d 854, 857 (1997). An odd-lot worker is one "so injured that he can perform no services other than those which are so limited in quality, dependability or quantity that a reasonably stable market for them does not exist." *Bybee v. State of Idaho, Industrial Special Indemnity Fund*, 129 Idaho 76, 81, 921 P.2d 1200, 1205 (1996).

39. The first inquiry is what restrictions are most appropriate for Claimant's right shoulder injury. Despite different methodologies, both experts reached very similar conclusions regarding the effect of Claimant's three sets of restrictions. If Dr. Floyd's restrictions are adopted, Claimant is not totally and permanently disabled per both experts' opinions. If Dr. Daines' restrictions are adopted, Claimant is totally and permanently disabled via his last injury alone per both experts' opinions.[1] If Dr. Bates' restrictions are adopted, Claimant is totally and permanently disabled by these restrictions alone per Ms. Eby whereas Claimant is totally and permanently disabled via a combination of Dr. Bates' restrictions and his pre-existing restrictions per Mr. Porter at deposition.

40. Dr. Floyd wrote two sets of restrictions for Claimant; his written report prohibits climbing and overhead lifting, but a job site evaluation form he filled out the same day limits Claimant to occasional lifting 0-50 pounds, never lifting above 50 pounds, no overhead reaching, and no climbing. Ex. 6:194, 199. Dr. Floyd's written report contradicts the JSE: "Regarding lifting…no temporary or permanent restriction against lifting, pulling, or pushing" vs. the handwritten notation of "never [lifting] 51-75" and

[1] Mr. Porter testified that Dr. Daines' restrictions resulted in 100% loss of labor market and did not maintain his written opinion that Dr. Daines' restrictions could combine with his pre-existing restrictions. See Porter Depo. 31:22-24; 46:20-47:12.

occasional lifting 0-50 pounds. *Id.* Dr. Floyd's JSE set of restrictions much more closely match Claimant's level of function, but Dr. Floyd's written report, read as a whole, seemingly endorses the first set of restrictions as his preferred opinion. Dr. Floyd expresses frequently that Claimant is able to use his upper extremity more than he is reporting, remarking on atrophy or lack thereof numerous times in his findings, and that Claimant's weakness is pain based and not "true weakness." The ambiguity regarding his ultimate opinion makes it impossible to adopt either set of restrictions on a more probable than not basis as required. Dr. Floyd's restrictions for Claimant's right shoulder injury are rejected.

41. Dr. Bates' and Dr. Daines' restrictions are both well founded in the medical record and in Claimant's demonstrated functioning. However, Dr. Daines' restrictions are given more weight than Dr. Bates' restrictions.

42. Dr. Daines was Claimant's treating physician for this injury for a little over two years. Dr. Daines revised and revisited Claimant's impairment rating and restrictions based on Claimant's deteriorating level of function and increasing levels of pain. In other words, Dr. Daines had a more nuanced and thorough understanding of Claimant's abilities because of observation over many years. Dr. Bates only met Claimant once in an IME setting.

43. Dr. Daines' restrictions more closely match Claimant's functional abilities, particularly his attempted returns to work. Claimant demonstrated in all his return-to-work attempts that he could not tolerate the pain in his shoulder for more than a few hours, strongly matching Dr. Daines' restriction of limited use of the right upper extremity. The record does not reveal how heavy a bag of onions was at the facility where Claimant attempted work, but even if it was five pounds or less, Claimant could not tolerate it for a

full day's work. Similarly, regardless of how heavy the heads of corn Claimant was topping were (or how high), Claimant could not tolerate it for more than a few hours due to pain in his upper right extremity. Both jobs as described by Claimant would fit within Dr. Bates' restrictions, but Claimant could not tolerate either because of pain in shoulder from using his right upper extremity to top corn or hoe/bag onions.

44. Dr. Daines' restrictions are the most persuasive. Claimant is totally and permanently disabled from his right shoulder injury alone per the opinions of Mr. Porter and Ms. Eby.

45. Even if Dr. Bates' restrictions were more persuasive, Mr. Porter's opinion applying them is not. Mr. Porter testified that there were some tractor positions still available within Dr. Bates' restrictions. However, Mr. Porter also admitted at hearing that any tractor or equipment job requires the operator to climb into the cab and Claimant agreed at his 2024 deposition. Ex 10:251. Claimant is prohibited from climbing, i.e. "no reaching above shoulder" per Dr. Bates, making a tractor driving position unsuitable even under Dr. Bates' restrictions.

46. **ISIF Liability.** Idaho Code § 72-332 provides that if an employee who has a permanent physical impairment from any cause or origin, incurs a subsequent disability by injury 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 suffers total and permanent disability, the employer and its surety will be liable for payment of compensation benefits only for the disability caused by the injury, and the injured employee shall be compensated for the remainder of his income benefits out of the ISIF account.

47. In *Aguilar v. Industrial Special Indemnity Fund*, 164 Idaho 893, 436 P.3d

1242 (2019), the Idaho Supreme Court summarized the four inquiries that must all be satisfied to establish ISIF liability under Idaho Code § 72-332. These include: (1) whether there was a pre-existing impairment; (2) whether that impairment was manifest; (3) whether the impairment was a subjective hindrance to employment; and (4) whether the impairment in any way combined with the subsequent injury or was aggravated and accelerated by the subsequent injury to cause total disability. *Aguilar*, 164 Idaho at 901, 436 P.3d at 1250.

48. **Pre-existing Impairment and Manifest.** To be manifest, the impairment must not only be in existence before the industrial accident and injury occurred, but Claimant and/or others must have been aware of the condition. *Horton v. Garrett Freightlines, Inc.*, 115 Idaho 912, 772 P.2d 119 (1989). Claimant's left knee and low back were pre-existing, manifest impairments.

49. **Subjective Hinderance.** The Idaho Supreme Court set out the definitive explanation of the "subjective hindrance" requirement in *Archer v. Bonners Ferry Datsun*, 117 Idaho 166, 686 P.2d 557 (1990). Under this test, evidence of the claimant's attitude toward the preexisting condition, the claimant's medical condition before and after the injury or disease for which compensation is sought, nonmedical factors concerning the claimant, as well as expert opinions and other evidence concerning the effect of the preexisting condition on the claimant's employability are considered in determining whether a particular condition was a subjective hindrance to that particular claimant. *Id*.

50. Claimant argues his left knee and low back were subjective hinderances prior to his right shoulder injury. Claimant suffered a left knee in 2006 for which he was rated and restricted from walking on uneven ground. Claimant suffered a low back injury in 2009 for which he was rated and restricted to a medium duty work capacity. Claimant testified

at hearing that he had assistance from family in completing his job due to his left knee. Claimant told Ms. Eby he observed a 30-pound lifting restriction prior to his injury due to his low back. Claimant testified he just worked through the pain because he needed to support himself and his family.

51. The record does not support Claimant's hearing testimony that he had assistance from his family. Claimant did not report assistance from family to Mr. Porter at his interview, to Ms. Rodriguez in her initial interview, or in his deposition. This claim only appears after ISIF was joined in litigation.

52. Similarly, when asked, Claimant denied any prior restrictions to Ms. Rodriguez and to Dr. Bates, and denied any medical or surgical history to Dr. Daines. Claimant "acknowledged" his restrictions to Mr. Porter but explained he kept performing heavy physical labor "despite his preexisting industrial injuries." Ex A:10. Claimant signed the job site evaluation agreeing that he performed a heavy job with a lot of walking and lifting, the two activities Claimant was restricted from. Claimant's report to Ms. Eby that he observed a 30-pound lifting restriction does not appear elsewhere in the record.

53. Claimant credibly testified that he had pain in his left knee and low back while performing his regular duties. However, Claimant's attitude toward his pre-existing injuries and pain prior to the industrial injury is probably best captured by this exchange at his deposition:

> Q: Why did you leave [Jackson Hops]?
>
> A: Well, I mean, we like - - and the reason I saw "we" is because my son was with me, **we like to work, but we like to work with people that like to work. And so they weren't working.**
>
> Q: At the hops place?

A: Yes.

Q: Did you feel you were doing more than your fair share?

A: Yeah, and the thing is that **when you see that other people aren't doing their job and you want it to be done, and so you push yourself and you do more than what you should be doing. Maybe I just view it wrong. Maybe I pushed myself too much.**

Ex 10: 249-250. Claimant worked for Jackson Hops after both his left knee and low back injuries and testified he was doing *more* than his fair share of work. Claimant was an incredibly hard worker and he "pushed" through the pain. Claimant credibly testified that he had pain while working but there is no evidence it ever "hindered" him in any way in completing his work or that he considered these injuries hinderances prior to his right shoulder injury. Claimant has failed to prove he suffered a pre-existing subjective hinderance as required for ISIF liability.

54. **Combination.** The fourth and final element required for ISIF liability is that the pre-existing impairments must "combine with" the impairment from the industrial accident and injury to render a person totally and permanently disabled or permanently aggravated and accelerated a pre-existing condition to cause total and permanent disability.

55. Claimant must show that but for his pre-existing injuries, he would not be totally and permanently disabled. Claimant has attempted to do this by showing that but for his low back and/or knee injury, he could perform work driving tractor. This argument relies on the finder of fact adopting Dr. Bates' restriction. As explained above, Dr. Daines' restrictions are adopted over Dr. Bates' due to his superior understanding of Claimant's injury and functioning. Both vocational experts agree that if Dr. Daines' restrictions are adopted, Claimant is totally and permanently disabled from those set of restrictions alone.

56. Per the above finding, Claimant is totally and permanently disabled from the

restrictions of his right shoulder injury. Claimant has not met his burden to show the fourth element of ISIF liability, combination, to show that but for the prior injuries, Claimant would not be totally and permanently disabled. Claimant has not met his burden to show ISIF is liable for benefits.

CONCLUSIONS OF LAW

1. Claimant is totally and permanently disabled from his last injury alone;
2. ISIF is not liable for benefits;
3. All other issues are moot.

RECOMMENDATION

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

DATED this 31st day of December, 2025.

INDUSTRIAL COMMISSION

Sonnet Robinson

Sonnet Robinson, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of January, 2026, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by *E-mail transmission* upon:

DARIN MONROE
dmonroe@monroelawoffice.com

DAN MILLER
dan@lsmj-law.com

ge Gina Espinosa

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

ELIEL MENDOZA, Claimant, v. STATE OF IDAHO, INDUSTRIAL SPECIAL INDEMNITY FUND, Defendant.	**IC 2021-013100** **ORDER** **FILED JANUARY 21, 2026** **IDAHO INDUSTRIAL COMMISSION**

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

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

1. Claimant is totally and permanently disabled from his last injury alone.
2. ISIF is not liable for benefits.
3. All other issues are moot.
4. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this __21st____ day of ___January_____, 2026.

INDUSTRIAL COMMISSION

Claire Sharp

Claire Sharp, Chair

Aaron White, Commissioner

ATTEST: Mary McMenomey
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __21st____ day of __January_____ 2026, a true and correct copy of the foregoing **ORDER** was served by *E-mail transmission* upon:

DARIN MONROE
dmonroe@monroelawoffice.com

DAN MILLER
dan@lsmj-law.com

ge

Gina Espinoza