BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

LARRY CHARLESWORTH, Claimant, v. STATE OF IDAHO, INDUSTRIAL SPECIAL INDEMNITY FUND, Defendant.	**IC 2020-016087** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** **FILED** **JANUARY 30, 2026** **IDAHO INDUSTRIAL COMMISSION**

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Industrial Commission assigned this matter to Referee Douglas Donohue. Referee Donohue conducted a hearing in Twin Falls on August 28, 2025. Andrew Adams represented Claimant. Bren Mollerup represented ISIF. Employer had settled previously. The parties presented oral and documentary evidence. The parties took post-hearing depositions and submitted briefs. The case came under advisement on December 1, 2025, and is now ready for decision.

ISSUES

The issues to be decided according to the parties at hearing are:

1. Whether Claimant is entitled to total and permanent disability, either 100% or as odd-lot;

2. Whether ISIF is liable under Idaho Code § 72-332; and

3. Apportionment to establish ISIF's share of liability under *Carey v. Clearwater County Road Dept.*, 107 Idaho 109, 686 P.2d 54 (1984).

CONTENTIONS OF THE PARTIES

Claimant contends he is totally and permanently disabled—both 100% and as an odd-lot worker—after a 2020 industrial accident in which he was struck by a coworker's vehicle which

injured his back, hip and left leg. Preexisting conditions include a 1987 elbow injury together with arthritis in his back, knee, and hip joints which had developed in 2011. These hindered his ability to perform his work and are bases for ISIF liability. These combined with the 2020 industrial injury to his hip and left leg to render Claimant totally and permanently disabled. The evidence supports a *Carey* apportionment of liability with 21% to Employer and 79% to ISIF.

In Claimant's reply brief he emphasizes that chronic pain and narcotic use to manage pain is a hindrance which combined with the current accident to complete the prerequisites for ISIF liability. Moreover, his difficulty standing and his need for a cane arise as a combination of his prior injuries, chronic pain and pain management, and the 2020 accident. Therefore, Ms. Eby's focus on standing limitations and use of a cane actually supports that Claimant has met the combination prerequisite for ISIF liability.

ISIF contends that Claimant was rendered an odd-lot worker solely by the subject industrial accident. The preexisting conditions do not constitute a but-for cause without which he would not be totally and permanently disabled. The "combination" requirement for ISIF liability is not present. Moreover, Claimant failed to provide evidence of the extent of preexisting impairment thereby precluding a *Carey* apportionment. A vocational expert's opinion cannot suffice in the absence of a physician's opinion as to permanent impairment. Neither can a layman's recollection of a result of a prior claim under the California workers' compensation system.

EVIDENCE CONSIDERED

The record in the instant case included the following:

1. Oral testimony at hearing of Claimant;
2. Joint exhibits 1-25 admitted at hearing; and
3. Post-hearing depositions of physician Richard Wathne, M.D., and vocational experts DeLyn Porter and Cali Eby.

All objections raised in post-hearing depositions are OVERRULED. The record was held open for receipt of old medical records, reserved as a potential exhibit 26, which had not yet been obtained at the time of hearing if they could be found. The record was never supplemented with these records.

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

1. (Due to the settlement between Claimant and Employer, much of the evidentiary medical record does not pertain to issues of impairment, restrictions, or limitations which impact potential ISIF liability. Therefore, much of Claimant's medical care is of limited relevance. Nevertheless, the entire record was reviewed and considered by the Referee.)

2. On July 7, 2020, Claimant was struck by a coworker driving one of the Employer's vehicles while Claimant was opening a gate in Employer's yard. He injured his back and left leg. In the emergency room he denied other injuries, but he reported knee pain. One note says "right", another "left." X-rays showed fractures of his tibia—including medial malleolus—and fibula. A CT scan was ordered for his left knee. Hospitalization records show Claimant complained that his most severe pain was felt in his low back. An L1 compression fracture was evident by X-ray. The leg was reset, but the L1 vertebra did not need surgery.

3. Early on, temporary aids and restrictions—including inpatient rehabilitation—were recommended to hasten recovery. Inpatient rehabilitation lasted about eight weeks. Occasionally, a therapist would assess Claimant's function and rate his ability to perform activities of daily living as a percentage. These ratings were an assessment of his recovery while recovery was still ongoing. Thus, each was temporary. Moreover, the assessments included both objective and

subjective criteria. Ultimately, these ratings are not relevant to any consideration of permanent physical impairment. Claimant was discharged on September 4, 2020.

4. As early as August 2, 2020, at least one physician was chastising Claimant for his lack of effort in his own recovery. This theme arises recurrently throughout the medical records.

5. Evaluation for home health care visits began August 10, and visits continued through November 2, 2020. The final evaluation deemed Claimant able to perform all activities of daily living without assistance. It deemed that Claimant had reached "maximum rehab potential" and recommended additional outpatient physical therapy.

6. On November 5, 2020, outpatient physical therapy began. Visits continued through July 12, 2021. Claimant's functional progress was well documented. The physical therapists did not opine about or separate treatment to indicate cause or need as being related to the subject accident, prior conditions, or subsequently arising conditions.

7. On January 7, 2021, Dr. O'Halloran noted at length about Claimant's failures at therapies designed to return him to work. Dr. O'Halloran released Claimant from his care stating he had nothing more to offer. Nevertheless, he did not entirely close the recovery door and opine Claimant medically stable. He mused about the possibility of help from other specialists. Ultimately, Richard Wathne, M.D., took over as treating physician.

8. On February 2, 2021, Claimant's pain management physician chastised him for taking his wife's morphine in addition to his prescribed Percocet. His prescription was changed to wean him off Percocet in favor of Belbuca, an opioid with a longer therapeutic half-life. The goal was to reduce administration from five Percocet per day to twice-daily Belbuca.

9. On April 8, 2021, Claimant again showed unprescribed morphine in addition to his other opioids. This time he denied having taken his wife's morphine. The pain management

physician directed that he be cut off from his Percocet. Claimant refused the offer of Suboxone. Not long after, the physician prescribed Suboxone anyway.

10. On April 27, 2021, Richard Wathne, M.D., allowed a return to restricted work. He imposed temporary restrictions. He recommended a continuation of physical therapy.

11. On June 9, 2021, Dr. Wathne restricted Claimant from all work for at least 30 days.

12. After a request by Surety and review of additional records pertaining to Claimant's physical status before the date of this accident, on July 13, 2021, Dr. Wathne performed an examination to determine MMI status and for an impairment rating. He noted that X-rays showed a knee healed by surgery, residual quadriceps atrophy, and full range of motion, with a "slight" limp. Claimant reported minor tenderness. Dr. Wathne opined Claimant to be at maximum medical improvement ("MMI") and used the *Guides* to rate impairment at 10% of the left lower extremity without apportionment to prior conditions. He recommended permanent restrictions including: no standing more than one hour, limited stair/ladder climbing, 50-pound lifting maximum. Dr. Wathne attributed these restrictions wholly to the subject accident. He did recommend continuing quadriceps exercises as "routine maintenance" to ameliorate the atrophy.

13. On September 9, 2021, Claimant reported extreme exacerbation of chronic low back pain. Contextually, the physician's note does not mention a recent inciting event but relates this to his ancient accidents which preceded the subject industrial accident. The note does not frankly opine either way. By September 23 an MRI revealed an "acute/subacute vertebral fracture at T11/T12." No cause was identified. The physician did state that it accounted for his pain exacerbation. The September 23 note reported that Claimant "has overused [opioids] in the past and had aberrant behaviors." By contrast, the continuing boilerplate in the note rated Claimant as being at "low risk of opioid abuse, misuse and diversion."

14. On October 1, 2021, a kyphoplasty was performed to relieve the wedge compression fracture at T11/T12. The medical notes continue to relate ongoing leg pain to the subject industrial accident but do not suggest this T11/T12 condition was in any way related.

15. On October 26, 2021, a functional capacity evaluation ("FCE") was performed. He performed less able than at Dr. Wathne's examination in July. After considering both subjective reports, effort, and objective testing, physical therapist Briggs Horman recommended "light medium" duty with maximum lifting at 36.5 pounds.

16. On October 7, 2025, Dr. Wathne testified in a post-hearing deposition. As an orthopedic surgeon, Dr. Wathne treated Claimant on referral from Dr. O'Halloran to perform a permanent physical impairment ("PPI") rating. He examined Claimant and did not initially consider him medically stable for purposes of rating PPI. After follow-up visits in which Claimant's gait and atrophy improved, he deemed Claimant stable and ratable. Dr. Wathne acknowledged that his two sets of restrictions given on July 13, 2021, were somewhat inconsistent. In deposition Dr. Wathne testified that the set of restrictions which included the 50-pound lifting restriction was the second of the two, articulated after the complete examination for purposes of PPI rating, and should be considered his final set of permanent restrictions. He did not evaluate Claimant for a PPI rating pertaining to any preexisting conditions. He was aware of Claimant's continuing chronic pain management for an earlier low back injury and reviewed pain management records beginning in 2013, but he did not review any other medical records which preceded the subject accident. Dr. Wathne acknowledged that an average chronic pain patient may have extended recovery from a subsequent accident and injury. He acknowledged that his medical note which referenced Claimant opting for "Social Security Disability" was actually a reference to Claimant stating that he intended to retire rather than undergo a work-hardening program. Dr.

Wathne testified, "I did not find any related preexisting conditions that affected this 10 percent left lower extremity impairment."

Prior Conditions: Medical Records and Testimony

17. Claimant injured his right elbow in an industrial accident. The record shows no medical records from that time or accident. All information depends on Claimant's memory. Because he could no longer work on ships, about July 1987 he was reassigned to work in the plate shop. The plate shop required the same amount of lifting but climbing was no longer required. He testified that the physician did not impose specific restrictions but told him to be careful not to damage a plastic insert which had been surgically placed in his elbow. He testified inconsistently in deposition that the physician did impose a 10-pound lifting restriction for his elbow injury. There is no supporting medical note. It is unknown whether this was a temporary restriction. Only speculation that it may have been a temporary restriction can reconcile Claimant's inconsistent testimony. Also, in deposition he testified that he received a "15 percent disability" under the California workers' compensation system.

18. A 2013 thumb injury healed completely. The record shows a surety stopped benefits after Claimant was released to full duty work as of April 8, 2013. A medical record from Dr. Crane, dated July 8, 2013, which rates a 6% PPI of the digit and translates it to a 1% whole person PPI attributable to this injury without apportionment to any pre-existing condition is found in Exhibit 25.

19. A 2018 degloving of a finger required Claimant learn to grip differently and with reduced grip strength.

20. In 2020 Claimant attended pain management for his arthritis, also called chronic pain syndrome disorder by at least one physician.

21. Claimant denied any lasting vocational impact from any other preexisting conditions like kidney stones, lacerations to his back, etc. In deposition he denied the 2018 degloving had any lasting vocational impact.

22. Except for one note from Dr. Crane, the record shows a dearth of prior medical records to show any physician rated Claimant for impairment or restrictions. Dr. Crane's 1% PPI refers to a thumb injury which did not have any effect on Claimant's work. Claimant denied the thumb was a hindrance. At best, recent physicians have identified healed prior injuries and degenerative conditions.

Vocational Factors

23. Born February 17, 1956, Claimant was 69 years of age at the time of hearing.

24. Claimant worked essentially his entire adult life as a welder and steel fabricator. He worked for 25 years beginning July 28, 1976, in the shipyard. He was a union member, an ironworker, for most of those years. As a supervisor there he supervised about 10 employees but was not a part of the union during that time. After about 10 years he moved to the plate shop, welding and fabricating.

25. Claimant receives monthly payments from a pension as a union benefit.

26. In September 2003 he began working for Employer, Kodiak America, LLC, in Idaho. He continued until 2020 and worked the same job throughout fabricating highway snowplows.

27. In October 2020 Claimant applied for Social Security retirement benefits. He has never applied for nor received Social Security disability benefits.

Vocational Experts

28. Notes of ICRD consultant Irene Sanchez comprise a portion of Exhibit 25. ICRD received a referral regarding Claimant on May 18, 2021. A job site evaluation was obtained. Claimant declined to cooperate with ICRD's and Ms. Sanchez's efforts to assess Claimant for assistance in returning to work with Employer or with other potential employers. The ICRD file closed In January 2022.

29. On January 21, 2022, Delyn Porter issued his report. He interviewed Claimant by telephone, reviewed medical restrictions, and applied labor market data to assess permanent disability. Mr. Porter reported that Claimant "also draws a small pension from his timpairment [sic] Rating working in the ship yard in San Diego of $439.00 per month." Despite not being a physician, Mr. Porter resorted to the *Guides* table to find that a 10 percent lower extremity rating translated to a 4% whole person rating. He noted Dr. Wathne had given two differing sets of restrictions and analyzed them separately, finding a 36.7% loss of market access with the restrictions accompanying his PPI evaluation and an 82.3% loss of market access with the other set. Similarly, loss of wage-earning capacity was rated at 6.2% and 10.4% respectively. These averaged to PPD rated at 21.5% and 46.4% respectively.

30. Mr. Porter's report does not explain what source he used to base his assertion of a "pension" for a prior "timpairment Rating". Moreover, Claimant told Ms. Eby that this pension was a union benefit. Mr. Porter's ambiguous hearsay on this point carries no weight.

31. On January 13, 2025, after reviewing additional records, primarily Claimant's deposition testimony, which addressed Claimant's subjective history of prior conditions without any medical records made contemporaneously pre-accident, Mr. Porter opined Claimant to be an odd-lot worker. His opinion about whether, as a legal matter, these "combined" for purposes of

ISIF liability was formulated without reference to any physician's medical opinion pertaining to that issue.

32. In deposition, Mr. Porter testified that his opinion that Claimant was totally and permanently disabled required a combining of Claimant's "preexisting difficulties and challenges"—specifically chronic pain and arthritis—with restrictions from the subject accident. He opined that permanent disability related to the subject accident was 46.5 percent with the remainder of his total and permanent disability related to his preexisting conditions. He testified that Claimant reported that no restrictions had been imposed for any preexisting condition before the subject accident. He noted that before the accident Claimant was able to work at his time-of-injury job with what looked like accommodations from Employer, but afterward Claimant was expressly unable to work that job according to the ICRD job site evaluation (JSE) which was disapproved by Dr. Wathne upon his evaluation of the JSE. Mr. Porter admitted that his initial report did not find total and permanent disability. It was only three years later when in his second report Mr. Porter found total and permanent disability and a combining of preexisting conditions with the restrictions from the subject accident to make it so.

33. In deposition, Mr. Porter further opined that considering the 30-pound lifting restrictions together with all nonmedical factors but expressly excluding preexisting conditions, Claimant would have a "very limited" labor market available to him as a welder; that is, he would not be totally and permanently disabled.

34. On May 9, 2025, Cali Eby issued her report about Claimant's job market access and wage-earning capacity specifically with a focus upon the prerequisites to ISIF liability. She opined that Claimant would likely be considered totally and permanently disabled by the

restrictions arising from the subject accident with or without any restrictions which may have arisen from prior conditions.

35. In deposition, Ms. Eby testified that Claimant asserted to her that restrictions and a 15 percent "disability" rating had been imposed upon him for his preexisting elbow injury. She was aware of no medical records which might support that assertion. Claimant reported narcotics use for pain management of arthritis since 2015. Ms. Eby opined that Claimant's most significant restriction related to the subject accident was limited standing no more than one hour with opportunity for change of positions. This restriction left Claimant with such a significant loss of labor market access that with nonmedical factors of age and lack of transferable skills, Claimant should be considered totally and permanently disabled regardless of the presence or absence of preexisting restrictions or difficulty. Claimant's use of a cane is corroborative of his restriction which limits standing.

DISCUSSION AND FURTHER FINDINGS OF FACT

36. 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).

37. 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). Uncontradicted testimony of a credible witness must be accepted as true, unless that testimony is inherently improbable, or rendered so by facts and circumstances, or is impeached. *Pierstorff v. Gray's Auto Shop*, 58 Idaho 438, 447−48, 74 P.2d 171, 175 (1937). *See also Dinneen v.*

Finch, 100 Idaho 620, 626−27, 603 P.2d 575, 581−82 (1979); *Wood v. Hoglund*, 131 Idaho 700, 703, 963 P.2d 383, 386 (1998).

38. This case in which Claimant's testimony includes details which changed or were augmented depending upon which defendant was present. His first deposition testimony with only Employer as defendant differs from his second deposition testimony which arose only after Employer had settled out and ISIF had been brought in as defendant. Similarly his reported history to physicians and vocational experts has been inconsistent at different times. Regardless, Claimant has a long and distinguished history of decades of hard work for two major employers. This case does not turn on credibility or the lack of it.

ISIF ISSUES

39. Assessment of ISIF liability begins with Idaho Code § 72-332. Upon determination of total and permanent disability, a Claimant has the burden of establishing a *prima facie* case by showing that: a preexisting physical impairment exists; that the impairment was manifest; that the impairment was a subjective hindrance to Claimant's employment before the accident; and that the preexisting impairment combined with the subject accident to cause total and permanent disability. *Aguilar v. State of Idaho, Industrial Special Indemnity Fund*, 164 Idaho 893, 436 P.3d 1242 (2019). A "but for" test is required to determine the element of combining. That is, Claimant must show by a preponderance of evidence that but for the preexisting condition he would not be totally and permanently disabled. *Tarbet v. J.R. Simplot Co.*, 151 Idaho 755, 264 P.3d 394 (2011).

40. The first element—the existence of total and permanent disability—is shown here. ISIF admits Claimant is totally and permanently disabled. Vocational expert, Cali Eby says so. In Mr. Porter's first report produced when Employer was still an active defendant he did not find

Claimant totally and permanently disabled. Using the set of restrictions Dr. Wathne endorsed in his deposition Mr. Porter opined Claimant was disabled by the accident in the amount of 21.5%. After Employer settled out and ISIF was the lone Defendant, Mr. Porter issued an addendum in which he found Claimant to be totally and permanently disabled as an odd-lot worker.

41. The second element requires Claimant to show by a preponderance of the evidence that a preexisting permanent physical impairment exists. It is here that Claimant runs into great difficulty. When Employer was the only Defendant, Claimant acknowledged that he had suffered a right elbow injury. However, no medical record was produced to support that it had caused a permanent physical impairment. Claimant, both to physicians when he provided a history and to Employer when he was deposed, denied that it had been a problem in his work life after he had recovered from it. He denied that he had been given any restrictions. It was only after ISIF became the sole Defendant that Claimant represented that he had been restricted from "climbing" and that he had received a "15 percent disability" under the California workers' compensation system. At best, Claimant's early testimony was that he moved from the ships to the plate room after the accident and that he liked the plate room better because it did not require climbing. Such testimony does not substitute for a physician's actual imposition of an impairment rating nor of medical restrictions.

42. It is understandable that Claimant may not have been able to obtain and produce a medical record of a physician declaring him to be permanently physically impaired by or restricted from certain activity where the injury occurred in 1987. It is not understandable why Claimant did not attempt to obtain California agency records to show he was paid any disability. Absent actual medical records, a contemporaneously treating physician from that time to testify, and/or agency records to support the event, Claimant's reversal of testimony is difficult to credit.

43. Claimant failed to show by a preponderance of evidence that he incurred a permanent physical impairment from his 1987 elbow injury.

44. Similarly, Claimant suffers from arthritis. At no time in the record has any physician imposed restrictions or rated Claimant with a permanent physical impairment rating for his arthritis.

45. Other possible related preexisting conditions are also inadequately established of record. For example, Claimant would have us believe that his opioid use from chronic pain contributes to make him unemployable. However, again, no physician had rated or issued restrictions. Moreover, Claimant's early representations were that the opioid use allowed him work full time. In fact he did so for at least five years. It was only after ISIF became involved that Claimant's representation shifted to allege that the opioid use was actually an obstacle rather than an aide to working.

46. In the absence of a proven preexisting physical impairment, we need not address questions of "manifest" or "hindrance" for those conditions.

47. The record fails to show it likely that the thumb injury can make ISIF liable. Claimant denies that it was manifest or a hindrance after it healed. This 1% of rated PPI does not qualify to make ISIF liable.

48. However, analysis of the "combining" factor is important. Cali Eby opined that Dr. Wathne's restrictions against standing, taken together with nonmedical factors of age and lack of transferrable skills were in themselves alone enough to make Claimant totally and permanently disabled. Ms. Eby's vocational opinion is entitled to more weight than Mr. Porter's changing opinions. Claimant's theory that his recovery was incomplete or prolonged has no express medical support beyond Dr. Wathne's deposition speculation about "an average chronic pain patient"

which "may" experience recovery. "May" does not mean "likely". "May" does not refer to Claimant. It merely refers to " an average chronic pain patient".

49. Without the establishment of a *prima facie* case for ISIF liability, a *Carey* analysis is improper.

50. In sum, Claimant failed to show by a preponderance of the evidence that ISIF should be liable.

CONCLUSIONS

1. Claimant was rendered totally and permanently disabled by the 2020 industrial accident; and

2. Claimant failed to show it likely that ISIF bears liability as a result.

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 _15th_ day of January 2026.

INDUSTRIAL COMMISSION

Douglas A. Donohue, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of January 2026, a true and correct copy of the foregoing **RECOMMENDATION FOR DISMISSAL** was served by regular United States Mail and Electronic Mail upon each of the following:

ANDREW ADAMS
598 N CAPITAL AVE
IDAHO FALLS, ID 83402
office@curtisandporter.com

BREN MOLLERUP
PO BOX 366
TWIN FALLS, ID 83303-0366
benoitlaw@benoitlaw.com

dc

Debra Cupp

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

LARRY CHARLESWORTH, Claimant, v. STATE OF IDAHO, INDUSTRIAL SPECIAL INDEMNITY FUND, Defendant.	**IC 2020-016087** **ORDER** **FILED** **JANUARY 30, 2026** **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 was rendered totally and permanently disabled by the 2020 industrial accident; and
2. Claimant failed to show it likely that ISIF bears liability as a result.
3. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this __30th____ 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 30th day of January, 2026, a true and correct copy of the foregoing **ORDER** was served by regular United States mail and Electronic Mail upon each of the following:

ANDREW ADAMS

598 N CAPITAL AVE

IDAHO FALLS, ID 83402

office@curtisandporter.com

BREN MOLLERUP

PO BOX 366

TWIN FALLS, ID 83303-0366

boitlaw@benoitlaw.com

dc Debra Cupp