BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

CATHERINE CLAYBAUGH, Claimant, v. SODEXO, INC., Employer, and XL INSURANCE AMERICA, INC., Surety, Defendants.	**IC 2020-018091** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** FILED: APRIL 3, 2026 IDAHO INDUSTRIAL COMMISSION

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Sonnet Robinson. A hearing was conducted on August 26, 2025, in Pocatello, Idaho. Claimant, Catherine Claybaugh, was represented by James Ruchti of Pocatello. W. Chad Walker of Boise represented Defendants. The parties presented oral and documentary evidence. Post-hearing depositions were taken. The matter came under advisement on February 17, 2026 and is ready for decision.

ISSUES[1]

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

[1] Claimant did not argue for total disability and this issue is withdrawn. Defendants did not argue for apportionment and this issue is withdrawn.

2. Whether Claimant is entitled to:

   a. Medical benefits;

   b. Temporary partial or temporary total disability benefits (TPD/TTD);

   c. Permanent partial impairment;

   d. Permanent partial disability;

   e. Attorney's fees.

CONTENTIONS OF THE PARTIES

Claimant contends she is not at MMI and entitled to additional surgery and temporary disability. Claimant's past denied medical care should be reimbursed at the full invoiced rate and past temporary disability should be paid. Although not at MMI, this additional surgery will not change her restrictions or permanent partial impairment, and Claimant is entitled to permanent partial disability of approximately 48%. Lastly, Claimant is entitled to attorneys' fees for Defendants' unreasonable reliance on Dr. Chen's opinion.

Defendants respond that Claimant suffered muscle strains and has failed to prove she suffered an aggravation of her pre-existing condition. Claimant's reports to physicians lack credibility. The evidence shows she was symptomatic prior to the injury, and that her continued symptoms should be attributed to her significant pre-existing condition.

Claimant replies that Dr. Hansen's opinion is far more credible and well-reasoned than Dr. Chen's opinion. Further, Claimant has never denied she had pre-existing *low* back issues and occasional pain in her neck and shoulders, but there is no evidence of severe symptoms like what she experienced post-accident. Claimant is entitled to benefits and attorneys' fees.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;

2. Joint exhibits (JE) 1-34[2];

3. The hearing testimony of Claimant, Catherine Claybaugh;

4. The post-hearing deposition of Qing-Men Chen, MD, taken by Defendants;

5. The post-hearing deposition of Stephen Hansen, MD, and Cali Eby, taken by Claimant.

Claimant objected to Dr. Chen's "addendum report" and related deposition testimony. The report was written on September 24, 2025 and produced at his post-hearing deposition on December 18, 2025. This report was not timely provided under JRP 10, nor was the record held open for its admission. Claimant's objection to the report and related deposition testimony is SUSTAINED. All other 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 on December 4, 1960, and she was 64 years old at the time of hearing. HT 17:6-9.

2. On July 25, 2012, Claimant presented with severe back pain and reported a "long history" of problems with her back "dating over 10 years ago." JE 25:415. Her pain was in her low back and it radiated into her legs. *Id.* On December 3, 2012, Claimant underwent a low back fusion without complications. JE 26:447. Claimant did not recall being assigned permanent restrictions but was not "100% sure" because it had been thirteen years since the surgery. HT

[2] The parties are reminded to follow the pre-hearing order on exhibits. Specifically, to put exhibits in date order and to remove irrelevant materials. See, *Order Governing Preparation of Exhibits*, issued July 30, 2025.

60:20-61:4.

3. Over the next few years Claimant continued to struggle on/off with low back pain and spasms but managed her condition with medication. See JE 27:457-483.

4. On October 1, 2015, Claimant reported low back pain after lifting at work, but was overall "doing good." JE 27:480. On October 8, 2015, Claimant reported "pain going all the way up her spine," but also "feeling more normal." JE 27:484. Claimant continued to manage her low back condition with medication, but was told if her pain worsened, she may need a referral to neurosurgery. *Id.* at 486.

5. On January 25, 2016, Claimant reported left sided SI joint pain after lifting boxes. JE 27:490.

6. Claimant was hired by Employer on March 6, 2017. JE 1:1.

7. On June 19, 2018, Claimant reported an injury where she hit her upper back on a bathtub and had "pain wrapping around her shoulder into her chest" and in her thoracic area. JE 27:510. Claimant explained she was already taking ibuprofen for chronic low back pain, but that condition was stable. *Id.* at 511. Claimant was prescribed a muscle relaxer and instructed to follow-up for imaging if the pain did not improve. *Id.*

8. On June 27, 2018, Claimant returned and reported she was feeling much better and needed a letter to return to work. *Id.* at 506-507.

9. On December 27, 2018, Claimant continued to complain of bilateral shoulder and neck pain, and weakness due to pain, but no numbness or tingling. JE 27:501. Claimant underwent five trigger point injections into her trapezius muscle due to pain. JE 27:503.[3]

[3] Exhibit 27 is difficult to parse because of missing pages, repeated pages, and a few pages out of date order. The parties' briefing reflects different dates for some of this treatment, but none of these discrepancies impact this decision.

10. On July 15, 2019, Claimant reported that the injections did not help her back spasms, but they had improved with a topical cream. JE 27:500. At hearing, Claimant recalled treating neck and shoulder pain about a year prior to her injury and that she had taken some medication for the pain. HT 35:1-36:15. She did not recall injections into her shoulders prior to her injury. *Id.* at 69:13-24.

11. On July 20, 2020, Claimant was lifting a full bag of trash and felt immediate pain in her neck, shoulders, and low back while lifting. JE 1:1; 31:847. Claimant estimated the bag weighed between 70 and 80 pounds because it was full of expired IV bags. HT 37:21-38:23.

12. Claimant was seen that day by NP Jim McGregor. JE 31:848. NP McGregor assessed minor muscle strain and dorsalgia. Claimant was prescribed Norco and methocarbamol, referred to physical therapy, and assigned work restrictions. *Id.*

13. Claimant attended physical therapy and started to improve. See JE 31:849-865, JE 30, generally. However, when Claimant was released to "restart normal duties" on August 3, 2020, two weeks after her injury, her symptoms worsened significantly and she was reassigned lifting restrictions. JE 31:866.

14. On September 4, 2020, Claimant reported to her physical therapist that she had lingering pain and tightness in her middle back and over her left shoulder, and was "worried this was overlooked because she did not notice this pain until recently because lower thoracic and low back pain was so significant initially." JE 30:801.

15. On September 7, 2020, Claimant returned to NP McGregor and reported she felt she had plateaued in her progress, still had pain, and would like to see an orthopedic specialist. JE 31:875. NP McGregor referred her to Dr. Blair. *Id.*

16. On September 10, 2020, Claimant was evaluated by Benjamin Blair, MD. JE

29:659. Claimant described her symptoms as slowly worsening in her shoulder and upper extremities, including pain and numbness; she reported prior low back surgery and problems, but explained that was not the issue she was having now. *Id.* Claimant reported no pain in her intrascapular region prior to the injury. *Id.* Dr. Blair ordered cervical and thoracic and lumbar MRIs. *Id.* at 660.

17. On October 2, 2020, Claimant described an exacerbation of her upper back and shoulder pain after "a day of very repetitive cleaning pt rooms" to her physical therapist. JE 30:837. This was the last physical therapy appointment Claimant attended, and on November 9, 2020, Claimant was discharged from physical therapy for missing appointments. JE 30:840.

18. On October 8, 2020, Claimant's thoracic MRI showed: (1) approximately 80 degrees of kyphosis of the upper thoracic spine; (2) no acute or chronic compression fractures; (3) degenerative changes; (4) mild multilevel discogenic disease. No significant central canal stenosis or foraminal encroachment; (5) some slight cord thinning seen apex of the kyphotic curve from T2-T4. No underlying cord signal changes. JE 29:663.

19. Claimant's lumbar MRI showed: (1) L4-S1 posterior fusion; (2) no acute or chronic compression deformities; (3) minimal disc bulging at the L2-3, L4-5 levels without significant central canal stenosis; (4) discogenic disease at L5-S1. *Id.* at 665.

20. Claimant's cervical spine showed: (1) multilevel discogenic disease. Mild canal stenosis at C5-6. Minimal encroachment at the C6-7 and C4-5; (2) multilevel neural foraminal narrowing bilaterally seen at the C3-4, C4-5, C5-6 levels. *Id.* at 667.

21. On October 19, 2020, Claimant returned to Dr. Blair to discuss her MRI and x-ray findings. JE 29:668. Dr. Blair wrote her cervical x-rays showed an exaggerated kyphosis at the cervical thoracic junction. Dr. Blair diagnosed spondylosis at the cervical thoracic junction and

opined her impingement was markedly symptomatic; further symptoms were due to cervical stenosis. *Id.* at 669. Dr. Blair recommended an ESI shot and did not believe she was a surgical candidate at that time. *Id*.

22. On December 2, 2020, Dr. Blair wrote to the adjustor. JE 29:671. Dr. Blair wrote that she had significant pre-existing discogenic disease, but that the lifting incident caused a significant aggravation causing her condition to become symptomatic. *Id.* He also relayed her prognosis was excellent and he did not believe she would need surgery but did need the proposed ESI shot to reach MMI. *Id.*

23. On December 23, 2020, Claimant received the ESI shot. JE 29:673. On January 4, 2021, Claimant reported an initial exacerbation of symptoms, which then returned to her baseline level of symptomology. *Id*. at 674. Dr. Blair and Claimant discussed potential treatment, and Claimant elected to try another ESI shot. *Id.* at 675.

24. On January 13, 2021, Claimant reported that second ESI had minimally improved her symptoms. JE 29:679. Claimant decided to proceed with fusion surgery. *Id.* at 680.

25. On February 23, 2021, Claimant attended an IME with Qing-Min Chen, MD, at Defendants' request. JE 18:366. Dr. Chen conducted an interview, reviewed medical records, and examined Claimant. *Id.* Claimant reported her low and mid back had returned to baseline, but she was still struggling with neck and shoulder pain. *Id.* Claimant denied any prior history of neck problems. *Id.* at 367. On exam, Claimant had no symptom magnification or inappropriate responses. JE 18:371. Dr. Chen noted a "moderate to severe kyphotic deformity" across the cervicothoracic junction, which he explained was chronic, taking years to form.

26. Dr. Chen diagnosed: (1) severe cervicothoracic kyphosis, pre-existing, ongoing; (2) history of pre-existing L4-S1 lumbar fusion, pre-existing, ongoing; (3) cervical and thoracic

myelopathy, pre-existing, ongoing; (4) multilevel cervical, thoracic, and lumbar disc degeneration, chronic and pre-existing, ongoing; (5) left-sided C5 or C6 radiculopathy from bilateral foraminal stenosis at C5-6, pre-existing, ongoing; (6) cervical, thoracic, and lumbar strain, work related, MMI without PPI three months from the date of the accident.

27. Dr. Chen explained that there was no evidence of acute disc herniation or pathologic worsening of Claimant's degeneration, and therefore it was his opinion that all treatment after October 20, 2020 was related to Claimant's pre-existing conditions. Dr. Chen did not assign PPI or restrictions related to the injury. *Id.* at 375. Regarding treatment, Dr. Chen wrote:

> No additional treatment is necessary with respect to this claim. Outside this claim, it is debatable exactly what is needed for the claimant's multiple conditions. The first major issue is the claimant's myelopathy. She does have some hyperreflexia and Hoffman's on my exam. There is a couple of different places mostly in the cervical and thoracic region that is likely causing this problem, but the only way to fix that is with a very large sagittal correction of the Claimant's cervicothoracic kyphosis that would require multiple levels of fusion anywhere from the mid-cervical spine down to the middle of the thoracic spine, and a simple C6-C7 ACDF is not going to fix this problem, and so the Claimant will have to decide whether or not that large procedure is worth undergoing likely to fix for chronic neck pain as well as her sagittal imbalance in her cervical thoracic spine. Doing a simple C6-C7 ACDF is not going to get rid of the myelopathy and there is a very high chance it does not get rid of the majority of her neck and upper back pain.

Id. at 374.

28. Claimant stopped working around March of 2021. HT 34:9-10.

29. On January 6, 2022, Claimant returned to Dr. Blair and elected to proceed with surgery. JE 29:682. Claimant reported her symptoms had worsened and she had stopped working. *Id.*

30. On March 1, 2022, Claimant underwent an anterior cervical diskectomy, decompression, and fusion at C4-5 and C5-6. JE 32:914.

31. On June 9, 2022, Claimant was still making slow, steady progress and was improved from her preoperative state, but still experiencing neck stiffness. JE 29:700. Dr. Blair believed she had reached MMI and assigned permanent restrictions of no lifting more than 25 pounds frequently and 10 pounds continuously, no repetitive overhead activity. *Id.* at 702.

32. On June 14, 2022, Dr. Blair wrote a letter to Claimant's attorney summarizing his opinions. JE 17:362. Dr. Blair related Claimant's accident to her need for treatment on a more probable than not basis, opined Claimant was at MMI without need for further treatment, with a 6% whole person impairment with no apportionment; Dr. Blair reiterated his restrictions but also noted an FCE would be helpful as his restrictions were for a "generic" patient. JE 29:705. Dr. Blair strongly disagreed with Dr. Chen's IME report. Dr. Blair did agree that Claimant had pre-existing degeneration in her cervical spine but emphasized that she was asymptotic prior to the industrial accident based on the records he had reviewed. He opined that his surgical treatment was necessary and caused by the accident. Lastly, his restrictions were 100% due to the accident because but for the accident, she would not have sought surgery. *Id.* at 706.

33. On November 29, 2022, Claimant underwent a three-day functional capacity evaluation (FCE) by Brett Bennett. JE 16:355. Mr. Bennett opined that Claimant was limited in forward bending and kneeling, partially due to pain. *Id.* Mr. Bennett wrote that she would require modifications or alternative placement at her job due to her condition. *Id*.

34. On February 7, 2023, Dr. Blair reviewed the FCE and adopted the following restrictions: no lifting more than 25 pounds on a rare basis, 15 pounds occasionally, 10 pounds frequently, limited/occasional forward bending and kneeling, and no pushing or pulling more than 35 pounds. JE 29:727.

35. On November 9, 2023, Claimant saw Stephen Hansen, MD, for an IME at her

request. JE 28:641. Claimant reported improvement from her cervical fusion, but she still had lingering pain with occasional radiation into both shoulders. *Id.* Dr. Hansen assessed cervicalgia and cervical stenosis and recommended an SNI (selective nerve root injection). *Id*. at 644.

36. On June 5, 2025, Claimant returned to Dr. Hansen. JE 28:645. Claimant reported continued neck pain and underwent a diagnostic SNI injection. *Id.* Claimant experienced complete relief of her pain from the injection and Dr. Hansen opined "this means…she is a candidate for an ACDF at C3-4." Dr. Hansen curiously related her need for surgery to her "motor vehicle collision." *Id.* at 648.

37. On June 14, 2025, Dr. Hansen wrote his IME report. JE 20:392. Dr. Hansen examined Claimant, reviewed records, and issued opinions. Dr. Hansen wrote that Claimant's cervical fusion had helped with some, but not all her symptoms, and she continued to have pain from her neck that radiated into her shoulders. JE 20:392. Dr. Hansen believed her current symptoms were caused by compression at C3-4 because she had complete relief of her pain with a targeted injection into that area. *Id.* at 393.

38. Dr. Hansen opined Claimant was not yet at MMI; she needed a new fusion at C3-4 wherein her old fusion would be removed and new hardware put in. *Id.* at 398. Dr. Hansen agreed with Mr. Bennett's FCE and opined if she underwent his recommended fusion, her restrictions would not change. *Id.* Dr. Hansen calculated her impairment rating at 17% whole person and opined it would not change with his proposed surgery. *Id.*

39. Regarding Dr. Chen's report, Dr. Hansen agreed that Claimant did have pre-existing stenosis. However, Dr. Hansen relied on the fact that she did not have pre-existing symptoms of radiculopathy. JE 20:399. Dr. Hansen agreed with most of Dr. Blair's opinions but did not agree Claimant was at MMI. Dr. Hansen estimated Claimant's proposed surgery would

cost $79,650. *Id.*

40. Dr. Hansen was deposed on December 19, 2025. Dr. Hansen confirmed that he had reviewed in detail all the medical records listed in his report. Hansen Depo. 16:5-17:13. Dr. Hansen opined that the surgery with Dr. Blair did help Claimant based on her reports and his review of the surgical report. *Id.* at 22:6-24:10. However, she did have continued pain radiating into both her shoulders/scapula area. The diagnostic selective nerve injection demonstrated that her pain was coming from her C4 nerve root, and she could benefit from an additional surgery. *Id.* at 22:6-26:6.

41. Dr. Hansen opined Claimant's neck pain after the injury was different from her pain prior to the injury. He acknowledged she had treatment for her neck and stenosis and degenerative changes on imaging, but that post-accident, she had radicular symptoms which were new and caused by the accident. Hansen Depo. 30:19-32:2. Dr. Hansen opined that the type of injury Claimant had would not show up on an MRI because it was not a more serious accident which would compromise the spine. *Id.* at 31:11-32:11. Dr. Hansen reiterated his opinion that the surgery he proposed would not change her restrictions or her impairment rating. *Id.* at 34:22-37:2. Dr. Hansen disagreed with Dr. Chen's report in many respects, but his main disagreement was that Dr. Chen did not acknowledge Claimant's new cervical radiculopathy. *Id.* at 37:11-39:2.

42. On cross-examination, Dr. Hansen explained his opinion that there was an injury based on the change in symptoms that Claimant reported from pre-injury to post. Hansen Depo. 50:9-51:16. Dr. Hansen also noted that fusions sometimes result in restrictions, but her fusion would result in lifting restrictions as her original injury was lifting. *Id*. at 52:3-17. Dr. Hansen opined her pre-existing conditions certainly made her more vulnerable to injury, but that that the accident caused the need for treatment. *Id.* at 55:18-57:8.

43. On December 18, 2025, Dr. Chen was deposed. Dr. Chen testified consistent with his report that she suffered muscle strain, and that all the other findings she had were degenerative. He did not see any acute injury on the MRI, although he did testify the MRI was several months after the injury and "maybe the MRI is just too far out." Chen Depo. 24:1-25:3; 17:11-20.

44. On cross-examination, Dr. Chen confirmed that he had not performed a spinal surgery since residency and the spine was not his "specialty." Chen Depo. 39:4-40:1. Dr. Chen confirmed that the records he reviewed showed no treatment for Claimant's neck or upper back prior to her industrial injury. *Id.* at 45:5-46:3.

45. **Vocational Background.** Claimant completed tenth grade and was trained in medical vocabulary and hospital cleaning procedures for her position with Sodexo. HT 19:7-20:1; JE 19. Claimant worked as cleaner from 1993 to 1997 and re-entered the workforce in 2012 also as a cleaner. *Id.* at 21:7-23:15. Claimant started work for Employer around 2017 and cleaned almost all rooms at the hospital, including patient rooms, nurse's stations, "med rooms," and more. HT 27:5-14. Claimant's job involved lifting, pushing, pulling, reaching overhead, scrubbing and dusting; Claimant regularly lifted items weighing anywhere from 40 to 60 pounds. See *Id.* at 27:5-33:6.

46. Claimant applied for one job at Hobby Lobby, which she did not get, and she has not applied to any other positions since she left Sodexo in March of 2021. HT 53:12-22. Claimant did not feel she could work because of the pain in her neck and shoulders. *Id.* at 53:23-54:3. She is currently receiving Social Security retirement and declined to apply for Social Security Disability. *Id.* at 54:4-55:1.

47. On April 21, 2023, Cali Eby completed a vocational report at Claimant's request.

JE 19. Ms. Eby reviewed medical records, vocational records, and interviewed Claimant. *Id.* Ms. Eby recorded Claimant's job history as above and noted she was able to use social media, the internet, and some office software, but was a hunt and peck typist. *Id.* at 384. Ms. Eby noted that at Claimant's age and education level, a future employer would be unlikely to provide retraining or additional education, and Claimant's job market would be mostly unskilled and semi-skilled labor. *Id.* at 386. Ms. Eby opined that Claimant had lost 64% of her labor market due to Dr. Blair's restrictions. *Id.* Ms. Eby wrote that Claimant's age and education level were both barriers to employment, but that she retained access to light duty childcare and office jobs and that Pocatello's excellent labor market meant she should be employable. *Id.* at 388. Ms. Eby concluded that Claimant had not lost any earning capacity under Dr. Blair's restrictions because her pre-injury wage range was the same as post-injury, approximately $11.50 an hour. *Id.* at 389. Ms. Eby found Claimant's disability inclusive of impairment to be approximately 48%. Ms. Eby weighed Claimant's loss of labor market at 1.5X because "it is appropriate to weigh this vocational factor more heavily considering its significant impact." *Id.* Claimant had no restrictions per Dr. Chen's opinion and therefore no labor market loss or wage loss. *Id*.

48. On June 14, 2025, Ms. Eby issued an addendum report after reviewing additional materials. JE 19:390. Ms. Eby wrote that because Dr. Hansen had opined Claimant's restrictions would not change based on the proposed surgery, her opinions had not changed; she retained her opinion that Claimant's disability was 48%. *Id.*

49. Ms. Eby was deposed on November 20, 2025. Ms. Eby described her methodology and what she considered in general when writing a report, and what she considered specifically in this case. Eby Depo. 6:3-21:17. Ms. Eby reiterated the conclusions from her report but added that Claimant had the additional benefit of having worked consistently for Sodexo for four years,

showing that she was a hard worker. *Id.* at 21:18-22:8. Ms. Eby summarized her opinion: "She is an older worker and has a very limited education. So those both will be barriers for her. I found that she still had some access to childcare jobs that were considered light and some very entry-level office positions, like receptionist where computer work is not the primary need." *Id.* at 29:13-18. Ms. Eby added that computer skills would assist in her employability. *Id.* at 29:18-22.

50. On cross-examination, Ms. Eby agreed that she did not have all the medical records which were introduced at hearing. Eby Depo. 34:3-22. Ms. Eby did consider that Claimant was taking social security retirement; if Claimant decided to look for work, work would be available to Claimant in the Pocatello labor market within her restrictions. *Id.* at 36:12-23.

51. **Condition at Hearing.** Claimant testified her collarbone and shoulder pain lessened due to Dr. Blair's surgery, but that she has residual, constant neck pain. HT 47:20-48:18. Claimant has difficulty walking, standing, lifting, driving, and pushing and pulling, mostly due to pain. *Id.* at 55:18-59:9.

52. **Credibility.** Claimant testified frankly and credibly; she admitted when she did not recall certain treatments or physician names. Where her recollection contradicts the medical record, the medical record will be relied upon.

53. Defendants' arguments about Claimant's credibility are explicitly rejected. The difference between Claimant's perceptions about her progress vs. her physical therapist's perceptions about her progress do not create a substantive credibility issue.

DISCUSSION

54. 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, 849 P.2d

934 (1993). Claimant must adduce medical proof in support of his claim, and he must prove his claim to a reasonable degree of medical probability. *Dean v. Dravo Corporation*, 95 Idaho 558, 511 P.2d 1334 (1973).

55. **Accident/Injury.** Idaho Code § 102(17) provides: (a) "Injury" means a personal injury caused by an accident arising out of and in the course of any employment covered by the worker's compensation law. (b) "Accident" means an unexpected, undesigned, and unlooked for mishap, or untoward event, connected with the industry in which it occurs, and which can be reasonably located as to time when and place where it occurred, causing an injury. (c) "Injury" and "personal injury" shall be construed to include only an injury caused by an accident, which results in violence to the physical structure of the body.

56. The permanent aggravation of a pre-existing condition is compensable. *Bowman v. Twin Falls Construction Company, Inc.*, 99 Idaho 312, 581 P.2d 770 (1978). 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).

57. Defendants concede that Claimant has proven an accident but argue that she has failed to prove she suffered a compensable injury, which caused physical violence to the structure of her body. Defendants rely on Dr. Chen's opinion and the lack of acute injury in the medical imaging. Claimant responds that she has proven her pre-existing condition was permanently aggravated by the accident and offers Dr. Hansen's and Dr. Blair's opinions.

58. Dr. Blair and Dr. Hansen opined that Claimant suffered a permanent aggravation of her pre-existing condition. Both physicians reviewed her records and acknowledged that she had significant pre-existing degeneration in her neck, but that she was relatively asymptomatic. Both physicians opined that but-for this injury, Claimant would not have needed surgical intervention. Dr. Hansen explained at deposition that Claimant had newly developed cervical radiculopathy, which he attributed to the accident. Dr. Hansen testified that he would not expect an injury of this sort to show up on an MRI because it was a lifting injury vs. a more compromising injury.

59. Dr. Chen opined that Claimant did not suffer an aggravation of her pre-existing condition because there was no acute injury on her MRIs. However, at deposition, Dr. Chen offered in an off-hand comment that "maybe the MRI is just too far out," as Claimant's injury was in July and her MRI was not until October. Chen Depo. 17:11-20. Dr. Chen reviewed her records for his report, including HealthWest, and confirmed that he saw no treatment for her neck and upper back prior to the industrial injury. Notably, Dr. Chen did not opine that her pre-existing neck and shoulder pain was the same injury/symptoms she had post-accident.

60. Contrary to Defendants' argument, there is no requirement that medical imaging show an acute injury for it to be compensable. Defendants' own experts recognized that an MRI several months after an injury may not show an acute process. Dr. Hansen convincingly testified that this type of lifting injury would not show up on an MRI because it was relatively minor accident.

61. The evidence of record shows that Claimant did suffer from at least one instance of neck and shoulder pain prior to the accident. However, Claimant did not report tingling, numbness, or other signs of cervical radiculopathy prior to the accident. However, after the

accident, Claimant developed numbness and tingling. Claimant was previously able to complete her medium-to-heavy duty cleaning job without assistance and maintain her employment for four years. After the accident, Claimant was never able to return to full time cleaning due to her pain and weakness. Claimant has proven she permanently aggravated her pre-existing degenerative cervical condition.

62. **Medical Care.** Idaho Code § 72-432 provides that the employer shall provide for an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital services, medicines, crutches and apparatus, as may be reasonably required by the employee's physician or needed immediately after an injury or manifestation of an occupational disease, and for a reasonable time thereafter. What constitutes reasonable medical care is to be determined by a totality of the circumstances approach. *Chavez v. Stokes*, 158 Idaho 793, 353 P.3d 414 (2015). As recently restated in *Thompson v. Burley Inn* 173 Idaho 637, 546 P.3d 649 (2024): "the *Neel* doctrine holds that if an employer denies a claim, and the Commission later finds that claim to be compensable, the employer must pay the full invoiced amount of the Claimant's medical expenses."

63. Defendants did not argue that Claimant's past medical care was unreasonable or that her proposed future medical care is unreasonable, just unrelated. Claimant is entitled reimbursement at the *Neel* rate for her past denied surgery with Dr. Blair and is entitled to her proposed surgery with Dr. Hansen, along with other related medical care. See JE 7. Claimant may have already undergone the proposed surgery before this decision is issued, and if so, is entitled to reimbursement at the *Neel* rate. See Claimant's Opening Brief, p. 27.

64. **Temporary Partial/Temporary Total Disability (TPD/TTD).** Once a claimant establishes by medical evidence that she is within the period of recovery from the original

industrial accident, she is entitled to total temporary disability benefits under Idaho Code § 72-408.

65. Claimant is owed TTD benefits from the time her benefits were terminated until she reached medical stability from her first surgery on June 14, 2022 per Dr. Blair. Claimant is entitled to temporary disability benefits when she is in a period of recovery from her surgery with Dr. Hansen.

66. **Permanent Partial Impairment (PPI).** Permanent impairment is any anatomic or functional abnormality or loss after maximal medical rehabilitation has been achieved and a claimant's position is considered medically stable. *See* Idaho Code § 72-422; *Henderson v. McCain Foods*, 142 Idaho 559, 567, 130 P.3d 1097, 1105 (2006).

67. Claimant has proven entitlement to permanent partial impairment of 17% per Dr. Hansen. Dr. Hansen's rating is more persuasive than Dr. Blair's rating because he had a more holistic view of Claimant's complaints and her records.

68. **Permanent Partial Disability (PPD).** 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 impairment and by pertinent nonmedical factors provided in Idaho Code § 72-430. Idaho Code § 72-425. Idaho Code § 72-430(1) provides that in determining percentages of permanent disabilities, account should be taken of the nature of the physical disablement, the disfigurement if of a kind likely to handicap the employee in procuring or holding employment, the cumulative effect of multiple injuries, the occupation of the employee, and his or her age at

the time of the accident causing the injury, or manifestation of the occupational disease, consideration being given to the diminished ability of the affected employee to compete in an open labor market within a reasonable geographical area considering all the personal and economic circumstances of the employee, and other factors as the Commission may deem relevant. 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, 294, 766 P.2d 763, 764 (1988). The claimant bears the burden of establishing permanent disability. *Seese v. Idaho of Idaho, Inc.*, 110 Idaho 32, 714 P.2d 1 (1986). 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).

69. Claimant is collecting social security retirement income and does not feel she could work due to pain in her neck and shoulders. The proposed surgery with Dr. Hansen may alleviate her pain but would not change her restrictions per Dr. Hansen. Claimant was not asked, and it is not clear from the record whether she would return to work if the proposed surgery is successful in ameliorating her pain. Regardless, Claimant may need to return to work to support herself given her only income is Social Security retirement and it is appropriate to assess permanent partial disability for present and future ability to engage in gainful activity.

70. Ms. Eby opined Claimant suffered disability of 48%; she weighed Claimant's loss of labor market at 1.5X because the labor market loss was so significant. Defendants made no

argument that this was inappropriate or overestimated her disability or that Claimant's retirement otherwise affects her disability.

71. The Industrial Commission has agreed with weighing loss of labor market access when the loss is extreme:

> the averaging method itself is not without conceptual and actual limitations. As the loss of labor market access becomes substantial, and the expected wage loss negligible, the results of the averaging method become less reliable in predicting actual disability. For illustration, as judged by the averaging method, a hypothetical minimum wage earner injured sufficiently to lose access to 99% of the labor market may theoretically suffer no expected wage loss if she can still perform any minimum wage job. Calculation of such a worker's disability according to the averaging method would produce a permanent disability rating of only 49.5% ([99% + 0%] ~ 2) even though her actual probability of obtaining employment in the remaining 1% of an intensely competitive labor market may be as remote as winning the lottery. The averaging method fails to fully account for the reality that the two factors are not fully independent.

Deon v. H&J, Inc., IIC 2007-005950, IIC 2008-032836 (May 3, 2013).

72. Here, Claimant has not lost upwards of 90% of her labor market, she has retained a significant percentage of her available labor market. However, her chances of finding and securing a job in her available labor market is uniquely challenging, similar to the Claimant in *Deon*. Claimant's labor market was already very small to begin with, only those jobs that do not require a high school equivalency or transferable skills/experience, approximately 4,000 jobs in cleaning, childcare, personal care, food prep, and cashiering/stocking. Claimant is now limited to only 1,500 potential positions in her labor market within her assigned work restrictions. She will be competing for these limited positions as an older worker with much less work experience than the average job seeker. It is unlikely an employer will hire Claimant over any other younger, more experienced or more educated job seeker applying for the same position. The jobs she is most competitive for, janitorial and housekeeping jobs, are only available in very small numbers post-injury (1,038 total janitorial jobs, only 69 sedentary/light-duty; 290 total housekeeping jobs, only

129 sedentary/light-duty). Claimant is the very rare worker whose labor market loss is appropriate to weigh without an extremely high loss (90+%).

73. In sum, Claimant is a minimum wage worker with no GED or equivalent, no transferable skills, and less than a decade of consistent work history in only medium and heavy-duty cleaning jobs. Claimant is a hunt and peck typist and Ms. Eby opined that she would require retraining to use a computer in a work setting. Claimant's wages were minimum wage prior to this injury and remain minimum wage post-injury. Claimant's job market is limited to only light duty, semi-skilled or unskilled jobs. The averaging method, if used here, would fail to adequately capture Claimant's significant disability caused by the medical factor of her impairment and her non-medical factors. Ms. Eby's opinion is well reasoned and persuasive. Claimant has proven permanent partial disability of 48%.

74. **Attorneys' Fees.** Claimant claims Defendants unreasonably denied this claim for benefits. Attorney fees are not granted as a matter of right under the Idaho Workers Compensation Law, but may be recovered only under the circumstances set forth in Idaho Code § 72-804 which provides:

> 72-804. ATTORNEY'S FEES — PUNITIVE COSTS IN CERTAIN CASES. If the commission or any court before whom any proceedings are brought under this law determines that the employer or his surety contested a claim for compensation made by an injured employee or dependent of a deceased employee without reasonable ground, or that an employer or his surety neglected or refused within a reasonable time after receipt of a written claim for compensation to pay to the injured employee or his dependents the compensation provided by law, or without reasonable grounds discontinued payment of compensation as provided by law justly due and owing to the employee or his dependents, the employer shall pay reasonable attorney fees in addition to the compensation provided by this law. In all such cases the fees of attorneys employed by injured employees or their dependents shall be fixed by the commission.

The decision that grounds exist for awarding attorney fees is a factual determination which rests with the Commission. *Troutner v. Traffic Control Company*, 97 Idaho 525, 528, 547 P.2d 1130,

1133(1976). It is axiomatic that a surety has a duty to investigate a claim in order to make a well-founded decision regarding accepting or denying the same. *Akers v. Circle A Construction, Inc.*, IIC 1998-007887 (Issued May 26, 1999). Defendants' grounds for denying a claim must be reasonable both at the time of the denial and in hindsight. *Bostock v. GBR Restaurants*, IIC 2018-008125 (Issued November 9, 2020).

75. Claimant argues that Defendants unreasonably denied this claim when they relied on Dr. Chen's opinion. She argues Dr. Chen is a hired gun, a defense only expert, performs too many IMEs a year resulting in 'assembly line' style reports, and hasn't performed spinal surgery since residency.

76. Claimant's objections to Dr. Chen are based almost entirely on his status as an opinion expert. Dr. Chen's opinion was ultimately found unpersuasive, but not because it was unreasonable. All three doctors agreed that Claimant had extensive pre-existing degenerative findings in her neck and nothing acute on her imaging. Contrary to what Dr. Hansen testified to, Dr. Chen did acknowledge Claimant's cervical radiculopathy in his report, but opined it was pre-existing. Dr. Chen opined Claimant did need surgery, a more extensive fusion than was proposed to alleviate her neck *and* shoulder pain; an accurate prediction in hindsight. Claimant is correct that a spinal surgeon would have been a better choice for an opinion expert, but it was still not unreasonable to rely on Dr. Chen's opinion to deny surgery.

77. Claimant has not proven entitlement to attorney's fees.

CONCLUSIONS OF LAW

1. Claimant has proven she suffered an accident and injury on July 20, 2020;
2. Claimant has proven entitlement to past medical care at the *Neel* rate;
3. Claimant has proven she is entitled to the proposed C3-4 fusion;

4. Claimant is entitled to temporary disability benefits during her period of recovery from Dr. Blair's surgery and her period of recovery following Dr. Hansen's surgery;

5. Claimant is entitled to 17% permanent partial impairment (PPI);

6. Claimant is entitled to 48% permanent partial disability inclusive of impairment;

7. Claimant has not proven entitlement to attorney's fees.

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 5th day of March, 2026.

INDUSTRIAL COMMISSION

Sonnet Robinson

Sonnet Robinson, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of April, 2026, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by *E-mail transmission* and regular United States Mail upon each of the following:

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ge Gina Espinosa

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

CATHERINE CLAYBAUGH, Claimant, v. SODEXO, INC., Employer, and XL INSURANCE AMERICA, INC., Surety, Defendants.	**IC 2020-018091** **ORDER** FILED: APRIL 3, 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 has proven she suffered an accident and injury on July 20, 2020.
2. Claimant has proven entitlement to past medical care at the *Neel* rate.
3. Claimant has proven she is entitled to the proposed C3-4 fusion.

4. Claimant is entitled to temporary disability benefits during her period of recovery from Dr. Blair's surgery and her period of recovery following Dr. Hansen's surgery.

5. Claimant is entitled to 17% permanent partial impairment (PPI).

6. Claimant is entitled to 48% permanent partial disability inclusive of impairment;

7. Claimant has not proven entitlement to attorney's fees.

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

DATED this _3rd_____ day of __April_____, 2025.

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 __3rd_____ day of ___April_____, 2025, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by *E-mail transmission* and regular United States Mail upon each of the following:

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