BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

IDA PEREZ, Claimant, v. VIRGINIA TRANSFORMER CORP., Employer, and THE PHOENIX INSURANCE CO., Surety, Defendants.	**IC 2021-033756** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** Filed April 17, 2026 Idaho Industrial Commission

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Brian Harper, who conducted a hearing in Pocatello, Idaho, on August 5, 2025. James Ruchti represented Claimant. W. Scott Wigle represented Defendants. The parties produced oral and documentary evidence at hearing and submitted post-hearing briefs. Three post-hearing depositions were taken. The matter came under advisement on January 13, 2026.

ISSUES

The parties agreed to the following issues for this adjudication:

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

2. Whether and to what extent Claimant is entitled to the following benefits:
   a. Medical Care;
   b. Temporary partial and/or temporary total disability (TPD/TTD);
   c. Disability based on medical factors (PPI);
   d. Permanent partial disability (PPD); and
   e. Attorney fees; and

3. Whether apportionment for a preexisting condition is warranted pursuant to Idaho Code § 72-406.[1]

CONTENTIONS OF THE PARTIES

Claimant asserts she suffered a compensable bilateral carpal tunnel injury on or about December 6, 2021. Treatment included bilateral surgeries, which did not alleviate her symptoms, and repeat surgeries were necessitated. Defendants initially denied responsibility for the repeat surgeries but capitulated just days before the hearing and agreed to cover the medical cost for such surgeries, but not at the *Neel* rate. Claimant is entitled to payment of her medical bills at the *Neel* rate, as well as benefits for temporary disability, permanent physical impairment (PPI), and permanent physical disability. This is an attorney fee case.

Defendants agree the existence and/or extent of Claimant's PPI and permanent partial disability need to be determined herein. Additionally, the application of *Neel* is contested because the Defendants accepted Claimant's medical treatment, albeit belatedly, once all the facts came to light to support such treatment. This is not an attorney fee case.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant, and witness Kari Woodhouse, taken at hearing;

2. Joint exhibits (JE) 1 through 22 admitted at hearing; and

3. The post-hearing deposition transcripts of Cali Eby, Vermon Esplin, M.D., and Gail Fields, DO, taken on October 21, 2025, October 24, 2025, and November 12, 2025, respectively.

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[1] The issue of causation was discussed at the outset of the hearing, wherein the parties indicated that in the days leading up to the hearing Defendants had accepted responsibility for Claimant's second set of carpal tunnel surgeries, thus calling into question the issue of causation as a contested issue for resolution. Defendants did not argue against causation in briefing, confirming the fact that causation is not in play in this decision. Additionally, and as is often the case, the issue of apportionment under Idaho Code § 72-406 was listed as a viable issue at the time of hearing but not argued in briefing by Defendants. The issues of causation and apportionment are waived.

FINDINGS OF FACT

1. At the time of hearing Claimant was five days short of being 47 years old. She did not have a high school diploma or GED but did have med tech and CPR/first aid certifications at the time of hearing. Her certifications were required in her time-of-hearing job as a med tech at Elegant Assisted Living in Pocatello, where she administered medications to the residents in addition to assisting in the facility kitchen and on occasion cleaning rooms.

Medical History with Employer

2. In April 2021, Claimant began working for Employer Virginia Transformer (Employer). She initially worked in the "core stacking" department and later assembled "step blocks." Both tasks required repetitive hand activities.

3. By December 2021, Claimant began experiencing intermittent numbness, tingling and discomfort in both hands. She reported these complaints to her supervisor who filled out a first report of injury.

4. On December 6, 2021, Claimant was seen at the Idaho Hand Institute where she was diagnosed with bilateral carpal tunnel syndrome. She was provided carpal tunnel braces and placed on work restrictions.

5. Claimant's complaints did not resolve with bracing and work restrictions. An EMG taken in February 2022 confirmed Claimant's bilateral median wrist neuropathy. Surety accepted the claim for her bilateral carpal tunnel.

6. Claimant underwent an open left carpal tunnel release procedure on March 21, 2022, performed by Ryan Miller, DO. After Claimant had difficulties with her return-to-work assignments, Dr. Miller took her off work until April 5, 2022.

7. Dr. Miller performed an open carpal tunnel release on Claimant's right wrist on May 16, 2022.

8. No concerns were expressed at Claimant's visit with Dr. Miller on June 9, 2022. Progress notes following her right carpal tunnel release show Claimant was "doing well" and she was released to modified work duties as of June 13, 2022.

9. At Claimant's follow-up visit on July 5, 2022, notations from Dr. Miller have been a focal point in this case. Therein, he dictated that Claimant had returned to work and was

> doing pretty well. She states that it is sore at times. She feels like it is slowly over time getting a little bit better, but sometimes she does have some occasional tenderness and sometimes some nerve symptoms still. It is still improving. She states that she will also often use braces and those have been helpful as well.
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> We talked about potentially doing an FCE/IME. She feels like she is doing okay at this point. We talked about even the potential for a second opinion if she wants. She states that she has asked Worker's Compensation and does not feel like that is necessary. We are here if she has any questions or concerns, but we will plan to see her back at this point as needed.

JE 14, pp. 282, 283.

10. During that same office visit, Dr. Miller filled out a return-to-work form in which he noted Claimant was able to return to work without restrictions as of July 5, 2022, and could return to see him as needed. Dr. Miller's notes do not mention a PPI rating.

11. Surety closed its file on Claimant thereafter, in reliance on Dr. Miller's July 5 office notes.

12. Claimant continued to have issues with her wrists. On August 11, 2022, she sought out Gail Fields, a Blackfoot Idaho osteopath, for a second opinion regarding her bilateral wrist complaints. Dr. Fields informed Claimant that it could take up to a year to reach full improvement after her recent release surgeries. Dr. Fields recommended Claimant wear splints full time, and if she could not work with splints, then she needed to take four weeks off work.

13. According to adjuster notes, August 18, 2022 was Claimant's last day of work for Employer. JE 5, p. 23. According to her testimony, Claimant found new work at A New Hope about a month later, where she worked with disabled individuals, helping then in a variety of daily activities.

14. While under Dr. Field's care, and while working for A New Hope, Claimant underwent a nerve conduction study which showed continuing carpal tunnel syndrome bilaterally.

15. Dr. Fields performed repeat carpal tunnel surgeries on Claimant, first on the right wrist, then on the left. The surgery dates were November 28, 2022, and February 6, 2023, respectively.

16. After the surgeries Claimant acknowledged less symptoms than before. As of May 25, 2023, Dr. Fields discharged Claimant from his care, with instructions to return as needed if she experienced more persistent or severe pain in her hands. Dr. Fields, like Dr. Miller, did not assign a PPI rating for Claimant.

17. On May 19, 2023, Claimant hired Vermon Esplin, M.D. to conduct an IME and to provide her with a PPI rating. His report will be discussed in detail hereinafter.

18. Claimant also hired vocational consultant Cali Eby to assist in determining her permanent partial disability rating. Ms. Eby was also deposed. Her analysis and testimony will be discussed in detail below.

DISCUSSION AND FURTHER FINDINGS

19. The first issue involves the proper rate of payment for past medical treatment provided to Claimant by Dr. Fields. Claimant argues she is entitled to full invoice rate of reimbursement under the *Neel* doctrine. Defendants argue she is not so entitled.

Neel Doctrine Analysis

20. *Neel v. Western Construction, Inc.,* 161 Idaho 194, 206 P.3d 852 (2009), established the rule that when a surety denies a claim

> subsequently deemed compensable by the [Industrial] Commission, [a]ny medical bills incurred during the time from when the accident occurred to the time when the claim was deemed compensable fall outside the workers' compensation regulatory scheme and may not be reviewed for reasonableness and must be paid in full by the surety.

Id at 149, 206 P.3d at 855.

21. Thereafter, in *Millard v. ABCO Construction, Inc.,* 161 Idaho 194, 384 P.3d 958 (2016), the Supreme Court of Idaho reiterated there are two prongs which must be true for *Neel* to apply. First, the claim (which includes requests for medical expenses incurred while seeking treatment for the underlying compensable injury) must be denied, and second, the claim must later be deemed compensable by the Industrial Commission.

22. The Supreme Court in *Thompson v. Burley Inn, Inc.,* 173 Idaho 637, 546 P.3d 649 (2024), endorsed the Commission's position that the Commission had no right or legal authority to modify a legal standard created by the Supreme Court. This would include modifying, ignoring, or rewriting any components of language of such standard. .

23. In this case Claimant clearly failed to meet the second prong of *Neel.* The Industrial Commission has not, and will not, deem Claimant's claim for medical benefits for treatment provided by Dr. Fields to be "compensable" because it was not a contested issue at hearing.

24. While Claimant argues *Neel* is broad enough "to apply to a compensability concession by the surety, or a decision by the Commission," Cl. Reply Brief, p. 13, that was not the pronouncement in *Millard.* Therein, the Court recognized that by the time of hearing some of the claimed medical benefits had been accepted, albeit not promptly after a demand was made,

and the Commission did not rule on compensability for those medical benefits. The Supreme Court ruled those benefits were not subject to the *Neel* doctrine.

25. It is not up to the Commission to ignore the plain language of the Supreme Court when it included the phrase "by the Industrial Commission." To strike that phrase would greatly expand the application of *Neel* and make it almost unusable. A delay in accepting the claim might lend itself to attorney fees under Idaho Code § 72-804, but does not automatically trigger the application of *Neel.*

26. Moreover, it does not appear from the record that Claimant proved she met the first prong of the *Neel* doctrine – a denial of benefits. From the record presented at hearing, it is apparent Claimant did not seek prior authorization before obtaining care from Dr. Fields. Likewise, the record is not clear on the issues of when Surety became aware of Claimant's surgeries with Dr. Fields, when Claimant first made a demand for payment of such treatment with a submission of bills or records from Dr. Fields, or if Surety specifically denied the claim for such medical benefits once demanded.[2] Claimant points out in briefing that she "provided the surety her medical bills before filing her complaint [and] Defendants did not respond." Cl. Reply Brief, p. 12. Claimant also claims she provided the medical bills in discovery once a lawsuit was filed and Surety again made no immediate response.

27. The adjuster's testimony was obtained during the August 5, 2025 hearing. Therein, she was not asked if she prepared and/or sent Claimant a denial of benefits notice, and if so, when. She was not asked if she had ever denied the benefits with a Notice of Claim Status. She was asked if Surety had accepted the claim for medical benefits in question and

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[2] In email correspondence from August 2022, Claimant and the adjuster discussed the fact that Claimant was seeing a provider "on her own." The adjuster made it clear such treatment was not authorized and Claimant was financially responsible for such treatment. The email string does not establish that Claimant submitted bills or medical records from Dr. Fields with a demand for payment.

she responded in the affirmative. Tr. p. 146. Furthermore, she acknowledged she had not received Dr. Fields' notes contemporaneously with his treatment of Claimant, but rather obtained them at a later point in time.

28. There is no evidence in the record that Surety specifically denied Claimant's claim for medical benefits associated with her treatment with Dr. Fields once presented with the bills and medical records. There are references to the fact that acceptance of such claim for benefits occurred as hearing was approaching. Defendants' counsel made such admission in open court at the outset of the hearing, indicating he had informed Claimant's counsel about a week before hearing of the decision. Other than silence on the issue until soon before the hearing, there is no evidence Surety formally denied their obligation to provide such benefits.

29. There is evidence Surety delayed accepting the claim for Dr. Fields' medical expenses, which it knew of since, at the very latest, February 25, 2025, the date of Claimant's deposition, and in all likelihood much sooner. However, there is nothing in the record to establish when demand for such benefits was first made, other than counsel's argument. One could assume by the time Claimant filed her complaint, or shortly thereafter, Surety had to know Claimant incurred additional medical charges for which she sought reimbursement, since the complaint asked for unpaid medical benefits for her bilateral carpal tunnel treatment, which could not include the care provided by Dr. Miller, as Surety had paid those charges previously. But delay in reaching a decision is not the same as a denial.

30. Claimant has failed to prove an entitlement to *Neel* rate reimbursement for her medical benefits associated with Dr. Fields' treatment. As made clear in *Millard,* to prevail on a claim for medical benefits at the *Neel* rate, a claimant must prove by a preponderance of

the evidence both of the two prongs of *Neel*; to wit, the claim must be denied, and the claim must later be deemed compensable by the Industrial Commission. Here, Claimant proved neither.

31. When the totality of the record is considered, Claimant has failed to prove by a preponderance of the evidence her entitlement to reimbursement of medical treatment benefits provided by Dr. Fields at the *Neel* rate; rather, she is entitled to such medical benefits at the fee schedule rate, as conceded by Defendants.

Temporary Disability Benefits

32. The next issue is Claimant's entitlement to temporary disability benefits. Idaho Code §§ 72-408 and 409 provide time loss benefits to an injured worker who is temporarily disabled. The burden is on Claimant to present medical evidence of the extent and duration of the disability in order to recover income benefits for such disability. *Sykes v. C.P. Clare and Company*, 100 Idaho 761, 605 P.2d 939 (1980). Furthermore, Claimant bears the burden of proving, by a preponderance of the evidence, all facts essential to her claim for recovery. *Evans v. Hara's, Inc.,* 123 Idaho 473, 849 P.2d 934 (1993).

33. While under Dr. Miller's care, Claimant was provided with light duty restrictions which she convincingly testified exceeded her abilities while in a period of recovery. She stopped working for Employer on August 18, 2022, and found a more suitable job "not very long" after. She guestimates she was between jobs for "about a month." Tr. p. 52. At other times, she made other nebulous guesses. In argument she asks for ten weeks of temporary disability benefits, but her request is not based upon any direct evidence.

34. While under Dr. Fields' care, Claimant underwent two carpal tunnel procedures. She has no evidence to support how many days she missed work, if any. She argues that two weeks is a reasonable time to assume she could not work after each of the procedures.

35. With regard to her claim for temporary disability benefits in August 2022, Claimant's testimony that she was off work for "not very long," "about a month," and "about two months" while finding suitable employment creates a prima facie case for some amount of temporary disability benefits.

36. The "one month" testimony was adduced at hearing and is considered the most persuasive. The problem arises when trying to quantify this vague testimony (and her failure to produce records to shore up her testimony, such as employment records from her job at A New Hope) into a concrete finding of days missed due to her compensable injury. However, Claimant's hearing testimony supports a finding that she missed about one month of work, which equates to approximately 22 days of work based on her schedule.

37. After Claimant's procedures with Dr. Fields, she offered no testimony on how long she was off work, if at all. She argues for two weeks as being reasonable. In effect, she is asking the undersigned to take judicial notice that carpal tunnel surgery results in a two-week hiatus from work, which he cannot do. There is simply no basis for such a finding. Outside of argument in briefing, there is no evidence that Claimant missed work after her procedures with Dr. Fields.

38. When the totality of the record is considered, Claimant has proven by a preponderance of the evidence that she is entitled to twenty-two days of temporary disability benefits for the time she was unable to find suitable employment during August to September 2022, subject to a credit in favor of Defendants for any amount of temporary disability payments previously paid to Claimant.

<u>Disability Based on Medical Factors (PPI)</u>

39. 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. *Henderson v. McCain Foods,* 142 Idaho 559, 567, 130 P.3d 1097, 1105 (2006). Idaho Code § 72-424 provides that the evaluation of permanent impairment is a medical appraisal of the nature and extent of the injury as it affects an injured employee's personal efficiency in the activities of daily living, such as self-care, communication, normal living postures, ambulation, elevation, traveling, and other activities. The Commission can accept or reject the opinion of a physician regarding impairment. *Clark v. City of Lewisto*n, 133 Idaho 723, 992 P.2d 172 (1999). "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, 40 P.3d 91 (2002). The Commission is the ultimate evaluator of impairment. *Urry v. Walker & Fox Masonry*, 115 Idaho 750, 769 P.2d 1122 (1989).

40. Neither Dr. Miller nor Dr. Fields provided an impairment rating for Claimant. They did not specifically state she had no permanent impairment, rather their records did not address the issue. Claimant obtained an impairment rating from Dr. Esplin, who she hired to evaluate her and provide the rating.

41. Defendants provided no competing PPI rating but instead pointed to inconsistencies in Claimant's presentation to Dr. Esplin *vis á vis* her treating physicians. They note Claimant's symptoms were more pronounced when she communicated with Dr. Esplin as compared to her symptoms when communicating with Dr. Fields, and Dr. Miller before that. Defendants suggest the Commission should scrutinize carefully Dr. Esplin's opinions since they rely, at least in part, on exaggerated symptoms.

42. In Dr. Esplin's report, prepared sometime following his examination of Claimant on May 19, 2023, (and possibly after May 25, 2023, since he references Dr. Fields' visit with Claimant on that date), he notes Claimant's complaints to him of feeling

"more helpless and weaker with persistent numbness and pain that still wakes her up at night," despite Dr. Fields' notes from his last visit with Claimant on May 25, 2023, at which time Claimant told him she was feeling "pretty good" with only occasional right hand numbness which is temporary and lasts "a short period of time and then recovery."

43. After setting out a chronology of Claimant's carpal tunnel medical treatment, Dr. Esplin detailed Claimant's pain scale, which showed her pain level at the time of his examination at 4/10, and her "best day in the past week" as being 7/10, and worst pain at 9/10. Claimant diagramed tingling in her bilateral hands and palms, and numbness at the site of her surgery incision scars. She also complained of stabbing pains in her bilateral upper arms.

44. Dr. Esplin performed a series of tests involving Claimant's upper extremities and thereafter provided a prognosis of possible permanent nerve damage, although he noted her symptoms could improve slowly over a period of years.

45. Dr. Esplin recommended Claimant refrain from vibratory work (grinding/sawing), as well as no repetitive gripping, pinching and twisting items at work. He placed a lifting/pushing/pulling limit of less than 10 pounds on a frequent basis, up to 15 pounds occasionally, and rarely up to 25 pounds. He also felt she should not work from ladders or elevated positions which require gripping.

46. Dr. Esplin, when evaluating Claimant's right hand for an impairment rating, gave her a grade 3 modifier for her "constant numbness and pain." He noted she had no atrophy of her median innervated thenar muscles but demonstrated "significant weakness in grip and pinch testing," and a quick dash (a subjective test where a person answers questions regarding various aspects of their health and daily living, with higher numbers

indicating worse conditions) of 64 out of 100. His evaluation of her left hand was slightly better. JE 19, p. 410.

47. Dr. Esplin assigned Claimant a 9% UE PPI rating for her right hand and a 6% UE PPI rating for her left hand. After applying the modifiers and combining the values, Dr. Esplin came up with a 14% UE rating, relying in part on her "severe" quick dash score and grip strength weakness bilaterally, right worse than left. His rating converts roughly to an 8.4% whole person impairment rating.

48. It is difficult to ignore the fact that Claimant's subjective complaints made to Dr. Esplin are significantly out of line with her reports to her treating physicians. Likewise, Dr. Fields' deposition testimony of his surgical findings and Claimant's post-surgery status do not support a severe permanent disability from a medical standpoint, or PPI rating. While she has consistently complained of intermittent pain and tingling, such as at night or from time to time, constant pain complaints when seen by Dr. Esplin are not repeated to Dr. Fields just six days later. Dr. Fields also noted Claimant's complaints were "inconsistent," which made a diagnosis difficult.

49. Even at Dr. Esplin's IME Claimant rated her current pain at 4/10 and her best day as 7/10. One would have to question why her best day would not be 4/10. And her grip strength is a subjective test, unlike objectively observing a lack of atrophy in her relevant muscles.[3]

[3] In his deposition, Dr. Esplin testified to tests he performs to minimize the likelihood of a patient manipulating the grip test and testified it did not appear to him that Claimant was attempting to do so. However, the fact remains that a grip test is not an objective test, and the potential exists for the outcome to be skewed consciously or subconsciously by the patient.

50. On the other hand, she has consistently complained of at least intermittent tingling and pain, which complaints, according to Dr. Esplin, have a high likelihood of plaguing her for life.

51. Both Dr. Esplin and Dr. Fields noted carpal tunnel patients can continue to improve for a year or more after surgery. Claimant was within that window when last seen by each physician. While she continued to have complaints, they were either intermittent and short lived, or more constant and disabling, depending on whose notes are considered.

52. More weight is given to the records of the treating physicians, particularly Dr. Fields, than the IME physician, Dr. Esplin. Had Claimant expressed the same level of discomfort to Dr. Esplin that she did to Dr. Fields, her impairment rating would have been reduced, even by Dr. Esplin's admission. Her last medical visit was with Dr. Fields, at which time she expressed far less symptoms than she did to Dr. Esplin. Assuming her complaints were in line with those expressed during her May 25, 2025 visit with Dr. Fields, her whole person PPI rating would be no more than 7%.

53. When the totality of the record is considered, Claimant has proven by a preponderance of the evidence that she is entitled to permanent impairment benefits corresponding to a 7% whole person rating.

Permanent Partial Disability Benefits

54. 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, 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). Claimant has the burden of establishing her claim for permanent disability benefits.

55. All providers who treated Claimant released her without stated permanent restrictions. However, Dr. Esplin determined some restrictions were necessary to prevent further injury to herself and others.

56. Claimant hired vocational expert Cali Eby, MPA, to prepare a vocational report to assist in establishing Claimant's permanent disability. She was also deposed post hearing.

57. As part of her vocational assessment of Claimant, Ms. Eby reviewed records supplied by Claimant, interviewed Claimant to obtain relevant background information, and used the information obtained to analyze Claimant's loss of market access and loss of wage earning capacity, if any. Consideration was given for Claimant's education, demographics, past employment and the demands thereof, transferable skills, and current labor market available to her. Work restrictions applicable to Claimant's job market were provided by Dr. Esplin.

58. Ms. Eby determined the restrictions provided by Dr. Esplin precluded Claimant from her time-of-injury employment, which required repetitive gripping and fingering, and other similar employment which would require repetitive or sustained hand use. She also was precluded, per Dr. Esplin, from jobs which required use of vibratory equipment such as grinders, sanders and similar tools, or heavy pushing/pulling (over fifteen pounds occasionally). Also, she should not be working in jobs requiring ladder use or working from heights.

59. As Ms. Eby noted in her deposition, Claimant had never been employed in jobs using ladders, working from heights, or utilizing vibratory tools such as grinders. As such, Claimant's most relevant restriction would be her limited weight handling (lifting, pushing, pulling) and gross manipulation (using her hands and fingers). Those restrictions limited Claimant to limited light duty or sedentary jobs.

60. Claimant's pre-accident work history was evaluated. Ms. Eby then created a table of job titles which most closely captured Claimant's past work history. See JE 20, p. 419. The job categories were roughly half in the light duty category and half in the medium duty category. None were in the heavy or very heavy category. Ms. Eby determined Claimant's pre-injury job market contained roughly 7,000 jobs Claimant could have qualified for based on her work history and lack of restrictions. Those included jobs in the heavy work category.

61. Ms. Eby then considered Claimant's post-accident job market, taking into account Dr. Esplin's restrictions, as well as Claimant's relevant nonmedical factors such as age, education, work history, skills, etc. She also assessed Claimant's transferable skills to find jobs Claimant could do but had not done in the past.

62. Ms. Eby opined that, due to her injury, Claimant had experienced between a 62% and a 90% loss of job market access. The discrepancy was due to how the term "repetitive" could be used. It could mean "occasional" up to "constant." If the term repetitive was synonymous

with frequent or constant, her job loss would be as low as 62%. If the term meant occasional, then Claimant's loss or job market would be up to 90%.

63. Ms. Eby chose a middle ground approach and figured Claimant had lost 75% job market access. That 75% market access loss included heavy labor jobs. Ms. Eby explained that even though Claimant had never actually had even a single heavy labor job, nothing precluded her, pre-accident, from doing those jobs. Post accident, she would not be able to perform such work.

64. Claimant suffered no loss of income capacity from her injury. At the time of hearing Claimant was employed in a job which suited her well and paid more than she had been making at her time-of-injury employment.

65. As is standard in the field of vocational assessment, Ms. Eby averaged Claimant's loss of labor market access (75%) and her loss of earning capacity (0%) and determined Claimant had suffered permanent partial disability in the amount of 37.5%.

66. Defendants dispute this finding, in part due to the inclusion of heavy labor jobs and jobs which include using tools such as grinders, jack hammers, sanders, etc., which Claimant had never engaged in, and, as a middle-aged woman, would likely not show interest in pursuing. Defendants point out that 51% of Claimant's job loss was due to heavy and medium duty jobs. Defendants are critical of a methodology which includes theoretical jobs in a claimant's "pre-accident" job market, which the claimant would never consider, and which are then eliminated due to the injury.

67. Claimant argues it is proper to include such jobs in this case because actual jobs performed by Claimant, although in the medium category, could have escalated into the heavy category. The example used was Claimant's job at Lamb Weston as a packer. While her job was in the medium category, the job title, packer, included heavy labor jobs.

68. Defendants' argument has some validity to it, although it is limited in this particular case. It is true that there are jobs every individual could do but would not apply for. For example, not every able-bodied person who could do oil field work would consider doing such jobs. The risk of injury, the hours, the environmental conditions, or countless other considerations preclude some individuals otherwise capable of doing such work from ever considering such a job. To simply include every job a person is not precluded from doing and has the transferable skills to do would be unsupportable. But, to include jobs in a category similar to those done by a claimant prior to injury would be supportable. So, if a person had worked in a heavy duty, outdoor occupation previously, such as a miner, then oil field worker could well be a transferable skill. In such cases the individual has shown a capability skillset, and willingness to do similar work.

69. In this case, although Ms. Eby did include heavy and even very heavy jobs which fit within Claimant's transferrable skill set on the basis that Claimant "could have physically done [such jobs] prior to the injury, and she can't now," she did not include jobs such as those requiring use of a grinder, or sander in her pre-accident job list. *See* Eby Depo. pp. 47, 48.

70. While Defendants point out that 51% of Claimant's job market access loss came from medium and heavy category jobs, there was no distinction between heavy category jobs and medium category jobs. Half of Claimant's pre-accident work history included medium category jobs, so eliminating them from Claimant's post-accident job pool would be appropriate.

71. While not specifically set apart from medium duty jobs, the inclusion of heavy duty jobs would only be a fraction of the 51% of either medium or heavy duty work for which Claimant would not qualify post accident. The remaining 11% up to 40% of jobs eliminated by Claimant's carpal tunnel restrictions involved gross manipulation at a frequent or constant basis.

72. Even if heavy, very heavy, or climbing jobs are not figured into Claimant's lost job opportunity pool, those medium duty jobs and jobs involving gross manipulation at a frequent or constant basis still represent significant percentage of jobs which Claimant lost access to as a result of her industrial injury. Given her non-medical factors such as age, education, and other personal and economic circumstances, Claimant's current job market is significantly more limited with her medical restrictions and personal limitations.

73. Dr. Esplin's restrictions are appropriate even if his PPI rating was a bit high. Based upon the limitations and complaints Claimant expressed through the time of hearing, she has lost significant job market access. Ms. Eby's report is basically sound and well reasoned, even if heavy and very heavy duty jobs are eliminated from her consideration. At most, her calculations were somewhat overstated, but not significantly. Her input was instructive and mostly persuasive.

74. When the totality of the record is considered, Claimant has proven by a preponderance of the evidence that she is entitled to permanent partial disability benefits corresponding to a 35% permanent disability rating, inclusive of her impairment.

Attorney Fees

75. Attorney fees are not granted as a matter of right under the Idaho Worker's Compensation Act, 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 to make a well-founded decision regarding accepting or denying the same. *Akers v. Circle A Construction*, *Inc.*, IIC 1998-007887 (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 (2020).

76. Defendants correctly note attorney fees under Idaho Code § 72-804 are "reserved for situations in which a claim may be denied or payment discontinued without reasonable grounds." Def. Brief, p. 25. Thus, the issue for determination is whether Surety's conduct in failing to accept responsibility for Claimant's medical treatment with Dr. Fields until approximately a week or less before hearing was unreasonable.

77. While Claimant argues attorney fees are warranted for Defendants' refusal to reimburse Claimant at the *Neel* rate for her medical expenses incurred while under the care of Dr. Fields, since Claimant did not prevail on that claim, that cannot be the basis for an award of attorney fees. *See, Salinas v. Bridgeview Estates,* 162 Idaho 91, 93, 394 P.3d 793, 795 (2017); ("The plain language of the statute is clear: there must be payment that is justly due and owing to allow an award of attorney's fees, no matter how unreasonably an employer or surety acted.")

78. However, that is not Claimant's only route to attorney fees. There is still the matter of when Surety was presented a demand for reimbursement of Dr. Fields' bills, when it became aware of the results of the October 2022 EMG, and/or the second set of surgeries which were performed by Dr. Fields. Claimant asserts she "provided the surety her medical records before

filing her complaint." Cl. Reply Brief, p. 12. No cite to the record is made to support the claim. The undersigned did not find evidence that Claimant made a demand for payment of Dr. Fields' medical bills prior to the date of the complaint, although there is a notation in Surety's file dated August 18, 2022, that Claimant "appears [to be] seeking treatment with a different doctor." In response, it appears Surety informed Claimant such treatment would not be covered and would be her financial responsibility. On October 3, 2022, Surety notes indicate Joel Beck sent Surety a letter of representation. No further notes are provided which would shed light on when a demand was made upon Surety to pay for Claimant's medical care with Dr. Fields. Claimant claims she also sent Dr. Fields' medical records during discovery, but did not state a date such discovery was sent. She also alleges her demand letter contained reference to such billings, and undoubtedly it did, but there is no record as to when the demand letter was sent, and Claimant's unsupported statements in briefing are not evidence.

79. The adjuster for this claim, Kerri Woodhouse, testified at hearing. She was never asked when she first became aware of the October EMG results and/or the fact that Dr. Fields operated on Claimant. She was only asked if she knew of the ongoing treatment as it was happening, to which she testified she was unaware of the treatment because Dr. Fields did not send her his records. So, while she knew as of August 2022 that Claimant was seeing another physician, she was not copied with the medical records while that care was being administered.

80. Claimant was deposed on February 25, 2025. By that time, Defendants were aware Claimant had undergone repeat surgery with Dr. Fields and were in possession of at least some of his records. *See, e.g.* Perez Depo. p. 58. The hearing was on August 5, 2025. Defendants acknowledged in open court they had recently accepted responsibility for Claimant's medical expenses incurred while in the care of Dr. Fields.

81. There was no record developed to explain the delay in accepting the claim. Ms. Woodhouse did not describe delays in obtaining records, or an uncooperative physician, or adverse behavior from the Claimant herself, nor did she testify she was trying to gather sufficient documentation to accept the claim but was thwarted by outside factors, or in any way try to justify the delay in accepting the claim.

82. It was at least five months between the last possible date Defendants could have been aware of the second round of surgeries and their acceptance of the claim. Without some explanation for the delay, the timeframe presents a *prima facie* showing of unreasonable delay.

83. This case is somewhat like *Roberts v. Portapros, LLC.,* IIC 2019-008048 (October 11, 2019). While the facts are not on all fours with the present case, there was a delay in paying TTD benefits until just prior to hearing, at which time the Surety did an about face and began paying the previously-denied benefits. The defendants' rationale in *Roberts,* that the amount due was in dispute, did not obviate the need to pay the uncontested amount promptly and litigate the remainder. As noted therein, "[a]ttorney fees are awardable for a surety neglecting *within a reasonable time* after receipt of a claimant's written claim for compensation to pay the claimant [those] benefits allowed by law." *Id* at 25. Furthermore, Surety had a duty to conduct a good-faith investigation into the claim in a timely manner. *Id* at 24.

84. Surety offered no evidence as to why their delay was reasonable. The timeframe alone suggests otherwise. Surety's conduct falls squarely within Idaho Code § 72-804. Claimant has proven, pursuant to Idaho Code § 72-804, a right to attorney fees for Surety's delay in accepting Claimant's claim for medical benefits for care rendered her by Dr. Fields. Even if the parties disputed the amount of such benefits owed, the Surety should have promptly investigated the claim and tendered the undisputed amount due and owing, leaving the application of *Neel* for hearing.

85. When the totality of the record is considered, Claimant has proven by a preponderance of the evidence that she is entitled to an award of attorney fees for Surety's unreasonable delay in accepting her claim for medical benefits for care provided by Dr. Fields for Claimant's industrial bilateral carpal tunnel condition.

CONCLUSIONS OF LAW

1. When the totality of the record is considered, Claimant has failed to prove by a preponderance of the evidence her entitlement to reimbursement of medical treatment benefits provided by Dr. Fields at the *Neel* rate; rather, she is entitled to such medical benefits at the fee schedule rate, as conceded by Defendants.

2. When the totality of the record is considered, Claimant has proven by a preponderance of the evidence that she is entitled to twenty-two days of temporary disability benefits for the time she was unable to find suitable employment during August to September 2022, subject to a credit in favor of Defendants for any amount of temporary disability payments previously paid to Claimant.

3. When the totality of the record is considered, Claimant has proven by a preponderance of the evidence that she is entitled to permanent impairment benefits corresponding to a 7% whole person rating.

4. When the totality of the record is considered, Claimant has proven by a preponderance of the evidence that she is entitled to permanent partial disability benefits corresponding to a 35% permanent disability rating, inclusive of her impairment.

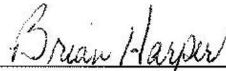
5. When the totality of the record is considered, Claimant has proven by a preponderance of the evidence that she is entitled to an award of attorney fees for Surety's unreasonable delay in accepting Claimant's claim for medical benefits for care provided by Dr. Fields for her industrial bilateral carpal tunnel condition.

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 12th day of February, 2026.

INDUSTRIAL COMMISSION



Brian Harper, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of April, 2026, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION** was served by email transmission and regular United States Mail upon each of the following:

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BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

IDA PEREZ, Claimant, v. VIRGINIA TRANSFORMER CORP., Employer, and THE PHOENIX INSURANCE CO., Surety, Defendants.	**IC 2021-033756** **ORDER** Filed April 17, 2026 Idaho Industrial Commission

Pursuant to Idaho Code § 72-717, Referee Brian Harper 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 recommendation of the Referee. The Commission concurs with this recommendation.

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,

IT IS HEREBY ORDERED that:

1. When the totality of the record is considered, Claimant has failed to prove by a preponderance of the evidence her entitlement to reimbursement of medical treatment benefits provided by Dr. Fields at the *Neel* rate; rather, she is entitled to such medical benefits at the fee schedule rate, as conceded by Defendants.

2. When the totality of the record is considered, Claimant has proven by a preponderance of the evidence that she is entitled to twenty-two days of temporary

disability benefits for the time she was unable to find suitable employment during August to September 2022, subject to a credit in favor of Defendants for any amount of temporary disability payments previously paid to Claimant.

3. When the totality of the record is considered, Claimant has proven by a preponderance of the evidence that she is entitled to permanent impairment benefits corresponding to a 7% whole person rating.

4. When the totality of the record is considered, Claimant has proven by a preponderance of the evidence that she is entitled to permanent partial disability benefits corresponding to a 35% permanent disability rating, inclusive of her impairment.

5. When the totality of the record is considered, Claimant has proven by a preponderance of the evidence that she is entitled to an award of attorney fees for Surety's unreasonable delay in accepting Claimant's claim for medical benefits for care provided by Dr. Fields for her industrial bilateral carpal tunnel condition.

6. Claimant is entitled to an award of attorney fees under Idaho Code § 72-804. Unless the parties can agree on an amount for reasonable attorney's fees, Claimant's counsel shall, within twenty-one (21) days of the entry of the Commission's decision, file with the Commission a memorandum of attorney fees incurred in counsel's representation of Claimant in connection with these benefits, and an affidavit in support thereof. The memorandum shall be submitted for the purpose of assisting the Commission in discharging its responsibility to determine reasonable attorney fees and costs in the matter. See *Hogaboom v. Economy Mattress*, 107 Idaho 13, 684 P.2d 900 (1984). Within fourteen (14) days of the filing of the memorandum and affidavit thereof, Defendant may file a memorandum in response to Claimant's memorandum. If Defendant objects to any representation made by Claimant, the objection must be set forth

with particularity. Within seven (7) days after Defendant's response, Claimant may file a reply memorandum. The Commission, upon receipt of the foregoing pleadings, will review the matter and issue an order determining attorney fees and costs.

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

IT IS SO ORDERED.

DATED this the 17th day of April, 2026.

INDUSTRIAL COMMISSION

Claire Sharp, Chair

Aaron White, Commissioner

ATTEST:

Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of April, 2026, a true and correct copy of the foregoing **ORDER** was served by email transmission and regular United States Mail upon each of the following:

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