BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BERTHA MENDOZA, Claimant, v. AMAZON.COM, INC, Employer, and LM INSURANCE COMPANY, Surety, Defendants.	**IC 2022-014557** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** **FILED MAY 20, 2026** **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 April 24, 2025, in Boise, Idaho. Claimant, Bertha Mendoza , was represented by Taylor Mossman-Fletcher of Boise. Chad Walker of Boise represented Defendants. The parties presented oral and documentary evidence. Post-hearing depositions were taken. The matter came under advisement on March 20, 2026 and is ready for decision.

ISSUES[1]

1. Whether Claimant is entitled to:
    a. Medical care;
    b. Temporary partial or temporary total disability benefits (TPD/TTD);
    c. Permanent partial disability;
    d. Attorney's fees.

[1] Claimant waived the issues of additional permanent partial impairment and total and permanent disability in briefing. Defendants waived the issue of 72-406 apportionment in briefing.

CONTENTIONS OF THE PARTIES

Claimant contends she is entitled to reimbursement at the *Neel* rate for medical expenses incurred after she was declared MMI by Dr. Trumble. Claimant is also entitled to temporary disability benefits until Dr. Lynch assigned permanent restrictions on March 13, 2024. Claimant is entitled to permanent partial disability of 75.3% based on Dr. Lynch's 10-pound lifting restriction. Claimant is entitled to attorney's fees for Defendants' unreasonable denial of physical therapy and injections which were clearly related to her injury.

Defendants respond that Claimant has exaggerated her disability in her expert report both by mathematical errors and in her requested restrictions. Defendants note that Claimant has shown a lack of candor by not mentioning that she was also working as a full-time caregiver for her husband during her treatment. Defendants deny attorney fees are warranted as Claimant herself did not attend all her previously approved physical therapy visits.

Claimant replies that Defendants misunderstand the law and mischaracterize the record. Defendants were aware Claimant was working as in-home caretaker and did not take it upon themselves to provide this information to their experts. Claimant has suffered a significant vocational setback and is entitled to disability. Attorneys' fees are awarded for unreasonable actions and do not hinge on Claimant's credibility.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. Joint exhibits (JE) 1-40;
3. The hearing testimony of Claimant, Bertha Mendoza;

4. The post-hearing depositions of Joseph Lynch, MD, Thomas Trumble, MD, and Cali Eby.

Claimant's objection to Ms. Eby's testimony at page 10, line 9 and Claimant's objection at page 12, line 23 are SUSTAINED.

All other outstanding objections are OVERRULED.

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

FINDINGS OF FACT

1. Claimant was born October 15, 1970, and was 54 years old at the time of hearing. HT 16:12-14.

2. On June 17, 2017, Claimant injured her low back while shoveling potatoes for Simplot. JE 10:834. After physical therapy and injections, Dr. Greenwald declared Claimant at MMI with a 2% whole person impairment and restrictions of no lifting over 50 pounds, no frequent torquing, and changing position as needed. JE 12:1099, 1102.

3. Claimant was injured again shoveling potatoes on August 3, 2018. JE 10:967. Claimant treated with Beth Rogers, MD, and underwent radio frequency ablation to treat her low back pain. See JE 14. Dr. Rogers released her to full duty on July 12, 2019, with no permanent work restrictions related to that injury. JE 14:1228, 1232. Claimant settled her low back workers' compensation claims. JE 31:2169.

4. Claimant was hired by Amazon on November 13, 2020. JE 1:1.

5. On May 10, 2022, Claimant reported her left shoulder was hurting from pulling totes and assembling/packing boxes. HT 33:9-35:4. Claimant treated in-house with ice, but was eventually referred to occupational health. JE 4:205-228. Claimant is left-hand dominant. HT 36:7-

8.

6. On May 17, 2022, Claimant saw James Gardner, MD, a primary care physician at her regular doctor's office. JE 18:1507. Claimant saw Dr. Gardner to "ask[] for restriction" for her low back and left shoulder; Claimant explained her FMLA leave form had been filled out in January[2] and she wanted it reinstituted to lower her work hours from 10 hours a day to 9 hours a day at Amazon. *Id.* Dr. Gardner wrote "I did discuss with her I am not her regular physician and though not unwilling to copy the previous papers for the same time, she would need to plan on getting this set up with her regular physician, Dr. Haywood [sic] for the long-term. Notably he filled out recent family papers [sic] regarding her anxiety issues as well." *Id.*

7. On May 31, 2022, Claimant saw Charles Frost, PA-C at occupational medicine. JE 20:1869. PA-C Frost assessed cervicalgia and impingement of the left shoulder. *Id.* Claimant had good strength, no numbness or tingling in the shoulder, and rated her pain at 6 out of 10. PA-C Frost prescribed diclofenac and physical therapy. *Id.*

8. On June 3, 2022, Claimant returned to her primary care physician and saw Carl Steinmann, PA, regarding chest pain and toe pain. JE 18:1509. She did not mention a shoulder injury or issue. PA Steinmann issued new work restrictions related to her prior low back injury: "given paperwork and added weight restriction with general restriction [sic] 20 pounds as frequent lifting heavier loads has worsened her chronic back pain…has past back injury and lifting at work can worsen. Has weight restrictions in past." *Id.* at 1509-1510.

9. On June 15, 2022, Claimant returned to PA-C Frost and reported physical therapy was aggravating her shoulder. JE 20:1887. PA-C Frost put a hold on physical therapy and ordered

[2] Exhibit 18 begins with this date. No pre-injury records were admitted that explain the notation regarding her FMLA form for her reduced work hours or anxiety. However, there is evidence Claimant's reduced work hours were related to her low back condition.

an MRI. *Id.*

10. On June 20, 2022, Claimant was interviewed telephonically by Surety. JE 6:736-744. Claimant reported she had begun caring for her husband as a caretaker about a month prior to her industrial injury. *Id.* at 738, 742. Claimant mentioned her work restriction for 9 hour days was due to her low back condition. *Id.* at 742.

11. On June 29, 2022, Claimant saw Mason Heywood, MD, her regular primary care physician, for toe pain and back pain. JE 18:1515. Dr. Heywood explained that if she needed more specific work restrictions for her low back condition, she should schedule with occupational medicine for an evaluation; Claimant relayed that her current restrictions "that have been addressed over the last couple of visits are adequate." *Id.* Claimant did not discuss her left shoulder condition.

12. On July 7, 2022, Claimant underwent a left shoulder MRI which showed a Type II SLAP tear and mild AC joint osteoarthritis. JE 20:1902. PA-C Frost referred Claimant to orthopedic surgery. *Id.* at 1906.

13. On August 3, 2022, Claimant saw Michael Nieraeth, PA-C, for her left shoulder. JE 19:1739. Claimant described severe pain and that she had attempted physical therapy, but "her pain was still consistent." *Id.* PA-C Nieraeth recommended surgery because Claimant had failed conservative treatment over the prior three months and Claimant desired "a more permanent fix" for her shoulder *Id.* at 1742.

14. On December 15, 2022, Claimant underwent an arthroscopic repair of the left rotator cuff tendon, open subpectoral biceps tenodesis, and debridement with Dr. Lynch. JE 21:1936.

15. On December 27, 2022, Claimant returned to Dr. Heywood regarding her low back pain. JE 18:1518. Dr. Heywood wrote "needing here today revision of paperwork for chronic low back pain. Prior paperwork did not have a weight limit that was previously discussed… she does

not report any worsening of her low back pain." *Id.* Claimant reported her recent shoulder surgery and that she was off work until the end of January for that condition. *Id.*

16. On December 30, 2022, Claimant began physical therapy for her left shoulder. JE 13:1106.

17. On February 1, 2023, Claimant reported her shoulder pain was keeping her up at night; PA-C Nieraeth wrote that she was "struggling and very timid to move her shoulder. I told her she needs to get stretching and let formal PT stretch her out." JE 19:1794.

18. On March 15, 2023, Claimant reported she still had pain and tingling and numbness down into her hand; Dr. Lynch wrote Claimant "continues to be overly cautious and guarded." JE 19:1799. Dr. Lynch recommended an injection to help her move past her "fear, pain, and tightness" but Claimant declined, wanting to see if she made more progress with physical therapy. *Id.*

19. On March 24, 2023, Claimant attended her regularly scheduled physical therapy appointment. This was the last appointment she attended.

20. On April 17, 2023, Claimant saw Dr. Heywood for her regularly scheduled appointment and reported an increase in back pain; Dr. Heywood referred her to physical therapy and scheduled her for a trigger point injection. JE 18:1530. Claimant did not discuss her left shoulder condition.

21. On April 19, 2023, Claimant reported to PA-C Nieraeth she still was experiencing tingling and numbness into her forearm, and her shoulder was "quite painful." JE 19:1805-1807. Claimant reported she had stopped going to physical therapy due to an issue with workers compensation approving her visits. *Id.* at 1807. PA-C Nieraeth wrote: "it is critical that she gets back into formal PT 2 times/week for 6-8 weeks." *Id.*

22. On April 23, 2023, Dr. Lynch's office reached out to Surety about Claimant's

physical therapy appointments. JE 6:479-482. Karen Shaw, the adjustor, wrote that 24 appointments had been approved, and no additional requests had yet been received. *Id.* That same day, Kristi Green, the office manager for Morris Physical Therapy authored a letter to Dr. Lynch explaining Claimant had attended 22 of the 24 authorized appointments and explained the same to Ms. Shaw. JE 13:1153; JE 6:479. Claimant had cancelled her last two appointments on March 27 and March 31 "with no reason" and had not returned her physical therapist's phone call. *Id.*

23. On May 6, 2023, Claimant was examined for an IME by Thomas Trumble, MD, at Defendants' request. JE 25:2121. Dr. Trumble took a history from Claimant, examined her, reviewed injury-related records, and issued opinions. Claimant's chief complaint was "numbness and tingling going all the way down to her hand and her hamstring, although the claim started as a problem with rotator cuff tear." Claimant noted this feeling had been there for two to three months and she may have confused the two issues. *Id.* at 2122. Dr. Trumble noted Claimant had excellent results from her surgery and had made great progress; she reported she was recovering nicely and excited and ready to return to work. *Id.* 2127. Dr. Trumble noted Claimant's grip strength test "does not seem to follow the normal curvature from muscle strength as highlighted in the AMA Guidelines to suggest a marginal voluntary effort." *Id.*

24. Dr. Trumble opined that Claimant's need for surgery was caused by her work accident and there did not appear to be any pre-existing condition. JE 25:2128. Claimant was at MMI with an impairment of 6% of the upper extremity and did not need any further "curative" treatment. *Id.* Dr. Trumble noted Claimant's subjective complaints were "slightly exaggerated" but that work restrictions were appropriate. Specifically, no lifting greater than 20 pounds overhead. *Id.* at 2128-2129.

25. On June 12, 2023, Dr. Lynch agreed with Dr. Trumble that Claimant was medically

stable and assigned the same restriction of no lift/push/pull/carry more than 20 pounds. JE 19:1814.

26. On July 12, 2023, Dr. Heywood updated Claimant's low back restrictions to limiting work to only 8 hours a day and a maximum of 20 pounds for lifting, carrying, pushing, and pulling. JE 18:1555-1556. Claimant was already under a 20-pound weight limitation from Dr. Heywood, but Claimant was having an increase in back pain in her last hour of work and "is wanting to see if she can get an accommodation to work up to 8 hours a day" vs 9 hours a day, which Dr. Heywood accommodated. *Id.* Claimant did not discuss her left shoulder or her left shoulder restrictions.

27. On August 15, 2023, Surety authorized a "one time" consultation with Dr. Lynch to evaluate Claimant's shoulder at Claimant's request. JE 19:1817; JE 6:391-392. Dr. Lynch saw Claimant on August 21, 2023, and she reported burning/pulling in her shoulder in addition to pain and limited motion at work. *Id.* at 1820. Dr. Lynch wrote that her physical exam was "reassuring" but that her subjective complaints pointed to the shoulder. He recommended another MRI to check on the repair and said a repeat injection would not be wise until "we know for sure that her tendon has safely healed" and because she had already had one injection. *Id.* at 1822.

28. On August 28, 2023, Claimant saw Dr. Heywood for her medication refill and low back pain. JE 18:1575. Claimant reported to Dr. Heywood that she was recently able to go back to her job and that her low back was handling that very well. *Id.* She reported ongoing issues with her left shoulder, but otherwise she was doing well. *Id.* at 1575.

29. On October 9, 2023, Claimant returned to Dr. Lynch to review her MRI results. JE 19:1832. Dr. Lynch wrote the MRI showed no new cuff tear and that they would try physical therapy and an injection to help improve her symptoms, but that she may need a diagnostic arthroscopy if her symptoms continued. *Id.* at 1834. Dr. Lynch restricted Claimant to only lifting 15 pounds with a break every two hours. *Id.* at 1839.

30. On October 17, 2023, Surety denied further physical therapy and injections for Claimant because the MRI showed no exacerbation or evidence of a new injury. JE 6:365-372.

31. On November 6, 2023, Claimant called Dr. Heywood's office because her work accommodation paperwork had expired; specifically, the portion restricting her from going up and down stairs, not the 20# lifting restriction. JE 18:1631.

32. On December 11, 2023, Claimant reported her pain was well controlled and the injection had provided "great relief;" she was progressing well in physical therapy. JE 19:1847. Dr. Lynch opined she was at MMI with 6% upper extremity impairment related to the industrial injury and no further treatment was necessary except for possible twice-yearly injections. Dr. Lynch wrote:

> Bertha has been on a permanent 20 lb lifting restriction and feels that 20 lbs is what aggravates her shoulder and asks if this can be reduced to a 15 lb maximum… permanent work restrictions are reasonable the light of her presentation and I'm not certain there is really a substantial difference at this point between 20 and 15 lb limit as long as she is capable of continuing full time work. She is aware that though I feel 15 lbs is reasonable; her IME doctor recommended 20 lbs, and this difference, if important, to the parties involved, could be a reason to obtain a formal FCE.

JE 19:1847-1848.

33. On February 19, 2024, Claimant returned to Dr. Lynch. Dr. Lynch wrote "Bertha would like to discuss her weight restrictions again as she is trying to move to a different department at her job but they are unwilling to move her with her current weight restrictions." Claimant reported "she gets burning pain when performing activity above 10 pounds" and requested her restrictions be modified. JE 19:1855-1856. Dr. Lynch wrote her exam was unchanged and reassuring, and although objectively there had been no change, he provided her an updated work release due to her subjective complaints. He also wrote: "she is aware that this may prompt an FCE and that it is possible if an FCE is performed that objectively she may be able to perform much

more than that activity…[she] now feels that 15 lbs is what aggravates her shoulder and asks if this can be reduced to a 10 lb maximum." *Id.*

34. On April 14, 2024, Amazon terminated Claimant because they could not accommodate her most recent permanent restrictions. JE 4:189-190.

35. At deposition on September 24, 2024, Claimant disputed that she "asked" that her restrictions be changed:

> Q: [By Mr. Stoddard] Looking through the medical record, Ms. Mendoza, I noticed that a couple times you asked for more restrictive work restrictions. Do you recall asking for some more restrictive work restrictions?
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> A: I recall going back to the doctor, to Dr. Lynch, and telling him the issues I was having with the restrictions that he gave me when I went back to Amazon. 'Cause they placed me on picking, and that was not working out with him -- with me. So I explain everything that was going on, how I was having to lift my shoulder, my arm to grab the totes and fill my station and then lift my arm to push the monitor. So I would go back and tell him, it's not working out. It's help -- it's making -- it's making me hurt a lot. My shoulder is hurting.
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> Q. Okay. So I have that in December 2023 you had a 20-pound permanent lifting restriction, you asked that that be lowered, and Dr. Lynch lowered that to 15 pounds lift restriction. Does that sound right?
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> A. Again, I went back and I told him the situation, what was happening while I was working at Amazon on the 20-pound restriction that he put me on, the weight restriction, and I told him everything that I was doing, and how it was hurting me. And he said then, okay, the weight restriction was going to change to 15 pounds. And that's when he changed me to 15 pounds.
>
> Q. Okay. Do you recall requesting the permanent lift restriction be changed, or are you testifying that Dr. Lynch kind of did that of his own volition?
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> A. I don't remember, to be honest with you.
>
> Q. Okay.
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> A. I just remember going in and telling him how I was doing at work while I was on the 20-pound restrictions, how it was -- like everything I was doing while I was on the 20-pound restriction, and how it was making my shoulder hurt, and it was making it worse.

Q. I understand.

A. But I don't remember if I mentioned anything about changing my weight limits or my weight restrictions.

Q. Okay.

A. I don't remember that.

Clt Depo. 40:2-42:24.

36. On October 3, 2024, Dr. Lynch responded to a letter from Claimant's attorney indicating he agreed her October 9 injection and related physical therapy orders were related to her industrial accident and that further injections, if necessary, would also be related. JE 19:1867-1868.

37. On October 4, 2024, Claimant saw Travis Page, DO, and reported her back and shoulder pain were bothering her and causing insomnia at night. JE 29:2155.

38. On April 11, 2025, Claimant received an injection in her shoulder to treat tendonitis. JE 40:2268.

39. Dr. Lynch was deposed on August 22, 2025. Dr. Lynch recalled treating Claimant and offered this description unprompted: "that she returned to us on a couple of subsequent occasions after they declared MMI requesting a modification of her work restrictions because of continued symptoms of pain." Lynch Depo. 8:4-14. When asked specifically about whether Claimant requested her restrictions be modified, Dr. Lynch testified she returned twice to request a "lesser" weight, "which we agreed to." *Id.* at 16:2-19. Dr. Lynch explained he agreed with Dr. Trumble's report with two exceptions, first, that she did need ongoing treatment in the form of injections or anti-inflammatories, and second, her work restrictions due to her subsequent presentation after her IME with Dr. Trumble. *Id.* at 12:1-12.

40. On cross-examination, Dr. Lynch testified Claimant could potentially require more

injections, but no more than two or three post-surgery to help with inflammation. *Id.* at 17:18-19:8. Regarding Claimant's 10-pound lifting restriction, Dr. Lynch offered:

> My understanding is that she was working a repetitive job, something that I would consider an assembly line job. <u>And my personal opinion is she's probably capable of more than 10 lbs.</u> But with her line of work at Amazon being a repetitive nature, my assumption is that the specific repetitive nature of that assembly line job is probably what's aggravating her more than the specific amount of weight...based upon what I've been presented and my evaluation of Ms. Mendoza, I thought 10 pounds was reasonable based on her request.

Lynch Depo. 22:14-23:10. (emphasis supplied)

41. Dr. Trumble was deposed on October 23, 2025. Dr. Trumble explained that Claimant's numbness and tingling was unusual because typically "no nerves are involved" in a rotator cuff injury but that she did have positive tests for carpal tunnel syndrome. Trumble Depo. 11:14-13:7. Dr. Trumble noted that Claimant's grip strength result was "inconsistent with a full voluntary effort" per the *Guides*[3]. *Id.* at 13:15-25.

42. On cross-examination, Dr. Trumble explained the tenderness he noted on her biceps was due to her surgery where they reattached her biceps. *Id.* at 25:14-22. Dr. Trumble agreed that injections after shoulder surgery could be appropriate to treat scar tissue, inflammation, and to reduce symptoms. *Id.* at 26:5-20.

43. **Vocational History.** Claimant did field work in 1990 in Wyoming; thereafter, she moved to Idaho and got her GED in 1994. HT 17:3-18:19. Claimant worked on and off as a caretaker starting in 2003. JE 38:2242. Claimant worked as a secretary for the Idaho Migrant Council for two years and as a bill collector for CitiBank for one month, but was uncomfortable in both positions because they required heavy use of the computer. HT 21:12-26:14; JE 38:2242.

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[3] AMA Guides to the Evaluation of Permanent Impairment, 6th Edition. See Trumble Depo. 21:2-9.

Claimant also worked for Wal-Mart palletizing, Idaho State University as a translator, Simplot shoveling potatoes, as a clerk in a thrift store, and finally at her time-of-injury position, Amazon. *Id.* Claimant has not looked for another job since her separation from Amazon, but is currently employed as a caretaker for her ex-husband. HT 52:7-15. Claimant works as a light-duty caretaker in her home with assistance from their children. HT 41:14-44:14.

44. Delyn Porter issued a vocational report at Claimant's request on December 6, 2024. JE 38:2226. Mr. Porter reviewed medical records, interviewed Claimant, and issued disability findings. *Id.* Mr. Porter recorded Claimant's pre-injury restrictions as a 50-pound[4] lifting limit, limiting her to medium duty. Mr. Porter observed that with the exception of her work for CitiBank and the Idaho Migrant Council, Claimant's work history was primarily in physically demanding unskilled or semi-skilled labor. *Id.* at 2253. Dr. Trumble's 20-pound overhead restriction caused Claimant labor market loss of approximately 33.1%, and Dr. Lynch's 10-pound lifting/pushing/pulling/carrying restriction resulted in labor market loss of 86.5%. *Id.* at 2256. Dr. Trumble's restriction resulted in wage loss of 9.9% and Dr. Lynch's resulted in wage loss of 7.1.%. *Id.* at 2257. Dr. Trumble's restriction therefore resulted in disability of approximately 21.5% and Dr. Lynch's resulted in disability of approximately 46.8%. Mr. Porter then explained that because Claimant's loss of labor market was so significant, he weighed that loss at 1.6X, resulting in 75.3% permanent partial disability. Mr. Porter was not deposed.

45. Ms. Eby did not issue a report but was deposed to offer rebuttal to Mr. Porter's opinion. Ms. Eby disagreed with the math behind Mr. Porter's weighted averages for loss of labor

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[4] Mr. Porter did not opine regarding Dr. Greenwald's additional restrictions of no frequent torquing and ad lib position change. Mr. Porter did not record or consider Claimant's other restrictions from her primary care physician including limited working hours, a prohibition on going up and down stairs, or the 20-pound lift/push/pull/carry limit.

market. Mr. Porter's math looked as follows: (86.5 X 1.66) + 7.1/2 = 75.3% whereas Ms. Eby argued that the appropriate math would be as follows: (86.5 X 1.66) + 7.1/**2.66** = 56.7%. *Id.* at 9:6-23. Essentially, Ms. Eby argues that the denominator should be weighted to account for the weighing on the front end of the labor market loss. Ms. Eby confirmed on cross-examination that she had not done an analysis, met the Claimant, or produced a report in connection with this case. *Id.* at 15:4-16:2.

46. **Condition at Hearing.** Claimant is still working as a caregiver for her ex-husband. Claimant still has shoulder pain and difficulty lifting. HT 47:4-21.

DISCUSSION

47. 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).

48. **Medical Care.** Idaho Code § 72–432(1) requires an employer to provide an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital service, 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."

Post-recovery palliative care is a recognized benefit where reasonable and may be awarded. *Rish v. Home Depot*, 161 Idaho 702, 390 P.3d 428 (2017).

49. This is an accepted claim.[5] Claimant argues she is entitled to *Neel* reimbursement for her medical care costs she incurred after Dr. Trumble's IME, including physical therapy and injections. Surety denied this care because there was no "new" injury on imaging.

50. There is no dispute amongst the experts that Claimant's condition can require injections after surgery to help with pain and inflammation. This is compensable care. Dr. Lynch testified that two to three injections were reasonable, and Dr. Trumble agreed that injections could be reasonable to treat pain and inflammation. There is no dispute that Claimant's post-surgical injection given by Dr. Lynch was related to her injury and surgery. Claimant is entitled to reimbursement at the *Neel* rate for this injection.

51. Claimant also received an injection in her shoulder for tendonitis from Dr. Page on October 24, 2025. Dr. Page related the injection to a shoulder injury/pain. It is not clear that Dr. Page had a history of the injury, but was aware that Claimant had shoulder surgery in 2022. However, Dr. Lynch opined this exact type of treatment was reasonable, necessary, and related to the injury. Claimant is entitled to reimbursement at the *Neel* rate for this injection.

52. Dr. Lynch wrote that Claimant's post-MMI physical therapy was related to the injury/accident. Dr. Trumble did not opine regarding Claimant's post-MMI physical therapy. There is only one expert opinion, and it is reasonable and well explained. Claimant is entitled to reimbursement at the *Neel* rate for her physical therapy.

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[5] Defendants' arguments around Claimant's employment as a caregiver revolve around causation/credibility and the possibility that her second employment contributed to her injury. There is no evidence supporting this theory in the record and Defendants had knowledge of Claimant's caregiver employment one month after the injury. See ¶ 10.

53. **Temporary Disability Benefits.** 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.

54. Surety stopped paying temporary disability benefits when Claimant was declared medically stable on May 6, 2023 by Dr. Trumble. Shortly thereafter, Dr. Lynch agreed with the MMI declaration and Dr. Trumble's restrictions. Claimant argues she is entitled to temporary disability benefits until Dr. Lynch's "final" restriction was given, approximately 10 months later on March 13, 2024[6].

55. However, Claimant returned to work at Amazon in the summer after she was released. Clt Depo. 41:24-42:6. Claimant worked at Amazon until she brought in her final restriction from Dr. Lynch in March of 2024, restricting her to lifting/pushing/pulling no more than 10 pounds. See Clt Depo, 42:1-44:10, HT 39:15-40:14. Temporary disability benefits are to compensate a claimant when they are not working because they are in a period of recovery. Claimant worked and received wages the entire time frame she is arguing for temporary disability benefits. Claimant is not entitled to further temporary disability benefits.

56. **Permanent Partial Disability and Apportionment.** 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 §

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[6] Dr. Lynch assigned his final restriction on February 19, 2024. However, Claimant did not stop working until approximately this date.

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). Pain may be considered as a medical factor, a non-medical factor, or both, but it must be considered. *Funes v. Aardema Dairy*, 150 Idaho 7, 11, 244 P.3d 151, 155 (2010).

57. Claimant argues she is entitled to 75.3% disability per the opinion of Delyn Porter. Defendants argue that Mr. Porter's opinion is inflated, although admit some disability is due to Claimant for her injury. Defendants withdrew the issue of apportionment pursuant to Idaho Code § 72-406.

58. It is extremely difficult to evaluate Claimant's disability from this injury alone.

Regarding restrictions, Claimant had pre-existing restrictions which Mr. Porter did not account for in his analysis (ad lib position change and no frequent torquing from Dr. Greenwald related to her low back, a restriction against going up and down stairs). Claimant was assigned unrelated vocationally significant restrictions after her shoulder injury, but prior to the hearing date, the appropriate date to determine disability (reduced working hours and a 20-pound lift/push/pull/carry limitation) which Mr. Porter did not engage with in his analysis. The evidence supports that Claimant asked for her restrictions to be lowered, multiple times, and that Dr. Lynch's "personal opinion" is that Claimant could lift more than 10 pounds, but that 10 pounds "was reasonable based on her request." Lastly, Dr. Trumble's restriction, while sensible, does not account for Claimant's pain and discomfort.

59. Regarding the experts'[7] opinions, Mr. Porter's loss of labor market is inflated because he did not adequately record and consider Dr. Greenwald's restrictions. Mr. Porter put it best when he said "the vocational evaluator must consider both the exertional (lifting, carrying) and positional (standing, sitting, walking, twisting, kneeling, bending, stooping, pushing, pulling, etc.) capacity of the injured worker to determine the appropriateness of any vocational field." JE 38:2251. Claimant did not have access to certain jobs due to her positional limitations which Mr. Porter mistakenly included in her pre-injury labor market, which inflated the resulting labor market loss. Mr. Porter did not see or did not consider Claimant's other restrictions which exist in Claimant's primary care records. The same criticism applies to his wage loss numbers. Further complicating wage loss, Claimant reported she was taking care of her husband for Independent Living prior to her injury and Claimant's W-2s reflect that fact as well. Mr. Porter did not include

[7] Ms. Eby's criticisms were interesting, but unhelpful for the sole reason that the underlying report she was criticizing is rejected.

those wages in calculating her wage loss. In other words, Mr. Porter did not have or did not consider all the relevant information in forming his opinions regarding disability.

60. It is clear that Claimant is entitled to *some* disability from this injury. Claimant has ongoing pain and discomfort from the injury. Claimant's subjective pain complaints from her shoulder caused Dr. Lynch to revise her restrictions downward to 10 pounds. Although he admits she could do more, Claimant's pain complaints are a valid component of her disability and must be accounted for. The information that is available and reliable shows that Claimant is an older worker, who is bilingual, with a history in primarily physical labor, and that she has pain and discomfort with lifting on her dominant, left side and is currently employed as a caretaker. Although Claimant has pre-existing restrictions, Defendants do not argue for apportioning her disability. Therefore, Claimant's disability is 30% inclusive of impairment when considering the medical factor of impairment and her non-medical factors.

61. **Attorney's Fees.** 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).

62. Claimant argues she is entitled to attorney's fees because Defendants unreasonably denied medical care following Dr. Trumble's IME without the benefit of a medical opinion.

63. It is a close call whether Surety denied the requested treatment unreasonably. Dr. Trumble found Claimant at MMI in May and opined she needed no further curative treatment. In October, four months later, Dr. Lynch recommended an injection to treat Claimant's inflammation and physical therapy to treat her symptoms overall. Defendants did not deny the treatment recommended by Dr. Lynch because of their recent opinion from Dr. Trumble stating no further treatment was required. Instead, Defendants denied the treatment because there was no evidence of a "new" injury or exacerbation, i.e. no objective change in her condition per the MRI. Defendants seemed to think that if the repair was intact, their obligation to Claimant ended.

64. At the time of the denial, Dr. Lynch was opining her industrial injury was still symptomatic. There was no evidence that the requested care was related to anything other than her industrial shoulder injury. If Defendants had asked Dr. Trumble, he would have presumably repeated his deposition testimony that at least the injection was reasonable treatment. Instead, Defendants relied on Dr. Lynch's findings regarding the MRI (no new injury or failed repair), but not his findings regarding her subjective increase in symptoms related to her shoulder or her need for treatment for the same. A little extra investigation would have resulted in the injection being

covered due to Dr. Trumble's opinion and/or a bulletproof denial with an updated opinion from Dr. Trumble.

65. This is a case where "a" denial would have been reasonable, but the offered rationale transformed it into an unreasonable denial. It is not merely a semantic difference. When a defendant denies medical care, the reasoning behind the denial guides a claimant on whether and how to litigate their case. Claimant was under the impression, incorrectly, that she needed a "new" injury for compensable care to be provided.

66. Again, this is a close case. Defendants had a recent medical opinion saying no further treatment was necessary and a treating physician recommending physical therapy when the Claimant did not complete her prior round of physical therapy. However, Defendants' offered rationale was unreasonable when the evidence is looked at as a whole. This is more apparent given that the treatment Dr. Lynch was proposing was essentially palliative care, which is compensable unless unrelated and there was no evidence Claimant's left shoulder symptoms were anything other than industrial. Claimant's limited request for attorney's fees is awarded.

67. Unless the parties can agree on an amount for reasonable attorney's fees, Claimant's counsel shall, within twenty-one days of the entry of the Commission's decision, file with the Commission a memorandum of attorney's fees incurred in counsel's representation of Claimant in connection with these benefits, and an affidavit in support thereof, with appropriate elaboration on *Hogaboom v. Economy Mattress*, 107 Idaho 13, 684 P.2d 990 (1984). The memorandum shall be submitted for the purpose of assisting the Commission in discharging its responsibility to determine reasonable attorney's fees in this matter. Within fourteen days of the filing of the memorandum and affidavit thereof, Defendants may file a memorandum in response to Claimant's memorandum. If Defendants object to the time expended or the hourly charge claimed, or any other representation

made by Claimant's counsel, the objection must be set forth with particularity. Within seven days after Defendants' counsel files the above-referenced memorandum, Claimant's counsel may file a reply memorandum. The Commission, upon receipt of the foregoing pleadings, will review the matter and issue an order determining attorney's fees.

CONCLUSIONS OF LAW

1. Claimant is entitled to reimbursement at the *Neel* rate for medical care which was related to the injury but denied by Surety, specifically physical therapy and injections;

2. Claimant is not entitled to temporary disability benefits;

3. Claimant has proven permanent partial disability in the amount of 30%, inclusive of impairment;

4. Claimant has proven entitlement to attorney's fees;

5. All other issues are moot.

RECOMMENDATION

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

DATED this 17th day of April, 2026.

INDUSTRIAL COMMISSION

Sonnet Robinson, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the _20th_ day of ___May__, 2026, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail and *E-mail transmission* upon each of the following:

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ge Gina Espinosa

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BERTHA MENDOZA, Claimant, v. AMAZON.COM, INC, Employer, and LM INSURANCE COMPANY, Surety, Defendants.	**IC 2022-014557** **ORDER** **FILED MAY 20, 2026** **IDAHO INDUSTRIAL COMMISSION**

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

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

1. Claimant is entitled to reimbursement at the *Neel* rate for medical care which was related to the injury but denied by Surety, specifically physical therapy and injections.

2. Claimant is not entitled to temporary disability benefits.

3. Claimant has proven permanent partial disability in the amount of 30%, inclusive of impairment.

4. Claimant has proven entitlement to attorney's fees. Unless the parties can agree on an amount for reasonable attorney's fees, Claimant's counsel shall, within twenty-one days of the entry of the Commission's decision, file with the Commission a memorandum of attorney's fees incurred in counsel's representation of Claimant in connection with these benefits, and an affidavit in support thereof, with appropriate elaboration on *Hogaboom v. Economy Mattress*, 107 Idaho 13, 684 P.2d 990 (1984). The memorandum shall be submitted for the purpose of assisting the Commission in discharging its responsibility to determine reasonable attorney's fees in this matter. Within fourteen days of the filing of the memorandum and affidavit thereof, Defendants may file a memorandum in response to Claimant's memorandum. If Defendants object to the time expended or the hourly charge claimed, or any other representation made by Claimant's counsel, the objection must be set forth with particularity. Within seven days after Defendants' counsel files the above-referenced memorandum, Claimant's counsel may file a reply memorandum. The Commission, upon receipt of the foregoing pleadings, will review the matter and issue an order determining attorney's fees.

5. All other issues are moot.

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

DATED this __20th____ day of _____May____________, 2026.

INDUSTRIAL COMMISSION

Claire Sharp, Chair

Aaron White, Commissioner

ATTEST: *Mary McMenomey*
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the ___20th___ day of ____May__________ 2026, a true and correct copy of the foregoing **ORDER** was served by *E-mail transmission* and by regular United States Mail upon each of the following:

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ge *Gina Espinosa*