**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

MARIA J. PONCE,

Claimant,

v.

CIRCLE VALLEY PRODUCE, LLC,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,

Defendants.

**IC 2021-016789**

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION**

Filed
May 28, 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 Idaho Falls, Idaho, on August 6, 2025. Andrew Adams represented Claimant. Paul Augustine represented Defendants. The parties submitted oral and documentary evidence at hearing and prepared post-hearing briefs. Post-hearing depositions were taken. The matter came under advisement on March 30, 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; and
   b. Permanent partial disability (PPD).

## CONTENTIONS OF THE PARTIES

On May 21, 2021, Claimant slipped and fell while working in the course and scope of her employment with Employer. While initially her complaints centered on her left thigh and knee, Claimant asserts that ultimately her compensable injuries came to include damage to her low back and left hip. Claimant has suffered permanent partial disability from her injuries. Defendants are liable for the medical care associated with Claimant's low back and hip and for benefits for her permanent partial disability.

Defendants agree that Claimant suffered a slip and fall at work, in which she contused her left knee and thigh. Her low back and other complaints did not emerge until several months after her accident and are not associated with her work accident. Additionally, Claimant is not entitled to permanent partial disability benefits because she suffered no permanent compensable disability and she returned to her time-of-injury employer after her soft tissue injuries resolved.

## EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant, and witness Shilo Park, taken at hearing;
2. Joint exhibits (JE) 1 through 27 admitted at hearing; and
3. The post-hearing deposition transcripts of Jacob Moss, M.D., Daric Russell, DO, and Charles Timothy Floyd, M.D.

## FINDINGS OF FACT

1. At the time of hearing Claimant was 56 years old and had lived in the United States for thirty-four years. She began working for Employer in 1996 and has continued such employment through the time of hearing. Claimant originally worked as a potato sorter but after ten years she moved into a janitorial position, although she does some sorting on an as-needed basis. She also supervises some of the sorters.

2. On May 25, 2021, Claimant, while working for Employer, slipped and fell. She struck her left knee and thigh on a metal bar as she fell, and landed on her left knee and left side.

3. Claimant testified she was bruised on her left side but did not seek immediate treatment. She thought her pain would subside with time, but when it did not, she went to Mountain View Hospital Occupational Health Solutions and Community Care West Side on June 16, 2021. There she was diagnosed with left knee contusion and acute pain, which radiated up into her left thigh. She was given work restrictions and referred to physical therapy.

4. One month later Claimant again complained of left knee pain and increasing pain in her left thigh. Her medical records from that visit listed muscle pain but no joint pain, numbness, or tingling. She was diagnosed with left knee strain.

5. At her August 19, 2021 office visit, Claimant's presentation, which included left knee pain not improving with physical therapy, and a notation of joint pain, but without back pain, Claimant's pain profile suggested iliotibial (IT) band involvement. Claimant was referred to Gary Walker, M.D., at Walker Spine & Sports.

6. Claimant was first seen by Dr. Walker on September 9, 2021, for "left thigh complaints."

7. Claimant's history to Dr. Walker included the mechanism of injury (slipped and fell, landing against a bar on the left lateral knee and lateral thigh), and her current complaints, which were described as "having localized just above the knee and go laterally up to the trochanter." Claimant's pain was getting worse with time, with tingling and numbness in her lateral thigh which was worse with walking and relieved somewhat by lying down. JE 9, p. 185.

8. Dr. Walker's lumbar range of motion testing caused moderate pain down Claimant's left thigh with flexion but not with extension and rotation. Pinprick sensation was reduced on Claimant's left lateral thigh. She had equal and normal lower extremities strength,

and straight leg raising was negative, as were internal and external rotation and Patrick testing. Claimant was tender along the IT band.

9. Dr. Walker's initial impression was that most of Claimant's symptoms were consistent with a contusion, and he did not see "a whole lot going on neurologically." JE 9, p. 186. He prescribed p/t for the IT band issue, a Medrol dose pack, and continuation of light duty work restrictions until her next appointment in two weeks hence.

10. At her next appointment Claimant's pain had decreased from 8/10 to 5/10 with physical therapy and light duty work, mostly cleaning. She was still tender over the lower third of her IT band (which runs from hip to knee). Dr. Walker's diagnosis was an industrially caused contusion to Claimant's left lateral thigh and iliotibial band.

11. At Claimant's October 27, 2021 office visit, she complained that even with physical therapy she was not improving. Her pain was back to 8/10, with muscle cramping. Claimant was pain free in her lumbar range of motion, although she felt a pulling sensation in her buttock and hamstring with flexion. She was tender to palpation in her left greater trochanter and left sciatic notch, down to her IT band. Dr. Walker expressed concern over the fact that a seemingly "simple contusion," which should have healed in the five months since the accident, was not improving. Her findings did not make sense to the doctor, so he ordered an MRI of her lumbar spine. His plan was to inject the greater left trochanter if the MRI was negative, and if positive for a lumbar disc protrusion he would treat that finding.

12. The MRI, taken on December 6, 2021 showed L4-5 and L5-S1 desiccation with degenerative disc disease and central disc bulges with annular tears at both levels. Claimant's neuroforamen were normal. While Dr. Walker still felt most of Claimant's complaints were related to her contusion, he was concerned with the MRI findings and Claimant's positive straight leg raising test, and could not rule out the possibility that "there may be a discogenic source to

her pains." JE 9, p. 192. On that visit Claimant received injections into her left piriformis and greater trochanter.

13. A month later, on January 6, 2022, Claimant reported no improvement from the injections, tenderness to palpation in the area of her left sciatic notch, with pain radiating to below her knees. During his visit, Dr. Walker opined his primary concern was that Claimant suffered "a work related injury with ongoing lower extremity pain" which could represent a "problem" involving her discs rather than soft tissue, in light of her L4-5, L5-S-1 "small disc bulges with annular tears." JE 9, p. 194. Dr. Walker recommended epidural steroid injections at left L4-5, L5-S-1.

14. The injections relieved Claimant's pain for a week, then the pain slowly returned. A second round of injections produced a similar relief pattern.

15. Dr. Walker's March 3, 2022 office notes contained his impression that Claimant presented with a history of a fall at work with pain complaints which initially seemed to be a leg contusion but an MRI found bulging discs at L4-5 and L5-S-1. Injections were helpful but not long lasting and Claimant had significant pain "seemingly specific to [her] left sacroiliac joint. Other than another round of guided injections into the sacroiliac joint Dr. Walker was "not sure [he] would have a whole lot else to offer her" and she might need to seek a second opinion or an IME. JE 9, p. 198.

16. The third round of injections did not produce lasting results and by the end of March 2022, Dr. Walker sought authority for a left lower extremity EMG and suggested Claimant consider an IME.

17. The EMG was normal. Her subjective pain complaints persisted. Dr. Walker was out of options other than a repeat injection into her greater trochanter, which historically provided

her with some relief. He anticipated releasing her from his care thereafter, with a full-duty work release and he again suggested she consider getting an IME.

18. Dr. Walker's last notes from May 11, 2022 pointed out Claimant was a year out from her fall, the injections failed to provide any lasting relief, Claimant complained of pain and numbness from her left buttocks to her knee, with weightbearing pain in the sole of her foot. Her MRI was negative for disc protrusion. X-rays were likewise negative, as was an EMG. Dr. Walker suggested either an orthopedic consultation or an IME, as he had no suggestions for her other than a prescription for Mobic.

19. Defendants sent Claimant to orthopedist Charles Timothy Floyd, M.D., on June 23, 2022. He reviewed her medical records and provided a succinct record of her treatment from the date of the accident through the May 11 visit with Dr. Walker.[1] He took a history from Claimant and noted her current complaints, which included constant, severe pain in her left greater trochanteric region and proximal left thigh. Claimant indicated her pain levels continued to progress from the time of injury forward.

20. During the physical examination, Dr. Floyd observed behavior which he noted to be inconsistent. For example, he noted Claimant walked with an antalgic short stride on the left in the examination room but walked normally when entering and exiting the office. She stood with a pronounced list to her right, with almost no weightbearing on her left leg, but was able to stand fully erect and straight with encouragement. She expressed severe discomfort with palpation along her left greater trochanter and proximal iliotibial bend when focused there, but expressed no discomfort to the same palpation when distracted by other testing. She showed no sign of lower extremity atrophy on her left side compared to right. Straight leg and FABER testing

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[1] Dr. Floyd also reviewed prior medical records, none of which were pertinent to Claimant's complaints at the time of his examination.

were negative. Claimant had no sensory deficits associated with L3 through S-1, and equal reflexes bilaterally.

21. Dr. Floyd found it "difficult to reconcile [Claimant's] present complaints with her injury." He noted while the early records indicate she struck her left knee in the accident and were relatively unremarkable other than a mild bruising about her left knee, which later included IT band pain, he felt at most Claimant contused her left proximal thigh/hip region and her left knee. Claimant's MRI and EMG studies "failed to demonstrate neurological injury." JE 11, p. 250.

22. Dr. Floyd also found Claimant's pain response and clinical course were highly atypical. She suffered no fracture, and her soft tissue injury "migrated from her knee to her left greater trochanteric region" and became more severe with time. *Id.* Dr. Floyd questioned Claimant's veracity of her complaints based on his observations and his opinion that her symptoms did not match her objective findings.

23. Claimant did not require additional treatment or medication from her industrial accident in Dr. Floyd's opinion. Instead, he opined that she was medically stable. He rated her at zero PPI based on the *AMA Guides* for her soft tissue injuries. He felt she warranted no permanent or temporary job restrictions. He noted she exhibited inconsistent examinations and unrealistic pain levels 13 months after contusing her left knee and/or thigh and hip.

24. Dr. Floyd summarized his opinion by noting Claimant's history, complaints, and physical examination findings "point strongly to symptom magnification." He pointed out she had no atrophy in her left lower extremity, which, if she "truly had 8/10 pain for 13 months" would have occurred. Also, the fact she was pain free in the area of her left greater trochanter and IT band with distraction, had no radiographic evidence of a "significant spinal injury," and no findings consistent with IT band injury, led Dr. Floyd to conclude Claimant's complaints were not credible. JE 11, p. 252.

25. Dr. Floyd was deposed post hearing, as discussed below.

26. After the IME, Claimant next sought treatment at Idaho Falls Family and Sports Medicine beginning in early November 2022. At that time, she complained of severe left leg pain which interfered with her sleep. She described the painful area as persistent left low back, sacroiliac, sciatic, hip, knee, and thigh pain, with increasing left lateral ankle and foot pain. Custom orthotics helped her foot pain.

27. X-rays taken that day of Claimant's left knee were essentially normal for her age, as were those of her left ankle and foot and left hip. X-rays of her lumbar spine showed multilevel facet degenerative changes and only mild degenerative changes at multiple levels. Left hip and lumbar MRIs were ordered.

28. Claimant's left hip MRI was unremarkable. Her lumbar spine MRI discovered Claimant was suffering from ovarian cancer, which was successfully treated. It also showed degenerative changes, mild stenosis and subluxations.

29. Claimant was referred to Daric Russell, DO, for pain management in August 2023. Dr. Russell acknowledged none of the imaging studies substantiated Claimant's L5-S1 radiculopathy complaints, but she had all of the symptoms of such. He felt a diagnostic selective nerve root block was appropriate to confirm the source of Claimant's pain. The results were not well articulated in his reports, but he did diagnose Claimant with piriformis syndrome, lumbar radiculopathy, lateral recess stenosis, and cysts of the sacrum at the S1 nerve root, all left sided.

30. Dr. Russell felt Claimant's conditions were related to her work accident due to her history that she had no such pain at any time prior to her accident and her low back has been painful "ever since his [sic] work accident." JE 17, p. 319

31. Periodic injections reduced but did not eliminate Claimant's pain complaints.

32. Dr. Russell was deposed post hearing as discussed below.

33. Claimant hired Jacob Moss, M.D., to conduct an IME and generate a report, which was dated April 5, 2024.

34. Dr. Moss provided a succinct history of Claimant's medical treatment since the date of her accident and conducted a physical examination.

35. Dr. Moss found Claimant's lower extremities were neurovascularly intact without atrophy, joint swelling, mottling, or rashes. Her gait was slightly antalgic. She was tender to palpation in the areas of her left SI joint, greater trochanter, and IT band. Strength testing of her left lower extremities were 4/5 left hip flexion, extension, abduction and adduction, as well as knee extension and flexion. Right side testing was not set out, other than to note they were within normal limits (which would include 4/5).

36. Dr. Moss diagnosed Claimant with degenerative disc disease in her lumbar spine, lumbosacral radiculopathy, chronic low back pain and left lower extremity contusion. He too determined Claimant was at maximum medical improvement. He assigned Claimant a 3% whole person PPI rating. The rating consisted of 2% for chronic lower back pain, and 1% for left lower extremity contusion.

37. Dr. Moss gave Claimant permanent restrictions of occasional bending and twisting of the lumbar spine, no lifting over 25 pounds from floor to waist and waist to crown on an occasional basis. When performing sedentary work Claimant should be allowed stand and stretch breaks every two hours.

38. Dr. Moss opined that Claimant would need future palliative care at the rate of one office visit with a pain management specialist per month and continued use of gabapentin. He also felt she would need quarterly lumbar and hip injections into the future.

39. Finally, Dr. Moss opined Claimant's "injury" was causally related to her work accident. He reasoned that Claimant had no prior pain in her left lower extremity or lower back.

He went on to note Claimant was diagnosed with disc protrusions at L4-L4 and L5-S1 in November 2022, and "some clinical suspicion" that Claimant's complaints might be discogenic in nature as of December 2021. However, Dr. Moss "struggle[d] to find a causal relationship between the accident and those diagnoses, so he did not consider her intervertebral disc herniation as a ratable impairment. JE 19, p. 406.

40. Dr. Moss was deposed post hearing. Therein, he testified that "[i]t was hard to find any definitive pathology associated with [Claimant's] complaints" even though she was consistent in her complaints. Moss Depo. p. 10. He confirmed his prior diagnosis of lumbar disc disease and lumbosacral radiculopathy with chronic pain and a contusion of Claimant's left lower extremity. He opined she would probably need medication therapy or pain intervention indefinitely into the future.

41. Dr. Moss confirmed his belief that he could not correlate Claimant's low back complaints with her industrial injury, so his impairment rating was based on her "nonspecific" lower back and lower extremity pain complaints. *Id.* He felt it was appropriate, given Claimant's pain complaints, for her to continue with palliative care with Dr. Russell into the future to "help her maintain somewhat of a semblance of normalcy." *Id* at 17. He also felt it was reasonable for Claimant to continue with gabapentin to "quell any potential irritation that might be accounting for some of [Claimant's symptoms.] *Id* at 18. Claimant would, in Dr. Moss' opinion, also benefit from continued lumbar spine and hip injections.

42. Dr. Moss felt Claimant had a "pretty high" likelihood of exacerbating her symptoms with repetitive movements and carrying weights greater than his restrictions.

43. Dr. Moss did not see "extensively obvious" symptom magnification by Claimant, but he did note her strength testing was less than optimal. He speculated Claimant's less than full

effort might have been due to pain avoidance. He also noted one person's pain level of 8 might be another person's pain level of 2, so Claimant's lack of atrophy could be related to that fact.

44. In cross examination, Dr. Moss acknowledged the MRI films showed no nerve impingement in Claimant's lumbar spine. Furthermore, he acknowledged his diagnosis of degenerative disc disease was not caused by the work accident and could be an age-related finding.

45. Dr. Moss' diagnosis of lumbosacral radiculopathy was not based on any objective findings (in fact, the EMG and MRIs failed to support such a finding), but rather on Dr. Russell's interpretation of "the MRI and findings that were presented with." Moss Depo. p. 30. Dr. Moss felt the negative EMG was "really not helpful one way or the other." *Id.*

46. Dr. Moss agreed that if Claimant had injured her lumbar spine in the accident, symptoms associated with such injury, including radiation of pain into her left lower extremity, would have manifested within a month from the date of the accident.

47. Dr. Russell was deposed post hearing. He noted he had only seen Claimant on one occasion and the rest of her treatments had been performed by a nurse practitioner. He did review the NP's notes though. He had not seen Dr. Walker's notes.

48. Dr. Russell acknowledged the MRI showed bulging discs which did not impinge on the nerves at L5-S1, but he felt Claimant's complaints aligned with her L5 S1 dermatome. As he noted, he treats the symptoms as opposed to treating based on MRI findings. As an example, he noted if a person complained of pain consistent with L5, he would treat that even if the MRI shows a different level should be more symptomatic.

49. Dr. Russell testified its common, but not absolute, that pain can cause atrophy in the affected limb through disuse.

50. Dr. Russell testified that location of pain can travel along the affected nerve, such that nerve damage may manifest initially in one area along the nerve pathway but then move.

Most often the pain starts in the back and "works its way down," but the nerve pain can start in one area and "grow from there." For example, the nerve pain could be in the area of the knee but not actually in the joint itself, which is a different pain. Pain "around the knee" could actually be nerve distribution pain but not actually knee joint pain.

51. Dr. Russell was not optimistic that Claimant would ever again be pain free as a result of her work accident. Her treatment moving forward would be palliative, not curative.

52. Dr. Russell testified the normal EMG study "didn't provide any benefit." Russell Depo. p. 16.

53. In cross examination, Dr. Russell acknowledged his understanding that Claimant's "severe, debilitating, progressive and intractable pain in her low back" had been present since May 2021 (and not before), and his understanding served as the basis for his opinion that the work accident caused her low back issue.

54. Dr. Floyd was also deposed post hearing. In his deposition, Dr. Floyd testified Claimant did not complain of low back pain at the time of the IME. Instead, her pain was focused on her greater trochanter region and the lateral aspect of her left hip. He reiterated his testing failed to demonstrate significant issues with the muscles in Claimant's greater trochanter, and no sensory deficits in her lumbar spine, which pointed toward a finding that Claimant had no pinched nerves in her low back. FABER testing, used to diagnose pain in the sacroiliac joints, was negative.

55. Dr. Floyd testified that if Claimant was in the type of pain she subjectively complained of at the time of her IME, and had been for some time prior, he would have expected to see atrophy in her left lower extremity because of disuse due to the pain. He found no atrophy.

56. Claimant's December 2021 MRI showed no disc protrusion, stenosis, or indication of nerve root injury or irritation. There was no significant change from the 2021 MRI to

the 2022 MRI. In fact, in both studies, Claimant's L1 through L3 had no age-related changes at all. Claimant's left hip MRI likewise showed no abnormalities.

57. Dr. Floyd reiterated his opinion that Claimant's only injury resulting from her industrial accident in question was a left lower extremity contusion or bruise.

58. Dr. Floyd disagreed with Drs. Moss and Russell, both of whom indicated a normal EMG was not relevant to diagnosing Claimant's condition, and the test is only consequential if positive. Dr. Floyd felt a negative EMG was important diagnostic information.

59. Dr. Floyd discussed Claimant's inconsistent behavior during and after the examination, as set out in his report.

60. Dr. Floyd pointed out that without a diagnosis there is nothing to treat, and Claimant's diagnosis was a bruised left knee to thigh, which resolved well before he saw her. As such, he argued there was no reason to continue to treat Claimant for her industrial injury. He also opined that Claimant suffered no permanent disability or impairment and had no need for any work restrictions. Any medical treatment after the November 2022 MRI was not related to Claimant's industrial injury and medically unnecessary in his opinion.

61. Claimant had no nerve damage, and thus no need for gabapentin.

62. In cross examination, Dr. Floyd made it clear he was not a proponent of sending people to pain management physicians. In his experience, he found too many times individuals treating with a pain management doctor wound up on long-term narcotics and "became quite dysfunctional." Floyd Depo. p. 41.

**DISCUSSION AND FURTHER FINDINGS**

63. The first, and dispositive issue is causation; to wit, whether the condition for which Claimant seeks benefits was caused by the industrial accident.

64. Claimant has the burden of proving the condition for which she seeks compensation is causally related to her industrial accident. *Callantine v Blue Ribbon Supply*, 103 Idaho 734, 653 P.2d 455 (1982). The proof required is "a reasonable degree of medical probability" that her injury was caused by an industrial accident. *Anderson v. Harper's Inc.,* 143 Idaho 193, 196, 141 P.3d 1062, 1065 (2006). Claimant is required to establish a probable, not merely a possible, connection between cause and effect to support her contention. *Dean v. Dravo Corporation*, 95 Idaho 558, 560-61, 511 P.2d 1334, 1336-37 (1973). Claimant bears the burden of proving the nature of the injury for which she seeks benefits. Manifestation of symptoms is not sufficient to prove a specific injury. *Konvalinka v. Bonneville County*, 140 Idaho 477, 95 P.3d 628 (2004).

65. In determining causation, it is the role of the Commission to determine the weight and credibility of testimony and to resolve conflicting interpretations of testimony. *Henderson v. McCain Foods, Inc.,* 142 Idaho 559, 130 P.3d 1097 (2006). When deciding the weight to be given an expert opinion, the Commission can consider whether the expert's reasoning and methodology has been sufficiently disclosed and whether the opinion takes into consideration all relevant facts. *Eacret v. Clearwater Forest Industries,* 136 Idaho 733, 40 P.3d 91 (2002).

66. The common thread among most of the expert witnesses is that Claimant suffered a contusion of her left knee and thigh in a work accident on May 25, 2021. Beyond that the opinions vary greatly.

67. Claimant's main treater, Dr. Walker recognized there was scant evidence to support any discogenic injury after normal MRI and EMG studies were obtained, even as he pondered the possibility. He was at a loss to render a diagnosis supported by objective evidence which would account for Claimant's continuing pain in her left lower extremity. Ultimately, he recommended she get an IME or second opinion, which she did.

68. Dr. Floyd performed an IME on Claimant in June of 2022. He found no evidence that Claimant suffered anything more than a contusion of her left lower extremity. Objective evidence ruled out any low back nerve damage. He likewise found no reason for her continued subjective complaints, which he viewed as being suspect.

69. Claimant hired Dr. Moss to conduct an IME. Interestingly, he was unable to determine any definitive pathology to account for Claimant's ongoing complaints, and he specifically declined to consider her intervertebral disc herniation as a ratable impairment resulting from the industrial accident. Instead, he placed great weight on Claimant's subjective pain complaints, and rated them, even though there were no clinical findings to support such a rating other than her nonspecific lower back and lower extremity pain complaints.

70. Under Idaho Code72-102(18)(c) "injury" is "construed only to include an injury caused by an accident which results in violence to the physical structure of the body." Pain is not an injury, even if pain must be accounted for when determining disability. *See, e.g. Urry v. Walker & Fox Masonry Contractors*, 115 Idaho 750, 769 P.2d 1122 (1989). Claimant's acknowledged injury caused by the work accident was a contusion of her left lower extremity, a condition which resolved well before the hearing.

71. When examining Dr. Moss's notes and deposition testimony it is difficult to determine an injury which would account for Claimant's ongoing pain complaints as of the time of hearing. It would not include any low back injury, per his findings and testimony.

72. Dr. Russell admitted he had not reviewed the treating physician's records, examined a timeline of Claimant's complaints, or considered Dr. Floyd's analysis. Instead, by his own admission he treated Claimant's complaint of pain, regardless of the lack of findings on MRI or EMG.

73. Dr. Russell's opinion on causation relied on his inaccurate belief that Claimant began suffering debilitating, intractable low back pain from the date of her industrial accident forward. Such belief finds no support in the record and greatly diminishes his opinion on causation.

74. When the various opinions are considered in light of the totality of the record, Dr. Floyd's opinions carry the greatest weight. His opinions are consistent with the weight of the record and account for the normal MRI and EMG results.[2] Claimant's MRIs do not provide a basis to diagnose low back nerve injury. Moreover, her complaints which led to the MRIs did not manifest at the time of, or shortly after, her work accident.

75. Medical testimony elicited in this case supports the idea that if Claimant had injured her low back to the point of having intractable nerve pain as a result, her symptoms would have begun either immediately following the accident or within a short time thereafter, as testified to by both Drs. Floyd and Moss. However, the medical records establish the fact that Claimant did not complain of low back or sciatic pain for several months post accident.

76. When the totality of the record is examined, including the persuasive testimony of Dr. Floyd, Claimant has failed to prove by a preponderance of the evidence that the condition for which she seeks benefits – low back and left lower extremity injury with radicular pain – was caused by her work accident of May 25, 2021.

77. Because Claimant has failed to carry her burden of proof on causation, all other issues are moot.

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[2] The notion that a negative EMG has no clinical value is hard to accept. All testing provides useful information and should not be dismissed out of hand just because the findings do not support the provider's opinions or beliefs. A negative EMG may not definitively rule out nerve damage, but it does provide important and useful information to assist in arriving at a diagnosis. At a minimum, it evidences a lack of neuropathy, as testified to by Dr. Russell in his deposition.

## CONCLUSIONS OF LAW

1. When the totality of the record is examined, Claimant has failed to prove by a preponderance of the evidence that the condition for which she seeks benefits was caused by the industrial accident in question.

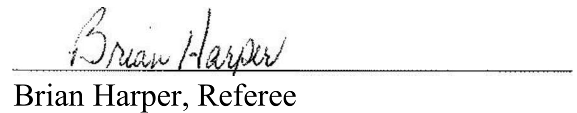
2. All remaining issues are moot.

## 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 15th day of May, 2026.

INDUSTRIAL COMMISSION



Brian Harper, Referee

## CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of May, 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**

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| MARIA J. PONCE,<br><br>Claimant,<br><br>v.<br><br>CIRCLE VALLEY PRODUCE, LLC,<br><br>Employer,<br><br>and<br><br>IDAHO STATE INSURANCE FUND,<br><br>Surety,<br><br>Defendants. | **IC 2021-016789**<br><br>**ORDER**<br><br>Filed<br>May 28, 2026<br>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 examined, Claimant has failed to prove by a preponderance of the evidence that the condition for which she seeks benefits was caused by the industrial accident in question.

2. All remaining issues are moot.

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

IT IS SO ORDERED.

DATED this the 28th day of May, 2026.

INDUSTRIAL COMMISSION

Claire Sharp, Chair

Aaron White, Commissioner

ATTEST:

Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the 28th day of May, 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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