

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JUANA VILLARREAL,

Claimant,

v.

CORNET LIMITED, INC, dba CREEKSIDE
TRANSITIONAL CARE &
REHABILITATION

Employer,

and

SAFETY NATIONAL CASUALTY
COMPANY,

Surety,

and

STATE OF IDAHO, INDUSTRIAL
SPECIAL INDEMNITY FUND,

Defendants.

IC 2022-001477

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

**FILED JUNE 3, 2026
INDUSTRIAL COMMISSION**

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Sonnet Robinson, who conducted a hearing on September 17, 2025 via Zoom. Claimant, Juana Villarreal, was present and represented by Matthew Andrew of Melba. Lora Breen of Boise represented Defendants/Employer. Paul Augustine of Boise represented Defendant/ISIF. The parties presented oral and documentary evidence. Post-hearing depositions were taken. The matter came under advisement on March 24, 2026 and is ready for decision.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 1

ISSUES

The issues¹ to be decided are:

1. Whether Claimant is entitled to permanent partial disability;
2. Whether apportionment pursuant to Idaho Code § 72-406 is appropriate;
3. Whether Claimant is totally and permanently disabled via the odd lot doctrine;
4. If Claimant is totally and permanently disabled:
 - a. Whether ISIF is liable for benefits;
 - b. And if liable for benefits, *Carey* apportionment.

CONTENTIONS OF THE PARTIES

Claimant contends she is totally and permanently disabled from a combination of her pre-existing right knee injury and industrially related left ankle injury. Claimant has very limited formal education and work history and also has a learning disability; her non-medical factors are significant. The one job Defendants posit Claimant can perform, as a driver, is inappropriate for several reasons. ISIF is liable because Claimant has a subjective, pre-existing hinderance (her right knee) which combines with her ankle injury to produce total and permanent disability; but for her right knee, Claimant would not be totally and permanently disabled.

Defendant/Employer contends that Claimant is not totally and permanently disabled. Claimant could secure jobs as a driver, CNA trainer, or companion but did not pursue such job listings and instead only applied to positions which exceeded her restrictions. Claimant's vocational expert's opinion has a number of flaws, as does her other opinion expert, Dr. Williams. Claimant has credibility issues relating to her prior knee injury and her performance on

¹ The parties did not argue causation, medical care, temporary disability benefits, mileage reimbursement, or permanent partial impairment; these issues are waived.

surveillance. Claimant's disability is no more than 43.5% and is lower if Dr. Flint's restrictions are adopted; further, it must be apportioned as Claimant has a pre-existing right knee injury which impacted her access to the labor market. If Claimant is totally and permanently disabled, ISIF is liable due to Claimant's pre-existing right knee injury.

ISIF contends that Claimant is not totally and permanently disabled. However, if Claimant is totally and permanently disabled, ISIF is still not liable because her two injuries do not combine to produce total disability.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. Joint Exhibits 1-44;
3. The testimony of Claimant, Juana Villarreal, and her daughter, Nicolette Medrano, taken at hearing;
4. The post-hearing depositions of:
 - a. Mark Williams, MD, and Sara Satz, taken by Claimant;
 - b. Christian Gussner, MD, and Carrie Alcaraz, taken by Defendant/Employer.

All outstanding objections are **OVERRULED**, with the exception of Claimant's objection to new opinion testimony from Dr. Gussner which is **SUSTAINED** from page 14:10-15:12.

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 57 at the time of hearing and born in Mexico. JE 29:2770; HT 18:1-12.

2. Claimant had a rollover car accident on December 5, 2003. JE 6:17. She injured both knees and underwent a right ACL reconstruction on January 23, 2004. *Id.* On June 6, 2004, Claimant underwent a right knee MRI due to pain and swelling. The MRI showed an intact ACL reconstruction but showed tears to her medial and lateral meniscus and degeneration. JE 6:65. On September 20, 2004, Claimant underwent a right knee arthroscopy to remove her tibial staple and debride the area. *Id.* at 71.

3. **August 9, 2015 Right Knee Injury.** Claimant was working at Karcher Estates and fell onto her right knee because of a wet floor. JE 29:2780. Claimant was seen in occupational health, referred for an MRI, and then referred to orthopedic surgery. See JE 11:1129-1144.

4. On October 22, 2015, Claimant presented to Miers Johnson, MD, for her right knee injury. JE 10:453. Claimant reported her prior car accident, knee surgeries, and full recovery. *Id.* Dr. Johnson reviewed the MRI and recommended surgery. *Id.* at 454.

5. On November 11, 2015, Claimant met with Melissa Rodriguez of the Idaho Industrial Commission Rehabilitation Division (ICRD). JE 35:3171. Claimant reported minimal familiarity with computers and dyslexia. *Id.* at 3171-3172. Ms. Rodriguez assessed her transferable skills as a caregiver, bilingual, trainer, and medication certified. *Id.* at 3173. Claimant applied to many retail positions and eventually secured a part-time position with Michaels. Claimant reported that the position was hard on her knee and she kept looking for more appropriate work. *Id.* 3180-3188. Claimant transitioned to working at Wal-Mart part-time as a cashier and “enjoyed it.” *Id.* at 3189.

6. On November 15, 2015, Claimant underwent a right lateral and medial meniscectomies and chondroplasty. JE 10:450. Claimant tolerated the procedure well. *Id.*

7. On December 21, 2015, Claimant was still in significant pain and Dr. Johnson predicted she would eventually need a total knee replacement because of her significant arthritis. *Id.* at 1394. After a series of injections, Claimant was still in significant pain from her right knee; Dr. Johnson recommended a total knee replacement. *Id.* at 1394-1409.

8. On June 2, 2016, Claimant underwent an IME with Dennis Chong, MD, at the State Insurance Fund's request, for her right knee injury. JE 15:1680. Dr. Chong attributed Claimant's entire condition to her pre-existing degeneration with the exception of her knee contusion, with no impairment, restrictions, or need for further treatment related to the industrial injury. *Id.*

9. On November 22, 2016, Claimant underwent a total right knee replacement with Dr. Johnson. JE 12:1446. Claimant struggled to return to full-time work due to pain and swelling, and difficulty with squatting, stooping, and prolonged standing. See JE 12:1501-1568; JE 14.

10. On May 19, 2017, Claimant reported to ICRD she was struggling to make ends meet working at Wal-Mart and was living with a friend. JE 35:3196. Claimant discussed needing to find full-time work and Ms. Rodriguez noted Claimant could return to CNA work and request reasonable accommodation. *Id.* at 3198.

11. On June 21, 2017, Dr. Johnson released her from care because she was at MMI and recommended an impairment rating; he assigned work restrictions of working no more than 6 hours a day and no repeated bending and stooping. JE 12:1564, 1569.

12. On July 11, 2017, Kevin Krafft, MD, assessed Claimant for an impairment rating. JE 16:1688. Dr. Krafft noted no laxity on exam. *Id.* Dr. Krafft assigned an impairment rating of 25% of the lower extremity, with 17% of that related to the industrial injury. *Id.* at 1691. Dr. Krafft assigned restrictions of rare squatting, occasional stooping, modified kneeling techniques, and limiting standing and walking to 6 hours a day. *Id.* at 1689.

13. On August 25, 2017, Claimant was examined by Mark Williams, DO, for an IME at her request. JE 17:1692. Dr. Williams recorded a slightly antalgic gait and “slight” valgus or varus play, and tenderness. *Id.* at 1695. Dr. Williams recorded “moderate” instability and assigned her a 37% lower extremity impairment. *Id.* at 1696. Dr. Williams limited Claimant to 4 working hours a day, light strength level limitations, never crouching, squatting, or kneeling on the right side. *Id.* at 1697.

14. On September 5, 2017, Claimant reported to Ms. Rodriguez she was terminated from Wal-Mart for too many absences. JE 35:3199.

15. On September 8, 2017, Claimant underwent vocational testing at her request, specifically the Wide Range Achievement Test (WRAT-4) to assess reading, spelling, and math. JE 30:2815. The evaluator noted she put forth a good effort during testing, and she tested at essentially a third-grade level for reading, spelling, and math. *Id.* at 2817.

16. On December 6, 2017, Claimant returned to Dr. Johnson and reported pain in both knees, particularly with weather changes. JE 12:1574. Dr. Johnson recorded a normal physical exam except for some tenderness and discomfort, no laxity. *Id.* Dr. Johnson wrote that he there was nothing he could do to improve her symptoms and that she would likely have pain with weather changes “as most people do with knee replacements.” *Id.* at 1575.

17. Claimant’s file with ICRD was closed on December 8, 2017 as Claimant had found work she liked as caregiver working 25 hours a week at \$10 an hour. JE 35:3203-3204.

18. Claimant resolved her right knee claims via lump sum settlement. JE 35:2989.

19. On December 3, 2018, Claimant reported to her primary care physician that she worked out 3-4 times a week at the YMCA “to aid in her movement of her knee.” JE 44:3291.

20. On April 2, 2019, Claimant reported right sided low back pain: “she reports she is a CNA and does a lot of heavy lifting, her pain waxes and wanes depending on the activity...she has stopped doing as much heavy lifting at work.” JE 44:3296.

21. **November 11, 2021 Left Ankle Injury.** Claimant was exiting a room with her hands full, and slipped on a wet floor, and “landed kind of weird” because she was trying to protect her right knee. JE 29:2789. Initially, Claimant just had her left ankle taped, but it swelled and was painful. *Id.* at 2790.

22. On January 4, 2022, Claimant saw Christian Crawford, PA-C, for her left ankle and low back. JE 8:258. Claimant was instructed to go to the ER. *Id.* at 259.

23. That same day, Claimant was seen by Jared O’Connor, PA, at the ER. JE 18:1912. Claimant was given a CAM boot for her ankle and referred to occupational medicine. *Id.* at 1913. Claimant filed a first report of injury on January 6, 2022. JE 41:3247.

24. On January 17, 2022, Claimant was seen by Trevor Crapo, PA, in occupational medicine. JE 18:1929. Claimant reported her injury and significant pain and swelling in her ankle. *Id.* at 1971. PA Crapo gave her a lace up ankle brace and prescribed physical therapy. *Id.* Claimant continued to have significant pain and swelling, so PA Crapo ordered an MRI. *Id.* at 1980-1985. After her MRI, PA Crapo referred Claimant for surgery. *Id.* at 1988.

25. On April 21, 2022, Claimant saw Wesley Flint, MD. JE 18:1989. Dr. Flint reviewed her MRI and observed “multiple abnormalities.” *Id.* at 1992. Dr. Flint and Claimant agreed to an injection as a first step to elucidate which abnormality was symptomatic. *Id.*

26. Claimant saw minor improvements with the injection and physical therapy, but was still in a significant amount of pain and had functional deficits. JE 18:2002; See JE 23. On June

24, 2022, Dr. Flint recommended surgery. *Id.* at 2003. At follow-up on August 2, 2022, Dr. Flint warned Claimant that surgery would likely not fix all of Claimant's pain. *Id.* at 2009.

27. On September 15, 2022, Claimant underwent a left ankle arthroscopy and debridement with Dr. Flint. JE 18:2016.

28. Claimant's recovery was difficult; three weeks post-operative her pain was at "a constant 9" and she needed a wheelchair because her roller was aggravating her right knee arthroplasty. JE 19:2358. At six weeks post-op, Dr. Flint recommended physical therapy and noted that if her severe pain continued, he would refer her to pain management. *Id.* at 2362.

29. On February 15, 2023, Claimant returned to Dr. Flint. JE 19:2372. Claimant had been out of her walking boot for a month and was trying to wean off her cane. *Id.* Claimant limped but had presented without her cane that day. *Id.* Dr. Flint expressed frustration that he did not have a good explanation for her tingling and "why she has remained so painful" post-surgery. *Id.* at 2373.

30. On February 21 and 22, 2023, Claimant was surveilled by Defendants. JE 37. This video shows Claimant walking back and forth to her car without an assistive device visible; Claimant did not appear to limp, but the distances shown in the video were short, from her house to her car, the bank to her car, etc. *Id.*

31. On April 4, 2023, Claimant was seen by Karl Zarse, MD, for pain management. JE 24:2712. Dr. Zarse examined Claimant and diagnosed her with complex regional pain syndrome (CRPS); he recommended a left lumbar sympathetic nerve block. *Id.* at 2713.

32. On April 23, 2023, Claimant underwent the sympathetic nerve block with Dr. Zarse. JE 24:2714. On May 3, 2023, Claimant reported she did not have much relief with the nerve block and Dr. Zarse wrote that they would try a sciatic and saphenous nerve block, but if

that didn't work, he would refer her back to Dr. Flint. *Id.* at 2716. Similar to the prior nerve block, Claimant did not have much relief and Dr. Zarse referred her back to Dr. Flint on June 8, 2023. *Id.* at 2719.

33. On June 12, 2023, Dr. Flint wrote that they had exhausted all options to treat her pain and referred her to Dr. Kemp for a second opinion. JE 18:2383. If Dr. Kemp could not offer her anything, he would place her at max medical improvement. *Id.*

34. On August 3, 2023, Claimant saw Travis Kemp, MD, for a second opinion. JE 25:2720. Dr. Kemp recorded a history of her treatment so far, but did not have her records except for her last visit with Dr. Flint. *Id.* Dr. Kemp diagnosed her with ankle nerve dysfunction. *Id.* at 2721. Dr. Kemp wrote "she has accepted this nerve dysfunction is likely permanent" and recommended a topical cream, good arch support and stable shoes. *Id.* He did not recommend more PT or injections. *Id.*

35. On September 23, 2023, Claimant saw Christian Gussner, MD. JE 26:2738. Dr. Gussner reviewed imaging, conducted a physical exam, and diagnosed pain in her left ankle and foot and a traumatic rupture of posterior tibial tendon. *Id.* at 2741. Dr. Gussner opined she did not meet the diagnostic criteria for CRPS and that she would need to "learn to live with her left ankle pain." *Id.*

36. On October 2, 2023, Dr. Flint indicated he agreed with Dr. Gussner's opinion that Claimant did not have CRPS. Dr. Flint prescribed her a custom AFO and noted she would be at max medical improvement at her next appointment. JE 18:2391.

37. On February 5, 2024, Claimant returned to Dr. Flint. JE 18:2397. Dr. Flint recorded Claimant was limping and having difficulty using her boot due to swelling. *Id.* Claimant reported she felt no better now than before the surgery. *Id.* Dr. Flint assigned restrictions of only standing

90 minutes at a time before a 30-minute break, no lifting/pushing/pulling over 20 pounds, no ladders, and limit walking on uneven surfaces. *Id.* at 2398. He assigned 4% whole person impairment. *Id.* Dr. Flint also wrote that Claimant may need ongoing palliative care in the form of physical therapy, medications, and adjustments to her brace. *Id.* at 2398. Dr. Flint reiterated his opinion that Claimant did not suffer from complex regional pain syndrome. *Id.*

38. On May 24, 2024, Claimant saw Dr. Williams again for an IME at her request. JE 28:2755. Dr. Williams took a history of the injury from Claimant, conducted a physical exam, reviewed records, and issued opinions. Dr. Williams recorded an antalgic gait, swelling, tenderness, limited range of motion, and weakness, but no gross instability in her left ankle. *Id.* at 2762. Dr. Williams also examined her right knee and noted tenderness and increased varus/valgus play. *Id.* Dr. Williams diagnosed: 1) work related ankle injury; 2) CRPS/neurologic pain; 3) chronic left ankle pain; 4) history of total right knee replacement; 5) chronic pain and stiffness in her knee. *Id.* at 2763.

39. Dr. Williams opined Claimant's right knee impairment had increased since his last exam due to increased instability and she now had a 24% whole person impairment. JE 28:2763. Dr. Williams did not rate Claimant for CRPS per Dr. Kemp's and Dr. Zarse's notes, but did rate her for her ankle injury (15% LEI), neurologic abnormalities (6% LEI), and degenerative joint disease (5% LEI) for a total 10% whole person impairment related to the ankle injury. *Id.* at 2763-2764. Claimant's ankle and knee injuries together totaled 32% whole person impairment. *Id.* at 2764. Dr. Williams predicted future care would include the compounding cream prescribed by Dr. Kemp and brace replacements every five years. *Id.* Dr. Williams limited her to 4-hour work days at a sedentary level with standing limited to only 10% of the day and walking 5% of the day;

Claimant was also restricted from stairs, ladders, crawling, crouching, and balancing and kneeling on the left side only. *Id.* at 2765.

40. On May 13, 2025, ISIF's counsel wrote to Dr. Flint to inquire whether his restrictions assigned on February 4, 2024 were related solely to left ankle injury or whether they included restrictions related to her right knee. JE 20:2409. On May 14, 2025, Dr. Flint responded and explained his restrictions were related to her left ankle only. JE 21:2411.

41. On September 5, 6, and 7, 2025, Claimant was surveilled at Defendants' request. JE 38, 39. On September 5, 2025, Claimant is seen walking without a visible assistive device and no limp; she is wearing skinny jeans which end at the ankle and flat sandals. On September 6, 2025, Claimant was observed walking into Wal-Mart without a visible assistive device and no limp; she is wearing skinny jeans and flat sneakers. While reaching for something off screen, Claimant briefly balances on the toes of her left foot. When Claimant returns home, she is seen walking with two bags of groceries in one hand and her purse in the other, walking without a limp.

42. On September 26, 2025, Dr. Williams was deposed by Claimant. Dr. Williams explained his 15% rating for Claimant's right knee in 2017 was due to her "fair" result from surgery: "it was a little bit loose." Williams Depo. 11:23-12:4. Dr. Williams limited Claimant to four working hours in 2017 due to the "fair" result from her surgery; if her result had been "good" her hours would have been closer to six or eight. *Id.* at 13:5-20. Dr. Williams noted his restrictions in 2017 were to prevent further injury. *Id.* at 15:10-25. Dr. Williams did not apportion her impairment rating in 2017 because he did not believe she had any prior significant injuries. *Id.* at 17:4-8. Dr. Williams clarified that his restrictions in his 2024 report pertained to the left ankle only and stood separate from his restrictions in 2017 for the right knee. *Id.* at 21:1-20. Dr. Williams explained he assigned a four-hour workday limit for her left ankle injury, even a sedentary job, as

follows: “So though I assigned her to sit most of the time, even after just sitting for a few hours, her ankle would swell and be affected by dependents or gravity pulling fluid into the ankle. So for her, that is why even the sedentary job is limited to four hours.” *Id.* at 22:4-12. Dr. Williams clarified an error in his report, noting that Claimant could use her left foot/leg for pedal controls occasionally “if she needed to.” *Id.* at 22:13-23:14. Dr. Williams opined that the reason her right knee was now worse was due to the left ankle injury and its kinetic effect up her body. *Id.* at 25:7-26:21. Dr. Williams explained his notation that she would have increased limitations due to impairments on opposite sides meant she could not balance on either foot at all anymore. *Id.* at 28:6-21.

43. On cross-examination, Dr. Williams confirmed he had not reviewed any additional documents or the surveillance since his report. Williams Depo. 29:9-23. Dr. Williams did not know her hours of work or physical activity level after his first IME; he assumed she was following the restrictions he assigned in 2017. *Id.* at 31:22-32:9. Dr. Williams confirmed his 2017 restrictions meant that Claimant could only stand for 20% of her 4-hour work day, about 48 minutes. *Id.* at 32:18-33:10. Dr. Williams did not have any records which showed an increase in right knee issues after her left ankle injury; Claimant reported that to him in her history. *Id.* at 34:25-35:20. Dr. Williams would expect the increase in right knee pain to appear in her records. *Id.* at 36:1-13.

44. On November 21, 2025, Dr. Gussner was deposed by Defendants. Dr. Gussner reiterated his opinion that Claimant did meet the diagnostic criteria for CRPS and why. Gussner Depo. 10:14-11:17. Dr. Gussner had reviewed Dr. Flint’s, Dr. Kemp’s, and Dr. William’s records and IME report and had observed the surveillance footage. *Id.* at 13:3-21. Dr. Gussner opined that the surveillance footage was different from her presentation to him, specifically that she did not limp or wear an assistive device in any of the footage he reviewed and was able to “very briefly”

get on her left toes alone to reach for something. *Id.* at 16:18-18:3. Per Dr. Gussner, Claimant had “improved quite a bit” from when he last saw her but noted he did not examine her and “more likely than not there’s still some range of motion impairments.” *Id.* at 19:4-19. Dr. Gussner opined the nerve damage diagnosed by Dr. Kemp would not result in any functional limitations in standing, walking, and lifting. *Id.* at 18:8-23.

45. On cross-examination, Dr. Gussner confirmed his physical findings and that the Claimant did not display any pain amplification behaviors. *Id.* at 23:10-23. Dr. Gussner agreed that Claimant would need continuing medical care in the form of the topical cream Dr. Kemp prescribed, in addition to icing, over the counter pain medication, and a home exercise program. *Id.* at 24:3-18. Dr. Gussner would not want Claimant running or jumping and assumed that after a couple miles of walking, she would have discomfort. *Id.* at 27:4-12. Dr. Gussner testified it was “possible” Claimant would have difficulty with standing for long periods or walking on uneven ground due to her ankle, and that he would expect her to be able to climb a couple flights of stairs, but that ladders would be more problematic. *Id.* at 27:13-24. Dr. Gussner was reluctant to comment on her physical capabilities without an FCE: “so to speculate exactly what would be difficult for her today without having an updated eval, it’s speculative.” *Id.* at 29:7-19. However, Dr. Gussner offered it would be difficult for her to lift very heavy weights: “Could she do it? There’s a good chance that she could, especially if it’s an emergency. Would I recommend it repetitively on a job? No.” *Id.* at 30:4-32:2.

46. **Vocational Background.** Claimant did not graduate from high school and attempted to get her GED, but was unable² to complete the math and reading classes required. JE

² Claimant testified studying was too difficult, but IRCD records reflect Claimant stopped attending classes because she was working. JE 35:3201.

29:2771-2772; JE 35:3201. Claimant was diagnosed with dyslexia as a child. *Id.* Claimant cleaned houses for about a year after leaving school and then trained to be a CNA in 1990. *Id.* Claimant has worked as a CNA since with the exception of some retail positions with Michaels as a stocker and Wal-Mart as a cashier/garden attendant. *Id.* Claimant also briefly worked in light assembly after her right knee arthroplasty but was unable to tolerate the 10-hour days. JE 35:3201. Claimant became medication certified in 2013. JE 35:3173; JE 31.

47. At Karcher Estates, Claimant was a CNA trainer because of her experience and good memory. JE 29:2778. Claimant struggled when Karcher Estates transitioned to computer charting from paper charting, but eventually got the hang of it through repetition. *Id.* at 2779.

48. At Wellspring and at Creekside, Claimant described enlisting help from her co-workers for the things she could not do because of her knee injury, for example, turning a large patient. JE 29:2785; HT: 37:11-41:19. Claimant also accommodated her knee injury by modifying certain duties, such as putting shoes on a resident while they were in bed vs. seated, so she did not have to kneel. *Id.* Claimant testified before her left ankle injury, but after her right knee injury, she was able to be on her feet seven to eight hours a day “like a regular CNA.” JE 29:2789. Claimant reported to Ms. Statz that prior to her ankle injury she was able to participate in hiking and biking, but now with her ankle injury was much less active. JE 31:2837.

49. After her most recent injury, Claimant worked with the Department of Labor to attempt to return to work. She testified at hearing and told Ms. Statz that the staff became frustrated with her repeated requests for help using the computer and were often too busy to help her. JE 31:2845; HT 51:14-52:22; *see* Exhibit 32. Exhibit 32 is a collection of online and in person job applications submitted by Claimant and a hand-written job diary from February 26, 2024 to June 10, 2024. *See* JE 32:2849-2896. Claimant’s job diary records her difficulty utilizing the DOL

computer to apply for jobs and frequently being unable to complete applications due to this difficulty. *Id.* Claimant applied for several retail positions, but almost all were filled by the time Claimant successfully submitted her application per her notes. Claimant had a scheduled interview with Burlington where they never called her and an interview with Jimmy Johns where they had already hired for the position and also informed her they could not accommodate her need to sit. *Id.* Claimant had a similar result from an interview with Sonic.

50. At hearing, Claimant testified she could “maybe” work as a companion “if there was no lifting.” HT 72:21-74:22. She would struggle to lift a client and did not want to put them at risk. *Id.* at 108:9-23. Claimant did not look for CNA work after her injury, but she testified companionship positions did not necessarily need a CNA certification, it depended on the employer. HT 77:15-78:4.

51. **Vocational Experts.** On February 3, 2025, Claimant was evaluated by Sara Statz at her request for a vocational report. JE 31. Ms. Statz interviewed Claimant, reviewed records, and issued opinions. *Id.* Regarding Claimant’s pre-2015 labor market, Ms. Statz’s report listed “fair” matches at 17,548 available jobs, “good” matches at 685 available jobs, and “closest” matches at 1,891 available jobs. Claimant’s pre-2015 labor market access was estimated at 5.40% of the Boise market. *Id.* at 2839. For Claimant’s right knee injury, considering Dr. Johnson’s restrictions, Claimant lost 29% of her labor market; Dr. Krafft’s restrictions resulted in 32.5% loss of labor market; Dr. Williams’ restrictions resulted in 94.6% loss of labor market. *Id.* at 2841. Ms. Statz did not calculate wage loss from the prior right knee injury.

52. For Claimant’s left ankle injury, Ms. Statz “overlaid” a “composite” of the prior restrictions and combined them with Dr. Flint’s restrictions. JE 31:2841. When Dr. Johnson’s and Dr. Krafft’s restrictions were combined with Dr. Flint’s, Claimant “labor market would be reduced

to 5.4% of her pre-injury access to the labor market,” i.e. she would lose 94.6% of her labor market. *Id.* at 2842. If Dr. Williams’ 2015 restrictions were combined with Dr. Flint’s restrictions, there would be no additional loss because Dr. Williams’ restrictions from 2015 were so onerous; the resulting loss was still 94.6%. *Id.* If Dr. Williams’ restrictions from 2024 were combined with Johnson/Krafft/2015 Williams’ restrictions, then the labor market loss would still be 94.6% but Ms. Statz recorded there would be “increased limitations” per Dr. Williams as Claimant’s restrictions were now bilateral. *Id.* Claimant’s wage loss when Flint/Johnson/Krafft’s restrictions are considered was 31.4% and 65.7% from Dr. Williams’ restrictions.³ *Id.* at 2843.

53. Ms. Statz observed that most of Claimant’s residual labor market was in sedentary jobs which required higher education. JE 31:2844. Claimant had tested at the 3rd grade level for math, spelling, and reading in 2017 and Ms. Statz wrote that those skills had likely stagnated or eroded since that time. *Id.* Claimant’s age of 56 had some effect on her disability as she would probably struggle to adjust to a new career and/or employer. *Id.* at 2846. Ms. Statz concluded that Claimant was an odd-lot Claimant and was unlikely to be employable without a business boom, superhuman effort, or a sympathetic employer; Ms. Statz further concluded that Claimant was totally and permanently disabled as a combination of her pre-existing restrictions (right knee) and her left ankle restrictions. *Id.* at 2847.

54. On August 18, 2025, Carrie Alcaraz issued a vocational report at Defendant/Employer’s request. JE 33:2897. Ms. Alcaraz reviewed records but did not interview Claimant because her attorney would not permit it. *Id.*; Alcaraz Depo. 4:5-17. Ms. Alcaraz found that Claimant had access to non CDL driving positions after her injuries based on her transferable

³ This appears to be the wage loss for both 2015 and 2024 restrictions as Ms. Statz wrote it was due to the 4-hour work limitation which Dr. Williams imposed both times.

skills; Ms. Alcaraz identified several current openings but opined in relevant part that there were “steady job openings” in this area. *Id.* at 2904-2907. Ms. Alcaraz only opined regarding Dr. Williams’ restrictions and opined that Claimant suffered wage loss of 14.5% and labor market loss of 52.7%, for a combined disability rating of 38.2%.

55. On September 8, 2025, Ms. Alcaraz issued an updated report with the same wage loss, but with loss of labor market at 58% and a combined disability rating of 43.45%. JE 42:3260. This update was due to changing labor market numbers from 2023 to 2024. Alcaraz Depo. 7:1-14.

56. On October 31, 2025, Sara Statz was deposed at Claimant’s request. Ms. Statz testified that what stood out about the case was Claimant’s “illiteracy” because she tested at a 3rd grade level in reading, spelling, and math: “really, really low levels, especially for someone who had a really... really great work history.” Statz Depo. 12:2-17. Ms. Statz testified that the WRAT4 was “pretty accurate” and that Claimant’s skills would not have increased, if anything, they would have decreased since the testing. *Id.* at 14:5-21. Ms. Statz’s understanding was that Claimant “had tried other jobs without success” which is why she went back to being a CNA after her right knee injury and that it was “really the only job she felt like she could do.” *Id.* at 15:6-16:1. Another significant factor to Ms. Statz was that Claimant had bilateral lower extremity injuries, which in her experience typically resulted in more restrictions and more limitations. *Id.* at 16:5-23. Ms. Statz testified that because her work history was primarily as a CNA in very physical work and because Claimant could not return to that field, her transferable skills were essentially “gone;” further, because Claimant was older, the fact that she could not utilize her transferable skills was a greater detriment. *Id.* at 17:9-19:14.

57. Ms. Statz noted that Claimant did not have computer skills, other than her work as a cashier. *Id.* at 19:15-20. Her lack of computer skills and diminished reading skills meant that she

could not “navigate a sedentary job” and she could not be a cashier because they are required to stand. *Id.* at 21:13-22:7. Regarding driving jobs, a school bus driver position requires an employee to be able to lift a child and most other driving positions would require a CDL, which Claimant would not be able to secure based on her physical restrictions. *Id.* at 22:23-23:20. Ms. Statz concluded that Claimant was totally and permanently disabled as an odd lot worker because of her two injuries, her lack of computer skills, and her diminished academic skills. *Id.* at 24:2-20.

58. Ms. Statz testified that Dr. Williams’ 2017 restrictions and Dr. Flint’s restrictions resulted in “the same thing” i.e. a huge labor market loss; the addition of the four-hour work week resulted in more labor market loss. *Id.* at 25:2-26:23. Regarding Dr. Williams’ notation that bilateral impairments would result in “increased limitations,” Ms. Statz testified she could not really take that into account because there were not any additional restrictions:

So even if it is more limited, if he already restricted her to no or occasional or rare - - whatever - - I can't take away from that. I can't make it less than, if that makes sense. If I'm being totally unbiased, you know, I could say “oh, well, he said there were some more; I could take more” off but that's not really being truthful or honest with the methodology.

Id. at 27:1-28:12. Ms. Statz explained that if Dr. Williams’ 2017 and 2024 restrictions were utilized: “it would have the same impact,” i.e. she is an odd lot worker under both sets of restrictions. *Id.* at 28:17-24. Ms. Statz agreed that Claimant’s two injuries combined to result in her total disability. *Id.* at 29:9-14. Regarding Claimant’s right knee, if Dr. Krafft’s or Dr. Johnson’s restrictions were utilized, Claimant could return to light duty work. *Id.* at 29:15-23. If only Dr. Williams’ restrictions for the left ankle injury were utilized, per Dr. Williams’ testimony, she would be at a light level and therefore have some access to jobs. *Id.* at 30:18-31:13.

59. On cross-examination, Ms. Statz confirmed that Claimant was a poor historian. Statz Depo. 34:14-20. Ms. Statz reviewed her records and testified that Claimant’s work for

Wellspring was described as medium duty. *Id.* at 38:22-39:1. Ms. Statz confirmed her records showed Claimant got the job at Creekside two days after she was terminated from Wellspring, which in her experience wasn't necessarily unusual because of how understaffed CNA positions tend to be. *Id.* at 39:18-40:5. Ms. Statz agreed that jobs as a cashier and sales clerk, and similar jobs would have been appropriate for Claimant before she injured herself, even with her diminished math and reading skills. *Id.* at 44:16-45:8.

60. Dr. Johnson's restrictions would preclude Claimant from finding work as CNA because they required more than occasional crouching and stooping. *Id.* at 47:5-17. Ms. Statz clarified that there were cashier positions Claimant could perform with her diminished math skills, it just depended on whether she was required to calculate the change to give back: "I would be hesitant to say that she would be confident in doing those skills." *Id.* at 48:2-15. Regarding Dr. Williams' 2017 restrictions, there were jobs available to Claimant after those restrictions, but the number was extremely low, about 688 jobs; the only job that Ms. Statz could think "off the top of her head" that was available within those restrictions in the Boise area was order clerks at the local hospitals, who sit and manage food orders. *Id.* at 53:13-54:7. Ms. Statz noted she would have been qualified to get that type of job in 2017 but would have difficulty getting it because of her lack of computer skills and the "huge jump" in career type. *Id.* at 54:13-55:7. Ms. Statz agreed that from a mathematical and vocational perspective that her left ankle injury did not further limit her labor market loss when utilizing only Dr. Williams' restrictions for both injuries; further, Claimant would have access to the order clerk job under both sets of restrictions. *Id.* 57:2-21; 64:24-65:2. Ms. Statz had not observed the surveillance video and confirmed that Claimant told her she could not get up on to her "tippy toes." *Id.* at 69:5-13.

61. On re-direct, Ms. Statz was not confident help from ICRD would have gotten Claimant a job, but it would have helped her come to terms with her restrictions: “looking at the job notebook that she kept for jobs that was applying, she was really applying for jobs that made no sense.” *Id.* at 71:5-17. Ms. Statz admitted that Claimant had not told her that her work accommodated her after her 2015 injury. *Id.* at 74:14-19.

62. Ms. Alcaraz was deposed at Defendant/Employer’s request on December 3, 2025. Ms. Alcaraz was provided with the surveillance, Statz’s deposition, the hearing transcript, and the WRAT4 documentation since her updated report. *Id.* at 9:25-10:13. None of these records changed her opinions. *Id.* Ms. Alcaraz explained her findings that there were a number of driving jobs Claimant could perform which required no experience and no CDL: “because commercial driver’s license would more like exceed her SVP... and physical requirements.” *Id.* at 15:1-10. Ms. Alcaraz noted her report contained “samples” of non-CDL driving jobs available, not an exhaustive list of those types of jobs; all of the sample jobs were part-time. *Id.* at 16:16-23; 17:20-25. Ms. Alcaraz specifically tried to find jobs that had no lifting requirements. *Id.* 20:2-20. Regarding Ms. Statz’s opinion that Claimant could not perform driving jobs due to the vehicle inspection requirements, Ms. Alcaraz explained that she works with individuals who accommodate around squatting by using extendable lit mirrors to do things like look under the carriage of the vehicle. *Id.* at 22:12-22. Regarding the non-CDL driving jobs, Ms. Alcaraz testified: “these jobs were regular and stable not only because of the snapshot of jobs found in the area but also the occupation information network. They see it as a “bright” outlook.” *Id.* at 28:3-9. Ms. Alcaraz confirmed that her labor market loss numbers were based solely on CNA jobs as Claimant’s pre-existing labor market and solely driving jobs as her post-injury labor market. *Id.* at 30:6-14. Ms. Alcaraz only calculated her numbers based on Dr. Williams’ restrictions as they were the most restrictive. *Id.* at 31:24-32:5.

63. On cross-examination, Ms. Alcaraz testified she was familiar with the requirements for CDL drivers generally but did not know Idaho's bus driver requirements. Alcaraz Depo. 36:23-37:13. Ms. Alcaraz confirmed her wage loss numbers were a direct hourly wage comparison and did not consider or include Claimant's reduced working hours as assigned by Dr. Williams. *Id.* at 65:10-66:9. An annualized comparison of income would be close to 50% loss: "I haven't done the math but yes that sounds about right." *Id.* at 67:22-25. Ms. Alcaraz did not believe Claimant could return to cashiering work because of Dr. Williams' restrictions. *Id.* at 73:10-13.

64. Ms. Alcaraz believed an employee would need more than a 3rd grade level of reading to become certified as a CNA. *Id.* at 76:24-77:7. Ms. Alcaraz testified that part-time food delivery would fit within Dr. Williams' restrictions, but not patient transport because some of those positions required securing wheelchair bound patients. 77:23-78:9. Ms. Alcaraz confirmed she would have expected Claimant to have skills in reading comprehension to chart as a CNA. *Id.* at 81:12-82:5. Ms. Alcaraz confirmed that if Dr. Flint's restrictions were accepted, Claimant would have more job opportunities than under Dr. Williams' restrictions. *Id.* at 82:6-16.

65. **Credibility.** Defendants Employer/Surety and ISIF both argue that Claimant has credibility problems. They point to the surveillance footage and a number of discrepancies between her testimony and her records. The Commission's findings on credibility are bifurcated into two categories, "observational credibility" and "substantive credibility." As stated in *Painter v. Potlatch Corp.*, 138 Idaho 309, 63 P.3d 435 (2003):

Observational credibility goes to the demeanor of the appellant on the witness stand and it requires that the Commission actually be present for the hearing in order to judge it. Substantive credibility, on the other hand, may be judged on the grounds of numerous inaccuracies or conflicting facts and does not require the presence of the Commission at the hearing.

Claimant testified credibly. Nicolette Medrano testified credibly. However, there are substantive credibility issues.

66. Claimant was a poor historian and inconsistent in her testimony and what she reported to providers and experts. For example, when confronted with her restriction by Dr. Williams for her 2015 knee injury for part-time work, Claimant first explained she did not remember that restriction, only her restrictions from Dr. Johnson. She then explained she could not tell Wellspring about the 4-hour workday restriction from Dr. Williams because she was homeless and needed a job, implying she did recall it at that time. When counsel for ISIF pointed out Claimant had recently settled her workers compensation claim at the time, Claimant recalled she had gotten an apartment. Then when asked again if she told Wellspring about her 4-hour workday restriction, Claimant said no one told her what her restrictions were, not that she only remembered Dr. Johnson's restrictions. HT 92:16-98:5. Similarly, when cross-examined about how often Claimant wore her brace, Claimant contradicted herself on whether/when/how often she wore her brace both in the surveillance footage and generally. HT 82:9-84:17. Claimant's testimony lacked consistency which rendered it less credible.

67. Other examples of inconsistency include Claimant testifying at hearing and deposition and reporting to Ms. Statz that Walmart let her go because they could not accommodate her restrictions anymore, when the records at the time show she was fired for too many absences. JE 29:2782-2783; JE 31:2824; JE 35:3199. Claimant told Ms. Statz her till was constantly off at Walmart but testified at deposition it was off three or four times, and only once was the till off enough that she was reprimanded. Claimant recalled she quit an early job because she couldn't spell correctly and "it wasn't fair to them," but later she admitted she quit because she had a car accident. JE 29:2773. Lastly, Claimant reported to Ms. Statz she could not get on her tippy toes to

balance and reach things when there is video evidence of her on her left tippy toes balancing to reach something. JE 31:2838; JE 39. Where Claimant's testimony contradicts the record, the record will be relied upon.

68. Most of Nicolette Medrano's credible testimony was contradicted by the surveillance footage and other evidence of record, and some of her testimony was explained by other evidence of record. For example, Ms. Medrano's specific recollection of her mother being significantly disabled by her knee was when she was recovering from knee surgery. See HT 125:15-129:10.

DISCUSSION AND FURTHER FINDINGS

69. The provisions of the Workers' Compensation Law are to be liberally construed in favor of the employee. *Haldiman v. American Fine Foods*, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990). The humane purposes which it serves leave no room for narrow, technical construction. *Ogden v. Thompson*, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996). Facts, however, need not be construed liberally in favor of the worker when evidence is conflicting. *Aldrich v. Lamb-Weston, Inc.*, 122 Idaho 361, 363, 834 P.2d 878, 880 (1992). 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, 479, 849 P.2d 934 (1993). Uncontradicted testimony of a credible witness must be accepted as true, unless that testimony is inherently improbable, or rendered so by facts and circumstances, or is impeached. *Pierstorff v. Gray's Auto Shop*, 58 Idaho 438, 447-48, 74 P.2d 171, 175 (1937).

70. **Total Permanent Disability.** 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 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 cumulative effect of multiple injuries, the age and occupation of the employee at the time of the accident causing the injury, consideration being given to the diminished ability of the 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. In sum, the focus of a determination of permanent disability is on the claimant's ability to engage in gainful activity. *Sund v. Gambrel*, 127 Idaho 3, 7, 896 P.2d 329, 333 (1995). Generally, the proper date for disability analysis is the date of the hearing. *Brown v. Home Depot*, 152 Idaho 605, 272 P.3d 577 (2012).

71. Claimant argues she is totally and permanently disabled as an odd lot worker. An odd-lot worker is one "so injured that he can perform no services other than those which are so limited in quality, dependability or quantity that a reasonably stable market for them does not exist." *Bybee v. State of Idaho, Industrial Special Indemnity Fund*, 129 Idaho 76, 81, 921 P.2d 1200, 1205 (1996). Such workers are not regularly employable "in any well-known branch of the labor market – absent a business boom, the sympathy of a particular employer or friends, temporary good luck, or a superhuman effort on their part." *Carey v. Clearwater County Road Department*, 107 Idaho 109, 112, 686 P.2d 54, 57 (1984). The burden of establishing odd-lot status rests upon the claimant. *Dumaw v. J. L. Norton Logging*, 118 Idaho 150, 153, 795 P.2d 312, 315 (1990). A claimant may satisfy this burden and establish total permanent disability under the odd-

lot doctrine in any one of three ways: (1) by showing that he has attempted other types of employment without success; (2) by showing that he or vocational counselors or employment agencies on his behalf have searched for other work and other work is not available; or (3) by showing that any efforts to find suitable work would be futile. *Lethrud v. Industrial Special Indemnity Fund*, 126 Idaho 560, 563, 887 P.2d 1067, 1070 (1995).

72. The first step in determining Claimant's disability is identifying what her restrictions were from each injury. Claimant's right knee injury resulted in three sets of restrictions. Dr. Johnson assigned restrictions of working no more than 6 hours a day and no repeated bending and stooping. Dr. Krafft assigned restrictions of rare squatting, occasional stooping, modified kneeling techniques, and limiting standing and walking to 6 hours a day. Dr. Williams assigned restrictions of 4 working hours a day, light strength level limitations, never crouching, squatting, or kneeling on the right side.

73. Claimant's functioning post-right knee arthroplasty most closely matches Dr. Krafft's restrictions. Claimant testified at deposition she was on her feet at Wellspring "like a regular CNA," but that she did sit more there than at Karcher Estates. Claimant testified she was able to hike, bike, ride motorcycles, and fish prior to her left ankle injury and told Ms. Statz the same. HT 64:8-65:11. She utilized techniques to avoid being on her knees. She did medium to heavy lifting and was able to move patients with assistance. JE 29:2785. Claimant was not able to recall what her restrictions were for her right knee injury other than avoiding kneeling and unstable areas, which she testified she successfully accommodated. HT 91:13-93:1. Claimant did not seek any treatment for her right knee after she was found at MMI and prior to her left ankle injury. Dr. Krafft's restrictions of rare squatting, occasional stooping, modified kneeling techniques, and limiting standing and walking to 6 hours a day are accepted.

74. For Claimant's left ankle, Dr. Williams limited her to 4-hour workdays at a sedentary level with standing limited to only 10% of the day and walking 5% of the day; Claimant was also restricted from stairs, ladders, crawling, crouching, and balancing and kneeling on the left side only. Dr. Flint assigned restrictions of only standing 90 minutes at a time before a 30-minute break, no lifting/pushing/pulling over 20 pounds, no ladders, and limit walking on uneven surfaces.

75. Claimant's functioning in the surveillance video, Dr. Flint's better vantage point, and Dr. Gussner's testimony support Dr. Flint's restrictions as the more appropriate restrictions for her left ankle injury. In the surveillance video, Claimant is able to walk in Walmart for 20 minutes without limping or an assistive device. This supports Dr. Flint's restriction of walking 90 minutes at a time vs. Dr. Williams' restrictions which would limit her walking to 12 minutes of her 4-hour workday. Dr. Flint was Claimant's treating physician for almost two years, and intimately familiar with her capabilities whereas Dr. Williams has only met and examined Claimant twice. Dr. Gussner's testimony supports Dr. Flint's restrictions. Dr. Gussner explained he would expect Claimant to be uncomfortable after walking for a prolonged period and that he would not want her running or jumping, no ladders, and that he would not want her repetitively lifting heavy weights for her job. Dr. Gussner's opinion much more closely matches Dr. Flint's restrictions and Claimant's demonstrated capabilities.

76. The vocational experts offered several scenarios and opinions based on the offered restrictions. As an initial matter, Ms. Alcaraz's conclusions regarding labor market loss and wage loss are rejected because Ms. Alcaraz only utilized Dr. Williams' restrictions, which were not accepted, per the above.

77. Ms. Statz concluded Claimant lost 32.5% of her labor market with Dr. Krafft's

restrictions and did not calculate wage loss for that restriction. Ms. Statz concluded that Dr. Flint's restrictions when combined with Dr. Krafft's and Dr. Johnson's, result in labor market loss of 94.6%. Ms. Statz did not assess labor market loss or wage loss from Dr. Flint's restrictions alone. However, Ms. Statz's deposition testimony reveals that Dr. Flint's restrictions "alone" results in the "same" labor market loss as Dr. Williams' restrictions of 94.6% because both restrictions were sedentary, leaving approximately about 1,200⁴ jobs available to Claimant. Statz Depo. 24:21-26:23. The combined wage loss from Drs. Flint/Johnson/Krafft restrictions was 31.4%. This would result in a combined disability rating of 63% from all causes (right knee and left ankle) per Ms. Statz's opinion.

78. Claimant argues she is totally and permanently disabled as an odd lot worker. Claimant argues her job search demonstrates she is odd lot and Ms. Statz's opinion supports it would be futile for Claimant to seek employment. The bus driver jobs identified by Ms. Alcaraz are entirely inappropriate and Claimant will not be able to secure a CDL.

79. The record demonstrates that Claimant's job search involved almost exclusively jobs which were beyond her capacity during a four-month period in 2024. Claimant repeatedly applied for positions as a cashier, which she could only perform if they accommodated her in a similar manner to Wal-Mart, i.e. providing her with a stool. Claimant recorded in her job diary that a DOL rep said as much to her at the beginning of her search "then she said why apply for a cashier when you know that they are not going to accommodate you." JE 32:2876. Similarly, Ms. Statz opined Claimant's job search "made no sense" because she was applying for jobs beyond her restrictions.

80. Further, it is not clear how many jobs Claimant actually applied for because she

⁴ 0.29% of 386,560 in jobs in the Boise Metro area. JE 31:2841, Statz Depo. 45:17-25.

had difficulty logging in, filling out applications, and completing them on the computer. Claimant did not reach out to ICRD for assistance despite four placements after her last injury (Michaels, Wal-Mart, Elwood Staffing Agency, ResCare) and their prior help with computer applications. Claimant did not apply for jobs as a non-CDL driver or food order clerk or food delivery, all jobs identified by Ms. Alcaraz and Ms. Statz as available in her residual labor market. Claimant has failed to prove she is an odd lot worker under the prong that she applied for work and no other work was available.

81. Claimant argues it would be futile to look for work and offers Ms. Statz's opinion. Ms. Statz opined that Claimant was an odd lot worker due to her two industrial injuries, her lack of computer skills, and her limited academic skills. Ms. Statz opined that most sedentary jobs required computer skills which Claimant does not possess. Claimant struggled with computers in 2016-2017 in her work with Ms. Rodriguez and credibly documented her difficulties utilizing the computer at the DOL.

82. Claimant's limited academic skills are also a barrier in her residual labor market. Claimant struggles with math; she made some mistakes in her work as a cashier, enough that she was reprimanded at least once, but not fired. Claimant's reading and writing skills are not as poor as Ms. Statz understood them to be; Ms. Statz termed Claimant "illiterate." It is clear from the record and Claimant's testimony that most of her difficulty stems from spelling and grammar; Claimant's testimony was that she speaks into her phone and then copies the correct spelling onto the page. There are several handwritten, cursive notes in the record over several years including her job diary, her witness statement, her IME records, and several other places in the record. Claimant was tested at 3rd grade level in 2017; she was able to read enough to complete the testing and reportedly give good effort. Claimant was able to complete charting in both paper and on

computers for her job as a CNA for almost 30 years and was experienced and skilled enough to be a CNA trainer. Claimant was certified to dispense medication in 2013. Claimant's academic skills are a barrier to employment, but Ms. Statz's opinion that Claimant was illiterate, i.e. unable to read or write, is unsupported.

83. When reviewing the record as a whole, Claimant has not demonstrated it would be futile for her to look for work within her restrictions. Claimant is employable as a non-CDL driver per Ms. Alcaraz and will be able to accommodate rare squatting and occasional stooping in that role. Ms. Statz's objections to the position revolved around her understanding that it was a CDL school bus driver position and that Claimant was totally restricted from stooping and crouching, relying on Dr. Williams' restrictions. This area of employment has a good outlook in Boise per Ms. Alcaraz. Claimant could also work as a food order clerk per Ms. Statz, even under Dr. Williams' restrictions. Ms. Alcaraz also opined Claimant could work in food delivery, but not patient transport due to her lifting limitations. Ms. Statz identified a number of jobs which she opined had very low numbers in the Boise area (688) of cashier tube room attendant, food checker, yard clerk, crane clerk, cutter and paster, pricer, tax clerk, telegraph service writer, tube operator, order clerk, and sorter. Some of these jobs would be inappropriate for Claimant due to her math skills or are obsolete, but not all, and these jobs were available within Dr. Williams' restrictions.

84. Claimant's arguments about whether she could secure a CDL misapprehend Ms. Alcaraz's testimony and report. Although Ms. Alcaraz's labor market loss conclusions were rejected, her testimony and report regarding non-CDL driving in Boise was convincing and is accepted. Ms. Alcaraz's sample jobs were just that, a sampling, per her deposition testimony. Her opinion was not credibly rebutted by Ms. Statz. Claimant is not totally and permanently disabled. Claimant has proven her disability from all causes is 63% per Ms. Statz's opinion.

85. **Apportionment.** Idaho Code § 72-406(1) provides as follows: “In cases of permanent disability less than total, if the degree or duration of disability resulting from an industrial injury or occupational disease is increased or prolonged because of a preexisting physical impairment, the employer shall be liable only for the additional disability from the industrial injury or occupational disease.” In *Horton v. Garrett Freightlines, Inc.*, 115 Idaho 912, 772 P.2d 119 (1989), the Idaho Supreme Court held that Idaho Code § 72-406 requires a two-step process to determine whether a claimant's permanent partial disability should be apportioned, as follows: first, determine the claimant's disability based upon all impairments, including preexisting impairments and impairment from industrial injury; and second, apportion the liability of employer based upon the degree to which the industrial injury contributed to claimant’s disability. *Id.*, 115 Idaho at 917, 772 P.2d at 124. There is a presumption that the Commission, by its experience, is capable of judging how such apportionment should be made. However, the Commission must explain its apportionment determination in such detail as to allow review on appeal. *Reiher v. American Fine Foods*, 126 Idaho 58, 878 P.2d 757 (1994).

86. The first step required by *Horton* is to calculate Claimant’s disability from all causes. In this case, Claimant’s disability from all causes is 63%.

87. Defendants argue Claimant is estopped from arguing her pre-existing disability is less than the 35% permanent disability she settled for due to her right knee injury and cite *Darlington v. JMF Co., Inc.*, IC 2021-013500 (2024) and *Wyatt v. Avis Budget Group, Inc.*, IC 2017-001917 (2023).

88. In *Wyatt*, the claimant settled a claim for total and permanent disability with ISIF in 2012. Thereafter, claimant returned to work and suffered a subsequent left shoulder injury and claimed additional benefits. Defendants argued claimant could not seek additional benefits because

he had already been deemed totally and permanently disabled in the prior settlement and was estopped from claiming more benefits. The Commission outlined collateral estoppel as follows:

(1) Did the party “against whom the earlier decision is asserted ... have a ‘full and fair opportunity to litigate that issue in the earlier case?’ (2) Was the issue decided in the prior litigation “identical with the one presented in the action in question?” (3) Was the issue actually decided in the prior litigation? This may be dependent on whether deciding the issue was “necessary to [the prior] judgment.” (4) “Was there a final judgment on the merits?” (5) “Was the party against whom the plea is asserted a party or in privity with a party to the prior adjudication?”

The Commission noted that claimant had argued for total disability and therefore had full opportunity to litigate the issue. The Commission ruled that the lump sum settlement was a final judgment on the merits. Regarding the “actually decided” prong, the Commission wrote:

The Industrial Commission does not have jurisdiction to entertain a settlement between an injured worker and the ISIF without first being satisfied that Claimant is totally and permanently disabled and that all other elements of ISIF liability are satisfied. The Commission's determination that Claimant is totally and permanently disabled is not incidental to the Commission's order of approval. Rather, it is a critical jurisdictional determination that must be satisfied before the Commission is empowered to approve a settlement with the ISIF.

The Commission ruled that the claimant was collateral estopped from pursuing additional disability. However, *Wyatt* found that the issue of total and permanent disability was “actually decided” due to the jurisdiction requirement imposed by *Wernecke*. This case is distinguishable on that basis. Claimant’s prior settlement did not “actually decide” Claimant was 35% permanently disabled from her right knee injury. JE 35:2986. The settlement represented a compromise between the two parties. There is no jurisdictional requirement for disability less than total.

89. Claimant’s disability from all causes is 63%. Claimant had some disability prior to her left ankle injury. She sat more, asked for help with lifting, and avoided kneeling. Claimant returned to work as a CNA after her right knee injury and completed all her duties, albeit modified. It is clear based on Ms. Statz’s report that the majority of Claimant’s disability comes from

Dr. Flint's restrictions vs. Dr. Krafft's restrictions. Dr. Krafft's restrictions result in labor market loss of 32.5% and Dr. Flint's result in labor market loss of 94.6%. There is obvious overlap between the two sets of restrictions on walking/standing/sitting, but Dr. Flint's restrictions transform Claimant into essentially a sedentary worker due to the lifting restriction per Ms. Statz.

90. Therefore, Claimant's disability from the left ankle injury alone is 43%. Claimant's wage loss from her right knee injury was small per her demonstrated work history and her labor market loss was estimated at 32.5% per Ms. Statz. Claimant's wage loss and labor market loss from her left ankle injury is much more impactful due to Dr. Flint's sedentary restrictions. Claimant is entitled to permanent disability of 43% related to the left ankle injury.

91. **ISIF Liability.** Idaho Code § 72-332 provides that if an employee who has a permanent physical impairment from any cause or origin, incurs a subsequent disability by injury arising out of and in the course of his employment, and by reason of the combined effects of both the pre-existing impairment and the subsequent injury suffers total and permanent disability, the employer and its surety will be liable for payment of compensation benefits only for the disability caused by the injury, and the injured employee shall be compensated for the remainder of his income benefits out of the ISIF account.

92. Claimant is not totally and permanently disabled. Therefore, ISIF cannot be liable for benefits.

CONCLUSIONS OF LAW

1. Claimant is not totally and permanently disabled;
2. Claimant's disability from all causes is 63%;
3. Claimant's disability from the left ankle injury is 43%;
4. ISIF is not liable for benefits.

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 19th day of May, 2026.

INDUSTRIAL COMMISSION



Sonnet Robinson, Referee

CERTIFICATE OF SERVICE

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

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BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JUANA VILLARREAL,

Claimant,

v.

CORNET LIMITED, INC, dba CREEKSIDE
TRANSITIONAL CARE &
REHABILITATION

Employer,

and

SAFETY NATIONAL CASUALTY
COMPANY,

Surety,

and

STATE OF IDAHO, INDUSTRIAL
SPECIAL INDEMNITY FUND,

Defendants.

IC 2022-001477

ORDER

FILED JUNE 3, 2026
IDAHO INDUSTRIAL COMMISSION

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

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

ORDER - 1

1. Claimant is not totally and permanently disabled.
2. Claimant's disability from all causes is 63%.
3. Claimant's disability from the left ankle injury is 43%.
4. ISIF is not liable for benefits.
5. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 3rd day of June , 2026.



INDUSTRIAL COMMISSION

Claire Sharp

Claire Sharp, Chair

Aaron White

Aaron White, Commissioner

ATTEST:

Mary McMenomey

Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of June 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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Gina Espinosa