BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

KAREN CUNNINGHAM, Claimant, v. JOINT SCHOOL DISTRICT NO. 2 Self-Insured Employer, Defendant.	**IC 2017-007936** **IC 2018-011996** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** **FILED August 4, 2026** **IDAHO 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 second hearing in this matter on March 5, 2025. Claimant, Karen Cunningham, was present in person and represented by Bryan Storer of Boise. Defendant was represented by Michael McPeek of Boise. The parties presented oral and documentary evidence. Post-hearing depositions were taken. The matter came under advisement on April 13, 2026 and is ready for decision.

ISSUES

The issues to be decided and clarified at hearing are:

1. Nature and extent of the injuries caused by the accidents;
2. Whether Claimant is entitled to:
    a. Medical care;
    b. Permanent partial impairment (PPI);
    c. Permanent partial disability (PPD); and,
3. Apportionment pursuant to Idaho Code § 72-406.

CONTENTIONS OF THE PARTIES

Claimant contends she is still in pain and requires palliative care to treat her industrial injuries, including pain management and physical therapy. Dr. Gussner's opinion is superior to Dr. Montalbano's, and his PPI rating, MMI date, and restrictions should be adopted by the Commission. Claimant's disability is best reflected by Mr. Porter's weighted disability opinion of 47.5%.

Defendant contends Dr. Montalbano's opinion regarding ongoing palliative care is persuasive and Claimant does not have objective findings which warrant that treatment. Claimant's vocational expert made a statistical error in calculating disability and also used less accurate, timely data sets in making his findings. Defendant's expert's disability opinion is persuasive and more accurate at 23.5% permanent partial disability.

Claimant responds that Dr. Montalbano's opinion is inconsistent and therefore unreliable. Claimant is entitled to palliative care and permanent partial disability in line with Mr. Porter's opinion.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. Joint Exhibits 1-74 (JE) admitted at hearing;
3. Joint Exhibits 75-79[1] (JE) admitted post-hearing via stipulation;
4. The testimony of Claimant, Karen Cunningham, taken at hearing;

[1] Claimant's attorney submitted two supplemental Rule 10s following hearing. One on May 30th, 2025 with Social Security Disability paperwork (#79), an itemized statement, (#80), and records from Velasquez Pain Center, and a second filing on October 2, 2025, with #75-#78 which were MRIs and duplicates of Velasquez Pain Center records already admitted. In the interests of clarity, those previously marked exhibits will remain numbered 75-78 and Claimant's Social Security paperwork will be exhibit #79 and the itemized statement (#80).

5. The post-hearing depositions of Paul Montalbano, MD, and Cali Eby, taken by Defendant;

6. The post-hearing depositions of Christian Gussner, MD, and Delyn Porter, taken by Claimant.

Claimant argued for temporary disability benefits, odd lot total and permanent disability, and attorney's fees in briefing despite none of these issues being listed for hearing. Defendant objected to these issues being included and asked that they be struck. Defendant's Motion to Strike is GRANTED and Claimant's arguments regarding these issues are stricken. All outstanding objections are OVERRULED.

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

FINDINGS OF FACT

1. All facts set out in the November 9, 2020 Findings of Fact and Conclusion of Law, as well as all legal analysis and conclusions, are incorporated by reference herein as if set forth in full.

2. On September 16, 2020, Claimant saw Dr. Gussner for an impairment rating for her cervical spine on referral from Dr. Montalbano. JE 44:876. Dr. Gussner rated Claimant at 8% whole person impairment, with 4% apportioned to her pre-existing 2009 cervical fusion. *Id.*

3. On October 12, 2020, Claimant underwent an L5-S1 fusion and decompression with Dr. Montalbano. JE 46:950.

4. On January 11, 2021, Claimant reported to Dr. Gussner that her low back pain was slowly improving. JE 44:882.

5. On August 17, 2021, Dr. Montalbano opined Claimant had been at MMI "for some time" and rated her at 6% PPI for her lumbar fusion with no restrictions related to the fusion. JE 45:947.

6. On January 10, 2022, Claimant reported her chronic neck and back pain was "barely manageable" with her Norco and Gabapentin prescriptions. JE 44:905. Dr. Gussner increased Claimant's Norco dosage. *Id.* at 908.

7. On January 12, 2022, Claimant returned to Dr. Montalbano and reviewed her recent cervical and lumbar MRIs. JE 45:948. Dr. Montalbano wrote the MRIs showed anticipated postoperative changes and no issues; she was still at medical stability and required no further treatment. *Id.* Dr. Montalbano wrote that her symptoms were not consistent with her imaging: "In other words, this is consistent with a high functional relay [sic]." *Id.*

8. On April 11, 2022, Claimant reported to Dr. Gussner her pain was much improved with the increased Norco dosage. JE 44:910. Claimant requested another surgical opinion and was referred to Dr. Harrison. *Id.* at 913.

9. On June 16, 2022, Claimant saw Greg Harrison, MD, for a second surgical opinion. JE 67:1104; JE 68. Dr. Harrison took a history of the injury and conducted a physical exam. Dr. Harrison wrote that her exam findings were nonfocal and her imaging did not show anything surgical. He recommended she continue with pain management and treatment for depression. *Id.* at 1103.

10. On August 15, 2022, Claimant saw Jacob Radil, PA-C, at the Spine Care Clinic. JE 68:1139. PA-C Radil took a history of the injury and conducted a physical exam. PA-C Radil wrote her exam findings were nonfocal and myofascial in nature, and he recommended physical therapy as Claimant was already treating for pain management with Dr. Gussner. JE 68:1133. Claimant declined physical therapy. *Id.*

11. On November 29, 2022, Dr. Gussner provided an impairment rating pursuant to an IME request from Claimant's then attorney. JE 55:985. Dr. Gussner wrote that neither Dr. Montalbano nor Dr. Harrison recommended any further surgical treatment, but she would need ongoing pain management. *Id.* at 988. Dr. Gussner assigned Claimant a 9% PPI rating for her low back with no apportionment and work restrictions of maximum 20 pounds occasional lifting, 10 pounds repetitive lifting, avoiding repetitive twisting and bending, and allowed to change positions for comfort. *Id.* at 987-988.

12. On January 12, 2023, Claimant had her last pain management appointment with Dr. Gussner as her treating physician; Dr. Gussner refilled her Norco, Gabapentin, and Tizanidine prescriptions. Claimant reported pain down her left leg, but that her back and neck pain was manageable with her prescriptions. JE 44:926. Claimant testified she quit taking Norco cold turkey due to the stigma around opioids. HT 60:3-7.

13. Claimant moved to Las Vegas in September of 2024. HT 66:18-24.

14. On January 6, 2025, Claimant presented to Shaan Jaggi, MD, at the Velazquez Pain Relief Center in Las Vegas where she had relocated. JE 75:1184. Claimant reported a history of her injury and resumed care for her low back and neck, including medication management and imaging. See JE 75. Claimant has a pending recommendation for physical therapy. *Id.* at 1202.

15. On February 20, 2025, Surety issued a notice of claim status. JE 60:1045. Claimant had already been paid the 6% rating assigned by Dr. Montalbano, but the Surety averaged the difference with Dr. Gussner's 9% rating to 7.5%. The Surety also noted the 4% apportioned rating assigned by Dr. Gussner to her cervical spine, for a total of 11.5% (4% + 7.5%). Surety had already paid the 6% PPI rating assigned by Dr. Montalbano and issued a check for the remaining 5.5%. JE 60, 65.

16. On February 24, 2025, Claimant was awarded Social Security Disability starting from December 31, 2024, the date Claimant became disabled under their rules. JE 79:C1.

17. On October 3, 2025, Dr. Gussner was deposed by Claimant. Dr. Gussner routinely treats patients that have undergone multiple spine surgeries. Gussner Depo. 10:19-21. Dr. Gussner agreed that a surgery can be "successful" but still not completely restore a patient to their pre-injury level of function or pain. *Id.* at 12:6-25. Dr. Gussner confirmed his PPI ratings and their rationale. Dr. Gussner explained his restrictions were to decrease risk of further injury and essentially "protect the actual fusion." *Id.* at 28:10-18. Dr. Gussner testified there was a difference of opinion among physicians whether to assign restrictions for a single level fusion; regarding Claimant specifically and her multiple fusions, Dr. Gussner testified in his practice he believed it was "very prudent" to give additional restrictions. *Id.* at 29:3-12. Dr. Gussner assigned change of position as needed (every one to two hours) so that Claimant would "not be stuck in one position for prolonged periods of time" which could increase her pain. *Id.* at 33:1-13; 34:11-12. Dr. Gussner did still recommend additional palliative care in the form of medications. *Id.* at 36:14-22. Dr. Gussner would recommend a headset for using a phone due to neck fusion. *Id.* at 38:9-14. Dr. Gussner agreed her imaging done in Neveda was reasonable and necessary; it is "very common" for a new physician to order imaging for a first-time patient. *Id.* at 39:1-10. Physical therapy would be reasonable if Claimant had "more pain or new symptoms." *Id.* at 39:13-20. When Claimant's counsel characterized Claimant's symptoms as "ongoing and continuous" along with Dr. Valezquez's recommendation for physical therapy, Dr. Gussner opined it was "reasonable." *Id.* at 39:21-25. On cross-examination, Dr. Gussner confirmed his restrictions were for both her cervical and lumbar conditions. Gussner Depo. 44:15-19.

18. Dr. Montalbano was deposed on December 4, 2025 by Defendants. Dr. Montalbano testified that by 2021, Claimant's cervical and lumbar fusions were stable.

Montalbano Depo. 14:1-15:5. Dr. Montalbano noted that Claimant had been neurologically intact during all his exams, and that her surgeries were based on subjective symptomology. *Id.* at 15:11-22. Dr. Montalbano did not assign restrictions for Claimant's lumbar condition because "she was doing very well." *Id.* at 17:3-8. Dr. Montalbano did not recommend any additional treatment for Claimant's conditions, including chronic pain management. *Id.* at 21:2-23. Specifically, because she had no objective abnormality on her imaging studies and her symptoms were in nonspecific patterns, he did not support pain management. *Id.* at 23:7-20. Dr. Montalbano thought Dr. Gussner's weight limitations were "low" and disagreed with his long-term medication recommendations other than tizanidine which Dr. Montalbano "wouldn't have an issue with." *Id.* at 24:19-25:8. Dr. Montalbano did agree Claimant should have a permanent lifting restriction of 40-pounds due to her cervical fusions. *Id.* at 26:18-22. Dr. Montalbano was able to review Claimant's 2025 MRIs and x-rays and found "no significant change" from her 2022 imaging. *Id.* at 27:18-28:8. Dr. Montalbano acknowledged that his opinion on chronic pain management was at a "disadvantage" because he had not seen her, but still opined that her medication was "not helping her symptoms because she continues to be symptomatic." *Id.* at 29:1-17. However, Dr. Montalbano did agree the imaging ordered by Dr. Velaquez was appropriate and reasonable to decipher her subjective complaints. *Id.* at 32:10-17.

19. On cross-examination, Dr. Montalbano reiterated that if a patient's symptoms, including pain, did not correlate with imaging: "it would lead me down the pathway of somatization disorder, secondary gain functional overlay." In other words, anything objectively causing pain should show up on imaging per Dr. Montalbano. *Id.* at 50:1-51:4. Dr. Montalbano did recommend another bone scan as Claimant had only had recent MRIs and x-rays. *Id.* at 51:13-22. Dr. Montalbano did not agree that Claimant was inhibited physically in any way by her injuries and surgeries based on his evaluations after surgery. *Id.* at 53:19-54:6. Dr.

Montalbano agreed Claimant was more susceptible to injury after her surgeries. *Id.* at 59:2-13. Dr. Montalbano agreed with Dr. Gussner's impairment ratings. *Id.* at 63:4-7. Dr. Montalbano did not agree that the purpose of restrictions is to protect from further injury "for a reasonable person using reasonably judgment on a daily basis." *Id.* at 63:25-64:7.

20. **Vocational Background.** Claimant worked for a tanning salon doing basic clerical and customer service work after she graduated high school in 1989. HT 17:1-18:18. Claimant then worked for State Farm, also in a clerical/receptionist role for a short time and then she began working as an orthodontic assistant for seven years. *Id.* at 20:23-22:17. Claimant was then a stay-at-home mom for several years. Around the early 2010s, she was a receptionist for an excavation company in Neveda for two years spending "98% of [her] time… on the computer" before moving to Idaho. *Id.* at 26:1-16. However, Claimant rated her computer skills as "very minimal." HT 28:22-24. In 2014, Claimant began working for Employer as a paraprofessional. *Id.* at 25:12-23. Claimant has not applied for any jobs since her separation from Employer in 2021. HT 96:16-19.

21. On July 27, 2024, Claimant was interviewed and evaluated by Delyn Porter for a vocational report at her request. JE 56. Mr. Porter identified Dr. Gussner's restrictions as limited light duty, and found that Claimant lost 63.3% of her labor market with Dr. Gussner's restrictions. *Id.* at 1028. Claimant's wage loss was 0%. *Id.* Mr. Porter estimated Claimant's permanent partial disability was 31.7% inclusive of impairment. However, when weighing Claimant's loss of labor market at 1.5x, Claimant's permanent partial disability increased to 47.5%. *Id.* at 1030.

22. On February 19, 2025, Cali Eby issued a critique of Mr. Porter's opinion at Defendant's request; Ms. Eby did not interview Claimant, nor did she perform a "complete vocational analysis." JE 59:1039. Ms. Eby respectfully disagreed with Mr. Porter's decision to

use Occupational Employment Quarterly (OEQ) data because it uses outdated DOT information and the second source Mr. Porter used, Occupational Requirements Survey (ORS), is more up to date and accurate. *Id.* at 1041. Ms. Eby wrote that Mr. Porter's identified transferable skills but did not list all the corresponding job titles for those skills; for example, Mr. Porter listed office clerks but did not include receptionists and information clerks in his labor market analysis. Further, Mr. Eby disagreed with Mr. Porter's decision to include dental assistant positions because her experience was too remote for her skills to be transferable. *Id.* at 1042-1043. Ms. Eby agreed that Claimant had no wage loss. Ms. Eby agreed it was appropriate to weigh labor market loss heavier, but Ms. Eby did not agree with Mr. Porter's math in weighing Claimant's labor market loss. Simply put, Mr. Porter's analysis was mathematically incorrect as he did not divide by the sum of all weights. Mr. Porter's analysis was (63 + 0) x 1.5/2 when the appropriate math is (63 + 0) x 1.5/**2.5**. When calculated Ms. Eby's way, Claimant's weighted disability drops to 38%.

23. On February 24, 2025, Mr. Porter responded to Ms. Eby's critiques via letter. JE 66. Mr. Porter responded to Ms. Eby's criticism regarding office jobs by arguing that Claimant did not have the skills to pursue those positions because she only had basic computer skills. JE 66:1094. Mr. Porter disagreed that Claimant's dental assistant skills were too remote because it was a skilled occupation. Mr. Porter did not agree that the ORS was superior to the OEQ because ORS data excludes jobs in the federal government, agriculture/foresting/fishing industry, and private households and ORS data is updated annually whereas OEQ is updated quarterly. *Id.* at 1095. Mr. Porter agreed that Ms. Eby's math was a true weighted average, but that in workers' compensation, a true weighted average is not the standard, only the two factors of wage loss and labor market loss are used and therefore, it is his opinion that 47.5% is more accurate and avoids an unjust result. *Id.*

24. On October 7, 2025, Delyn Porter was deposed at Claimant's request. Mr. Porter explained his methodology and sources and reiterated his opinions from his report. See Porter Depo. 1-40. Mr. Porter criticized Ms. Eby's use of JobSleuth to estimate labor market access because "it's really easy to skew that information." *Id.* at 40:19-41:12. Mr. Porter believed Ms. Eby skewed information because she found Claimant could still work as administrative assistant and medical secretary despite Claimant's lack of computer skills or background in those areas. *Id.* at 41:18-25. Mr. Porter observed that when you exclude office clerks, medical secretaries, and administrative assistants from Ms. Eby's calculations, their labor market numbers "are actually very close." *Id.* at 42:17-43:13. On cross-examination, Mr. Porter confirmed he used the Boise metropolitan area to calculate disability and that a larger metropolitan area would have a larger labor market. *Id.* at 53:3-14. Mr. Porter offered that the loss of access is "pretty consistent" across labor markets because loss of access is based on job type, not the sheer number of jobs available. *Id.* at 54:8-20.

25. Ms. Eby was deposed on December 18, 2025 at Defendant's request. Ms. Eby opined that Claimant's work as a paraprofessional did give her transferable skills in providing aid for a person with special needs. *Id.* at 12:7-19. Ms. Eby "didn't follow" Mr. Porter's transferable skills analysis, which is why she used JobSleuth to do her own evaluation utilizing the DOT titles Mr. Porter used in his analysis. *Id.* at 13:6-14:16. Ms. Eby reiterated that she identified several more job types Claimant could access based on her transferable skills than Mr. Porter, namely office clerk type jobs. *Id.* at 14:17-15:9. Ms. Eby noted using a headset was an easy and common accommodation for office type jobs. *Id.* at 15:10-20. Ms. Eby explained she objected to Mr. Porter's use of Occupation Employment Quarterly (OEQ) because it used outdated DOT titles whereas the other source he used, Occupational Requirements Survey (ORS), is more accurate and based on "current jobs, current job requirements." *Id.* at 17:1-21.

She also objected to Mr. Porter's use of two data sources because it introduces the possibility of more error. *Id.* at 17:22-25.

DISCUSSION AND FURTHER FINDINGS

26. 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).

27. **Injury/Accident and Medical Care.** Causation is an issue whenever entitlement to benefits is at question. *Gomez v. Dura Mark, Inc.*, 152 Idaho 597, 601, 272 P.3d 569, 573 (2012). A claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability. *Langley v. State, Industrial Special Indemnity Fund*, 126 Idaho 781, 785, 890 P.2d 732, 736 (1995). Idaho Code § 72–432(1) requires an employer to provide an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital service, medicines, crutches and apparatus, as may be reasonably required by the employee's physician or needed immediately after an injury or manifestation of an occupational disease, and for a reasonable time thereafter.

28. Claimant claims Defendant owes ongoing care in the form of chronic pain management and physical therapy. Defendant argues that Claimant is not entitled to additional medical care and support their position with Dr. Montalbano's opinion.

29. Defendants concede ongoing imaging of Claimant's fusion is reasonable, and

both physicians agreed that imaging was necessary and appropriate, therefore Claimant's imaging ordered by Velasquez Pain Center is compensable.

30. Dr. Gussner's opinion is more persuasive than Dr. Montalbano's on issues of ongoing medical care. Regarding pain management, specifically medications, Dr. Montalbano's opinions were difficult to reconcile and therefore less convincing. Dr. Montalbano did not object to tizanidine for pain management but objected to pain management in general for Claimant. Dr. Montalbano testified that Claimant "only" had subjective symptoms when he operated on her low back but now that she "only" has subjective symptoms post-surgery, any treatment is unreasonable and due to factors like secondary gain. Dr. Montalbano's testified Claimant is more susceptible to injury after her surgery but does not need restrictions, and restrictions are not to prevent further injury. Dr. Montalbano's opinions are internally inconsistent and difficult to reconcile with his prior deposition testimony in 2021 as well.

31. Dr. Gussner convincingly testified that Claimant's need for palliative care was reasonable and necessary. Dr. Gussner treated Claimant in 2009 and again during these injuries and has a long history with Claimant. Although Dr. Montalbano also has a history with Claimant, Dr. Gussner's relationship with her is longer and specifically to treat her for back/neck pain. Similarly, Dr. Gussner regularly practices pain management vs. Dr. Montalbano who is a neurosurgeon. Dr. Gussner's opinion is more persuasive, and Claimant is entitled to pain management, specifically the medication and physical therapy recommended by her current treating physicians.

32. **PPI.** "Permanent impairment" is any anatomic or functional abnormality or loss after maximal medical rehabilitation has been achieved and which abnormality or loss, medically, is considered stable or nonprogressive at the time of evaluation. Idaho Code § 72-422.

33. Dr. Gussner rated Claimant's cervical spine at 8%, with 4% apportioned for her pre-existing cervical condition. Dr. Montalbano rated Claimant at 6% for her low back, unapportioned. Dr. Gussner rated Claimant's low back at 9%, unapportioned. Surety paid 4% for Claimant's cervical spine and 7.5% for Claimants' lumbar spine, averaging the two ratings.

34. As an initial matter, Claimant's arguments regarding cervical impairment misstate the record. Claimant argues that her cervical impairment was never paid. Claimant's cervical impairment was paid via check in February of 2025.

35. Claimant also argues that Dr. Frizzell's cervical spine rating should be accepted and also averaged with Dr. Gussner's rating. Dr. Frizzell rated Claimant prior to her third surgery by Dr. Montalbano when Claimant was not yet at MMI for her cervical fusion. Dr. Frizzell's rating is not accepted.

36. Claimant argues that Dr. Gussner's rating for Claimant's lumbar spine is superior and it would be a manifest injustice to average the impairments. Claimant cites to IDAPA 17.01.01.402. Rule 402 is a "rule of convenience, to be applied during the pendency of the litigation of Claimant's entitlement to benefits." *Damien v. Big Wood Roofing*, IC 2019-001166 (Dec. Ruling, issued September 30, 2022). Claimant does recite the rule's purpose as a pre-litigation tool but still argues it would be a manifest injustice to average the ratings. Claimant is not required to show it would be a manifest injustice to retain the averaged impairment ratings. Instead, Claimant must show that it is more likely than not that one impairment rating is better reasoned than another impairment rating in order to meet her burden of proof.

37. Claimant has met this burden. Dr. Gussner's rating is superior to Dr. Montalbano's. Dr. Gussner has had a longer relationship with Claimant and had a better understanding of her function. Dr. Gussner's rating better accounts for Claimant's pain as well. Dr. Gussner's 9% impairment rating for the low back is accepted.

38. **Permanent Partial 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 (rating) of permanent disability is an appraisal of the injured employee's present and probable future ability to engage in gainful activity as it is affected by the medical factor of impairment and by pertinent nonmedical factors provided in Idaho Code § 72-430. Idaho Code § 72-425. Idaho Code § 72-430(1) provides that in determining percentages of permanent disabilities, account should be taken of the nature of the physical disablement, the disfigurement if of a kind likely to handicap the employee in procuring or holding employment, the cumulative effect of multiple injuries, the occupation of the employee, and his or her age at the time of the accident causing the injury, or manifestation of the occupational disease, consideration being given to the diminished ability of the affected employee to compete in an open labor market within a reasonable geographical area considering all the personal and economic circumstances of the employee, and other factors as the Commission may deem relevant. The test for determining whether a claimant has suffered a permanent disability greater than permanent impairment is "whether the physical impairment, taken in conjunction with nonmedical factors, has reduced the claimant's capacity for gainful employment." *Graybill v. Swift & Company*, 115 Idaho 293, 294, 766 P.2d 763, 764 (1988). The claimant bears the burden of establishing permanent disability. *Seese v. Idaho of Idaho, Inc.*, 110 Idaho 32, 714 P.2d 1 (1986). Permanent disability is a question of fact, in which the Commission considers all relevant medical and non-medical factors and evaluates the purely advisory opinions of vocational experts. *See*, *Eacret v. Clearwater Forest Indus.*, 136 Idaho 733, 40 P.3d 91 (2002); *Boley v. ISIF*, 130 Idaho 278, 939 P.2d 854 (1997).

39. As an initial matter, Dr. Gussner's restrictions are accepted over Dr. Montalbano's opinion that restrictions are inappropriate. Dr. Montalbano's insistence that a reasonable person would not need restrictions then also testifying that 40-pound weight limit is appropriate for her cervical spine are irreconcilable and his opinion on restrictions in this case are rejected. Defendants did not argue for apportionment of disability and there is no evidence to support it; Claimant's 2009 cervical fusion produced no restrictions.

40. Mr. Porter and Ms. Eby both offered interesting opinions on Claimant's disability. However, both experts utilized the Boise labor market in coming to their conclusions even though Claimant resided in the Las Vegas metropolitan area at the time of hearing, which is the appropriate time to determine disability. See *Brown v. Home Depot*, 152 Idaho 605, 272 P.3d 577 (2012).

41. Mr. Porter testified that the market loss numbers would be similar between Las Vegas and Boise because market loss is based on job type, not mere number of jobs. This does not make sense when compared to the report Mr. Porter provided, which discusses actual numbers of jobs in the Boise labor market to determine Claimant's labor market loss. The job numbers are what forms the percentage for the job types that are excluded. Claimant had access to 19,414 total jobs but lost 7,126 jobs per Mr. Porter based on *Boise* job numbers; if Las Vegas has more medium strength category child-care workers per capita than Boise, but an overall lower number of total jobs in her labor market, than Claimant's loss of labor market would be higher in Las Vegas than Boise for example. Even if Mr. Porter was correct, the statute requires the Commission to utilize the "reasonable geographic area" to determine disability which in this case is the Las Vegas metropolitan area and there is no vocational evidence for that market.

42. Claimant's restrictions are maximum 20 pounds occasional lifting, 10 pounds repetitive lifting, avoiding repetitive twisting and bending, and allowed to change positions for

comfort. Claimant is now precluded from very heavy, heavy, and medium jobs and also light/sedentary jobs that do not allow for positional changes. Claimant's work history is in clerical, administrative work and childcare, with remote experience in orthodontic assisting. Mr. Porter's claim that Claimant lacks basic computer skills is contradicted by her other testimony and work history.

43. Claimant has clearly lost a large chunk of her labor market in childcare. She can no longer lift children, a requirement of her prior position, and a requirement of at least some childcare jobs per DOT titles. Claimant has lost access to any clerical/administrative job which does not allow a position change or does not allow her to wear a headset. Claimant is an older worker at age 55, and may be passed up for jobs due to her age vs. other candidates, although Claimant is personable and pleasant. Considering all the factors of Idaho Code § 72-430, Claimant has suffered permanent partial disability in the amount of 35%.

CONCLUSIONS OF LAW

1. Claimant is entitled to medical care related to her cervical and lumbar spine fusions, specifically imaging and palliative care;

2. Claimant is entitled to a 9% permanent partial impairment rating for her lumbar spine;

3. Claimant is entitled to permanent partial disability of 35%.

RECOMMENDATION

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

DATED this 23rd day of July, 2026.

INDUSTRIAL COMMISSION

Sonnet Robinson

Sonnet Robinson, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the _4th__ day of _August_____, 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

KAREN CUNNINGHAM, Claimant, v. JOINT SCHOOL DISTRICT NO. 2, Self-Insured Employer, Defendant.	**IC 2017-007936** **IC 2018-011996** **ORDER** **FILED August 4, 2026** **IDAHO INDUSTRIAL COMMISSION**

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

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

1. Claimant is entitled to medical care related to her cervical and lumbar spine fusions, specifically imaging and palliative care;
2. Claimant is entitled to a 9% permanent partial impairment rating for her lumbar spine;
3. Claimant is entitled to permanent partial disability of 35%.
4. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 4th day of August, 2026.

INDUSTRIAL COMMISSION

Claire Sharp, Chair

Aaron White, Commissioner

ATTEST:
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of August 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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