

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JON WERNER,

Claimant,

v.

STATE OF IDAHO, INDUSTRIAL SPECIAL
INDEMNITY FUND,

Defendant.

IC 2021-009789

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

**FILED AUGUST 13, 2026
IDAHO INDUSTRIAL COMMISSION**

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission (“Commission”) assigned the above-entitled matter to Referee Paul Jefferies, who conducted a hearing on October 28, 2025. Claimant, Jon Werner, was present and represented by Andrew Adams and Michael Barnes. Defendant, the Industrial Special Indemnity Fund (“ISIF”), was represented by Anthony Valdez. The parties were present at the Commission’s office in Pocatello, Idaho. The Referee appeared remotely from the Commission’s office in Boise, Idaho, and had audio and visual connectivity with the parties. The parties presented oral and documentary evidence. Post-hearing depositions of Jacob Moss, M.D., and Kent Granat were taken. Claimant filed his opening brief on March 31, 2026. ISIF filed its response brief on May 13, 2026. Claimant filed a reply brief on May 26, 2026. The matter came under advisement on May 27, 2026, and is ready for decision.

ISSUES

As clarified at the hearing, the issues to be decided are:¹

1. Whether ISIF is liable under Idaho Code § 72-332

¹ The September 9, 2025 Notice of Hearing listed other noticed issues. However, at the hearing ISIF conceded that Claimant was totally and permanently disabled.

2. Apportionment under the *Carey* formula.

CONTENTIONS OF THE PARTIES

Claimant maintains that on April 9, 2021, he suffered a work accident when he attempted to open a fertilizer bin that had frozen shut. Claimant injured his lower back as a result of this accident. This low back injury combined with his pre-existing impairments of his left shoulder, left triceps, right shoulder, and low back to render him totally and permanently disabled. The record established that apportionment under *Carey* would be 9% due to the last injury (April 9, 2021) and 91% due to ISIF liability. The surety would be responsible for the first \$20,839.50 in benefits. Thus, ISIF would have become liable on February 18, 2022.

At the hearing, ISIF conceded that Claimant is totally and permanently disabled. However, ISIF maintains that Claimant was totally and permanently disabled well before the subject accident, either since his 2009 left shoulder work injury, or at least since his 2016 work injury. In their brief, ISIF further concedes that Claimant had a pre-existing impairment, that it was manifest, and a subjective hindrance to employment. However, ISIF maintains that Claimant did not suffer an additional, compensable injury in the April 9, 2021 accident. Dr. Chen opined that Claimant's low back complaints were apportioned 100% to his chronic, pre-existing back condition. Thus, there is neither a combination of injuries nor a permanent aggravation of Claimant's low back condition to satisfy the final element of ISIF liability.

In his reply brief, Claimant argues that ISIF's brief was untimely and requests that it be stricken. In the event it is not stricken, Claimant responded that he was not totally and permanently disabled prior to April 9, 2021, because he had been gainfully employed as a truck driver in the many years leading up to his final accident of April 9, 2021. The record supports that Claimant suffered a new injury or exacerbated an injury on April 9, 2021. Dr. Chen's opinion that Claimant's

low back complaints were apportioned 100% to his pre-existing back condition is inconsistent with his 2019 report, in which he opined that Claimant sustained no PPI as to the lower back. Furthermore, Chen's opinion is inconsistent with medical records that indicate that Claimant reported 100% relief at the pertinent lumbar levels on October 23, 2019 and that Claimant went to the doctor multiple times without complaining about his spine or back issues in the months and years leading up to his April 9, 2021 injury. Dr. Moss's opinions regarding the April 9, 2021 injury are persuasive and should be accepted. Furthermore, Kent Granat's opinion that the Claimant's April 9, 2021 injury combined with his pre-existing impairments to render him totally and permanently disabled is persuasive and should be accepted.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. Joint Exhibits ("JE") 1 through 85;
3. The testimony of Claimant, taken at the hearing; and
4. The post-hearing depositions of Jacob Moss, MD, and Kent Granat.

As stated above, Claimant objected to ISIF's brief for being untimely and asked that it be struck. On May 4, 2026, the parties had stipulated and agreed to extend the due date of ISIF's brief to May 12, 2026. This Referee granted that extension per the parties' stipulation and agreement. (*See* Order Revising Briefing Schedule, filed 5/5/26.) ISIF subsequently filed its brief on May 13, 2026. ISIF's brief was untimely. ISIF did not provide any explanation for its delay in filing its brief. ISIF did not respond to Claimant's request to strike. Accordingly, Claimant's request to strike ISIF's brief is GRANTED.

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. At the time of the hearing, Claimant was 84 years old and lived in Pocatello, Idaho. Tr. 15:7-11;18:24-19:16.

2. After graduating from high school, Claimant joined the Navy in 1959 and worked as an aircrewman for several years. Tr. 16; Clt. Depo. 10:1-11:11.²

3. Claimant then worked for Lockheed Martin building photo satellites, and then for Memorex developing disk packs. Tr. 16:25-17:10.

4. Claimant went to college in the late 1970s and graduated with a degree in electronics. Tr. 17:11-15; Clt. Depo. 12:4-17. Claimant worked as an engineer for Searle Ultrasound, as an engineer and in sales for a semi-conductor manufacturer in Pennsylvania, and then as a director of marketing and sales for a Japanese-based company called “Itochu” (phonetic). Tr. 17:16-18:23. Claimant also worked for a year or two as a car salesman. Tr. 17:24-18:3.

5. In 2005, when Claimant was 65 years old, he joined the Merchant Marines. Claimant passed the physical to become a Merchant Marine (which is roughly equivalent to the physical requirements to enlist in the U.S. Coast Guard). Claimant worked as a Merchant Marine for a year or so. Tr. 26:8-28:24. Clt. Depo. 51:7-64:15.

6. Shortly after leaving the Merchant Marines, Claimant worked as a truck driver for a number of employers for many years. Claimant drove truck for Wada Farms, Lamb Weston (aka Conagra), and Transystems. Tr. 29:1-17; 33:9-34:15; 41:25-42:19; 68:20-69:4.

² A transcript of Claimant’s November 1, 2023 Deposition is included in the record as JE 85.

7. In the years leading up to the April 9, 2021 accident, Claimant worked for Bingham Co-Op.³ Claimant drove a tender truck, hauling fertilizer pellets out to the spreaders. The work was seasonal, approximately five to six months out of the year. When Claimant worked, his hours varied from 12 to 16 hours a day. Tr. 49:2-51:18.

8. Claimant obtained his commercial driver's license ("CDL") in approximately 2007. Many of the employers that Claimant drove truck for, including Bingham Co-Op, required that he maintain a CDL. Claimant was required to pass Department of Transportation physicals in order to maintain his CDL. At the time of the April 9, 2021 accident, Claimant had an active, valid CDL. Tr. 29:5-12; 70-71; 81-82.

9. **Medical History.** In 1999, Claimant was involved in a motorcycle accident and suffered a significant injury to his right ankle. However, after several years, Claimant recovered and was able to join the Merchant Marines and work as a truck driver. Tr. 19:17-21:14.

10. *Left Shoulder Injury.* In 2009, Claimant injured his left shoulder while working for Lamb Weston. Claimant stepped over a trailer and his pants got caught on a wheel razor and threw him down to the ground, landing on his left shoulder. Tr. 29:13-30:15.

11. As a result of this injury, Claimant underwent an IME with Richard T. Knoebel, M.D., in 2010. JE 12. Dr. Knoebel concluded that Claimant suffered a "left shoulder industrial injury status post rotator cuff repair with residuals." Dr. Knoebel assigned a 5% whole person impairment on an industrial basis and gave permanent restrictions of "no repetitive or forceful work at or above shoulder level with the left arm." JE 12, Bates 001615-001616.

12. As to his left shoulder injury, Claimant described that he still could drive but could not reach up with his left arm. Tr. 32:13-18 (Claimant testified: "I can do most things. I can drive.

³ At various times throughout the record, this employer is also referred to as "CHS." Tr. 72:21-73:18.

I can do stuff. I can't reach up – I can throw my arm up, but I can only reach about that high with the side. These tendons are gone (indicating).”

13. After a period of time, Claimant returned to employment and worked as a truck driver for Transystems and Bingham Co-op.

14. *Left Triceps Injury.* In December 2015, Claimant injured his left triceps while working for Transystems. He was driving a truck and went over a large pothole that was partially covered with mud. The resulting jolt caused his left elbow to hit the side of the door. Tr. 38-39.

15. Anthony Joseph, M.D., diagnosed Claimant with “full-thickness tear of the medial aspect of the left triceps” and opined that it was caused by the work accident. JE 5, Bates 000060.

16. After this injury, Claimant could still drive, but he would protect his left arm and keep it away from the door while he was driving. Tr. 39:21-40:3. Claimant also reported to Dr. Joseph that he felt that he could still drive a 10-wheel truck to pick up produce, etc., but that a larger truck, such as the one he was injured in, would be beyond his capabilities. Dr. Joseph did not assign any permanent work restrictions to Claimant for the left triceps injury if he remained on 10-wheel trucks. JE 5, Bates 000059.

17. Qing-Min Chen, M.D., conducted an IME in May 2019. He opined a 4% upper extremity impairment rating for the left triceps injury. JE 52, Bates 002362.

18. *Right Shoulder Injury.* On January 8, 2016, Claimant was involved in a motor vehicle accident while driving truck for Transystems. Tr. 42-44.

19. Claimant injured his right shoulder in this accident. In a May 2019 IME, Dr. Chen diagnosed a right shoulder full-thickness rotator cuff tear and opined that it was 20% work related. Dr. Chen assigned Claimant a 3% whole person impairment as to the left triceps and right shoulder injury combined. JE 52, Bates 002361, 002363.

20. Claimant did not get surgery on his right shoulder but would get PRP injections from a physician in Mexico. These injections relieved the right shoulder pain and helped him to move his arm and function better. Tr. 48:13-49:1. With this treatment, Claimant was able to continue working for Bingham Co-op.

21. *Low Back Injury.* Claimant also complained of low back pain resulting from the January 2016 accident. Claimant reported to Portneuf Medical Center that he had low back pain on his right side. JE 7, Bates 000328, 000348, 000355. A May 12, 2016 MRI indicated contact of the right L5 nerve root proximal to the right lateral recess at L4-5. JE 7, Bates 000353.

22. In the May 2019 IME, Dr. Chen diagnosed a low back strain and that it was work related. Dr. Chen opined that Claimant sustained no PPI to his lower back. JE 52, Bates 002361, 002363.

23. This low back pain persisted for a period of time after the accident, and although it made it difficult for Claimant to get in and out of trucks, he continued to work for Bingham Co-op. Tr. 44:25-45:7.

24. Starting in December 2017, Claimant sought treatment for his injuries from Nathan Sneddon, M.D., with the Idaho Pain Group. *See* JE 44. Claimant received radio frequency ablation at T12, L1, L2, and L3 levels for his low back pain. On October 23, 2019 – Claimant’s last visit to Idaho Pain Group prior to the April 9, 2021 accident – Dr. Sneddon noted that Claimant reported “ongoing 100% pain relief from his lower back. He is quite pleased with the results of his ablation.” JE 44, Bates 002272.

25. **Subject Accident.** On April 9, 2021, Claimant hurt his back at work while attempting to open a fertilizer bin that had frozen or hardened shut. Tr. 51:10-52:6; Clt. Depo.

91:15-92:4. Claimant has not worked for Bingham Co-op, or any other employer, since this accident.

26. Later that day, April 9, 2021, Claimant reported to Bingham Memorial Hospital complaining of back pain. JE 10, Bates 001046 (the report states that Claimant “was ‘attempting to open a gate bin, and it wouldn’t open.’ Fertilizer that had been in the grain was like cement from the rain last week. Pulled hard and had a shooting pain from his back, left pelvis, down his left leg. Reports pain is severe, making him nauseated”). Claimant also sought treatment for his back pain from Wade Davis, D.C., on April 12, 2026. JE 53, Bates 002380.

27. On April 26, 2021, Claimant returned to Dr. Sneddon due to his back pain. Dr. Sneddon noted that Claimant newly complained of pain in his left low back.

[Claimant] returns for follow-up today. It has been about a year and a half since I last saw him. At the time he was status post radiofrequency ablation at T12, L1, L2 and L3 reporting 100% pain relief. Today states that this pain is starting to return. **However, more importantly states that he has some new onset left low back pain in the musculature and to the left of midline from his scapula down to his iliac crest.** This is a work-related injury and he is going through Workmen’s Comp. He states that he would like to try conservative cares [sic] for treatment of the same specifically a chiropractor. **He does endorse some numbness into the left leg which is new.**

JE 44, Bates 002278 (emphasis added). Dr. Sneddon diagnosed Claimant with lumbar myofascial pain. JE 44, Bates 002282.

28. On April 28, 2021, at request of the surety, Dr. Chen conducted another IME on Claimant. Dr. Chen opined that Claimant experienced a thoracic and lumbar strain that was ongoing and work-related. Dr. Chen believed that Claimant’s left sided motor weakness and radiculopathy was due to chronic, pre-existing conditions and not due to the work injury, but he was not sure until an MRI was completed. Dr. Chen ordered an MRI. Dr. Chen placed Claimant on work restrictions of no lifting over 10 pounds. JE 52, Bates 002375.

29. On June 8, 2021, Dr. Chen reviewed the MRI and stated that it revealed impingement on the left sided nerve roots. JE 52, Bates 002377.

30. Dr. Chen opined that Claimant had reached maximum medical improvement (“MMI”) on June 8, 2021. JE 52, Bates 002377.

31. Dr. Chen further opined that Claimant’s current complaints related to a pre-existing condition and opined that the MRI findings confirmed his beliefs expressed in the April 28, 2021 IME. Dr. Chen concluded:

At this point the claimant’s strains would have resolved. Soft tissue strains and sprains usually last up to 6 weeks before the tissue is healed. The claimant is medically stationary with respect to this claim as of June 8, 2021. He is able to work full duty without restrictions with respect to this claim. Any treatment past this date would be 100% apportioned to the claimant’s pre-existing conditions. If he does require work restrictions, it would again be 100% apportioned to the claimant’s pre-existing conditions.

JE 52, Bates 002377-002378.

32. On January 24, 2022, Jacob Moss, M.D., conducted an IME of Claimant. JE 65. Dr. Moss diagnosed Claimant with thoracic and lumbar strain that was work-related. Dr. Moss also diagnosed Claimant with left sided radiculopathy that was work-related. He also diagnosed Claimant with multilevel thoracic and lumbar degenerative disc disease and vertebral facet arthritis that was pre-existing. Dr. Moss opined that Claimant was at maximum medical improvement. JE 65, Bates 002701.

33. Dr. Moss assigned Claimant with 2% whole person impairment due to the work injury. Dr. Moss opined that “5% of Claimant’s current complaints are accounted for by the work-related incident, with 95% considered to be pre-existing.” JE 65, Bates 002702.

34. Dr. Moss initially placed no work restrictions on Claimant regarding the work injury. JE 65, Bates 002702. However, after reviewing the hearing transcript, Dr. Moss changed

his opinion and concurred with Dr. Chen's 10-pound lifting restriction. Moss Depo. 14:6-17. However, unlike Dr. Chen, Dr. Moss opined that the 10-pound lifting restriction applied to the April 9, 2021 subject accident and injury. Moss Depo. 14:15-17; 21:15-22:3.

35. Dr. Moss described the April 6, 2021 subject accident as the "coup de grace" and "grand finale" that rendered Claimant unable to function afterwards. Dr. Moss explained:

...[W]e can't discredit the fact that he had several major injuries. You know, and he was working, as far as I know, up until this point. You know, and that was something where, after going through the transcript, I mean, it kind of, supported that – you know, that opinion that, "Well, all right. After this, things really changed for him."

And I feel like – if I were to give you a summary, I feel like this was the coup de grace. You know, one last incident, and, you know what, that now is rendering him unable to actually gain – or hold any gainful employment as he had been historically.

...

...[M]y opinion is this is what did it. You know, this was the grand finale for [Claimant]. And after that, he was unable to function – even though it may have been limited, he was unable to function to full capacity, whatever that may have been for him.

Moss Depo. 24:4-17; 24:25-25:5.

36. On August 30, 2025, Kent Granat conducted a vocational evaluation of Claimant. JE 83. Granat had previously conducted a vocational report in 2012 due to Claimant's 2009 left shoulder injury.

37. Granat reviewed all the pertinent records and determined that any efforts for Claimant to find suitable employment would be futile and concluded that Claimant was totally and permanently disabled via the odd-lot doctrine. Granat also concluded it was "the combined work

restrictions from the four industrial injuries (left shoulder, right shoulder and back) that led [Claimant] to being totally and permanently disabled.” JE 83, Bates 002941.⁴

38. In his deposition, Granat further explained his reasoning. First, Granat explained that Claimant’s education and sedentary jobs were so far in the past, they were no longer applicable. Instead, Granat focused his vocational evaluation primarily on Claimant’s work history as a truck driver. Granat Depo. 12:22-15:14. Granat reasoned that Claimant’s work restrictions stemming from his left shoulder and right shoulder injury (which limited his ability to reach, first with his left arm, and then with his right arm), eliminated 91% of the jobs available to Claimant. Granat Depo. 48:5-49:4. Thus, 9% of the jobs were still available to Claimant after the 2016 Transystems accident. Granat explained:

Well, at this point in time, even [Claimant] recognized he couldn’t be a heavy truck driver or a tractor trailer truck driver, but he thought he could become just a specialized truck driver hauling produce. And he was able to explain to his doctors that he thought he could at least do that lighter truck driver job and did so.

Granat Depo. 19:20-20:1.

39. Granat then determined that the 10-pound lifting restriction stemming from the April 9, 2021 subject accident eliminated the remaining jobs available to Claimant. Granat Depo. 25:11-13; 49:9-12. Thus, Granat concluded that the 10-pound lifting restriction combined with the prior restrictions stemming from the left and right shoulder injuries to render Claimant unemployable. Granat explained:

Well, we have a combination of restrictions that, all added together, make him really unemployable. He’s, at this point in time, restricted to sedentary work, unskilled sedentary work. His one sedentary job was so many years ago, it wouldn’t count for vocational rehabilitation people.

⁴ Granat clarified that additional non-industrial injuries and serious medical conditions that began in September of 2021 happened after Claimant’s fourth work injury when he had already become unemployable. JE 83, Bates 002941.

Granat Depo. 22:25-23:6.

40. **Credibility.** Although Claimant had some difficulty remembering various details of his long employment history and medical history, the Referee finds that he testified credibly.

DISCUSSION AND FURTHER FINDINGS

41. 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).

42. **Injury/Accident.** Causation is an issue whenever entitlement to benefits is in 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). No special formula is necessary when medical opinion evidence plainly and unequivocally conveys a doctor's conviction that the events of an industrial accident and injury are causally related. *Jensen v. City of Pocatello*, 135 Idaho 406, 18 P.3d 211 (2000).

43. Upon review of the evidentiary record, Claimant has met his burden to establish that on April 9, 2021, he suffered an injury caused by an accident arising out of and in the course of his employment.

44. Dr. Chen diagnosed Claimant with a thoracic and lumbar strain that was work-

related to the April 9, 2021 accident. Dr. Chen placed Claimant on a 10-pound lifting restriction and ordered an MRI.

45. The MRI revealed impingement on the left-sided nerve roots, which was a new finding from his prior MRI.

46. After reviewing this MRI, Dr. Chen opined that Claimant had reached maximum medical improvement (“MMI”) as of June 8, 2021. This date of maximum medical improvement is supported by the record and is accepted.

47. After reviewing the MRI, Dr. Chen also confirmed that it was his opinion that the strain had resolved and that any further treatment and work restrictions would be 100% apportioned to Claimant’s pre-existing conditions.

48. This opinion is inconsistent with Dr. Chen’s opinion from his 2019 IME, in which he opined that Claimant had a low back strain that was work-related to the January 2016 accident with no PPI sustained. Dr. Chen also failed to explain his opinion in light of the medical records indicating that Claimant reported 100% relief from his back pain in 2019. Claimant visited physicians multiple times between 2019 and the April 9, 2021 subject accident without complaining of low back pain. It was only after the April 9, 2021 subject accident that Claimant began to again complain of low back pain. Furthermore, Claimant’s complaints of low back pain after the April 9, 2021 accident were primarily on the left side. The 2021 MRI revealed impingement on the left side. Claimant’s back pain complaints after the January 2016 accident were primarily on his right side. The 2016 MRI indicated contact on the right side nerve roots. For these reasons, Dr. Chen’s ultimate opinion that Claimant’s low back condition is 100% apportioned to Claimant’s pre-existing conditions is not persuasive.

49. Dr. Moss diagnosed Claimant with a thoracic and lumbar strain, work-related, and

left-sided radiculopathy, exacerbated by the work-related April 9, 2021 accident. Dr. Moss assigned Claimant a 2% whole person impairment and apportioned 5% of his current complaints to the April 9, 2021 work accident, and 95% to pre-existing conditions. Dr. Moss also opined that Claimant was at maximum medical improvement. In his deposition, Dr. Moss thoroughly and persuasively explained his reasoning for the diagnosis and apportionment. Dr. Moss also persuasively explained why he ultimately arrived at the opinion that the 10-pound lifting restriction was appropriate and that it applied to the April 9, 2021 accident.

50. Dr. Moss's opinions are accepted. Claimant suffered a work-related accident on April 9, 2021 that caused either a new injury to his lower back and/or aggravated a pre-existing back condition that had been asymptomatic for a substantial period of time.

51. **Total Permanent Disability.** A prerequisite to a finding of ISIF liability is a finding that Claimant is totally and permanently disabled. *Wernecke v. St. Maries Joint School Dist. No. 401*, 147 Idaho 277, 284, 207 P.3d 1008, 1015 (2009). There are two methods by which a claimant can demonstrate that he or she is totally and permanently disabled. First, if his or her medical impairment together with the relevant nonmedical factors totals 100% disability. Second, a claimant may demonstrate total and permanent disability if he or she fits within the definition of an odd-lot worker. *Boley v. State of Idaho, Industrial Special Indemnity Fund*, 130 Idaho 278, 281, 939 P.2d 854, 857 (1997). 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).

52. Claimant argues that he is totally and permanently disabled via the odd-lot doctrine. See JE 83, Bates 002941. At the hearing, ISIF conceded that Claimant is totally and permanently

disabled. Tr. 12:6-17. Accordingly, Claimant has proved that he is totally and permanently disabled via the odd-lot doctrine.

53. **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.

54. In *Aguilar v. Industrial Special Indemnity Fund*, 164 Idaho 893, 436 P.3d 1242 (2019), the Idaho Supreme Court summarized the four elements that must all be satisfied to establish ISIF liability under Idaho Code § 72-332. These are: 1) whether there was a pre-existing impairment; 2) whether that impairment was manifest; 3) whether the impairment was a subjective hindrance to employment; and 4) whether the impairment in any way combined with the subsequent injury or was aggravated and accelerated by the subsequent injury to cause total disability. *Aguilar*, 164 Idaho at 901, 436 P.3d at 1250.

55. Upon review of the evidentiary record, the Referee concludes that Claimant has met his burden by a preponderance of the evidence to demonstrate that his left shoulder, left triceps, right shoulder, and low back injuries were pre-existing impairments; that these impairments were manifest; and that these impairments were subjective hindrances to employment.

56. The remaining question is whether these impairments in any way combined with the April 9, 2021 injury or were aggravated and accelerated by the April 9, 2021 injury to cause total disability. In other words, has Claimant shown that “but for” these pre-existing impairments,

he would not be totally and permanently disabled?

57. Granat's opinion that Claimant's pre-existing impairments did combine with his April 9, 2021 injury to render Claimant totally and permanently disabled is persuasive and accepted. Granat concluded that Claimant's left shoulder, left triceps, and right shoulder impairments severely restricted Claimant's ability to reach with both arms. Although Granat acknowledged that it would be reasonable to conclude a worker would be totally and permanently disabled at that point, Granat opined that there were still jobs available to Claimant within his abilities. Indeed, Claimant continued to work despite his shoulder/triceps impairments for Bingham Co-op as a truck driver for several years leading up to the April 9, 2021 accident.

58. The 10-pound lifting restriction stemming from the April 9, 2021 low back injury took away the remaining jobs available to Claimant, rendering him totally and permanently disabled. There is nothing in this record to suggest or indicate that Claimant was rendered totally and permanently disabled by the April 9, 2021 accident alone. Instead, Claimant has proven that his pre-existing impairments combined with and/or were aggravated and accelerated by the April 9, 2021 injury to cause total and permanent disability.

59. ISIF's argument that Claimant was totally and permanently disabled prior to the April 9, 2021 subject accident (either by the January 2016 accident or at some earlier time) is not persuasive. Although it was seasonal work, Claimant worked for Bingham Co-op as a tender truck driver approximately 5-6 months, with 12 hour days, each year for the several years leading up to the April 9, 2021 accident. There is insufficient evidence on this record to indicate that Bingham Co-op made accommodations to employ Claimant. ISIF has not established that Claimant's employment for Bingham Co-op was due to a business boom, sympathetic employer or friends, temporary good luck, or a superhuman effort on Claimant's part.

60. Claimant has proven that he is totally and permanently disabled under the odd-lot doctrine as a result of the combination of his pre-existing impairments and his industrial April 9, 2021 low back injury.

61. Accordingly, Claimant has proven that ISIF is liable under Idaho Code § 72-332.

62. **Carey Apportionment.** Because Claimant has met his obligation under Idaho Code § 72-332, Claimant's employer and its surety is liable for payment of compensation benefits 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. To calculate the respective compensation allocations, a formula known as the *Carey* formula is used. This formula derives from the case of *Carey v. Clearwater County Road Department*, 107 Idaho 109, 686 P.2d 54 (1984).

63. The *Carey* formula prorates the non-medical portion of disability between the employer/surety and ISIF in proportion to their respective percentages of responsibility for the physical impairment. In summary, the formula works by adding the impairment ratings from a claimant's past ratable impairments and the claimant's impairment ratings from the subject accident, and then subtracting that number from 100 (total disability) to determine the claimant's non-medical disability. Then, the ratio between past and subject impairments is used to determine respective percentages of responsibility between the employer and ISIF. As such, it is imperative that the claimant's past impairments be quantified.

64. Claimant was assigned impairment ratings for the following pre-existing impairments that constituted subjective hinderances to Claimant's employment: 1) Dr. Knoebel assigned Claimant a 5% whole person impairment rating for his left shoulder; 2) Dr. Chen assigned Claimant a 3% whole person impairment rating for the left triceps and right shoulder injuries combined. Claimant's qualifying preexisting physical impairments when combined equal 8%.

65. Claimant's impairment rating for the subject industrial accident was rated at 2% by Dr. Moss.

66. Claimant's impairments for *Carey* apportionment total 10% (8% pre-existing + 2% subject industrial accident) of the whole person, leaving an additional 90% disability (100 – 10) to be apportioned between ISIF and employer, Bingham Co-op, per the *Carey* formula. Claimant's industrial impairment constitutes 20% (2/10) and his qualifying preexisting impairments constitute 80% (8/10) of his total impairment.

67. Employer, Bingham Co-op, is responsible for payment of 100 weeks of disability (500 weeks, the limit of partial disability x 20% industrial partial impairment) from June 8, 2021, the date of Claimant's medical stability. The 20% disability rating is payable at 55% of the average state weekly wage for the year of Claimant's injury. Employer, Bingham Co-op, previously settled with Claimant, so its obligation is accounted for in the settlement.

68. Total and permanent disability benefits are payable at a different rate under Idaho Code § 72-408. Thus, for the first 100 weeks following Claimant's date of medical stability, ISIF is responsible for making up any difference between the employer's obligation to pay permanent disability benefits and Claimant's entitlement to benefits as calculated pursuant to Idaho Code § 72-408. Thereafter, ISIF is responsible for the payment of total and permanent disability benefits for the remainder of Claimant's life.

CONCLUSIONS OF LAW

1. Claimant has proven he is totally and permanently disabled under the odd-lot doctrine.
2. Claimant has proven that ISIF is liable under Idaho Code § 72-332 for a share of Claimant's total and permanent disability benefits pursuant to the *Carey* formula.
3. Commencing June 8, 2021, for a period of 100 weeks, ISIF shall pay the difference

between the periodic payments that would have been owed by the employer/surety, had they not settled, and the amounts payable pursuant to Idaho Code § 72-408. Thereafter, ISIF shall pay benefits to Claimant pursuant to Idaho Code § 72-408 for the remainder of Claimant's life.

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 5th day of August, 2026.

INDUSTRIAL COMMISSION


Paul Jefferies, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of August, 2026, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail and Electronic Mail upon each of the following:

ANDREW ADAMS
520 PARK AVENUE
IDAHO FALLS, ID 83402
wcservice@curtisandporter.com

ANTHONY VALDEZ
2217 ADDISON AVENUE EAST
TWIN FALLS, ID 83301
valdezlaw.frontdesk@gmail.com



Mary McMenomey

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JON WERNER,

Claimant,

v.

STATE OF IDAHO, INDUSTRIAL
SPECIAL INDEMNITY FUND,

Defendant.

IC 2021-009789

ORDER

**FILED AUGUST 13, 2026
IDAHO INDUSTRIAL COMMISSION**

Pursuant to Idaho Code § 72-717, Referee Jefferies submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusions of law, to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations 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 has proven he is totally and permanently disabled under the odd-lot doctrine.
2. Claimant has proven that ISIF is liable under Idaho Code § 72-332 for a share of Claimant's total and permanent disability benefits pursuant to the *Carey* formula.
3. Commencing June 8, 2021, for a period of 100 weeks, ISIF shall pay the difference between the periodic payments that would have been owed by the employer/surety, had they not settled, and the amounts payable pursuant to Idaho Code § 72-408. Thereafter, ISIF shall pay benefits to Claimant pursuant to Idaho Code § 72-408 for the remainder of Claimant's life.

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

DATED this 13 day of August, 2026.



INDUSTRIAL COMMISSION

Claire Sharp

Claire Sharp, Chair

Aaron White

Aaron White, Commissioner

ATTEST:

Mary McMenomey

Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of August, 2026, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail and Electronic Mail upon each of the following:

ANDREW ADAMS
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Mary McMenomey