

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARIA E. RANGEL,

Claimant,

v.

SORRENTO LACTALIS, INC.,

Employer,

and

TRAVELERS PROPERTY & CASUALTY
CO. OF AMERICA,

Surety,

Defendants.

**IC 2015-005565
2016-031069**

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

Issued 8/29/18

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Brian Harper, who conducted a hearing in Boise, Idaho, on December 5, 2017. John Greenfield and Gardner Skinner, Jr., of Boise represented Claimant. W. Scott Wigle of Boise represented Defendants. The parties produced oral and documentary evidence at hearing and submitted post-hearing briefs. One post-hearing deposition was taken. The matter came under advisement on May 25, 2018.

ISSUES

At hearing, the parties agreed to the following issues for adjudication:

1. Whether and to what extent Claimant is entitled to the following benefits:
 - a. Medical care, including mileage and the application of the *Neel* Doctrine;
 - b. Temporary disability benefits, partial or total (TPD or TTD);
 - c. Permanent Partial Impairment (PPI);

- d. Permanent Partial Disability in excess of impairment;
- e. Attorney Fees;¹ and

2. Whether apportionment for a pre-existing condition pursuant to Idaho Code § 72-406 is appropriate.

In her opening brief, Claimant listed the issues for resolution as including “[w]hether Claimant’s right shoulder problem (snapping scapula syndrome) was caused by one or both of her workplace accidents at Sorrento Lactalis” in addition to the above-listed issues. She also excluded the issue of Idaho Code § 72-406 applicability.

Neither party argued for or against the application of Idaho Code § 72-406 apportionment, and thus that issue is waived. The briefing in this matter supports the presentation of issues as set out in Claimant’s first brief, to include causation, but not apportionment.

CONTENTIONS OF THE PARTIES

Claimant worked for Employer for a number of years. In September 2013, and May 2014, she injured her right shoulder in work-related accidents. After Defendants closed her claim, Claimant came under the care of Dr. Joseph Lynch, who diagnosed her ongoing right shoulder issue as snapping scapula syndrome. A subsequent operation to address this problem improved Claimant’s condition. Dr. Blair opined that Claimant’s right snapping scapula was caused by her 2014 work accident.

Claimant suffered temporary disability during her period of recovery, and permanent partial impairment and disability from her work injuries. Additionally, she is entitled to medical benefits paid at the invoiced amount per *Neel* for those charges Defendants refused to pay.

¹ At hearing, Claimant’s counsel indicated Claimant would most likely not pursue attorney fees, and she did not in briefing. The issue of attorney fees is waived.

Defendants argue that Claimant was paid all benefits to which she was entitled from her two accepted work accidents. Claimant's surgery corrected a pre-existing anatomical variant, and was in no way related to her work accidents with Employer.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant, Barbara Nelson, and Anne Mejicano taken at hearing;
2. Claimant's exhibits (CE) A through P admitted at hearing, and Q and R, submitted without objection post-hearing;
3. Defendants' exhibits (DE) 1 through 14 admitted at hearing; and
4. The post-hearing deposition transcript of Roman Schwartsman, M.D., taken on January 26, 2017.

No objections were preserved through the deposition.

FINDINGS OF FACT

BACKGROUND AND SUBJECT WORK ACCIDENTS

1. Claimant came to the United States from Mexico in 1991 at the age of seventeen. She worked her first few years in this country in agriculture, picking and packing various crops. She was next employed in a factory assembling brakes. Claimant was hired by Employer in 2002, where she worked until November 2016. Claimant became a U.S. citizen in 2012.

2013 Accident

2. While working as a palletizer, (taking boxes of product off a moving conveyor belt and stacking them on pallets), Claimant, on September 5, 2013, felt pain in her

right shoulder.² She reported the pain immediately, and saw Anne Mejicano, the company nurse, the following day. Claimant was provided with a heat wrap and Ibuprofen. Claimant was shown how to prepare a written report, which she did. Claimant was placed on light duty.

3. The nurse's notes indicated Claimant's symptoms persisted for a time, but by September 17, 2013, Claimant was "much improved" and could return to unrestricted duty on September 25. DE 12, p. 269.

4. Claimant testified that she continued to have some shoulder pain after returning to full duty work as a palletizer, but did not seek additional medical care other than taking OTC pain medicine. Claimant was able to perform her regular duties.

5. There is no evidence the September 2013 accident led or contributed to any of the claims currently on the table.

2014 Accident

6. On May 21, 2014, Claimant was lifting a pallet weighing a bit less than fifty pounds when she felt a "very strong" pain in her right shoulder. Tr. p. 51. She told her supervisor, and filled out a report in which she indicated the accident hurt her right shoulder, neck, and back.

7. Claimant saw Ms. Mejicano the following day. The nurse palpated a knot in the musculature between Claimant's right scapula and her spine. Claimant was given a warm patch for the area and restricted from doing palletizing.

² The nurse's note from the initial injury contact listed Claimant's left shoulder as the one injured. Claimant's report did not list a particular shoulder (left or right). The nurse's entry from September 16, 2013 stated Claimant was having pain in "her upper back and shoulders". DE 12, p. 268. Whether Claimant hurt her right shoulder, her left shoulder, or both shoulders in the 2013 accident is not pivotal to the decision herein.

8. By May 27, 2014, Ms. Mejicano could still feel the knot in Claimant's upper back, but it was getting smaller with time. Claimant still had pain in her right upper back, neck, and right shoulder area. Claimant reported that certain movements of her right shoulder caused a noise, and demonstrated the movement for the nurse, who heard the popping sound, but in Claimant's left shoulder area. Ms. Mejicano was unable to elicit the sound again after having Claimant relax. Claimant reluctantly agreed to return to her normal work duties with OTC pain medicine and a hot patch.

9. The next day, May 28, Ms. Mejicano checked with Claimant. At that time Claimant was using a brace on her right wrist for additional support. Claimant still had pain radiating up her right neck muscles, but was able to do her job "ok". DE 13, p. 277. Ms. Mejicano instructed Claimant to contact her if the injury did not resolve.

10. Claimant next returned to Ms. Mejicano on February 24, 2015, complaining of increased right shoulder pain. The nurse noted crepitus (a new finding) at the medial border of Claimant's right scapula with slight movement, which Claimant reported was worsening.

11. Claimant indicated she had seen a temporary substitute "nurse" (the substitute was not really a nurse, but an employee with first aid training) for shoulder complaints the past summer while Ms. Mejicano was on vacation, but did not follow up with the company nurse when she returned.

12. Ms. Mejicano recommended Ibuprofen every six hours, and Tylenol as needed for pain. Additionally, Claimant was scheduled to see a doctor without delay, as the nurse felt Claimant's crepitus was "very remarkable" and "far beyond" what she had heard back in May. In fact, she felt Claimant's crepitus was "alarming." Tr. p. 167.

POST-INJURY MEDICAL TREATMENT

13. Claimant first saw Cody Heiner, M.D., at St. Luke's Occupational Health in Meridian on February 26, 2015. Claimant's history included the fact that she related the onset of pain in her right shoulder to the industrial accident in 2014, while lifting a "heavy box". Her pain had "waxed and waned" since, but never completely resolved. Dr. Heiner noted Claimant reported she had episodes of similar pain bilaterally off and on since 2012, without any medical treatment to that time. DE 1, p. 1.

14. Claimant's right periscapular pain was made worse by pushing and lifting, and included some muscular neck pain, but no radicular arm symptoms. Claimant had similar symptoms with her left shoulder, although to a lesser degree.

15. Examination showed no swelling, erythema, deformity, atrophy, or hypertrophy, with a full range of motion and normal rotator cuff strength in all planes. Claimant showed diffuse periscapular muscle tenderness bilaterally on palpation, right greater than left.

16. Claimant told Dr. Heiner, and testified at hearing, that she wanted to see a doctor for over a year prior to her initial visit, but was told by Employer it would be too expensive for the company. Dr. Heiner noted that "[u]nfortunately, we are now dealing with a chronic condition, bilateral, recently more pronounced on the right." DE 1, p. 2. He felt Claimant's condition was likely myofascial, but could not rule out radiculopathy without cervical x-rays, which subsequently were read as normal. Right shoulder films were also normal.

17. Dr. Heiner prescribed daily aerobic exercise, such as walking, ice/heat as directed, and formal physical therapy. He imposed work restrictions of no lifting over 10 pounds.

18. At Claimant's next visit with Dr. Heiner, he diagnosed Claimant with scapulothoracic syndrome (also known as "snapping scapula syndrome", as discussed

in greater detail hereinafter), and chronic periscapular pain. He continued his course of treatment unchanged.

19. On March 30, 2015, Claimant met with Dr. Heiner for the last time. She still had “lots of popping” followed by aching, in her right periscapular area, which was aggravated by pushing and lifting. Her neck felt fine. Claimant also had similar, but less severe, symptoms in her left shoulder area. While physical therapy had been helpful to a degree, Dr. Heiner referred Claimant to Kyle Palmer, M.D., an orthopedist.

20. Claimant saw Dr. Palmer on April 6, 2015. He felt her pain was myofascial in nature and prescribed a prednisone taper followed by Mobic anti-inflammatory medication. He restricted her work activity to light duty and continued her physical therapy. Dr. Palmer contemplated a trigger point injection if Claimant did not improve by the time of his next exam.

21. On her April 20 visit Claimant was still complaining of pain in the right shoulder area, but not her shoulder itself. Dr. Palmer decided Claimant should see a rehabilitation specialist. He also kept her with work restrictions.

22. Claimant next saw rehabilitation physician Michael Sant, M.D., of Idaho Physical Medicine and Rehabilitation, in Caldwell on May 26, 2015. She reported continuing right scapula pain (described as a deep ache) which radiated into her right neck and shoulder. Claimant also complained of her right arm going numb at night. Dr. Sant suspected “a myofascial problem” and felt a cervical spine MRI was indicated. He also added a muscle relaxer medication to her ongoing pain and anti-inflammatory medication prescriptions.

23. Other than a medically-insignificant annular bulge at C5-6, Claimant’s MRI was normal.

24. Dr. Sant's follow up notes (as well as his ordered MRI) appear to focus on Claimant's neck as the source of her problems, even though Claimant "continues to have pain between her shoulder blades". DE 4, p. 61. Dr. Sant assured Claimant that her neck was not the source of her complaints, and set up an EMG to study her complaints of right arm numbness.

25. The EMG was normal. Dr. Sant changed Claimant's pain medication and set up a chiropractic evaluation for treatment. In subsequent office notes Dr. Sant indicated the chiropractic treatment was beneficial for Claimant's right shoulder, but her mid back still was painful.³ Also, the line work she was doing at her job continued to bother Claimant's right posterior shoulder area.

26. On October 6, 2015, Dr. Sant administered a trigger point injection into Claimant's right levator scapula area; it provided little relief. Dr. Sant had no further treatment suggestions, as he was unable to "make a connection between her subjective complaints and the clinical findings". DE 4, p. 82. Dr. Sant released Claimant without any permanent restrictions or impairment on October 23, 2015.

27. Once Dr. Sant released Claimant to full duty without restrictions, she was returned to her regular job as a palletizer. Soon thereafter Claimant complained to Ms. Mejicano of increasing pain in her right shoulder radiating on several occasions into her right hand. She was provided with a warm patch on February 5, 2016 after telling the nurse that her pain had never gone away, and the fast-paced palletizer work made her shoulder hurt worse, as did heavy lifting.

³ The chiropractor, Robin King, D.C., diagnosed Claimant with a lower cervical and upper thoracic sprain and strain, as well as a right trapezius strain, and treated her for such.

28. On May 26, 2016, Claimant again saw Ms. Mejicano, complaining of pain in both shoulders radiating into her hands, and weakness with gripping. Ms. Mejicano noted Claimant did not have a new injury, just worsening of the same pain she had previously. Claimant was provided with a temporary lifting restriction of 20 pounds, with no bending, twisting, or stooping. Ms. Mejicano also contacted Surety to see if the claim might be re-opened. Surety suggested Claimant see her own physician and it would review the medical records from that visit to see if further treatment under her claim was warranted.

29. Claimant had a bit of trouble finding an orthopedist, and her counsel recommended she see James Bates, M.D. Her first appointment with him occurred on July 18, 2016.

30. Dr. Bates diagnosed Claimant with myofascial pain syndrome, along with bilateral hand pain, stiffness in her right shoulder, and thoracic spine pain. He prescribed physical therapy and a muscle relaxant. He imposed a temporary 20 pound lifting restriction. Subsequently, Dr. Bates administered steroid injections in Claimant's right levator scapulae area and thoracic spinous process at T3-4, which helped somewhat, as did physical therapy.

31. In November 2016 Dr. Bates ordered an MRI of Claimant's right scapular region; the results were read as "[n]ormal appearance of the right scapula". DE 8, p. 122. After the MRI Dr. Bates determined the study did not uncover findings which would account for Claimant's complaints and restricted movement in her right scapular region. He suggested continuing rehabilitation efforts, but was skeptical that Claimant would regain additional function. He therefore made permanent his previous temporary restrictions as set out above.

32. The permanent restrictions cost Claimant her job with Employer in mid-November 2016. She has not worked since.

33. In early 2017 Dr. Bates referred Claimant to Joseph Lynch, M.D., an orthopedic surgeon at the Shoulder Clinic in Boise, to “make sure that there is no further treatment that is appropriate for [Claimant’s] condition” before declaring her medically stable. DE 6, p. 112.

34. Claimant first saw Dr. Lynch on February 22, 2017. He recorded her history as involving two industrial accidents involving Claimant’s right shoulder with subsequent treatment which provided no relief. Dr. Lynch noted Claimant’s then-current shoulder symptoms “started gradually” and her pain was “moderate”. DE 8, p. 123.

35. In his examination Dr. Lynch found crepitus and tenderness over Claimant’s right and left scapulae. Claimant’s right shoulder movement was limited. Dr. Lynch also read Claimant’s previous MRI study involving her right scapula from November 2016. He noted that while the radiologist interpreted the study as normal, Dr. Lynch felt there “does appear to be some subtle hyper intensity seen about the superior medial boarder [sic] of the scapula”. DE 8 p. 125.

36. Dr. Lynch diagnosed bilateral snapping scapula syndrome. Upon the request of her attorney, who accompanied Claimant to the examination, Dr. Lynch assigned permanent impairment ratings for Claimant’s shoulders. Based on her loss of range of motion, Dr. Lynch assigned Claimant a 17% upper extremity impairment rating for her right shoulder, and a 6% impairment for her left shoulder. Dr. Lynch did not opine on causation.

37. Dr. Lynch discussed treatment options with Claimant. The first option was to modify her activities and monitor her condition. Other options included medication use, injections, and surgery. Claimant made no decision on further treatment at that visit.

38. Surety was provided a copy of Dr. Lynch’s office notes, which triggered an IME with Roman Schwartsman, M.D., a Boise orthopedic surgeon. This examination took place

on March 21, 2017. Subsequently, Dr. Schwartzman prepared a written report. Post hearing he was deposed, as discussed hereinafter.

39. Dr. Schwartzman prepared a chronology of Claimant's medical and work history from the time of her first industrial accident. He made note of the fact the MRI showed "no evidence of inflammation, edema, elastoma, bursal formations or anatomic irregularities to explain the [Claimant's] findings [sic; complaints]". DE 7, p. 118. He also pointed out that neither Dr. Lynch nor any other physician to date had specifically linked Claimant's complaints to her industrial accidents; rather it appeared from the record the providers simply inferred a correlation based on Claimant's subjective complaints.

40. In his examination summary Dr. Schwartzman indicated that Claimant put forth a markedly poor effort on testing involving her right upper extremity, with exaggerated pain responses and symptom magnification. She did co-operate with all other aspects of the examination. Claimant's behavior limited the doctor's ability to fully test Claimant's affected limb. In spite of that, Dr. Schwartzman was able to elicit crepitus in Claimant's shoulders bilaterally, and diagnosed symmetrical bilateral snapping scapula syndrome, consistent with Dr. Lynch's diagnosis (and Dr. Heiner's diagnosis from 2015).

41. Dr. Schwartzman then discussed causation. He opined that there was no objective evidence of a causal link between Claimant's snapping scapula syndrome and her employment. Instead, after reviewing "available literature on the subject", to wit, the AMA Guide to the Evaluation of Disease and Injury Causation, Dr. Schwartzman concluded there was no causal relationship between "specific employment and scapulothoracic syndrome/snapping scapula". Instead, he stated the known causes are limited to "anatomic variants". DE 7, p. 120. Finally, Dr. Schwartzman advised against surgery regardless of causation.

42. Subsequently, in response to Surety's direct question, Dr. Schwartzman again reiterated that no causal relationship existed between Claimant's employment and her shoulder condition. Again he supported his opinion with the AMA Guide referenced above, and his examination findings. He concluded by stating flatly that "[t]his is a nonindustrial condition". DE 7, p. 121.

43. By early April 2017 Claimant returned to Dr. Lynch, having resolved to move forward with surgery. Surgery took place approximately a week later. The surgery consisted of an excision/partial scapulectomy (shaving the bone) of Claimant's right superior medial scapula border and open bursectomy (excision of a bursa on the undersurface of her right scapula). The surgery eliminated Claimant's right scapula crepitus, and reduced but did not eliminate, her right shoulder pain. It also improved Claimant's functionality with her right arm. Claimant's left shoulder still "snaps" (crepitus) but it is not painful.

DISCUSSION AND FURTHER FINDINGS

CAUSATION

44. As noted by the parties, causation is the primary issue for resolution in this case. There is no dispute that Claimant suffered two industrial accidents. Furthermore, there is no dispute that Claimant was found to have bilateral snapping scapula syndrome, right side worse than left. There is no dispute that Claimant's right-sided snapping scapula syndrome treatment culminated in surgery, which proved beneficial. The issue is whether one or more of those accidents caused her right-sided snapping scapula syndrome.

45. Claimant carries the burden of proving that the condition for which she seeks compensation is causally related to an industrial accident. *Duncan v. Navajo Trucking*, 134 Idaho 202, 998 P.2d 1115, (2000). The proof required is a reasonable degree of

medical probability that Claimant's snapping scapula syndrome was caused by an industrial accident. *See, e.g., Anderson v. Harper's Inc.*, 143 Idaho 193, 141 P.3d 1062 (2006). To prove that a causal relationship is medically probable requires Claimant to demonstrate that there is more medical evidence for the proposition than against it. *Jensen v. City of Pocatello*, 135 Idaho 406, 18 P.3d 211 (2000). In determining causation, it is the role of the Commission to determine the weight and credibility of testimony and to resolve conflicting interpretations of testimony.

Claimant's Position

46. Claimant asserts she has met her burden of proving the industrial accident of May 21, 2014 caused her subsequent snapping scapula syndrome and resultant medical care, including surgery, through a combination of testimony, medical records, and the opinion of Dr. Bates.

47. Points raised by Claimant include the fact she had no prior history of shoulder problems before her accident of September 5, 2013, and after her May 21, 2014 accident her problems became persistent and worsened over time, culminating in surgery in April 2017. After the second accident, the company nurse observed a knot adjacent to Claimant's right scapula, and heard a popping noise when Claimant moved her right shoulder.⁴ By February 2015, Claimant's condition, and noise in her right shoulder had become "frightening", "very remarkable", and "alarming", in the words of the company nurse.

48. On November 20, 2017, Dr. Bates prepared a report in which he causally linked Claimant's May 21, 2014 accident to her snapping scapula syndrome. He felt Claimant suffered

⁴ In fairness, nurse Mejicano testified that the noise she heard shortly after the 2014 accident came from Claimant's left shoulder area and was not reproducible when Claimant relaxed. She further testified that the initial sound she heard was much different than the snapping scapula noise present in February 2015 when Claimant next presented.

a myofascial soft tissue injury in the accident, which progressed into snapping scapula syndrome. In Dr. Bates' opinion, the 2014 work accident caused her syndrome, as opposed to permanently aggravating a pre-existing condition. He further noted Claimant's surgery was reasonable and necessary, and significantly improved her function. His report will be analyzed in greater detail below.

Defendant's Position

49. Defendants argue they are not responsible for Claimant's medical care after she was released to full duty work by Dr. Sant. In support of their position, Defendants assert that Claimant had problems with both shoulders caused by a "developmental anomaly that predisposed her to development of problems with her shoulder blades, which would on occasion manifest itself as a grating or snapping of the shoulder blades – hence "snapping scapula syndrome".⁵ D's Brief, p. 14. They rely on the opinions of Dr. Schwartzman to support their proposition. Those opinions will be examined in greater detail below.

50. Defendants also point out that no physician other than Dr. Bates, from the several who treated Claimant, opined that Claimant's right-sided snapping scapula was causally related to an industrial accident.⁶ Furthermore, while Dr. Bates opined Claimant's condition was

⁵ Throughout their brief Defendants dangle the fact that Claimant's injuries happened during a time when she was complaining to her supervisors that the new machines ran too fast for a single palletizer to keep up with and she needed additional assistance or she might end up getting hurt. Defendants are perhaps trying to imply that maybe Claimant's injuries were somehow a "self fulfilling prophecy", even though they acknowledge Claimant's snapping scapula was a real condition. In any event, the Referee finds no significance to the timing of the accident except to ponder whether the faster running machines may in fact have contributed to Claimant's snapping scapula syndrome by increasing the repetitive movements and amount of weight she lifted over the course of a day, as argued by Claimant in her closing brief.

⁶ In fairness, most other physicians did not even diagnose snapping scapula syndrome, so it is a bit disingenuous to point out that they did not causally relate the condition to Claimant's work accidents. However, it is true, and significant that Dr. Lynch, who operated on Claimant to correct the condition, did not opine on causation, at least in the record before the Commission.

caused by her 2014 work accident, he offers no explanation for the fact she suffers this condition bilaterally.

51. Finally, Defendants acknowledge that the medical evidence “can be interpreted as consistent with the notion that Claimant’s work as a palletizer had a tendency to aggravate the physical anomaly in her shoulders by causing irritation to the soft tissues in the area: *i.e.*, the myofascial pain described by nearly all of her physicians”, D’s Brief, p. 17, but the claim that the May 2014 accident actually caused the snapping scapula has not been proven. Claimant has no medical opinion that supports this “aggravation” theory.

Causation Analysis

52. Dr. Bates’ opinion on causation does not consider the proposition that Claimant suffered from an underlying condition which was caused or aggravated by her repetitious and strenuous activities with Employer over a course of many years. Instead, he insists Claimant’s right-sided snapping scapula syndrome was the result of a traumatic soft tissue injury which “progressed” into snapping scapula. Although he declined to speculate as to whether Claimant would at some point in the future have needed the scapular surgery even without the 2014 accident, his opinion can be read to support the proposition that, but for the industrial accident of May 21, 2014, Claimant would not have developed right-sided snapping scapula syndrome at the time she did.

53. Dr. Bates did not explain how the soft tissue injury progressed into snapping scapula syndrome. Unfortunately he was not deposed, and thus had no opportunity to elaborate on how a soft tissue injury “progressed” to snapping scapula syndrome, and to back up his assertions with medical evidence. His opinion that it did without further explanation carries little weight.

54. Even Claimant seemed to distance herself from Dr. Bates' opinion in her closing brief. Therein she argued that the most likely scenario for Claimant's thickening of her scapula border occurred when the muscles attached to the edge of the scapula were repetitively pulled or exerted over a span of years, causing the scapula edge to thicken in response.⁷ Claimant argues that her work activity of repetitively lifting cheese product (up to several tons a day) at, and over, her head height most likely caused a thickening of her scapulae borders and bi-lateral snapping scapula syndrome. C's Closing Brief, pp. 8-9.

55. Claimant argues that while her scapulae borders were thickened by her forceful, repetitive overhead lifting at work, her right-sided snapping scapula was worse than the left due to her soft tissue injury in 2014. It is not clear that theory comports with Dr. Bates' opinion, which was certainly not articulated in such terms. Such a theory seems to equate to a permanent aggravation of Claimant's underlying condition, *i.e.* her thickened scapular borders due to repetitive work activities. In any event there is no explanation as to *how* the soft tissue injury would have created (or even permanently aggravated) Claimant's right-sided snapping scapula syndrome.

56. Claimant did not argue for benefits under a theory of occupational disease, but her argument seems to implicate a disease process (thickening of the scapula edge until it catches, and causes pain) caused by her repetitive duties with Employer. Such a scenario seems from the record to be, as admitted by Defendants, consistent with Claimant's duties as a palletizer. But for Claimant to prevail on her claims in this suit, she must prove that her right-sided snapping scapula was not the end result of years of repetitive lifting, but rather the end result of a soft tissue injury which occurred when she lifted a heavy pallet in May 2014.

⁷ Dr. Schwartzman testified to this sequence of events in explaining Claimant's scapular thickening.

However, to date no physician has told Claimant her bi-lateral snapping scapula syndrome is due to her repetitive work activities, if in fact such is the case. Claimant would bear the burden of proof on this proposition.

57. Dr. Schwartzman's report and deposition testimony refute Claimant's theory. While he acknowledged that Claimant had bilateral and symmetrical snapping scapulae, he adamantly denied Claimant's condition was the result of lifting a pallet in 2014. Dr. Schwartzman listed the causes of snapping scapula syndrome to include atrophy of the subscapularis muscle, tumors between the ribcage and the shoulder blade, inflammation of the underlying bursa, malunited rib fractures, and most commonly, anatomic variances in the shape of the ribcage or the scapula itself. A single lifting episode resulting in soft tissue injury would not cause the syndrome according to Dr. Schwartzman.

58. When pressed, Dr. Schwartzman also acknowledged that snapping scapula syndrome can result from overuse, but he claimed only from a "very specific overuse", to wit "forceful, repetitive overhead motion". Schwartzman Depo. p. 11. Examples include volleyball players, baseball pitchers, tennis players, and swimmers. Dr. Schwartzman testified that in his practice, all of the athletes he has treated for snapping scapula syndrome have had the condition only in their dominant hand, except swimmers competing in the butterfly stroke.⁸

59. Dr. Schwartzman opined that Claimant did not perform mechanical movements at work sufficient to cause snapping scapula syndrome. It is not clear from the record that Dr. Schwartzman was aware of the exact nature and extent of the repetitive movements

⁸ Of course this observation makes sense, since pitchers throw exclusively with one arm, tennis players typically serve exclusively with the same arm, volleyball players usually serve with the same arm each time, but swimmers use both arms in swimming. Claimant used both arms in palletizing cheese product, although her right arm is dominant.

Claimant undertook daily at work, as was evidenced in cross examination. However, that point is not material to the issue at hand, since Claimant did not argue in this suit that her snapping scapula syndrome was caused by her years of repetitive movement at work.

60. Dr. Schwartzman confirmed that Claimant's left-sided snapping scapula would not in any way be related to Claimant lifting a pallet with her right arm.

61. While soft tissue inflammation can cause snapping scapula syndrome, Dr. Schwartzman emphatically stressed in cross examination that the MRI showed no soft tissue inflammation. He refused to discuss the nurse's finding of a hard knot near Claimant's right scapula a few days after the 2014 accident, claiming a "hard knot" is so nonspecific the nurse could have been referring to a pimple or ingrown hair.⁹

62. In spite of Dr. Schwartzman's belligerent and obstructionist attitude during much of his deposition cross examination testimony, certain points stand unrebutted. The MRI showed no evidence of soft tissue inflammation, and no physician noted otherwise after reviewing the study. Even if Claimant had temporary muscle inflammation which presented as a hard knot in her back muscles, that condition subsided within a few days, and does not appear from the record to be present when she was first diagnosed with snapping scapula syndrome by Dr. Heiner. Also, the trauma to Claimant's right shoulder when lifting the pallet in 2014 does not in any way explain her snapping scapula syndrome in her left shoulder. Dr. Bates did not discuss this problematic issue at all in his report.

⁹ Dr. Schwartzman appeared to have lost his composure at the outset of cross examination when asked about his income derived from IMEs. He became indignant that anyone would even implicitly question his objectivity, in spite of his six-figure annual income augmentation from doing such examinations. Any "IME physician" who does not think his or her credibility will be called into question, at least implicitly, at some point in their career is either supremely naïve, or incredibly arrogant. Dr. Schwartzman's consistently combative manner during cross examination and reluctance to answer numerous questions straightforwardly negatively impacted his objectivity and lacked professionalism.

While an anatomic variant and/or repetitive forceful overhead movements both appear to be reasonable explanations for Claimant's bilateral and symmetrical condition, a single soft tissue injury in Claimant's right shoulder as a cause of this condition does not. On these two points, the opinions of Dr. Schwartzman carry the most weight.

63. Because Dr. Bates did not explain the mechanism for how Claimant's soft tissue injury "progressed" into snapping scapula syndrome, his opinion is afforded the lesser weight.

64. Unfortunately, the treating surgeon, Dr. Lynch, did not opine on causation. His insight might have been useful when considering this difficult issue. Instead this Referee is left to decide proof on two relatively weak expert medical opinions.

65. The relationship between Claimant's industrial accidents and her subsequent development of snapping scapula syndrome is unclear, and has not been proven by the weight of the evidence.

66. Claimant has failed to prove a causal link between her industrial accidents of 2013 and 2014 and her subsequent development of snapping scapula syndrome.

MEDICAL BENEFITS

67. An employer is only obligated to provide medical treatment necessitated by the industrial accident, and is not responsible for medical treatment not related to the industrial accident. *Williamson v. Whitman Corp./Pet, Inc.*, 130 Idaho 602, 944 P.2d 1365 (1997).

68. Defendants paid for Claimant's medical treatments until she was released to full duty work without restrictions by Dr. Sant on October 23, 2015. Claimant had been working on modified work duties until then. Soon thereafter, Claimant was returned to her normal position as a palletizer. As her pain continued, she was advised by Defendants to

see her regular physician and if additional work-related treatment was necessary, Surety would review her claim.

69. Claimant saw Roger Wyatt, M.D., a family medicine doctor, who diagnosed bilateral carpal tunnel syndrome. Claimant bought wrist braces. No further wrist/carpal tunnel treatment ensued. It is unclear if Claimant seeks reimbursement of these charges, however, no medical evidence was produced correlating this visit and wrist braces with an industrial accident.

70. Claimant, in arguing for additional medical benefits after November 2015, stated in her opening brief “[i]f Claimant’s snapping scapula syndrome was a result of the accident of May 21, 2014, ... then Defendants are liable to the Claimant for the full charged amount of the unpaid medical bills....” C’s Opening Brief, p. 26. It appears from this argument that Claimant takes the position that reimbursement of her treatment starting with Dr. Bates, the ensuing physical therapy, and the surgery by Dr. Lynch, is contingent upon her proving her snapping scapula syndrome was causally linked to her 2014 industrial injury. Such causal link was not proven. Claimant made no arguments, and presented no medical evidence in favor of reimbursement for some or all of her medical treatment after Surety closed its claim if such causal link is not proven.

71. Claimant had failed to prove she is entitled to additional medical treatment after November 2015.

TEMPORARY TOTAL DISABILITY BENEFITS

72. Idaho Code § 72-102 (10) defines “disability,” for the purpose of determining total or partial temporary disability income benefits, as a decrease in wage-earning capacity due to injury or occupational disease, as such capacity is affected by the medical factor

of physical impairment, and by pertinent nonmedical factors as provided for in Idaho Code § 72-430. Idaho Code § 72-408 further provides that income benefits for total and partial disability shall be paid to disabled employees “during the period of recovery.” The burden is on Claimant to present medical evidence of the extent and duration of the disability in order to recover income benefits for such disability. *Sykes v. C.P. Clare and Company*, 100 Idaho 761, 605 P.2d 939 (1980).

73. Claimant argues she was under a temporary disability from the time she lost her employment in late 2016 until after her recovery from surgery in August 2017, at which time she was given an impairment rating by Dr. Bates.

74. Claimant lost no work during the time she was under a physician’s care for her industrial accidents. Claimant lost her job after she was declared at MMI, and released to return to full duty employment. Her job was terminated due to the permanent restrictions imposed by Dr. Bates, who was treating Claimant for a condition she has not proven was causally linked to her work accidents.

75. Claimant did not establish her loss of employment was due to an industrial accident.

76. Claimant has not proven her entitlement to temporary disability benefits.

PERMANENT PARTIAL IMPAIRMENT

77. Permanent impairment is any anatomic or functional abnormality or loss after maximal medical rehabilitation has been achieved and a claimant’s position is considered medically stable. *Henderson v. McCain Foods*, 142 Idaho 559, 567, 130 P.3d 1097, 1105 (2006). Idaho Code § 72-424 provides that the evaluation of permanent impairment is a medical appraisal of the nature and extent of the injury or disease as it affects

an injured employee's personal efficiency in the activities of daily living, such as self-care, communication, normal living postures, ambulation, elevation, traveling, and other activities. The Commission is the ultimate evaluator of impairment. *Urry v. Walker & Fox Masonry*, 115 Idaho 750, 769 P.2d 1122 (1989).

78. In the present case, Dr. Sant released Claimant to full duty employment with no impairment from her May 21, 2014 accident in October 2015. Some two years later, Claimant had surgery which left her with some permanent impairment. However, that surgery was not proven to be causally related to her 2014 industrial accident.

79. Dr. Bates gave Claimant a 4% whole person impairment rating for her right shoulder condition on August 22, 2017. However, her impairment was for her loss of range of motion after a surgery for her snapping scapula syndrome.

80. Only Dr. Sant opined on Claimant's permanent impairment at the time she reached MMI from her May 21, 2014 accident, at which time he found she suffered no permanent impairment. Dr. Sant's opinion is afforded the most weight on this issue.

81. Claimant has failed to prove she is entitled to any permanent partial impairment as the result of her 2013 and 2014 industrial accidents.

PERMANENT PARTIAL DISABILITY BENEFITS

82. 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.

Without permanent impairment there can be no permanent disability. *Urry v. Walker & Fox Masonry Contractors*, 115 Idaho 750, 753, 769 P.2d 1122, 1125 (1989).

83. In the present case, Claimant failed to prove she suffered permanent impairment from her industrial accidents of 2013 and 2014. As such she cannot establish a right to permanent disability benefits.

84. Claimant has failed to prove her entitlement to permanent disability benefits as a result of her industrial accidents of 2013 and 2014.

CONCLUSIONS OF LAW

1. Claimant has failed to prove a causal link between her industrial accidents of 2013 and 2014 and her subsequent development of snapping scapula syndrome.

2. Claimant had failed to prove she is entitled to additional medical treatment after November 2015.

3. Claimant has failed to prove her entitlement to temporary disability benefits associated with her 2013 and 2014 industrial accidents.

4. Claimant has failed to prove she is entitled to any permanent partial impairment as the result of her 2013 and 2014 industrial accidents.

5. Claimant has failed to prove her entitlement to permanent disability benefits as a result of her industrial accidents of 2013 and 2014.

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 16th day of August, 2018.

INDUSTRIAL COMMISSION

/s/
Brian Harper, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of August, 2018, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

JOHN GREENFIELD
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W SCOTT WIGLE
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GARDNER SKINNER
2008 N 23RD ST
BOISE ID 83702

/s/

jsk

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARIA E. RANGEL,

Claimant,

v.

SORRENTO LACTALIS, INC.,

Employer,

and

TRAVELERS PROPERTY & CASUALTY CO.
OF AMERICA,

Surety,

Defendants.

IC 2015-005565

IC 2016-031069

ORDER

Issued 8/29/18

Pursuant to Idaho Code § 72-717, Referee Brian Harper submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusions of law, to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the 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 failed to prove a causal link between her industrial accidents of 2013 and 2014 and her subsequent development of snapping scapula syndrome.
2. Claimant had failed to prove she is entitled to additional medical treatment after November 2015.

ORDER - 1

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of August, 2018, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

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/s/

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