BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

ERNESTO MACIAS, Claimant, v. WABTEC, Employer, and TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, Surety, Defendants.	**IC 2015-028926** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** August 1, 2018

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee John C. Hummel, who conducted a hearing in Boise on October 13, 2017. Clinton E. Miner represented Claimant, Ernesto Macias, who was present in person. Alan K. Hull represented Defendant Employer, WABTEC, and Defendant Surety, Travelers Property Casualty Company of America. The parties presented oral and documentary evidence, took post-hearing depositions and submitted briefs. The matter came under advisement on July 25, 2018.

ISSUES

The issues to be decided by the Commission as the result of the hearing are as follows:

1. Whether Claimant incurred a compensable occupational disease;

2. Whether Claimant's condition is due in whole or in part to a preexisting or subsequent injury or condition; and

3. Whether and to what extent Claimant is entitled to the following benefits:

   a. Medical care; and

   b. Temporary partial and/or temporary total disability benefits.

All other issues are reserved.[1]

CONTENTIONS OF THE PARTIES

Claimant contends that in or about 2013, while working for Employer, he noticed that he was experiencing numbness in both upper extremities. Employer, which does business under the trade name "Motive Power," is a manufacturer of locomotives. Claimant was a skilled electrician who performed work for Employer installing wiring and cable overhead. In 2015, Claimant received a diagnosis of bilateral carpal tunnel syndrome. He had one carpal tunnel surgery on his left wrist, the treatment for which Defendants covered. He alleges that his continued numbness extending from his shoulders to his hands, primarily on his left side, is also industrially related and the result of an occupational disease incurred while working for Employer. He claims medical treatment for this condition and any related income benefits.

Defendants provided coverage and benefits for Claimant's left carpal tunnel syndrome and release surgery. They deny that Claimant, who was still working for Employer at the time of hearing, requires treatment for any other condition of his upper extremities, including radiculopathy, or that any treatment of the same would be due to an occupational disease incurred while working for Employer.

[1] The issues to be decided differ from the noticed issues. At hearing, the parties stipulated that the following issues would be waived: whether Claimant complied with the notice limitations set forth in Idaho Code §§ 72-701 and 72-448; whether Claimant sustained an injury from an accident arising out of and in the course of employment; and whether the condition for which Claimant seeks benefits was caused by an industrial accident. Tr., 5:4-6:20. The case for decision thus involves solely an occupational disease claim; Claimant has waived any claim based upon an industrial accident. Defendants have also waived any objection to whether Claimant appropriately complied with the notice requirements of the Idaho Workers' Compensation Law.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant at a deposition on November 21, 2016 and at hearing;

2. Joint Exhibits 1 through 14, admitted at the hearing;

3. The deposition testimony of Mark Campion Clawson, M.D., taken on December 7, 2017; and

4. The deposition testimony of Kyle Lynn Palmer, M.D., taken on December 8, 2017.

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

FINDINGS OF FACT

1. **Claimant's Background, Education and Prior Work Experience**. Claimant was born in Michoacán, Mexico on October 10, 1952. He completed the sixth grade while in Mexico. He immigrated to the United States on September 14, 1976. He first worked for a winery in Kenwood, California. He later performed agricultural labor work for a turkey farm in Sonoma, California. Thereafter he returned to school to obtain his G.E.D.; he also attended Santa Rosa Junior College for two and half years without completing a degree. Claimant then worked for Hewlett Packard Company (HP) at production facilities located in Santa Rosa and Rohnert Park, California, for approximately 20 years. At HP, Claimant began in maintenance work repairing production equipment. Working closely with engineers, he held several different jobs with the company in manufacturing/production positions. Claimant and his family then moved to Middleton, Idaho in 2002, where he worked briefly for Plexus Corporation, an electronics

manufacturer in Nampa, and then for Western Electronics, another electronics manufacturer in Meridian. Tr., 19:2-26:15; Claimant Dep., 7:1-18:13.

2. **Subject Employment**. Claimant began working full-time for Employer as an electrician on August 6, 2007. Ex. 1:1. His first position was in locomotive production where he performed electrical wiring work. This included installing high voltage cable, which were often "super heavy," in the engine blocks and upper and lower compartment housings of locomotives. Most of his career with Employer was spent working in the component shop. His work often required him to hold his hands above his head for eight to ten hours per day while lifting and installing heavy cable. Claimant pulled cables and wires, connected them to terminals, and performed necessary electrical installation and remedial repairs on locomotives. He performed the majority of his work on new locomotives but also performed repair work. Claimant still worked for Employer at the time of hearing. Claimant Dep., 19:8-21:14; Tr., 27:9-34:17; *Id*. at 47:23-48:4.

3. **Prior Medical History**. Claimant had a stomach ulcer for which he received treatment "in the '70s, '80s." He sustained a back injury while working for a turkey farm in California in the 1970s. His recovery included a body cast that he had to wear for several months. He did not have any long-term back pain symptoms after this injury, however he had to quit his job with the farm after his injury due to his temporary inability to work. Sometime after he moved to Idaho, Claimant received a diagnosis of type II diabetes, for which he takes the maximum daily dose of the prescription drug Metformin. Claimant asserted that he did not suffer from any complications from diabetes, such as diabetic retinopathy or peripheral neuropathy. Claimant Dep., 15:1-16:17; 23:4-29:20. Nevertheless, at an office visit to monitor his diabetes on March 17, 2015, Katherine Coate, NP, with Saint Alphonsus Medical Group Clinic at Eagle,

noted the following diabetic sequelae: "The problem is getting worse … Pertinent negatives include frequent infections, frequent urination, nocturia, polydipsia, weight gain and weight loss." Claimant's A1C (estimated average blood glucose) tested at 8.1 (5.7 or less considered normal.) Ex. 2:15; 18.

4. **Upper Extremities Conditions**. Claimant did not receive any treatment for conditions related to his upper extremities prior to 2013.

5. Beginning in 2013, Claimant noticed that his shoulders and arms were "going asleep." Claimant Dep., 30:16. He described the condition of his left arm at this time as follows: "Going numb. Completely my whole arm. From the top of my neck all of the way to the tip of my finger." *Id*. at 31:1-3. Work activity would exacerbate this numbness, as follows: "At the time I was hiding wires in the ceiling [of locomotive compartments]. So it requires for me to have my neck to the back. And my arms above my head." *Id*. at 7-9.

6. Claimant told his supervisor at an unspecified time in 2013 that his "hand was hurting, getting numb" as well as his "arm and shoulder." Tr., 35:14-23. His left forearm would go asleep when he was performing overhead electrical installation work. *Id*. at 37:24-38:4.

7. At an office visit on June 7, 2013, with Cherese R. Severson, DNP, with Saint Alphonsus Medical Group NHP Family Medicine in Nampa, Claimant complained of left shoulder pain. He stated that his left arm would "become numb if you 'push on his shoulder.' Only occurs in one arm, does not relate to an injury, however has a labor intensive job." Ex. 2:2. Ms. Severson diagnosed a trapezius strain "related to your repetitive movements that you do. I would think that occupational therapy would help." *Id*. at 5.

8. Claimant consulted again with Ms. Severson on September 6, 2013. She noted that Claimant's shoulder pain had progressed as follows: "Greater than 2 month history left

shoulder pain from repetitive use of the left shoulder. Work has modified his job and he is still having pain. Needs referral to occupational medicine. Arm is getting worse and now goes numb with certain positions. Ex. 2:7. Severson noted a referral to occupational medicine for Claimant at the conclusion of the appointment "for evaluation and treatment of this work related problem." *Id*. at 9.

9. Claimant did not consult with an occupational medicine specialist in 2013 following Ms. Severson's recommendation. Claimant did not seek medical help again for the condition of his upper extremities until 2015, when he talked to his supervisor again regarding the pain/numbness/discomfort he was experiencing. At this point the condition of Claimant's left hand had deteriorated to the point that he found it difficult to grasp even a handful of nuts or washers. Employer then referred him for medical treatment. Tr., 40:25-41:13.

10. Claimant's first visit with the occupational medicine clinic was on October 19, 2015. His treating physician was Lawrence J. Sladich, M.D. Dr. Sladich noted Claimant's history in pertinent part as follows:

> Patient presents to clinic with complaints of pain in his upper back and neck. The pain will occasionally radiate into his left shoulder and arm. He also has intermittent numbness and tingling in his left arm. He has not noticed any weakness in that arm. He has not tried any medications for the pain. He has had these symptoms on and off for over a year and he feels that the symptoms are work related. He works for Motive Power and has to do repetitive overhead work. He did report these symptoms when they started over a year ago but he did not seek medical care and the symptoms gradually got better. He had a flare-up of the symptoms about six months ago but again did not seek medical treatment. Over the past two to three weeks the symptoms have again become more severe and he cannot take it anymore. He handles heavy cables overhead for several hours a day and notes that his symptoms get much better on his days off. The pain does not keep him awake at night and he sleep in such a position with his head that he is not bothered by the numbness. He was diagnosed with Diabetes about four years ago and he tells me that it is well controlled.

Ex. 3:23. Dr. Sladich diagnosed radiculopathy cervical region and noted that Claimant had exhibited left-sided radicular symptoms that had been going on for approximately a year. He prescribed Meloxicam for pain and inflammation, restricted Claimant from overhead work (no reaching or lifting above the shoulder level with either arm), and sought authorization for an MRI of the cervical spine. *Id*. at 25-27.

11. Employer filed a first report of injury/illness for Claimant on October 27, 2015, which stated that the onset of the illness was October 16, 2015. It noted that Claimant "reported shoulder/arm pain, numbness." Ex. 1:1.

12. Dr. Sladich continued to follow Claimant in office visits on November 2, November 16, and November 30, 2015. During this time Claimant remained on restricted work duty (no overhead work) and his symptoms were essentially unchanged. Cervical spine X-rays taken on November 2, 2015 showed mild to moderate degenerative disc disease, evidence of osteophytes and mild bilateral bony foraminal narrowing at C5-6 and C6-7. Left shoulder radiographs on the same date showed mild acromioclavicular joint degenerative change. Surety authorized an MRI of Claimant's cervical spine that took place on November 24, 2015. The results of the MRI were consistent with those of the X-rays. Dr. Sladich noted on November 30, 2015 that Claimant was "doing fairly well and has not had any increased pain." He further noted that there did not "appear to be anything on his MRI that would account for his left sided radiculopathy symptoms. He also has Diabetes and his left arm numbness may be more of a peripheral neuropathy." Dr. Sladich recommended nerve conduction studies to assess radiculopathy vs. peripheral neuropathy. He continued to prescribe Meloxicam for Claimant and released him to return to work without restrictions. Ex. 3:28-42.

13. Kevin S. Krafft, M.D., performed an electro-diagnostic study for Claimant upon referral from Dr. Sladich on December 31, 2015. Dr. Krafft's impression was that the study result was abnormal and consistent with left sensory motor and mild right sensory carpal tunnel syndromes. He found no evidence of either left or right radiculopathy in Claimant's upper extremities. Dr. Krafft recommended referral of Claimant to a hand specialist. Ex. 3:43; Ex. 4:44-46.

14. Claimant received a referral from Dr. Krafft to Mark C. Clawson, M.D., with the Idaho Hand Center in Boise. Tr., 43:8-12; Ex. 5:51. Dr. Clawson examined Claimant for the first time on February 23, 2016. Claimant related "a 3 year history of upper extremity symptoms. Symptoms have included neck pain with associated arm pain and numbness into the hand. The left hand has been more symptomatic than the right." Dr. Clawson reviewed Dr. Krafft's electro-diagnostic testing suggestive of "moderate left and mild right median compressive neuropathy." He diagnosed bilateral carpal tunnel syndrome, left more symptomatic than the right, and recommended left carpal tunnel release. On a more probable than not basis, he determined that the left carpal tunnel syndrome was work-related. Dr. Clawson recommended evaluation of the cervical spine and "probable double crush with cervical pathology (cord and foraminal stenosis)" by a spinal surgeon. *Id*. at 51-52.

15. Surety approved the left carpal tunnel release surgery and Dr. Clawson conducted a pre-surgical consultation with Claimant on March 14, 2016. Dr. Clawson restricted Claimant from use of his left upper extremity until the surgery. *Id*. at 54-55. Dr. Clawson performed the surgery on Claimant at Saint Alphonsus Regional Medical Center on March 16, 2016. Claimant tolerated the procedure without complication. Ex. 6:82-105.

16. Dr. Clawson followed Claimant's recovery post-surgery. Claimant recovered satisfactorily with median nerve numbness resolving, however he continued to report left neck and upper extremity pain and radiculopathy, for which Dr. Clawson determined that he required an evaluation of the cervical spine for a probable C5-6 nerve root pathology. Claimant received a temporary restriction from working for a portion of his recovery period. Dr. Clawson released Claimant to return to work on modified duty with restrictions on April 26, 2016. On August 26, 2016, Dr. Clawson determined that Claimant had reached medical stability with no permanent impairment from his left carpal tunnel syndrome or treatment. He released Claimant to return to work with limited use of the left upper extremity, with temporary restrictions of no lifting in excess of 10 pounds with his left extremity, and rarely lifting above the shoulder with his left extremity. On September 27, 2016, Dr. Clawson informed Surety that Claimant was not restricted in the number of hours of work he could perform per day. Ex. 5:54-76.

17. **Independent Medical Examination (IME)**. Surety scheduled Claimant for an IME with Kyle L. Palmer, M.D., an orthopedic surgeon, on December 15, 2016. Dr. Palmer took Claimant's medical history and noted that Dr. Sladich evaluated him for cervical radiculopathy involving the left upper extremity in 2015. He further noted Dr. Krafft's electro-diagnostic study on December 31, 2015 that showed no evidence of right or left upper extremity radiculopathy, but was positive for bilateral carpal tunnel syndrome. Claimant had been working full time for Employer since his release by Dr. Clawson following left carpal tunnel release surgery. Claimant had no physical therapy or injections following his surgery. Ex. 7:106-107.

18. Claimant's chief complaint to Dr. Palmer was pain in both shoulders, but mainly on the left. The complaint was mostly of pain and numbness on the left side, with no weakness,

made worse by activity and lifting. Claimant also had bilateral hand cramping at work. Claimant was not taking any medicine for his symptoms at the time of the IME. Ex. 7:107-108.

19. Dr. Palmer performed a physical examination of Claimant with the following significant findings: some tenderness over the left trapezius area; a negative Spurling test; full strength in abduction, flexion, internal rotation and external rotation in shoulders bilaterally; biceps and triceps had full strength; some discomfort on strength testing; O'Brien's, Speed's tests mildly uncomfortable; AC joint nontender; Hawkins test negative; Tinel's test at the elbow and wrist negative; and Phalen's test at the wrist caused immediate pain. *Id*. at 108-109.

20. Dr. Palmer reviewed relevant medical records, including those of Dr. Severson, NP Coate, Dr. Sladich, Dr. Krafft, Dr. Clawson, and the MRI of November 24, 2015. *Id*. at 109-113.

21. Dr. Palmer diagnosed Claimant with left-sided radiculopathy secondary to severe neural foraminal stenosis, due to a gradual development of degenerative changes in his cervical spine. There was no evidence of acute damage to Claimant's cervical spine. His condition was secondary to degenerative disc disease combined with severe foraminal stenosis and spur formation in the cervical spine. Dr. Palmer determined that these degenerative changes occurred over many years and were not the result of industrial conditions. He recommended treatment in the form of a dose of prednisone, followed by regular oral anti-inflammatories, as well as physical therapy. Such treatment would not be industrially related. *Id*. at 113-114.

22. Dr. Palmer opined that Claimant's current medical issues were from his cervical spine, not his shoulder. While Claimant's shoulder was medically stable, Dr. Palmer considered Claimant's cervical spine still symptomatic due to radicular pain and thus not medically stable. Dr. Palmer did not consider any particular restrictions as required by Claimant's cervical

condition, however he advised that Claimant should refrain from activities that are significantly uncomfortable for him. Ex. 7:114.

23. **Surveillance of Claimant**. Defendants engaged the services of a private investigator to perform outdoor surveillance of Claimant on November 19 and 20, 2016. Investigators took video of Claimant and delivered reports to Defendants of his activities. They observed Claimant getting in and out of vehicles, exiting his house, driving, attending a holiday parade with his family, attending church, and similar activities. Claimant picked up objects with both hands, including a guitar case that he brought to church and a lawn chair he brought to the parade. The investigators noted that they did not observe Claimant engage in any behaviors or physical actions that showed he was favoring his left shoulder or in pain. The investigators apparently did not observe Claimant performing any strenuous activities, such lifting heavy objects or engaging in physical exercise or outdoor activities. Ex. 12:486-502.

24. **Deposition of Dr. Clawson**. Defendants took the deposition of Dr. Clawson on December 7, 2017. Dr. Clawson is a hand surgeon who was practicing with the Idaho Hand Center at the time of his care of Claimant and at the time of deposition. Clawson Dep., 5:20-21. Dr. Clawson graduated from medical school in 1982 and has continuously practiced hand surgery since his residency in 1990. Ex. 5:47-48. He is board-certified surgeon and a member of the American Society for Surgery of the Hand. His particular areas of practice involve the hand, wrist, forearm, and some parts of the elbow for certain pathologies, but not proximal to the elbow. Clawson Dep., 5:22-6:9.

25. Dr. Clawson first met with Claimant on February 23, 2016, upon referral from Dr. Krafft. *Id*. at 6:10-24. Dr. Clawson noted Claimant's long employment with Employer and three year history of upper extremity symptoms including neck and limb pain and numbness in

his hands. Clawson Dep., 7:2-8. Dr. Clawson understood that Claimant worked as an electrician for Employer pulling wire cables and installing them overhead on locomotives. *Id*. at 9-19.

26. Dr. Clawson reviewed Dr. Krafft's electro-diagnostic study of Claimant and agreed with his findings which showed a "moderate electrical blockage of the median nerve, electrical function on the left hand, and mild electrical blockage on the right." *Id*. at 8:4-15. Although he was aware of Claimant's type II diabetes history, Dr. Clawson did not find that the electrical studies showed evidence that Claimant's pathology was due to diabetic neuropathy. *Id*. at 8:16-9:10.

27. After Dr. Clawson's physical examination of Claimant, review of the electro-diagnostic study, and review of medical history, he concluded that Claimant had bilateral carpal tunnel syndrome, with the left hand more symptomatic than the right. *Id*. 13:22-14:2.

28. Dr. Clawson also diagnosed probable double crush with cervical pathology (cord and foraminal stenosis), based upon Claimant's symptoms and the MRI findings. He did not undertake a detailed examination of the MRI study as it was not his "area of purview." Dr. Clawson stated that the "cervical spine is not an area of interest, training or expertise for me," and he declined to comment on the cause of Claimant's cervical nerve compression, whether it was due to an industrial or congenital cause. Dr. Clawson did not examine Claimant to determine whether he had any cervical radiculopathy, but rather confined the focus of his examination into Claimant's medial nerves. *Id*. at 14:3-17:20.

29. Based upon his review and examination, Dr. Clawson recommended carpal tunnel release on the left and further evaluation by an orthopedic specialist for his cervical condition. *Id*. at 18:3-10. He then performed the carpal tunnel surgery for Claimant on March 16, 2016. *Id*. at 11-17.

30. Dr. Clawson found that, outside of Claimant's "other limb complaints," Claimant recovered well from his carpal tunnel release surgery and he released Claimant without restrictions or impairment on February 27, 2016. He did not examine Claimant again thereafter. Clawson Dep., 22:1-14. At the time of discharging Claimant, Dr. Clawson did not find that his mild carpal tunnel syndrome on the right had progressed to the point of requiring surgery or any specific treatment. *Id*. at 22:15-23:6.

31. **Deposition of Dr. Palmer**. Defendants deposed Dr. Palmer on December 8, 2017. Dr. Palmer is an orthopedic surgeon who at all relevant times practiced in Meridian. Palmer Dep., 5:1-4. He received his medical degree from the Medical College of Virginia, completed a residency at the University of Tennessee, and moved to Idaho to practice orthopedic surgical medicine in 1992. *Id*. at 9-17. He is board certified in orthopedic surgery by the American Board of Orthopedic Surgery. *Id*. at 18-21.

32. Dr. Palmer performed the IME of Claimant at his office in Meridian on December 15, 2016. In preparation, he reviewed all relevant medical records, including his MRI, and took Claimant's medical history. *Id*. at 6:2-23. His most significant conclusions from his records review and medical history were that Claimant had significant degenerative changes to his cervical spine over time that could affect either his left or right sides, that there was no particular instance of an injury to his spine, and that further treatment would be warranted, such as steroid injections that might provide relief, but that neither the condition nor treatment for it were industrially-related. *Id*. at 8:8-25. The changes observed in Claimant's cervical spine were degenerative and not work-related, in Dr. Palmer's opinion. *Id*. at 10:11-15.

33. Dr. Palmer's physical examination of Claimant led to the conclusion that Claimant had a normal range of motion in his upper extremities, with normal strength

throughout, but with some discomfort on strength testing and on range of motion. Claimant's ligaments were intact, with no point tenderness. Dr. Palmer observed as follows: "Aside from some minor discomfort, he [Claimant] appeared to have a normal exam." Palmer Dep., 11:14-24.

34. With respect to Claimant's MRI, Dr. Clawson did not conclude that Claimant's cervical condition was the result of his work activity of repetitively pulling electrical wire and cable for Employer. *Id.* at 14:14-19. He did conclude that the MRI showed that Claimant had left-sided radiculopathy of his upper extremity, secondary to foraminal stenosis. *Id*. at 18:1-9.

35. **Claimant's Condition at Hearing**. Claimant continued to work 50 to 60 hours per week for Employer at the time of hearing. Tr., 76:25-77:1. He no longer performed "much" overhead electrical work but mostly installed and pulled wires and cables in the floors of locomotive compartments. *Id*. at 46:14-17.

36. Claimant was able to grab and grasp objects with more ease than before his left carpal tunnel surgery; for example, he can pick a handful of washers or nuts without debilitating pain. *Id*. at 44:11-19. He explained in pertinent part as follows: "The pain is still there because I am working and I – I have to grab things, but it's much better than it was before." *Id*. at 22-24. He was still experiencing problems with his right hand and wrist similar to his left hand and wrist prior to surgery. *Id*. at 45:6-12. The left carpal tunnel surgery did not resolve Claimant's burning sensation on the back of his left hand, numbness in his forearm, or pain in his biceps and neck. Tr., 45:17-46:7. The surgery helped his left hand but not his arm. *Id*. at 46:8-9.

37. Claimant no longer engaged in pastimes he enjoyed before developing upper extremity symptoms, like playing guitar and gardening. Claimant previously was a professional musician in Mexico and played guitar and bass guitar in his church after coming to the United

States, however he no longer played music at church. Tr., at 48:5-50:4. Claimant's pain, numbness, and discomfort in his left hand affect his sleep. *Id*. at 52:1-9.

38. Counsel for Defendants asked Claimant whether he had been playing guitar at church on one of the days of the surveillance ordered by Surety, November 20, 2016. Claimant's answer was not completely responsive and the Referee asked him to respond, as follows:

> REFEREE HUMMEL: Pardon me. I want to make sure that you answer the question. Were you playing the guitar on this occasion?
>
> THE WITNESS: If he has it, probably, yes, because I don't remember. It's – that's a big day.
>
> BY MR. HULL:
> Q. When did you quit – finally quit playing the guitar?
>
> A. It's been a few months.

Id. at 56:11-19.

39. **Claimant's Credibility**. Claimant testified credibly regarding the development of his upper extremity symptoms. Contemporaneous medical records reflect and corroborate the symptoms that Claimant described in both his deposition and hearing testimony. There was one instance of problematic testimony by Claimant, referenced directly above, wherein he was required to admit, after being asked twice, that he was still playing guitar at church in or about November 2016. This evidence would be relevant to impairment and disability, which are not at issue in this hearing. Nevertheless, despite his reluctance to admit it, Claimant does not appear to have sustained any significant physical impairment from his upper extremity conditions. As of the hearing date, he continued to work 50 to 60 hours per week using both his hands and arms, although he rarely performed overhead work. With regard to the occupational disease and medical issues, however, these aspects of the claim are not relevant. Whether Claimant has a

compensable occupational disease depends upon the medical evidence, not Claimant's credibility, as discussed below.

DISCUSSION AND FURTHER FINDINGS

40. The provisions of the Idaho Workers' Compensation Law should be liberally construed in favor of the employee. *Haldiman v. American Fine Foods*, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990) (retraining benefits statute liberally construed to permit payment of travel-related retraining expenses rather than requiring claimant to pay them from his subsistence-level temporary disability benefits). 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) (substantial evidence supported Commission's finding that the industrial accidents did not cause claimant's breathing problems, where medical evidence was conflicting).

41. **Occupational Disease; Preexisting Condition.** Defendants provided medical and indemnity benefits for Claimant's left carpal tunnel syndrome and surgery. Dr. Clawson also specifically opined that Claimant's left carpal tunnel syndrome was work-related. Benefits for this condition are not at issue here.

42. Claimant also claims benefits, both medical and indemnity, for the condition of his cervical spine and upper extremity radiculopathy, more pronounced on the left, on the theory that the repetitive use of his upper extremities to perform his electrical work on locomotives, particularly his overhead work, resulted in a compensable occupational disease and/or aggravated his preexisting cervical condition. He is not alleging that any work accident caused traumatic injury to his cervical spine. Defendants deny that Claimant suffers from a compensable occupational disease as a result of repetitive workplace injuries to his cervical spine or upper extremities.

43. An "occupational disease" is "a disease due to the nature of an employment in which the hazards of such disease actually exist, are characteristic of, and peculiar to the trade, occupation, process, or employment …" Idaho Code § 72-102(22)(a). Idaho Code § 72-439 limits the liability of an employer for any compensation for an occupational disease to cases where "such disease is actually incurred in the employer's employment," and for a non-acute occupational disease, where "the employee was exposed to the hazard of such disease for a period of 60 days for the same employer."

44. Idaho Code § 72-437 provides in pertinent part as follows:

> [W]hen an employee of an employer suffers an occupational disease and is thereby disabled from performing his work in the last occupation in which he was injuriously exposed to the hazards of such disease, . . . and the disease was due to the nature of an occupation or process in which he was employed within the period previous to his disablement as hereinafter limited, the employee, . . . shall be entitled to compensation.

45. Disablement means "the event of an employee's becoming actually and totally incapacitated because of an occupational disease from performing his work in the last occupation in which injuriously exposed to the hazards of such disease," and "disability means the state of being so incapacitated." Idaho Code § 72-102(22)(c). Finally, "Where compensation is payable for an occupational disease, the employer, or the surety on the risk for the employer, in whose employment the employee was last injuriously exposed to the hazard of such disease, shall be liable therefor." Idaho Code § 72-439(3).

46. The Idaho Supreme Court has held regarding occupational disease in pertinent part as follows: "Nothing in these statutes indicates an intent to require that an employer who employs an employee who comes to the employment with a preexisting occupational disease will be liable for compensation if the employee is disabled by the occupational disease due to an injurious exposure in the new employment." *Reyes v. Kit Manufacturing Co.*, 131 Idaho 239,

241, 953 P.2d 989, 991 (1998) (employee not entitled to workers' compensation benefits for his preexisting carpal tunnel syndrome which he claimed working conditions aggravated; compensability for aggravation of a prior disease or condition is allowed only in cases where an accident caused the aggravation, not generalized working conditions).

47. To prove a causal connection between the alleged medical condition and the occupational exposure, medical testimony to a reasonable degree of medical probability is required. *Langley v. ISIF*, 126 Idaho 781, 890 P.2d 732 (1995) (competent medical evidence supported a finding that worker failed to prove his respiratory condition was an occupational disease). Claimant is required to establish a probable, not merely a possible, connection between cause and effect to support his contention. *Dean v. Dravo Corp.*, 95 Idaho 558, 511 P.2d 1334 (1973) (admission of worker's doctor that he could not state his opinion "with more than a possibility" was insufficient to establish causation). "Probable" is defined as "having more evidence for than against." *Fisher v. Bunker Hills Co.*, 96 Idaho 341, 344, 528 P.2d 903, 906 (1974) (claimants entitled to default orders awarding workers' compensation where their default proof included medical testimony sufficient to establish their claims by a reasonable degree of reasonable probability).

48. In summary, under the statutory scheme to prove a compensable occupational disease, Claimant must show as follows: (1) that he or she is afflicted by a disease or condition; (2) that the disease or condition was incurred in, or arose out of and in the course of, employment; (3) that the hazards of such disease or condition actually exist and are characteristic of and peculiar to the employment in which claimant was engaged; (4) that claimant was exposed to the hazards of such *nonacute* disease for a minimum of 60 days with the same employer; and (5) that as a consequence of such disease, claimant became actually and totally

incapacitated from performing his work in the last occupation in which he was injuriously exposed to the hazards of such disease.

49. Claimant meets the first criteria for a compensable occupational disease in that he has an identifiable medical condition of his cervical spine, which Dr. Palmer diagnosed as left-sided radiculopathy, secondary to foraminal stenosis. Palmer Dep., 18:1-7; Ex. 7:113-114. Nevertheless, Claimant does not meet the second and third criteria due to the failure of required medical evidence of causation. The only medical evidence in the record that Claimant's upper extremity condition was causally connected to repetitive activities in his workplace came from the nurse practitioner who examined Claimant in 2013. DNP Severson observed that Claimant's symptoms were "related to … repetitive movements," Ex. 2:5, and due to a "work-related problem." *Id*. at 9. Nevertheless, Ms. Severson, who was a family medical practitioner, did not have the necessary qualifications or expertise to definitely diagnose an occupational disease; she correctly referred Claimant to an occupational medicine specialist for further evaluation of the condition. Her preliminary observations concerning Claimant's condition provide too slight a foundation upon which to build an occupational disease claim.

50. Other than Ms. Severson, no other medical authority associated with this claim has drawn a definitive causal connection between Claimant's repetitive work activities for Employer and his cervical condition. Dr. Sladich, the first occupational medical specialist who examined Claimant in 2015, made note of his repetitive work activities in discussing his symptoms, however Dr. Sladich did not correlate those symptoms specifically with an occupational cause. Ex. 3:23. When Claimant's MRI, in Dr. Sladich's opinion, failed to demonstrate radiculopathy, he referred Claimant for an electro-diagnostic study to determine whether his neuropathic symptoms were related to an orthopedic condition or diabetes. Ex. 3:39.

Dr. Krafft, who performed the electro-diagnostic study, diagnosed bilateral carpal tunnel syndrome, with no evidence of radiculopathy on the basis of an electro-diagnostic study. Ex. 3:43; Ex. 4:44-46. Dr. Krafft then referred Claimant to Dr. Clawson, a hand surgeon, who correlated Claimant's left carpal tunnel syndrome with an industrial cause and subsequently performed left carpal tunnel release upon approval from Surety. Ex. 5:51-52; Ex. 6:82-105. Dr. Clawson had no expertise in cervical spine pathology and specifically recommended referral of Claimant to such a specialist for review of that condition. Furthermore, at his deposition, Dr. Clawson declined to offer any opinion regarding any causal connection between Claimant's cervical disease and his working conditions, due to his self-acknowledged lack of qualifications. Clawson Dep., 27:3-7. Finally, Dr. Palmer, the Defendants' IME physician, specifically ruled out any work-related causation of Claimant's upper extremity condition; instead, he opined that Claimant's symptoms were due entirely to preexisting degenerative changes in his cervical spine over time. Palmer Dep., 20:5-17; Ex. 7:113-114.

51. It seems counterintuitive that Claimant's repetitive work activities, which required extensive use of his arms above his shoulders to install heavy electrical cable, have no proven connection to his cervical condition/radiculopathy. Nevertheless, proof of an occupational disease claim requires medical proof and cannot rest on what may appear to be, from an anecdotal standpoint, a reasonable explanation for Claimant's ongoing symptoms. Due to a failure of medical evidence sufficient to establish that it is more probable than not that Claimant's cervical condition or any corresponding symptoms in his upper extremities had an occupational cause, it is not necessary to address the other criteria of an occupational disease.

52. Claimant's cervical condition was not the result of a compensable occupational disease but rather was due to preexisting degenerative changes.

53. **Medical and Temporary Disability Benefits**. Because Claimant does not have a compensable occupational disease related to his upper extremities/cervical condition, he is not entitled to any medical or indemnity benefits related to those conditions.

54. **Compensability of Right Carpal Tunnel Syndrome**. Claimant asserted in post-hearing briefing that "Defendants have acknowledged their responsibility for the ongoing treatment, if any, limitations related to Ernesto's wrists as caused by carpal tunnel syndrome." Claimant's Opening Brief at 6. This is not, however, an entirely correct statement of Defendants' position on coverage of Claimant's right carpal tunnel syndrome. Defendants covered Claimant's left carpal tunnel syndrome, apparently on the basis of Dr. Clawson's opinion that the condition was work-related. In their post-hearing brief, however, Defendants argued that because Dr. Clawson has determined that there was no need for right carpal tunnel surgery, Claimant is not entitled to any benefits for the same. Defendants' Post Hearing Brief at 14-15.

55. The issue of whether Claimant is entitled to further medical or indemnity benefits based upon right carpal tunnel was not litigated in this hearing, despite the fact that the parties mentioned it as an aside in their briefing. This issue is reserved in the event that Claimant's right wrist and hand become symptomatic and require carpal tunnel treatment, such as release surgery. Whether Defendants should cover Claimant's right carpal tunnel syndrome as they did for his left carpal tunnel syndrome will depend upon medical evidence supporting causation.

CONCLUSIONS OF LAW

1. Claimant has failed to prove that it is more probable than not that he suffers from an occupational disease related to his upper extremities/cervical condition.

2. Claimant is not entitled to any medical benefits related to his upper extremities/cervical condition.

3. Claimant is not entitled to any temporary disability benefits related to his upper extremities/cervical condition.

4. The issue of whether Claimant is entitled to medical benefits and indemnity benefits related to right carpal tunnel syndrome is reserved.

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 25th day of July, 2018.

INDUSTRIAL COMMISSION

/s/
John C. Hummel, Referee

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 1st 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:

CLINTON E MINER
MIDDLETON LAW
412 S KINGS AVE STE 105
MIDDLETON ID 83644

ALAN K HULL
ANDERSON JULIAN & HULL
PO BOX 7426
BOISE ID 83707-7426

sjw /s/

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

ERNESTO MACIAS, Claimant, v. WABTEC, Employer, and TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, Surety, Defendants.	**IC 2015-028926** **ORDER** August 1, 2018

Pursuant to Idaho Code § 72-717, Referee John C. Hummel 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 that it is more probable than not that he suffers from an occupational disease related to his upper extremities/cervical condition.

2. Claimant is not entitled to any medical benefits related to his upper extremities/cervical condition.

3. Claimant is not entitled to any temporary disability benefits related to his upper extremities/cervical condition.

4. The issue of whether Claimant is entitled to medical benefits and indemnity benefits related to right carpal tunnel syndrome is reserved.

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

DATED this __1st____ day of __August_____, 2018.

INDUSTRIAL COMMISSION

__/s/_____
Thomas E. Limbaugh, Chairman

__/s/_____
Thomas P. Baskin, Commissioner

__/s_____
Aaron White, Commissioner

ATTEST:

_/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __1st__ 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:

CLINTON E MINER
MIDDLETON LAW
412 S KINGS AVE STE 105
MIDDLETON ID 83644

ALAN K HULL
ANDERSON JULIAN & HULL
PO BOX 7426
BOISE ID 83707-7426

sjw

__/s/_____