BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MELISSA GARCIA, a.k.a MELISSA WASIA, Claimant, v. AMY'S KITCHEN, INC., Employer, and TRAVELERS PROPERTY & CASUALTY COMPANY OF AMERICA, Surety, Defendants.	**IC 2018-000996** **ORDER** FILED JUN 13 2022 INDUSTRIAL COMMISSION

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 conclusion of law, to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendation of the Referee. The Commission concurs with this recommendation.

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, IT IS HEREBY ORDERED that:

1. Based upon the totality of the evidence, Claimant has failed to prove by a preponderance of the evidence that her cervical and lumbar conditions for which she seeks benefits were caused by the industrial accident of January 4, 2018.

2. Based upon the totality of the evidence, Claimant has failed to prove by a preponderance of the evidence that the medical treatments for her cervical and lumbar spine she received after May 23, 2018, were reasonable and necessary and caused or contributed to by her industrial accident of January 4, 2018.

3. Based upon the totality of the evidence, Claimant has failed to prove by a preponderance of the evidence that she is entitled to additional temporary disability benefits beyond May 23, 2018.

4. Based upon the totality of the evidence, Claimant has failed to prove by a preponderance of the evidence that she is entitled to additional disability benefits based on medical factors, commonly known as permanent partial impairment or PPI benefits beyond those previously awarded her based on a 1% whole person industrially-related impairment.

5. Based upon the totality of the evidence, Claimant has failed to prove by a preponderance of the evidence that she is entitled to benefits for permanent partial disability in excess of her impairment rating.

6. The issue of apportionment under Idaho Code § 72-406 is moot.

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

DATED this the 10th day of June, 2022.

INDUSTRIAL COMMISSION SEAL STATE OF IDAHO

INDUSTRIAL COMMISSION

Aaron White, Chairman

Thomas E. Limbaugh, Commissioner

Thomas P. Baskin, Commissioner

ATTEST:

Kamerron Slay
Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of June, 2022, a true and correct copy of the foregoing **ORDER** was served by email transmission and regular United States Mail upon each of the following:

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BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MELISSA GARCIA, a.k.a MELISSA WASIA, Claimant, v. AMY'S KITCHEN, INC., Employer, and TRAVELERS PROPERTY & CASUALTY COMPANY OF AMERICA, Surety, Defendants.	**IC 2018-000996** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** FILED JUN 13 2022 INDUSTRIAL COMMISSION

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 Pocatello, Idaho, on July 15, 2021. James Ruchti represented Claimant. W. Scott Wigle represented Defendants. The parties produced oral and documentary evidence at hearing and submitted post-hearing briefs. Three post-hearing depositions were taken. The matter came under advisement on February 22, 2022.

ISSUES

The parties agreed to the following issues for this adjudication:

1. Whether the condition for which Claimant seeks benefits was caused by the industrial accident;

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

a. Medical Care;
b. Temporary partial and/or temporary total disability (TPD/TTD);
c. Disability based on medical factors, commonly known as permanent partial impairment (PPI); and
d. Permanent partial disability (PPD); and

3. Whether apportionment for a preexisting condition pursuant to Idaho Code § 72-406 is appropriate.

CONTENTIONS OF THE PARTIES

Claimant asserts she injured her upper and lower back as the result of an industrial accident which occurred on January 4, 2018. While medical care was initially covered by Defendants, after an IME conducted in May of that year, Claimant's benefits were discontinued. She continued thereafter to seek treatment, including two surgeries. She is entitled to her medical expenses at the *Neel* rate, and temporary disability benefits associated with the surgeries. She also is entitled to benefits for her permanent impairment and disability.

Defendants note that Claimant suffered a work accident in January 2018 wherein she complained of neck, left arm, and low back pain. Her initial treatment was covered. When, during the course of treatment, Claimant's treating physician suggested cervical fusion surgery, Defendants sought an IME. The IME physician found no evidence of cervical or lumbar radiculopathy. The physician determined Claimant was medically stable and needed no further medical treatment as the result of the industrial accident. Defendants then discontinued Claimant's benefits. Defendants are not liable for any of Claimant's medical expenses incurred thereafter, nor are they liable for any other benefits claimed in this matter. Finally, Defendants argue that the Commission should carve out an exception to the *Neel* doctrine where, such as in this case, Claimant's medical care was covered by Medicaid.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant taken at hearing;

2. Claimant's exhibits (CE) 1 through 39 admitted at hearing;

3. Defendants' exhibits (DE) A through G, admitted at hearing; and

3. The post-hearing deposition transcripts of Nancy Collins, Ph.D., Benjamin Blair, M.D., and Lynn Stromberg, M.D., taken on August 25, September 1, and November 11, 2021, respectively.

Objections made during the depositions are overruled.

FINDINGS OF FACT

1. Claimant began working for Employer in July 2017 as a food line assembler. On January 4, 2018, Claimant was in the process of cleaning the floor around the assembly line when she slipped and fell onto the concrete floor. She testified at hearing that she landed on her tailbone with her head snapping back and hitting the floor. Elsewhere in the record there is no mention of Claimant striking her head when she fell. Instead, she testified in her deposition (and medical records shortly after the accident confirm) that in addition to landing on her tailbone, she struck her left arm on something as she fell, causing bruising. *See e.g.*, Cl. Depo. (DE G), pp. 48, 49, CE 18, p. 478, 482, CE 20, p. 1110. Claimant felt immediate burning sensations from her neck to her hands. Her fingers and thighs felt "tingly," and she had a headache. Tr. P. 59.

2. The day following the accident Claimant sought treatment at Physicians Immediate Care in Chubbuck. Her chief complaints were pain in her neck and left forearm. Secondary complaints included tingling in her fingers and coccyx pain. Forearm x-rays were normal.

Claimant was diagnosed with neck strain, contusions of left forearm, low back, and pelvis. She received work restrictions.

3. Claimant was contacted by Employer after a couple of visits to Physicians Immediate Care and informed that she needed to follow up with Employer's preferred physician at Portneuf Medical Practice. There, Claimant was seen by Randall Fowler, M.D. on January 9, 2018. At that time Claimant's primary complaint centered on her neck with tingling into her left hand, fourth and fifth digits. Dr. Fowler's notes indicate Claimant's tailbone pain had resolved, but her left arm was still bruised and painful to lift. After examination and cervical x-rays, Dr. Fowler assessed Claimant with cervical radiculopathy and left arm contusion. He prescribed physical therapy and ordered eight-pound lifting work restrictions.

4. When Claimant followed up with Dr. Fowler the next day to review her x-rays she complained of pain and stiffness in her mid and low back upon waking that morning, but her neck was feeling a bit better after using heat and ice the preceding evening. Dr. Fowler felt additional x-rays were needed, to include Claimant's thoracic and lumbar spine to her SI joint.

5. Claimant's x-rays were evaluated on January 25. Claimant had mild multilevel thoracic spinal degenerative changes, and lower lumbar facet arthropathy, with a likely limbus vertebra at L4. Due to Claimant's failure to improve with time, Dr. Fowler suggested a cervical MRI to rule out a herniated disc at C7-8. The work restrictions remained in place.

6. Claimant's MRI of January 31, 2018, showed a straightening/reversal of her normal cervical lordosis with disc bulging throughout her cervical spine but without central spinal stenosis, and bilateral neural foraminal narrowing most pronounced on the left at C5-6. Claimant was taken off light-duty work due to sedating medications which were started that day. Dr. Fowler

referred Claimant for an orthopedic consultation with Benjamin Blair, M.D., an orthopedic surgeon from Pocatello.

7. On March 2, 2018, Claimant was seen in Dr. Blair's office by PA-C Justin Pool, who conducted an examination, took cervical and lumbar x-rays, and reviewed prior diagnostic films. Claimant's chief complaint that date centered on her ongoing cervical pain with numbness and tingling and weakness into both shoulders and hands. Claimant also complained of intermittent tingling into her lower extremities, more pronounced on the right. Claimant was tender to palpation in her cervical region and her straight leg testing was positive for increased pain. Cervical x-ray findings of that date showed straightening/reversal of Claimant's normal lordotic curve without significant degenerative disc disease. Claimant's lumbar x-rays were interpreted by PA Pool as showing no significant degenerative changes. A small anterior endplate nondisplaced avulsion-type fracture of Claimant's L4 vertebra was noted. Claimant's diagnosis that day was cervical spinal stenosis, lumbar region radiculopathy, and low back pain. PA Pool ordered cervical epidural steroid injections.

8. After the injections Claimant was seen by Dr. Blair on March 19, 2018. She reported fleeting but significant relief from the injections, after which her neck pain recurred. Claimant also complained of continuing low back pain which radiated into her right thigh. Dr. Blair felt a repeat epidural injection was warranted. In the interim he took Claimant off work. Dr. Blair also felt Claimant's low back needed further evaluation.

9. Claimant's second round of injections produced no positive results. Dr. Blair diagnosed Claimant with degenerative spinal stenosis at C5-6. He presented Claimant with three options; continued conservative care, another round of injections, or surgery. Claimant opted for more injections.

10. Claimant's third injections were no more successful than her second. Dr. Blair noted Claimant had a cervical disc bulge secondary to foraminal stenosis at C5-6. Claimant's symptoms had existed for four months and were interfering with her quality of life. Conservative care did not help, so Dr. Blair suggested an anterior cervical discectomy and fusion with allograft and plate at C5-6. Claimant agreed to the operation and Dr. Blair sought Surety approval to proceed.

11. Surety did not approve the surgery. Instead, it scheduled Claimant for an IME with Idaho Falls orthopedic spinal surgeon Lynn Stromberg, M.D. The examination took place on May 10, 2018.

12. Dr. Stromberg reviewed medical records and diagnostic films from the time of Claimant's work accident forward, took an oral and pain questionnaire history from Claimant and conducted a physical examination. Thereafter, Dr. Stromberg requested nerve conduction studies of Claimant's upper extremities and right lower extremity, based on what he described as a "confusing pattern" in her presentation which prevented him from drawing "valid conclusions." CE 25, p. 1169.

13. Once the nerve conduction studies were performed, Dr. Stromberg reached several conclusions. He found Claimant had advanced (for her age) degenerative changes in her cervical spine without overt neurologic compression or compromise. Claimant's hand numbness was secondary to bilateral carpal tunnel syndrome as documented by the EMG studies. Claimant's degenerative changes and carpal tunnel findings were not related to her industrial accident. The EMG studies provided no evidence of myopathy, neuropathy, or radiculopathy in either Claimant's upper or lower extremities. Dr. Stromberg opined that Claimant had reached MMI with regard to her accident-related injuries as of May 23, 2018, needed no further medical care

related to her work injury, (although given the progressive nature of her chronic degenerative conditions, future medical care could be required on a non-industrial basis), and could return to regular employment without restrictions as of that same date. Limitations in Claimant's tolerance to perform work tasks in light of her degenerative changes and carpal tunnel syndrome would be unrelated to her work injuries. Dr. Stromberg assigned Claimant a 2% whole person impairment rating, apportioned 50% to her industrial accident and 50% to her preexisting degenerative arthritis.

14. Once Surety received Dr. Stromberg's report it terminated Claimant's benefits effective May 23, 2018, after paying her benefits based on her 1% industrially-related whole person impairment rating.

15. Claimant returned to Dr. Blair in mid-June 2018 with continued complaints of neck pain radiating into her upper extremity. By that time Dr. Blair was aware of Dr. Stromberg's report. Dr. Blair decided a myelogram and post-myelogram CT scan procedure was needed to delineate the extent of Claimant's neurologic impairment. He took the position that if the CT scan showed significant neurologic impairment Claimant would be a candidate for cervical spine treatment. If the CT scan failed to show significant impairment, then Claimant should seek evaluation by a hand surgeon for carpal tunnel syndrome. *See* CE 17, p. 409.

16. Dr. Blair also noted in passing that Claimant "continues to complain of low back pain and wishes MRI to further evaluate extent of injury." CE 17, p. 407. Dr. Blair scheduled the low back MRI. Claimant was kept on light duty work release.

17. Claimant's June 28, 2018 MRI showed disc desiccation and facet arthropathy on the lower lumbar spine, along with suspected small annular disc tears at L4-5, L5-S1, with central disc protrusions contacting the subarticular roots bilaterally at L4-L5 and on the left at L5-S1.

18. Claimant's CT scan with intrathecal contrast (myelogram) of that same date was interpreted as showing, (1) mild straightening of Claimant's normal cervical lordosis with slight anterolisthesis of C3 on C4 and C5 on C6 with facet arthroscopy noted at those levels, (2) widening of the facet joints with erosive changes at C3-C4 on the right, and at C 5-C6 on the left, (3) shallow central disc bulges present at C5-C6 and C6-C7 with minimal flattening of the ventral thecal sac, and (4) no severe spinal canal or neural foraminal stenosis. It was noted by the radiologist that the previous MRI study which suggested foraminal encroachment on the right at C5-C6 was "less apparent on this study." CE 17, p. 411.

19. After reviewing Claimant's CT scan and recent low back MRI, on July 3, 2018, Dr. Blair opined that Claimant's "herniated disc is improved to some extent and because of such I do not believe she is currently a surgical candidate. I believe she has reached maximal medical improvement and it's medically stable from her cervical injury...." CE 17, p. 416. Shifting focus to her lumbar spine, Dr. Blair suggested epidural steroid injections to address her "central herniated disc [at] L4-5 and L5-S1." Claimant was kept on light-duty work restrictions.

20. After some delay due to insurance issues, on January 9, 2019, Claimant received the lumbar epidural injections, which provided minimal relief. Claimant agreed to lumbar discectomy bilateral at L4-5 and left L5-S1 at her next visit with Dr. Blair.

21. On February 5, 2019, Claimant's surgery went forward. At her two-week checkup she reported significant improvement in her symptoms.

22. By her four-month checkup she reportedly was making slow but steady progress. Her physical therapy was delayed due to hypertension. She complained of increasing neck pain radiating to her bilateral upper extremities with associated numbness. Dr. Blair described her symptoms as "fairly severe." CE 17, p. 433.

23. By June 2019, Dr. Blair was again actively treating Claimant for her cervical spine pain. He ordered x-rays and an MRI. The MRI showed multilevel foraminal narrowing with secondary stenosis at C5-6. Dr. Blair prescribed translaminar epidural steroid injections at C6-7.

24. On July 3, 2019, Dr. Blair, after reviewing medical records, answered a series of questions from Claimant's counsel. He opined that Claimant sustained a central disc bulge at C5-6 level with secondary foraminal narrowing, as well as a central disc bulge with secondary neurologic impingement at the L4-5 and L5-S1 levels as a direct result of her workplace accident of January 4, 2018. He found no apportionment due to any preexisting conditions. Claimant's post-accident medical care was reasonable, necessary, appropriate, and related to her work accident in question. Regarding Claimant's cervical spine, Dr. Blair opined that she was not at MMI (contrary to earlier indications), and needed further steroid injections, the number of which depended on the level of relief they provided. Claimant's lumbar spine was medically stable with no further treatment necessary. Dr. Blair assessed Claimant with a whole person PPI rating of 7% for her lumbar spine, without apportionment. He could not address Claimant's cervical rating as she was not yet at MMI.

25. On that same date Dr. Blair reviewed Dr. Stromberg's IME report. He disagreed with the conclusions expressed therein. In particular Dr. Blair believed that while Claimant had no gross compression of her spinal cord, she did have significant foraminal narrowing which was the cause of her upper extremity paresthesias. The foraminal narrowing was noted on the June 4, 2019 MRI. Dr. Blair opined that Claimant's lumbar symptoms where due to a two-level herniated disc, confirmed by the MRI of June 15, 2018 (which was after Dr. Stromberg's evaluation). Dr. Blair felt that by the time of Dr. Stromberg's examination Claimant had not yet reached maximal medical improvement from either her cervical or lumbar injuries. As such,

he disagreed with Dr. Stromberg's impairment rating. Finally, Dr. Blair disagreed with Dr. Stromberg's opinion that Claimant had no permanent restrictions due to the January 4, 2018 accident. Dr. Blair believed Claimant had significant temporary restrictions at the time of his report but could not assign permanent restrictions because Claimant was not at MMI.

26. Claimant continued to treat with Dr. Blair through the summer of 2019 for her neck. Epidural injections afforded her no relief. In his office notes of July 18, 2019, Dr. Blair indicated that he was unsure if he could attribute Claimant's severe bilateral upper extremities numbness to her cervical spine. He suggested further studies. His medical notes do not indicate if such studies were performed; however, by mid-August 2019, Claimant was contemplating cervical spine surgery in the form of an anterior cervical discectomy and interbody fusion with allograft and cervical plate at C5-6. Claimant was encouraged to stop smoking prior to the surgery. The surgery took place on August 20, 2019.

27 In the weeks following the surgery, Claimant's improvement was noted as slow but steady. By early December 2019, Claimant was noted as doing well overall, but was again complaining of "significant low back pain which radiates into the buttocks." CE 17, p. 464. Dr. Blair suggested an MRI of Claimant's lumbar spine. If it was unremarkable, he was prepared to label her as medically stable and at MMI for both her cervical and lumbar spine.

28. The MRI showed degenerative disc disease without evidence of significant neurologic impingement. He found Claimant to be at MMI and so indicated in a letter to Claimant's attorney dated January 22, 2020. At that time, he assigned Claimant permanent restrictions to include no lifting greater than 25 pounds occasionally and 15 pounds frequently, no repetitive bending or squatting, no standing or sitting (including at a computer) for greater than 30 minutes without a change of position. Dr. Blair assessed Claimant with a 7% whole person

impairment with regard to her lumbar spine and a 6% impairment with regard to her cervical spine. Using the combined values chart he assigned Claimant a 10% overall whole person impairment rating with no apportionment for preexisting conditions.

DISCUSSION AND FURTHER FINDINGS

29. Claimant argues an entitlement to past medical care in relation to two spinal surgeries performed by Dr. Blair. Defendants dispute medical causation. Claimant's additional claims for benefits, *i.e.,* temporary (TTD/TPD) and permanent disability (PPD), and disability based on medical factors, commonly known as PPI, all rely to some degree on a favorable finding on medical causation. It is appropriate to consider those related issues first.

Medical Treatment and Causation

30. Idaho Code § 72-432(1) mandates that an employer shall provide for an injured employee such reasonable medical, surgical or other attendance or treatment as may be reasonably required by the employee's physician or needed immediately after an injury, and for a reasonable time thereafter. However, an employer is only obligated to provide medical treatment necessitated by an industrial accident and is not responsible for unrelated medical treatment. *Williamson v. Whitman Corp./Pet, Inc.*, 130 Idaho 602, 944 P.2d 1365 (1997). "An employer cannot be held liable for medical expenses unrelated to any on-the-job accident or occupational disease." *Sweeney v. Great West Transp.,* 110 Idaho 67, 71, 714 P.2d 36, 40 (1986). The fact that an employee suffered a covered injury to a particular part of his or her body does not make the employer liable for all future medical care to that part of the employee's body, even if the medical care is reasonable." *Henderson v. McCain Foods, Inc.,* 142 Idaho 559, 563, 130 P.3d 1097, 1101 (2006).

31. Claimant herein must prove not only that she injured her cervical spine and low back in the work accident, but also that her subsequent surgeries to those areas resulted therefrom. *See, e.g., Seamans v. Maaco Auto Painting*, 128 Idaho 747, 918 P.2d 1192 (1996). Proof requires medical testimony that supports her 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). Claimant is required to establish a probable connection between cause and effect to support her contention. *Dean v. Dravo Corporation*, 95 Idaho 558, 560-61, 511 P.2d 1334, 1336-37 (1973). 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). The Commission is not required to construe facts liberally in favor of the Claimant when the evidence is conflicting. *Aldrich v. Lamb-Weston, Inc.*, 122 Idaho 361, 834 P.2d 878 (1992).

32. At the outset it is noted Defendants raised a question of Claimant's credibility on a number of grounds. It is not necessary to discuss the details regarding this assertion other than to point out that both parties agree Claimant testified inaccurately regarding various dates, sequences of events, and educational/vocational background. To the extent Claimant's credibility is relevant to resolving the issue of medical causation it is sufficient to find that she is but a fair historian, and when her testimony conflicts with the medical records created at the time of her treatments, those records are afforded the greater weight. If Claimant's credibility becomes material to other issues presented herein, it will be explored in greater detail at such time.

Medical Causation Analysis

33. Claimant has the obligation to establish by the weight of the evidence that her continued treatment, including lumbar and cervical spine surgery was reasonable, necessary

treatment causally related to her accident of January 4, 2018. She supports her quest for medical benefits by asserting her pain was immediate, unprecedented, unrelenting, unresponsive to conservative treatment, and her injuries were documented by objective diagnostic films. Dr. Blair, Claimant's treating physician, opined her medical treatment was reasonable, necessary, and related to her work accident without apportionment.

34. Other than a couple of brief episodes of prior issues involving Claimant's neck, back, left shoulder, and tingling in Claimant's thighs years before Claimant's work accident, as noted in *fn* 2, *infra,* Claimant has no history of complaints suggestive of serious ongoing cervical and lumbar pain or dysfunction. Defendants do not argue otherwise. Claimant did complain of neck pain immediately after the accident in question, as well as some low back pain initially.

35. Nowhere in the record does it appear Claimant's neck and left upper extremity pain ever fully resolved, although there are a couple of early references to Claimant's low back complaints resolving. In Dr. Fowler's January 9, 2018 office notes, it mentions Claimant's tailbone complaints had resolved. (However, the next day Claimant told the doctor her low back was sore when she woke up that morning.) Also, a notation in Dr. Fowler's January 25, 2018 office notes indicates Claimant's lower back discomfort had resolved, as per her history. On that same date, Dr. Fowler's assessment listed Claimant's lower back contusion as resolved. But, by March when she presented at Dr. Blair's office, she listed as a secondary complaint intermittent tingling into her lower extremities, more pronounced on the right.

36. Claimant's neck and left upper extremity issues are fairly constant complaints. Her low back complaints are a bit more variable, but still the record as a whole

supports the notion that both Claimant's neck/upper extremity and her low back were complaints which never fully resolved, even as of the date of hearing. As such, her claims that her injuries were immediate, unprecedented, unrelenting, and unresponsive to conservative treatment find support in the record. Left for resolution herein are the issues of whether Claimant's work injuries are documented by objective diagnostic films and whether her treatment after May 23, 2018, when Claimant's benefits were terminated, was reasonable, necessary, and related to her work accident.[1]

37. The controversy in this case centers around the significance of diagnostic studies, including MRI and CT scans, and competing expert physician testimony and opinions. The Industrial Commission, as the fact finder, is free to determine the weight to be given to the testimony of a medical expert. *Rivas v. K.C. Loggin*g, 134 Idaho 603, 608, 7 P.3d 212, 217 (2000).

Expert Testimony

Dr. Blair

38. Dr. Blair's medical notes and reports have been set out as part of Claimant's medical history, *supra.* He was deposed post hearing.

39. At his deposition, Dr. Blair reiterated that he diagnosed a herniated disc at C5-6 which could account for Claimant's ongoing symptoms of neck pain "going into her arms" for

[1] While the slip and fall accident was acknowledged, and her claim accepted, it is interesting that Claimant's version of her body impact during the fall took on a new element at hearing, when she testified that she violently struck the back of her head when she fell. This is at odds with the medical records and her deposition testimony. The significance of this change is minor, but arguments based on the "fact" she struck her head during the accident are afforded no weight as not being supported by the record as a whole.

greater than three months and which did not resolve after conservative treatment. These findings led him to consider surgery, which in turn led to Dr. Stromberg's IME. Blair Depo., p. 18.

40. Dr. Stromberg's EMG findings caused Dr. Blair to order a CT scan and myelogram to "see if the disc herniation was large enough to warrant surgery...." Dr. Blair testified the CT scan did show a herniated disc with impingement at C5-6 but was not "large enough to justify the risk of surgery" even though it was large enough to "cause symptoms." Further, Dr. Blair was of the opinion that surgery "at that point wasn't something that would help her improve her symptoms." Dr. Blair added that his hesitation was amplified by Claimant's refusal to use narcotics, which "makes surgery very difficult, if not impossible." *Id.*

41. When asked why he had focused on Claimant's neck and not her low back since the time of her accident, Dr. Blair indicated that Claimant had more neck complaints and obtained a cervical MRI early in her treatment, which "sped things up to treat [her neck] rather than wait and get more information on her low back." Blair Depo. p. 20.

42 Treatment on Claimant's lumbar spine was slowed due to insurance/payment questions (Surety had already denied further lumbar treatment), but in early February 2019, after steroid injections at L4-5 did no good, Claimant proceeded with lumbar spine surgery. Dr. Blair felt the surgery went well and Claimant healed without complications. However, as her low back healed, Claimant again began complaining of "increasing" neck pain.

43. Dr. Blair ordered another cervical MRI, which he interpreted as showing the herniation at C5-6 had gotten larger. Dr. Blair felt that surgery was indicated due to the progression of Claimant's symptoms and complaints, progression of the herniation to the point that it was now "definitely impinging on the nerves" as evidenced by his reading of the MRI,

and the fact that Claimant had done well with her low back surgery despite taking no narcotics.[2] *Id.* p. 26. However, prior to surgery, Dr. Blair ordered an MRI of Claimant's brain. His stated rationale was that he wanted to rule out any other cause of Claimant's symptoms of upper extremity pain and numbness. Examples were tumors, strokes, or multiple sclerosis. Claimant's brain MRI was normal.

44. Dr. Blair went forward with Claimant's neck surgery in August 2019 and Claimant progressed well through the recovery phase. However, by the four-month mark, Claimant was again complaining of low back pain. A follow up MRI revealed no treatable issues. At that point Dr. Blair declared Claimant at MMI for both her low back and neck. He assigned permanent restrictions as set out above. Dr. Blair reiterated that all medical treatments, including surgeries, Claimant received after her industrial accident was reasonable and necessary to treat conditions sustained in the accident in question. No apportionment for preexisting conditions is warranted.

45. In cross examination, Dr. Blair initially testified that neural foraminal narrowing is synonymous with nerve root compression; it varies only in degree of compression. Blair Depo. p. 41. However, in the next sentence he admitted the foramen can be narrowed without compressing the nerve root. *Id* p.42.

46. Dr. Blair acknowledged that he referenced "degenerative stenosis" at C5-6, in his office notes of April 3, 2018, and "degenerative" means a slow, ongoing degenerative process as opposed to something traumatic. *Id* p. 43. In redirect, he tried to walk back that note, claiming he should not have used the word "degenerative" when describing Claimant's stenosis. If he could re-do his notes, he would, in hindsight state "stenosis narrowing from the herniated disc." *Id.* p. 66.

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[2] When asked if low back or neck surgery is typically more painful, Dr. Blair opined that while it depends on the extent of the surgeries, usually low back surgery is more painful for a comparable procedure.

47. Dr. Blair also acknowledged that the CT scan myelogram radiologist report noted the "previously suggested foraminal encroachment on the right at C5-6" was "less apparent on this study," but did not buy into the suggestion that the foraminal encroachment had improved in this case. Instead, he noted a CT scan and an MRI are completely different studies which look at the same area "in completely different lights." *Id.* pp. 45, 46. Nevertheless, Dr. Blair admitted the CT scan findings made a difference in his thinking, as he abandoned his suggestion for cervical surgery and declared Claimant at MMI regarding her neck after seeing the CT results which showed no significant neurological impairment.

48. There was discussion on the reason for Claimant's brain MRI, which Dr. Blair admitted was due to the fact that Claimant's pain severity was not "absolutely aligning" with her diagnostics, and he wanted to be "absolutely certain" in her case the symptoms were not due to some condition in her brain, such as multiple sclerosis. Blair Depo. p. 50. Put another way, as noted in redirect examination, Claimant's subjective pain complaints were outside the norm, but in no way did her complaints cause Dr. Blair to ever doubt her symptomatology. *Id.* p. 65.

49. Dr. Blair disagreed with the radiologist report of the cervical MRI done on June 4, 2019. That report interpreted Claimant's C5-6 level as "unchanged," whereas Dr. Blair felt Claimant's condition had worsened at that level. Dr. Blair testified that his decision to proceed to surgery on Claimant's cervical spine was contingent upon her C5-6 stenosis worsening, but even though he felt the MRI showed the worsening, he was still "a little uncomfortable" with his finding that Claimant's symptoms were due to the stenosis. Hence the brain scan. *Id.* p. 53.

Dr. Stromberg

50. In addition to his IME report of May 2018, discussed above, Dr. Stromberg authored a supplemental report dated October 14, 2019. He was also deposed post hearing.

51. In his October 2019 report, Dr. Stromberg indicated he had been provided additional medical records and Dr. Blair's opinion letter regarding Claimant's treatment and was asked to comment.

52. Looking first at Claimant's cervical spine, and specifically Claimant's CT myelogram, Dr. Stromberg stated,

> MRI scans notoriously exaggerate narrowing in the foramina, particularly in the cervical spine .... The CT myelogram is much more accurate in this assessment and the new study find that there is no significant foraminal narrowing ... with regard to her cervical spine after all. The CT scan does note that there are erosive changes and gapping of the facets indicating chronic degenerative condition. There is no disc herniation. The disc bulge noted on MRI is part of a normal degeneration process, which would be expected in association with these facet degenerative changes given the patient's age.

CE 25, p. 1162.

53. Dr. Stromberg also noted the most-recent MRI (the one Dr. Blair read as showing a progression of Claimant's condition and the basis for her neck surgery) "simply echoes" the findings of her prior cervical MRI, taken before the CT myelogram. He also felt Claimant's mechanism of injury – a fall – was not compatible with her noted degenerative changes. *Id.*

54. Dr. Stromberg found no association between Claimant's work accident and her degenerative findings on MRI and CT. Elaborating, Dr. Stromberg noted "[t]here are no physical manifestations to correlate subjective complaints to an etiology." He discounted Claimant's subjective complaints given the absence of physical findings or significant clinical abnormalities. He noted there was no documentation of any neurologic compromise of a cervical origin documented on EMG, and no findings of neurologic impairment have been found on any physical examination. *Id.*

55. Dr. Stromberg was equally critical of Claimant's lumbar medical treatment history. He began his critique by noting Claimant had but one positive tension test, in January 2018. Dr. Stromberg found only two other times where an examination is even documented in the record, in July of 2018 and in February 2019. Both of those examinations were normal. Dr. Stromberg pointed out that no neurologic or mechanical abnormalities were ever noted at Immediate Care, or by Dr. Fowler, or by Justin Pool (Dr. Blair's PA), or by himself during his IME of Claimant in May of 2018.

56. Dr. Stromberg opined that "the MRI findings of disc herniation were incidental findings of an asymptomatic degenerative condition. As of yet, prior and post-surgery, there are no objective findings to indicate neurologic compromise which would correlate with these MRI findings." CE 25, p. 1162.

57. Not surprisingly, Dr. Stromberg disagreed with Dr. Blair's findings, and elaborated on his opinions in a "point-by-point" rebuttal of Dr. Blair's opinions. While it is a concise discussion of the differences between the two physicians, and highlights the contrasting opinions quite well, the points raised therein have been adequately set out above (and also below in a discussion of Dr. Stromberg's deposition testimony) and need not be listed yet again at this time. See generally, CE 25, pp. 1163, 1164.

58. At his deposition, Dr. Stromberg again reiterated his reading of Claimant's initial cervical MRI as showing no evidence of compressed nerve roots, although she did have some degenerative foraminal narrowing. Dr. Stromberg testified that a disc bulge is not synonymous with a disc herniation, as a bulge simply defines the contour of the disc, not pathology.

59. Claimant's subjective complaints did not mirror her medical findings. Dr. Stromberg saw no evidence of an acute injury.

60. Dr. Stromberg ordered nerve conduction studies in order to determine if there was objective evidence confirming or ruling out a radiculopathy at any level of Claimant's cervical or lumbar spine. (Dr. Stromberg defined "radiculopathy" as "something wrong" with the nerve root. A radiculopathy could manifest as weakness or numbness in an area correlating with a particular nerve root. Stromberg Depo. p. 10.) While Dr. Blair focused on Claimant's C5-6 foramen, Dr. Stromberg found nothing "very remarkable" on MRI at that level. Claimant's complaints of numbness in her hand correlated with her ulnar nerve which does not emanate from C5-6. Dr. Stromberg felt nerve conduction studies would help illuminate what, if anything, was going on with Claimant's cervical spine. He also ordered the same studies for Claimant's lumbar spine based on her right-sided leg complaints. The nerve conduction studies confirmed that there was no sign of radiculopathy in either Claimant's lumbar or cervical spine.

61. Claimant's incidental finding of carpal tunnel syndrome bilaterally was unrelated to her industrial accident. Her reported symptoms did not correlate with the objective studies, or the MRI. As such, Dr. Stromberg opined that "performing a surgery at the level that was proposed had no capacity to effect [sic] her reported symptomology." Stromberg Depo. p. 18.

62. While the focus of his IME was on Claimant's cervical spine, Dr. Stromberg did examine Claimant's lumbar findings and saw nothing indicating she needed lumbar surgery.

63. Dr. Stromberg explained the CT myelogram as a procedure where dye is placed in the fluid around the nerves inside the spinal canal, so that when the CT scan is obtained it produces a very clear outline of anything which might be compressing the exiting nerve roots, spinal cord, and the central canal contents. CT scan also has a very high sensitivity to finding fractures. (In contrast, according to Dr. Stromberg, MRIs are more convenient, and pose less risk, but the tradeoff is the level of detail, particularly on bone structures, which leaves room for

interpretation of the study based on subjective judgment.) The myelogram CT scan of Claimant's cervical spine "made it clear" that there was no neurologic nerve root compression in Claimant's neck.

64. After reviewing Claimant's MRI of June 4, 2019, Dr. Stromberg agreed with the radiologist's interpretation that it showed no worsening of substance in Claimant's cervical spine compared to previous studies.

65. Dr. Stromberg found nothing in any records provided him at any time which would cause him to reevaluate his original opinions that Claimant was not a candidate for either lumbar or cervical surgery as of the time of his IME, and that any further medical treatment beyond the date of his IME would not be related to her industrial accident. In fact, he felt the CT scan reenforced his original opinion.

66. Dr. Stromberg testified that most of the time differences between acute and degenerative processes can be discerned when reading an MRI. Acute injuries will typically cause inflammatory changes, if not outright fractures, herniations, or subluxations if the forces are great.

67. In cross examination, Dr. Stromberg testified that nerve root compression at C5-6 can produce bicep weakness, perhaps weakness of wrist extension, and possibly, if compressed sufficiently, shock-like pain. It does not produce tingling and numbness in the shoulder but can in the arm. It can produce pain in the shoulder and upper arm. It will not produce those symptoms in the hand in general, just the thumb. Typically, it does not make it difficult for patients to grip and hold objects.

68. Dr. Stromberg acknowledged that theoretically a combination of radiculopathy of C6, coupled with a mild carpal tunnel inflammation, might produce increased carpal tunnel symptoms, under a theory labelled "double crush."

69. Dr. Stromberg did not diagnose carpal tunnel syndrome during his examination; it was discovered as an incidental finding on the nerve conduction studies. Prior medical records do not indicate Claimant was ever diagnosed with carpal tunnel syndrome prior to the studies. However, Dr. Stromberg felt it was not plausible that the industrial accident caused Claimant's previously undiagnosed carpal tunnel syndrome.

70. Dr. Stromberg acknowledged that immediately after the workplace accident Claimant complained of numbness in her hand, difficulty holding and gripping things, and tingling sensations in her hands and arms. However, he noted those symptoms would likely stem from some sort of severe neurologic issue, and she had none. Likewise, while Claimant most likely had preexisting stenosis, she had no nerve root compression, either before or after the work accident.

71. Dr. Stromberg further acknowledged that prior to the accident in question, he reviewed no records wherein Claimant had medical treatment for any of her post-accident complaints, no work restrictions, no functional limitations, no lower extremity complaints such as numbness and burning in her legs or feet turning purple, numbness in her hands, hands turning purple, trouble grasping things, shooting and burning pain from her neck to her hands or pain in her left scapula area.[3]

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[3] Dr. Stromberg testified he was not provided records of all of Claimant's past records, so he had no information dating back for years. It is therefore unlikely he saw medical records from 2011 where Claimant was involved in a minor car accident and sought treatment for pain in her neck, back, and left shoulder, with tingling in the back of her thighs when walking. CE 9, p. 48. He might not have seen her records from May 31, 2016, where Claimant complained of left shoulder and chest wall pain and radiographic studies showed mild degenerative changes in her spine at that time. CE 10, pp. 96-98. It is not inferred from these references that those events have a bearing on the instant case beyond any inference that because Dr. Stromberg did not review such records they do not exist. However, any such inference was minimized by Claimant's counsel during his examination of Dr. Stromberg, page 42.

Causation and Medical Care Considerations and Conclusions

Expert Considerations

72. The weight of the record as a whole does not support the opinions of Dr. Blair. His initial diagnosis of "herniated disc" at C5-6, which was the basis for his first recommendation of surgery, was refuted by the CT myelogram. Further, Claimant's pain symptoms "going into her arms" did not follow a specific nerve root distribution, much less the distribution for the nerves emanating from C5-6.

73. In a letter from Dr. Blair, presumably to Surety, dated June 18, 2018, he again set out his interpretation of past MRI films as showing "significant narrowing of the foramen at C5-6 bilaterally," which contributed to Claimant's complaints. However, he noted Dr. Stromberg's contrary conclusions, based in part on nerve conduction studies, and suggested a CT myelogram as the way to resolve this disagreement. He specifically stated therein, "[i]f there no significant neurologic impingement on CT myelogram, then I believe [Claimant's] symptoms are, more likely than not, due to carpal tunnel syndrome as Dr. Stromberg has suggested." CE 17, p. 409. In effect, Dr. Blair was doubling down on his opinion that Claimant had significant neurological impingement justifying surgery. The CT myelogram showed no significant neurological impingement, and Dr. Blair declared her at MMI with regard to her cervical spine.

74. Dr. Blair's deposition testimony on this point did not comport with his earlier letter which clearly stated that if no significant neurological impingement was shown on the CT scan, then he would concede Claimant's cervical complaints were not accident related, but were instead due to a non-industrial condition, to wit, carpal tunnel syndrome. His deposition testimony that Claimant's herniated disc was causing her symptoms but was

just not large enough to justify the risks of surgery was impeached by his June 18, 2018 letter. Further, his explanation that spinal surgery was "very difficult, if not impossible" to survive without narcotics made his subsequent decision to perform even more painful lumbar surgery on Claimant, who refused narcotics, nonsensical. The disconnect is patent, and severely hurts Dr. Blair's credibility.

75. Dr. Blair's rationale for not treating Claimant's lower back pain until he conceded there was no reason to operate on her neck also rang hollow. There is no reason Dr. Blair could not treat both conditions contemporaneously. In reality, only when Dr. Blair could not justify further treatment for Claimant's neck, did he turn his attention to Claimant's low back. Perhaps not surprisingly he found a surgical condition there, even though the earlier nerve conduction studies ordered by Dr. Stromberg showed no radiculopathy. Furthermore, by the time Dr. Stromberg suggested lumbar surgery Surety was no longer "calling the shots" on which surgeries it would or would not authorize. While finding insurance for this surgery took some time, eventually it was secured, and the surgery went forward.

76. After low back surgery was completed, Dr. Blair again returned his attention to Claimant's cervical complaints, ordering a new MRI study in spite of the previous CT scan findings. He, and only he, read the new MRI as showing an increase in Claimant's C5-6 "herniation." The reading radiologist and subsequently Dr. Stromberg, both read the MRI findings as substantially unchanged from the previous study. However, Dr. Blair had already conceded that the previous CT findings did not support surgery; he needed something more to justify cervical surgery. The weight of the evidence does not support Dr. Blair's finding that the herniation had progressed. Instead, the evidence supports the idea that Dr. Blair

performed the operation for the same condition which he earlier admitted was not a surgical finding. At most, he could justify that decision on Claimant's continuing complaints and her proven ability to withstand the pain of surgery without resorting to narcotic pain relief. But given the fact that Claimant's condition was not surgical in 2018 and did not materially progress by the time of surgery in 2019, there is not a clear medical reason for surgery, as pointed out by Dr. Stromberg.

77. Adding to the skepticism of Dr. Blair's reasoning in deciding to operate on Claimant's cervical spine is the fact that prior to the surgery he ordered an MRI of her brain. In spite of his effort to downplay the significance of this procedure, this decision is a clear manifestation of the concerns the doctor had with correlating Claimant's complaints to the MRI/CT findings. This may well be an unprecedented procedure in Commission history, and if not, it certainly is most rare. One could assume if it was simply to rule out such things as multiple sclerosis it would be a common practice. While Claimant may be critical of Dr. Stromberg's "confusion" in trying to correlate Claimant's subjective complaints with the objective evidence, it appears Dr. Stromberg was not alone.

78. Dr. Blair at deposition testified that foraminal narrowing (stenosis) is always associated with nerve root compression, but then rebutted himself moments later. He also classified Claimant's spine as suffering from "degenerative" stenosis at C5-6, and admitted degenerative stenosis is the result of a slow, ongoing process and not a traumatic event. His attempt to disavow his own findings in redirect examination seemed contrived and did little to erase his earlier findings and testimony. His contemporaneous findings in his office notes are afforded more weight than his revised wording proffered in his deposition after prompting by Claimant's counsel.

79. In contrast, Dr. Stromberg's testimony was consistent and simply made more sense. He examined Claimant and found her subjective complaints did not align with her medical findings, including the diagnostic films, so he ordered more definitive nerve conduction and EMG tests. Those tests ruled out nerve root compression as a reason for Claimant's symptoms. While they did disclose an incidental finding of carpal tunnel syndrome, that was not the purpose for ordering the tests.

80. Dr. Stromberg convincingly testified that CT myelogram was the more precise test for determining the degree of foraminal narrowing, as MRI scans are "notorious" for exaggerating the extent of such narrowing. This explains why Dr. Blair would order the test, and why the findings made an impression on Dr. Blair's decision to not operate. It could also explain the difference of opinions on the significance of the findings between the two physicians when reviewing the prior MRI scans. The more accurate CT scan findings supported Dr. Stromberg's conclusions. It also ruled out disc "herniation" as defined by Dr. Stromberg.[4] Finally, it showed the presence of degenerative processes, but no acute injury. Dr. Stromberg testified that Claimant lacked any evidence of traumatic injury in her cervical and lumbar spine and no other medical expert pointed to any such evidence, such as fracture or inflammation.

81. While the Claimant did complain of various pains and limitations since the time of the accident up to the time of hearing (with some modest subjective relief of her complaints afforded by the surgeries as per her testimony), the complaints did not correlate

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[4] The term "herniation" is used differently by various physicians as noted by Dr. Stromberg in his deposition. What Dr. Stromberg called a disc bulge could be called a herniation by Dr. Blair.

with any medical condition observable by objective testing. Regarding Claimant's lumbar spine, subjective straight leg tests were positive just once.

82. While Dr. Stromberg admitted Claimant's complaints did not correlate with carpal tunnel syndrome, neither did they correlate with any potential cervical injury. Her complaints were her complaints, but they were not explainable by any testing, or studies done. Instead, her complaints, if validated by testing, would be indicative of some sort of severe neurological issue which she did not have.

Conclusions

83. When the record as a whole is considered, Dr. Stromberg's opinions on medical causation and permanent restrictions are afforded the greater weight.

84. When the totality of the evidence is examined, Claimant has failed to prove by a preponderance of the evidence that her cervical and lumbar conditions for which she seeks benefits were caused by the industrial accident of January 4, 2018.

85. When the totality of the evidence is examined, Claimant has failed to prove by a preponderance of the evidence that the medical treatments for her cervical and lumbar spine she received after May 23, 2018, were reasonable and necessary and caused or contributed to by her industrial accident of January 4, 2018.

TTD, PPI, PPD and Apportionment

TTD

86. Idaho Code § 72-408 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.

87. While Claimant testified as to her employment and unemployment since her termination with Employer, eligibility for temporary disability benefits for such periods of reduced or lack of employment depends upon a finding that her un- or under-employment occurred during a period of recovery. Dr. Stromberg testified that Claimant reached MMI and could return to work without restrictions as of May 23, 2018. Dr. Blair ultimately determined Claimant was at MMI on January 22, 2020. For reasons discussed previously, the weight of the evidence when examining the record as a whole supports Dr. Stromberg's opinion on the duration of Claimant's period of recovery.

88. When the totality of the evidence is examined, Claimant has failed to prove by a preponderance of the evidence that she is entitled to additional temporary disability benefits beyond May 23, 2018.

PPI

89. 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. "When deciding the weight to be given an expert opinion, the Commission can certainly consider whether the expert's reasoning and methodology has been sufficiently disclosed and whether or not the opinion takes into consideration all relevant facts." *Eacret v. Clearwater Forest Industries,*

136 Idaho 733, 40 P.3d 91 (2002). The Commission is the ultimate evaluator of impairment. *Urry v. Walker & Fox Masonry*, 115 Idaho 750, 769 P.2d 1122 (1989).

90. Dr. Stromberg assessed Claimant with a 2% permanent partial impairment rating, and apportioned 50% to her preexisting degenerative arthritic changes and 50% to the industrial accident. Dr. Blair assigned Claimant a 10% whole person impairment rating based on his assessment of her post-surgical work-related permanent deficits of. her lumbar and cervical spine after he declared her at MMI in 2020.

91. Claimant was originally diagnosed with a neck strain, low back and left forearm contusion. Diagnostic films since that time have consistently shown degenerative and congenital changes without significant nerve root compression at any level. While Claimant's subjective complaints have continued unabated, even after surgeries, those complaints do not correlate with her objective findings.

92. It is not clear from the record what, if any, permanent anatomic or functional abnormality Claimant suffered as a result of the industrial accident in question. She had soft tissue strains and contusions, but she is not arguing those strains were permanent. Her claims for permanent medical disability (PPI) stem from Dr. Blair's opinions that Claimant suffered spinal stenosis (bulged discs) as a traumatic result of her work-place accident which necessitated surgeries and led to disabilities. See, e.g., Clt's Opening Brief, p. 22. That medical theory was rejected based on the totality of the record.

93. Dr. Stromberg assigned Claimant a 2% PPI rating, apportioning half to her preexisting degenerative conditions, based on the AMA Guides, 6th Ed. under the heading Soft Tissue and Non-Specific Conditions, for a Class 1 Impairment with ongoing, non-verifiable axial complaints. This rating is supported by the weight of the evidence.

94. When the totality of the evidence is examined, Claimant has failed to prove by a preponderance of the evidence that she is entitled to additional disability benefits based on medical factors, commonly known as permanent partial impairment or PPI benefits beyond those previously awarded her based on a 1% whole person industrially-related impairment.

PPD

95. 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. The test for determining whether a claimant has suffered a permanent disability greater than permanent impairment is "whether the physical impairment, taken in conjunction with nonmedical factors, has reduced the claimant's capacity for gainful employment." *Graybill v. Swift & Company*, 115 Idaho 293, 294, 766 P.2d 763, 764 (1988).

96. Dr. Stromberg assigned Claimant no permanent restrictions. Dr. Blair assigned her permanent restrictions of no lifting greater than 25 pounds occasionally, 15 pounds frequently, no repetitive bending or squatting, and positional changes as needed, with 30 minutes as a suggested guideline. These permanent restrictions were put in place after Claimant's surgeries.

97. In the present case, Claimant hired vocational rehabilitation expert Nancy Collins, Ph.D. Utilizing Dr. Blair's restrictions, she assessed Claimant with a permanent partial disability of greater than 65%. However, Dr. Collins acknowledged that if Dr. Stromberg's opinions were utilized, then Claimant has no disability in excess of impairment.

98. Dr. Stromberg's opinions on Claimant's lack of permanent disability and need for permanent restrictions due to her industrial accident are in line with the rest of his testimony and supported by the weight of the evidence. While Claimant may need permanent restrictions after her surgeries in order to safeguard her from further injury to her surgically modified cervical and lumbar spine, the totality of the evidence does not support the idea that her surgeries were causally related to her workplace accident and resultant injuries.

99. When the totality of the evidence is examined, Claimant has failed to prove by a preponderance of the evidence that she is entitled to benefits for permanent partial disability in excess of her impairment rating.

Apportionment

100. Idaho Code § 72-406 allows for a deduction for preexisting injuries in cases where a claimant has suffered less than total permanent disability, when the disability resulting from the industrial accident is increased or prolonged because of the preexisting physical impairment. In such cases, the defendants shall be liable only for the *additional* disability from the industrial injury. In the present case, Claimant has failed to prove a right to permanent partial disability in excess of impairment. Therefore, the issue of apportionment of permanent partial disability benefits is moot.

CONCLUSIONS OF LAW

1. Based upon the totality of the evidence, Claimant has failed to prove by a preponderance of the evidence that her cervical and lumbar conditions for which she seeks benefits were caused by the industrial accident of January 4, 2018.

2. Based upon the totality of the evidence, Claimant has failed to prove by a preponderance of the evidence that the medical treatments for her cervical and lumbar spine she received after May 23, 2018, were reasonable and necessary and caused or contributed to by her industrial accident of January 4, 2018.

3. Based upon the totality of the evidence, Claimant has failed to prove by a preponderance of the evidence that she is entitled to additional temporary disability benefits beyond May 23, 2018.

4. Based upon the totality of the evidence, Claimant has failed to prove by a preponderance of the evidence that she is entitled to additional disability benefits based on medical factors, commonly known as permanent partial impairment or PPI benefits beyond those previously awarded her based on a 1% whole person industrially-related impairment.

5. Based upon the totality of the evidence, Claimant has failed to prove by a preponderance of the evidence that she is entitled to benefits for permanent partial disability in excess of her impairment rating.

6. The issue of apportionment under Idaho Code § 72-406 is moot.

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 28th day of March, 2022.

INDUSTRIAL COMMISSION

Brian Harper

Brian Harper, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of June, 2022, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION** was served by email transmission and regular United States Mail upon each of the following:

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