BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

ESTELLA ZAMORA, Claimant, v. CANYON COUNTY, Employer, and IDAHO STATE INSURANCE FUND Surety, Defendants.	**IC 2013-002145** **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION** FILED JUN 30 2022 INDUSTRIAL COMMISSION

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Sonnet Robinson, who conducted a hearing on October 4, 2021. Claimant, Estella Zamora, was represented by Samuel Johnson of Boise. Paul Augustine of Boise represented Defendants. The parties presented additional oral and documentary evidence. The matter came under advisement on May 5th 2022, and is ready for decision.

ISSUE

The sole issue[1] for decision is whether Claimant is entitled to additional medical treatment pursuant to Idaho Code § 72-432.

[1] The parties entered into a lump sum settlement agreement on December 31, 2020 settling all issues except for "reasonable future medical benefits." JE 26:1.

CONTENTIONS OF THE PARTIES

Claimant contends she is entitled to additional medical treatment for her chronic migraine headaches in the form of Botox injections and prescriptions.

Defendants contend that Claimant does not suffer from migraines, and if she does suffer from migraines, they are unrelated to her industrial accident and rely on Dr. Cox's opinion to prove the same.

Claimant responds that she has more than proven she suffered a head injury and related migraine headaches; she has no previous history of headaches and no other potential cause for her migraines other than her accident.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. The testimony of Claimant taken at hearing on October 4, 2021;
3. Joint Exhibits (JE) 1 through 26;
4. The pre-hearing deposition of Claimant, taken October 6, 2020;
5. The post-hearing depositions of Ryan Smith, DO, taken November 9, 2021 and Rodde Cox, MD, taken December 20, 2021.

Defendants explained in briefing that Claimant attempted to introduce Exhibit 9A at Dr. Smith's deposition and that they object to its inclusion into evidence as it was not timely produced pursuant to JRP 10(C). Defendants also timely objected at Dr. Smith's deposition regarding Exhibit 9A and Claimant's counsel's questions about the same.

Exhibit 9A was not included when Dr. Smith's deposition was lodged, and Claimant did not argue including Exhibit 9A or Dr. Smith's testimony regarding the same. Defendants'

objection to Dr. Smith's testimony regarding Exhibit 9A is SUSTAINED; Dr. Smith's testimony beginning at page 33, line 10 through page 36, line 6 is struck. All other outstanding objections are overruled.

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

FINDINGS OF FACT

1. Claimant suffered multiple injuries in the industrial accident that is the subject of this decision. This decision will focus solely on the claim for migraine headaches and related records.

2. Claimant was born July 12, 1953 and was 68 years old at the time of hearing. Tr. p. 10:19. Claimant began work as an interpreter for Canyon County in 1985. *Id.* at 11:17.

3. **Pre-existing Medical History.** On July 18, 2011, Claimant presented to Cynthia Reed, NP, and reported an episode two weeks prior where the lights in her office bothered her and made her feel uncomfortable and dizzy and foggy; she was unable to talk in full sentences during the episode but was able to remember everything and did not slur her words. JE 22:4. Claimant reported that eating a couple pieces of candy did seem to improve her condition and that she hadn't eaten breakfast that morning, which she normally does. Further, she reported that she had not had another episode similar to that one; however, the lights were still "bothersome." *Id.*

4. **Industrial Accident.** On January 17, 2013, Claimant was on the third floor of the Canyon County Courthouse when she fell down a stairwell on her way to court. Tr. p. 16:13-17:3. Claimant called her boss and reported the injury, but remained at work until approximately 5:00pm, when she started to feel unwell. *Id.* at 19:24-21:7. Claimant's husband drove her to be treated. *Id.*

5. Claimant presented to Saltzer Idaho Pain Center that same day and reported her fall. JE 16:1. Claimant "remembered hitting her head" but did not have loss of consciousness. *Id.* Claimant was referred the emergency room for imaging. *Id.* at 2.

6. Claimant was seen at St. Luke's Nampa Medical Center that same day and was examined by Nathan Church, PA. JE 20. PA Church recorded Claimant fell down 10 stairs, but that "[s]he did not hit her head or loose [sic-lose] consciousness." *Id.* at 7. She did have a little nausea after the fall but reported she currently did not have a headache, vision changes, speech difficulties, or focal neurologic complaints. *Id.* PA Church ordered X-rays of Claimant's spine, elbow, knee, and shoulder, which were negative for fractures, and prescribed Norco and Flexeril. *Id.* at 9, 13. PA Church observed "serious intercranial injury is felt unlikely considering her current exam, lack of focal neurologic complaints, and no LOC or serious head injury at time of fall." *Id.* at 12. PA Church assessed cervical strain, left shoulder contusion, left elbow contusion, left knee abrasion/contusion, and fall. PA Church wrote that that if Claimant did not improve in 10 days to see her primary care physician. *Id.* at 13.

7. The nursing notes from this same visit note a headache/migraine at 18:57 (6:57pm), new onset, which was mild in severity, but described as "pressure [sic] and sharp." *Id.* at 14.

8. Claimant followed-up with Suzanne McConnaughey, DO, on January 24, 2013. JE 22:10. Claimant reported she still had pain on the "top of her left head" and that the top of her head throbbed with headaches "once in a while" at the end of the day after reading. *Id.* Claimant reported no prior problems with headaches, and "doesn't know if she passed out but may have" during the accident. *Id.* at 12. Dr. McConnaughey recorded that her examination revealed a "lump on her left parietal lobe" which was small, but still slightly tender. *Id.* at 11.

9. Claimant saw Richard Davis, MD, on February 6, 2013 for evaluation of her injuries. JE 11:1. On March 8, Claimant returned to Dr. Davis and reported her most concerning issue was "headaches. She is going to work daily; however, she is having difficulty concentrating and completing the day because of her neck and back issues as well as headaches." *Id.* at 4. Dr. Davis referred Claimant to physical therapy again, this time for her headaches and neck and back pain. *Id.* at 5. On April 5, Claimant reported her headaches were getting better. *Id.* at 7.

10. On April 11, 2013, Claimant was seen by William Black, OD, for an eye exam. JE 2:1. Claimant complained of "troublesome" vision changes, especially at close range, and that her eyes tired easily and she had persistent headaches. *Id.* Dr. Black's impression was bilateral subjective visual disturbance and he recommended special testing. *Id.* at 3. On May 8th, Cindy Hugulet, claims examiner, wrote to Dr. Black to ask whether Claimant's condition was a result of her accident. *Id.* at 4. Dr. Black wrote it was "unconclusive" whether it was related to the industrial accident or non-industrial issues. *Id.*

11. On May 3, 2013, Claimant returned to Dr. Davis and reported her headaches were much improved and less frequent; her main complaints were her shoulder and her knee. JE 11:8.

12. On May 6, 2013 was evaluated by Michael Djernes, MD, for her headache and neck pain. JE 17:1. Claimant relayed she hit her head and may have lost consciousness briefly. *Id.* Claimant described her headaches as aching and tightness in her in her cervical and suboccipital head region. *Id.* Dr. Djernes wrote Claimant's headaches were likely post-traumatic or tension based, and that physical therapy did help to a degree. *Id.* at 2. Dr. Djernes ordered an MRI of Claimant's cervical spine and electroencephalogram. *Id.*

13. Claimant returned on June 5, 2013. *Id.* at 13. Dr. Djernes recorded that there was no significant cervical impingement shown on the MRI and that the EEG was unremarkable; he

referred Claimant for physical therapy and noted Claimant was improving. *Id.* In a letter to Dr. McConnaughey, Dr. Djernes elaborated: "[c]linically, Estella tells me that her headaches have nearly resolved…" but that she continued to have neck pain. *Id.* at 16.

14. On July 10, 2013, Claimant was evaluated for physical therapy for her knee and shoulder injuries and reported pain on the left side of her cervical spine "with associated occipital and parietal headaches." JE 10:2. In reporting her medical history, Claimant noted severe and frequent headaches and vision or hearing difficulties. *Id.* at 3.

15. On September 11, 2013, Claimant followed up with Dr. Djernes and reported her headaches had worsened since her last visit and described "sharp or pounding pain involving her left retro-orbital head regions… and associated autonomic phenomena including tearing of her eyes." JE 17:17. Claimant did note physical therapy helped her headaches. *Id.* Dr. Djernes prescribed topiramate and more physical therapy. *Id.* at 17-18.

16. Claimant returned to Dr. Djernes on October 11, 2013 and reported the topiramate helped somewhat, but that she did not like the way it made her feel; Dr. Djernes recorded he was going to refer Claimant to Shane Maxwell to try trigger point injections, possibly suboccipital nerve blocks, and further medication. *Id.* at 21.

17. On November 18, 2013, Shane Maxwell, DO, evaluated Claimant. *Id.* at 24. Dr. Maxwell reviewed Claimant's history, examined her, and assessed occipital neuralgia. *Id.* Dr. Maxwell prescribed occipital nerve blocks and Topamax. *Id.* at 25. On January 23, 2014, Claimant underwent bilateral occipital nerve blocks. JE 17:33

18. Claimant saw Erin Carver, PA, at Dr. Maxwell's office for follow-up on February 24, 2014. JE 17:35. Claimant reported her pain was better, but she was having memory issues, which she related to the Topamax; PA Carver reduced her Topamax prescription. *Id.* at 36. At

follow-up on March 24, 2014, Claimant's medication was switched to Neurontin because the Topamax was causing hair loss, although her headaches had improved. *Id.* at 37-38. On April 10, 2014, Claimant reported itching and nausea with Neurontin and was switched back to Topamax and prescribed Norco. *Id.* at 40.

19. On May 5, 2014, Claimant was evaluated by Robert Walker, MD, for her orthopedic injuries. JE 12:3. Claimant reported memory difficulties, decreased vision, headaches, and dizziness. *Id.* at 6. Regarding her headaches, Dr. Walker's impression was "[h]istory of head injury and post-traumatic headaches, currently being treated by Dr. Maxwell. This has, unfortunately, resulted in the loss of her long-standing job as a court translator due to difficulty in concentration." *Id.* at 11.

20. Claimant returned to PA Carver on May 15, 2014. JE 17:42. PA Carver increased Claimant's Norco prescription to reduce pain and improve function and noted Claimant was doing well with current medications. JE 17:43. At follow-up on September 8, Claimant reported dizziness and loss of balance associated with her headaches. *Id.* at 47. PA Carver wrote that they would try increasing her Topamax dosage and try extended-release capsules. Id. at 48. On October 6, Claimant's pain was worse; PA Carver ordered a repeat C-spine MRI and noted Claimant may be a good candidate for medial branch blocks to address her occipital nerve pain. *Id.* at 51.

21. Claimant saw Dr. Maxwell on December 22, 2014 and reported her headaches had worsened; previously she had only needed to take one-half of a pill, but was up to full pill to control her headaches and that reading worsened her headaches. *Id.* at 99. Dr. Maxwell wrote that Claimant was not at maximum medical improvement, and that the medial branch blocks had yet to be approved. *Id.* at 100.

22. On February 11, 2015, Claimant underwent cervical medial branch blocks and reported 100% pain relief. *Id.* at 103. At follow-up on March 11, Claimant reported dizziness after the injection and an 80% improvement in pain; Dr. Maxwell wrote "[w]e are making headway as she is having less neck pain in her headaches or changing from the occipital based headaches to something more of a typical headache but overall she is making headway" and recommended more medial branch blocks. *Id.* at 108. Dr. Maxwell noted Claimant's headaches affected her cognitive ability which made it hard to do her job. *Id.* Claimant underwent medial branch blocks a second time on March 31, 2015. *Id.* at 111.

23. At follow-up on April 30, 2015, Claimant reported significant relief for two weeks after the medial branch blocks but then the pain returned. *Id.* at 120. Dr. Maxwell summarized the treatment to date as follows:

> [w]e have been through 2 separate injection series left C2 through for medial block branch injections. Each has given good short-term as well as a little bit of longer-term relief both of the steroid and anesthetic phase but none of the hip [sic] provided any longer term relief which is unfortunate. During the time when she is doing well the headaches and neck pain are nearly completely control[led] and she's able to reduce her medications. She does not in fact need a prescription for hydrocodone today because she is barely using it. She does feel if the pain relief and headache relief lasted a whole lot longer that she would be of the [sic – able to] taper off of the Topamax. It is currently the side effects of the Topamax as well as the persistent neck pain and headaches that are keeping her from working. Headaches and neck pain and it [sic] difficult for her to stay at a job site [and] the Topamax makes it difficult to cognitively function.

Id. at 121. Dr. Maxwell recommended medial branch radiofrequency denervation, which he predicted would give 12 to 18 months of pain relief. *Id.* On June 16, 2015, Claimant underwent the radiofrequency denervation procedure at C2, C3, and C4. *Id.* at 127.

24. On July 21, 2015, Claimant reported 50% relief from the denervation procedure: "she states she thinks that the injection helped with her migraines some but the site of the injection is still sore so it is hard for her to tell." *Id.* at 132. Dr. Maxwell was hopeful that the pain relief

from denervation would allow him to decrease Claimant's Topamax prescription and reduce its corresponding side effects, namely cognitive dysfunction. *Id.* at 133.

25. At follow-up on September 9, 2015, Dr. Maxwell recorded that Claimant's improvement from ablation had started to fade; Dr. Maxwell wrote that he did not really know what else to do for her. *Id.* at 134. By November 5, 2015, Dr. Maxwell opined Claimant had reached maximum medical improvement (MMI) for her headaches and neck pain which were controlled by Topamax and low, rare doses of hydrocodone. *Id.* at 138.

26. On March 29, 2016, Claimant returned to Dr. Maxwell and reported her headaches were "almost daily but not as bad as before." JE 17:143. Claimant noted that since starting treatment with Dr. Maxwell she had had improvement of about 70%-75%, and that her headaches and neck pain were more manageable. *Id.* at 144.

27. On January 31, 2017, Claimant saw Dr. Maxwell again and reported her headaches could be weather related and caused by stress. JE 18:4. On April 28, 2017, Claimant reported her headaches had worsened and Dr. Maxwell recommended medial branch blocks, and if that worked, denervation a second time. *Id.* at 8. Claimant underwent the medial branch blocks and reported 30% improvement of her pain, but did not undergo denervation. *Id.* at 39.

28. On August 1, 2018, Claimant underwent medial branch blocks a third time. *Id.* at 52. On September 4, 2018, Claimant reported the procedure did not provide any short or long-term relief and that her migraines were severe, weekly, and lasting multiple days; at follow-up on October 9, 2018, Claimant reported she was getting headaches 3-4 times a week and they were waking her up. *Id.* at 54. Dr. Maxwell wrote he was waiting for a referral to the St Luke's Headache Clinic. *Id.* at 56.

29. On January 10, 2019, Claimant saw Ryan Smith, DO, for a headache neurology consultation. JE 9:1. Dr. Smith reviewed records and imaging. *Id.* Dr. Smith wrote that Claimant suffered from headaches associated with head trauma from a fall down the stairs and that her headaches had been at the same frequency and pattern for the last three to six months. *Id.* Claimant reported a mild headache 20 days a month and a severe/moderate headache 10 days per month; the severe headaches were associated with sensitivity to light and sound, nausea, neck rotation to the right and bending to the right. *Id.* Dr. Smith noted that Claimant had undergone medial branch blocks and medication management for her headaches. *Id.* Dr. Smith stopped Claimant's topiramate, requested a brain MRI, and requested the prior cervical spine MRI. *Id.* at 6. Dr. Smith diagnosed (1) chronic migraine without aura arising from post-traumatic etiology; (2) query cervicogenic etiology given benefit from prior high cervical medial branch blocks. *Id.*

30. Claimant returned on March 11 and was examined by NP Michael Parker. NP Parker wrote that Claimant's MRI results were "normal" and prescribed 3 different medications: (1) candesartan for prevention of migraine; (2) sumatriptan for control of migraines; and (3) naproxen for milder headaches. *Id.* at 15. On June 11, Claimant reported the candesartan reduced the intensity of her headaches by about 20%, but that the sumatriptan caused stomach upset; NP Parker switched Claimant's medications to nortriptyline and naratriptan but kept prescribing candesartan and naproxen. *Id.* at 22. Claimant again reported negative side effects from the new medications on August 7, and NP Parker prescribed Botox injections. *Id.* at 27.

31. Claimant underwent her first series of Botox injections on September 5, 2019. *Id.* at 30. At follow-up on October 7, Claimant reported a decrease in migraine frequency; Claimant had only had one migraine in the past month. *Id.* at 32. NP Parker continued to recommend Botox. *Id.* at 36. At this same appointment, Claimant brought a letter from her attorney, which Dr. Smith

filled out and signed. *Id.* at 39-40. Dr. Smith wrote that her migraines were related to her injury and that it was unclear if she was at maximum medical improvement (MMI) yet because she just began Botox treatment, which may improve her condition. Dr. Smith did not have restrictions for Claimant. *Id.*

32. On January 7, 2020, Dr. Beaver issued his report at the request of Claimant. JE 1:1. Dr. Beaver reviewed medical records from 2013 onward, interviewed Claimant, administered psychological and neurocognitive psychological tests, and made diagnoses and recommendations. In relevant part, Dr. Beaver diagnosed a mild traumatic brain injury (TBI) as a result of the industrial injury; it was his opinion that Topamax temporarily exacerbated her cognitive difficulties after the accident. *Id.* at 11, 13. Dr. Beaver found her neurocognitive complaints were consistent with her test results, and that she put forth reasonable effort. *Id.* Dr. Beaver's secondary diagnosis was somatic symptom disorder with predominant pain, mild, persistent, and related to her coping style and the accident. *Id.* at 12.

33. Dr. Beaver deferred to her other physicians regarding her headaches and orthopedic injuries, but opined Claimant was at MMI regarding her TBI and somatic disorder. *Id.* Dr. Beaver opined Claimant's vestibular complaints could be related to her work injury and recommended a vestibular evaluation. *Id.* at 13. Dr. Beaver rated Claimant's mild neurocognitive disorder, secondary to her TBI, at 5% PPI with no apportionment; Dr. Beaver did not rate her somatic disorder as it was not predominately caused by the accident. *Id.*

34. On January 27, 2020, Dr. Cox issued his report. JE 13:1. Dr. Cox reviewed records, interviewed Claimant regarding her history and the accident, examined Claimant, rated her injuries, and opined on causation, diagnoses, and work restrictions. Regarding her migraine treatment, Claimant had just received her second round of Botox and relayed "that she feels like

she has some benefit from the Botox injections but notes that it is only temporary." *Id.* at 18. Dr. Cox diagnosed headaches and neck pain and possible somatic symptom disorder. *Id.* at 25. Dr. Cox opined Claimant's headaches were muscle tension headaches as opposed to migraines; he wrote that the natural history of headaches related to trauma would be improvement over time. *Id.* Dr. Cox wrote that Claimant's lack of improvement with treatment was inconsistent with the natural history of headaches related to head trauma. *Id.* at 26. Dr. Cox related Claimant's headaches to her work injury but also noted he was at a loss to explain her ongoing headaches. *Id.* at 27. Dr. Cox found Claimant at MMI and rated her at 2% PPI for her headaches and opined she needed no further treatment. *Id.* at 29.

35. On August 26, 2020, Claimant underwent her fifth[2] round of Botox injections. JE 9:41. Prior to Botox treatment, Claimant had 20 migraines per month and 10 headaches per month, but after her fourth Botox injection she only had 3 migraines per month and 4 headaches per month. *Id.*

36. At deposition on October 6, 2020, Claimant reported Botox decreased the frequency and severity of her headaches. Claimant Depo. 38:1. At hearing, Claimant elaborated that with Botox treatment her headaches were "[m]uch much better. I don't get have the severe headaches like I used to." Tr. 44:24-5. Claimant also explained that when she did get a severe headache, she took her rescue medications, diclofenac and candesartan, and that those helped her by reducing the duration of the migraine. *Id.* at 45:5-24; 47:1-4.

37. On April 19, 2021, NP Parker wrote a letter explaining that Claimant's headaches were "directly related" to her injury. JE 9:45.

[2] Exhibit 9, Dr. Smith's records, does not include Claimant's second, third, or fourth Botox injections.

38. On November 9, 2021, Claimant deposed Ryan Smith, DO. Dr. Smith is fellowship trained in headaches and has practiced medicine in Idaho for six years. Smith Depo. pp. 5:13-8:3. Dr. Smith did not recall Claimant. *Id.* at pp. 8:4-10:24. Dr. Smith explained that Claimant's medications were abortive control medications designed to "alleviate that acute attack. They do not change the fundamental nature of what's causing the headache, but can briefly alleviate that attack." *Id.* at 18:17-19:23. Candesartan is a blood pressure medication which has evidence for alleviating headaches. *Id.* at 18:21-23. Dr. Smith explained Botox treatment for migraine headaches is "an indefinite treatment. It is not curative therapy, but in many patients it provides significant relief from the symptoms of chronic migraines." *Id.* at 31:2-5. Dr. Smith elaborated it was possible to go off of Botox treatment, but some patients will need it for the rest of their life. *Id.* at 31:10-21. Dr. Smith thought Botox injections and medications were reasonable and necessary treatment for Claimant's headaches and migraines. *Id.* at 36:7-23.

39. On cross-examination, Dr. Smith explained the difference between headaches and migraines as follows:

> a tension-type headache is a mild to moderate headache where they can either have light or sound sensitivity but not both. And they should not have nausea. The location isn't that important for a tension headache. For a migraine, it is a moderate to severe headache where they have light and sound sensitivity or nausea.

Id. at 39:19-40:1. Dr. Smith noted he would have had access to Claimant's St. Luke's electronic records but could not recall what records he reviewed before he met with Claimant for the first time. *Id.* at 38:1-16. Dr. Smith agreed that his causation opinion relied on Claimant having hit her head during her accident: "that would be necessary." *Id.* at 47:13-14.

40. Defendants deposed Rodde Cox, MD, on December 20, 2021. Dr. Cox's specialty is physical medicine and rehabilitation, and he has practiced in Idaho since 1994. Cox Depo. 5:19-6:5. Dr. Cox explained that tension headaches typically start at the back of head (the occiput) and

radiate to the area behind the eye, there is not usually an aura associated with tension headaches, and tension headache treatment tends to focus on soft tissue factors, such as physical therapy or medial branch blocks. *Id.* at 9:1-10:3. Dr. Cox explained occipital neuralgia is when the occiput's nerves become irritated, sometimes by nearby muscles, and that the irritation can cause a headache. *Id.* at 10:25-11:6. Dr. Cox opined that migraines and tension headaches do have variability over time and can wax and wane, but that occipital neuralgia does not wax and wane. *Id.* at 11:18-12:3. Dr. Cox did think whether Claimant hit her head or lost consciousness in the initial accident was relevant to whether Claimant suffered from post-traumatic headaches related to the accident. *Id.* at 14:1-15:11.

41. Dr. Cox opined that the "natural course" of Claimant's headaches would be improvement over time, whether they were post-concussion headaches or tension headaches. *Id.* at 16:2-17:2. The fact that Claimant did not improve over time suggested to Dr. Cox that Claimant's somatic symptom disorder may explain her ongoing symptomatology. *Id.* at 25:15-26:4.

42. Dr. Cox opined that "some of those wear-and-tear changes" in Claimant's neck could be the cause of cervicogenic headaches. *Id.* at 28:7-9. Dr. Cox found it significant that Claimant responded positively to medial branch blocks because if the source of her pain was migraine related, the blocks should not have provided relief, even temporarily, and indicated her headaches were more likely a cervicogenic or tension-type headache. *Id.* at 19:13-20:5.

43. Dr. Cox thought Claimant suffered from tension/muscle type headaches because of the location, the improvement with medial branch blocks, pain with palpitation on the back of her neck, and the increase in severity of headaches due to the weather. *Id.* at 22:1-24:20. Regarding Botox treating Claimant's tension headaches, Dr. Cox explained "there really isn't great literature

on Botox's effectiveness for tension headaches...local anesthetic injections can be as effective as Botox into muscles for tension-type headaches or more effective than Botox for those headaches." *Id.* at 26:8-13.

44. On cross-examination, Dr. Cox admitted Claimant hypothetically could have suffered both tension-type headaches and migraine headaches as a result of her accident, but that a migraine type headache required some kind of head trauma. *Id.* at 32:25-33:14. Dr. Cox agreed Claimant had no preexisting history of chronic headaches. *Id.* at 35:19-23. Dr. Cox clarified his causation opinion: he did feel Claimant had headaches related to her accident, but that the headaches she was still having in 2020 during his exam of her were not related to the accident. *Id.* at 41:17-42:21.

45. **Credibility.** Claimant testified credibly, but her recall was poor; where Claimant's testimony contradicts the medical record, the medical record will be relied upon.

DISCUSSION

46. A worker's compensation claimant has the burden of proving, by a preponderance of the evidence, all the facts essential to recovery. *Evans v. Hara's, Inc.*, 123 Idaho 473, 479, 849 P.2d 934 (1993). Claimant must adduce medical proof in support of his claim, and he must prove his claim to a reasonable degree of medical probability. *Dean v. Dravo Corporation*, 95 Idaho 558, 511 P.2d 1334 (1973). 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. Logging*, 134 Idaho 603, 608, 7 P.3d 212, 217 (2000). "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, 737, 40 P.3d 91, 95 (2002).

47. Idaho Code § 72–432(1) requires an employer to provide an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital service, medicines, crutches and apparatus, as may be reasonably required by the employee's physician or needed immediately after an injury or manifestation of an occupational disease, and for a reasonable time thereafter.

48. The parties dispute whether Claimant hit her head in the accident. Whether Claimant hit her head is foundational to her case because Dr. Smith's opinion that Claimant's migraines are related to the accident relies on this fact. Dr. Cox agreed diagnosing trauma-related migraines required evidence of head trauma.

49. The evidence shows it is more probable than not that Claimant did hit her head in the accident. Claimant reported at the very first evaluation at Saltzer Pain Center that she: "remembered hitting her head" in the accident. At St Luke's, Claimant reported nausea to PA Church, but that she did not hit her head; she later reported a headache/migraine at that same visit to the nursing staff. At evaluation a week after the accident, Dr. McConnaughey recorded a lump on Claimant's left parietal lobe. Claimant reported she hit her head consistently thereafter to her providers.

50. There is only one medical record wherein Claimant reported she did <u>not</u> hit her head (St Luke's), which came minutes after reported she <u>did</u> hit her head (Saltzer). Claimant consistently reported she hit her head thereafter, and Dr. McConnaughey's record of a lump on Claimant's head a week after the accident is very strong evidence she hit her head at the time of the accident. In sum, it is more probable than not that Claimant hit her head in the accident.

51. Dr. Cox opined that Claimant suffered tension/muscle headaches just after the accident, and there is evidence that Claimant had symptoms consistent with tension/muscle

headaches at that time. Claimant had some early relief from physical therapy, medial branch blocks, and denervation. Claimant had pain with palpitation to her neck.[3] Claimant reported her headaches worsened with cold weather, along with the rest of her orthopedic injuries. Dr. Cox and Defendants plainly laid out that all these factors[4] point to a diagnosis of muscle/tension headaches over post-traumatic migraines.

52. However, Dr. Cox's theory is that her initial headaches were related to the accident, but that thereafter her headaches are related to the wear and tear in her neck and are muscle/tension based. There are a few issues with this theory despite its strong foundation. First, there is no break in treatment for Claimant's headaches, she has had continued symptomology from the date of the accident to the date of hearing with no pre-existing history. Second, this theory leaves unexplained Claimant's subjective improvement with abortive migraine medication.

53. Dr. Cox does not explain when Claimant's symptoms became related to wear and tear, and unrelated to the subjective accident. Dr. Cox does not point to a period of MMI or change in symptoms to explain his reasoning. This theory also begs the question of whether Claimant's headaches are more appropriately viewed as an aggravation of a pre-existing condition or just caused by the accident itself. In other words, did the accident "light up" Claimant's neck such that she is now experiencing muscle/tension headaches from the wear and tear in her neck which she was not suffering from before the subject accident. Or, more problematic, are these muscle/tension headaches caused by accident-related cervical myelopathy. Defendants even write that Claimant's muscle/tension headaches "are related to her cervical injuries." Def's Post-Hearing Brief, p. 13. If

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[3] Dr. Cox's opinion that a tension/muscle headaches begins in the occiput and radiates to behind the eye is contradicted by Dr. Smith's opinion that the location of the tension/muscle headache does not matter, and Dr. Smith's testimony on this point is accepted over Dr. Cox's because headache neurology is his specialty.

[4] Defendants strongly argue that Claimant's headaches "waxing and waning" is a feature of muscle/tension headaches. However, Dr. Cox testified "you can have some variability over time with migraines headaches…tension headaches can come and go" when explaining that both conditions wax and wane. 11:22-23;12:5.

Claimant's headaches are caused by her accident produced injuries, then regardless of how classified, they are compensable.

54. Further, Dr. Cox did not explain how or why Claimant's subjective symptoms improved with abortive migraine medication. Dr. Cox does explain that Claimant could "hypothetically" have relief from Botox treatment for muscle/tension headaches if the Botox was injected into Claimant's neck, but does not explain why candesartan, an abortive migraine medication, gives Claimant relief from her symptoms. This is particularly important given Dr. Smith's testimony that this medication "does not change the fundamental nature of what's causing the attack" but alleviates the symptoms. Claimant's early subjective relief from medial branch blocks was never replicated, despite multiple attempts. However, Claimant has reported consistent subjective relief with Botox and abortive migraine medication.

55. Dr. Cox also theorized at deposition that Claimant's continued symptoms could be caused by somatic symptom disorder. Similar to above, Dr. Cox explained Claimant had tension/muscle headaches related to the accident initially, but since the natural course is for traumatic headaches to improve, any ongoing symptoms could be related to somatic symptom disorder. Dr. Beaver diagnosed Claimant with somatic symptom disorder, but opined the disorder exacerbated her symptoms, not caused them.

56. Dr. Cox's somatic symptom disorder explanation for Claimant's ongoing symptoms suffers from similar problems as his first explanation. When does Dr. Cox make the distinction between what is caused by the accident and what is caused by somatic symptom disorder? Dr. Cox also opined that headaches wax and wane, which further complicates when and how Claimant's history of injury diverts from the 'natural history' of traumatic headaches as explained by Dr. Cox. Moreover, if Claimant's ongoing symptoms are due to somatic symptom

disorder, Dr. Cox does not explain why Claimant responded positively to abortive migraine medications. Dr. Cox wrote in his report that patients with somatic symptom disorder are "often… unresponsive to medical interventions," that medical treatment "rarely alleviates" individual's concerns, and these patients "may seek care from multiple doctors for the same symptoms." JE 13:26-27. Claimant's history seems quite the opposite. Claimant had short-term relief from medial branch blocks, longer-term relief from Botox and abortive migraine medication, and treated with the same doctor for the same symptoms, Dr. Maxwell, for over five years until she was referred to Dr. Smith. Dr. Cox is correct that Claimant has somatic symptom disorder and is correct that it impacts her presentation. Claimant's expert, Dr. Beaver, diagnosed somatic symptom disorder related to the accident and Claimant's coping style. However, Dr. Beaver's opinion that it exacerbates her symptoms, rather than is the cause of them, makes more sense and has more support in the record.

57. Regarding the diagnosis at issue, Dr. Smith's opinion that Claimant suffers from post-traumatic migraines related to her accident is flawed as Defendants argue, but not fatally so. Dr. Smith could not remember what records he reviewed in his initial appointment with Claimant, but he knew he would have reviewed Claimant's records in the St. Luke's system. In his record of her first appointment, Dr. Smith wrote that he reviewed her treatment records and imaging and noted Claimant had undergone medial branch blocks and Topamax to treat her headaches. Dr. Smith knew of Claimant's past treatments for her headaches and reasonably relied on her report that she hit her head in the accident in forming his opinion. Dr. Smith also reasonably relied on Claimant's report of symptoms since the accident.

58. Other evidence that supports a diagnosis of post-traumatic migraines include that Claimant's subjective symptoms improved with abortive migraine medication and Botox

injections. Claimant had light and sound sensitivity and reported visual disturbances as early as April 2013. Claimant's pain was so severe it would wake her up. Claimant experienced head trauma during her accident and had no prior history of migraines or headaches. Again, Dr. Smith's opinion is not robust, but it does meet the standard of more probable than not basis when considering all the evidence of record.

59. It is very tempting to 'armchair diagnose' Claimant with both tension/muscle headaches and migraine headaches related to the accident based on the evidence of record and both Dr. Cox and Dr. Smith's opinions. Dr. Cox testified on cross-examination that Claimant could have "hypothetically" suffered both tension/muscle headaches and post-traumatic migraines. Dr. Smith diagnosed both chronic migraines and "possible" cervicogenic involvement based on Claimant's relief from medial branch blocks. However, neither opinion is stated on a more probable than not basis and it goes beyond the authority of the Commission to diagnosis Claimant with concurrent conditions when no physician endorses that theory. See *Mazzone v. Texas Roadhouse*, 154 Idaho 750, 302 P.3d 718 (2013). Claimant has proven on a more probable than not basis that she suffers from post-traumatic migraines related to the accident, and is entitled to reasonable medical care for treatment of the same, to include Botox injections.

CONCLUSION OF LAW

1. Claimant has proven she suffers from migraine headaches related to her accident on a more probable than not basis.

2. Claimant is entitled to such additional medical care as she may require to treat her migraine headaches under Idaho Code § 72–432(1), including the Botox injections and other treatment as prescribed by her physician.

RECOMMENDATION

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

DATED this 10th day of June, 2022.

INDUSTRIAL COMMISSION

Sonnet Robinson

Sonnet Robinson, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of June, 2022, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION** was served by *E-mail transmission* and regular United States Mail upon each of the following:

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Gina Espinosa

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

ESTELLA ZAMORA, Claimant, v. CANYON COUNTY, Employer, and IDAHO STATE INSURANCE FUND, Surety, Defendants.	**IC 2013-002145** **ORDER** FILED JUN 30 2022 INDUSTRIAL COMMISSION

Pursuant to Idaho Code § 72-717, Referee Sonnet Robinson submitted the record in the above-entitled matter, together with her recommended findings of fact and 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 these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusion of law as its own.

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

1. Claimant has proven she suffers from migraine headaches related to her accident on a more probable than not basis.

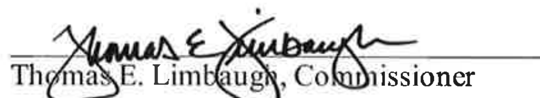
2 Claimant is entitled to such additional medical care as she may require to treat her migraine headaches under Idaho Code § 72–432(1), including the Botox injections and other treatment as prescribed by her physician.

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

DATED this 30th day of June, 2022.

INDUSTRIAL COMMISSION

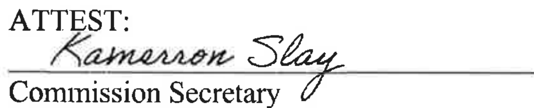
Aaron White, Chairman



Thomas E. Limbaugh, Commissioner

Thomas P. Baskin, Commissioner

ATTEST:



Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of June 2022, a true and correct copy of the foregoing **ORDER** was served by *E-mail transmission* and by regular United States Mail upon each of the following:

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