

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

SAM WYATT,  
v.  
AVIS BUDGET GROUP, INC.,  
and  
AMERICAN CASUALTY COMPANY  
OF READING PA,  
Claimant,  
Employer,  
Surety,  
Defendants.

IC 2017-001917

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

**FILED**

**JUL 07 2023**

**INDUSTRIAL COMMISSION**

**INTRODUCTION**

Pursuant to Idaho Code § 72-506, the Industrial Commission assigned this matter to Referee Douglas A. Donohue who conducted a hearing in Boise on March 17, 2022. Darin Monroe represented Claimant. Mindy Muller represented Employer and Surety. The parties presented oral and documentary evidence. Post-hearing depositions were taken and briefs submitted. The case came under advisement on March 2, 2023. This matter is now ready for decision.

**ISSUES**

This matter was set for hearing by the Commission's February 3, 2022, Notice of Hearing.

Therein, the following issues were noticed for hearing:

1. Whether the condition for which Claimant seeks benefits was caused by the alleged industrial accident;
2. Whether and to what extent Claimant is entitled to:
  - a) Permanent partial impairment,
  - b) Permanent disability in excess of impairment including total permanent disability, and
  - c) Attorney fees;
3. Whether Claimant is entitled to total permanent disability under the odd-lot

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER - 1**

doctrine;

4. Whether Claimant is collaterally estopped from seeking indemnity benefits, including total and permanent disability benefits;
5. Whether Claimant is barred by Idaho Code § 72-441 from recovering benefits in this case because he misrepresented and/or failed to disclose that he has previously been deemed total and permanently disabled by the Industrial Commission; and
6. Whether apportionment is appropriate under Idaho Code § 72-406.
7. Whether Claimant's entitlement to benefits should be affected by application of appropriate statute.

However, at the March 17, 2022 hearing, the issues to be heard were narrowed by agreement of the parties, to include only the extent and degree of Claimant's permanent physical impairment, the extent to which that impairment is causally related to the subject accident, and whether Claimant is estopped from pursuing his claim for PPI benefits. Tr. 6-7, 10. The briefing of the parties also supports this refinement of the issues. Accordingly, the issues before the Commission are as follows:

1. Extent and degree of Claimant's permanent physical impairment (PPI) and whether the same should be apportioned between the subject accident and a pre-existing condition;
2. Whether Claimant is estopped from pursuing the claim for PPI.

All other issues are deemed waived.

#### **CONTENTIONS OF THE PARTIES**

Claimant contends he suffered a left shoulder injury with nerve damage from a compensable accident on January 3, 2017. He incurred a 48 percent upper extremity impairment. He emphasizes that he is not seeking disability in excess of the recent additional impairment caused by this accident. The medical factors comprising PPI which arose from this accident were not

compensated in a prior 2012 settlement. Therefore, that settlement cannot be used to collaterally estop Claimant's entitlement to benefits here. Further, Employer and Surety were not involved in the prior settlement. They cannot use that settlement to preclude paying for PPI referable to the subject accident. Moreover, Employer's and Surety's continued payment of PPI benefits constitutes a waiver of a claim of estoppel. Finally, after Claimant was totally and permanently disabled and settlements reached, circumstances changed, and Claimant was able to, and actually did, start working again. Therefore, he overcame his total and permanent disability and should not be punished for doing so.

Defendants contend that impairment is a subset of permanent disability and that the 2012 settlement between Claimant and the Industrial Special Indemnity Fund (ISIF), in which Claimant was found to be totally and permanently disabled, precludes the claim for further PPI. Collateral estoppel and quasi-estoppel doctrines apply. As respects Claimant's left shoulder, Claimant's problems are documented as starting in 2007 with a rotator cuff tear. Recommended surgical repair did not take place. Claimant returned to modified work as tolerated despite continuing symptoms. Medical treatment for chronic shoulder pain continued. The subject accident of January 3, 2017 identified initial complaints as left-sided thoracic pain, not shoulder pain. It was more than three weeks later that shoulder pain was first noted when treating for the subject accident. Medical diagnostics showed longstanding degenerative conditions in Claimant's left shoulder. Dr. Michael Daines deemed shoulder symptoms a "temporary aggravation" but not a worsening or acceleration of the underlying chronic condition. He opined that recommended shoulder surgeries were not related to the industrial accident. After shoulder surgeries failed, Dr. Daines rated Claimant's shoulder impairment and assigned only a small portion to the industrial accident. Surety began

paying PPI benefits for the subject accident without knowledge of the 2012 settlement and award in which Claimant was found to be totally and permanently disabled. Surety cannot waive a defense without knowledge of the prior settlements and did not actually waive any defense herein.

### **EVIDENCE CONSIDERED**

The record in the instant case included the following:

1. Oral testimony at hearing of Claimant;
2. Claimant's Exhibits A through G;
3. Defendants' Exhibits A through T; and
4. Post-hearing depositions of Dr. James H. Bates, M.D., and Dr. Michael T. Daines, M.D.

Objections raised in post-hearing depositions are overruled.

The Referee submitted findings of fact and a proposed decision for the Commission's review and approval. The Commission, although it agrees with the Referee's ultimate conclusions, believes that different treatment of the issues is warranted. Accordingly, the Commission declines to adopt the proposed decision and issues its own findings of fact, conclusions of law, and order. The Referee found that "Claimant was articulate in testimony and in demeanor appeared credible." Referee's Findings of Fact, Conclusions of Law, and Recommendation ¶75. The Commission finds no reason to disturb the Referee's findings and observations on Claimant's presentation or credibility.

### **FINDINGS OF FACT**

#### **I. Left shoulder and accident of January 3, 2017**

1. On January 3, 2017, Claimant was manually breaking up and removing ice from a portion of Employer's premises. While so engaged, he heard a pop and felt a pain in his upper back on the left side. He relates his left shoulder injury to this accident.

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2. Medical records reflect a significant preinjury history of left shoulder complaints. While working as a drywall finisher in 2007 Claimant presented with left shoulder complaints to Dr. James Morland. Defendants' Exhibit K p. 586. Dr. Morland suspected a rotator cuff tear and recommended an MRI. There was some difficulty in obtaining the study. However, it was eventually obtained since, on December 5, 2008, Dr. Morland noted significant improvement in Claimant's left shoulder pain notwithstanding a clear-cut rotator cuff tear on MRI. Defendants' Exhibit K p. 592. Dr. Morland continued to see Claimant periodically through 2016 for various complaints, including chronic shoulder pain and rotator cuff lesions, bilaterally. *See* Defendants' Exhibit K. However, prior to the January 3, 2017 industrial accident, Claimant did not undergo surgical treatment or repair of his left rotator cuff tear.

3. Following the January 3, 2017 accident, Claimant did not report any specific left shoulder pain until January 27, 2017. Defendants' Exhibit A p. 6. A February 15, 2017 MRI revealed a full thickness tear of the supraspinatus tendon, moderate to severe atrophy of the supraspinatus and infraspinatus muscle bellies, a large labral tear and moderate degenerative changes in the glenohumeral joint. Defendants' Exhibit M p. 725.

4. On November 9, 2017, Claimant underwent arthroscopic rotator cuff repair performed by Roman Schwartzman, M.D. *See* Claimant's Exhibit C p. 88. That surgery failed due to Claimant's age and the chronicity of his rotator cuff tear.

5. A second surgery was performed by Dr. Schwartzman on May 23, 2018. *See* Claimant's Exhibit C p. 114. The surgery involved a "mini arthrotomy with superior capsular reconstruction." Claimant's Exhibit C p. 114. This repair, too, ultimately failed.

6. Claimant conferred with C. Scott Humphrey, M.D., who diagnosed Claimant with

rotator cuff tear arthropathy. He recommended Claimant for a reverse total shoulder arthroplasty, the need for which he related to the subject accident. That surgery was performed on or about October 8, 2019. *See* Claimant's Exhibit E. Claimant did poorly following the procedure. CT imaging of Claimant's shoulder revealed surgical changes, mild atrophy and a screw tip extending into the spinal glenoid notch. Claimant was evaluated by Paul Montalbano, M.D. to rule out cervical spine injury as a cause of his persistent complaints. On August 25, 2020, Dr. Humphrey surgically revised the placement of the screw, and this afforded Claimant substantial relief.

7. In August of 2021, Claimant underwent an independent medical evaluation by James Bates, M.D. Dr. Bates found Claimant to be medically stable and entitled to a 53% upper extremity impairment for his left shoulder condition. Dr. Bates apportioned a 5% UE impairment to Claimant's pre-existing condition, and a 48% UE impairment to the subject injury. Claimant's Ex. G p. 470.

8. Dr. Daines commented on Dr. Bates evaluation in a report dated September 10, 2021. *See* Defendants' Exhibit S p. 783. Although he stated his agreement with Dr. Bates' evaluation of Claimant's left shoulder impairment, he disagreed with Dr. Bates about how that impairment should be apportioned between Claimant's documented preexisting left shoulder condition and the effects of the subject accident. Per Dr. Daines, Claimant's left shoulder impairment should be apportioned 90% to the documented preexisting condition and 10% to the subject accident. Therefore, per Dr. Daines, Claimant has a 5.3% upper extremity rating referable to the subject accident. (53% x 10% = 5.3%)

9. From the foregoing, the Commission concludes that Claimant has met his burden of proving that he has ratable permanent physical impairment referable to the subject accident.

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Whether that impairment is in the range of 5.3% of the upper extremity versus 48% of the upper extremity we need not determine, as explained in more detail below.

## **II. 2010 Industrial Accident and 2012 ISIF Settlement**

10. In January of 1994, Claimant suffered a low back injury while lifting a box of plastering compound at work. Defendants' Exhibit I p. 514. He eventually underwent a right L5-S1 laminotomy, foraminotomy, and discectomy performed by Michael Henbest, M.D. on June 10, 1994. *See* Defendants' Exhibit I p. 495. Claimant was given a 10% whole person rating for this injury by William Prebola, M.D., on or about November 17, 1994. *See* Defendants' Exhibit I p. 512. He was given permanent restrictions against lifting more than 50 pounds occasionally, 35 pounds frequently. He was also counseled to limit crouching, bending, or stooping positions. Defendants' Exhibit A p. 41. Claimant settled his 1994 claim via a lump sum settlement in 1997. *See* Defendants' Exhibit B p. 172.

11. Claimant returned to his neurosurgeon with complaints of left leg pain in 1998. MRI evaluation revealed a recurrent disc herniation on the left at L5-S1. *See* Defendants' Exhibit I pp. 526-27. Claimant underwent further low back surgery by Dr. Bishop on May 5, 1998 to include a laminectomy at L5, lysis of scar tissue, and removal of recurrent disc herniation at L5-S1 and interbody fusion at L5-S1. Defendants' Exhibit B p. 173.

12. On or about October 17, 2010, Claimant suffered injuries to his neck and right shoulder as the result of an industrial accident which occurred while he was employed by Interior Systems, Inc. He underwent right shoulder surgery in January of 2010 for repair of his right rotator cuff. In July of 2011 he underwent a C3-C6 cervical fusion by Dr. Montalbano. Claimant was eventually given a 6% upper extremity rating by Dr. Schwartzman for his work-related right

shoulder injury and a 22% whole person rating for his work-related cervical spine injury, with 8% referable to preexisting degenerative changes. Defendants' Exhibit B pp. 171-72.

13. For his 2010 injury, Claimant pursued claims against both employer/surety and the Industrial Special Indemnity Fund. Claimant settled his claim against the employer/surety by a lump sum settlement approved by the Industrial Commission on or about April 12, 2012. Claimant also settled his claim against the ISIF in April of 2012. That stipulation and agreement of discharge was approved by the Industrial Commission on April 12, 2012.

14. Claimant's 2012 settlement with the ISIF is worthy of further discussion. The settlement contains the parties' stipulation that Claimant is totally and permanently disabled, and that his total and permanent disability is the result of the combined effects of the 2010 accident, and certain preexisting impairments, to specifically include the aforementioned 1994 low back injury and related treatment. The parties' stipulation to the existence of ISIF liability did not lead to the payment of periodic lifetime benefits as anticipated by Idaho Code § 72-408. Rather, the parties agreed to a lump sum payment of \$85,000 to commute Claimant's entitlement to the payment of periodic lifetime benefits. The agreement explains why such an arrangement was preferable to receipt of lifetime benefits. Specifically, Claimant alluded to a family history of cancer, presumably because he thought it shortened his life expectancy. Claimant was also a recipient of Social Security Disability benefits. Acceptance of statutory benefits would evidently implicate Social Security offset provisions, and by prorating the lump sum settlement, he hoped to avoid such an offset. *See* Defendants' Exhibit D. The Commission approved the stipulation and settlement. *See* Defendants' Exhibit D p. 337. No appeal was taken from the Commission's order approving the settlement.



15. The ISIF settlement specifies that Claimant's preexisting low back injury, as well as other "preexisting maladies" combined with the 2010 accident to cause total and permanent disability. However, the settlement does not specifically reference the Claimant's left shoulder condition and suspected left rotator cuff tear, first noted in 2007.

## **DISCUSSION AND FURTHER FINDINGS**

### **PPI is PPD**

16. Claimant does not ask for an award of permanent partial disability (Tr. 10) yet claims entitlement to a 48% upper extremity PPI rating as given by Dr. Bates. The unstated assertion is that PPI benefits should be given different treatment than PPD benefits. However, *Oliveros v. Rule Steel Tanks, Inc.*, 165 Idaho 53, 438 P.3d 291 (2019) makes it clear that payments made for permanent impairment are subsumed by, and part of, Claimant's entitlement to permanent partial disability, and are payable only under provisions of Idaho Code § 72-425. The Court noted that the statutory scheme contains no mechanism for the payment of a PPI award. Rather, any payments or awards made for impairments are more accurately characterized as disability payments under the statute:

Thus, we take this opportunity to reiterate that Idaho's workers compensation law only provides for an award of income benefits based on disability, not impairment. There are not separate income awards for PPI and PPD. Instead, monies received by the claimant for PPI are part of his final award for PPD. This accords with how disability is calculated, e.g., PPI is one component to be considered by the Commission, but is not the exclusive factor, in determining a claimant's PPD rating.

*Oliveros*, 165 Idaho at 59-60, 438 P.3d at 297-98 (internal citations omitted). Therefore, in claiming entitlement to a 48% upper extremity PPI rating Claimant actually asks the Commission to make him an award of permanent partial disability.

17. Defendants assert that Claimant is collaterally estopped from pursuing a claim for

further disability by virtue of the April 12, 2012 ISIF settlement. In that settlement, the parties stipulated to the fact of Claimant's total and permanent disability as well as the ISIF's responsibility for the same. That stipulation was approved by order of the Industrial Commission on April 12, 2012. Simply, the argument is that because Claimant has been adjudged to be totally and permanently disabled by a previous order of the Commission, he cannot now assert a claim for additional disability benefits because no one can be more than totally and permanently disabled.

18. We agree with this assertion and find that under either the theory of collateral estoppel or quasi estoppel (both of which are discussed by the parties) Claimant is barred from pursuit of his claim for additional disability benefits.

#### **Collateral Estoppel**

19. *Magic Valley Radiology, PA v. Kolouch*, 123 Idaho 434, 849 P.2d 107 (1993) establishes the test for determining whether collateral estoppel will prevent a re-litigation of issues decided in a prior case:

(1) Did the party "against whom the earlier decision is asserted ... have a 'full and fair opportunity to litigate that issue in the earlier case?' (2) Was the issue decided in the prior litigation "identical with the one presented in the action in question?" (3) Was the issue actually decided in the prior litigation? This may be dependent on whether deciding the issue was "necessary to [the prior] judgment." (4) "Was there a final judgment on the merits?" (5) "Was the party against whom the plea is asserted a party or in privity with a party to the prior adjudication?"

*Kolouch*, 123 Idaho at 439, 849 P.2d at 112 (ellipses, brackets, and quotations in original).

20. Here, Claimant had a full and fair opportunity to litigate the issue of disability in the ISIF claim brought subsequent to the 2010 industrial injury. Indeed, since he was pursuing a claim against the ISIF, and since ISIF liability will only arise where a claimant is found to be totally and permanently disabled, Claimant necessarily asserted, as a prerequisite to recovery

against the ISIF, that he was totally and permanently disabled.

21. In order for the doctrine of collateral estoppel to apply, there must be a final judgment on the merits. In *Jackman v. State, Industrial Special Indemnity Fund*, 129 Idaho 689, 931 P.2d 1207 (1997) it was held that a Commission order approving a lump sum settlement agreement is a “final judgment on the merits.” No appeal was taken from the April 12, 2012 order of approval, and under Idaho Code § 72-719 the Commission’s order may not be revisited to address claims of fraud, change of condition or to correct a manifest injustice. *See* Idaho Code § 72-719(4). The fact that Defendants were not a party to the action between Claimant and the ISIF does not prevent Defendants’ assertion of the doctrine of collateral estoppel against Claimant, who was a party to the earlier case. *Jackman, supra*.

22. It is also clear that the issue decided in the 2012 order of approval is identical to the issue raised in the instant matter. In both the 2012 order and the instant matter, Claimant seeks a determination of his entitlement to disability benefits. In connection with the claim against the ISIF, the parties stipulated, as part of their settlement, that Claimant was (1) totally and permanently disabled and (2) that all other elements of ISIF liability were satisfied. There can be no doubt that both issues were actually decided in connection with the Commission’s order approving the settlement. The Industrial Commission does not have jurisdiction to entertain a settlement between an injured worker and the ISIF without first being satisfied that Claimant is totally and permanently disabled and that all other elements of ISIF liability are satisfied. The Commission’s determination that Claimant is totally and permanently disabled is not incidental to the Commission’s order of approval. Rather, it is a critical jurisdictional determination that must be satisfied before the Commission is empowered to approve a settlement with the ISIF. *Wernecke*

*v. St. Marie's Joint School District No. 401*, 147 Idaho 277, 207 P.3d 1008 (2009).

23. Therefore, in the 2012 order of approval adopting the stipulation of the parties, the issue of Claimant's disability was litigated and Claimant was found to be totally and permanently disabled. The issue of Claimant's disability is, as well, at issue in the instant proceeding, but because he has previously been adjudged totally and permanently disabled, no further disability is payable.

24. Claimant asserts that because the 2012 ISIF settlement did not treat disability referable to Claimant's left shoulder condition, the settlement does not stop claimant from pursuing a claim for disability benefits attributable to that condition. Had the 2012 settlement simply resolved an earlier claim for less than total disability arising from an injury to a different body part, we would agree. However, the prior settlement and order of approval adjudicates Claimant as totally and permanently disabled, leaving no room for an award of additional disability benefits from any type of subsequent injury.

25. In conclusion, the elements of collateral estoppel are satisfied; Claimant is estopped from pursuing his claim for further disability of benefits in the form of additional permanent physical impairment.

#### **Quasi estoppel**

26. Defendants also assert that the instant claim for award of additional disability is barred by the doctrine of quasi estoppel. The doctrine of quasi estoppel prevents a party from asserting a right to the detriment of another party which is inconsistent with a position previously taken. *Atwood v. Smith*, 143 Idaho 110, 138 P.3d 310 (2006). The Court stated that:

This doctrine applies when: (1) the offending party took a different position than his or her original position and (2) either (a) the offending party gained an

advantage or caused a disadvantage to the other party; (b) the other party was induced to change positions; or (c) it would be unconscionable to permit the offending party to maintain an inconsistent position from one he or she has already derived a benefit or acquiesced in.

*Atwood*, 143 Idaho at 114, 138 P.3d at 314.

27. Here, in asserting an entitlement to permanent partial disability benefits, Claimant necessarily asserts that he is not totally and permanently disabled, which is inconsistent with the position he asserted in connection with the 2012 settlement and order of approval. Indeed, to reconcile these conflicting positions, Claimant asserts that following the 2012 settlement and order of approval, his condition actually improved, such that he found it possible to return to the workforce. He asserts that since he was no longer totally and permanently disabled at the time of the 2017 accident it would be unfair to deny him additional permanent impairment benefits for the injuries he sustained in 2017, particularly where the 2012 settlement and order of approval did not, and could not, have considered the disability that is attributable to the 2017 accident.

28. We have no basis to challenge Claimant's assertion that he experienced a significant improvement in his condition following the 2012 settlement such that he was able to return to full time employment, albeit at a different type of work. However, his restored ability to engage in a gainful activity is neither here nor there. In a final decision on the merits, Claimant has been adjudged totally and permanently disabled. He became entitled to a statutory lifetime total and permanent disability benefits which were commuted by the payment of a lump sum approved by the Commission. No appeal was taken from the order finding Claimant to be totally and permanently disabled. Such order forecloses future claims for disability since one cannot be more than totally and permanently disabled. Claimant asserts the unfairness of this result, but he did not think it unfair to retain the benefit of his total and permanent disability after his capacity to engage

in gainful activity was restored. Nor do we think it relevant that his current claim arises from a condition that was not extant when he settled his ISIF case in 2012. Again, he has already been compensated for the maximum disability available under the statutory scheme. We find that it would be unconscionable to permit Claimant to pursue a claim for further disability, even if his condition has improved.

29. We conclude that the doctrine of quasi estoppel, as well, bars Claimant from pursuit of his claim for further disability in the form of additional permanent partial impairment benefits.

30. There remains for consideration Claimant's assertion that by their actions, Defendants have waived the estoppel defense. The following facts are relevant to the claim of waiver: Claimant's complaint was filed on or about November 21, 2018. Both PPI and PPD benefits were claimed in that complaint. Defendants answered on December 10, 2018. In the course of discovery, Defendants initiated an investigation of Claimant's past worker's compensation claims history. In January of 2019 they requested copies of past claims documents from the Commission, including documents generated in connection with the claim for accident/injury of October 17, 2010. Those records contained the lump sum settlement between Claimant and the ISIF as well as the April 12, 2012 order of approval issued by the Industrial Commission. It is not clear when Defendants received these documents, but on May 28, 2019, Defendants filed their amended answer to the complaint, raising the defense of collateral estoppel. However, notwithstanding their discovery of the April 12, 2012 order approving the settlement with the ISIF, Defendants continued the payment of the PPI benefits which had commenced on or about November 8, 2018. In fact, Defendants continued to make PPI payments through October 4, 2019. *See* Defendants' Exhibit E. It is Defendants' continued payment of weekly PPI benefits

subsequent to the discovery of the ISIF settlement that, per Claimant, represents Defendants' waiver of the estoppel defense. A waiver is defined as follows:

A waiver is the intentional relinquishment of a known right. It is a voluntary act and implies election by a party to dispense with something of value or to forego some right or advantage which [the party] might at [the party's] option have demanded and insisted upon.

*Crouch v. Bischoff*, 78 Idaho 364, 368, 304 P.2d 646, 649 (1956). The intention to waive must clearly appear, although waiver may be established by conduct. *Riverside Development Company v. Ritchie*, 103 Idaho 515, 650 P.2d 65 (1982). Therefore, according to Claimant, the fact that Defendants continued to make weekly PPI payments after the discovery of the 2012 ISIF settlement is conduct which demonstrates their intention to waive the estoppel defense. Defendants explain that they began paying PPI owed prior to the discovery of the 2012 ISIF settlement, but this does not explain why they continued those payments after they discovered that Claimant had been adjudged to be totally and permanently disabled in 2012.

31. However, a party asserting waiver must have acted in reliance upon the waiver and altered the parties' position as a result. *Brand S Corporation v. King*, 102 Idaho 731, 639 P.2d 429 (1981). Here, it is noted that in his complaint of November 21, 2018, Claimant made claim for additional PPI and PPD benefits. He continues to pursue the payment of the full PPI award to which he believes he is entitled. As Defendants noted, there is no evidence that Claimant has altered his position in reliance on Defendants' alleged waiver of their collateral estoppel defense. We conclude that Claimant has failed to establish the requisite elements of waiver.

#### **CONCLUSIONS OF LAW**

In summary, the Commission concludes that Claimant has proven that he suffered ratable permanent physical impairment as a consequence of the subject accident. We need not determine

the extent and degree of his accident-produced impairment since he is foreclosed from pursuing any claim for disability (inclusive of impairment) by virtue of the April 12, 2012 Commission order approving the lump sum settlement reached by Claimant and the ISIF, an integral part of which established that Claimant was totally and permanently disabled as the result of the 2010 industrial accident and certain preexisting conditions. Defendants have not waived their right to rely on collateral estoppel or quasi estoppel as an affirmative defense.

**ORDER**

1. Claimant has suffered some permanent physical impairment as a consequence of the subject accident.
2. Claimant is estopped from pursuing his claim for further disability by the 2012 Commission order approving the settlement between Claimant and the ISIF.
3. Defendants have not waived their right to assert collateral estoppel or quasi estoppel as an affirmative defense.
4. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 7th day of July, 2023

INDUSTRIAL COMMISSION



  
Thomas E. Limbaugh, Chairman

  
Thomas P. Baskin, Commissioner



  
\_\_\_\_\_  
Aaron White, Commissioner

ATTEST:

  
\_\_\_\_\_  
Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the 7 day of July, 2023, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** was served by regular United States Mail and Electronic Mail upon each of the following:

DARIN G MONROE  
PO BOX 50313  
BOISE, ID 83705  
[dmonroe@monroelawoffice.com](mailto:dmonroe@monroelawoffice.com)  
[lgreenfield@monroelawoffice.com](mailto:lgreenfield@monroelawoffice.com)

MINDY MULLER  
PO BOX 1617  
BOISE, ID 83701  
[mmuller@hawleytroxell.com](mailto:mmuller@hawleytroxell.com)

mm

*Mary McMenemy*