

- c. Permanent partial disability (PPD).

CONTENTIONS OF THE PARTIES

Claimant was injured while lifting metallic plates in an accident in Employer's workplace that occurred on January 29, 2021. Claimant cites to Dr. Williams' positive opinion on palliative care/pain management but states that whether such care should be provided is "left up to the Commission." Claimant contends that he is entitled to permanent partial impairment (PPI) in the amount of 6%. He also contends that he is entitled to permanent partial disability (PPD) of 47.7%, inclusive of impairment, as opined by Vocational Expert Delyn D. Porter.

Defendants accepted Claimant's claim and covered the surgery performed by Dr. Montalbano, associated treatment such as physical therapy, and time loss benefits. Defendants do not dispute Claimant's entitlement to future medical care in the form of palliative care/pain management. Defendants concede that the two impairment ratings in the record, 5% PPI as found by Dr. Montalbano and 7% PPI as found by Dr. Williams, should be averaged, thus Claimant is entitled to a 6% PPI. They deny that Claimant is entitled to PPD benefits because Dr. Montalbano released Claimant to return to work without restrictions.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. The transcripts of hearing of July 25, 2023 and August 24, 2023;
3. Joint Exhibits 1 through 10;
4. Deposition of Mark Williams, D.O., taken on September 22, 2023; and
5. Deposition of Paul J. Montalbano, M.D., taken on November 9, 2023.

FINDINGS OF FACT

1. **Claimant's Background.** Claimant was born on March 19, 1982 in Colombia. Ex. 10:169. He was 41 years old at the time of hearing. Tr., 8:19-20.¹ Claimant lived to age 36 in Colombia, where he attended school through college and studied commercial engineering. He and his family then emigrated to the United States. Ex. 10:170; Tr., 10:6-18. Claimant resided in the United States for over four years since 2019. Ex. 10:170.

2. **Claimant's Prior Work History.** In Colombia, Claimant worked for the following employers: Servientrega as a shipping and receiving clerk and package handler, from 2003 to 2005; TV Cable Promision CA as a telecommunications service and marketing salesman, from 2005 to 2008; and Claro Communications as a telecommunications service and marketing salesman, from 2008 to 2019. Ex. 10:171. These were primarily office jobs.

3. **Subject Employment.** Claimant began working for Employer as a production laborer in or about May 2019. *Id.* His work involved assembling trusses. Tr., 11:3-4.

4. Claimant's average weekly wage while working for Employer was \$923.80 per week prior to his injury, or \$15.93 per hour for a 58 hour week. *Id.* at 22:15-18; 28:9-11.

5. **Industrial Accident.** On Friday, January 29, 2021, Claimant was delivering metallic plates to a table where he and his coworkers were assembling trusses. He described what happened as follows: "At that moment, I was delivering the metallic plates to the table. And due to the quickness in which you worked there, I took a box with too much weight. I lifted it up, and I put it over on the table. And at that moment, I felt a sharp pain in my back that left me bent."

¹ All citations to the transcript in this decision are to the hearing held on August 24, 2023. The hearing held on July 25, 2023 was preliminary due to the fact that a Spanish interpreter had not been requested by the parties prior to the hearing and an interpreter was not available for the hearing at that time.

The box weighed over 60 pounds. Tr., 12:1-13.

6. Immediately after the incident, Claimant's supervisor and coworkers asked Claimant to step aside for a moment until his pain subsided. Claimant continued to have pain throughout the weekend and when he returned to work on Monday, he told his supervisor that he was still experiencing pain. The supervisor then asked for a medical appointment for Claimant to be evaluated by a doctor. *Id.* at 12:22-25.

7. **Medical Care.** Claimant presented to Northwest Medicine and Neurological Spine Institute in Boise on Monday, February 1, 2021. Lynette Ages, NP-C, evaluated him. His chief complaint was L5 pain on the pain scale of an 8 out of 10, constant with movement. Ex. 5:70. Claimant denied a past history of back pain or that he had ever been seen by a chiropractor. *Id.* at 71. PA-C Ages recorded in pertinent part as follows: "Both the mechanism of injury and physical examination supports a strain of L5 with radiculopathy. Pt could possibly have a herniated disc and will monitor his progress carefully." *Id.* at 72. Claimant received a Medrol Dose pack with a muscle relaxer for use at night. PA-C Ages encouraged him to stretch, use topical analgesics, and ice. *Id.* Claimant was restricted from lifting more than five pounds with no climbing on table, no kneeling or squatting. *Id.* at 73-74.

8. Claimant returned for further evaluation by PA-C Ages on February 8, 2021. *Id.* at 75. He rated his pain as a constant 10/10 with prolonged standing, walking and movement. *Id.* at 76. His radiculopathy into his bilateral lower extremities was worsening, with numbness and tingling in addition to pain *Id.* at 76. Claimant could no longer stand up straight and any movement was difficult. *Id.* PA-C Ages described him as in "acute distress." *Id.* at 77. She opined that "the mechanism of injury and physical examination support a strain of L5 with radiculopathy which appears to be worsening." *Id.* at 77. PA-C Ages took Claimant off work for the next two days and

scheduled an MRI of L5 with LS x-rays. Ex. 5:77. She prescribed diclofenac and tramadol for pain. *Id.* Diagnoses remained the same. *Id.* at 78.

9. The MRI, performed on February 10, 2021, revealed a disc bulge with central/right paracentral disc protrusion and facet degeneration at L5-S1. *Id.* at 82.

10. Surety referred Claimant to Paul J. Montalbano, M.D., a neurological surgeon, who first evaluated him on February 10, 2021. Ex. 7:101. Dr. Montalbano's credentials as a surgeon are known to the Commission. Dr. Montalbano observed that Claimant presented with "low back pain as well as right S1 radiculopathy. In terms of etiology of his symptomatology, I do relate this to his work-related injury of January 29, 2020 [sic - 2021]." *Id.* at 102. Flexion-extension x-rays demonstrated no gross instability. Dr. Montalbano prescribed a course of physical therapy. According to Dr. Montalbano's plan of care, Claimant would continue working 8 hours per day, 40-pound weight limit, with lumbar restrictions (no repetitive stooping, bending or twisting). *Id.* at 102-104.

11. Claimant returned to Dr. Montalbano on February 24, 2021 and continued to be symptomatic. *Id.* at 105. Dr. Montalbano prescribed continued physical therapy and observed that surgery would be undertaken if Claimant failed conservative measures. Work restrictions remained the same. *Id.* at 105.

12. On March 10, 2021, Claimant presented to Dr. Montalbano for continuing evaluation. Dr. Montalbano observed that Claimant had a paracentral disc herniation with compression of the right greater than left S1 nerve root. Dr. Montalbano recommended a right

L5-S1 epidural steroid injection. Claimant would continue physical therapy twice a week and his work hours were increased to 10 hours per day with the same restrictions. Ex. 7:107.

13. Claimant received the steroid injection on March 11, 2021 and tolerated the procedure well. *Id.* at 109.

14. Claimant underwent physical therapy at Morris Physical Therapy from February 12, 2021 to March 23, 2021 with limited success. Ex. 6:83-96. PT Christopher Nichols observed on February 12, 2021 that Claimant's pain had gotten steadily worse since the injury. *Id.* at 85. On March 23, 2021, PT Nichols also observed that Claimant had made no progress over the last two weeks and that he had peripheral pain regardless of light duty at work. *Id.* at 96.

15. Claimant presented to Dr. Montalbano again on March 31, 2021. Dr. Montalbano noted that Claimant had failed conservative measures and recommended surgery to include a right L5-S1 and possibly left L5-S1 microdiscectomy. Claimant carried the pre-operative diagnoses of lumbar region disc displacement, disc degeneration, and disc with radiculopathy. Ex. 7:113.

16. On April 6, 2021, Claimant underwent surgery at Treasure Valley Hospital by Dr. Montalbano, consisting of a right L5-S1 microdiscectomy. Claimant tolerated the procedure well. Ex. 7:116-117. Dr. Montalbano prescribed a lumbar brace to be worn for the first 4-6 weeks following surgery. *Id.* at 119.

17. Claimant presented to Dr. Montalbano on April 21, 2021 for his post-surgical evaluation. He still had right leg pain which Dr. Montalbano believed was residual from his prior nerve root being compressed. Claimant was to remain off work until further notice. Dr. Montalbano recommended current conservative measures "as well as time." *Id.* at 120-121.

18. Claimant returned to Dr. Montalbano on May 5, 2021 for further evaluation. He complained of persistent pain. Dr. Montalbano ordered another MRI to rule out recurrent disc herniation. Claimant would remain off work pending the MRI results. Ex. 7:122-123.

19. The MRI, performed on May 6, 2021 revealed no sizeable recurrent or residual disc herniation. *Id.* at 124-125. Nevertheless, the MRI now showed L5-S1 interval right laminectomy changes. There was enhanced epidural fibrosis (scarring) within the laminectomy bed and within the ventral/right lateral epidural space encroaching on the S1 nerve roots right more so than the left. *Id.*

20. At a follow-up appointment on May 12, 2021, Dr. Montalbano noted that lack of any evidence of recurrent disc herniation. As for the other findings, to Dr. Montalbano, these were “anticipated post-operative changes.” Claimant was to return to work light duty, ten pound weight limit, 8 hours per day. He would also continue with physical therapy. *Id.* at 126-127.

21. On May 19, 2021, Dr. Montalbano evaluated Claimant again. Dr. Montalbano observed in pertinent part as follows:

Overall, Mr. Castillo Suarez is neurologically intact. He has multitude of complaints none of which follow dermatomal distribution. He complains of left leg pain and I have explained to him his most recent MRI scan demonstrated no evidence of canal/foraminal stenosis. *There is no evidence of recurrent disc herniation and nothing to explain his left-sided symptomatology, which is contralateral to his work-related injury.* At this point in time, he will return to work. I have increased his weight limit to 40 pounds. He will begin a course of physical therapy...

Mr. Castillo Suarez will make a full recovery. I do not anticipate any permanent work restrictions.

Id. at 128 [emphasis added].

22. Claimant underwent another course of physical therapy, this time with Rulin J. Hawks of Caldwell Physical Therapy two to three times per week from May 21, 2021 to June 23,

2021. Ex. 8:135-149. In a Physical Therapy Progress Report dated June 29, 2021, PT Hawks recorded in pertinent part as follows:

In my opinion, Edwing is healing routinely, but not rehabbing routinely. His pain ratings have remained virtually the same over the course of therapy, which is atypical. He never says his pain changes with activity. It is always the same. This is a red flag and potential indicator of symptom magnification. Furthermore, his complaints of pain in his legs are myofascial and not neurological. For some reason, he reports pain and expresses pain behaviors (moans, groans, grabs his muscles) when I am stretching him. Typically, discomfort from being stretched is felt, but not pain. He is having difficulty differentiating between pain (indicating harm or a problem) and discomfort from normal, safe activity. His gait pattern is also inconsistent. He limps in clinic and parking lot, but he does not on the treadmill. His perceived level of disability is very high and has actually increased since last report despite not suffering any new injuries and having an improving physical exam. *In my opinion, there are nonorganic factors contributing to his high level of perceived disability.* Lumbar ROM and lower extremity strength have increased since last report. He no longer reports numbness or tingling in his legs, just discomfort from stretching, but *his discomfort does not follow any dermatomal patterns.* He is doing well at work on light duty.

Id. at 150 [emphasis added.] PT Hawks recommended return to work and normal function on the job. *Id.*

23. Claimant returned to Dr. Montalbano for evaluation on June 30, 2021. Dr. Montalbano noted that Claimant was 2&1/2 months status post-surgery. “He is doing quite well. He is neurologically intact. His subjective complaints are not supported by physical therapy nor his postop radiographic studies. He has reached medical stability. He will return to work without restrictions.” According to the 6th Edition of the Guides to the Evaluation of Permanent Impairment, Dr. Montalbano assigned a 5% whole person impairment. Ex. 7:133-134. There is no indication in the medical record that Dr. Montalbano performed a physical examination of

Claimant at this time or that he considered palliative medical treatment or pain management to address Claimant's continued pain complaints. Ex. 7:133-134.

24. **Independent Medical Examination.** On September 23, 2022, Claimant underwent an independent medical examination (IME) at the request of his counsel. Dr. Mark Williams, D.O., performed the IME. *See*, Ex. 9. Dr. Williams' credentials as an osteopathic physician practicing sports and orthopedic medicine are known to the Commission.

25. Dr. Williams recorded Claimant's current status as follows:

Mr. Suarez reports constant pain in the low back with radiation to the bilateral legs. Occasional pins and needle sensation in the legs and continued weakness in the back and legs. He reports increased pain at the end of the day with significant pain at night that wakes him from sleep. He has increased pain with lifting or any activity requiring twisting. Heat helps relax the back some but does not completely resolve the pain. He reports little relief from the surgery and therapy. He reports he had to quit his previous job and is currently delivering for Walmart locally. He reports having to stop all recreational activities including running, biking, etc.

Ex. 9:151-152.

26. Dr. Williams undertook a chronological review of Claimant's relevant medical records, including physical therapy records. *Id.* at 151-153.

27. In his physical examination of Claimant, Dr. Williams reported that Claimant had pain with palpation of spinous process at lower lumbar segments, and mild para spinal musculature pain. Claimant had no significant spasm. Claimant also had the following: "Mild pain at bilateral sacroiliac joints. Mild axial compression pain, normal examination of the buttocks with deep palpation." *Id.* at 154. According to Dr. Williams, Claimant had limited range of motion secondary to pain. Claimant also had 5/5 strength bilaterally with no significant muscle atrophy noted. Claimant had normal reflexes equal bilaterally. Claimant was able to stand from a seated position, had normal toe and ankle dorsiflexion against resistance, normal toe and heel walk, and normal

balance. Ex. 9:155.

28. Dr. Williams opined that all treatments that Claimant received were reasonable and necessary. *Id.*

29. Based upon the 6th Edition of the Guides to the Evaluation of Permanent Impairment, chapter 17 under spinal injuries, Table 17-4 on page 570, Dr. Williams assigned Claimant a 7% whole person impairment for a single level disc injury with non-verifiable, clinically appropriate radicular complaints. No apportionment was necessary. *Id.*

30. For physical demands/restrictions, Dr. Williams assigned Claimant a medium strength level set of restrictions, with positional percentages as follows: standing 30%; walking 30%; and sitting 40%. *Id.* For weight/force in pounds, Dr. Williams assigned no lifting in excess of 50 pounds, no carrying in excess of 50 pounds, and no pushing in excess of 100 pounds. *Id.* at 156.

31. For future medical care, Dr. Williams opined that Claimant would require “consultation to pain management/physical medicine for evaluation and long-term care of the chronic pain that has developed. Mr. Suarez is currently limited due to pain, not weakness, therefore pain evaluation would be appropriate.” *Id.* Dr. Williams estimated that the cost of pain management would be approximately \$500 if only one consultation were required, but the total cost would be dependent upon the “amount of care required.” *Id.*

32. **Deposition of Dr. Williams.** The deposition of Dr. Williams took place by Zoom teleconference on September 22, 2023. Williams Dep., 4:1-3.

33. Dr. Williams observed in pertinent part the following regarding his examination of Claimant:

Well, he did have some soreness along the back with just pushing on the back deep into the musculature. He had a little bit of pain at the sacroiliac joints, which are

joints just below the low back, where the hips come into the back essentially. He had a little bit of discomfort with compression on the top of his head while he was standing. He was limited in his range of motion in forward and in backward bending as well as a little bit of pain with side bending, but he didn't have any rotational pain, which is expected.

He had good strength in his muscles generally, and good balance, he was able to walk. *But he had a positive straight leg raise, which is a test of sciatic nerve where you stretch the sciatic nerve and if the sciatic nerve is irritated, then it will reproduce pain into the leg. And he had that as well as something called a Lasegue's maneuver, where you dorsally flex the ankle with the leg extended and increases the symptoms.*

These were the positive findings that he had.

Williams Dep., 18:10-19:3 [emphasis added]. Dr. Williams stated that the positive findings were consistent with the MRI that showed enhanced scar tissue on the S1 nerve root. *Id.* at 19:4-7.

34. Unlike Dr. Montalbano or PT Hawks, Dr. Williams observed that Claimant "didn't show any signs of malingering or trying to fake anything that I could ascertain." *Id.* at 19:13-15. He further observed that when he examined Claimant, "he was appropriately painful but he didn't act like it was horribly uncomfortable. He acted appropriate for someone who would have radiculitis." *Id.* at 19:23-20:1.

35. Dr. Williams placed Claimant at maximum medical improvement. He explained that no further surgery would be beneficial for Claimant. *Id.* at 20:21-24.

36. Dr. Williams indicated that steroidal injections should be considered in Claimant's case because "... injections, in and of themselves, can shrink scar tissue down as well. So it's a combination of taking some pressure off the nerve and literally trying to get the scar tissue to shrink." *Id.* at 21:15-19.

37. **Deposition of Dr. Montalbano.** The deposition of Dr. Montalbano occurred on November 9, 2023. Montalbano Dep., 2:3-11.

38. Dr. Montalbano described the surgery and the results of the surgery as follows:

His disc surgery itself was totally uneventful. There was not a big opening in his

disc annulus that would place him at risk for a recurrent disc. We did indeed obtain an MRI at – after his next visit, and that MRI scan demonstrated anticipated changes. There is no evidence of a new disc herniation, there is no evidence of infection, there is no evidence of anything compressing his right or left-sided nerve root.

Montalbano Dep., 14:9-18.

39. In mid-May 2021 following the surgery, Claimant “had a lot of complaints. His main issue was his left leg, which was contralateral to his surgery. Once again, we reviewed the MRI scan. There was nothing on that MRI to demonstrate left-sided pathology.” *Id.* at 20:20-24.

40. Dr. Montalbano assessed that Claimant had a disconnect between his symptoms and the pathology, as follows:

Also, during that period I talked to Rulin Hawks. There was some disparity during a visit where he [Claimant] would complain of pain at one part of his physical therapy appointment, but then he would move on to another structured exercise, and he wouldn’t exhibit any pain symptoms.

And then his pain itself didn’t necessarily follow the distribution of the S1 nerve or any nerve at that point in time, so a lot of – in talking with Rulin, it was a lot of just reinforcement that he was going to do well, that it was – how I talked to Rulin was it was a little blip in the road of the disc injury, but he’ll go back and make a full recovery.

Q. [BY MR. WALKER] Okay. And you say “contralateral.” Can you explain exactly what you mean by that?

A. So his pain initially when he presented was back pain as well as right and left leg pain. His disc was primarily on the right. We operated on the right, and then during that time period, end of April/May, his main symptoms were down his left leg that had no scarring and no recurrent disc at that point.

Q. Did you find any medical reason whatsoever that would occur – or reason why that would occur?

A. No, I did not, which is not uncommon, *but that doesn’t mean anything*, that you just have to provide continued reassurance that everything is okay. And we really rely on that post-operative MRI scan as an objective tool to reinforce to the patient that they’re going to be okay.

Id. at 21:3-22:10 [emphasis added].

41. Dr. Montalbano observed that “*Sometimes patients can have nonspecific pain that don’t follow a dermatomal distribution.* Whether its reactionary to the stress of the injury or the

stress of the surgery, it just is part of the course in taking care of patients.” Montalbano Dep. 22:13-18. [Emphasis added.] One of the purposes of the MRI is to reassure patients that “they don’t have a spinal fluid leak, they don’t have a condition called arachnoiditis related to a leak, that they don’t have infection, and they don’t have a recurrent disc.” *Id.* at 22:25-23:5.

42. Dr. Montalbano had no reason to conclude that Claimant had any residual neurological issues. “No. He was neurologically intact, motor and sensory. His main issue was subjective pain.” *Id.* at 24:25-25:1.

43. Dr. Montalbano responded to the following colloquy from Claimant’s counsel:

Q. Okay. And would it be accurate to say that you did – if I understand – well, it would be accurate to say you didn’t get another MRI after May 6th of 2021?

A. No.

Q. As such, is it also accurate to say that you don’t know what kind of scar tissue buildup you had in the laminectomy bed after May 6th of 2021?

A. So the scar tissue doesn’t keep growing or building up, so that was a good quality MRI scan that showed what I would consider anticipated post-operative changes.

So unless there was another event or significant worsening of his symptoms, I would not obtain another MRI scan.

Id. at 38:24-39:17.

44. Dr. Montalbano stated as follows regarding Claimant’s pain:

Q. Is it fair to say, I’m gathering, that based on your evaluation and Rulin Hawks’ observations, you didn’t believe he had pain?

A. Oh, *I believed he had pain*, but he did not require any additional surgery to address that pain.

Montalbano Dep., 44:17-22 [emphasis added].

45. **Vocational Evaluation Report.** Delyn D. Porter, M.A., CRC, CIWCS, prepared a Vocational Evaluation Report dated February 14, 2023, at the request of Claimant’s counsel. *See*, Ex. 10. Mr. Porter’s credentials are known to the Commission.

46. To prepare his report, Mr. Porter undertook a Zoom vocational interview of

Claimant on November 1, 2022. He also conducted a records review of all medical records pertaining to the industrial injury, analyzed Claimant's physical restrictions and functional limitations assigned by physicians (Dr. Montalbano and Dr. Williams), assessed demographics and nonmedical factors, reviewed Claimant's educational and vocational histories, conducted a transferable skills analysis, analyzed Claimant's pre and post labor markets, analyzed Claimant's pre and post wage earning capacity; and concluded by preparing disability findings and conclusions. Ex. 10:164.

47. Mr. Porter noted that Claimant completed all of his education, including post-high school education in engineering/telecommunications, in his native country of Colombia. *Id.* at 169. Claimant was working for Claro Communications in Colombia when he took a public position against government corruption and in favor of human and worker rights. Because of this, Claimant became the target of death threats. As a result of the death threats, Claimant and his wife and daughter emigrated from Colombia to the United States in 2019. He became a political asylum seeker with legal work status. He lived and worked in Nampa, Idaho since coming to the United States. *Id.* at 169-170.

48. While Claimant read, spoke, and wrote in Spanish proficiently, he had limited English language skills, even after living in the United States since 2019. He understood better than he could speak English, while he had difficulty reading and writing in English. *Id.* at 170. Claimant had proficient computer skills in Spanish. *Id.* at 169-170.

49. Claimant possessed a valid Idaho Class D driver's license and denied any legal issues that would impact his employability. *Id.*

50. Claimant's employment with Employer was terminated on July 26, 2021. Almost immediately after that time he became self-employed working as an independent Door Dash [later

SparkDrive] delivery driver delivering groceries for Walmart. Ex. 10:170.

51. Claimant did not serve in the military. *Id.*

52. While Claimant was referred to the Industrial Commission Rehabilitation Division (ICRD) following his industrial injury, he did not complete services with ICRD. *Id.* Claimant also did not apply for services through the Idaho Division of Vocational Rehabilitation. *Id.*

53. Claimant attempted to return to work without restrictions when Dr. Montalbano released him, but found that he was unable to perform the physical demands of the job, which led to termination of his employment on July 26, 2021. *Id.* at 172.

54. Claimant reported the following pertinent residual functional capacities to Mr. Porter: standing, for a maximum of one hour at a time; walking, for a maximum of 30 to 40 minutes at a time; sitting, has increased low back pain with extended sitting – avoids sitting for more than 15 to 20 minutes at a time; lifting/carrying, able to lift and carry a maximum of 40 pounds; pushing/pulling, increased low back pain with heavy pushing and pulling; kneeling, is unable to kneel more than a few minutes at a time; bending/stooping, has difficulty bending at the waist and has increased pain with bending or stooping; twisting, has limited range of motion in his low back – avoids twisting by turning his whole body; reaching, has increased low back pain when reaching behind his back – no restrictions in reaching forward or to the side with bilateral arms; overhead reaching, does ok with overhead reaching as long as it does not involve heavy weights; climbing, has difficulty climbing steps and stairs; sleeping, has difficulty getting comfortable and falling asleep due to lower back pain; driving, reports some difficulty getting in and out of vehicles; and other, reports that he is independent in his activities of daily living. *Id.* at 172-173.

55. Mr. Porter found the following job titles to be relevant to Claimant's previous employment: deliverer, merchandise (retail trade); truss assembler; material handler; cable

television installer; private branch exchange repairer (television and telephone); sales representative, communications equipment; manager, sales; shipping and receiving clerk; sales attendant; and stock clerk. Ex. 10:173-177.

56. For a transferable skills analysis, Mr. Porter found that Claimant had previously worked in occupations that ranged from unskilled to highly skilled work settings, however because of language barriers, his work history since coming to the United States was limited to unskilled and semi-skilled work. *Id.* at 178.

57. Based upon Claimant's current vocational profile, which included his limited English proficiency, Mr. Porter would place his highest specific vocational preparation level in the United States to be an SVP level 4, over 3 months up to and including six months of preparation. Mr. Porter found that Claimant could perform occupations ranging from SVP level 1 through SVP level 4, unskilled to semi-skilled work. *Id.*

58. Mr. Porter observed that prior to the industrial injury, Claimant did not have any assigned impairments or work restrictions that limited his physical demand capacities. Dr. Montalbano did not assign any work restrictions to Claimant. *Id.* at 180. The assigned restrictions from Dr. Williams, however, would place him in a limited light to limited medium physical demand work capacity. *Id.* at 181.

59. Mr. Porter found that based upon the opinion of Dr. Montalbano, Claimant possessed the same physical demand work capacities that he possessed prior to the industrial accident. Using Dr. Montalbano's medical opinion, Claimant has not sustained any labor market loss or wage loss, and thus does not qualify for disability in excess of impairment. *Id.* at 182-183.

60. Based upon Dr. Williams' assigned permanent work restrictions, Mr. Porter found that Claimant is limited to a limited medium physical demand work capacity, post-injury. Using

Dr. Williams' restrictions, Claimant has sustained a partial labor market loss and partial wage capacity loss, thus qualifying him for disability in excess of impairment. Ex. 10:183.

61. For a labor market analysis, Mr. Porter determined that Claimant was able, pre-injury, to perform the following occupations: laborers and freight stock, and material movers, hand; machine feeders; delivery service drivers; production workers; helpers, production workers; woodworking, machine setters, operators and tenders; packers and packagers; team assemblers; assemblers and fabricators, other, and stock clerks and order fillers. These jobs comprised 12,408 total jobs in Claimant's pre-injury labor market. *Id.* at 184. Because Dr. Montalbano released Claimant to return to work with no restrictions, Mr. Porter determined that he would still have access to 12,408 total jobs in the Boise City – Nampa, Idaho labor market. Thus his calculated labor market loss, using Dr. Montalbano's opinion, was 0.0%. *Id.* at 184.

62. Based upon the various physical restrictions assigned to Claimant by Dr. Williams, which encompass both exertional and positional restrictions, Claimant was in a limited light – limited medium physical demand work capacity. Excluding those jobs that are not compatible with the assigned restrictions from Dr. Williams, Claimant would continue to have access to approximately 3,829 total jobs post injury, resulting in a calculated labor market loss, post injury, of 69.1%. *Id.* at 184-185.

63. For a wage capacity loss calculation, Mr. Porter assumed that the most accurate description of Claimant's pre-injury wage earning capacity was \$23.10 per hour or \$923.80 per week. *Id.* at 186.²

64. Using the opinion of Dr. Montalbano that Claimant had no work restrictions,

² It appears that Mr. Porter based this calculation on a 40 hour work week instead of Claimant's actual hours of 58 hours per week.

Claimant would be able to return to his time-of-injury employment with no wage loss. Thus, the wage earning capacity loss using Dr. Montalbano's opinion would result in 0.0% wage loss. Ex.. 10:186.

65. Based upon Claimant's Door Dash/Spark Drive earnings and expenses, Claimant earns an equivalent of \$17.03 per hour. Using the medical opinion of Dr. Williams, and based upon his current Door Dash employment, Mr. Porter found that Claimant has sustained a calculated 26.3% wage earning capacity loss, post-injury. *Id.* at 186-187.

66. Mr. Porter concluded his report by noting that using the medical opinion of Dr. Montalbano, Claimant has sustained a 0.0% labor market loss and 0.0% wage capacity loss, thus he would not qualify for disability in excess of impairment. The calculated permanent partial disability would be 0.0%. *Id.* at 187-188.

67. Mr. Porter further determined that if the medical opinion of Dr. Williams were applied, Claimant would have sustained a 69.1% labor market loss and wage earning capacity loss of 26.3%, resulting, when averaged, in a permanent partial disability of 47.7%, inclusive of impairment. *Id.* at 188.

68. **Claimant's Work Status After Being Released By Dr. Montalbano.** After being released to return to work with no restrictions by Dr. Montalbano on June 30, 2021, Claimant attempted to return to Employer full time with no restrictions. He lasted approximately a week in the job. When Employer learned that Dr. Montalbano released Claimant to return to work without restrictions but that he could not perform the essential functions of the job, Employer terminated Claimant's employment. Tr.. 19:12-20:12.

69. Claimant next went to work for Door Dash delivering groceries from Walmart to customers in his private vehicle. Walmart subsequently developed its own mobile application for

grocery delivery known as SparkDrive, thus Claimant worked for SparkDrive doing the same grocery delivery job that he had with Door Dash, because Walmart ended the contract with Door Dash. In working for both Door Dash and SparkDrive, Claimant was not required to lift very heavy items, only small bags of groceries and light food items; if upon occasion Claimant had items to lift that were heavier, such as packages of bottled water, he had a cart in his car to deal with that. He made approximately \$17 per hour at this occupation and worked 50 to 60 hours per week, which averaged to \$935.00 per week (\$17 x 55 hours = \$935.00 weekly). Tr., 20:13-22:21.

70. **Claimant's Condition After Treatment.** As Claimant noted at hearing, he has not stopped working since he came to the United States, and that includes the period that followed his treatment by Dr. Montalbano who released him to return to work with no restrictions. *Id.* at 24:16-19. Lifting heavy objects, however, was difficult for Claimant. *Id.* at 24:20-22. Bending, crawling, squatting, and kneeling were all limited due to pain. *Id.* at 24:23-25:14. Pain from his injury kept Claimant from performing heavy work at home, including mopping, vacuuming, and similar tasks. He felt a lot of pain at nighttime. *Id.* at 25:15-23.

71. **Credibility.** Claimant testified credibly at hearing. His responses to questions were short and to the point – he did not attempt to overexplain himself. His testimony was also consistent with his statements to Mr. Porter and medical professionals.

FURTHER FINDINGS AND DISCUSSION

72. The provisions of the Idaho Workers' Compensation Law are to be liberally construed in favor of the employee. *Haldiman v. American Fine Foods*, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990). The humane purposes which it serves leave no room for narrow, technical construction. *Ogden v. Thompson*, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996). Facts, however,

need not be construed liberally in favor of the worker when evidence is conflicting. *Aldrich v. Lamb-Weston, Inc.*, 122 Idaho 361, 363, 834 P.2d 878, 880 (1992).

73. **Weighing the Medical Evidence.** 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 have 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). The credibility of an expert is not simply whether the expert is expressing an honest opinion. The Commission can weigh ‘whether or not the opinion takes into consideration all relevant facts.’ *Waters v. All Phase Constr.*, 156 Idaho 259, 262, 322 P.3d 992, 995 (2014). “The opinions of an expert are not binding upon the trier of fact, but are advisory only.” *Clark v. Truss*, 142 Idaho 404, 408, 128 P.3d 941, 945 (2006). “It is the role of the Industrial Commission to determine the weight and credibility of testimony and to resolve conflicting interpretations of testimony.” *Henderson v. McCain Foods, Inc.*, 142 Idaho 559, 565, 130 P.3d 1097, 1103 (2005). The Commission’s conclusions as to the weight and credibility of expert testimony will not be disturbed unless such conclusions are clearly erroneous. *Reiher v. American Fine Foods*, 126 Idaho 58, 878 P.2d 757 (1994).

74. This is a close case, the resolution of which depends upon nuanced aspects of the medical evidence and testimony. The medical testimony was from Dr. Montalbano, Claimant’s treating orthopedic surgeon, and Dr. Williams, an independent medical examiner retained by Claimant who was a sports medicine and orthopedic physician. There was agreement between these physicians on two key items, first, that Claimant had reached maximum medical

improvement and second, that Claimant required no further surgery to address his problem with L5, S1.

75. The physicians diverged in their opinions over whether Claimant's post-surgical symptomology was due to symptom magnification, and whether further medical treatment was indicated. Additionally, the physicians had differing takes on whether Claimant should have any post-surgical work restrictions.

76. For the reasons explained below in the treatment of medical care and permanent partial disability, it is reasonable to give more weight to the opinions of Dr. Williams than those of Dr. Montalbano.

77. **Medical Care.** An employer shall provide reasonable medical care for a reasonable time after an injury. Idaho Code § 72-432(1). A "reasonable time" includes the period of recovery before medical stability but may include a longer period past maximum medical improvement. *Jarvis v. Rexburg Nursing Center*, 136 Idaho 579, 38 P.3d 617 (2001). Reasonable medical treatment benefits may continue for life; there is no statute of limitation on the duration of medical benefits under Idaho Workers' Compensation Law.

78. A claimant bears the burden of showing that medical treatment required by a physician is reasonable. Idaho Code § 72-432(1). A claimant must support his or her workers' compensation claim with medical testimony that establishes compensability to a reasonable degree of medical probability. *Hope v. ISIF*, 157 Idaho 567, 572, 338 P.3d 546, 552 (2014), citing *Sykes v. CP Clare & Co.*, 100 Idaho 761, 764, 605 P.2d 939, 942 (1980). The reasonableness of treatment is dependent upon the totality of the facts and circumstances of the individual being treated. *Harris v. Independent School District No. 1*, 154 Idaho 917, 303 P.3d 605 (2013). Totality of

circumstances is a factual determination, but not a retrospective analysis with the benefit of hindsight. *Chavez v. Stokes*, 158 Idaho 793, 353 P.3d 414 (2015).

79. It is for the physician, not the Commission, to decide whether the treatment is required; the only review the Commission is entitled to make is whether the treatment was reasonable. *Sprague v. Caldwell Transportation, Inc.*, 116 Idaho 720, 779 P.2d 395 (1989).

80. The parties' briefing was unhelpful in resolving the dispute in the evidence regarding future medical care. In Claimant's Opening Brief, he merely recited what Dr. Williams prescribed as palliative care/pain management without arguing expressly why he is entitled to such additional medical care. Claimant did not criticize Dr. Montalbano's lack of opinion on whether palliative care is indicated. *See*, Claimant's Brief at 8 – 9. In Claimant's Reply Brief, Claimant stated merely as follows: "Whether further medical treatment such as treatment by a pain specialist and injections at this time would be considered palliative care is left up to the Commission." Claimant's Reply Brief at 7. Defendants, for their part, did not address medical care at all in their argument that Claimant is entitled to no further workers' compensation benefits. *See*, Defendants' Brief at 12 – 15.

81. Despite the parties' failure to affirmatively deal with a noticed issue of whether Claimant is entitled to further medical treatment, this issue will not be deemed waived but rather must be resolved. There is a legitimate dispute as to whether future medical treatment is reasonable based upon the medical evidence in the record.

82. Dr. Montalbano did not opine whether Claimant would require palliative care/pain management to treat post-surgical pain, which Dr. Montalbano acknowledged was real but did not require surgery. Dr. Williams, however, while agreeing that Claimant did not require further surgery, did address palliative care/pain management in his opinion. Dr. Williams recommended

post-MMI consultation to pain management/physical medicine for evaluation and long-term care of the post-surgical pain that Claimant was experiencing. *See*, Ex. 9:156. Pain management would include steroidal injections to deal with the inflammation in the S1 nerve root. Williams Dep., 21:10-19. The purpose of injections was to “shrink scar tissue” to ameliorate pain. *Id.* 21:15-17.

83. Of the two physicians’ treatments of future medical care, Dr. Williams’ opinion is entitled to greater weight. Dr. Montalbano ignored the issue of palliative care/pain management by not addressing it all. Nevertheless, in deposition he acknowledged that Claimant’s pain, albeit “subjective,” was real. (“Oh, I believed he had pain, but he did not require any additional surgery to address that pain.” Montalbano Dep., 44:20-22.) While Dr. Montalbano only determined that Claimant would not benefit from further surgery, he did not consider whether Claimant would benefit from other treatment in the form of palliative care/pain management.

84. There is objective evidence in the record to support a finding that Claimant’s pain was centered in irritation of the S1 nerve root due to scar tissue buildup in the laminectomy bed following surgery. (“So that describes some of the scar tissue that was residual from the surgery seemed to be touching or pinching close to that S1 nerve on the right side more than on the left.” Williams Dep., 13:8-11.) This bolsters a finding that palliative care/pain management would be appropriate for Claimant.

85. Based upon both Dr. Montalbano’s opinion and Dr. Williams’ opinion, Claimant requires no further surgery. Nevertheless, per Dr. Williams’ opinion, Claimant is entitled to future palliative care/pain management consultation for evaluation and long-term care of the chronic pain that he experienced post-surgery. It is reasonable to find that Claimant is entitled to such palliative care, including pain management consultations and steroidal injections if they are deemed necessary by a pain specialist physician.

86. **Impairment.** “Permanent impairment” is any anatomic or functional abnormality or loss after maximal medical rehabilitation has been achieved and which abnormality or loss, medically, is considered stable or non-progressive at the time of evaluation. Idaho Code § 72-422. “Evaluation (rating) 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, traveling, and non-specialized activities of bodily members. Idaho Code § 72-424. When determining impairment, the opinions of physicians are advisory only. The Commission is the ultimate evaluator of impairment. *Waters v. All Phase Construction*, 156 Idaho 259, 262, 322 P.3d 992, 995 (2014). In cases where two physicians have issued conflicting impairment ratings for the same body part(s), the Commission has the discretion to average the impairment ratings or choose the impairment rating that more closely aligns with the evidence. *Waters*, 156 Idaho at 262, 322 P.3d at 995. Averaging impairment ratings for the same body part by two or more physicians is also codified in the administrative regulations pursuant to IDAPA § 17.01.01.402.02.

87. Claimant argued that his impairment ratings should be averaged. *See*, Claimant’s Opening Brief at 9. Defendants conceded that Claimant’s impairment rating should be averaged using Dr. Montalbano’s 5% PPI and Dr. Williams’ 7% PPI to yield a 6% PPI. *See*, Defendants’ Brief at 3-4. It is reasonable to adopt the parties’ agreement on this issue. Claimant is therefore entitled to a 6% PPI.

88. **Disability.** “Permanent disability” or “under a 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. “Evaluation (rating) of permanent disability” is an appraisal of

the injured employee's present and probable future ability to engage in gainful activity as it is affected by the medical factor of permanent impairment and by pertinent nonmedical factors provided in Idaho Code § 72-430. Idaho Code § 72-425.

89. The test for determining whether Claimant has suffered a permanent disability greater than permanent impairment is "whether the physical impairment, taken in conjunction with nonmedical factors, has reduced Claimant's capacity for gainful employment." *Graybill v. Swift & Company*, 115 Idaho 293, 294, 766 P.2d 763, 764 (1988). In sum, the focus of a determination of permanent disability is on Claimant's ability to engage in gainful activity. *Sund v. Gambrel*, 127 Idaho 3, 7, 896 P.2d 329, 333 (1995).

90. Permanent disability is a question of fact, in which the Commission considers all relevant medical and nonmedical factors and evaluates the advisory opinions of vocational experts. *See Eacret v. Clearwater Forest Industries*, 136 Idaho 733, 40 P.3d 91 (2002); and *Boley v. State of Idaho, Industrial Special Indemnity Fund*, 130 Idaho 278, 939 P.2d 854 (1997). The burden of establishing permanent disability is upon Claimant. *Seese v. Ideal of Idaho, Inc.*, 110 Idaho 32, 714 P.2d 1 (1986).

91. The first requirement for determining whether Claimant has sustained disability in excess of impairment is to establish that Claimant has a permanent partial impairment. *See Urry*, 115 Idaho 750, 769 P.2d 1122. Claimant has met the *Urry* bar. He is entitled to a 6% PPI, as found above.

92. Before the dispute about work restrictions between the physicians is addressed, it is necessary to first address the subject of Claimant's alleged symptom magnification, which Dr. Montalbano observed but then stated that it does not matter in his deposition. Dr. Williams, however, did not find evidence of symptom magnification by Claimant in his examination but

rather observed that Claimant reacted appropriately for a patient with sciatic pain. Even if Claimant's pain complaints were entirely subjective, they were real and Dr. Montalbano acknowledged as such in his deposition. For his part, Claimant testified credibly about his post-surgical pain at hearing. The Referee is not persuaded that Claimant engaged in symptom magnification.

93. Nevertheless, there is an objective basis for Claimant's pain complaints. Dr. Williams observed in his physical examination of Claimant that he had sciatic pain and related it to irritation of the S1 nerve root due to residual scar tissue. Thus, Claimant's pain was not entirely subjective, as Defendants argued.

94. What is remarkable and difficult to comprehend is Dr. Montalbano's failure to assign work restrictions to a patient who had undergone L5, S1 disc surgery, a microdiscectomy. Dr. Montalbano himself assigned a 5% PPI to Claimant as a result of this surgery, but then did not assign corresponding work restrictions. Impairment by its very definition implicates limited functionality, yet Dr. Montalbano did not acknowledge that by assigning corresponding work restrictions to coincide with his impairment rating. Dr. Williams, however, did assign medium level work restrictions to Claimant as a result of his L5, S1 injury and surgery, as well as an impairment rating.

95. Dr. Montalbano's "anticipated post-operative changes" were in fact irritation of the S1 nerve root as a result of scar tissue in the operative area. Dr. Williams, in contrast, did address Claimant's problem with the S1 nerve root and related it to Claimant's pain complaints, which despite Dr. Montalbano's conclusion, were not entirely subjective.

96. Dr. Williams stated in pertinent part as follows: "Well, the reason to give someone permanent work restrictions is, one, based on functional capacity. Through 30 years of examining

patients and taking care of patients you learn with certain injuries there are just certain things people can and can't do, and then there are certain things they should and shouldn't do to prevent further injury, impairment disability. So it's a combination of functionality and protection.” Williams Dep., 23:5-12.

97. It is important to note that Dr. Montalbano acknowledged in his deposition that surgical patients often have pain complaints that do not follow normal dermatomal distribution.

98. Defendants point out that Dr. Montalbano was Claimant's treating physician and as such his opinion on restrictions should be entitled to greater weight than that of an IME physician such as Dr. Williams who only examined Claimant once. *See*, Defendants' Brief at 15 - 16. Nevertheless, Dr. Montalbano's status as the treating physician must be balanced by the fact that he did not address Claimant's work restrictions which are required, in part, to prevent further injury, as noted by Dr. Williams. Additionally, Claimant's functional capacity must still be addressed, which Dr. Montalbano did not address, with the exception of assigning permanent impairment of 5%.

99. Dr. Williams did appropriately address the functional capacity of Claimant. For this reason, it is reasonable to give greater weight to Dr. Williams' opinion on work restrictions. Claimant did not make a “full recovery,” as Dr. Montalbano predicted, and required work restrictions to address his functional capacity due to his pain.

100. If more weight were given to Dr. Montalbano's lack of work restrictions for Claimant, the inquiry into permanent partial disability would be over. No work restrictions equals no permanent partial disability. Nevertheless, utilizing Dr. Williams' restrictions, Mr. Porter calculated a 69.1% loss of labor market access, post-injury, for Claimant. Defendants did not

present their own vocational expert to dispute this calculation. Mr. Porter's opinion carries weight in this decision and his calculation of labor market access loss is accepted as realistic.

101. Mr. Porter's opinion is supported by the fact that Claimant was terminated from his job with Employer once Dr. Montalbano's opinion on no work restrictions was received by Employer. Claimant was simply unable to meet the essential physical requirements of that job. He did, however, immediately go out and find a job that he could perform that was within the restrictions set forth by Dr. Williams, namely the job with Door Dash and subsequently SparkDrive. He was performing this job at the time that Dr. Williams evaluated him.

102. Prior to his industrial accident, Claimant was able to do physically demanding jobs such as the one involving lifting heavy trusses and metal plates for Employer. Claimant, however, was limited from performing such work post-surgery due to his pain, as noted by Dr. Williams. Mr. Porter appropriately used Dr. Williams' restrictions to conclude that Claimant suffered a significant labor market loss of 69.1%.

103. Bolstering the assessment that Claimant has permanent partial disability is the fact that Claimant, although he had been in the United States since 2019, was still not proficient in English communication, which limited his employability in his Nampa/Boise job market further. If Claimant still resided in Colombia, he would have had access to skilled jobs with higher levels of education required, but since he has resided in the United States, unskilled and semi-skilled jobs were the only ones available to him. Claimant, however was precluded from doing any jobs that require heavier lifting such as the production job with Employer, thus his career choices were limited even further to positions such as the delivery driver for Door Dash and SparkDrive.

104. While Mr. Porter's opinion on a 69.1% job market access loss is well taken, Defendants, however, correctly point out that Mr. Porter miscalculated Claimant's wage capacity

loss. Defendants did not dispute that Claimant earned an average weekly wage of \$923.80 while working for Employer prior to his injury. Nevertheless, Mr. Porter incorrectly assumed that this wage was for a 40-hour work week, yielding \$23.10 per hour ($\$923.80 \div 40 \text{ hours per week} = \23.10 per hour). Claimant, however, did not work a 40-hour work week for Employer pre-injury. Rather, he typically worked a 58-hour work week, which yields a much lower average hourly wage of \$15.93 ($\$923.80 \div 58 \text{ hours per week} = \15.93 per hour). Since Claimant's average rate of pay as a driver for Door Dash and Spark Drive was \$17.03 per hour, Claimant thus has no identifiable wage loss.

105. Correcting for Mr. Porter's miscalculation of Claimant's wage loss, the accurate assessment of Claimant's permanent partial disability is as follows: 69.1% labor market access loss + 0.00% wage capacity loss = $69.1\% \div 2 = 34.55\%$ permanent partial disability (PPD). Therefore, Claimant has sustained a PPD of 34.55%, inclusive of impairment.

CONCLUSIONS OF LAW

1. Claimant is entitled to post-MMI future medical care in the form of palliative care/pain management. This includes medication management for pain as well as steroidal shots if they are deemed necessary by a pain management physician.

2. Claimant's permanent partial impairment (PPI) is 6%, an average of Dr. Montalbano's 5% PPI and Dr. Williams' 7% PPI.

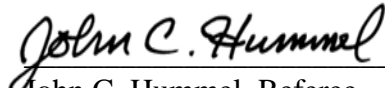
3. Claimant is entitled to permanent partial disability (PPD) in the amount of 34.55%, inclusive of impairment.

RECOMMENDATION

Based on 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 7th day of March, 2024.

INDUSTRIAL COMMISSION



John C. Hummel, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of March, 2024, a true and correct copy of the foregoing ***FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION*** was served *via* **Regular United States Mail** and **Electronic Mail** upon each of the following:

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Mary McMenomey

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

EDWING CASTILLO SUAREZ,

Claimant,

v.

INTEFRAME COMPONENTS, LLC,

Employer,

and

WCF NATIONAL INSURANCE
COMPANY,

Surety,
Defendants.

IC 2021-003103

ORDER

FILED

March 15, 2024

IDAHO INDUSTRIAL COMMISSION

Pursuant to Idaho Code § 72-717, Referee John Hummel submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusions of law, to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

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

1. Claimant is entitled to post-MMI future medical care in the form of palliative care/pain management. This includes medication management for pain as well as steroidal shots if they are deemed necessary by a pain management physician.

2. Claimant's permanent partial impairment (PPI) is 6%, an average of Dr. Montalbano's 5% PPI and Dr. Williams' 7% PPI.

ORDER - 1

3. Claimant is entitled to permanent partial disability (PPD) in the amount of 34.55%, inclusive of impairment.

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

DATED this 15th day of March, 2024.

INDUSTRIAL COMMISSION





Thomas D. Limbaugh, Chairman



Claire Sharp, Commissioner



Aaron White, Commissioner

ATTEST:



Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of March, 2024, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

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