

**BOISE, FRIDAY, DECEMBER 10, 2021 AT 11:10 A.M.**

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

**DANIEL SHARP,**

**Claimant-Appellant,**

**V.**

**THOMAS BROTHERS PLUMBING,  
Employer; TRUCK INSURANCE  
EXCHANGE, Surety,**

### Defendants-Respondents.

Docket No. 48568

## Appeal from the Idaho Industrial Commission.

James, Vernon &amp; Weeks, P.A. Coeur d'Alene, for appellant.

Breen Veltman Wilson, P.A, Boise, for respondent.

Daniel Sharp appeals from a decision of the Industrial Commission determining that he is not totally and permanently disabled as the result of a workplace accident. Sharp injured his back while working as a plumber for Thomas Brothers Plumbing in August 2015, which required back surgery in September 2015. In October 2016, Sharp was examined by Dr. Rodde Cox at the request of Thomas Brothers' surety, Truck Insurance Exchange. Dr. Cox concluded that Sharp had reached maximum medical improvement and imposed medium-duty work restrictions of lifting no more than 50 pounds occasionally, and avoiding repetitive bending, twisting, stooping, and exposure to low-frequency vibration. However, Sharp complained of continuing back pain and did not return to work. In January 2019, Sharp was examined by Dr. John McNulty, who imposed much more stringent work restrictions than Dr. Cox—no more than five minutes of continuous standing or walking, no more than 20 minutes continuous sitting, no lifting more than 10 pounds from waist to shoulder, no stooping, bending, or crawling, and other restrictions.

Before the Commission, Sharp argued that he was permanently and totally disabled based on the work restrictions imposed by Dr. McNulty. However, the Commission evaluated Sharp's disability based on Dr. Cox's restrictions and found Sharp suffered only a 21 percent permanent disability. In reaching this conclusion, the Commission noted that Sharp had been advised by multiple medical providers to lose weight to take strain off his injured back. However, Sharp gained substantial weight between his evaluation by Dr. Cox and his evaluation by Dr. McNulty. The Commission concluded that Sharp's weight gain was a superseding, intervening cause of Dr.

McNulty's more severe restrictions, and therefore disregarded Dr. McNulty's restrictions in determining Sharp's permanent disability rating.

On appeal, Sharp argues that the Commission erred by (1) disregarding his obesity as a personal, nonmedical circumstance under Idaho Code section 72-430, (2) failing to evaluate his disability as of the time of the hearing, (3) failing to follow the two-step framework for apportioning the amount of permanent disability attributable to an industrial accident as set forth by *Page v. McCain Foods, Inc.*, 145 Idaho 302, 179 P.3d 265 (2008), and (4) rendering a decision not supported by substantial and competent evidence.